



FIBRECOMM NETWORK (M) SDN BHD
(Company No: 199201009356 (240859-H))

REFERENCE ACCESS OFFER
(Version 1.0)

As at 31 May 2023

Disclaimer:

Fibrecomm Network (M) Sdn Bhd reserves the right to amend, modify or revise the terms and conditions contained in this document as it deems fit and/or as may be directed by the Malaysian Communications and Multimedia Commission at any time, with or without notice.

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CHAPTER 1 – Introduction, Background and Scope

1.1 Preliminary

1.1.1 This Reference Access Offer (Version 1.0) is made by Fibrecomm Network (M) Sdn Bhd (Company Reg No: 199201009356 (240859-H)), (“Fibrecomm”) a company incorporated under the laws of Malaysia and having its principal place of business at Level 35 (North Wing), Menara TM, Off Jalan Pantai Baharu, 59200 Kuala Lumpur on 31 May 2023 pursuant to the Commission Determination on Access List (Determination No 6 of 2021) (“**Access List Determination**”), the Commission Determination on Mandatory Standard on Access (Determination No 1 of 2022) (“**MSA Determinations**”) and the Commission Determination on the Mandatory Standard on Access Pricing (Determination No 1 of 2023) (“**MSAP Determination**”).

1.1.2 This Reference Access Offer (Version 1.0) came into effect on 31 May 2023.

1.1.3 This Reference Access Offer (Version 1.0) is hereby referred to as Fibrecomm’s RAO.

1.1.4 Fibrecomm’s RAO is set out as follows:

- (a) Main Text which consists of 10 chapters; and
- (b) Annexures which consist of 4 parts.

1.2 MSA Determination Obligations

1.2.1 The MSA Determination deals with access to network facilities and network services included 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);
- (c) Content obligation (Section 5.5 to 5.19 of the MSA Determination); and
- (d) Service Specific Obligations (Section 6 of the MSA Determination).

1.2.2 Disclosure Obligations

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

- (a) Prepare and maintain a Reference Access Offer;
- (b) Make the Reference Access Offer available;
- (c) Follow prescribed procedures after acceptance of the Reference Access Offer; and

- (d) Follow prescribed procedures for any amendment of the Reference Access Offer.

1.2.3 The role of Standard Access Obligations

- (a) 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 Determination'. Pursuant to Section 149 of the Act, Fibrecomm is required to comply with the standard access obligations in providing the network facilities and network services that are included in the Access List Determination.
- (b) 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 so that Fibrecomm 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.
- (c) Section 149 of the Act specifies the terms and conditions upon which Fibrecomm must comply with the standard access obligations. Section 149(2) provides that the access provided by Fibrecomm shall be:
 - (i) Of at least the same or more favorable technical standard and quality as the technical standard and quality on Fibrecomm's network facilities or network services; and
 - (ii) On an equitable and non-discriminatory basis.
- (d) The paraphrasing of any statutory provisions in this Fibrecomm's RAO 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 Fibrecomm's RAO

1.3.1 Fibrecomm is a licensed individual network facilities and network services provider under the Act. Pursuant to these licenses, Fibrecomm may offer network facilities and network services within the territory of Malaysia.

1.3.2 Pursuant to Section 5.3.3 of MSA Determination, Fibrecomm is obliged to prepare and maintain a Reference Access Offer in relation to network facilities or network services on the Access List Determination which Fibrecomm provides to itself or third parties.

1.3.3 Fibrecomm's RAO:

- (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 Fibrecomm's RAO.
- 1.3.5 Fibrecomm's RAO are consistent with:
 - (a) The standard access obligations stipulated under Section 5 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 Fibrecomm's RAO is applicable to the Facilities and/or Services and which is relevant to the provisioning of facilities and services within Fibrecomm's licenses only. If the Access Seeker requests network facilities and/or network services outside Fibrecomm's RAO, the terms and conditions for the provision of such network facilities and/or network services shall be negotiated and shall remain outside the scope of Fibrecomm's RAO.
- 1.3.7 In addition, the Operators are free to consider Fibrecomm's RAO 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.

1.4 Commencement and Duration of the Reference Access Offer

- 1.4.1 Fibrecomm's RAO comes into force and takes effect immediately from the date referred to in Subsection 1.1 of this RAO and continues until the earlier to occur of any of the following:
 - (a) A Review; or
 - (b) The withdrawal of Fibrecomm's RAO in accordance with the terms of Fibrecomm's RAO.
- 1.4.2 Fibrecomm's RAO has no effect on contractual arrangements for the supply of Facilities and Services by Fibrecomm to an Access Seeker prior to the Commencement Date unless such contractual arrangement is subsequently renegotiated and agreed between the Operators.

1.4A Conditions Precedent

- (a) This Fibrecomm's RAO shall be effective once the relevant portion required to be registered is duly registered with the Commission under Section 150 of the Act in its entirety.
- (b) Fibrecomm shall not be obliged to provide the Facilities and/or

Services unless the Access Seeker has provided the Security Sum in accordance with the terms of this RAO.

1.5 Amendment to Fibrecomm's RAO

1.5.1 If Fibrecomm proposes to amend the RAO, Fibrecomm shall, no less than thirty (30) Business Days before Fibrecomm proposes to effect the changes, provide a copy of the amended RAO showing the proposed changes to the existing RAO, to:

- (a) The Access Seeker who is being provided with access to Facilities and/or Services under the existing RAO; and
- (b) The Access Seeker who has requested access to facilities and/or services under the existing RAO 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.

For the avoidance of doubt:

- (i) nothing in Subsection 1.5.1 of this RAO prevents an Access Seeker from initiating a dispute in relation to an amendment to a RAO made by Fibrecomm under this Subsection;
- (ii) where the terms and conditions of an Access Agreement are not identical to those in the existing RAO, an amendment to the RAO will not alter the terms of that Access Agreement except as agreed between Fibrecomm and Access Seeker; and
- (iii) without prejudice to an Access Seeker's right to dispute a change to a RAO, where the terms and conditions of an Access Agreement are identical to those in the existing RAO, an amendment to the RAO will be deemed to alter the relevant terms and conditions of that Access Agreement. However, if Access Seeker disputes the change to the existing RAO, no amendments to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favour of Fibrecomm.

1.5.2 Upon expiry of the thirty (30) Business Days in Subsection 1.5.1 of this RAO (or such longer period as Fibrecomm determines is necessary to finalise the amendments to its RAO), Fibrecomm will:

- (a) make available the amended RAO on Fibrecomm's publicly accessible website without delay (including updating its date and version number, both on the cover and on each page of document); and
- (b) provide the updated RAO to the Commission before being made available under Subsection 1.5.2(a) above.

1.6 Notice of Withdrawal, Replacement and Variation of Fibrecomm's RAO

- 1.6.1 If subject to Section 56 of the Act, the Commission revokes, varies or replaces the Access List Determination relating to the Facilities or Services, Fibrecomm may, by giving written notice to all Access Seekers to whom it is supplying Facilities or Services under Fibrecomm's RAO, withdraw or replace Fibrecomm's RAO.
- 1.6.2 The notice period referred to in Subsection 1.6.1 of this RAO must be no shorter than:
- (a) The period of time between the time of giving the notice and the time at which Fibrecomm is proposing to no longer provide the Facilities and/or Services to itself; or
 - (b) Twelve (12) months.
- 1.6.3 Fibrecomm shall comply with Sections 7.4.2 and 7.4.3 of the MSA Determination where it withdraws or varies Fibrecomm's RAO pursuant to Subsection 1.6.1 of this RAO.
- 1.6.4 In addition to Subsection 1.6.3 above, Fibrecomm may give the Access Seekers to whom it is supplying Facilities and Services under Fibrecomm's RAO a notice of a variation or replacement of Fibrecomm's RAO to effect such variations that are necessary or appropriate in the event of:
- (a) The occurrence of a Legislative Event that materially affects the rights or obligations of Fibrecomm under Fibrecomm's RAO; or
 - (b) The occurrence of a Regulatory Event that relates to Fibrecomm; or
 - (c) A review by the Commission of the MSA Determination pursuant to Section 7.5 of the MSA Determination and which shall include a review by the Commission on the Mandatory Standard Access Pricing.
- 1.6.5 Notwithstanding Subsections 1.6.1, 1.6.3 and 1.6.4 above, Fibrecomm may subject to Subsection 1.6.3 above, replace Fibrecomm's RAO at any time.

1.7 Availability

- 1.7.1 Fibrecomm's RAO shall be made available to an Access Seeker:
- (a) on written request, at Fibrecomm's principal place of business at the address stated in paragraph 1.8 below; and
 - (b) on a publicly accessible website at www.fibrecomm.net.my.

1.8 Notices

Any notices or communications in respect of Fibrecomm's RAO should be made in writing to:

Attention : Regulatory Unit
Corporate Services Division
Address : Level 35 (North Wing), Menara TM
Off Jalan Pantai Baharu
59200 Kuala Lumpur, Malaysia
e-Mail : regulatory@fibrecomm.net.my
Telephone : 03-2240 1533
Facsimile : 03-2240 1530

[END OF CHAPTER 1]

CHAPTER 2 – Definitions and Interpretation

2.1 Definitions

The following words have these meanings in this Fibrecomm’s RAO unless the contrary intention appears: -

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

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

- (a) entered into between Fibrecomm and the Access Seeker pursuant to this RAO; or
- (b) which is commercially negotiated between the Operators on the terms and conditions therein contained,

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

“**Access List Determination**” means the Commission Determination on Access List, Determination No.6 of 2021 which contains the list of Facilities and Services determined by the Commission under Chapter 3 of Part VI of the Act.

“**Access Provider**” means:

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

“**Access Request**” means a request made by the Access Seeker to Fibrecomm for access to Facilities or Services and containing the information in Subsection 5.1.1 of this RAO.

“**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 or Services.

“**Access Service**” means a service for the carriage of agreed Communications along Fibrecomm’s Facilities and Services between the POIs/POPs.

“**Bank Guarantee**” means a guarantee in a form acceptable to Fibrecomm, executed

in favour of Fibrecomm by a licensed bank in Malaysia approved by Fibrecomm pursuant to Subsection 5.3 of this RAO on behalf of the Access Seeker.

“Billing Cycle” means the regular periodic basis on which Fibrecomm shall issue Invoices for the supply of access to Facilities and/or Services during each Billing Period as specified in Section 7 of this RAO.

“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 access to 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, Sunday or a public holiday.

“Capacity Allocation Policy” has the meaning given to it in Subsection 6.2.32 of this RAO.

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

“Change Notice” has the meaning given to it in Subsection 8.4.3 of this RAO.

“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 an attempt to establish 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 License(s).

“Confidentiality Agreement” means a Confidentiality Agreement entered into between Fibrecomm and the Access Seeker in accordance with Section 5.3.8 of the MSA Determination

“Creditworthiness Information” means the information required by Fibrecomm to assess the creditworthiness of the Access Seeker which are more particularly described in Subsection 5.2 of Fibrecomm’s RAO 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.

“**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 Fibrecomm’s RAO.

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

“**Fibrecomm**” means Fibrecomm Network (M) Sdn Bhd which shall be 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 Fibrecomm pursuant to Subsection 5.4 of this RAO.

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

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

“**Interface Change**” has the meaning given to it in Subsection 8.4.2 of this RAO.

“**IP**” or “**Internet Protocols**” has the meaning given to it in paragraph 3 of the Access List Determination.

“**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 Fibrecomm is required or obliged to comply;
- (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 Fibrecomm's RAO contravenes any provision of any law, except to the extent that the making of such determination, direction or finding constitutes a Regulatory Event.

"License" means an individual license 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 Fibrecomm to the Access Seeker for a ninety (90) day period.

"Minister" means the Minister of Communications and Multimedia or, if different, the Minister administering the Act.

"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 and in relation to an Operator, means so much of the network as is owned or operated by the Operator.

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

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

"Notice of Acceptance" means the Fibrecomm's notice of acceptance of an Order provided to the Access Seeker containing the information as stated at Subsection 6.2.13 of this RAO.

"Operators" means Fibrecomm and the Access Seeker collectively.

“Other Operator” means either:

- (a) Fibrecomm; or
- (b) the Access Seeker, as the context requires.

“Point of Interconnection” or **“POI”** means any technically feasible point which demarcates the Network of Fibrecomm 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.

“Ready For Service” means that the applicable Facility or Service is ready for use, in accordance with the Access Agreement.

“Ready For Service Date” means in respect of each Facility of Service the date on which the Facility or Service is Ready For Service or, if earlier, the date on which Access Seeker first makes use of such Facility or Service.

“Regulatory Event” means:

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

“Review” means a review of the MSA Determination and/or a review of the Mandatory Standard on Access Pricing.

“RM” means Ringgit Malaysia which shall be the monetary currency used in Fibrecomm’ RAO unless otherwise provided.

“Security Sum” means the security:

- (a) in the form of a Bank Guarantee, deposited with Fibrecomm in accordance with Subsection 5.3 and/or Subsection 7.3 of this RAO for the supply of Facilities or Services; and
- (b) which amount is equivalent to the Minimum Value.

“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

Fibrecomm's RAO.

"Service Ordering Procedures" means the procedures governing the forecasting, planning and ordering of relevant Access Services as set out in Chapter 5 of this RAO.

"Service Qualifications" means:

- (a) in relation to Network Co-Location Service and Transmission Services, desk and/or field study that may be conducted in accordance to Chapter 6 of this RAO and may include (where relevant) the testing of a line to ascertain whether it could be used in response to an Access Request and/or an Order or proposed Order; and
- (b) in relation to all other Facilities and Services, includes the interrogation of an Access Provider's OSS to confirm availability of network facilities to fulfil an Order or proposed Order.

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

"Technical Specifications" means any technical parameters, specifications and procedures applicable to Interconnection of the Operators' Network and provision of Access Services documented in this RAO or any manuals referred to in the Access Agreement.

2.2 Interpretation

In Fibrecomm's RAO except where the contrary intention appears:

- (a) the singular includes the plural and vice versa; and
- (b) a document includes all amendments or supplements to that document, or replacements or 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 2016; and
 - (h) a reference to a third party is a reference to a person who is not a party to Fibrecomm's RAO; 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 Fibrecomm'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 Fibrecomm's RAO; and
 - (k) headings are included for convenience and do not affect the interpretation of Fibrecomm's RAO.

[END OF CHAPTER 2]

CHAPTER 3 – LIST AND DESCRIPTION OF FACILITIES AND/OR SERVICES

Section A List of Facilities/Services

3.1 General

This chapter lists down the Facilities and/or Services which may be provided by Fibrecomm to the Access Seeker.

3.2 The followings are the Facilities/Services which may be provided by Fibrecomm:

Item	Facilities/ Services
1.	End to End Transmission Service
2.	Network Co-Location

Section B – Facilities/Service Description

3.3 TRANSMISSION SERVICE

3.3.1 End to End Transmission Service

- (a) End-to-End Transmission Service is a Facility and/or Service for the carriage of communications between:
- (i) Two (2) End User locations;
 - (ii) Between two (2) Access Seeker Points of Presence; or
 - (iii) Between one (1) End User location and one (1) Access Seeker Point of Presence,

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

- (b) Network interface may use any technology as may be agreed between Fibrecomm and the Access Seeker, including for example, Ethernet interfaces.
- (c) The functionalities of the End-to End Transmission Service may include:
- (i) transmission and any type of routing or switching (whether packet, circuit, multi-layer or otherwise);

- (ii) The signaling required to support the technology or to provide a service;
 - (iii) termination at either end by a port, router, network termination unit, switch, submarine cable landing centre or earth station; and
 - (iv) a digital protocol (including Internet Protocols).
- (d) The End-to-End Transmission Service may be for the carriage of communications which comprise of content applications service.
- (e) Technologies used to supply End-to-End Transmission Service, such as Metro-E may be requested by Access Seekers and the Access Provider must supply End-to-End Transmission Service using these technologies on request.
- (f) An Access Seeker for the End-to-End Transmission Service which includes but not limited to a network facilities provider or network service provider which is only authorized to provide limited network facilities or network services such as in the last mile, but wishes to acquire the End-to-End Transmission Service in order to connect its limited network facilities or network services.
- (g) For the avoidance of doubt, the End-to-End Transmission Service comprises but is not limited to the Facilities and/or Services specified in the Trunk Transmission Service and the Wholesale Local Leased Circuit Service.
- (h) The End-to End Transmission Service includes any End-to-End Transmission Service supplied to the Access Seeker with:
- (i) any network availability between 99.90% and 99.99% whether per month or otherwise;
 - (ii) any latency between >1 ms and <40 ms;
 - (iii) Zero or more routes of redundancy; and
 - (iv) Any other technical parameters specified or utilized by the Access Provider from time to time, including parameters of a type referred to in subsection 3.3.1 (i) (i) to (iii) above.

