



FIBRECOMM NETWORK (M) SDN BHD

**ACCESS REFERENCE DOCUMENT
(Version 2.0)**

AS AT 2 MAY 2009

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CHAPTER 1 – Introduction, Background and Scope

1.1 Preliminary

- 1.1.1 This Access Reference Document is made by Fibrecomm Network (M) Sdn Bhd (Company No: 240859-H), (“**Fibrecomm**”) a company incorporated under the laws of Malaysia and having its principal place of business at Level 37 (South Wing), Menara TM, Off Jalan Pantai Baharu, 59200 Kuala Lumpur on 3 May 2009 pursuant to section 5.3.2 of the Commission Determination on the Mandatory Standard on Access Determination No. 2 of 2005, as amended by the Variation to Commission Determination on Mandatory Standard on Access (Determination No.2 of 2009) (“MSADetermination”).
- 1.1.2 This Access Reference Document is hereby referred to as Fibrecomm’s ARD.
- 1.1.3 Fibrecomm’s ARD is set out as follows:
- (a) Main Text which consists of 10 chapters;
 - (b) Annexures which consists of 2 parts.
- 1.1.4 The service description for each of the Facilities and/or Services are set out in Chapter 3.
- 1.1.5 The charges and charging principles for each of the Facilities and/or Services are set out in Chapter 10.
- 1.1.6 The technical and operational matters for all of the Facilities and/or Services are set out in Chapter 8.

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); and
 - (c) Content obligation (Section 5.5 to 5.19 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 an Access Reference Document;
 - (b) make the Access Reference Document available;
 - (c) follow prescribed procedures after acceptance of the Access Reference Document; and
 - (d) follow prescribed procedures for any amendment of the Access Reference Document.

1.2.3 Negotiation Obligations

The negotiation obligations in Section 5.4 of the MSA Determination sets out the requirements and principles of negotiation where among others both Operators are required to:

- (a) negotiate and co-operate in good faith and commercially reasonable manner;
- (b) protect from disclosure any confidential information provided by one Operator to another;
- (c) use only such intellectual property and information provided by one Operator to another for purpose of providing access to the requested network services or facilities.

1.2.4 Content Obligations

The content obligations in Section 5.5 of the MSA Determination sets out among others the following obligations of Fibrecomm:-

- (a) Forecasting, Ordering and Provisioning
- (b) Network Conditioning
- (c) Point of Interface Procedures
- (d) Decommissioning
- (e) Network Changes
- (f) Network Facilities Access and Co-location
- (g) Billing and Settlement
- (h) Operations and Maintenance
- (i) Technical
- (j) Term, suspension and termination

1.2.5 The role of Standard Access Obligations

1.2.5.1 Pursuant to sections 55 and 145 of the Act, the Commission may determine the list of network facilities and network services, which may be listed in the access list. Accordingly the Commission has issued the Access List Determination. Pursuant to section 149 of the Act, 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.

1.2.5.2 The standard access obligations facilitate the provision of access to the network facilities and network services listed in the Access List Determination by Access Seekers 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.

1.2.5.3 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:

- (a) of at least the same or more favourable technical standard and quality as the technical standard and quality on the Fibrecomm's network facilities or network services; and
- (b) on an equitable and non-discriminatory basis.

1.2.5.4 The paraphrasing of any statutory provisions in this Fibrecomm's ARD does not amount to any party agreeing to waive any of their rights under the paraphrased provisions and those statutory provisions continue to apply in full.

1.3 Scope of Fibrecomm's ARD

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

1.3.2 Pursuant to Section 5.3.2 of MSA Determination, Fibrecomm is obliged to prepare and maintain an Access Reference Document 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 ARD:

- (a) contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and
- (b) does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination.

1.3.4 Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to Fibrecomm's ARD.

1.3.5 Fibrecomm's ARD are consistent with:

- (a) the standard access obligations stipulated under Section 4.1.1 of the MSA Determination and section 149 of the Act; and
- (b) the principles of non-discrimination stipulated under Sections 4.1.5 and 4.1.6 of the MSA Determination.

