



Fiberail Sdn Bhd

# Access Reference Document



# Fiberail's Access Reference Document

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# Access Reference Document

## CHAPTER 1 – Introduction, Background and Scope

### 1.1 Preliminary

- 1.1.1 This Access Reference is made by Fiberail Sdn Bhd (Company No: 190730-W), a company incorporated under the laws of Malaysia and having its registered office at Level 51, North Wing, Menara TM, Off Jalan Pantai Baharu, 50672 Kuala Lumpur on 3 May 2009 pursuant to section 5.3.2 of the Commission Determination on the Mandatory Standard on Access, Determination No. 2 of 2005, as amended by the Variation to the Commission Determination on the Mandatory Standard on Access (Determination No.2 of 2009) (“MSA Determination”).
- 1.1.2 This Access Reference Document is hereby referred to as Fiberail's ARD.
- 1.1.3 This Access Reference Document is set out as follows:
  - (a) Main Text of which consist of 5 Chapters;and
  - (b) Schedules, Annexure and relevant Appendixes
- 1.1.4 Fiberail's ARD is to facilitate Access Seekers who wish to have access to Fiberail's Facilities and/or Services and sets out the terms and conditions for access to Fiberail's Facilities and/or Services.

### 1.2 Legislative Background

- 1.2.1 Following the issuance of the Ministerial Direction to Determine a Mandatory Standard on Access, Direction No. 2 of 2003 and in exercise of the powers conferred by sections 55, 56, 104(2) and 106 of the Act, the Commission issued the MSA Determination.
- 1.2.2 MSA Determination Obligations
- 1.2.3 The MSA Determination deals with access to network facilities and network services listed in the Access List Determination and sets out obligations that apply to Operators concerning various access issues which include:
  - (a) Disclosure obligation (Section 5.3 of the MSA Determination);
  - (b) Negotiation obligations (Section 5.4 of the MSA Determination); and
  - (c) Content obligation (Section 5.5 to 5.19 of the MSA Determination).
- 1.2.4 Disclosure Obligations

Pursuant to the Disclosure Obligations in Section 5.3 of the MSA Determination, Fiberail is required to:

  - (a) prepare and maintain an Access Reference Document;
  - (b) make the Access Reference Document available;
  - (c) follow prescribed procedures after acceptance of the Access Reference Document; and
  - (d) follow prescribed procedures for any amendment of the Access Reference Document.
- 1.2.5 The role of Standard Access Obligations
- 1.2.5.1 Pursuant to sections 55 and 145 of the Act, the Commission may determine the list of network facilities and network services, which may be listed in the access list. Accordingly,

the Commission has issued the Access List Determination. Pursuant to section 149 of the Act, an Access Provider is required to comply with the standard access obligations in providing the network facilities and network services that are listed in the Access List Determination.

- 1.2.5.2 The standard access obligations facilitate the provision of access to the network facilities and network services listed in the Access List Determination by Access Seekers in order that Access Providers can provide network facilities, network services, and other facilities and/or services which facilitate the provision of network services or applications services, including content applications services.
- 1.2.5.3 Section 149 of the Act specifies the terms and conditions upon which the Access Provider must comply with the standard access obligations. Section 149(2) provides that the access provided by the Access Provider shall be:
- (a) of at least the same or more favourable technical standard and quality as the technical standard and quality on the Access Provider's network facilities or network services; and
  - (b) on an equitable and non-discriminatory basis.
- 1.2.5.4 The paraphrasing of any statutory provisions in this Fiberail's ARD does not amount to any party agreeing to waive any of their rights under the paraphrased provisions and those statutory provisions continue to apply in full.

### **1.3 Scope of Fiberail's ARD**

- 1.3.1 Fiberail is a licensed individual network facilities and network services provider under the Act. Pursuant to these licences, Fiberail may offer network facilities and network services within the railway corridor of Malaysia and any adjacent area.
- 1.3.2 Pursuant to Section 5.3.2 of the MSA Determination, Fiberail is obliged to prepare and maintain an Access Reference Document in relation to network facilities or network services on the Access List Determination which Fiberail provides to itself or third parties.
- 1.3.3 Fiberail's ARD:
- (a) contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and
  - (b) does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination.
- 1.3.4 Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to Fiberail's ARD.
- 1.3.5 Fiberail considers Fiberail's ARD to be consistent with:
- (a) the standard access obligations stipulated under Section 4.1.1 of the MSA Determination and section 149 of the Act; and
  - (b) the principles of non-discrimination stipulated under Sections 4.1.5 and 4.1.6 of the MSA Determination.
- 1.3.6 For the purposes of clarification, the terms and conditions of Fiberail's ARD is applicable to the Facilities or Services and which is relevant to the provisioning of facilities and services within Fiberail's licenses only. If the Access Seeker requests network facilities or network services outside Fiberail's ARD, the terms and conditions for the provision of such network facilities or network services shall remain outside the scope of Fiberail's ARD.

1.3.7 If an Access Seeker requests Fiberail to provide it with Facilities or Services other than on the terms and conditions contained in Fiberail's ARD, Fiberail and the Access Seeker will:

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

#### 1.4 Additional Services

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

### 1.5 **Effective Date of Fiberail's ARD**

#### 1.5.1 Commencement and Duration of Fiberail's ARD

1.5.1.1 Fiberail's ARD comes into force and takes effect immediately from the date referred to in **Section 1.1** and continues until the earlier to occur of:

- (a) the expiry of the ARD Term; or
- (b) a Review; or
- (c) the withdrawal of Fiberail's ARD in accordance with the terms of Fiberail's ARD.

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

#### 1.5.2 Amendment to Fiberail's ARD

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

- (a) the Access Seeker who is being provided with access to Facilities or Services ; and
- (b) the Access Seeker who has requested Fiberail's ARD within the period of ninety (90) days prior to the making of such amendments, unless the Access Seeker has already indicated that it does not wish to proceed with the Access Request.

#### 1.5.3 Notice of Withdrawal, Replacement and Variation of Fiberail's ARD

1.5.3.1 If the Commission revokes, varies or replaces the Access List Determination relating to the Facilities or Services, Fiberail may, by giving written notice to all Access Seekers to whom it is supplying Facilities or Services under Fiberail's ARD, withdraw or replace Fiberail's ARD with effect from a date no earlier than the effective date of the Commission's revocation.

1.5.3.2 Fiberail shall comply with Sections 6.4.2 and 6.4.3 of the MSA Determination where it withdraws or varies Fiberail's ARD pursuant to Section 1.5.3.1.

1.5.3.3 In addition to Section 1.5.3.2 above, Fiberail may give the Access Seekers to whom it is supplying Facilities and Services under Fiberail's ARD a notice of a variation or replacement of Fiberail's ARD to effect such variations that are necessary or appropriate in the event of:

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

1.5.3.4 Notwithstanding Sections 1.5.3.1, 1.5.3.2 and 1.5.3.3 above, Fiberail may subject to Section 1.5.2 above, replace Fiberail's ARD at any time.

1.5.4 Availability

15.4.1 Subject to Section 1.5.4.2, Fiberail's ARD shall be made available to an Access Seeker:

- (a) on written request, at Fiberail's principal place of business; and
- (b) on a publicly assessable website.

15.4.2 Prior to the provision of Fiberail's ARD to the Access Seeker, the Access Seeker shall be required to enter into a confidentiality agreement with the Access Provider.

## CHAPTER 2 – Interpretation

2.1 The following words have these meanings in this Fiberail Access Reference Document unless the contrary intention appears: -

“**Act**” means the Communications and Multimedia Act 1998.

“**Access Agreement**” means:

- (a) an Access Agreement executed between Access Seeker and Access Provider for Fiberail to provide requested Facilities and/or Services subject upon commercially negotiated terms and conditions and in accordance with the terms therein contained and registered with the Commission in accordance with Section 150 of the Act.; or

“**Access List Determination**” means Commission Determination on Access List, Determination No. 1 of 2005 which came into operation on 1 July 2005 and as amended by the Variation to Commission Determination on Access List (Determination No.1 of 2005), Determination No.1 of 2009.

“**ARD Term**” means the period of three (3) years commencing from the date set out in Section 1.1.1 or such other period as may be specified by Fiberail from time to time.

“**Access Request**” means a request made by the Access Seeker to Fiberail for access to Facilities or Services and containing the information in Section 4.1.3.

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

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

“**Access Service**” means a service for the carriage of agreed Communication along Fiberail's Facilities and Services between the POIs/POPs.

“**Bank Guarantee**” means a guarantee, executed in favour of Fiberail by a licensed bank in Malaysia approved by the Fiberail pursuant to Section 4.3 on behalf of the Access Seeker.

“**Billing Dispute**” means the dispute of an invoice prepared by an Operator to the Other Operator which is made in good faith.

“**Billing Period**” means one (1) calendar month period over which the supply of Facilities and/or Services is measured for the purposes of billing unless otherwise agreed between the Operators.

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

“**Charges**” means the sums payable by the Access Seeker to Fiberail for accessing and/or being provided the Facilities and/or Services.

“**Commencement Date**” means the date on which the Operators enter into the Access Agreement or such other date as agreed between the Operators.

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

**“Communication”** means any communication, whether between persons and persons, things and things, or persons and things in the form of sound, data, text, visual images, signals, or any other form or any combination of those forms and, where the context permits, includes and attempt to establish a communication.

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

**“Confidentiality Agreement”** means a Confidentiality agreement entered into between Fiberail and the Access Seeker in accordance with Section 5.3.7 of the MSA Determination.

**“Creditworthiness Information”** means the information required by Fiberail to assess the creditworthiness of the Access Seeker which are more particularly described in Section 4.2 of Fiberail’s ARD and such other information as may be required from time to time.

**“Customer”** means in relation to an Operator, a person having a contractual relationship with the Operator for the provision of Communications Services.

**“Determination”** means any lawful determination made by the Commission and/or the Minister, pursuant to Chapter 2 of Part V of the Act.

**“Direction”** means any lawful direction made by the Commission pursuant to Chapter 1 of Part V of the Act.

**“Effective Date”** means the date on which the relevant portions of the Access Agreement requiring registration is duly registered with the Commission under Section 150 of the Act in its entirety (and such registration is notified by the Commission in writing to either of the Operators);

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

**“Facilities”** means network facilities and/or other facilities which facilitate the provision of network services or applications services including content applications services which are listed in the Access List Determination and offered in Fiberail’s ARD.

**“Facilities Access”** in relation to Facilities, means a service for the provision of access to network facilities and/or premises.

**“Fast Track Application Service”** means a Facility or Service that is subjected to the fast track application process which is more particularly set out in Section 4.10.

**“Fast Track Security Sum”** means the security:

- (a) in the form of a Bank Guarantee, deposited with Fiberail in accordance with Section 4.9 and Chapter 6 for the Fast Track Application Service; and
- (b) which amount is Ringgit Malaysia Fifty Thousand (RM50,000) only for each Facility or Service for which access is sought unless otherwise provided in Chapter 6.