3.3.2 Provisions of Transmission Services

- (a) Subject to the Parties complying with the Ordering and Provisioning Obligations in Chapter 6, Fibrecomm will provide Transmission Service requested by the Access Seeker in accordance with Fibrecomm's RAO and/or the Access Agreement including the terms and conditions in Chapter 8 of this RAO.

- (b) Where the Access Seeker leases Transmission Service from Fibrecomm, Fibrecomm's Equipment can be co-located in the Access Seeker's premises in accordance with Chapter 8 of this RAO.
- (c) The Access Seeker shall provide Fibrecomm reasonable access to its premises when Fibrecomm reasonably requires it for the purpose of installing, maintaining, modifying or removing Equipment related to the provision of Transmission Service by Fibrecomm.
- (d) Fibrecomm shall ensure that Transmission Services conform to the QoS Standards and Technical Specifications, subject to the Access Seeker's use of those Transmission Services in accordance with the Technical Specifications and other agreed requirements.
- (e) The minimum period in which the Access Seeker may lease Transmission Services is one (1) year.
- (f) The Access Seeker shall pay to Fibrecomm for Transmission Services stated in this Subsection 3.3 provided by Fibrecomm, Charges in accordance with the applicable provisions set out in Chapter 10 of this RAO.

3.4 NETWORK CO-LOCATION SERVICE

- (a) The network Co-location service offered by Fibrecomm comprises of:
 - (i) physical co-location, which refers to the provision of space at Fibrecomm's premises to enable the Access Seeker to install and maintain equipment necessary for the provision of the Access Seeker's services through the Facilities and/or Services of Fibrecomm. Physical co-location includes physical space, power, environmental services (such as heat, light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access seeker;
 - (ii) in-span interconnection, which is the provision of a POI at an agreed point on a physical cable linking any Fibrecomm's network facilities to any Access Seeker's network facilities.

3.4A Pre-requisites for Applying for Network Co-Location Services

3.4A.1 General Pre-requisites for Network Co-Location

Fibrecomm shall not be obliged to provide the Access Seeker Network Co-Location at a designated site ("Designated Site") unless:

- (a) Fibrecomm:

- (i) is the legal owner of the Designated Site and there is no restriction for Fibrecomm to provide the Designated Sites to the Access Seeker (“Restrictions of Use”); or
 - (ii) in the event Fibrecomm is not the legal owner of the Designated Sites or there are Restrictions of Use, the Access Seeker shall at its own cost and expenses apply for the respective land owner’s consent for the use, of the Designated Site or the removal of the Restrictions of Use. The Access Seeker undertakes and shall ensure that procurement of the land owner’s consent or removal of Restrictions of Use shall not in any event affect any Fibrecomm’s rights in the land or with the land owner to use the Designated Site including but not limited to increase in premium as provided in Article 3.4C.3 herein, increase in rental or lease amount or imposition of any new terms upon Fibrecomm by the land owner (“Adverse Conditions”), in the event any Adverse Conditions are imposed upon Fibrecomm, the Access Seeker shall procure such Adverse Conditions are promptly removed and the Access Seeker shall fully indemnify Fibrecomm upon demand for any such cost, expenses, damages, losses suffered by Fibrecomm as result of imposition of such Adverse Conditions .
- (b) The Access Seeker has the appropriate license under the CMA and its subsidiary legislation to operate the service for the purpose for which the equipment is to be installed and other approvals from relevant authority, where required;
 - (c) there being sufficient space at the Designated Sites; and
 - (d) that it is not technically infeasible to implement Network Co-Location at the Designated Site.

3.4B General Terms and Conditions on Network Co-Location Services

3.4B.1 Duration

- (a) The term of each Network Co-Location shall be a fixed period of one (1) year (“the Term”). Three (3) months before the expiry of the Term, the Access Seeker shall submit an application for renewal (“Renewal”) of each Network Co-Location in accordance with Section II terms and Conditions for Technical Matters. Fibrecomm may at its own absolute discretion waive any compliance with Section II Terms and Conditions for Technical Matters for such Renewal.
- (b) The term of the Network Co-Location shall commence on the date (“Commencement Date”):
- (c) Fibrecomm makes available for physical possession the co-located space (“Co-Located Space”) at the Designated Site; or
- (d) The Access Seeker takes physical possession of the Co-located Space at the

Designated Site, whichever is the earlier.

3.4C. Specific Terms and Conditions for Physical Co-Location

3.4C.1 Use of Co-Located Space

- (a) The Access Seeker shall only use the Co-Located Space for the sole purpose of providing communication services and shall not do or permit to be done any act or thing which is illegal or may become a nuisance or give reasonable cause for complaint by the owner or any of the other users in Fibrecomm's Designated Site or any other buildings adjoining the Designated Site.
- (b) If the Access Seeker has not complied with **Condition** 3.4C.1(a), the Access Seeker shall take the necessary rectification or remedial action to address any complaints made by Fibrecomm or other users in the Designated Site.
- (c) The Access Seeker's right to use the Co-Located Space and the right of use does not entitle the Access Seeker to any proprietary rights or interest whether under statute, common law, equity or any theory of law in any building, land, fixture, other structure or in or to the Designated Site.
- (d) Where the Designated Site is owned or controlled by a third party ("**Site Owner**") and Fibrecomm's use of the Designated Site is pursuant to a tenancy or lease, Fibrecomm shall be under no obligation to seek any renewal of the term of the tenancy or lease. The Access Seeker agrees that it shall not seek a tenancy or lease to the Designated Sites from the Site Owner unless Fibrecomm signifies in writing that it is no longer interested in the use of the Designated Sites. In the event the tenancy or lease of Fibrecomm is terminated for whatsoever reason, The Access Seeker's right under this Agreement shall be equally terminated on the effective date of termination of such lease or tenancy and the Access Seeker shall not be entitled to damages or any other remedies under any law, equity or legal theories for such termination pursuant to this Condition.
- (e) The Access Seeker undertakes that any works done in respect of use of the Co-Located Space and within the premises of Fibrecomm where the Co-Located Space is sited shall be undertaken by a person who is appropriate, skilled, experienced and qualified.
- (f) The Co-Located Space is provided on an "as-is-where-is" basis.

3.4C.2 Storage

The Access Seeker shall not permit to be kept on the Co-Located Space or any part thereof:

- (a) any materials the storage of which may contravene any ordinance, statute, regulation or by-law;
- (b) any materials the storage of which an increased rate of insurance is usually required; or

- (c) any explosive, combustible or radioactive substances.

3.4C.3 Increase in Premium

The Access Seeker shall not do or permit to be done anything which would render the insurance policy or policies with respect to Fibrecomm's Designated Site on which the Co-Located Space is located void or voidable or whereby the premium of the said policy or policies may be increased. In the event of an increase in premium or other expenses on renewal of such policy or policies due to a breach or non-observance of this condition by the Access Seeker, The Access Seeker undertakes to repay all sums paid by Fibrecomm including the expenses incurred thereto.

3.4C.4 Repairs

- (a) In the event of any damage caused to the Co-Located Space by the Access Seeker, the Access Seeker shall, at its own cost and expense, restore and to forthwith make good any damage to the original state and condition (fair wear and tear excepted) as specified in the notice in writing given by Fibrecomm to the Access Seeker specifying therein all necessary replacements and/or repairs to be effected to the building, plant, facilities and equipment.
- (b) If the Access Seeker fails to effect the replacements and/or repairs within the time period stipulated in the notice (which period must be a reasonable time), Fibrecomm may, whether or not together with its workmen, enter the Co-Located Space and make all necessary replacements and/or repairs to the building, plant, facilities and equipment. The costs for all such necessary replacements and/or repairs shall be a debt due from the Access Seeker and shall be recoverable by Fibrecomm save where the replacements and/or repairs were due to the natural failure of the structure or due to Fibrecomm's fault.

3.4C.5 Tenantable Condition

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

3.4C.6 Consents, Licences and Approvals

- (a) The Access Seeker shall be fully responsible at its own cost to obtain all necessary consents, permits, approvals and licenses from third parties and governmental authorities or agencies to carry out/provide its communications services at the Co-Located Space including operating, using all equipments, systems, cables, links and devices and for using the Co-Located Space.
- (b) The Access Seeker its employees, independent contractors, agents or invitees

shall further observe and comply with all laws, by-laws, rules and regulations which are now in force or which may hereafter be enacted.

- (c) The Access Seeker shall further observe and perform and cause all its employees, independent contractors, agents or invitees to observe and perform all rules and regulations made by Fibrecomm from time to time and notified to the Access Seeker in writing Provided Always that Fibrecomm shall not be liable to the Access Seeker in any way for violation of the rules and regulations by any person including the Access Seeker or its employees, independent contractors, agents or invitees save where Fibrecomm has been negligent.

3.4C.7 Sub-letting

The Access Seeker may sub-let the Co-Located Space owned by Fibrecomm to the Access Seeker's customer who are also acquiring services from Fibrecomm and the Access Seeker shall ensure that the Access Seeker's customer complies with the relevant co-location agreement. The Access Seeker shall be responsible for all acts and omissions of Access Seeker's customer in connection with providing access under its co-location agreement.

3.4C.8 Payment of Quit Rents, Rates and Taxes

Fibrecomm will pay all quit rents, rates (save for utilities), taxes, assessments which are or may hereafter be charged upon the Co-Located Space. Any increase in quit rent, assessment, taxes or rates on the Co-Located Space from the Commencement Date of the Co-Location shall be borne by Fibrecomm and all users in proportion to their usage of space.

3.4C.9 Fibrecomm's Covenant

- (a) The Access Seeker acknowledges and agrees that it is using the Co-Located Space at its own risk as Fibrecomm does not warrant or represent that it has obtained all the necessary authorisation, approvals or permits from the relevant authorities (including the Federal and State Government and any private land owners) to erect the infrastructure on the Designated Site in which the Co-Located Space has been rented to the Access Seeker or to use or occupy the Designated Site.

3.4C.10 Utilities

- (a) In the event of the Access Seeker requires dedicated power supply meter, the Access Seeker shall be responsible to apply for its own individual meter and power supply to the Co-Located Space and shall be further responsible for and bear the cost of all electricity utilised by the Access Seeker at the Co-Located Space.
- (b) In the event that the Access Seeker utilises the electricity supplied at the Co-Located Space and provided that Fibrecomm is of the opinion that the electricity power load is sufficient to be shared with the Access Seeker and other users within its Designated Site, the Access Seeker shall reimburse Fibrecomm for all electricity charges utilised (and any other additional charges for back-up power) by the Access Seeker at the Co-Located Space. Where Fibrecomm is not able to

provide the electricity supply to the Access, The Access Seeker shall be entitled to bring and install its own generator at the Co-Located Space at the Designated Site.

3.4C.11 To Permit Access Seeker to Enter and View Condition

Where the Co-Located Space is an enclosed or secured area, Fibrecomm shall permit Access Seeker and his agents, servants and contractors, to enter the Co-Located Space at all reasonable times and upon giving five (5) days' written notice for unmanned sites and two (2) days written notice for manned sites for the purpose of viewing the state and condition thereof or for any other reasonable purpose. The Parties agree however, that in an emergency, the Access Seeker may first enter the Co-Located Space but shall subsequently notify Fibrecomm within twenty-four (24) hours. Fibrecomm shall have the option to provide an escort to Access Seeker, at its own cost, but Access Seeker shall not be prevented from entering if the escort fails to be present.

3.4C.12 Installation of Equipment

- (a) The Access Seeker shall ensure that all Equipment, system or devices on the Co-Located Space shall:
- (i) be type-approved and comply with all relevant laws and regulations;
 - (ii) not cause any frequency interference to Fibrecomm's and/or any of the other users' equipment or services provided in or around the Co-Located Space; and/or
 - (iii) be electromagnetically compatible in accordance with the prescribed standards and shall not cause electromagnetic interference to Fibrecomm's and/or any of the other users' equipment or services provided in or around the Co-Located Space; and/or
 - (iv) not be connected to any equipment belonging to Fibrecomm without the prior written consent from Fibrecomm.

For the purposes of **Condition 3.4C.12(a)(ii) and (iii)**, the Parties agree that where the Access Seeker's equipment causes frequency interference or electromagnetic interference to Fibrecomm and/or other users' equipment or services provided in or around the Co-Located Space, Fibrecomm shall provide immediate verbal notification followed by a written notice within 24 hours to the Access Seeker. The Access Seeker shall immediately (and in any event no longer than 24 hours) upon receipt of the verbal notification take all such necessary steps to stop any such interference.

If the Access Seeker is not able to locate the source of the interference within twenty-four (24) hours under paragraph above, the Access Seeker shall promptly notify Fibrecomm and both Operator shall meet as soon as possible, and in any case, within twenty-four (24) hours of such notice and jointly examine each other's network, network facilities, network services or Equipment to locate the source of the interference.

- (b) In the event that:
 - (i) The Access Seeker fails to fulfil its obligations under this **Condition 3.4C.12**; or
 - (ii) the equipment, system or devices of the Access Seeker is or poses a threat or danger to the public health and safety or Fibrecomm and/or other user's facilities, equipment, device or system,

Fibrecomm may direct the Access Seeker to take such remedial action as may be necessary to remedy such breaches including temporary shutting down of the equipment, system or devices.

- (c) The Access Seeker shall only be permitted to install its Equipment on the Co-Located Space for the provision of its communications services and shall not be permitted to install any third party's equipment, system and/or devices on the Co-Located Space without the prior written approval of Fibrecomm.
- (d) The Access Seeker shall not damage, tamper, modify, alter or handle any equipment, system or devices belonging to Fibrecomm or any other user in the Designated Site and/or the Co-Located Space without the prior written approval of Fibrecomm and/or the other user.
- (e) The Access Seeker is responsible for insuring its equipment and shall purchase the necessary insurances when carrying out any works including installation works on Fibrecomm's Designated Site. In particular, The Access Seeker shall obtain or procure the necessary insurances against all risks of physical loss or damage to Fibrecomm's assets and that Fibrecomm is a named insured (either solely or jointly) in the insurance policy for the duration of the works and the insurance shall be in the amount as is required by Fibrecomm.

3.4C.13 Installation of Electrical Points and Plumbing Connection

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

3.4C.14 Installation Works

- (a) The Access Seeker shall submit the installation and work plan, which shall include installation and works schedule and work methods to Fibrecomm and obtain Fibrecomm's written approval prior to undertaking the installation or upgrading or any equipment in the Designated Sites or site preparation works.
- (b) Where required by Fibrecomm, the Access Seeker shall secure certification by an independent consultant engineer that the installation or upgrading of its Equipment in the Designated Sites or site preparation works undertaken and completed comply with the terms of all approvals, authorisation, permits, consents and clearances and the installation plans submitted to

Fibrecomm.