1.3.6 For the purposes of clarification, the terms and conditions of Fibrecomm's ARD 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 ARD, 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 ARD.

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

1.4 Commencement and Duration of the Access Reference Document

1.4.1 Fibrecomm's ARD comes into force and takes effect immediately from the date referred to in Section 1.1.1 and continues until the earlier to occur of any of the following:

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

1.4.2 Fibrecomm's ARD 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.

1.5 Amendment to Fibrecomm's ARD

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

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

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

1.6.1 If 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 ARD, withdraw or replace Fibrecomm's ARD with effect from a date no earlier than the effective date of the Commission's revocation.

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

1.6.3 In addition to Section 1.6.2 above, Fibrecomm may give the Access Seekers to whom it is supplying Facilities and Services under Fibrecomm's ARD a notice of a variation or replacement of Fibrecomm's ARD to effect such variations that are necessary or appropriate in the event of:

- (a) the occurrence of a Legislative Event that materially affects the rights or obligations of Fibrecomm under Fibrecomm's ARD; 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 6.5 of the MSA Determination.

1.6.4 Notwithstanding Sections 1.6.1, 1.6.2 and 1.6.3 above, Fibrecomm may subject to Section 1.6.2 above, replace Fibrecomm's ARD at any time.

1.7 Availability

1.7.1 Fibrecomm's ARD 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 assessable website at www.fibrecomm.net.my.

1.8 Notices

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

Attention	:	Legal, Regulatory & Risk Management Dept Corporate Services Division
Address	:	Level 37 (South Wing), Menara TM Off Jalan Pantai Baharu 59200 Kuala Lumpur
Telephone	:	03-2240 1843
Facsimile	:	03-2240 5001

CHAPTER 2 – Definitions and Interpretation

2.1 Definitions

The following words have these meanings in this Fibrecomm's ARD 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 ARD; or
- (b) which is commercially negotiated between the Operators,

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.1 of 2005 and as amended by the Variation to Commission Determination on Access List (Determination No.1 of 2005), Determination No. 1 of 2009.

"Access Request" means a request made by the Access Seeker to Fibrecomm for access to Facilities or Services and containing the information in Section 5.1.1.

"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 Section 5.3 on behalf of the Access Seeker.

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

"Billing Period" means one (1) calendar month period over which the supply of 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.

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

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

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

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

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

“Confidentiality Agreement” means a Confidentiality Agreement entered into between Fibrecomm and the Access Seeker in accordance with Section 5.3.7 of the MSA Determination which template is provided herein in Annexure I.

“Creditworthiness Information” means the information required by Fibrecomm to assess the creditworthiness of the Access Seeker which are more particularly described in Section 5.2 of Fibrecomm’s ARD and such other information as may be required from time to time.

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

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

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

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

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

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

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

“Fast Track Application Service” means a Facility or Service that is subjected to the fast track application process which is more particularly set out in Section 5.11.

“Fast Track Security Sum” means the security:

- (a) in the form of a Bank Guarantee, deposited with Fibrecomm in accordance with Section 5.11; and
- (b) which amount is Ringgit Malaysia Fifty Thousand (RM50,000) only for each Facility or Service for which access is sought.

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

“Fibrecomm” means Fibrecomm Network (M) Sdn Bhd is the Access Provider unless otherwise stated.

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

“Insurance Information” means the insurance information required by Fibrecomm pursuant to Section 5.4.

“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.

“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 ARD contravenes any provision of any law, except to the extent that the making of such determination, direction or finding constitutes a Regulatory Event.

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

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

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

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

“MylX” means the Malaysia Internet Exchange.

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

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

“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. An example of POI is MylX.

“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 ARD; and/or
- (c) the giving of a lawful direction to Fibrecomm by the Minister relating to Fibrecomm’s ARD.

“Review” means a review of the MSA Determination pursuant to Section 6.5 of the MSA Determination.

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

“Security Sum” means the security:

- (a) in the form of a Bank Guarantee, deposited with Fibrecomm in accordance with Section 5.* 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 ARD.