**“Fast Track Service Order Form”** means the application form to be completed by an Access Seeker with respect to the Fast Track Application Service which is more particularly set out in Appendix 1 of Fiberail’s ARD.

“**Fiberail**” means Fiberail Sendirian Berhad and in Fiberail’s ARD, is the Access Provider unless otherwise stated.

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

“**Insurance Information**” means the insurance information required by Fiberail pursuant to Section 4.4.

“**Interconnect Link**” means a physical link connecting the Networks of two Operators.

“**Interconnection**” means interconnection of the Operators’ Networks : for the purposes of Fiberail providing Access Services to the Access Seeker in relation to a Communication via a POI/POP and using agreed interfaces and signaling systems.

“**Interconnect Steering Group**” or “**ISG**” means the inter-operator relations group established by the Operators.

“**Invoice**” means the invoice for amounts due in respect of the supply of requested Facilities or Services during a Billing Period.

“**Legislative Event**” means:

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

“**Licence**” means an individual licence granted by the Minister pursuant to the Act for Communication Services.

“**Manuals**” means the Technical and Implementation Manual, the Operations and Maintenance Manual and other manuals which the Operators establish pursuant to the Access Agreement.

“**Minimum Value**” for the purposes of calculating the Security Sum means the total estimated value of access to the requested Facilities and Services provided (based on the most recent amounts invoiced for those requested Facilities and Services) or new facilities and/or services to be provided by Fiberail to the Access Seeker for a ninety (90) day period.

“**Minister**” means the Minister of Energy, Communications and Multimedia or, if different, the Minister administering the Act.

“**Model Access Agreement**” means an agreement entered into pursuant to:

- (a) an Access Request made in accordance with **Sections 4.1 to 4.9** (also referred to as “**Access Agreement Template**” or “**AAT**”); or
- (b) a fast track application process made in accordance with **Section 4.10** (also referred to as “**Fast Track Access Agreement**” or “**FTAA**”); and

which contains the terms and conditions based on Fiberail's ARD.

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

**"Network Capacity"** means equipment and facilities required to be installed in Fiberail's Network for use in the provision of one or more Access Services but does not include Interconnect Link.

**"Network Conditioning"** means the conditioning, equipping and installation of facilities at Fiberails's Network to enable the provision of one or more Access Services.

**"Operators"** means Fiberail and the Access Seeker collectively.

**"Other Operator"** means either:

- (a) Fiberail; or
- (b) the Access Seeker,

as the context requires.

**"Point of Interconnect"** or "POI" means any technically feasible point which demarcates the Network of Fiberail and the Network of the Access Seeker collectively referred to as the **"interconnecting networks"**) and is a point at which a Communication is transferred between the interconnecting networks.

**"Point of Presence or "POP"** means a point at which an Access Seeker has established itself for the purposes of obtaining access to Facilities or Services and is the point at which Communication is transferred between the Operators.

**"Regulatory Event"** means:

- (a) the declaration, modification, variation or revocation of the MSA Determination;
- (b) the giving of a lawful direction to Fiberail by the Commission relating to Fiberail's ARD; and/or
- (c) the giving of a lawful direction to Fiberail by the Minister relating to Fiberail's ARD.

**"Review"** means a review of the MSA Determination pursuant to Section 6.5 of the MSA Determination.

**"RM"** means Ringgit Malaysia which shall be the monetary currency used in Fiberail' ARD unless otherwise provided.

**"Security Sum"** means the security:

- (a) in the form of a Bank Guarantee, deposited with Fiberail in accordance with Section 4.3 and Chapter 6 for the supply of Facilities or Services and
- (b) which amount is equivalent to the Minimum Value unless otherwise provided in Chapter 6.

**"Services"** means network services and/or other services which facilitate the provision of network services or applications services, including content applications services which are listed in the Access List Determination and offered in Fiberail's ARD.

**"Service Ordering Procedures"** means the procedures governing the forecasting, planning and ordering of relevant Facilities and Services as set out in the relevant Manuals.

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

**“Sunset Date”** means 30 June 2010 or such other later date as declared by Fiberail.

**“Technical Specifications”** means any technical parameters, specifications and procedures applicable to Interconnection of the Operators’ Network and provision of Access Services documented in this ARD or any manuals referred to in the Access Agreement.

2.2 In Fiberail’s ARD except where the contrary intention appears;

- (a) the singular includes the plural and vice versa; and
- (b) a document includes all amendments or supplements to that document, or replacements or novations of it; and
- (c) a reference to a statute, ordinance, regulations, code or other law and other instruments under it, shall include any statute, ordinance, regulation, code and other law consolidating, amending, re-enacting or replacing of any of them from time to time relating thereto or in connection therewith; and
- (d) a reference to a person includes a firm, body corporate, unincorporated association or an authority; and
- (e) a reference to a person includes the person’s executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; and
- (f) if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the next Business Day and any reference to acts that have to be done or to be done by or on or before a particular day or Business day means by or on or before the close of business at 5.00pm on that particular day or Business Day; and
- (g) a reference to a related body corporate of an Operator has the same meaning as in the Companies Act 1965; and
- (h) a reference to a third party is a reference to a person who is not a party to Fiberail’s ARD; and
- (i) in relation to an Access Service for the carriage of a communication it refers to the carriage of a communication between the POIs/POPs along Fiberail’s Network but does not include any Communication for which the Access Service is provided with the assistance a third party’s Facilities or Services; and
- (j) no rule of construction and/or interpretation applies to the disadvantage and/or detriment of the Operator having control and/or responsibility for the preparation of Fiberail’s ARD; and
- (k) headings are included for convenience and do not affect the interpretation of Fiberail’s ARD.

## CHAPTER 3 – Principles of Access and Interconnection

### 3.1 Application of Fiberail's ARD

- 3.1.1 Fiberail's ARD sets out the terms and conditions upon which Access Seekers may access Fiberail's Facilities and/or Services.
- 3.1.2 Subject to Section 1.3.6, Fiberail's ARD applies only to the Facilities and/or Services.
- 3.1.3 The general terms for access to Fiberail's Facilities and Services listed in the Access List Determination are set out in the **General Terms and Conditions of the Access Agreement Template**.
- 3.1.4 The obligations on forecast, ordering and provisioning for Fiberails' Facilities and Services listed in the Access List Determination are set out in **Schedule A of the Access Agreement Template**.
- 3.1.5 The obligations on technical and network operational matters for Fiberail's Facilities and Services listed in the Access List Determination are set out in **Schedule C of the Access Agreement Template**.
- 3.1.7 The **Annexures to the ARD** are set out as follows:
  - (a) ANNEXURE I – List & Description of Facilities and Services
  - (b) ANNEXURE II – Charges and Charging Principles
  - (c) ANNEXURE III – Existing POI/POP List

### 3.2 Eligibility for Access of Services

- 3.2.1 Fiberail may at its discretion and in a manner consistent with the Licence(s) granted (and the licence rights accorded therein) by the Minister to the Access Seeker, determine on a case by case basis whether to provide the Access Seeker with access to Facilities and/or Services.
- 3.2.2 Consistent with Government policy and Determinations by the Commission (and its predecessor), an Access Seeker may only request for access to any or all of the Facilities and/or Services where the Access Seeker has been granted (i) an individual network facilities provider licence and (ii) an individual network services provider licence and (iii) an individual content applications services provider licence, and such individual licences are not limited or restricted from those detailed in the *Communications and Multimedia (Licensing) Regulations 2000*, as amended in any way:
  - (a) by reference to the type of network facilities, network services and/or content applications services that can be provided; and
  - (b) by geographical limitations to only a specific area and/or areas in Malaysia to which the Access Seeker can provide such network facilities, network services and/or content applications services.
- 3.2.3 An Access Seeker may not request for access to the Facilities and/or Services where the requested Facilities or Services are to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.
- 3.2.4 Consistent with Government policy and Determinations by the Commissions (and its predecessor), where Fiberail provides the Access Seeker with access to the Facilities or Services pursuant to **Section 3.2.1**, the charges for the requested Facilities or Services shall be negotiated between the Operators subject to any mandatory standard on access pricing determined by the Commission.

### **3.3 Availability of Facilities and Services**

3.3.1 Consistent with Government policy and the Access List Determination, Fiberail shall be required to provide the Domestic Network Transmission Service until the Sunset Date only. After the Sunset Date, the automatic transition of Domestic Network Transmission service shall be in accordance with the provisions set out in Appendix 2 General Terms and Conditions.

### **3.4 Principles of Access and Interconnection**

#### **3.4.1 Access Terms and Conditions**

3.4.1.1 Subject to Sections 3.2 and 3.3, Fiberail shall if requested to do so by an Access Seeker, supply a Facility and/or Services to the Access Seeker on commercially negotiated terms and conditions.

### **3.5 Dispute Resolution**

3.5.1 Each party shall use all reasonable endeavours to resolve any disputes arising from or in connection with Fiberail's ARD.

3.5.2 If any disputes or difference of any kind shall arise between the parties in connection with or arising out of Fiberail's ARD, the Dispute Resolution Procedure in Annexure A of the MSA Determination shall be adhered to.

### **3.6 Confidentiality**

An Operator must protect from disclosure any confidentiality information provided by another Operator given in the course of negotiating an Access Agreement or during the term of Fiberail's ARD in accordance with the Confidentiality Agreement signed between the parties.

## **CHAPTER 4 – Access Request Procedures**

### **4.1 Application for Access to Services**

4.1.1 Where an Access Seeker makes a request to Fiberail to supply Facilities or Services, the Access Seeker shall serve an Access Request on Fiberail.

4.1.2 The purpose of such Access Request is to provide Fiberail with sufficient information to assess the Access Seeker's request for the supply of Facilities or Services under Fiberail's ARD.

4.1.3 The Access Request must:

- (a) contain the name and contact details of the Access Seeker,
- (b) specify the Facilities or Services in respect of which access is sought;
- (c) indicate whether the Access Seeker wishes to accept Fiberail's ARD or negotiate an Access Agreement;
- (d) contain the information (if any) as set out in Section 5.3.6 of the MSA Determination that the Access Seeker reasonably requires Fiberail to provide for the purposes of the access negotiations;
- (e) contain two (2) copies of confidentiality agreement properly executed by the Access Seeker in the form prescribed by Fiberail;

- (f) specify forecasts of the capacity which the Access Seeker reasonably requires, having regards to Fiberail's disclosed provisioning cycle and forecasting as described herein;
- (g) provide the relevant information relating to the Access Seeker's Network and the functionality of its Services, to the extent that the Access Seeker is aware that such information may affect Fiberail's Network;
- (h) contain confirmation that the Access Seeker is not currently being supplied with the requested Facility or Service ;
- (i) specify the type of communications licences held by the Access seeker and a copy of the licence where a copy had not been previously provided;
- (j) contain Creditworthiness Information as set out in **Section 4.2**;
- (k) be accompanied by a Security Sum as set out in **Section 4.3**;
- (l) contain Insurance Information as set out in **Section 4.4**;
- (m) contain relevant technical information relating to the interface standards of the Access Seeker; and
- (o) such other information that Fiberail may reasonably request.