- (c) Any revision to or revocations of the approvals, authorisations, consents, permits, clearances and installation plans shall be notified to Fibrecomm. All revision to the installation plans must be approved in writing by Fibrecomm. A copy of all plans as approved by Fibrecomm and the authorities must be provided to Fibrecomm.
- (d) No work shall be undertaken by the Access Seeker at a Designated Sites, in the event, the approvals, consents, permits, authorisations and clearances are revoked.
- (e) Fibrecomm shall be entitled at any time to visit and inspect the installation works and the site preparation works.
- (f) Upon completion of the installation works and site preparation works, the Access Seeker shall inform Fibrecomm.
- (g) Fibrecomm shall be entitled to conduct an inspection of the Designated Sites to verify that the installation of equipment at the Designated Sites and completion of the site preparation works comply with the approved installation and work plan. In the event there is any non-compliance by the Access Seeker, The Access Seeker shall commence and complete rectification works within ten (10) Business Days failing which Fibrecomm shall be entitled to terminate the licence granted herein.
- (h) All connections of the Access Seeker's Equipment to the Facilities of Fibrecomm shall be carried out by Fibrecomm or the Access Seeker as agreed by the Parties but the Access Seeker shall pay the reasonable cost incurred by Fibrecomm for works carried out by it.

3.4C.15 Safety and Health and Security Procedures

- (a) The Access Seeker shall comply with the provisions and requirements of the Occupational Safety and Health Act 1994 ("**OSHA**"). These provisions include the usage of personal protective equipment such as safety helmet, safety boots, safety goggles and other safety gadgets as prescribed by OSHA.
- (b) The Access Seeker shall exercise due care in the execution of their work so as to prevent accidents and are required to report any incidents including but not limited to accidents as a result of their works to Fibrecomm within twenty four (24) hours from the time of the occurrence.
- (c) The Access Seeker shall comply and cause its employees, agents and contractors to comply with all guidelines, rules and regulations issued by Fibrecomm from time to time on site use and security procedures with respect to use of the Co-Located Space. Further, The Access Seeker shall undertake all such necessary measures to ensure the security of its Co-Located Space prevents unauthorised usage of the Co-Located Space.

- (d) The Access Seeker is responsible for the safe operation of its network and must take all reasonable and necessary steps to ensure that its network and, its network operations and implementation:
 - (i) do not endanger the safety or health of the officers, employees, contractors, agents, customers of Fibrecomm and/or the general public; and
 - (ii) do not damage, interfere with or cause any deterioration in the operation or impedes or interrupts the continuous use of Fibrecomm's network and/or the network of any other persons who have been granted use of the Facilities.

3.4C.16 Exclusive Possession

The Access Seeker recognises that it does not have exclusive possession of the Co-Located Space since Fibrecomm occupies the Co-Located Space and may sub-let or intends to sub-let the Co-Located Space to other parties. However, Fibrecomm agrees that it shall not tamper, modify, alter or handle any or interfere with equipment, system or devices belonging to the Access Seeker at the Co-Located Space for the duration of the Physical Co-Location unless an emergency situation arises and immediate notice has been given to the Access Seeker in accordance with **Condition 3.4C.11.-**

3.4C.17 Vacating the Co-Located Space

- (a) The Access Seeker shall on the expiration or termination of the Physical Co-Location at each Co-Located Space, at its own cost and expense, remove all its equipment, system and devices which may have been installed by the Access Seeker and to peaceably and quietly yield up the Co-Located Space to Fibrecomm with all Fibrecomm's fixtures and additions thereto in good and tenable repair and condition (fair wear and tear excepted) in accordance with the covenants herein contained.
- (b) The Access Seeker shall be given:
 - (i) a grace period of ten (10) Business Days effective from the expiry or termination of the Physical Co-Location at the Co-Located Space; or
 - (ii) where the infrastructure on the Designated Site is to be dismantled or Fibrecomm is to vacate the Designated Site in accordance with **Condition 3.4C.9**, such reasonable grace period as may be specified by Fibrecomm taking into consideration the time lines provided by the relevant authorities or the owner of the land/landlord to Fibrecomm to dismantle the infrastructure or to vacate the Designated Site provided always that the Access Seeker must vacate the Co-Located Space earlier than the stipulated time line provided to Fibrecomm to enable Fibrecomm to comply with the requisite time lines;
 - (iii) to vacate the Co-Located Space, during which no monthly rental will

be charged by Fibrecomm. Should the equipment, system or devices not be removed within the grace period, Fibrecomm shall have the right to:

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

3.4C.18 Reservation of space.

Fibrecomm shall 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 Access Seekers who are currently occupying or have ordered space from Fibrecomm.

3.4C.19 Allocation of space

Fibrecomm shall allocate space at each location where physical co-location is to be permitted in a non-discriminatory way and will treat other Access Seekers as it treats itself.

3.4C.20 No minimum space requirements

Fibrecomm shall not impose minimum space requirements on an Access Seeker. There will be for minimum space charges requirement as in Subsection 10.3.1.

3.4C.21 Notice of refusal

If Fibrecomm proposes to refuse, or refuses, a request for physical co-location from an Access Seeker on the basis of current or future needs of Fibrecomm and/or the needs of other Access Seekers who are currently occupying or have ordered additional space from Fibrecomm, it must also notify the Access Seeker and the Commission of:

- (a) the space currently used by Fibrecomm;
- (b) the amount of space reserved for Fibrecomm's future needs;
- (c) the space currently occupied by other Access Seekers;

- (d) the space ordered by other Access Seeker;and
- (e) the total amount of space potentially available but for the uses set out above.

3.4D. Relocation of the Co-Located Space

- (a) In the event that the Co-Located Space is required to be relocated to an alternative Co-Located Space with the same terms and conditions and on a recurring charge which are not less favorable to the Access Seeker at any time due to any circumstances as may be notified by Fibrecomm, the Access Seeker shall carry out all necessary works to relocate its equipment as instructed by Fibrecomm.
- (b) The relocation works shall be carried out by the Access Seeker within the time period as notified by Fibrecomm and in accordance with the Standard Operating Procedure. The Access Seeker shall obtain all consents, approvals, permits, authorization and licenses required to undertake the relocation works and reinstall its equipment at the new site for the use of the Co-Located Space. The Access Seeker acknowledges that Fibrecomm can or may only be able to undertake the relocation of the Co-Located Space after the Access Seeker has completed its works and in the event that there is any failure or delay by the Access Seeker in undertaking the relocation works and completing the said works promptly and in accordance with the time schedule stipulated by Fibrecomm, then the Access Seeker shall indemnify Fibrecomm against all costs, expenses, damages, liabilities, fines, penalties and imposts incurred or suffered by Fibrecomm.

3.4E Termination by Fibrecomm

- (a) Fibrecomm shall have the absolute right to terminate any lease of the Co-Located Space at any time in the event that Fibrecomm requires the Co-Located for its own use. Fibrecomm shall provide at least three (3) months prior written notice to the Access Seeker.
- (b) Upon the occurrence of the circumstances stated in **Condition 3.4E (a)** above, Fibrecomm shall refund any advanced payment received from the Access Seeker on a pro-rata basis after the termination of the lease.
- (c) If, after the termination of this Agreement or the Co-Location Services at any Designated Sites:
- (d) Fibrecomm shall give the Access Seeker written notice requesting the Access Seeker to carry out necessary disconnection works and to remove any equipment or facilities of the Access Seeker or a third person installed by or for the Access Seeker; and
- (e) The Access Seeker has failed to comply with the request, Fibrecomm may carry out any necessary disconnection works. The Access Seeker shall be responsible for compensating Fibrecomm for the cost of disconnecting and removing any such equipment or facility and for making good any damage

to Fibrecomm's premises. A certificate of Fibrecomm of the cost incurred by Fibrecomm in disconnecting the the Access Seeker equipment shall save for manifest error be final and binding.

3.4F Upon termination of this Agreement:

- (a) subject to **paragraph 3.4F (b)** below and the specific terms and conditions relating to the use of the Co-Located Space as set out above, Fibrecomm shall refund to the Access Seeker within sixty (60) days all amounts paid in advance in respect of the Co-Located Space to the extent that the amount (or part of the amount calculated on a pro-rata basis) relate to the period after the effective date of termination; and
- (b) The Access Seeker shall immediately pay all amounts due to Fibrecomm for the usage of the Co-Located Space prior to and up to termination.

3.4G Charging Principles for Access Services

Please refer to Chapter 10 on the details of charges and charging principles for the Facilities and Services offered by Fibrecomm.

[END OF CHAPTER 3]

CHAPTER 4 – PRINCIPLES OF ACCESS

4.1 Application of Fibrecomm's RAO

Fibrecomm's RAO sets out the terms and conditions upon which Access Seekers may access Fibrecomm's Facilities and/or Services. Fibrecomm's RAO applies only to the Facilities and/or Services.

4.2 Eligibility for Access of Services

4.2.1 Consistent with Government policy and Determination 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:-

- (a) network facilities provider license and/or;
- (b) network services provider license and/or;
- (c) applications services provider license and/or
- (d) content application services provider

and such licenses are not limited or restricted from those detailed in the *Communications and Multimedia (Licensing) Regulations 2000*, as amended in any way:

- (i) by reference to the type of network facilities, network services and/or content applications services that can be provided; and
- (ii) by geographical limitations to only specific area and/or areas in Malaysia to which the Access Seeker can provide such network facilities, network services and/or content applications services

4.2.2 Consistent with Government policy and Determination by the Commissions (and its predecessor), where Fibrecomm provides the Access Seeker with access to the Facilities and/or Services pursuant to **Subsection 4.2.1 above**, 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.

4.3 Standard Access Obligations

4.3.1 Access Terms and Conditions

Subject to Subsections 4.2 and 4.3 of this RAO, Fibrecomm shall if requested to do so by the Access Seeker, supply a Facility and/or Service to the Access Seeker on reasonable terms and conditions.

4.3.2 Principles of non-discrimination

In supplying a Facility and/or Service, Fibrecomm shall treat an Access Seeker on a

non-discriminatory basis as required by the Standard Access Obligations in relation to the supply of a Service(s).

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

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

4.3.3 Customer Principles

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

4.4 Negotiation Principles

4.4.1 Good faith and Dispute Resolution

Each party shall co-operate, in good faith and commercially reasonable manner, in negotiating and implementing the terms of the Access Agreement, acting promptly, honestly and not perversely, capriciously or irrationally and use all reasonable endeavours to resolve any disputes arising from or in connection with Fibrecomm's RAO.

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

4.4.2 Confidentiality

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

[END OF CHAPTER 4]

CHAPTER 5 – ACCESS REQUEST PROCEDURES

5.1 Application for Access to Services

5.1.1 Where an Access Seeker makes a request to Fibrecomm to supply Facilities and/or Services, the Access Seeker shall serve an Access Request on Fibrecomm setting out the information listed in below:

- (a) the name and contact details of the Access Seeker;
- (b) the Facilities and/or Services in respect of which access is sought;
- (c) a list of the relevant licences held by Fibrecomm;
- (d) whether the Access Seeker wishes to accept Fibrecomm's RAO, to negotiate amendments to the RAO or to negotiate an Access Agreement on alternative terms;
- (e) the information (if any) the Access Seeker reasonably requires Fibrecomm to provide for the purposes of the access negotiations. The type of information which may be requested by the Access Seeker is described in, but not limited to Subsection 5.3.7 of the MSA Determination;
- (f) two (2) copies of Confidentiality Agreement properly executed by the Access Seeker in the form prescribed by Fibrecomm;
- (g) preliminary information regarding the scale and scope of Facilities and/or Service that the Access Seeker expects to acquire from Fibrecomm pursuant to the Access Request;
- (h) relevant information relating to the Access Seeker' Network and functionality of its Services, to the extent that Access Seeker is aware that such information may affect Fibrecomm Network;
- (i) creditworthiness information in accordance with Fibrecomm requirement as set out in Subsection 5.2 of this RAO;
- (j) assessed security (or, if applicable, confirmation of security provided) in accordance with Fibrecomm security requirement as set out in Subsection 5.3 of this RAO;
- (k) insurance information in accordance with Fibrecomm insurance requirement as set out in Subsection 5.4 of this RAO;
- (l) relevant technical information relating to the interface standards of the Equipment of the Access Seeker; and
- (m) such other information as Fibrecomm may reasonably request for the sole purpose of providing access to the requested Facilities and/or Services.

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

5.2 Creditworthiness Information

5.2.1 Fibrecomm shall request creditworthiness information from an Access Seeker:

- (a) If Fibrecomm reasonably believes that the Access Seeker may not be able to meet any liabilities that may arise under an Access Agreement with the Access Seeker;
- (b) If the creditworthiness information sought is limited to information which is publicly available (on this basis, Fibrecomm may request the Access Seeker to warrant that such information is accurate); and
- (c) To the extent commensurate with a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the minimum period of access to Facilities and/or Services in an Access Agreement.

5.3 Security Sum

5.3.1 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.

5.3.2 Fibrecomm is not obliged to enter into an Access Agreement with the Access Seeker that Fibrecomm determines presents a credit risk, until the Access Seeker has amongst other things, provided (at the Access Seeker's costs) to Fibrecomm security sum that will materially reduce or remove that risk.

5.3.3 The amount and type of any security requirement to be imposed on an Access Seeker is only imposed in the Fibrecomm's security policy and commensurate with:

- (a) a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over:
 - (i) for Facilities and/or Services with a minimum period of access, the minimum period of access to those Facilities and/or Services; and
 - (ii) for Facilities and/or Services without a minimum period of access, a single Billing Period for those Facilities and/or Services,in an Access Agreement;
- (b) the creditworthiness of the Access Seeker (including prior record of payment by the Access Seeker); and
- (c) security previously required by Fibrecomm.

5.3.4 Fibrecomm will not impose a security requirement on an Access Seeker which:

- (a) exceeds a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the minimum period of access to Facilities and/or Services to be provided by Fibrecomm to the Access Seeker; or
- (b) is designed to, or has the effect of, denying or delaying the Access Seeker's access to Facilities and/or Services.

5.4 Insurance Information

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

- (a) Insurance beyond that necessary for Worker's Compensation 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 employed in connection with the work covered by the Access Agreement that may be entered into;
- (b) Comprehensive General Liability Insurance of an amount which is 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; and
- (c) the Access Seeker to specifically list Fibrecomm's name as the beneficiary.

5.5 Processing of Access Request

5.5.1 Acknowledgement of Receipt of Access Request

Fibrecomm shall within ten (10) Business Day of receipt of the Access Request respond to the Access Seeker in writing acknowledging receipt of the Access Request and stating that:

- (a) if the Access Seeker is willing to accept a RAO from Fibrecomm, Fibrecomm will provide access to Facilities and/or Services in accordance with Fibrecomm's RAO. Subsection 5.4.8 of the MSA Determination shall apply.
- (b) If Subsection 5.5.1 (a) above does not apply, Fibrecomm is willing to proceed to negotiate amendments to the RAO or an Access Agreement on alternative terms. Subsection 5.4.9 of the MSA Determination shall apply;
- (c) Fibrecomm refuses the Access Request in accordance to Subsection 5.6 of this RAO. Subsection 5.4.10 of the MSA Determination shall apply; or
- (d) Fibrecomm requires specified additional information to make a decision on the Access Request in accordance with paragraphs 5.5.1(a) to 5.5.1(c) of

this RAO, and once such information is received from the Access Seeker, Fibrecomm shall reconsider the Access Request upon receipt of such additional information and the ten (10) Business Days for the Fibrecomm to consider the Access Request will recommence from the receipt of the information from the Access Seeker.

5.5.2 Non-refundable resource

- (a) In accordance with Section 5.7.28 of the MSA Determination, Fibrecomm may charge an Access Seeker a one-off non-refundable resources charge (including to test and fulfill an Order for new Facilities and/or Services and processing fees to process the Access Request) to be determined by by Fibrecomm.
- (b) 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 Fibrecomm is required to allocate manpower and resources for the same. Such non-refundable processing fee is only applicable to the requested Facilities and/or Services that can be offered and made available by Fibrecomm.
- (c) The one-off non-refundable fee that will be charged by Fibrecomm as below:
 - i) Test and Fulfill fee an Order for new Facilities and/or Services

Type of Charge	Location Category	Charge (RM)
Site Survey	Urban Area	1000
	Rural Area	1500
	Remote Area and Island	2500
	Very Remote Area	4500
Site Preparation Work	Applicable to all location	As per quotation
Site Supervision work	Urban	1000
	Rural	1500
	Remote and Island	2500
	Very Remote	4500
Installation	Urban	426
	Rural	670
	Remote and Island	1200
	Very Remote	4000

Type of charge	Description of charges	Charge (RM)
Processing fee for Transmission Service requirement	a) Establishment of new route/bearer	RM 600 per circuit
	b) Circuit Migration Exercises	RM 600 per circuit
	c) Provisioning of Additional Circuits	RM 250 per circuit

ii) Processing Fee to process the Access Request

Description	Fee
Processing Fee	RM1,000

The Access Seeker hereby acknowledge that the one-off non-refundable fee in this Subsection 5.5.2 (c) may be subject to change at Fibrecomm’s sole discretion.