“Service Ordering Procedures” means the procedures governing the forecasting, planning and ordering of relevant Access Services as set out Chapter 5.

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

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

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

2.2

Interpretation

In Fibrecomm’s ARD except where the contrary intention appears;

- (a) the singular includes the plural and vice versa; and
- (b) a document includes all amendments or supplements to that document, or replacements or novations of it; and
- (c) a reference to a statute, ordinance, regulations, code or other law and other instruments under it, shall include any statute, ordinance, regulation, code and other law consolidating, amending, re-enacting or replacing of any of them from time to time relating thereto or in connection therewith; and
- (d) a reference to a person includes a firm, body corporate, unincorporated association or an authority; and
- (e) a reference to a person includes the person’s executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; and
- (f) if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the next Business Day and any reference to acts that have to be done or to be done by or on or before a particular day or Business day means by or on or before the close of business at 5.00pm on that particular day or Business Day; and

- (g) a reference to a related body corporate of an Operator has the same meaning as in the Companies Act 1965; and
- (i) a reference to a third party is a reference to a person who is not a party to Fibrecomm's ARD; and
- (j) 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
- (k) 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 ARD; and
- (l) headings are included for convenience and do not affect the interpretation of Fibrecomm's ARD.

CHAPTER 3 – LIST OF FACILITIES AND/OR SERVICES

3.1 General

This chapter lists down the Facilities and/or Services that Fibrecomm provides under this Fibrecomm's ARD .

3.2 Domestic Network Transmission Services

- (a) Consistent with Government policy and the Access List Determination, Fibrecomm shall only be required to provide Domestic Network Transmission Service until the Sunset Date. Accordingly, the terms and conditions in this Section 3.2 shall only be applicable until the Sunset Date.
- (a) Fibrecomm's Domestic Network Transmission Service is a Facility and/or Service for the carriage of communications between transmission points (not being Customer transmission points) via network interfaces at such transmission rates as may be agreed between the Fibrecomm and the Access Seeker.
- (b) The functionalities of Fibrecomm's Domestic Network Transmission Service include:
 - (i) switching (whether packet or circuit)
 - (ii) signaling required to support the technology or to provide a service
 - (iii) termination at either end by a port, router, network termination unit and switch
 - (iv) a digital protocol
- (c) Network interfaces referred to in paragraph (a) above include copper wire, microwave, laser, fibre optic or other wireless technologies.
- (d) An Access Seeker for the Domestic Network transmission Service includes (but is not limited to) a network facilities provider or network services provider which is only authorized to provide limited (e.g in the last mile) network facilities or network services, but wishes to acquire the Domestic Network Transmission Service in order to connect its limited network facilities or network services.

3.2A Provision of Domestic Network Transmission Services

- (a) Subject to the Access Seeker complying with the Ordering And Provisioning Obligations in Chapter 6, Fibrecomm will provide in accordance with the terms and conditions of this ARD and the applicable Annexure herein, Domestic Network Transmission Services requested by the Access Seeker.
- (b) Where the Access Seeker leases Domestic Network Transmission Services from Fibrecomm, Fibrecomm's Equipment can be shared in the Access Seeker's premises in accordance with Chapter 8.

- (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 Domestic Network Transmission Services by Fibrecomm.
- (d) Fibrecomm shall ensure that the Domestic Network Transmission Services conform to the QOS Standards and Technical Specifications, subject to the Access Seeker's use of those Transmission Capacity Services in accordance with the Technical Specifications and other agreed requirements.
- (e) The minimum period in which the Access Seeker may lease Domestic Network Transmission Services is one (1) year.
- (f) The Access Seeker will pay to Fibrecomm for Domestic Network Transmission Services provided by Fibrecomm, Charges in accordance with the applicable provisions set out in Chapter 10.

3.2B PROVISIONS ADDRESSING TRANSITIONAL ISSUES IN RELATION TO DOMESTIC NETWORK TRANSMISSION SERVICE

Consistent with Government policy and the Access List Determination, Fibrecomm shall only be required to provide Domestic Network Transmission Service until the Sunset Date.