#### 4.2 Creditworthiness Information

4.2.1 The Creditworthiness Information that is required to accompany an Access Request include but shall not be limited to:

- (a) a letter, signed by the executive director of the Access Seeker, stating that the Access Seeker is not insolvent and is not under any external administration or under similar form of administration under any laws applicable to it in any jurisdiction;
- (b) a copy of the Access Seeker's most recently published audited balance sheet and audited profit and loss statement; and
- (c) such other information as may be reasonably requested by Fiberail provided that such information are information which are publicly available.

4.2.2 The Creditworthiness information shall commensurate with an estimated value of the access to the Facilities or Services to be provided by Fiberail to the Access Seeker over a ninety (90) day period.

#### 4.3 Security Sum

4.3.1 An Access Request shall be accompanied by a Security Sum. The security that may be given by the Access Seeker shall be in the form of a Bank Guarantee.

### 4.4 Insurance Information

4.4.1 Subject to Section 4.4.2, An Access Request shall be accompanied by the following insurances:

- (a) Worker's Compensation and/or Social Security Insurance and/or Employer's Liability Insurance and/or other insurance with statutory limits as required by the laws of Malaysia to provide for payment to its employees or in connection with the work covered by the Access Agreement that may be entered and/or their dependants; and
- (b) Comprehensive general Liability Insurance of an amount which is not in excess of Ringgit Malaysia Twenty Million (RM20, 000,000) for any one claim or series of claims arising out of an accident for occurrence in connection with the Access Agreement that may be entered into resulting in bodily injury and/or personal injury

including death and property damage of an Operator which shall arise out of or in consequence of any acts of omissions of the Other Operator. Such policy shall include contractual liability.

- 4.4.2 For the purpose of clarification, the insurance provided by the Access Seeker pursuant to section 4.4.1 shall commensurate with the reasonable sum, which is to be agreed by Fiberail.

#### 4.5 Processing of Access Request

##### 4.5.1 Acknowledgement of Receipt of Access Request

Subject to Section 4.10, Fiberail shall within ten (10) Business Day of receipt of the Access Request inform the Access Seeker in writing that it has received the Access Request and:

- (a) Subject to Section 4.5.3, request additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request; or
- (b) Indicate whether it is willing to provide access to Facilities or Services in accordance with Fiberail's ARD.

Subject to the additional information being received by Fiberail within twenty (20) Business days from the date of request, Fiberail shall reconsider the Access Request in accordance with this **Section 4.5.1** upon receipt of such additional information.

##### 4.5.2 Non-refundable resource

- 4.5.2.1 In accordance with Section 5.7.28 of the MSA Determination Fiberail may charge an Access Seeker a one-off non-refundable resources charge (including processing fees and additional and non-routine processing fees) to be determined by reference to the costs incurred by Fiberail for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Facilities and Services for the purposes of interconnection.

- 4.5.2.2 The one-off non-refundable resource charge shall also be inclusive of a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request as Fiberail is required to allocate manpower and resources for the same. Such non-refundable processing fee is only applicable to requested Facilities and Services that can be offered and made available by Fiberail. The non-refundable processing fees for the respective Facilities and Services will be mutually agreed by the Operators from time to time. Notwithstanding the foregoing, in the event that additional and non-routine administrative work is required to process the Access Request where there is sufficient and/or erroneous information provided by the Access Seeker or where the Access Seeker varies or changes the information provided, Fiberail shall be entitled to charge additional and non-routine processing fee for undertaking such additional and non-routine work as additional resources are required to do the same.

- 4.5.2.3 If the Access Seeker does not proceed with the Access Request accepted by Fiberail, the processing fees will not be refunded to the Access seeker. However, if the Access Seeker proceeds with the Access Request accepted by Fiberail, the processing fee will be set-off against the Charges for the requested Facilities and Services after acceptance of the Access Request by Fiberail

#### 4.6 Assessment of Access Request

##### 4.6.1 Reason for Refusal

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

- (a) in Fiberail's reasonable opinion, the Access Seeker's Access Request was not made in good faith and Fiberail shall set out the basis on which the Access Request was not made in good faith;
- (b) in Fiberail's reasonable opinion, the Access Request does not contain the information reasonably required by Fiberail's ARD provided that Fiberail has sought the information from the Access Seeker under Section 4.5.1 of Fiberail's ARD and has not received that information within twenty(20) Business Days of making such a request;
- (c) Fiberail does not currently supply or provide access to the requested Facilities or Services to itself or to any third parties, except where the Access Seeker compensates Fiberail for the supply of access to such Facilities or Services;
- (d) It is not technically feasible to provide access to the requested Facilities or Services;
- (e) Fiberail has insufficient capacity to provide the requested Facilities or Services;
- (f) there are reasonable grounds in Fiberail's opinion to believe that the Access Seeker would fail, to make timely payment for the supply of the relevant Facility or Service; or
- (g) there are reasonable grounds in Fiberail's opinion to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities or Services; or
- (h) there are reasonable grounds for Fiberail to refuse access in the national interest; or
- (i) the access is being sought to facilities and/or services which are not in the Access List Determination.

4.6.2 Determination of technical infeasibility

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

4.6.3 Determination of capacity constraints

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

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

Example of reasonable grounds for Fiberail's belief as mentioned in Section 4.6.1 (f) includes evidence that the Access Seeker is not in the reasonable opinion of Fiberail creditworthy.

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

4.6.5.1 Example of reasonable grounds for Fiberail's belief as mentioned in Section 4.6.1 (g) include repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to Facilities or Services have been provided (whether or not by Fiberail).

4.6.6 Assessment of Creditworthiness

4.6.6.1 In determining the creditworthiness of the Access Seeker, Fiberail may have regard to, but is not limited to the matters referred to in **Section 4.2**.

4.6.6.2 In determining the creditworthiness of the Access Seeker, Fiberail shall not take into account amounts outstanding for Facilities or Services previously provided by Fiberail to the Access

Seeker where, in accordance with the terms and conditions governing the provision of such Facility or Service, the Access Seeker is not required to pay such amounts to Fiberail to the extent that there is a bona fide dispute in relation to the amounts outstanding by the Access Seeker to Fiberail and the Access Seeker is relying on such terms and conditions as basis for its non-payment.

#### 4.7 Notification of Rejection to the Access seeker

##### 4.7.1 Where Fiberail rejects the Access Request, Fiberail shall:

- (a) promptly notify the Access Seeker in writing within ten (10) Business Days from receipt of the Access Request or additional information requested pursuant to **Section 4.5.1**, as the case may be;
- (b) provide reasons for rejection under Section 4.6.1 above to the Access Seeker;
- (c) provide the basis for Fiberail's rejection of the Access Request; and
- (d) indicate a date and time, not later seven (7) Business Days from the date of the notice of rejection, at which representatives of Fiberail will be available to meet with representatives of the Access Seeker to discuss the rejection of the Access Request. At this meeting, the Access Seeker may request Fiberail to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in **Section 4.6.1(e)**, Fiberail must identify when additional capacity is likely to be available.

4.7.2 Where the Operators are unable to resolve their differences following the meeting held pursuant to Section 4.7(d), either Operator may request resolution of the dispute in accordance with dispute resolution procedures in Annexure A of the MSA Determination.

#### 4.8 Acceptance of Access Request

4.8.1 Where Fiberail agrees to provide access to Facilities or Services to the Access Seeker in accordance with Fiberail's ARD, Fiberail shall within ten (10) Business Days of such response under Section 4.5.1(b), provide the Access Seeker with two copies of the executed Model Access Agreement, for execution by the Access Seeker.

4.8.2 Where the Access Seeker wish to negotiate an Access Agreement, the Operators shall comply with the requirements in Sections 5.4.2, 5.4.3, and 5.4.4 of the MSA Determination in negotiating and concluding an Access Agreement.

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

- (a) a Security Sum has been provided in accordance with Section 4.1 and 4.3; and
- (b) an Access Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with section 150 of the Act.

#### 4.9 Negotiations on Access Request

4.9.1 Pursuant to Section 4.8.2, where the Access Seeker wish to negotiate an Access Agreement, Fiberail will set out in its response to the Access Seeker:

- (a) the names of personnel of Fiberail's representatives in the negotiations and in respect of those personnel:
  - i. his or her contact details;
  - ii. his her job title; and
  - iii. details of his or her availability for the access negotiations;
- (b) the identity of the negotiating team leader, and Fiberail shall ensure that the negotiating team leader shall have authority to make binding representations on

behalf of Fiberrail in relation to matters arising from the negotiations (subject to final approval from Fiberrail's Chief Executive Officer, if required)

- (c) the information which is reasonably required from the Access Seeker for the purposes of negotiations;
- (d) a date and time not later than fifteen (15) Business Days from the date of the Access Seeker's response, at which Fiberrail's representatives will be available for the initial meeting with the representatives of the Access Seeker.
- (e) One copy of the executed Confidentiality Agreement (in accordance with Section 4.1.3 (h)) that has also been properly executed by the Operators.

#### 4.10 Fast Track Application Process

4.10.1 (a) The fast track application process set out in this **Section 4.10** shall be applicable to

- (i) Domestic Network Transmission Service

- (b) For the purpose of clarification, where an Access Seeker requests for a Facility or Service that is not listed in **Section 4.10.1** above in addition to a Fast Track Application Service, the fast track application process shall not be applicable and the Access Seeker shall be required to put in an Access Request for the requested Facilities and Services in accordance with **Sections 4.1 to 4.9**.

4.10.2 An Access Seeker is eligible for the fast track application process if it fulfils the following criteria:

- (a) The Access Seeker is duly licensed to provide the Facilities or Services for which access is sought;
- (b) the access requirements of the Access Seeker do not in Fiberrail's opinion, have a material impact on Fiberrail's current level of network resources; and
- (c) the Access Seeker is willing to accept the terms and conditions for the requested Facility or Service as stipulated in the Model Access Agreement without negotiation;

4.10.3 Subject to Section 4.10.2, where an Access Seeker who is eligible for the fast track application process wishes to utilize the fast track application process, the Access Seeker shall:

- (a) forward to Fiberrail a duly completed and signed Fast Track Service Order Form;
- (b) deposit a Fast Track Security Sum;
- (c) pay a non-refundable processing fee to be determined by Fiberrail for undertaking the necessary administrative work to process the fast track application; and
- (d) lodge with Fiberrail two copies of the signed Model Access Agreement with suggested amendments to the technical matters (if any).

4.10.4 Fiberrail may reject the Access Seeker's fast track application for the reasons set out in Section 4.6.1(c), (f) and (g)

4.10.5 Where Fiberrail accepts the Access Seeker's fast track application, Fiberrail:

- (a) may impose a one-off resource charge for allocation of manpower and other resources in accordance with **Section 4.5.3** and
- (b) shall within ten (10) Business Days of receipt of the fast track application, execute the Model Access Agreement

- 4.10.6 Fiberail will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Facility or Service until:
- (a) a Fast Track Security Sum has been provided in accordance with **Sections 4.10.3**; and
  - (b) a Model Access Agreement has been executed between the Operators and the Model Access Agreement is registered with the Commission in accordance with section 150 of the Act.
- 4.10.7 For the purpose of clarification, if the Access Seeker wishes to obtain the Fast Track Application Services but is not agreeable to the terms and conditions of the Model Access Agreement, Fiberail is not obliged to process the fast track application further and the Access Seeker shall be required to put in a new Access Request in accordance with **Section 4.1-4.9**.