- (d) If the Access Seeker does not proceed with the Access Request accepted by Fibrecomm, the processing fees will not be refunded to the Access Seeker. However, if the Access Seeker proceeds with the Access Request accepted by Fibrecomm. The processing fee will be set-off against the Charges for the requested Facilities and Services upon acceptance of the Access Request by Fibrecomm.

5.6 Assessment of Access Request

5.6.1 Grounds for Refusal

Except where expressly permitted otherwise under the Act, Fibrecomm may refuse to accept an Access Request for the supply of Facilities and/or Services and accordingly may refuse to supply that Access Service (s) to the Access Seeker for any of the following reasons:

- (a) in Fibrecomm’s reasonable opinion, the Access Seeker’s Access Request was not made in good faith and Fibrecomm shall set out the basis on which the Access Request was not made in good faith;
- (b) in Fibrecomm’s reasonable opinion, the Access Request does not contain the information reasonably required by Fibrecomm’s RAO.
- (c) Fibrecomm does not currently supply or provide access to the requested Facilities and/or Services to itself or to any third parties (in which case it shall identify any alternative facilities and/or services which it does provide to itself or to any third parties, which may be acceptable substitutes), except where the Access Seeker compensates Fibrecomm for the supply of access to such Facilities and/or Services;

- (d) It is not technically feasible to provide access to the requested Facilities or Services;
- (e) Fibrecomm has insufficient capacity or space to provide the requested Facilities or Services;
- (f) Fibrecomm has reasonable grounds to believe that the Access Seeker may fail, to make timely payment for the supply of the relevant Facility or Services and such concern cannot be addressed through a security requirement in accordance with Subsection 5.3;
- (g) Fibrecomm has reasonable grounds 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;
- (h) there are reasonable grounds for Fibrecomm 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.

5.6.2 Determination of technical infeasibility

For the purpose of determining technical infeasibility in Subsection 5.6.1(d), the Operators shall comply with Subsection 5.4.17 of the MSA Determination.

5.6.3 Determination of capacity constraints

For the purpose of determining capacity constraints in Subsection 5.6.1 (e), the Operators shall comply with Subsection 5.4.18 of the MSA Determination.

5.6.4 Assessment of the Access Seeker's ability to pay for supply of relevant Facilities or Services

Example of reasonable grounds for Fibrecomm's belief as mentioned in Subsection 5.6.1 (f) of this RAO includes evidence that the Access Seeker is not in the reasonable opinion of Fibrecomm creditworthy and such creditworthiness concerns cannot be addressed through a security requirement in accordance with this RAO.

5.6.5 Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of relevant Facilities or Services

Example of reasonable grounds for Fibrecomm's belief as mentioned in Subsection 5.6.1 (g) of this RAO include but not limited to repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to Network Facilities or Network Services have been provided (whether or not by Fibrecomm).

5.6.6 Assessment of Creditworthiness

- (a) In determining the creditworthiness of the Access Seeker, Fibrecomm will carry out assessment as set out in Subsection 5.2.1 of this RAO.
- (b) In determining the creditworthiness of the Access Seeker, Fibrecomm shall not take into account amounts outstanding for Facilities or Services previously provided by Fibrecomm 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 Fibrecomm to the extent that there is a *bona fide* dispute in relation to the amounts outstanding by the Access Seeker to Fibrecomm and the Access Seeker is relying on such terms and conditions as basis for its non-payment.

5.7 Notification of Rejection to the Access Seeker

5.7.1 Where Fibrecomm rejects the Access Request, Fibrecomm 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 Subsection 5.5.1 of this RAO as the case may be;
- (b) provide grounds for rejection under Subsection 5.6.1 above to the Access Seeker;
- (c) provide basis for Fibrecomm's decision with sufficient particulars to enable the Access Seeker to make its own assessment about the applicability of the specified grounds of refusal; and
- (d) indicate a place, date and time, not later seven (7) Business Days from the date of Fibrecomm's response, at which representatives of Fibrecomm authorized to review Fibrecomm's assessment of the Access Request will be available to meet with representatives of the Access Seeker to discuss the refusal of the Access Request. At this meeting, the Access Seeker may request Fibrecomm to substantiate its reasons for refusal (and Fibrecomm shall do so), and if access has been refused on the basis of the grounds in:
 - (i) Subsection 5.6.1(b), Fibrecomm must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker;
 - (ii) Subsection 5.6.1(e), Fibrecomm must identify when additional capacity is likely to be available; and
 - (iii) Subsection 5.6.1(f), Fibrecomm must identify the form of security requirement which would satisfy its concern that the Access Seeker may fail to make timely payment for the requested Facilities and/or services, its reasons for the security requirement and why it considers such concern cannot be addressed through a security

requirement under subsection 5.3 of this RAO.

- 5.7.2 Where the Operators are unable to resolve their differences following the meeting held pursuant to Subsection 5.7.1(d) above, either Operator may request resolution of the dispute in accordance with Dispute Resolution Procedures in Annexure A of the MSA Determination.

5.8 Acceptance of Access Request

- 5.8.1 Where Fibrecomm agrees to provide access to Facilities or Services to the Access Seeker, Fibrecomm shall within ten (10) Business Days of such response under Subsection 5.5.1(b), provide the Access Seeker with two copies of the executed Access Agreement, for execution by the Access Seeker.
- 5.8.2 Where the Access Seeker wish to negotiate an Access Agreement, the Operators shall comply with the requirements in Subsections 5.4.2, 5.4.3, and 5.4.4 of the MSA Determination in negotiating and concluding an Access Agreement.
- 5.8.3 Fibrecomm will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Facilities or Services until:
- (a) a Security Sum has been provided in accordance with Subsections 5.1 and 5.3 of this RAO; and
 - (b) an Access Agreement has been executed between the Operators and the Access Seeker and the Access Agreement is registered with the Commission in accordance with Section 150 of the Act.

5.9 Negotiations on Access Request

- 5.9.1 Pursuant to Subsection 5.8.2 of this RAO, where the Access Seeker wish to negotiate an Access Agreement, Fibrecomm shall set out in its response to the Access Seeker:
- (a) a place, date and time not later than fifteen (15) Business Days from the date of Fibrecomm response, when Fibrecomm's representative that is authorized to negotiate will be available for the initial meeting with the representatives of the Access Seeker.
 - (b) One copy of the executed Confidentiality Agreement that has also been properly executed by the Operators.
- 5.9.2 If an Operator wishes to negotiate an Access Agreement with another Operator:
- (a) Both parties shall notify the Commission when negotiations for the Access Agreement begin under this subsection;
 - (b) Both parties shall use their best endeavors to conclude the Access Agreement within:

- (i) Where there is no Access Agreement in place between the Operators, four (4) months; or
 - (ii) Where there is already a commercial agreement or an Access Agreement in place between the Operators, three (3) months, after a written request by Access seeker to commence negotiations under Subsection 5.1.1(d) of this RAO and Fibrecomm response confirming it is willing to proceed to negotiate under Subsection 5.5.1 (c) of this RAO.
- (c) If the negotiation is not completed within the applicable timeframe specified under Subsection 5.9.2 (b) above:
- (i) The parties may jointly apply to the Commission for an extension of time to negotiate and if the extension of time not granted by the Commission, there shall be deemed to be a dispute between the parties and the Dispute Resolution Procedure shall take effect; or
 - (ii) Either party may initiate the Dispute Resolution Procedure; and
- (d) If the Commission grants an extension of time under Subsection 5.9.2 (c), it may do so subject to such conditions as it specifies (such as an ongoing requirement to provide updates on negotiations at specified intervals and the right to reduce or extend any extension).
- 5.9.3 Unless otherwise agreed between the Operators, each Operator shall ensure that its representatives meet on the date notified pursuant to paragraph 5.9.1. (a) and such representatives:
- (a) agree on a timetable for the negotiations, including milestones and date for subsequent meetings within the applicable timeframe for negotiations under Subsection 5.9.2 (b);
 - (b) agree on negotiating procedures including:
 - (i) calling and chairing meetings;
 - (ii) responsibility for keeping minutes of the meetings;
 - (iii) clearly defined pathway and timetables for escalation and resolution by each Operator of matters not agreed in the meetings;
 - (iv) procedures for consulting and including in the negotiating process, relevant experts from each of the Operators; and
 - (v) procedures for preparing and exchanging position papers;
 - (c) review the information requested and provided to date and identify information yet to be provided by each Operator; and

- (d) identify what technical investigations, if any, need to be made and by whom such investigations should be made.

5.10 Fast Track Application Process

5.10.1 Notwithstanding and as an alternative process to that set out in Subsection 5.1 to Subsection 5.9 above, Fibrecomm shall make available a fast-track application and agreement process for Access Seekers based on the following principles:

- (a) the fast-track process shall be limited to the criteria set out by Fibrecomm in accordance with Subsection 5.10.2 of this RAO;
- (b) the fast-track application form:
 - (i) shall be limited to gathering information from the Access Seeker as set out in Subsection 5.1.1(a) and 5.1.1 (b) of this RAO; and
 - (ii) in respect of any requirement to provide security, shall set out a process for determining the required security sums under Subsection 5.3 of this RAO within **five (5) Business Days** of FCN's receipt of a fast-track application;
- (c) Fibrecomm may only refuse the Access Seeker fast-track application for the reasons set out in Subsection 5.6.1(c), 5.6.1(f) and 5.6.1(g) of this RAO;
- (d) the fast-track agreement between Fibrecomm and the Access Seeker must be on the terms of Fibrecomm's RAO; and
- (e) within **ten (10) Business Days** of Fibrecomm's receipt of a fast-track application, Fibrecomm must :
 - (i) provide the Access Seeker with two (2) copies of the RAO executed by Fibrecomm, or a notice of refusal that sets out the grounds for refusal under Subsection 5.10.1(c) of this RAO including the basis on which those grounds apply).
 - (ii) provide the Commission with a copy of the response at the same time that it provides the response to the Access Seeker under Subsection 5.10.1(e)(i).

5.10.2 Fibrecomm shall set up, and publish on its publicly accessible website, the criteria on which Access Seeker will be eligible for the fast-track application and agreement process according to the following principles:

- (a) the criteria must be determined and applied by Fibrecomm on a non-discriminatory basis;
- (b) the fast-track process may be limited to the supply of Facilities and/or Services to the extent that such supplies do not have a material impact on Fibrecomm's current level of network resources; and

- (c) the Facilities and/or Services which may be the subject of a fast track application may be limited to End-to-End Transmission Services and Co-Location Service.

[END OF CHAPTER 5]

CHAPTER 6 - FORECAST, ORDERING AND PROVISIONING OBLIGATIONS

6.1 Forecast Obligations

6.1.1 General

Subject to Subsections 6.1.3 and 6.1.4 of this RAO, Fibrecomm may require, as a condition of accepting Orders for access to Facilities and/or Services from an Access Seeker (but not as a prerequisite for entering into an Access Agreement), that the Access Seeker shall provide Forecasts in good faith over a certain period of supply of Facilities and/or Services it seeks to access in accordance with Subsection 6.1 of this RAO

6.1.2 Prerequisite information

The Access Seeker may request preliminary information from Fibrecomm about the availability and capacity of its Facilities and/or Services to the extent the Access Seeker requires such information to provide Forecasts.

6.1.3 Confirmation of Forecast

If Fibrecomm, acting reasonably will incur significant costs to ensure that access can be provided in accordance with a Forecast (for example, because it will need to proactively augment its Network to provide access within the requested timeframe), Fibrecomm may request the Access Seeker to confirm the relevant Forecast. Once confirmed, the Forecast is deemed to be an Order for the purposes of this RAO and Subsection 6.2 will apply.

6.1.4 Alternative or No Procedure

Notwithstanding Subsection 6.1.1 above, Fibrecomm and an Access Seeker may agree to alternative Forecasting and Ordering procedure or to dispense with such procedure altogether whereupon Fibrecomm and the Access Seeker will be bound by the terms of that alternative procedure (or mutual dispensation) and not this Subsection 6.1.

6.1.5 Non-binding Forecast Period

Subject to Subsection 6.1.3 of this RAO, Fibrecomm shall not require an Access Seeker to provide Forecasts that are legally binding on the Access Seeker, except to the extent that Fibrecomm is permitted to recover costs and expenses as set out in subsection 6.1.16 of this Standard.

6.1.6 Forecast Request

Fibrecomm may request an Access Seeker to provide, with a sufficient level of detail to enable Fibrecomm to carry out network planning and provisioning, the following information (forecast information):

- (a) the Facilities and/or Services in respect of which Forecast are required;

- (b) The total period of time covered by each Forecast which period:
 - (i) shall be determined having regard to Fibrecomm's own planning and provisioning cycles and the forecasting requirements which apply to the Access Seeker's own business units in using the relevant Facilities and/or Services; and
 - (ii) shall be a period of one (1) year and the period of forecasting which Fibrecomm provides to itself for network planning and provisioning purposes.
- (c) The intervals or units of time to be used in making the Forecast, which shall be the period of one (1) year and the intervals of time in which Fibrecomm provides forecasting to itself;
- (d) The Network area or operational area to which Forecast shall relate which area shall correspond to that which Fibrecomm uses for its own network planning and provisioning;
- (e) the frequency with which a Forecast shall be updated or further Forecast made, which shall be once every six (6) months and the length of the time after which Fibrecomm provides itself with the updated or further Forecasts; and
- (f) Such other information that Fibrecomm reasonably requires in order to provide access to Facilities and/or Services requested by the Access Seeker (which shall not include any information that Fibrecomm does not provide to itself in connection with forecasting for its own facilities and/or services)

6.1.7 Non-permitted information

Fibrecomm must not request an Access Seeker to provide a Forecast that contains:

- (a) Any information that is or would allow Fibrecomm to infer any non-permitted information listed under Subsection 5.4.16 of the MSA Determination; or
- (b) Any information that identifies or would enable the identification of Customers or particular services of the Access Seeker.

6.1.8 Forecast provision

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

6.1.9 Use of Forecast Information

Forecast Information provided by the Access Seeker shall be treated by Fibrecomm

as Confidential Information of the Access Seeker and shall only be used by Fibrecomm whose role is within either:

- (a) Fibrecomm's Sales & Marketing Division; or
- (b) that part of the engineering division of Fibrecomm responsible for interconnection or access;

for the purposes of responding to and planning for the Forecast. Fibrecomm must maintain records that indicate which persons are provided with access to Forecast information.

6.1.10 Distribution of Forecast Information

Fibrecomm may only distribute Forecast Information of an Access Seeker outside the people necessary for the purpose referred to in Subsection 6.1.9 above if:

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

6.1.11 Time for acceptance

Fibrecomm shall notify the Access Seeker within five (5) Business Days of receiving a Forecast whether or not Fibrecomm considers the Forecast to be in compliance with Forecast Request and: -

- (a) if, Fibrecomm considers that the Forecast does not comply with a Forecast Request, to specify in that notice the additional information which the Access Seeker is to provide to comply with the Forecast Request and Fibrecomm will not require such information to be provided sooner than four (4) weeks after such notice; or
- (b) If, Fibrecomm considers that the Forecast does comply with the Forecast Request, to specify in that notice that Forecast is provisionally accepted subject to verification of the details of the Forecast and the matters set out in Subsection 6.1.12 (a) to 6.1.12 (d) below.