Availability of Domestic Network Transmission Service

1. The terms and conditions in this Section 3.2A shall only be applicable until the Sunset Date.
2. Access Seekers who are provided with access to Domestic Network Transmission Service pursuant to an Access Agreement prior to the Sunset Date will automatically be provided with access to Transmission Service after the Sunset Date unless:
 - (a) the Transmission Services does not offer leased circuits which has the same bandwidth as the leased circuit bandwidth offered under Domestic Network Transmission Service currently subscribed by the Access Seeker; or
 - (b) the Access Seeker:
 - (i) notifies Fibrecomm in writing at least sixty (60) days prior to the Sunset Date that it does not wish to seek access to Transmission Service after the Sunset Date ("Service Termination Notice"); and
 - (ii) has met the conditions for termination of the Domestic Network Transmission Service as specified in the Access Agreement or by Fibrecomm ("Termination Conditions").
3. Where the Transmission Services does not offer leased circuits which has the same bandwidth as the leased circuit bandwidth offered under Domestic Network Transmission Service, then those leased circuit for Domestic Network Transmission Service will automatically terminate on the Sunset Date. The Access Seeker may however subscribe for new leased circuits of different

bandwidth under Transmission Services pursuant to a new leased circuit agreement and in accordance with the terms and conditions in Section 3.3.

4. In relation to Paragraph b, where the Access Seeker provides Service Termination Notice and complies with the Termination Conditions, Fibrecomm shall cease to provide the Access Seeker with access to Domestic Network Transmission Service on the Sunset Date or such earlier date as agreed between the parties.
5. After the Sunset Date, Access Seekers who wish to seek access to Domestic Network Transmission Service shall be required instead to seek access to Transmission Service in accordance with the terms and conditions in Section 3.3.

3.3 TRANSMISSION SERVICE

- (a) Transmission Service is a Facility and/or Service for the carriage of communications between any two technically feasible network transmission points (not being Customer transmission points) via network interface at such transmission rates as may be agreed between 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.
- (c) The functionalities of the Transmission Service include:
 - (i) transmission and switching (whether packet or circuit);
 - (ii) the signalling 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;
 - (iv) termination between codecs and to a transmitter station; and
 - (v) a digital protocol (including Internet Protocols)
- (d) A technically feasible network transmission point in Paragraph (a) includes submarine cable and satellite link between Sabah and Sarawak and Peninsular Malaysia, submarine cable landing station centre or/an earth station.
- (e) The Transmission Service may be for the carriage of Communications which comprise of content applications service.
- (f) For the purposes of this Section 3.3, an Access Seeker includes (but is not limited to) a network facilities provider or network service provider which is only authorised to provide limited (e.g. in the last mile) network facilities or network service, but wishes to acquire the Transmission Service in order to connect its limited network facilities or network services.

3.3A Provisions of Transmission Services

Domestic Transmission Service

- (a) Fibrecomm will provide Domestic Transmission Service requested by the Access Seeker in accordance with Fibrecomm's ARD and the Access Agreement including the terms and conditions in Chapter 8.
- (b) Where the Access Seeker leases Domestic Transmission Service from Fibrecomm, Fibrecomm's Equipment can be co-located in the Access Seeker's premises in accordance with Chapter 8.
- (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 Domestic Transmission Service by Fibrecomm.
- (d) Fibrecomm shall ensure Domestic Transmission Services conform to the QoS Standards and Technical Specifications, subject to the Access Seeker's use of those Domestic Transmission Services in accordance with the Technical Specifications and other agreed requirements.
- (e) The minimum period in which the Access Seeker may lease Domestic Transmission Services is one (1) year.
- (f) The Access Seeker shall pay to Fibrecomm for Domestic Transmission Services stated in this Section 3.3 provided by Fibrecomm, Charges in accordance with the applicable provisions set out in Chapter 10.