## CHAPTER 5 – Notices

5.1 Any communications in respect of Fiberail's ARD should be made in writing to:

Attention: Finance & Legal Division  
Address: 8<sup>th</sup> Floor Wisma TM,  
Jalan Desa Utama,  
Pusat Bandar Taman Desa,  
58100 Kuala Lumpur, Malaysia

Telephone: 03-79809696  
Facsimile: 03-79818781

## **APPENDIX 1**

# **Fast Track Agreement**

## Fast Track Service Terms and Conditions

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

# APPENDIX 2

## GENERAL TERMS AND CONDITIONS

### 1. TERM

- 1.1 The Access Provider will provide the facilities and/or services specified in the List and Description of Facilities and Services in Annexure I to the Access Seeker on the general terms and conditions set out in this Access Agreement
- 1.2 The Facilities and Services provided by the Access Provider under this Access Agreement shall be based on the charges and charging principles set out in the Charges and Charging Principles - Annexure II.

### 2. PROVISIONS ADDRESSING TRANSITIONAL ISSUES IN RELATION TO DOMESTIC NETWORK TRANSMISSION SERVICE

- 2.1 Pursuant to Section 3.3.1 of Chapter 1 ARD, Fiberail shall only be required to provide Domestic Network Transmission Service until the Sunset Date.

#### 2.2 Availability of Domestic Network Transmission Service

- 2.2.1 The terms and conditions in this Section 2.2 shall only be applicable until the Sunset Date.
- 2.2.2 Access Seekers who are provided with access to Domestic Network Transmission Service pursuant to an Access Agreement prior to the Sunset Date will automatically be provided with access to Transmission Service after the Sunset Date unless:
  - (a) the Transmission Services does not offer leased circuits which has the same bandwidth as the leased circuit bandwidth offered under Domestic Network Transmission Service currently subscribed by the Access Seeker; or
  - (b) the Access Seeker:
    - (i) notifies Fiberail in writing at least sixty (60) days prior to the Sunset Date that it does not wish to seek access to Transmission Service after the Sunset Date ("**Service Termination Notice**"); and
    - (ii) has met the conditions for termination of the Domestic Network Transmission Service as specified in the Access Agreement or by Fiberail ("**Termination Conditions**").
- 2.2.3 Where the Transmission Services does not offer leased circuits which has the same bandwidth as the leased circuit bandwidth offered under Domestic Network Transmission Service, then those leased circuit for Domestic Network Transmission Service will automatically terminate on the Sunset Date. The Access Seeker may however subscribe for new leased circuits of different bandwidth under Transmission Services pursuant to a new leased circuit agreement and in accordance with the terms and conditions in contained therein.
- 2.2.4 In relation to Section 2.2.2 above, where the Access Seeker provides Service Termination Notice and complies with the Termination Conditions, Fiberail shall cease to provide the Access Seeker with access to Domestic Network Transmission Service on the Sunset Date or such earlier date as agreed between the parties.

2.2.5 After the Sunset Date, Access Seekers who wish to seek access to Domestic Network Transmission Service shall be required instead to seek access to Transmission Service in accordance with the terms and conditions of agreement to be mutually agreed between the parties.

## **2.3 PROVISIONS ON TRANSMISSION SERVICE**

2.3.1 Transmission Service is a Facility and/or Service for the carriage of communications between any two technically feasible network transmission points (not being Customer transmission points) via network interface at such transmission rates as may be agreed between Fiberail and the Access Seeker on a permanent or virtual basis.

2.3.2 Network interface may use any technology as may be agreed between Fiberail and the Access Seeker.

2.3.3 The functionalities of the Transmission Service may include:

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

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

2.3.5 For the purposes of this provision on Transmission Service, an Access Seeker includes (but is not limited to) a network facilities provider or network service provider which is only authorised to provide limited (e.g. in the last mile) network facilities or network service, but wishes to acquire the Transmission Service in order to connect its limited network facilities or network services.

## **2.4 Provisioning of Transmission Services**

### **Domestic Transmission Service**

2.4.1 Fiberail will provide Domestic Transmission Service requested by the Access Seeker in accordance with Fiberail's ARD and the Access Agreement including the terms and conditions mutually agreed upon.

2.4.2 Where the Access Seeker leases Domestic Transmission Service from Fiberail, Fiberails' Equipment can be co-located in the Access Seeker's premises in accordance with terms of the agreement.

2.4.3 The Access Seeker shall provide Fiberail reasonable access to its premises when Fiberail reasonably requires it for the purpose of installing, maintaining, modifying or removing Equipment related to the provision of Domestic Transmission Service by Fiberail.

2.4.5 Fiberail shall ensure Domestic Transmission Services conform to the QoS Standards and Technical Specifications, subject to the Access Seeker's use of those Domestic Transmission Services in accordance with the Technical Specifications and other agreed requirements.

2.4.6 The Access Seeker shall pay to Fiberail for Domestic Transmission Services provided by Fiberail, Charges in accordance with the applicable provisions set out in the Transmission Services Agreement and as provided for in the new Mandatory Standard Access Pricing which shall be enforced after the SunSet date.

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# **SCHEDULE A**

## **FORECAST, ORDERING AND PROVISIONING OBLIGATIONS**

**FORECAST, ORDERING AND PROVISIONING OBLIGATIONS****1. FORECAST OBLIGATIONS**

## 1.1 General Principal

1.1.1 The Access Seeker shall provide Forecast on the services it seeks to access as part of its Access Request in relation to the following: -

- (a) Capacity requirement
- (b) Period of requirement
- (c) Network area or operational area

## 1.2 Confirmation of Forecast

1.2.1 In the event Access Provider incurs significant costs to ensure that access can be provided in accordance with the Forecast, then Access Provider shall have the right to request the Access Seeker to confirm the relevant Forecast. Upon confirmation, the forecast is deemed to be an Order and **Clause 2**, Ordering and Provisioning below shall apply.

## 1.3 Forecast Request

1.3.1 An Access Provider may request an Access Seeker to provide, with a sufficient level of detail to enable Access Provider to carry out Network planning, the following information (forecast information): -

- (a) The capacity of Facilities or Services which the Access Seeker seeks
- (b) The total period of time covered by each Forecast shall be 12 months
- (c) The intervals or units of time to be used in making the Forecast, which shall be no longer than (3) months unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services
- (d) The Network area or operational area of the Forecast in relation to Access Provider's Network topology
- (e) Such other information that Access Provider reasonably requires in order to provide access to Facilities or Services requested by the Access Seeker.

## 1.4 Response to Forecast

1.4.1 Access Provider may acknowledge and notify the Access Seeker: -

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

## 1.5 Time of Rejection

1.5.1 Access Provider may notify the Access Seeker of any rejection within fifteen (15) Business Days of receipt of the relevant Forecast.

1.5.2 Such notice of rejection must specify the grounds of rejection and an offer to meet within five (5) business days of the notice of rejection to discuss the reasons for rejection and alternative methods of compliance.

## 1.6 Negotiating an Agreed Forecast

1.6.1 If a Forecast is rejected, Access Provider must:

- (a) give reasons why it is unable to meet the Forecast;
- (b) indicate the level that Access Provider can meet, and
- (c) offer to meet with the Access Seeker within 5 Business Days of the rejection notice to discuss the reasons for the rejection and alternatives open to the Access Seeker.

1.6.2 The Access Seeker may reconsider its Forecasts following a rejection notice. Within 21 Business Days of receipt of the notice, the Access Seeker must either;

- (a) confirm its rejected Forecast and explain why the Forecast is reasonable; or
- (b) submit a new Forecast that meets Access Provider's concerns, failing which the Forecast are deemed to be rejected by Access Provider.

1.6.3 If the Access Seeker confirms its Forecast within 21 Business Days, Access Provider will reconsider the Forecast and respond in the manner specified in sub clause 1.4 ("**Response to Forecast**") and this sub clause 1.6

## 1.7 Grounds for Rejecting a Forecast

1.7.1 Access Provider may reject a Forecast if:

- (a) The Access Provider reasonably believes that the Forecast is inaccurate having regard to:
  - (i) the total current usage of the relevant Facilities or Services;
  - (ii) the current growth rate of the Access Seeker's usage of the Facilities or Services; and
  - (iii) the current growth rate of the total usage of the relevant Facilities or Services; or
- (b) the Forecast exceeds the level of demand that Access Provider can reasonably provide on its existing capacity levels, having regard to its own Forecasts and the Forecasts of other Operators.

## 1.8 Over Forecasting

1.8.1 If the level of Orders made by the Access Seeker are below the Agreed Forecast over the relevant Forecast period, Access Provider may require the Access Seeker to contribute to the costs and expenses incurred by Access Provider due to its acceptance of the Agreed Forecast.

1.8.2 An Access Provider may seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an Access Seeker if the Forecast is not met by the Access Seeker provided:

- (a) such costs and expenses were reasonably and necessarily incurred by the Access Provider; and
- (b) the Access Provider has reasonably sought to mitigate its loss over a six month period;

1.8.3 The Access Provider shall be entitled to recover 75% of such costs or expenses which could not be mitigated under sub-clause 1.8.2 (b) above.

1.9 Meeting Agreed Forecast

The Access Provider must use reasonable efforts to meet Orders that are within the Agreed Forecast but it is not bound to do so.

1.10 Use Forecast Information

- (a) Forecast information provided by the Access Seeker is Confidentiality Information belonging to the Access Seeker and may be used only:
  - (i) by Access Provider's relevant departmental group for the purpose of provisioning an Order; and
  - (ii) for network planning or engineering purposes.
- (b) Forecasts information may be provided to other groups within Access Provider only if the information:
  - (i) is aggregated with Access Provider's own Forecasts and those provided by other Operators; and
  - (ii) does not identify the Access Seeker in any manner.

**2. ORDERING AND PROVISIONING OBLIGATIONS**

2.1 Ordering Contact and Information

2.1.1 The Access Seeker must submit all Orders to Access Provider at the following address:

**Marketing Division,  
7th Floor, Wisma TM,  
Jalan Desa Utama,  
Pusat Bandar Taman Desa,  
58100 Kuala Lumpur, Malaysia.**

2.1.2 The Order must be in the form specified by Access Provider and must contain the following information:

- (a) Facilities or Services requested;
- (b) The location of the points of delivery of the Facilities or Service requested ("**Delivery Points**");
- (c) A requested time for fulfilment of the Order ("**Requested Delivery Date**");
- (d) Information on the Access Seeker's Equipment to be used in connection with the Order; and
- (e) Such other information that Access Provider reasonably requires to provision the Order.