6.1.12 Reasons for Rejection

Fibrecomm may only reject a Forecast following provisional acceptance where Fibrecomm reasonably believes that the Forecast is inaccurate or, there is insufficient capacity having regard to:

- (a) total current usage of the Facilities and/or Services by Fibrecomm and all Access Seekers;

- (b) the current rate of growth of the Access Seeker's usage of the Facilities and/or Services;
- (c) the current rate of growth of total usage of the Facilities and/or Services by Fibrecomm and All Access Seekers; and
- (d) subject to Subsection 6.2.30, the amount of capacity in the Facilities and/or Services that Fibrecomm currently has available and can reasonably provision for the Access Seeker over the Forecast period, which shall be at least equivalent to that which Fibrecomm can reasonably provision for itself.

6.1.13 Time for acceptance or rejection

Fibrecomm shall give notice of any rejection ("**Rejection Notice**") of a Forecast to the Access Seeker:

- (a) within fifteen (15) Business Days of receipt of the relevant Forecast; and
- (b) Such Rejection Notice (if any) must specify;
 - (i) the grounds on which Fibrecomm rejects the Forecast in accordance with subsection 6.1.12 of this RAO at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Forecast; and
 - (ii) an offer to meet within five (5) Business Days of the Rejection Notice of the Forecast to discuss the reasons for rejection and alternative methods of compliance. The meeting shall take place between Fibrecomm and Access Seeker if the offer is accepted by the Access Seeker.

6.1.14 Reconsideration by Access Seeker

Fibrecomm shall allow an Access Seeker to reconsider its Forecasts following a Rejection Notice and allow the Access Seeker within twenty-one (21) Business Days of receipt of a Rejection Notice, either:

- (a) to confirm its rejected Forecast and explain why the Access Seeker considers that Fibrecomm is obliged to accept the Forecast under this RAO; or
- (b) to submit a new Forecast which the Access Seeker regards as meeting the Fibrecomm concerns.

6.1.15 Reconsideration by Fibrecomm

Fibrecomm shall reconsider any re-submitted or amended Forecast provided pursuant to Subsection 6.1.14 and Subsection 6.1.8 to 6.1.10 shall re-apply.

6.1.16 Recovery for over-forecasting

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

- (a) the relevant portion of the Forecast that was not met by the Access Seeker does not relate to a Non-Binding Forecast Period;
- (b) such costs and expenses were reasonably and necessarily incurred by Fibrecomm;
- (c) the Access Provider reasonably seeks to mitigate its loss (including through its own usage) provided Fibrecomm shall not be required to do so for any greater period than the relevant Forecast period; and
- (d) Fibrecomm only recovers from the Access Seeker, seventy-five percent (75%) of such costs and expenses which could not be mitigated under Subsection 6.1.16(c) above.

6.1.17 Meeting Forecast

Subject to Subsection 6.1.11 to 6.1.13 above, Fibrecomm shall carry out network planning in order to enable Forecast to be met. If an Access Seeker has confirmed a Forecast under Subsection 6.1.3 above, it will be binding on the Access Seeker.

6.2 Ordering and Provisioning Obligations

6.2.1 Contact Point or Mechanism

Fibrecomm shall designate and notify an Access Seeker of one or more of the following:

- (a) a person to whom Orders for access to Facilities and/or Services are to be delivered;
- (b) a contact point to which Order for access to Facilities and/or Services are to be delivered (such as an email address); and
- (c) a mechanism where Orders for access to Facilities and/or Services can be made (such as a web portal or B2B gateway, provided that if such a mechanism is the only method which Fibrecomm provides for the receipt of Orders for that Facility and/or Service, Fibrecomm cannot require the Access Seeker to unreasonably invest in specialized technology or systems (such as an automated interface between the Operational Support Systems of the Operators).

6.2.2 Order Content

Prior to access being provided, Fibrecomm may require an Access Seeker to

provide it with an Order which outlines the Access Seeker's access requirements. Fibrecomm may request an Access Seeker to fill up a Service Order Form and Service Alteration Form (Annexure I). The following information shall be provided at a level of detail (sufficient for planning provisioning) for access to Facilities and Services:

- (a) the Facilities and/or Services to which access is requested;
- (b) a requested date and time for delivery;
- (c) the location of the points of delivery;
- (d) Equipment of the Access Seeker to be used in connection with the Order, to the extent it may adversely affect Fibrecomm's Network; and
- (e) Such other information that Fibrecomm reasonably requires in order for it to provision of access to the Facilities and/or Services as requested by the Access Seeker, provided that such information shall not include any information which:
 - (i) Fibrecomm does not require from itself for similar provisioning;
 - (ii) identifies or which enables the identification of, a Customer or services of the Access Seeker; or
 - (iii) is non-permitted information under Subsection 5.4.16 of the MSA Determination.

6.2.3 Use of Ordering Information

Ordering Information provided by the Access Seeker shall be treated by Fibrecomm as the Confidential Information of the Access Seeker and shall only be used by those persons within Fibrecomm whose role is within:

- (a) Sales and Marketing Division;
- (b) Engineering Division;
- (c) Finance Division; and
- (d) Corporate Services Division

for the purpose of responding to and provisioning for the Order.

6.2.4 Treatment of Order and Service Qualifications

Fibrecomm shall:

- (a) establish a single queue for all Orders and Service Qualifications for a given type of Facility and/or Service, whether those Orders and Service

Qualifications are required for itself or any Access Seekers;

- (b) give the equivalent priority to the handling of all Orders and Service Qualifications in each queue; and
- (c) Otherwise treat all Orders and Qualifications in each queue in compliance with its queuing policy established under Subsection 6.2.28 of this RAO.

6.2.5 Acknowledgement of Receipt

Fibrecomm shall acknowledge receipt of the Order for Facilities and/or Services, in writing (or any other material or electronic form agreed by the parties) within five (5) Business Days.

6.2.6 Notice of Receipt

Fibrecomm shall include in its Notice of Receipt the following information:

- (a) the time and date of receipt of the Order;
- (b) a list of any additional information reasonably required by Fibrecomm from the Access Seeker to provision the Order;
- (c) whether Fibrecomm needs to perform post-Order Service Qualification because information is not readily available to Fibrecomm, for example in its Operational Support Systems, together with the reasons for needing to undertake the Service Qualification; and
- (d) the position of the Order in Fibrecomm's queue.

6.2.7 Further Information

Fibrecomm shall allow the Access Seeker a period of up to ten (10) Business Days after a request for additional information under Subsection 6.2.6 (b) above to provide Fibrecomm with such information.

6.2.8 Service Qualifications

Fibrecomm shall make Service Qualifications available to the Access Seekers prior to placing Order if such pre-Order Service Qualifications are undertaken for a given Facility and/or Service by Fibrecomm for itself. Fibrecomm shall only require post-Order Service Qualifications to be requested if:

- (a) no pre-Order Services Qualification has been completed in accordance with the process to be developed under Subsection 5.4.5 of the MSA Determination;
- (b) Fibrecomm reasonably requires information from post-Order Service Qualifications which are not readily available;

- (c) Fibrecomm notifies the Access Seeker that the post-Order Service Qualifications are necessary (together with the reasons for needing to take such Service Qualifications) at the time of providing (and as specified in) Fibrecomm's Notice of Receipt under Subsection 6.2.6 of this RAO, or, if further information has been requested under Subsection 6.2.7 of this RAO within two (2) Business Days upon the expiry of the period specified in Subsection 6.2.7 of this RAO.

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

6.2.9 Commencement and Completion of Service Qualification

- (a) Fibrecomm shall commence a Service Qualification on the date issuing a Notice of Receipt and complete and notify the Access Seeker of the result of any Service Qualification within the shorter of:
 - (i) fifteen (15) Business Days after the date of the Notice of Receipt; and
 - (ii) the time within which Fibrecomm performs and notifies the result of an equivalent Service Qualification undertaken for itself.
- (b) Where there is a delay in the commencement and/or completion of the Service Qualification, and the delay is caused by either the Access Seeker or by a third party that is not acting under Fibrecomm's direction or control:
 - (i) Fibrecomm shall notify the Access Seeker of the delay to the delivery date as soon as practicable after Fibrecomm becomes aware of it;
 - (ii) Fibrecomm and Access Seeker must work together to minimize the delay; and
 - (iii) the delivery date shall be extended for a further period as reasonably necessary, and Fibrecomm shall promptly notify the Access Seeker of the revised completion date.
- (c) If the relevant Facilities and/or Services available to Fibrecomm are below the capacity required to provide the relevant Facilities and/or Services to the Access Seeker, Fibrecomm shall notify the Access Seeker, at the same time as providing notice under Subsection 6.2.9 (a) above, of the available capacity and timeframe for the fulfilment of the Order at the available capacity and (if relevant) with such augmentation as may be required to fulfil the Order as submitted.

6.2.10 Withdrawal of Order following Service Qualifications

Fibrecomm shall permit an Access Seeker to withdraw its Order without penalty,

except that it may recover from the Access Seeker reasonable costs incurred by Fibrecomm for any Service Qualification undertaken in respect of the withdrawn Order (irrespective of whether Fibrecomm has accepted the Order or not) before the earlier of:

- (a) ten (10) Business Days after the Access Seeker receives the result of a Service Qualification under Subsection 6.2.9 above.
- (b) one (1) Business Day before Fibrecomm commences civil works to provision the Order (where the civil works are required to provision the Facility and/or Service within the delivery timeframe specified in the Notice of Acceptance), and any civil works to be conducted must be subject to the issuance of a notice in writing by Fibrecomm, which may be in the form of a Notice of Acceptance if civil works is to occur after Fibrecomm has accepted the Order.

6.2.11 Acceptance Obligation

Fibrecomm shall use its reasonable efforts to accept and fulfill Orders from the Access Seeker for Facilities and/or Services which comply with a Forecast accepted by Fibrecomm pursuant to Subsection 6.1 of this RAO).

6.2.12 Time for Acceptance/Rejection

- (a) Fibrecomm must notify the Access Seeker that an Order for the Facility and/or Service is accepted or rejected within ten (10) Business Days.
- (b) If Fibrecomm notifies the Access Seeker that an Order is rejected, Fibrecomm must advise the Access Seeker of the grounds of rejection and whether Fibrecomm would be able to accept the Order in a modified form.

6.2.13 Notice of Acceptance

- (a) Fibrecomm notice of acceptance to the Access Seeker must contain the following information:
 - (i) The delivery date or activation date (as applicable), which must be the date that is requested by the Access Seeker or if the date cannot be met by Fibrecomm then no later than:
 - (aa) the indicative delivery timeframe or activation timeframe specified in Subsections 6.2.13 (b) and 6.2.13 (c) hereinbelow for the purpose of this Subsection 6.2.13; or
 - (bb) the period of time taken by Fibrecomm to deliver or activate, such Facilities and/or Services for itself,whichever is shorter
 - (ii) the date when civil works (if any) are intended to commence;

- (iii) the charges applicable to fulfillment of the Order, including without limitation additional works such as internal wiring, right of way, land rental, local authority permits and third-party deposits;
 - (iv) such information as is reasonably necessary for the Access Seeker to benefit from access to the Facilities and/or Services; and
 - (v) a validity period which shall be a period that is not shorter than three (3) months commencing from the date of the Notice of Acceptance (“**Validity Period**”).
- (b) For the purposes of Subsection 6.2.13 (a)(i)(aa) of this RAO, the indicative delivery timeframe for Transmission Services is:
- (i) If no network facilities are required to supply the Transmission Services, twenty (20) Business Days; or
 - (ii) If new network facilities are required to supply the Transmission Services, the period shall be mutually agreed between Fibrecomm and the Access Seeker.

For clarification, the indicative delivery timeframe in this subsection commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with Subsection 6.2.15 of this RAO.

- (c) For the purposes of Subsection 6.2.13 (a)(i)(aa) above, the indicative delivery timeframe for Network Co-Location is twenty (20) Business days.

For clarification, the indicative delivery timeframe in this subsection commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with Subsection 6.2.15 of this RAO.

6.2.14 Commencement of Delivery Times

The applicable delivery timeframe for an Order as determined under Subsection 6.2.13 (a) of this RAO shall commence from:

- (a) where the Access Seeker’s confirmation of an Order is required under Subsection 6.2.15 of this RAO, the date the Access Seeker confirms the Order in accordance with that subsection; and
- (b) in any other case, from the start of the Validity Period.

6.2.15 Access Seeker Confirmation

- (a) The Access Seeker’s confirmation of an Order is not required if Fibrecomm accepts the Order without change. A change may include circumstances where delivery dates are delayed, estimated charges are exceeded, a post-Order Service Qualification is required or any other matter that requires

further confirmation from Access Seeker before Fibrecomm can proceed with the Order.

- (b) Where the Access Seeker's confirmation is required for Fibrecomm to proceed with fulfilling an Order as provided for paragraph 6.2.15 (a) above, Fibrecomm shall permit the Access seekers to provide its confirmation within the Validity Period and shall not provision the Order until the confirmation is received. Upon receipt of such confirmation, Fibrecomm shall fulfill the Order in accordance with the Notice of Acceptance.

6.2.16 Estimated Charges

If the Notice of Acceptance provided by Fibrecomm contains estimates of charges (e.g. based on time and materials):

- (a) Fibrecomm shall not exceed the estimate without providing the Access Seeker with written notice prior to exceeding the estimate that:
 - (i) the estimate will likely be exceeded;
 - (ii) an explanation of the reasons for exceeding the estimate; and
 - (iii) a further estimate of the charges for the work necessary to fulfill the Order.
- (b) Fibrecomm shall permit the Access Seeker to withdraw the Order without penalty if the revised estimate in that notice exceeds the original estimate by more than 10% of the original estimate within ten (10) Business Days of the notice given by Fibrecomm under subsection 6.2.16(a) above.
- (c) Where the actual cost incurred by Fibrecomm exceeds an estimate or revised estimate for the specific scope of work provided by Fibrecomm due to:
 - (i) information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker; and
 - (ii) a change in the scope of work by the Access seekerthe Access Seeker shall be obliged to pay Fibrecomm for the actual cost incurred (but in no other circumstances); and
- (d) Fibrecomm shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate, whereby such confirmation is to be provided by the Access Seeker the timeframe set out in paragraph 6.2.13 (e) or 6.2.16 (b).

6.2.17 Reasons for Rejection

Fibrecomm may only reject an Order from an Access Seeker where:

- (a) subject to Subsection 5.4.17 of MSA Determination (as if references to 'Access Request' in that subsection were references to 'Order'), it is not technically feasible to provide access to the Facilities and/or Services requested by the Access Seeker;
- (b) subject to compliance with Subsections 6.2.31 and 6.2.32 of this RAO, Fibrecomm has insufficient capacity to provide the requested Facilities and/or Services;
- (c) subject to Subsection 6.2.19 of this RAO, the Order is in excess of agreed Forecast levels;
- (d) the Order or variation request duplicates an Order awaiting fulfillment;
- (e) [intentionally left blank];
- (f) There are reasonable grounds to believe that the Access seeker would fail, to a material extent, to comply with the terms and conditions of the Access Agreement and such concern cannot be addressed to Fibrecomm's satisfaction, acting reasonably (e.g. through the application of a security requirement); or
- (g) There are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Facilities and/or Services to protect the integrity of a Network, or the safety of individuals working on, or using services supplied by means of a Network or Equipment and such concern cannot be addressed to Fibrecomm's satisfaction, acting reasonably (e.g. through the application of reasonable security or escorted access requirements).

6.2.18 Notice of Rejection

Fibrecomm notice of rejection of an Order to the Access Seeker must:

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

6.2.19 Order in Excess of Forecast

- (a) Notwithstanding Subsection 6.2.17(b), Fibrecomm must use its reasonable efforts to provide sufficient capacity to enable Fibrecomm to accept and

fulfill Orders from an Access Seeker for Facilities and/or Services which are in excess of the relevant Forecast.