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 light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access seeker;
 - ii. virtual co-location, which refers to the provision of facilities or services at Fibrecomm's premises to enable the acquisition by the Access seeker of Facilities and Services, where equipment is owned and maintained by the Fibrecomm; or
 - iii. 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.
- (b) Network premises at which co-location is to be provided includes switching sites, Customer Access Modules (including roadside cabinets) and such other network facilities locations associated with the provision

of a Facility or Service, and includes co-location provided at any location where main distribution frame is housed.

3.5 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.

CHAPTER 4 – PRINCIPLES OF ACCESS

4.1 Application of Fibrecomm's ARD

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

4.2 Eligibility for Access of Services

4.2.1 Fibrecomm shall at its discretion and in a manner consistent with the License(s) granted (and the license rights accorded therein) by the Minister to the Access Seeker, determine on a case by case basis whether to provide to Access Seeker with access to the Facilities and/or Service (s)

4.2.2 Consistent with Government policy and Determinations by the Commission (and its predecessor), an Access Seeker may only request for access to any or all of the Facilities and/or Services where the Access Seeker has been granted:-

- (i) an individual network facilities provider license and/or;
- (ii) an individual network services provider license and/or;
- (iii) an individual content applications services provider license,;

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

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

4.2.3 An Access Seeker may not request for the Facilities and/or Services where the requested Facilities and/or Services are to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.

4.2.4 Consistent with Government policy and Determinations by the Commissions (and its predecessor), where Fibrecomm provides the Access Seeker with access to the Facilities and/or Services pursuant to **Section 4.2.1**, the charges for the requested Facilities or Services shall be negotiated between the Operators subject to any mandatory standard on access pricing determined by the Commission.

4.3 Availability of Facilities and Services

4.3.1 Consistent with Government policy and the Access List Determination, Fibrecomm shall be required to provide Domestic Network Transmission Service until the Sunset Date only. After the Sunset Date, the automatic transition of Domestic Network Transmission service shall be in accordance with the provisions set out in **Section 3.2B**.

4.3 Standard Access Obligations

4.3.1 Access Terms and Conditions

Subject to Sections 4.2 and 4.3, 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 section 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 Section 4.3 of the MSA Determination.

4.4 Negotiation Principles

4.4.2 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 and use all reasonable endeavours to resolve any disputes arising from or in connection with Fibrecomm's ARD.

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

4.4.3 Confidentiality

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

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) whether the Access Seeker wishes to accept Fibrecomm's ARD or negotiate an Access Agreement;
- (d) the information (if any) set out in Section 5.3.6 of the MSA Determination that the Access Seeker reasonably requires Fibrecomm to provide for the purposes of the access negotiations;
- (e) contain two (2) copies of Confidentiality Agreement properly executed by the Access Seeker in the form prescribed by Fibrecomm as in Annexure 1;
- (f) forecast of the capacity the Access Seeker will reasonably require, in accordance with the forecasting procedures stated in Chapter 6;
- (h) relevant information relating to the Access Seeker and functionality of its Services, to the extent that Access Seeker is aware that such information may affect Fibrecomm Network;
- (i) contain confirmation that the Access Seeker is not currently being supplied with the requested Facility or Service;
- (i) specify the type of communications licensed held by the Access Seeker and a copy of the licence where a copy had not been previously provided;
- (i) creditworthiness information in accordance with Fibrecomm requirement as set out in subsection 5.2;
 - a. security in accordance with Fibrecomm security requirement as set out in subsection 5.3;
 - b. insurance information in accordance with Fibrecomm insurance requirement as set out in subsection 5.4;
 - c. relevant technical information relating to the interface standards of the Access Seeker; and
 - d. such other information as Fibrecomm may reasonably request.

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 ARD.

5.2 Creditworthiness Information

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

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

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 consider entering into an Access Agreement with the Access Seeker pursuant to Fibrecomm's ARD until the Access Seeker has amongst other things, provided (at the Access Seeker's costs) to Fibrecomm such Security Sum on terms and conditions reasonably acceptable to Fibrecomm.

5.4 Insurance Information

5.4.1 Subject to Section 5.4.2, An Access Request shall be accompanied by the following insurances:

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

5.4.2 For the purpose of clarification, the insurance provided by the Access Seeker pursuant to section 5.4.1 shall commensurate with the reasonable sum, which is to be agreed by Fibrecomm.