2.1.3 Access Seeker may use the Service Order Form in the format shown in Annexure IV for the purposes of ordering Services

2.2 Acknowledgement of Receipt

2.2.1 Within 2 Business Days of receipt of an Order, Access Provider must: -

- (a) if the Order is complete – confirm receipt of the Order by specifying the day and time the Order was received ("**Order Date**"); or
- (b) if the Order is incomplete – return the Order to the Access Seeker and specify the information reasonably required by Access Provider to clarify or complete the Order.

2.2.2 If the Access Seeker resubmits a completed Order within 14 Business Days of the Order having been returned by Access Provider, the Order Date is the day the Order is resubmitted by the Access Seeker.

- 2.2.3 If the Access Seeker resubmits a completed Order more than 14 Business Days of the Order having been returned by Access Provider, the Order is deemed to be a fresh Order.
- 2.3 Use of Ordering Information
- 2.3.1 Ordering Information provided by the Access Seeker is Confidentiality information belonging to the Access Seeker and may be used only by those persons within Access Provider whose role is:
- (a) within Access Provider's group for the purpose of provisioning an Order; and
  - (b) for network planning and engineering purposes.
- 2.4 Further Information
- 2.4.1 Access Provider may, at any time after the Order Date, request further information about the Order as is reasonably necessary to clarify an order. The Access Seeker will be given fourteen (14) business days or more to respond to Access Provider's request for further information and may, acting reasonably:
- (a) Treat the Order as suspended until the information requested is received; and
  - (b) Remove the Order from Access Provider's queue and insert the Order at a later position in the queue when the information requested is received.
- 2.5 Respond to an Order
- 2.5.1 Access Provider shall indicate whether it accepts or rejects an Order within:
- (a) 14 Business Days of the Order Date; or
  - (b) if a Service Qualification as described in sub-clause 2.7 below is performed in respect of that Order - 14 Business Days of the Order Date plus the period for completing the Service Qualification.
- 2.5.2 Access Provider may reject an Order where:
- (a) it is not technically feasible to provide access to the Services requested by the Access Seeker;
  - (b) Access Provider has insufficient capacity to provide the requested Services;
  - (c) the Order is in excess of agreed Forecast levels;
  - (d) the Order duplicated an Order awaiting fulfillment;
  - (e) the Access Seeker has not obtained from Access Provider the necessary related agreements;
  - (f) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions of this Access Agreement, including:
  - (g) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Services, to protect:
    - (i) the integrity of a Network; or
    - (ii) the safety of the individuals working on, or using Facilities or Services supplied by means of a network or Equipment.
- 2.5.3 If the Order is accepted, Access Provider must specify:
- (a) an indicative date when the Services requested in the Order will be ready to be provided ("Indicative Fulfillment Date"), subject to the Order being confirmed by the

Access Seeker and any Indicative Fulfillment Date as confirmed by the Access Seeker shall be the Agreed Ready For Service Date;

- (b) an estimate of the Charges for fulfilling the Order;
- (c) such information as is reasonably necessary for the Access Seeker to benefit from access to the Service; and
- (d) a validity period of 90 days after acceptance for the Access Seeker to confirm the Order.

2.5.4 The Indicative Fulfillment Date must be:

- (a) the Requested Delivery Date; or
- (b) if that date cannot be met, a date that is within:
  - (i) 8 months of the Order being confirmed – for Orders involving the provision of new facilities and infrastructure to fulfil the Order; or
  - (ii) 60 days of the Order being confirmed – for Orders involving augmentation of capacity on existing facilities and infrastructure to fulfil the Order.

2.5.5 If the Order is rejected, Access Provider will notify the Access Seeker in writing:

- (a) specifying the grounds on which the Order is rejected at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection; and to make its own reassessment of the Order; and
- (b) offer to meet the Access Seeker within 5 Business Days of notice of the rejection to discuss the reasons for the rejection and alternatives available to the Access Seeker.

## 2.6 Accept and Fulfilling Orders

2.6.1 Access Provider will use reasonable efforts to accept and fulfill Orders from the Access Seeker for Services that comply with a Forecast accepted by Access Provider pursuant to sub-clause 1.4 (Response to Forecast).

2.6.2 Access Provider will use reasonable efforts to accept and fulfill Orders that are in excess of agreed Forecast levels where:

- (a) there is available capacity after meeting the Forecast requirements of other Operators or Access Provider's own Forecast requirements; or
- (b) Access Provider can readily increase or upgrade existing capacity.

2.6.3 If there is available capacity or capacity can be increased or upgraded readily, Access Provider will allocate that capacity on a non-discriminatory basis to meet:

- (a) its own requirements; and
- (b) Forecast requirements of Access Seeker including those of other Operators.

2.6.4 Having regard to its obligations under Assessment of Access Request in Chapter 4 of Fiberail's ARD, Access Provider is not required to fulfil Orders that are in excess of agreed Forecast Levels where this would materially degrade the quality of Services provided by Access Provider to other Operators and to itself.

## 2.7 Service Qualifications

- 2.7.1 Access Provider may conduct Service Qualifications if:
- (a) Access Provider reasonably require information from such Service Qualifications which is not readily available; and
  - (b) Access Provider notifies the Access Seeker that such Service Qualifications are necessary within five (5) Business Days of receiving the Order Date, or, if further information has been requested under subsection 2.4 within five (5) Business Days of the expiry of the period for further information, together with the reasons for such Service Qualifications.

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

2.7.2 Completion of Service Qualifications

Access Provider shall:

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

2.7.3 Withdrawal of Order following Service Qualifications

Access Provider shall permit an Access Seeker to withdraw its Order without penalty within fourteen (14) days after receiving the result of a Service Qualification under sub-clause 2.7.2.

2.8 Cancellation and Variation of Orders

- 2.8.1 If an Order is cancelled or varied by Access Seeker, Access Provider may ask the Access Seeker to pay any costs reasonably incurred by Access Provider in respect of the Order.

2.9 Allocation of Constrained Capacity

- 2.9.1 Capacity on Access Provider's Network is constrained if the capacity that is immediately available to meet the relevant Service ("Available Capacity") is less than the total capacity required ("Required Capacity") to meet:

- (a) the Access Seeker's Agreed Forecast and those of other Operators;
- (b) Access Provider's own Forecast; and
- (c) any redundant capacity ("Redundant Capacity") that is reasonable for Access Provider to reserve in respect of the relevant Service.

- 2.9.2 The Access Provider must maintain a policy for allocating constrained capacity ("Capacity Allocation Policy"). This policy must:

- (a) be fair and reasonable;
- (b) be consistent with Access Provider's duty of non-discrimination;
- (c) treat the Access Seeker's requirements on an equivalent basis to that which Access Provider treats itself for the same Service; and
- (d) allocate the Available Capacity less the Redundant Capacity (if any) in proportion to each operator's Forecast (including Access Provider's own Forecast).

- 2.9.3 If Access Provider anticipates that it may not be able to meet the Access Seeker's Forecast (whether agreed or not) because of constrained capacity, Access Provider must:
- (a) notify the Access Seeker that capacity is constrained;
  - (b) give the Access Seeker a copy of Access Provider's Capacity Allocation Policy in relation to the Service required by the Access Seeker; and;
  - (c) allocate the Available Capacity between itself, the Access Seeker and other Operators in accordance with the Capacity Allocation Policy.
- 2.10 Delivery of Service
- 2.10.1 The Access Provider shall deliver the ordered Service to Access Seeker by the Agreed Ready For service Date (as provided under subsection 2.5.3).
- 2.10.2 If the Access Provider, in the normal course of business, is able to offer a delivery date earlier than the delivery date that would otherwise apply, it shall advise the Access Seeker and, if requested by the Access Seeker, deliver access to the relevant Facilities or Services or both at the earlier delivery date. Rental charges shall commence on the earlier delivery date.
- 2.10.3 If Access Seeker defers an Agreed Ready For Service Date, Access Seeker shall be liable to any cost incurred by Access Provider in relation thereto.
- 2.10.4 If Access Seeker is not able to use the Facilities or Services on the Agreed Ready For Service Date not due to Access Provider's fault, the Facilities or Services are deemed provided and Access Seeker shall be subject to the rental charges commencing from the Agreed Ready For Service Date.
- 2.10.5 An Access Provider shall :
- (a) notify an Access Seeker of the delay to a delivery date and the revised delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;
  - (b) permit the Access Seeker notified under sub-clause 2.10.3 (a) above to cancel the Order without penalty if the delay is longer than fourteen (14) days; and
  - (c) provide the Access Seeker with a remedy in accordance with subsection 2.13.
- 2.11 Testing and Commissioning
- An Access Provider shall:
- (a) co-operate with the Access Seeker in relation to the testing and provisioning of ordered Facilities or Services or both; and
  - (b) treat an Access Seeker's testing and provisioning on an equivalent basis to that which the Access Provider treats itself.
- 2.12 Resource Charge
- An Access Provider may charge the Access Seeker a one-off fee, to be determined by reference to the costs incurred by the Access Provider for allocation of manpower and other resources to enable the Access Seeker to test and provide new Facilities or Services for purpose of interconnection.
- 2.13 Late Delivery

Subject to subsection 2.13.1 below, if an Access Provider fails to meet any timeframe in subsection 2.10.1 with respect to the delivery of access to Facilities or Services pursuant to an Order made in accordance with this Access Agreement Access Provider shall, without limitation to any other rights the Access Seeker may have in this Access Agreement or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring rental charges payable for the Facilities or Services prorated daily for the number of days delayed subject to a maximum sum of 1 month's rental.

*2.13.1 Access Provider shall not be liable for failures or delays in meeting the Agreed Ready For Service Date or any timeframe of delivery for Services due to any of the following reasons:*

- a. the Service being modified or altered in any way at Access Seeker's request;
- b. an act of God, an act of any government, an act of any third party which is beyond the Access Provider's control or any other circumstance commonly known as "force majeure";
- c. incomplete order information provided by the Access Seeker to Access Provider; or
- d. any act or omission of Access Seeker which causes or contributes to the delay or failure to meeting the delivery date.

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# **SCHEDULE B**

## **BILLING AND SETTLEMENT OBLIGATIONS**

## **BILLING AND SETTLEMENT OBLIGATIONS**

### **1. BILLING**

#### **1.1 General Principle**

Unless otherwise agreed Access Provider will invoice Charges in advance based in each Billing Period. Each invoice will be issued 30 days before the commencement of each Billing Period. Rental charges shall commence to be payable from the date Facilities or Services are provided, which shall be the Agreed Ready For Service Date unless otherwise stated.

#### **1.2 Billing Information**

Each invoice will state the charges for the Billing Period and will be accompanied by information as may be reasonably necessary for the Access Seeker to verify rates and Charges contained in the bill.

#### **1.3 Billing Error**

If an operator discovers an error in an invoice, it must notify the other operator. The operator who made the error must make necessary adjustment to correct that error in the next invoice.

#### **1.4 Back Billing**

Any omitted or miscalculated Charges from an invoice may be included in a later invoice, provided the Charges are substantiated and the inclusion or amendment shall be made within two (2) months from the issuing of the original invoice in which the omitted or miscalculated Charges should have been included or within thirteen (13) months from the month in which the Services were provided, whichever is later.