- (b) Fibrecomm is only required to do so if, after meeting the Forecast requirements of other Access Seeker and itself, there is available capacity or Fibrecomm could readily upgrade existing capacity. Fibrecomm shall allocate the available capacity on a non-discriminatory basis to meet the over Forecast requirement of all Access Seeker and itself.
- (c) Fibrecomm is not required to supply Facilities and/or Services in excess of Forecast if, despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of Facilities and/or Services provided to all Access Seekers and/or itself.

6.2.20 Other Uses

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

6.2.21 Delivery Dates

Fibrecomm shall deliver the Order for the Facilities and/or Services by the delivery date or activation date (as applicable) as specified in the Notice of Acceptance or the extended delivery date (if any) as determined in accordance with Subsection 6.2.23 below.

6.2.22 Early Delivery Dates

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

6.2.23 Delayed Delivery Dates

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

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

reasonably necessary and Fibrecomm shall promptly notify the Access Seeker of the revised delivery date.

- (b) Where the delay is caused by the Access Seeker:
 - (i) Fibrecomm shall notify the Access Seeker of the delay to the delivery date as soon as practicable after Fibrecomm becomes aware of it;
 - (ii) Fibrecomm and Access Seeker must work together to minimize the delay; and
 - (iii) The delivery date shall be extended for a further period as reasonably necessary and Fibrecomm shall promptly notify the Access Seeker of the revised delivery date.

6.2.24 Cancellation and Variation of Orders

Fibrecomm shall allow an Access Seeker to cancel or vary an Order at any time subject to Subsection 6.2.25.

6.2.25 Cancellation or Variation Penalty

Except where this RAO provides that cancellation of an Order is to be at no penalty:

- (a) Fibrecomm may impose a charge for the cancellation or variation of the Order; and
- (b) the charge which Access Seeker is required to pay shall not exceed the lesser of the following amounts:
 - (i) the sum of costs necessarily incurred by Fibrecomm which is directly attributable to the cancellation or variation; or
 - (ii) an amount equal to the sum of changes that would have been payable by the Access Seeker in six (6) months immediately following the cancellation or variation had the Order not been cancelled or varied,

and reduced to the extent that those costs have been mitigated, or would have been mitigated had Fibrecomm used its best endeavours to do so.

6.2.26 Testing and Provisioning

Fibrecomm shall:

- (a) co-operate with the Access Seeker in relation to the testing and provisioning of ordered Facilities and/or Services, including but not limited to by implementing a proof of concept if requested by the Access Seeker; and

- (b) treat an Access Seeker's testing and provisioning on an equivalent basis to that which Fibrecomm treats testing and provisioning for itself; and
- (c) may require reasonable co-operation by the Access Seeker in respect of such activities

6.2.27 Resource Charge

Fibrecomm may:

- (a) charge the Access Seeker a one-off fee, to be determined by reference to the costs incurred by Fibrecomm for allocation of manpower and other resources to enable Fibrecomm to test and fulfill an Order for new Facilities and/or Services, provided that such one-off fee is justified by Fibrecomm to the Access Seeker as necessary for Fibrecomm to provide the requested Facilities and/or Services;
- (b) Must specify the methodology and units costs for calculating any fees under Subsection 6.2.28 (a) above and in its RAO. Fibrecomm may reasonably require that information under this Subsection 6.2.27(b) be subject to a Confidentiality Agreement in accordance with subsection 5.3.8 of the MSA Determination; and
- (c) Must specify the methodology and unit rates (including any potential or contingent unit rates) for calculating any fees under Subsection 6.2.27(a) above that have not been included in its RAO. Fibrecomm may reasonably require that information under this paragraph 6.2.27(c) be subject to a Confidentiality Agreement in accordance with Subsection 5.3.8 of the MSA Determination.

6.2.28 Queuing Policy

Fibrecomm shall establish and maintain a queuing policy for each Facility and/or Service, which:

- (a) shall be non-discriminatory
- (b) shall be applied to Orders and service Qualifications of all Access Seekers and Orders and Service Qualifications for itself for the same or similar Facilities and/or Services, and shall treat the Order and Service Qualifications of Access Seeker on an equivalent basis to that which Fibrecomm treats Orders and Service qualifications for itself for the same or similar Facilities and/or Services; and
- (c) shall seek to maximize the efficiency of its Ordering and provisioning process.

6.2.29 Acceptance on Queue

Fibrecomm shall promptly notify an Access Seeker at the time of providing an

acknowledgement of receipt of the Order under Subsection 6.2.5 of this RAO (and as specified in the Notice of Receipt under Subsection 6.2.6 of this RAO) of their acceptance of, and position in, Fibrecomm's queue.

6.2.30 Constrained Capacity

If Fibrecomm reasonably believes that the capacity in any Facilities and/or Services required by:

- (a) the Access Seeker pursuant to the relevant Forecast and/or Order;
- (b) other Access Seeker, pursuant to their relevant Forecasts and/or Orders; and
- (c) Fibrecomm for the purposes of its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest, would in aggregate, exceed the capacity which Fibrecomm will be in a position to be able to provide, Fibrecomm must:
 - (d) notify all Access Seekers to whom relevant capacity is supplied; and
 - (e) allocate the available capacity between itself, the Access Seeker and other Access Seekers in accordance with Fibrecomm's Capacity Allocation Policy.

6.2.31 Late Delivery

If Fibrecomm fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with Subsection 6.2.23 (a)(iii) of this RAO except where such failure has been caused solely by the Access Seeker's delay or a delay by a third party that is not acting under the Access Provider's direction or control (for example, where a local authority or landowner delays providing necessary approvals for works to commence), Fibrecomm shall without limitation to any other rights the Access Seeker may have under Subsection 6.2 of this RAO or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring charges payable for access to the Facilities and/or Services prorated daily for the number of days delay subject to a maximum sum of one (1) month's rental. If Fibrecomm alleges that a failure has been caused solely by the Access Seeker delay or a delay by a third party not acting under the Fibrecomm's direction or control, Fibrecomm shall have the burden of demonstrating:

- (a) that allegation; and
- (b) that Fibrecomm has done all things reasonably practicable to minimize or avoid such failure.

6.2.32 Contractors under direction or control

For clarity, any employees and contractors of Fibrecomm shall be deemed to be acting under the direction or control of the Fibrecomm for the purposes of Section

6.2 of this RAO.

[END OF CHAPTER 6]

CHAPTER 7 - BILLING AND SETTLEMENT OBLIGATIONS

7.1 Billing

7.1.1 General Principle

- (a) Fibrecomm shall use its best endeavours to issue to the Access Seeker an Invoice in writing or in electronic form within one (1) month of the end of each Billing Cycle for amounts due in respect of the supply of Facilities and/or Services during the relevant Billing Period.
- (b) An Access Provider shall issue Invoices in accordance with the Billing Cycles as agreed between the Parties.

7.1.2 Billing Information

Each Invoice will state the Charges for the Billing Period (as per Service Order Form and Service Alteration Form) and will be accompanied by information as may be reasonably necessary for the Access Seeker to verify rates and Charges contained in the bill.

7.1.3 Billing Error

If an Operator discovers an error in an invoice, it must promptly notify the other Operator. The Operator which made the error must make necessary adjustment to correct that error within one (1) month of notification.

7.1.4 Currency

Unless otherwise agreed by Fibrecomm and Access Seeker in the Access Agreement, all Charges shall be in Ringgit Malaysia and the Access Seeker shall make payment in Ringgit Malaysia.

7.1.5 Summarized Invoice and Billing Information

Fibrecomm shall provide the Access Seeker on written request with an aggregated summary of billings for access to the Facilities and/or Services provided to the Access Seeker, in monthly tranches.

7.2 Settlement

7.2.1 Payment Period

- (a) 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 unless otherwise agreed in writing by both Operators.

In the event that the Charges remain unpaid after becoming due, Fibrecomm shall be entitled for late penalty charges on the overdue payment at a rate specified in the Access Seeker's invoice.

- (b) The interest that may be charged by the Access Provider shall be at the rate of two percent (2%) per annum above Malayan Banking Berhad's base rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than two (2) month will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad's base rate calculated from the due date until the date of receipt by Fibrecomm of full payment.

7.2.2 Method of Payment

The Access Seeker must pay an Invoice by electronic funds transfer or cheque to the nominated accounts of Fibrecomm.

7.2.3 No set-off

Unless otherwise agreed by Fibrecomm and Access Seeker in an Access Agreement, Fibrecomm may not set-off Invoices except where the Access Seeker is in liquidation or at least three (3) Invoices have been issued and such Invoices have not been paid (excluding disputed amounts).

7.2.4 Billing Disputes

In the event the Access Seeker wishes to dispute an Invoice, the Access Seeker shall notify Fibrecomm in writing within thirty (30) Business Days after the date of receipt of such Invoice, failing which the Access Seeker shall be deemed to have accepted the Invoice and the Charges thereunder shall be payable in accordance with Subsection 7.2.1 above.

The dispute notification shall provide the following information: -

- (a) the reasons for which the Access Seeker disputes the Invoice;
- (b) the amount in dispute;
- (c) details required to identify the relevant invoice and Charges in dispute including the account number, the invoice reference number, the invoice date, the invoice amount and the billing verification information; and
- (d) evidence in the form of the invoiced Party's outgoing report, indicating the relevant traffic data which is in dispute.

7.2.5 Withholding of Disputed Amounts

For the avoidance of doubt, the Access Seeker shall not use the dispute resolution procedure to avoid or delay payment due to Fibrecomm where there is no genuine dispute.

Fibrecomm shall allow an Access Seeker to withhold payment of any amount disputed in good faith by Access Seeker if;

- (a) the Access Seeker notifies Fibrecomm within fifteen (15) Business Days from the date of receipt of the Invoice of such dispute (unless otherwise agreed by Fibrecomm and Access Seeker in an Access Agreement); and
- (b) the Access Seeker's notification specifies the information referred to in Subsection 7.2.4 above.

7.2.6 Billing Dispute Resolution

Fibrecomm and Access Seeker must use their reasonable endeavors to promptly resolve any dispute notified under Subsection 7.2.4 hereinabove and where relevant the parties must comply with the Dispute Resolution Procedures in Annexure A of the MSA Determination which are applicable to the billing disputes.

7.2.7 Late Payment Charges

- (a) Upon resolution of the dispute, if the Access Seeker is found to be liable for the payment disputed, the Access Seeker shall pay the amount due together with the late payment charges calculated from the expiry date of thirty (30) days of the invoice receipt, in accordance to Subsection 7.2.1 above.
- (b) If Fibrecomm is found to be liable for the payment disputed, Fibrecomm shall refund the amount that had been paid by the Access Seeker together with the late payment charges at the rate specified in Subsection 7.2.1 (b) calculated from the date an Access Seeker paid the disputed amount to the date of the refund by Fibrecomm.

7.3 Security Sum

7.3.1 The Access Seeker is required to deposit or procure the deposit of the Security Sum for the performance of all the Access Seeker's obligations under the Access Agreement if Fibrecomm determines that the Access Seeker presents a credit risk.

7.3.2 Fibrecomm shall be entitled to revise the Security Sum as follows:

- (a) a maximum of once in any twelve (12) month period;
- (b) if there is a material increase in the credit risk to Fibrecomm pursuant to Subsection 5.3.3 (a) of this RAO; and
- (c) if Fibrecomm determines that the variation will materially reduce or remove the increased credit risk.

7.3.3 The Security Sum deposited by the Access Seeker with Fibrecomm, shall only be used for the purposes set out in Subsection 7.3.1 above. Fibrecomm may at its discretion call upon or deduct the Security Sum at any time after the due date for any Charges or upon breach of any of the Access Seeker's obligation. Such utilization or deduction of the Security Sum shall not be construed as a set-off or counterclaim.

7.3.4 Without prejudice to Fibrecomm's rights under the Access Agreement and/or under law, upon termination of the Access Agreement:

- (a) the Security Sum deposited with Fibrecomm or parts thereof (if any) shall be immediately returned to the Access Seeker provided that all other amounts payable by the Access Seeker to Fibrecomm have been paid; and
- (b) Fibrecomm shall immediately in writing unconditionally waive its rights under any guarantee provided as Security Sum in respect of future performance of the Access Agreement by the Access Seeker if any, since the Access Agreement has been terminated save and except that the Bank Guarantee remains in full force in respect of any antecedent breaches under the Access Agreement and in respect of any amounts payable by the Access Seeker to Fibrecomm as at the date of termination, without prejudice to the rights and remedies of Fibrecomm under the Access Agreement (including but without limited to the right to claim for any or all amounts due and payable under the Access Agreement and/or to call upon the Security Sum) and/or under law.

7.4 Backbilling

Unless otherwise agreed by Fibrecomm and Access Seeker in an Access Agreement, Fibrecomm may include omitted or miscalculated charges from an earlier Invoice in a later Invoice, or issue an Invoice for charges which have previously not been invoiced provided that Fibrecomm is able to substantiate the charges to the Access Seeker and such inclusion, amendment or issuance is made within three (3) months from the end of the Billing Cycle in which the calls were made or in which other Facilities and/or Services were provided.

[END OF CHAPTER 7]

CHAPTER 8 - TECHNICAL AND NETWORK OPERATIONAL OBLIGATIONS

8.1 Network Conditioning Obligations

8.1.1 Non-discrimination

Fibrecomm shall perform Network Conditioning on an equivalent basis to that which Fibrecomm performs for itself for the same or similar Services.

8.1.2 Commencement

Fibrecomm will commence Network Conditioning immediately following:

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

8.2 Point of Interface Procedures

8.2.1 Interconnection

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

8.2.2 Point of Interface Locations

- (a) Subject to Subsection 8.2.3 of this RAO, Fibrecomm shall publish on its publicly accessible website and keep updated a list of the general locations and technical feasible points at which physical co-location is available;
- (b) The Access Provider shall ensure that network co-location at each POI is offered to the Access Seeker in accordance with Subsection 3.4 of this RAO.

8.2.3 In-Span Interconnection

Each Operator shall offer I co location or in span interconnection at all technically feasible points.

8.2.4 Lack of Space

If there are space constraints at a particular location, Fibrecomm shall take reasonable steps to optimise its usage of the space, including through the upgrading of Facilities and transferring Equipment to an alternative location. If the Fibrecomm has used its best efforts to accommodate all Access Seekers and it is not physically possible for any further Access Seekers to be accommodated, Fibrecomm shall:

- (a) Notify the Commission of the lack of space at the location;
- (b) Provide any supplementary information which may be requested by the Commission (which may include physical inspections by the Commission); and
- (c) Be excused from providing physical co-location at that location unless and until the Commission notifies Fibrecomm that the Commission considers that physical co-location can and must be provided, in which case Fibrecomm shall provide physical co-location as directed by the Commission.

8.2.5 Access Seeker requested Point of Interface

Fibrecomm shall reasonably consider a request by an Access Seeker to interconnect at a point other than that specified under Section 8.2.2 of this RAO. Fibrecomm shall promptly notify the Access Seeker whether it accepts or refuses a request by an Access Seeker under this Section, and provide the Access Seeker with reasons if it refuses the Access Seeker's request.

8.2.6 Network Responsibility

Each Operator is responsible for the provisioning and maintenance of Facilities (including those Facilities which form part of the Interconnect Links and the transmission equipment) on its side of the Point of Interface.

8.2.7 Third Party Point of Interface

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

8.2.8 Point of Interface Factors

When determining which locations are to be listed under Subsection 8.2.2, or when determining a request under Subsection 8.2.5, each Access Provider shall have regard to the following:

- (a) Fibrecomm shall offer (but shall not require) interconnection and co-location at each other technically feasible point;

- (b) any possible re-arrangement of its Equipment configuration to eliminate space inefficiencies;
- (c) Fibrecomm shall not reserve space other than current needs for itself, future needs for itself calculated by use of a reasonably projected rate of growth over two (2) years and the needs of other Access Seekers who are currently occupying or have ordered additional space from that Fibrecomm; and
- (d) any possible re-arrangement of the configuration of its Equipment to eliminate space inefficiencies.

8.3 Decommissioning Obligations

8.3.1 Decommissioning notice

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

- (a) one (1) year notice in writing to all relevant Access Seekers prior to the decommissioning of a Point of Interface; or
- (b) six (6) months' notice in writing to all relevant Access Seekers prior to the decommissioning of any other Facilities and/or Services which rely on Fibrecomm's use of that site.