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 inform the Access Seeker in writing that it has received the Access Request and:

- (a) Subject to Section 5.4.16 of the MSA, request additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request; or
- (b) Indicate whether it is willing to provide access to Facilities and/or Services in accordance with Fibrecomm's ARD.

Subject to the additional information being received by Fibrecomm within twenty (20) Business days from the date of request, Fibrecomm shall reconsider the Access Request upon receipt of such additional information.

5.5.2 Non-refundable resource

5.5.2.1 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 processing fees and additional and non-routine processing fees) to be determined by reference to the costs incurred by Fibrecomm for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Facilities and Services for the purposes of interconnection.

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

5.5.2.5 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

Without limiting any other grounds that may be relied upon 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 ARD provided that Fibrecomm has sought the information from the Access Seeker under Section 5.5.1 of Fibrecomm's ARD and has not received that information within twenty(20) Business Days of making such a request;
- (c) Fibrecomm does not currently supply or provide access to the requested Facilities and/or Services to itself or to any third parties, 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) there are reasonable grounds in Fibrecomm's opinion to believe that the Access Seeker would fail, to make timely payment for the supply of the relevant Facility or Services
- (g) there are reasonable grounds in Fibrecomm's opinion to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities or Services;or
- (h) there are reasonable grounds for 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 Section 5.6.1(d), the Operators shall comply with Section 5.4.17 of the MSA Determination.

5.6.3 Determination of capacity constraints

For the purpose of determining capacity constraints in Section 5.6.1 (e), the Operators shall comply with Section 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 Section 5.6.1 (f) includes evidence that the Access Seeker is not in the reasonable opinion of Fibrecomm creditworthy.

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 Section 5.6.1 (g) include repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to Network Facilities or Network Services have been provided (whether or not by Fibrecomm).

5.6.6 Assessment of Creditworthiness

5.6.6.1 In determining the creditworthiness of the Access Seeker, Fibrecomm may have regard to, but is not limited to the matters referred to in **Section 5.2**.

5.6.6.2 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 Section 5.5.1 as the case may be;
- (b) provide grounds for rejection under Section 5.6.1 above to the Access Seeker;
- (c) provide basis for Fibrecomm's rejection of the Access Request; and
- (d) indicate a date and time, not later seven (7) Business Days from the date of the notice of rejection, at which representatives of Fibrecomm will be available to meet with representatives of the Access Seeker to discuss the rejection of the Access Request. At this meeting, the Access Seeker may request Fibrecomm to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in Section 5.6.1(e), Fibrecomm must identify when additional capacity is likely to be available.

5.7.2 Where the Operators are unable to resolve their differences following the meeting held pursuant to Section 5.7.1(d), 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 Section 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 Sections 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 Sections 5.1 and 5.3; and
 - (b) an Access Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with Section 150 of the Act.

5.9 Negotiations on Access Request

- 5.9.1 Pursuant to Section 5.8.2, where the Access Seeker wish to negotiate an Access Agreement, Fibrecomm shall set out in its response to the Access Seeker:
- (a) a date and time not later than fifteen (15) Business Days from the date of the Access Seeker's response, at which Fibrecomm's representatives will be available for the initial meeting with the representatives of the Access Seeker.
 - (b) One copy of the executed Confidentiality Agreement (in accordance with Section 5.1.1 (h)) that has also been properly executed by the Operators.

5.10 Fast Track Application Process

- 5.11.1 The fast track application process set out in this Section 5.10 shall be applicable to Domestic Network Transmission Services
- 5.11.2 For the purpose of clarification, where an Access Seeker requests for a Facility and/or Service that is not listed in Section 5.10.1 above in addition to a Fast Track Application Service, the fast track application process shall not be applicable and the Access Seeker shall be required to put in an Access Request for the requested Facility and/or Service in accordance with Sections 5.1 to 5.9.
- 5.11.3 An Access Seeker is eligible for the fast track application process if it fulfills the following criteria:
- (a) The Access Seeker is duly licensed to provide the Facilities or Services for which access is sought;
 - (b) the access requirements of the Access Seeker do not in Fibrecomm's view have a material impact on Fibrecomm's current level of network resources; and

- (c) the Access Seeker is willing to accept the terms and conditions for the requested Facility and/or Service as stipulated in model Access Agreement without negotiation.