#### **1.5 Provisional Billing**

Where the Access Provider is unable to issue an Invoice, it may issue an Invoice to an Access Seeker for a provisional amount, based on the last Invoice (**provisional invoice**). In such circumstances, Access Provider may invoice an Access Seeker for a provisional amount for a period of not more than three successive Billing Periods, provided the amount of the provisional Invoice is no more than the average of the most recent three Invoices. Where there have not been three (3) past Invoices for access to the relevant Services or Facilities, Access Provider may issue a provisional Invoice up to the full value of the amount based on the most recent Invoice. The Access Seeker shall pay the Provisional Amount by the Due Date. The Provisional Amount will be adjusted in the next invoice or as soon as practicable but not later than sixty (60) days after the month in which the charges were incurred or such other time period as may be agreed in writing ("**Adjustment Period**"). If an adjustment is not made within the Adjustment Period, the Access Seeker shall treat the Provisional Amount as the actual invoice.

#### **1.6 Currency**

The Invoices shall state all Charges in Ringgit Malaysia and the Access Seeker shall make payment in Ringgit Malaysia unless otherwise agreed by the Parties.

### **2. SETTLEMENT**

#### **2.1 Time for Payment**

The Access Seeker shall make payment for the Charges within thirty (30) days from the date of the invoice without set-off counter claims or deduction.

#### **2.2 Method of Payment**

The Access Seeker must pay an invoice by bank cheque or electronic funds transfer directly to the bank account of Access Provider.

#### **2.3 Billing Disputes**

In the event the Access Seeker wishes to dispute an invoice, the Access Seeker shall notify Access Provider in writing within twenty-one (21) days after the date of receipt of such invoice.

The dispute notification shall provide the following information: -

- (a) the reasons for which the Access Seeker disputes the Invoice;
- (b) the amount in dispute; and
- (c) details required to identify the relevant invoice and Charges in dispute including the account number, the invoice reference number, the invoice date, the invoice amount; and the billing verification information.

2.4 Withholding of Disputed Amounts

Subject to Section 2.3 Billing Disputes above, Access Provider will allow the Access Seeker to withhold payment of any amount disputed in good faith by the Access Seeker.

2.5 Billing Dispute Resolution

Where relevant the Parties must comply with the Dispute Resolution Procedures applicable to the billing disputes in Annexure A of the MSA Determination.

2.6 Interest

Subject to withholding of amounts being disputed in good faith in accordance to section 2.4, Access Provider may charge interest in any amount outstanding from the Access Seeker from time to time, in respect of that overdue sum at the rate of one percent (1%) per annum above Maybank Berhad's Base Lending Rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than sixty (60) days will bear interest at the rate of two percent (2%) per annum above Maybank Berhad's Base Lending Rate calculated from the due date until the date of receipt of the full payment by Access Provider.

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# **SCHEDULE C**

## **TECHNICAL AND NETWORK OPERATIONAL OBLIGATIONS**

**TECHNICAL AND NETWORK OPERATIONAL OBLIGATIONS****OPERATIONAL NETWORK****1. NETWORK CONDITIONING OBLIGATIONS****1.1 Non-discrimination**

Access Provider shall perform Network Conditioning on an equivalent basis to that which the Access Provider performs for itself for the same or similar Services. The costs for works on Network Conditioning pursuant to an Order shall be apportioned in an equitable manner between the Operators having regards to cost causation.

**1.2 Commencement**

1.2.1 Access Provider will commence Network Conditioning immediately following:

- (a) confirmation of an Order from the Access Seeker; and
- (b) agreement by the Access Provider and the Access Seeker on:
  - (i) geographical coverage;
  - (ii) number information (i.e., length and code allocation), if relevant;
  - (iii) origins from or destinations to which access is require, if relevant;
  - (iv) network routes (including which party is responsible for provisioning Interconnect Link); and
  - (v) handover arrangements and relevant Points of Interface.

**2. POINT OF INTERFACE PROCEDURES****2.1 Interconnection**

2.1.1 Each party must interconnect its Network with the Network of the other party in accordance with the terms of the Access Agreement.

2.1.2 A Point of Interface may be a Point of Interconnection (“**POI**”) or a Point of Presence (“**POP**”). A POI may be implemented in any of the following three configuration options:

(a) **In- Span Interconnection**

The POI lies at some point along the physical cable linking the two Operators’ Networks. Each party is responsible for the transmission Equipment at its end of the cable, and the cable from its building to the POI. In the case of wireless “In-span Interconnection”, the POI lies somewhere between the terminal Equipment of the two Operators.

(b) **Physical Co-Location**

The POI lies between the Equipment of Access Provider and the Equipment of the Access Seeker. In this case, Access Provider may provide facilities access for Access Seeker to install its Equipment at the Access Provider’s Equipment Building. The Interconnect Link from the Access Seeker’s Equipment to its own premises are maintained by the Access Seeker.

2.1.3 Each party is responsible for provisioning and maintaining Network Facilities (including those Network Facilities which form part of the Interconnect Link and the transmission Equipment) on its side of the Point of Interface.

2.1.4 Locations available for POIs are as listed in Annexure III of this ARD.

- 2.1.5 The Access Seeker may request a Point of Interface at a location not specified by the Access Provider under sub clause 2.1.4. The Access Provider must consider the request in good faith and must, acting reasonably, accept or reject the request. If the request is rejected, the Access Provider must give reasons for the rejection.
- 2.1.6 When determining which locations are to be listed as a Point of Interface under sub clause 2.1.4. or when considering a request under sub-clause 2.1.5:
- (a) the Access Provider must offer Interconnection and Co-Location at any other technically feasible point;
  - (b) the Access Provider may offer more than one form of Interconnection configuration in relation to a particular location;
  - (c) the Access Provider must not reserve space other than for its own current needs, its future needs (calculated by use of a reasonably projected rate of growth over two (2) years) and the needs of other Operators who are currently occupying or have ordered additional space from the Access Provider; and
  - (d) the Access Provider must have regard to any possible rearrangement of its Equipment to eliminate space inefficiencies.
- 2.1.7 Access Provider must take reasonable steps to optimise its use of physical space (including by upgrading its facilities). If reasonable steps have been taken and no further physical space is available at a Point of Interface location, the Access Provider is not obliged to grant Physical Co-Location to the Access Seeker at that location.
- 2.1.8 The Access Seeker may share Physical Co-Location with another Operator subject to the terms and conditions to be agreed provided always:
- (a) the Access Seeker first notifies the Access Provider in writing of the other Operator's identity before sharing physical Co-Location with the other Operator; and
  - (b) Access Seeker warrants that the other Operator will comply with the Access Seeker's obligations in relation to the physical Co-Location.

## **2.2 Point of Interface factor**

### **2.2.1 Provisioning of New POI**

#### **(a) In-span Interconnection**

For an In-span Interconnection, the connection will be provided by means of optic fibre cable circuits except where as agreed, due to location speed or other reasons, wireless connection may be used.

The provision via wireless connection may be used permanently, or as an interim measure and in such case planning and implementation of fibre optic shall be carried out. The following shall also be agreed for In-span Interconnection:-

- (i) the In-span fibre connection shall be a point mutually agreed;
- (ii) the number of other nodes to be served by this POI capacity
- (iii) Synchronous Digital Hierarchy (SDH) is the preferred technology and the type of equipment at both end must be from the same equipment vendor or compatible to Access Provider's equipment;
- (iv) Subject to capacity requirement and Forecast, SDH technology shall also be considered.

### **2.2.2 Establishment for a New POI**

- (a) If the Access Seeker wishes to establish a new POI, the Access Seeker must notify the Access Provider in advance. The identification for POI shall be notified in advance in accordance with the MSA Determination. Before the acceptance of the establishment of a new POI, the following information has to be available and the arrangements to be finalised before the planning for a new POI Interconnect Link be done. They are:
  - (i) the ordering party shall submit its Five (5) year updated Forecast;
  - (ii) the number of routes and nodes that will be served by the Interconnect Link provided at the proposed POI shall be indicated;
  - (iii) leased circuits requirements (non POI if required);
  - (iv) method of provisioning whether In-span or Virtual Co-location.
- (b) The five (5) year circuit Forecast for the Interconnect Link at the agreed new POI shall be agreed by both Parties.
- (c) The Interconnect Link shall be dimensioned to provide for a minimum of three years provisioning period for the purpose of planning.

#### 2.2.3 Provisioning of Additional Capacity at Existing POI.

- (a) The following information must be available before the decision to provide additional interconnect capacity at the existing POI. They are:
  - (i) Existing Interconnect Transmission Facilities;
  - (ii) The utilization of each available Interconnect Transmission media;
  - (iii) The number of E1s leased by the Access Seeker, if applicable;
  - (iv) The ordering party shall submit its Order on a three (3) monthly basis.
- (b) The provision of additional Interconnect Link at the POI shall be agreed once any of the following conditions are met:
  - (i) The circuit utilisation of the existing interconnect facilities is at 75%.
  - (ii) The demand of circuits exceeds the Forecasted circuits.
- (c) The Interconnect Link shall be dimensioned to provide for a three (3) years provisioning period.
- (d) The need for migrating from existing Virtual Co-location to the In-span Interconnected bearer shall be permitted once the In-span Interconnect bearer is established in accordance with the MSA Determination and the capacity of the new POI is sufficient to cater for migration.

#### 2.2.4 POI Location Considerations

Technical consideration for POI shall be as follows:

- (a) Transmission facility has the capacity to interconnect with other networks.
- (b) Timely and efficient deployment of sufficient capacity of links to support the required grade of service to Customers.
- (c) Preservation of network security.

### **3 DECOMMISSIONING OBLIGATIONS**

#### 3.1 Decommissioning of POIs

- (a) Access Provider may request the decommissioning of POI;

- (b) If Access Provider makes such a request, the Parties will consult and negotiate a timetable for decommissioning;
- (c) The Access Provider must offer an alternative POI to the other Party to route interconnection traffic;
- (d) The Access Provider shall use its best endeavour to ensure no or least traffic interruption and the Access Seeker shall be responsible to reroute the existing traffic before the decommissioning of the POI;
- (e) Both Parties shall mutually agree decommissioning of any working circuit. For example, decommissioning may take place due to retirement of equipment or rearrangement of network configuration. The Party planning to decommission any link must give advance notice in writing in accordance to Clause 3.2 below and the Parties shall mutually agree upon a suitable and expected time frame for completing the decommissioning.

### 3.2 Decommissioning notice

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

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

Where Access Provider is required to vacate the site where a Point of Interface is located as a result of a third Party landlord's notice (under an arm's length tenancy agreement), the Access Provider must provide all relevant Access Seekers with as much notice as possible in relation to the matters in paragraphs (a) and (b) above. The Operators must co-operate and negotiate on the timetable for decommissioning of the affected Facility or Service.