Where Fibrecomm is required to vacate the site as result of a third-party landlord's notice (under an arm's length tenancy agreement) or local authority's notice, Fibrecomm shall provide all relevant Access Seeker with as much notice as possible in relation to the matters in Subsections 8.3.1(a) and 8.3.1(b) above.

8.3.2 Co-Operation

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

8.3.3 Alternative arrangements

Fibrecomm shall notify an Access Seeker of its intention:

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

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

8.3.4 Decommissioned Point of Interface compensation

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

- (a) decommissioning any links to the Point of Interface that is proposed to be decommissioned, that are, or will be, rendered redundant by the proposed decommissioning;
- (b) installing or otherwise procuring links between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to subsection 8.3.3 (a) of this RAO; and
- (c) the carriage of traffic between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to Subsection 8.3.3 (a) of this Standard for a period that is not less than three (3) years from the date of decommissioning.

8.3.5 Decommissioned Facilities/Service Compensation

Except where decommissioning is caused by Force Majeure, Access Seeker shall bear the associated cost incurred in:

- (a) moving the Access Seeker's Equipment from the decommissioned Facilities to alternative Facilities offered in accordance with Subsection 8.3.3 (b) of this RAO; or
- (b) re-arranging Equipment to connect to the alternative Services offered in accordance with Subsection 8.3.3(b) of this RAO.

8.4 Network Change Obligations

8.4.1 Scope

This Section 8.4 applies where an Operator proposes to implement a Network Change of a type referred to in Subsection 8.4.2 of this RAO which necessitates a change in the hardware or software (including interface software) of the other Operator/ Party's Network in Order to ensure the continued proper operation and compatibility of the Operator's respective Networks, services and procedures.

8.4.2 Types of changes

The following kinds of proposed Network Changes may be within the scope of Subsection 8.4.1 of this RAO:

- (a) any change by the Operator proposing to make the change ("**Notifying Operator**") to any technical specification of the interconnection interface between their respective Networks ("**Interface Change**");
- (b) any change by the Notifying Operator to any technical specification or characteristic of the Facilities and/or Services to which the other Operator ("**Recipient Operator**") has access to, which will or might affect:
 - (i) the Recipient Operator's Network; or
 - (ii) the Recipient Operator's use of the Facilities and/or Services provided by the Notifying Operator("Facility and/or Service Change");
- (c) any change by the Notifying Operator to any technical specification or characteristic of that Notifying Operator's Network which will or might affect the Recipient Operator's Network ("**Other Network Change**");
- (d) any change by the Notifying Operator to any of the Operational Support Systems used in inter-carrier processes, including without limitation:
 - (i) the billing system;
 - (ii) the ordering and provisioning systems; or
 - (iii) the Customer Churn process,("OSS Change"); and
- (e) any enhancement by the Notifying Operator of the features, functions or capabilities of the Facilities and/or Services to which the Recipient Operator has access, which enhancement the Notifying Operator proposes to make available either:
 - (i) to itself; or
 - (ii) to any other Operator("Functionality Change"),
(collectively "**Relevant Changes**").

8.4.3 Notification of Change

If a Notifying Operator proposes to make a Relevant Change to its Network, services or procedures, the Notifying Operator shall provide the Recipient Operator with notice in writing (“**Change Notice**”) of:

- (a) the nature, effect, technical details and potential impact on the Recipient Operator’s Network and the expected completion date of the proposed Relevant Change, described at a sufficient level of detail to enable the Recipient Operator to identify and begin planning such changes as may be necessary or desirable for the Recipient Operator 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 Change notice, on which representatives of the Notifying Operator will be available to discuss with representatives of the Recipient Operator the proposed Relevant Change and the changes that may be necessary or desirable for the Recipient Order 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 in the table below or such other notice period as agreed between the Notifying Operator and Recipient Operator in an Access Agreement:

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

8.4.4 Post-Notification Procedures

The Notifying Operator shall:

- (a) meet with representatives of the Recipient Operator on the date set out in the Change Notice or as soon as practicable thereafter (but no later than the notice period set out in the table in Subsection 8.4.3 above), for the purpose of discussing the Relevant Change and any changes that may be necessary or desirable for the Recipient Operator to make to its Network, services or procedures in consequence of the Relevant Changes;
- (b) provide any additional information reasonably requested by the Recipient Operator no later than ten (10) Business Days after the Recipient Operator’s request for such additional information; and

- (c) take reasonable account of concerns raised and proposals made by the Recipient Operator to minimize any adverse impact of the Relevant Changes on the Recipient Operator and revise the Change Notice accordingly.

8.4.5 Testing

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

- (a) co-operate with a Recipient Operator in relation to the development of procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Operator's respective Networks including where required by implementing a proof of concept;
- (b) jointly carry out testing with the Recipient Operator in a timely manner, using its best endeavors to accommodate any timing requested by the Recipient Operator and, in any case, no less than 20 Business Days before the Notifying Operator proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under Section 8.4.5(a) above.

8.4.6 Testing Failure

Subject to the Recipient Operator having co-operated with the Notifying Operator in relation to the conduct of tests under Subsection 8.4.5 above, if such tests:

- (a) are not accepted by ten (10) Business Days prior to the date when the Notifying Operator proposes to effect the Relevant Changes; or
- (b) do not provide reasonable assurance of the continued proper operation and compatibility of the Operators respective Networks, services and procedures the Notifying Operator shall postpone implementation of the Relevant Changes. The period of postponement will be the period necessary to allow the Operator to repeat the steps in Subsections 8.4.3 to 8.4.5 above.

8.5 Operations and Maintenance Obligations

8.5.1 Operations & Maintenance Responsibility

Each Operator shall be responsible for the operations and maintenance of its own facilities and services.

8.5.2 Fault Reporting Systems

Each Operator shall establish and maintain a fault reporting service that allows Customers who are directly connected to the Network of that Operator and to whom that Operator supplies Facilities and/or Services (inter alia), to report faults relating to any Network, Facility and/or Service.

8.5.3 Customer notification

Each Operator will advise all of its directly connected Customers to report all faults to the fault reporting service described in Section 8.6.2 of this RAO.

8.5.4 Non-discriminatory fault reporting and identification

An Operator shall:

- (a) perform fault reporting and identification on a non-discriminatory basis; and
- (b) treat the faults reported by another Operator on an equivalent basis as it treats the faults reported by itself.

8.5.5 Cross-Referrals

If a Customer reports a fault to an Operator:

- (a) when the Customer is directly connected to another Operator; or
- (b) which clearly relates to a Network, Facility and/or Service of another Operator,

the Operator which receives the report shall promptly inform the other Operator of the reported fault, or refer that Customer to the other Operator's fault reporting service.

8.5.6 Network Fault Responsibility

The Operator in whose Network the fault occurs is responsible for rectifying it and restoring services including for the purpose of restoring the supply of Facilities and/or Services which are used in another Operator's Network.

8.5.7 Transmission Service Faults

The Operator that supplies transmission services is responsible for maintaining and repairing that transmission service.

8.5.8 Major Inter-Working Faults

If a major fault occurs which affects a communication that crosses or would cross both Operators' Networks, initial responsibility for identifying the fault rests with the Operator who first becomes aware of the fault.

8.5.9 Faults Affecting Other Networks or Equipment

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

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

8.5.10 Bear Own Costs

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

8.5.11 Fault Priority

Each Operator shall give priority to faults in the following order:

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

8.5.12 Fault Rectification

Each Operator shall rectify faults on a non-discriminatory basis.

8.5.13 Target Times

Each Operator shall respond to and rectify faults within the lesser of:

- (a) the response timeframes, progress update frequencies and rectification timeframes set out in the table below;
- (b) timeframes which will result in compliance by all affected Operators with any applicable mandatory standards that apply to service availability and restoration; and
- (c) timeframes equivalent to that which the Access Provider provides to itself.

Priority Level	Fault Types (examples)	Response Timeframe	Progress Update Frequency	Rectification Timeframe
Level 1	1. Major switch outage 2. Transmission bearer total outage Major routing issues	Within 1 hours	Every 1 hour	4 hours

Level 2	1. Minor switch outage 2. Minor routing issue	Within 4hours	Every 4 hours	24 hours
Level 3	1. Fault affecting single or small number of customers	Within 24 hours	Every 24 hours	72 hours
Level 4	1. External Technical Irregularities (ETI) 2. Other performance related issues	Within 48 hours	Every 48 hours	10 Business Days

Explanatory Notes to Subsection 8.5.13 of this RAO:

- (a) All faults reported shall be ascribed with a “Priority Level” as set out in the above table for response and restoration purposes and the Operators involved shall cooperate with one another to achieve the target timeframes corresponding to the severity of the fault reported as set out in that table.
- (b) The “Fault Types” listed in the table above are only examples of possible type of faults. Operators are required to categories all faults by reference to specified “Priority Levels’, “Response Timeframes” and Rectification Timeframes”.
- (c) “Response Timeframe” refers to the timeframe for the Operator whose Network, Network and/or Service is faulty to respond to and appropriately attend to the fault. Response Timeframes are to be measured from either the time the fault is notified by the other Operator or from the time when the Operator first becomes aware of the Fault, whichever is the earlier.
- (d) “Progress Update Frequency” refers to the frequency to update the other Operator until the fault is rectified.
- (e) “Rectification Timeframe” refers to the time taken by the Operator to restore a faulty Network, Facility and/or Service and is determined by the period between the reporting of a fault to the relevant fault reporting service of the Operator and the rectification of fault on a permanent or temporary basis (provided that if rectified on a temporary basis, the Operator must continue attempting to achieve a permanent rectification without delay).

8.5.14 Planned Maintenance

If an Operator intends to undertake planned maintenance (“**Maintenance Operator**”) which may affect an Access Seeker’s Network, Facilities and/or Services, the Maintenance Operator shall:

- (a) provide at least the greater of the time which it notifies its own Customers and ten (10) Business Days notice of the planned maintenance;

- (b) use its reasonable endeavors to minimise any disruption to the carriage of communications that crosses or are to cross both Operators' Networks, and which are caused by the maintenance or rerouting; and
- (c) where the Operators agree that it is practicable, provide alternative routing or carriage at no additional cost to the Access Seeker.

8.5.15 Planned Maintenance Windows

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

8.5.16 Emergency Maintenance

If a Maintenance Operator needs to undertake emergency maintenance which may affect the other Operator's Network, the Maintenance Operator shall, if it is able to:

- (a) provide at least 24 hours notice of the planned maintenance;
- (b) use its reasonable endeavours to minimise any disruption to the carriage of communications that crosses or would cross both Operator's Networks, and which are caused by the maintenance or rerouting; and
- (a) where the Operators agree that it is practicable, provide alternative routing or carriage at no additional cost to the other Operator.

8.5.17 Hours of fault reporting and rectification

Fibrecomm shall maintain a 24 hour a day, 7 days a week fault reporting and rectification service.

8.5.18 Complaints Handling

The Operators shall report all interconnection and access outages that relate to Networks, Services and/or Facilities to Fibrecomm's relevant fault reporting and rectification service.

8.5.19 Routine Testing

The Operators shall conduct interconnection service tests at agreed annual intervals to ensure the maintenance of interconnection services at agreed services levels in accordance with standards as agreed by both parties or such other standards as may be determined by the Commission.

8.6 Technical Obligations

8.6.1 Compliance

Operators shall adhere to the relevant guidelines issued by the Commission from

time to time to the extent that they have not been expressly revoked or are not inconsistent with any technical obligations set out in this RAO.

8.6.2 Prevention of technical harm

An Operator must take reasonable measures to ensure that interconnection and access do not cause physical or technical harm to the other Operators Network, which measures shall be no less robust than the measures which the Operator takes in respect of new facilities or Equipment incorporated into its own Network.

8.6.3 Technical Standards

An Operator shall comply with any applicable technical Standard adopted by the Commission under Chapter 3 of Part VII of the Act.

8.6.4 No Interference

An Operator shall not do anything, or knowingly permit any third person to do anything, in relation to Network, network facilities, network services or Equipment which:

- (a) causes interference; or
- (b) materially obstructs, interrupts or impedes the continuous use or operation of the Network, network facilities, network services or Equipment of another Operator.

8.6.5 Notice of Interference and Rectification

If an Operator notifies ("Notifying Operator") another Operator that the other Operator's Network, network facilities, network services or Equipment is causing interference to the Notifying Operator's Network, network facilities, network services or Equipment:

- (a) the other Operator shall rectify the situation as soon as possible and in any case within 24 hours of receiving notice from the Notifying Operator so that no interfere is caused; or
- (b) if the other Operator is not able to locate the source of the interference within 24 hours under Section 8.6.5(a) above, the other Operator shall promptly notify the Notifying Operator, and both Operators shall meet as soon as possible and in any case within 24 hours of such notice and jointly examine each other's Network, network facilities, network services or Equipment to locate the source of the interference.

[END OF CHAPTER 8]

CHAPTER 9 – TERM, TERMINATION, SUSPENSION AND OTHER PROVISIONS

9.1 Term

The Operators shall unless otherwise required by the Access Seeker enter into an Access Agreement for a term of no less than five (5) years from the execution date of the said Access Agreement.

9.2 Term of Supply

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

Services	Minimum term
Transmission Services	Twelve (12) months or Twenty-Four (24) months (at Fibrecomm’s discretion)
Co-Location Services	Twelve (12) months

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

9.3 Termination

9.3.1 Fibrecomm may terminate an Access Agreement, whether in whole or in part, if any of the circumstances referred to in Subsection 9.3.1(a), 9.3.1(b) or 9.3.1(c) below apply and Fibrecomm has notified the Access Seeker that it will terminate where:

- (a) the Access Seeker has materially breached the Access Agreement and Fibrecomm has notified the Access Seeker that it will terminate the said agreement in no less than thirty (30) days if the Access Seeker has not remedied its breach by the end of that period and the Access Seeker has failed to remedy its breach in accordance with such notification;
- (b) the Access Seeker has become subject to a winding up order (whether compulsorily or voluntarily) or cease to trade in the normal course of business or becomes insolvent or a receiving order is made against it or has entered into any agreement or composition with or assignment for the benefit of its creditors or the Access Seekers assets are subject of any form of distress or execution or any analogous insolvency event related to the Access Seeker has occurred in any jurisdiction; or
- (c) a Force Majeure event has continued for a period of more than three (3) months.

Fibrecomm shall forward to the Commission a copy of the notice of termination

at the same time as providing the notice of termination to the Access Seeker.

9.3.2 Except where permitted under Subsection 9.2 of this RAO, an Access Seeker may only terminate an Access Agreement, whether in whole or in part, if any of the circumstances referred to in Subsections 9.3.2 (a), 9.3.2 (b) or 9.3.2 (c) of this RAO apply, and the Access Seeker has notified the Fibrecomm that it will terminate where:

- (a) Fibrecomm has materially breached the Access Agreement, the Access Seeker has notified Fibrecomm that it will terminate in no less than thirty (30) days if the Access Provider has not remedied its breach by the end of that period and the Access Provider has failed to remedy its breach in accordance with such a notification;
- (b) Fibrecomm has become subject to a winding up order (whether compulsorily or voluntarily) or ceases to trade in the normal course of business or becomes insolvent or a receiving order is made against it or has entered into any agreement or composition with or assignment for the benefit of its creditors or the Access Provider's assets are subject of any form of distress or execution or any analogous insolvency event related to the Access Provider has occurred in any jurisdiction; or
- (c) a Force Majeure has continued for a period of more than three (3) months.

9.4 Changes In Law

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

9.5 Suspension

Fibrecomm may only suspend access to any Facilities and/or Services in the following circumstances:

- (a) the Access Seeker facilities materially and adversely affect the normal operation of Fibrecomm's Network or are a material threat to any person's safety;
- (b) the Access Seeker's facilities or the supply of services pose an imminent threat to life or property of Fibrecomm, its employees or contractors;
- (c) the Access Seeker's facilities cause material, physical or technical harm to

- any facilities of Fibrecomm or any other person;
- (b) where the Access Seeker has failed to pay Invoices in accordance with Section 7 of this RAO and has failed to rectify such non-compliance within thirty (30) days of receiving notice from Fibrecomm (and subject to any right that the Access Seeker has under subsection 7.2.4 of this RAO to dispute any amount in an Invoice);
 - (e) where the Access Seeker has failed to provide the new security amount as required under this RAO;
 - (f) where Force Majeure applies; or
 - (g) the Access Seeker breaches any laws, regulations, rules or standards which has a material adverse effect on Fibrecomm or the provision by Fibrecomm of Facilities and/or Services under the Access Agreement.

For the purposes of this Section 9.5, Fibrecomm must provide the Access Seeker five (5) Business Days' notice in writing, including written reasons, prior to suspending access to any Facilities and/or Services.

9.6 Notice

Prior to terminating, suspending, or seeking to materially vary an Access Agreement or access to any Facilities and/or Services provided under it, Fibrecomm must notify the Commission in writing of the action Fibrecomm proposes to take and the reason why it considers such action is appropriate. The Commission may invite any affected Access Seeker to make submissions to the Commission regarding the proposed termination, suspension or material variation. Fibrecomm:

- (a) shall only give effect to the proposed termination, suspension or material variation with the Commission's written consent and subject to any time delay or conditions which the Commission may specify (if any).

The Commission will endeavour to respond to Fibrecomm's notice within ten (10) Business Days or such other period that the Commission considers is reasonable.

- (b) must not give effect to the proposed termination, suspension or material variation unless Fibrecomm has received written consent from the Commission to such termination, suspension or material variation; and
- (c) shall take all steps practicable to minimize disruptions and inconvenience to the Customers of the Access Seeker, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the suspension or termination of the Access Agreement or access to Facilities and/or Services provided under it.

9.7 Undertakings

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

9.8 Post-Termination Fees

Fibrecomm shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any Facilities and/or Services provided under it except:

- (a) Charges invoiced in arrears and not yet paid; or
- (b) Charges arising during an applicable minimum contractual period (as described in Subsection 9.2 above) provided that:
 - (i) such charges must be reduced to reflect any costs savings to Fibrecomm from not having to supply the Facilities and/or Services to the extent that they have been terminated or suspended; and
 - (ii) Fibrecomm must use reasonable endeavours to mitigate its costs of termination or suspension and maximize cost savings under paragraph 9.8(b)i above.

9.9 Upfront Charges Refund

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

9.10 Deposits and guarantees

Notwithstanding the obligation in Subsection 9.9 above, the Access Provider shall:

- (a) within two (2) months of termination of the Access Agreement refund to the Access Seeker any deposit paid provided all other amounts payable by the Access Seeker to Fibrecomm have been paid; and
- (b) immediately upon termination of the Access Agreement unconditionally waive any rights under any guarantees provided by the Access Seeker except in respect of amounts payable by the Access Seeker to Fibrecomm as at the date of termination.

9.11 Intellectual Property Rights

The Operators agree not to use any patent, trade mark, trade name, housemark, service mark, designs, copyright, database rights, know-how and any other type of intellectual property rights belonging to the Other Operator or any of its affiliates without the prior written consent of the Other Operator for purposes including but not limited to any advertising, publicity releases or sales presentations.

9.12 Force Majeure

9.12.1 If a Party (“Affected Party”) is prevented from performing any of its material obligations under this Agreement (but shall not include any of the Customer’s payment obligations) by reason of Force Majeure, it must immediately notify the other Party (“Other Party”) in writing of the circumstances constituting the event of Force Majeure and must keep the Other Party regularly informed of the progress in resolving the event of Force Majeure and use all reasonable steps to minimize the adverse effects of the event of Force Majeure on the performance of its obligations under this Agreement.

9.12.2 If the delay in performance or non-performance of the Affected Party’s obligations due to the event of Force Majeure is continuous for a period of more than 90 days from the date of the Affected Party’s written notification under Subsection 9.12.1 above, then either Party shall have the right to terminate this Agreement with immediate effect and neither Party shall have any claim against the other in respect of such termination save for antecedent breaches.

9.13 Review

An Access Agreement shall be reviewed upon the occurrence of the following events:

- (a) If the Minister issues a direction or determination relating to its subject matter;
- (b) If the Commission issues a direction or determination relating to its subject matter;
- (c) If the Act or the MSA is amended in relation to its subject matter;
- (d) By Agreement of both parties.
- (e) If a condition of the Operator’s license is amended or deleted or a new condition is imposed in relation to its subject matter.

9.14 Costs and Expenses

Each Operator shall bear its own costs and expenses in relation to the preparation, negotiation and execution of an Access Agreement.

9.15 Governing Law

This RAO shall be governed by and interpreted in accordance with the laws of Malaysia.

9.16 Assignment

An Operator's right to assign its right under an Access Agreement prepared by it shall be reciprocal with the other Operator's right of assignment.

[END OF CHAPTER 9]

CHAPTER 10- RATES, CHARGES AND CHARGING PRINCIPLE

10.1 General

The Sections in this chapter sets out the type of Charges and charging principles for the Facilities and/or Services provided by Fibrecomm to the Access Seeker.

10.2 Type of Charges for Transmission Service

10.2.1 In consideration of Fibrecomm’s obligations in the provision of the Facilities and/or Services the Access Seeker shall pay to Fibrecomm the following Charges:

End to End Transmission Service

Within Peninsular Malaysia and within Sabah:	Ringgit Malaysia per month		
	2023	2024	2025
10 Mbps	2,074	1,634	1,196
100 Mbps	3,016	2,244	1,470
200 Mbps	4,066	2,920	1,776
500 Mbps	7,212	4,952	2,690
750 Mbps	9,834	6,642	3,452
1 Gbps	13,122	9,326	5,530
3 Gbps	26,504	15,263	11,626
5 Gbps	28,383	24,209	17,722
6 Gbps	33,977	28,835	20,770
7 Gbps	39,571	33,462	23,818
8 Gbps	45,165	38,089	26,866
9 Gbps	50,759	42,715	29,914
10 Gbps	56,353	47,342	32,964
Installation (Non-Recurring Charges)	6,571	6,768	6,971

10.2.2 The Terms and Conditions of Transmission Service as below:

- (a) The services are offered at SLA 99.90%.
- (b) No rebate applicable for the services subscribed.
- (c) MTTR is based on subsection 8.5.13 of this RAO.
- (d) Services are only applicable within list of nodes as listed under Fibrecomm’s Point of Presence and for any future new infrastructure which will be based on mutual commercial agreement.
- (e) Price is inclusive of any cabling works within Fibrecomm boundary but excluded cross-connect charges by the data center or building owner,
- (f) The services are based on capacity/ports availability reserved for Access Seeker.
- (g) Ready for Service (RFS) will be twenty (20) business days for existing network and for new network facilities the delivery timeframe required is to be mutually agreed between Fibrecomm and Access Seeker.

- 10.2.3 The recurring Charges including rental Charges shall commence to be payable from the date Facilities and/or Services is provided, which is the Agreed Ready For Service Date 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 accordance with Chapter 7 of Fibrecomm’s RAO.
- 10.2.4 In relation to rental Charges, Access Seeker shall also be liable to pay any applicable taxes 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 Fibrecomm at the same time as the relevant invoice is settled in accordance with Chapter 7 of Fibrecomm’s RAO.
- 10.2.5 In relation to the One–Time Charges for the Facilities and/or Services, the Access Seeker shall pay the Charges within the same time frame as stipulated under Chapter 7 upon receiving first invoice issued by Fibrecomm after the Ready For Service Date or Handover Date, whichever is relevant.
- 10.2.6 The charging principle on rental of Transmission Services as below:
- (a) The rental Charges for the Facilities and/or Services are charged according to Transmission Services of the Facilities or Services.
 - (b) The rental charges for Transmission Service are as per mandated by MCMC and are based on the following factors:
 - (c) Capacity of the Bandwidth Services;
 - (d) Geographical location of the link in the Service; and
 - (e) Cable length required for the link in the Service as per Fibrecomm network boundary.

10.3 Type of Charges for Network Co-location Service

10.3.1 The rental Charges for Network Co-Location Service are charged according to the price below:

i) Rack Space

Rack Space	RM/Monthly	RM(OTC)
1U	500	1,500
24U	2,500	2,500
42U	4,500	3,500

*inclusive of 1X20A DC power
 *inclusive of 1X32A DC power
 *inclusive of 1X32A DC power

ii) Floor Space

Floor Space	RM/Monthly
1 rack space	4,000

*inclusive of 1X32A DC power

iii) Additional Power Supply - As per Fibrecomm’s quotation and to be mutually agreed between the parties.

10.3.2 The rental Charges for the physical co-location space is inclusive of common services, standard power supply, light, ventilation, air-conditioning and access for the personnel of the Access Seeker.

10.3.3 One-Time charges 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.

10.3.4 Fibrecomm will charge the supervision charges for access to Fibrecomm’s co-location by the Access Seeker or its contractor or agent for unmanned site and planned activity which exceeds five (5) times free monthly supervision charges. The supervision charges that will be charged by Fibrecomm are as below:

Number of site:	Details	Charges
1	Site access per event	RM1,000

10.4 Charging Principle For Service Outside Fibrecomm’s Existing Network Topology

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

10.5 Cancellation Charges

If Access Seeker cancels a confirmed order for a Service, Access Seeker shall be liable to pay Fibrecomm cancellation charges based on Subsection 6.2.25 of this RAO.

[END OF CHAPTER 10]

IN WITNESS WHEREOF the Operators hereunto have executed this Reference Access Offer on the day and the year first above written.

Signed by)
For and on behalf of)
FIBRECOMM NETWORK (M) SDN BHD)
(Company Reg No.: 199201009356 (240859-)
H)))

In the presence of

Name:
NRIC No.:
Designation:

Signature of witness

Signed by)
For and on behalf of)
(Company Reg No.:))

In the presence of

Name:
NRIC No.:
Designation:

Signature of witness

ANNEXURE I - SERVICE ORDER FORM & SERVICE ALTERATION FORM



SERVICE ORDER FORM (SOF) PRIVATE LEASED CIRCUIT SERVICE

Doc No:
Revision No:

<p>IMPORTANT: THIS SERVICE ORDER FORM (SOF) IS BOUND BY THE TERMS AND CONDITIONS CONTAINED IN THE MASTER SERVICE AGREEMENT (MSA), MSA SUPPLEMENTAL AGREEMENT AND ADDITIONAL TERMS AND CONDITIONS AS CONTAINED IN THE SOF, IF ANY. APPLICATION MUST BE MADE BY AUTHORISED PERSONNEL OF THE COMPANY.</p>	<p>SOF NO:</p>								
<p>1 - CUSTOMER INFORMATION</p>									
<p>Date: _____</p> <p>Company Name: _____</p> <p>Correspondence Address: _____</p> <p>Postal Code: _____ City/State: _____</p> <p>Contact Person Details: <input checked="" type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Miss Name: _____</p> <p>Telephone Number: _____ Mobile Number: _____ Fax Number: _____</p> <p>E-mail: _____</p>									
<p>2 – BILLING AND PRICING DETAILS</p>									
<p>Company Name: _____</p> <p>Correspondence Address: _____</p> <p>Postal Code: _____ City/State: _____</p> <p>Contact Person Details: <input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input checked="" type="checkbox"/> Miss Name: _____</p> <p>Telephone Number: _____ Mobile Number: _____ Fax Number: _____</p> <p>E-mail: _____</p> <p>Payment Term: <input checked="" type="checkbox"/> Monthly In Advance <input type="checkbox"/> Quarterly In Advance <input type="checkbox"/> Yearly In Advance</p> <p>SLA: % Rebate Term: <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly In Advance <input type="checkbox"/> Yearly In Advance</p> <p>Pricing Details:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #d3d3d3;"> <th style="width: 50%;">Charges</th> <th style="width: 50%;">Currency Mode : <input type="checkbox"/> RM <input checked="" type="checkbox"/> USD <input type="checkbox"/> OTHERS <i>(please specify)</i></th> </tr> </thead> <tbody> <tr> <td>Installation (<i>One Time</i>)</td> <td></td> </tr> <tr> <td>Rental Charges (monthly)</td> <td></td> </tr> <tr> <td>Others</td> <td></td> </tr> </tbody> </table>		Charges	Currency Mode : <input type="checkbox"/> RM <input checked="" type="checkbox"/> USD <input type="checkbox"/> OTHERS <i>(please specify)</i>	Installation (<i>One Time</i>)		Rental Charges (monthly)		Others	
Charges	Currency Mode : <input type="checkbox"/> RM <input checked="" type="checkbox"/> USD <input type="checkbox"/> OTHERS <i>(please specify)</i>								
Installation (<i>One Time</i>)									
Rental Charges (monthly)									
Others									

3 - SERVICE DESCRIPTION AND CONTRACT INFORMATION

Service Type: <input checked="" type="checkbox"/> International PLC <input type="checkbox"/> Domestic PLC <input type="checkbox"/> Ethernet Private Line			
INSTALLATION ADDRESS SITE A		INSTALLATION ADDRESS SITE B	
This is (Check where applicable) <input type="checkbox"/> New Location : <input checked="" type="checkbox"/> Existing FIBRECOMM Nodes:		This is (Check where applicable) <input type="checkbox"/> New Location : <input checked="" type="checkbox"/> Existing FIBRECOMM Nodes:	
Company:		Company:	
Address:		Address:	
City/State:	Postal Code:	City/State:	Postal Code:
Is this an end-user premise? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Is this an end-user premise? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Is the customer premises Co-Located in a FIBRECOMM Node/PoP? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Is the customer premises Co-Located in a FIBRECOMM Node/PoP? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Requested RFS Date:		Contract Period(s): year(s)	

4 – TECHNICAL DETAILS

Bandwidth Speed: Gbps /
Site A Interface: <input type="checkbox"/> Electrical G.703 75Ω <input type="checkbox"/> Electrical G.703 120Ω <input checked="" type="checkbox"/> Optical G.957 <input type="checkbox"/> Others:
Site B Interface: <input type="checkbox"/> Electrical G.703 75Ω <input type="checkbox"/> Electrical G.703 120Ω <input checked="" type="checkbox"/> Optical G.957 <input type="checkbox"/> Others:
Additional Terms and Conditions:

5- DECLARATION OF APPLICATION

We hereby agree to be bound by the Terms and Conditions stated in the Master Service Agreement (MSA), MSA Supplemental Agreement (SA) and additional Terms and Conditions stated in this Service Order Form for the provision by you of the telecommunication service requested by us. We further confirm that the information given on this form is true and correct.

Signature : _____ Date: _____
Name : _____
Designation : _____

Witnessed by : _____
Name: _____ Business Stamp:
Designation : _____

6 – DECLARATION OF ACCEPTANCE

We hereby agree to accept the requirements as contained in this Service Order Form and we hereby agree to be bound by the Terms and Conditions as stated in the Master Service Agreement (MSA) Supplemental Agreement and additional Terms and Conditions stated in this Service Order Form for the provision by us of the telecommunication service requested by you.

Signature : _____ Date: _____
Name : _____
Designation : _____

Witnessed by : _____
Name: _____ Business Stamp:
Designation : _____

5- DECLARATION OF APPLICATION

We hereby agree to be bound by the terms and conditions stated in: The Master Service Agreement (MSA) (Ref No:) together with the Additional Terms and Conditions as stated above (if any) for the provision by you of the services requested by us. We further confirm that the information given on this form is true and correct. Unless otherwise stated in the MSA, in the event of any inconsistency between the terms and conditions as stated in this SOF with the *MSA/Proposal, this SOF shall prevail.

Signature : _____

Signature : _____

Name : _____

Name : _____

Designation : _____

Designation : _____

Date : _____

Date : _____

Witnessed by : _____

Witnessed by : _____

Name: : _____

Name: : _____

Designation : _____

Designation : _____

Business Stamp :

Business Stamp :