## 4 NETWORK CHANGE OBLIGATION

### 4.1 Network Change

This Clause applies where a party proposes to implement a Network Change of a type referred to in Clause 4.2 which necessitates a change in the hardware or software (including interface software) of the other party's Network in order to ensure the continued proper operation and compatibility of the parties respective Networks, services and procedures.

### 4.2 Types of Changes

4.2.1 The following kinds of proposed Network Changes may be within the scope of Clause 4.1:

- (a) any change by the party proposing to make the change ("Notifying Party") to any technical specification of the interconnection interface between their respective Networks ("Interface Change");
- (b) any change by the Notifying Party to any technical specification or characteristic of the Services or Facilities to which the other Party ("Recipient Party") has access which will or might affect:
  - (i) the Recipient Party's Network;
  - (ii) the Recipient Party's use of the Services or Facilities provided by the Notifying Party ("Service Change");
- (c) any change by the notifying Party to any technical specification or characteristic of that Notifying Party's Network which will or might affect the Recipient Party's Network ("Network Change");

- (d) any change by the Notifying Party to and of the operational support systems used in intercarrier Party processes, including without limitation:
  - (i) the billing system; or
  - (ii) the Ordering and provisioning systems.
- (e) any enhancement by the Notifying Party of the features, functions or capabilities of the Services or Facilities to which the Recipient Party has access, which enhancement the Notifying Party proposes to make available either;
  - (i) to itself or,
  - (ii) to any other Party (“functionality Change”), (collectively referred to as “Relevant Changes”).

### 4.3 Notification of Change

#### 4.3.1 If a Notifying Party proposes to make Relevant Change to its Network, services or procedure, the Notifying Party shall provide the Recipient Party with notice in writing of:

- (a) the nature, effect, technical details and potential impact on the Recipient Party’s Network of the proposed Relevant Change, described at a sufficient level of detail to enable the other Party to identify and begin planning such changes as may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant Change; and
- (b) a date, which shall be no later than ten (10) Business Days from the date of the notice under this Clause, on which representatives of the Notifying Party will be available to discuss with representatives of the Recipient Party the proposed Relevant Change and the changes that may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant change as soon as reasonably practicable and, in any event, with not less than the relevant notice period set out below:

<b>Relevant Change:</b>	<b>Notice period:</b>
Interface Change	4 months
Network Change	6 months
Service Change	3 months
Functionality Change	3 months

### 4.4 Testing

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

- (a) co-operate with a Recipient Party in relation to the development of procedures for testing the impact of Relevant Changes on the proper operation and compatibility of the parties’ respective Networks;
- (b) jointly carry out testing with the Recipient Party no less than twenty (20) Business Days before the Notifying Party proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under paragraph 4.4.1 (a)

4.4.2 Subject to the Recipient Party having co-operated with the Notifying Party in relation to the conduct of tests under subsection 4.4.1, if such tests:

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

of the postponement will be the period necessary to allow the Parties to repeat the steps in subsections 4.3.1 to 4.4.1 above.

## **5 NETWORK FACILITIES ACCESS AND CO-LOCATION**

- 5.1 Unless otherwise agreed by the parties, each POI will be physically installed and housed at the Access Provider's available POI locations as listed in Annexure III. All Operators shall mark or label their Equipment in such manner that they can be easily identified as the Equipment of the Operator.
- 5.2 The parties will negotiate and agree on all applicable terms and conditions in respect of technicalities for the provision of Services, in addition to those provided for in Clause 5.1, as required.
- 5.3 The parties may negotiate and agree on the location of the POI. For purpose of clarification, it is hereby agreed that in order to minimise the cost and to promote efficiency of Network deployment, the technical manner and the location of the POI must minimise the length of any link which either party will need to build and to this end the mode of provisioning Interconnect Link shall be full span Interconnection by way of fiber or wireless transmission or any other method of interconnection as agreed by the parties.
- 5.4 The parties will agree to all applicable terms and conditions in respect of access to the agreed POI locations as well as any other operations and implementation issues, in addition to those provided for in Clauses 5.3, as required.
- 5.5 The parties acknowledge and agree that the Commission may issue a framework or guidelines pertaining to the establishment and maintenance of POIs and access to the Facilities of telecommunications network of the parties. In the event that such framework or guidelines are issued by the Commission, the parties agree to review, and where necessary, revise and/or modify the relevant provisions of this agreement to ensure consistency with the framework or guidelines.
- 5.6 An Operator shall permit, and do all things reasonably necessary to allow the Other Operator to maintain its Equipment at or in the Facilities to which access has been granted. This may include, for example, the provision of physical access. For the purposes of this subsection 5.6, an Operator shall be permitted to maintain its Equipment at or on the Facilities if the Other Operator allows external contractors or other third parties to maintain similar Equipment on the Facilities.
- 5.7 The utility cost in respect of the Facilities as contemplated in this section 5 shall be apportioned (in accordance with fair and equitable principles) against the utility and ancillary costs charged to other Access Seekers at the relevant location.
- 5.8 It is agreed that for the purposes of providing Interconnect Link to trunk Interconnect to and from POI's, equipment can be shared in Access Seekers' premises and Access Provider shall have the right to co-locate and to offer virtual co-location (either by fibre or wireless) to the other party with a Licence (other than the party hereto) in Access Seeker premises.

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# **ANNEXURE I**

## **LIST AND DESCRIPTION OF FACILITIES AND SERVICES**

**LIST AND DESCRIPTION OF FACILITIES AND SERVICES PROVIDED BY FIBERAIL**

**A. LIST OF FACILITIES AND SERVICES**

**1. General**

1.1 Section A of Annexure I sets out the list of Facilities and Services which may be provided by Fiberail to the Access Seeker.

1.2 The following table tabulates the Facilities and Services provided by Fiberail.

Item	Facilities / Services	Capacities/Size
1	Domestic Network Transmission Service  Bandwidth Services  (a) (b) (c) (d)	2 Mbps 34 Mbps 45 Mbps 155 Mbps (STM-1)
2	Infrastructure Sharing  (a) Cabin (b) Tower Space	12' x12' Sq feet

1.3 Fiberail reserves the right to amend the Facilities/Services listed herein by adding, removing or altering the Facilities/Service.

**B. SERVICE DESCRIPTION**

**B.1 DOMESTIC NETWORK TRANSMISSION SERVICES**

**1. General**

1.1 Section B 1 of Annexure I sets out the terms and conditions which are applicable to Domestic Network Transmission Service.

1.2 Domestic Network Transmission Service is a Facility and Service by Bandwidth Services connection for the carriage of communications between transmission points of the Access Provider via network interfaces at such agreed transmission rate between Access Provider and Access Seeker. The following diagram illustrates the Domestic Network Transmission Service:

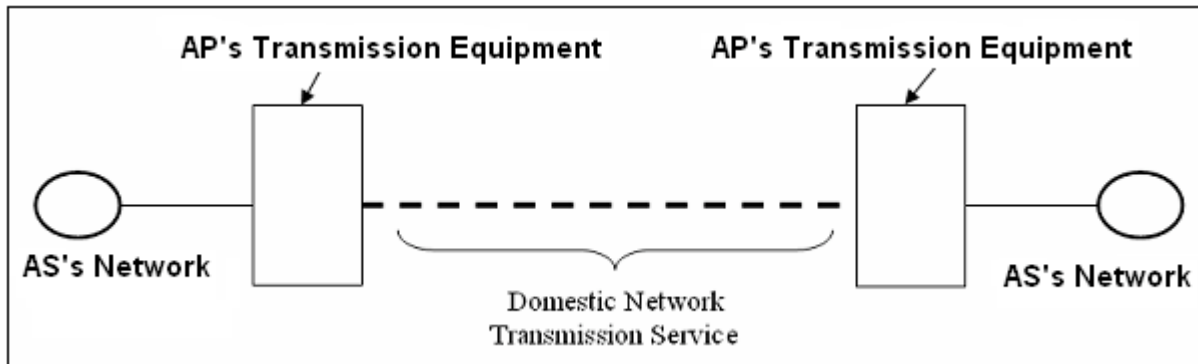


Figure 1: Domestic Network Transmission Services

## 2. Provision of Domestic Network Transmission Services

- 2.1 Subject to the Access Seeker complying with the Ordering And Provisioning Obligations in **Schedule A**, Fiberail will provide in accordance with the terms and conditions of this Access Agreement and the applicable Schedules and Annexure herein, Domestic Network Transmission Services requested by the Access Seeker.
- 2.2 Where the Access Seeker leases Domestic Network Transmission Services from Fiberail, Fiberail's Equipment can be shared in the Access Seeker's premises in accordance with Section 5.13 of the MSA Determination, **Section B.2 below** and **Schedule C**.
- 2.3 The Access Seeker shall provide Fiberail reasonable access to its premises when Fiberail reasonably requires it for the purpose of installing, maintaining, modifying or removing Equipment related to the provision of Domestic Network Transmission Services by Fiberail.
- 2.4 Fiberail shall ensure that the Domestic Network Transmission Services conform to the QOS Standards and Technical Specifications, subject to the Access Seeker's use of those Transmission Capacity Services in accordance with the Technical Specifications and other agreed requirements.
- 2.5 The minimum period in which the Access Seeker may lease Domestic Network Transmission Services is one (1) year.
- 2.6 The Access Seeker will pay to Fiberail for Domestic Network Transmission Services stated in **Section B.1 of Annexure I** provided by Fiberail, Charges in accordance with the applicable provisions set out in **Annexure II**.

## B.2 INFRASTRUCTURE SHARING

### 1. General

1.1 Section B.2 of Annexure 1 sets out the terms and conditions which are applicable to Infrastructure Sharing.

### 2. Type of Infrastructure Sharing

2.1 The type of Infrastructure Sharing provided by Fiberail is: Infrastructure Sharing, which refers to the provision of space at specified network facilities to enable the Access Seeker to install and maintain its own equipment necessary for the provision of the Access Seeker's services through the Facilities and/or Services of Fiberail. The specified network facilities are physical space in the form of Cabin Space or Tower Space and may include, wherever relevant, power, environmental services (such as heat, light, ventilation and air-conditioning), site maintenance and access for the personnel of the Access Seeker. The following diagram illustrates the Infrastructure Sharing.

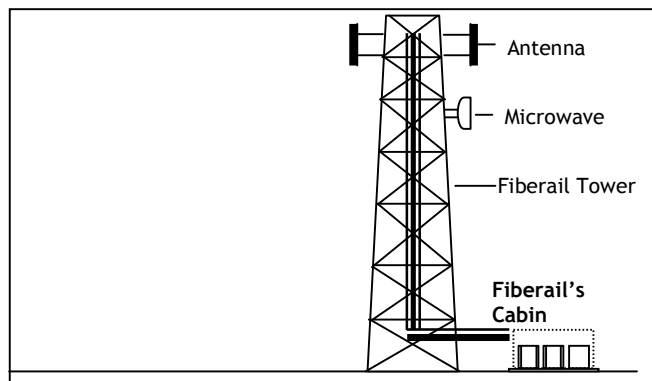


Figure 2: Infrastructure Sharing

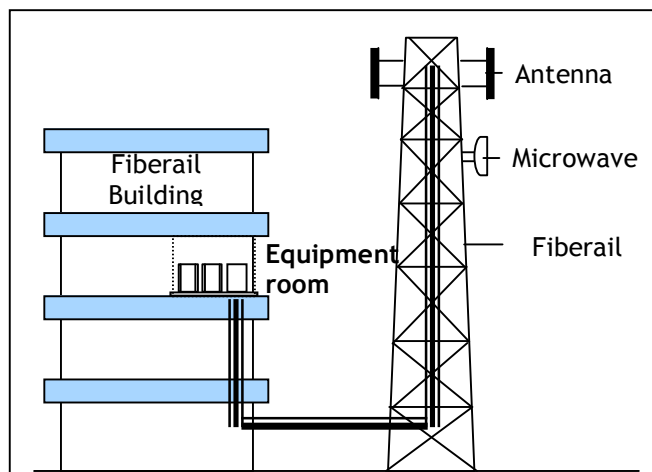


Figure 3: Infrastructure Sharing

### 3. Pre-requisites to Apply for Infrastructure Sharing

3.1 Fiberail shall not be obliged to provide to the Access Seeker Infrastructure Sharing for the specified network facilities unless:

- (a) Fiberail is the legal owner of the specified network facility;
- (b) the Access Seeker has the appropriate license from the relevant authorities to operate the service for the purpose for which the equipment is to be installed;

- (c) and  
there is no space constraint.

#### **4. General Terms and Conditions on Infrastructure Sharing**

##### **4.1 Duration**

- 4.1.1 Infrastructure Sharing at a specified network facility, agreed between the Operators, shall be for a fix period of three (3) years and may be further renewed subject to the mutual agreement of the Operators.

# **ANNEXURE II**

## **CHARGES AND CHARGING PRINCIPLES**

**CHARGES AND CHARGING PRINCIPLES FOR NETWORK FACILITIES AND NETWORK SERVICES****1. General**

- 1.1 These Sections in Annexure II sets out the type of Charges and charging principles for the Facilities and Services provided by Fiberail to the Access Seeker.

**2. Type Of Charges**

- 2.1 In consideration of the Access Provider's obligations in the provision of the Facilities and Services in the Access Agreement Access Seeker shall pay to Access Provider the following Charges:

Type of Services	Type of Charges	Details	Billing Period/
Domestic Network Transmission Service	Recurring Charges	1. Rental	Monthly/Quarterly
	One – Time Charges	1. Installation Charges 2. Interconnection Charges	Before Ready For Service Date
Infrastructure Sharing	Recurring Charges	1. Rental	Monthly/Quarterly
	One – Time Charges	1. Supervision Charges (These are Charges for supervision of works to be conducted by Access Seeker at the site of the specified network facility)	Before Handover Date and/or before Access Seeker commence work at site

- 2.1 The recurring Charges including rental Charges shall commence to be payable from the date Service is provided, and shall be paid according to the Billing Period elected by the Access Seeker in the Service Order Form and payments shall be made in advance on or before the payment periods.
- 2.2 In relation to rental Charges, Access Seeker shall also be liable to pay any government taxes (including sales tax) relevant to the Service provided it is legally required to be paid by the Access Seeker. Where applicable such taxes shall be added to the invoice and shall be paid to Fiberail at the same time as the relevant invoice is settled in accordance with Section 2.1 above.
- 2.3 In relation to the One –Time Charges for each Service, Access Seeker shall pay the Charges no later than the Ready For service Date or Handover Date, which ever is relevant
- 2.4 All amounts payable by Access Seeker pursuant hereto shall be paid in full free and clear of all bank or transfer charges imposed by the Access Seeker bank(s) to such account(s) as Fiberail may by notice to Access Seeker designate without reduction for any deduction or withholding for or on account of any tax, duty or other charge of whatever nature imposed by any taxing authority. If Access Seeker is required by law to make any deduction or withholding from any payment hereunder, Access Seeker shall pay such additional amount to Fiberail so that after such deduction or withholding the net amount received by Fiberail will be not less than the amount Fiberail would have received had such deduction or withholding not been required. Access Seeker shall make the required deduction or withholding, shall pay the amount so deducted or withheld to the relevant governmental authority and shall promptly provide Fiberail with evidence of such payment.
- 2.5 Any type of Charges chargeable to the Access Seeker shall be determined and made known to the Access Seeker before the commencement of the Service and shall not be changed for the duration of the Service period unless mutually agreed between the Operators or unless provided otherwise in the Access Agreement.

**3. Charging Principle on Rental**

**3.1** The rental Charges for Domestic Network Transmission Service are charged according to the link from end-to-end of the Facilities or Services.

3.1.1 In relation to Domestic Network Transmission Service the rate of charge for rental are based on the following factors:

- (a) Capacity of the Bandwidth Services;
- (b) Straight line distance of the link in the Service;
- (c) Geographical location of the link in the Service; and
- (d) Required Service Availability for the link in the Service

**3.2** The rental Charges for Infrastructure Sharing are charged according to the type of Infrastructure Sharing provided to Access seeker. The rental rate shall be based on the following factors:

- (a) Size of the Shared Space;
- (b) Geographical location the Shared Space;
- (c) Type of utilities requirement at the Shared Space; and
- (d) Height of the Shared Space in the case of Tower Space

#### **4. Charging Principle on One- Time Charges**

One-Time charges are installation charges, interconnect charges and supervision charges which may be charged to the Access Seeker in relation to the Service provided to the Access Seeker and such charges may vary from case to case depending on the extend and complexity of the work involved for the installation, interconnection or supervision work related thereto. Supervision charges are charged according to the number of times that supervision work is required of Fiberail or its contractor or agent on the works to be conducted by the Access Seeker at the site of the Shared Space.

#### **5. Charging Principle For Service Outside Fiberail's Existing Network Topology**

Any request for Service located outside of Fiberail's existing Network Topology and subsequently provided to the Access Seeker shall be subject to other charges including third party charges, if any.

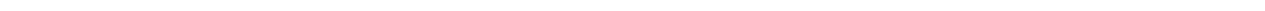
#### **6. Cancellation Charges**

If Access Seeker cancels a confirmed order for a Service, Access Seeker shall be liable to pay Fiberail cancellation charges.

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# **ANNEXURE III**

## **EXISTING POIS/POPS LIST LIST OF EXISTING NODES AND ADD DROPS ALONG FIBERAIL'S NETWORK FOR BANDWIDTH SERVICES**



**EXISTING POINTS OF INTERFACE LIST**  
**Annexure III**

**A. List Of Existing Nodes And Add Drops Along Fiberail's Network along KTMB Railway corridor For Bandwidth Services**

1. Padang Besar KTMB Station	28. Mentakab KTMB Station
2. Arau KTMB Station	29. Kuala Lipis KTMB Station
3. Alor Setar KTMB Station	30. Sungai Temau KTMB Station
4. Gurun KTMB Station	31. Gua Musang KTMB Station
5. Sungai Petani KTMB Station	32. Kemubu KTMB Station
6. Bukit Mertajam KTMB Station	33. Kuala Krai KTMB Station
7. Bagan Serai KTMB Station	34. Tanah Merah KTMB Station
8. Taiping KTMB Station	35. Pasir Mas KTMB Station
9. Sg Siput KTMB Station	36. DGB, Bandar Seberang Jaya *
10. Ipoh KTMB Station	37. AIMS, Menara Aik Hua *
11. Kampar KTMB Station	38. Cordoda, Technology Park Malaysia *
12. Sungkai KTMB Station	39. KLIA *
13. Tanjung Malim KTMB Station	40. City Command Centre, Cyberjaya *
14. Rawang KTMB Station	41. NTT, Cyberjaya *
15. Kuala Lumpur KTMB Station	42. Menara Ansar, Johor Bahru *
16. Padang Jawa KTMB Station	43. Ban Hin Huat, Pasir Mas *
17. Kajang KTMB Station	44. Kuala Lumpur City Centre (KLCC) *
18. Seremban KTMB Station	45. Kulim, Hi-Tech *
19. Tampin KTMB Station	46. CSF, Cyberjaya *
20. Gemas KTMB Station	47. FSBM, Cyberjaya *
21. Segamat KTMB Station	48. Mid Valley
22. Labis KTMB Station	49. Sentul KTM Station
23. Kluang KTMB Station	50. Marang Fiberail Node
24. Sedenak KTMB Station	51. Crystal Point, Penang*
25. Johor Bahru KTMB Station	52. Plaza Sentral
26. Bahau KTMB Station	53. Menara Merais, PJ
27. Kemayan KTMB Station	

**Note:**

- Access Seeker may add drop at any of Fiberail Nodes above provided there is an available Add Drop MUX and may be subject to any cost payable by the Access Seeker.
- The interface offered at the Nodes is a G.703 interface.
- Any interconnectivity arrangements outside the parameter of Fiberail's network shall be considered as additional customized network connectivity solution and shall be subject to additional costs payable by Access Seeker.
- \* denotes Nodes outside of KTMB's railway corridor

**EXISTING POINTS OF INTERFACE LIST**

Annexure III

**A. List Of Existing Nodes And Add Drops Along Access Provider's Network along PGB Gas Pipelines Corridor For Bandwidth Services**

1. <b>GPP A (Kerteh)</b>	13. <b>ML 210 (Puchong)</b>
2. <b>KERTEH CG/ ML 105</b>	14. <b>BATU 3 CG (Gleenmarie)</b>
3. <b>BKT JERUNG (Marang)</b>	15. <b>ML 403 (Kuala selangor)</b>
4. <b>KOCC (Kerteh)</b>	16. <b>ML 406 (Ldg. Jenderata Teluk Intan)</b>
5. <b>KERTEH RO (KRO)</b>	17. <b>ML 409 (Ayer Tawar, Sitiawan)</b>
6. <b>ML 111(Bandar Indera Mahkota Kuantan)</b>	18. <b>ML 413 (Permatang Batu Taiping)</b>
7. <b>ML 116(Muadzam Shah Kuantan)</b>	19. <b>ML 417(Lunas)</b>
8. <b>SEGAMAT PGB</b>	20. <b>ML422 (Kota Star)</b>
9. <b>ML 202 (Gemmas)</b>	21. <b>ML 200-1 / ML 300-1(Segamat)</b>
10. <b>ML 204(Pulau Sebang Melaka)</b>	22. <b>ML 303 (GEMAS)</b>
11. <b>SEREMBAN RO</b>	23. <b>ML 305 (Kluang)</b>
12. <b>ML 207 / ML 250 (Rasah Negeri Sembilan)</b>	24. <b>ML 350(Plentong J.Baru)</b>

Note:

- a. Access Seeker may add drop at any of the Nodes above provided there is an available Add Drop MUX and may be subject to any cost payable by the Access Seeker.
  - b. The interface offered at the Nodes is a G.703 interface.
  - c. Any interconnectivity arrangements outside the parameter of Fiberail's network shall be considered as additional customized network connectivity solution and shall be subject to additional costs payable by Access Seeker.
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