5.11.5 Subject to Section 5.10.1, where an Access Seeker who is eligible for the fast track application process wishes to utilize the fast track application process, the Access Seeker shall:

- (a) forward to Fibrecomm a duly completed and signed Fast Track Service Order Form;
- (b) deposit a Fast Track Security;
- (c) pay a non-refundable processing fee to be determined by Fibrecomm for undertaking the necessary administrative work to process the fast track application; and
- (d) execute two (2) copies of the signed Access Agreement with suggested amendments to the technical matters (if any)..

5.10.5 Fibrecomm may reject the Access Seeker's fast track application for the reasons set out in Sections 5.6.1(c), (f) and (g).

5.10.6 Where Fibrecomm accepts the Access Seeker's Fast Track Service Order Form, Fibrecomm:

- (a) may impose a one-off resource charge for allocation of manpower and other resources in accordance with **Section 5.5.3**; and
- (b) shall within ten (10) Business Days of receipt of the Fast Track Service Order Form execute the Access Agreement.

5.10.7 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 Facility or Service until:

- (a) a Fast Track Security Sum has been provided in accordance with **Sections 5.9.3**; and
- (b) an Access Agreement has been executed between the Operators and the model Access Agreement is registered with the Commission in accordance with section 150 of the Act.

CHAPTER 6 - FORECAST, ORDERING AND PROVISIONING OBLIGATIONS

6.1 Forecast Obligations

6.1.1 General

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 relation to the following:-

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

6.1.2 Confirmation of Forecast

If Fibrecomm, acting reasonably will incur significant costs to ensure that access can be provided in accordance with a Forecast, 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 ARD and Section 6.2 will apply.

6.1.3 Alternative Procedure

Notwithstanding Section 6.1.1, Fibrecomm and an Access Seeker may agree to alternative Forecasting and Ordering procedure whereupon Fibrecomm and the Access Seeker will be bound by the terms of that alternative procedure and not this Section 6.1.

6.1.4 Non-binding

Subject to Section 6.1.2, Fibrecomm shall not require an Access Seeker:

- a) to provide Forecasts that are legally binding on the Access Seeker, subject to Section 6.1.14; or
- b) to provide information in its Forecast that identifies or would allow identification of Customers.

6.1.5 Forecast Request

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

- (a) the Facilities or Services or both 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 own planning and provisioning cycles and the Forecasting requirements which apply to

the Access Seeker' own business units in using the relevant Facilities or Services; and

- ii) shall be no longer than one year, unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services.
- (c) The intervals or units of time to be used in making the Forecast, which shall be no longer than (3) months unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services;
- (d) The Network area or operational area to which Forecast shall relate which area shall correspond to that which Fibrecomm uses for its own Network planning;
- (e) the frequency with which a Forecast shall be updated or further Forecast made, which shall not be more frequently than every 3 months unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services; and
- (f) Such other information that Fibrecomm reasonably requires in order to provide access to Facilities or Services requested by the Access Seeker.

6.1.6 Forecast Provision

Fibrecomm may only require an Access Seeker to provide Forecast in accordance with a Forecast Request:

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

6.1.7 Use of Forecast Information

Forecast 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 Fibrecomm whose role is within either:

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

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

6.1.8 Distribution of Forecast Information

Fibrecomm may only distribute Forecast Information of an Access Seeker outside the people necessary for the purpose referred to in section 6.1.7 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 in any manner.

6.1.9 Time for acceptance

Fibrecomm shall notify the Access Seeker: -

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

6.1.10 Reasons for rejection

Fibrecomm may only reject a Forecast where Fibrecomm reasonably believes that the Forecast is inaccurate, having regard to:

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

6.1.11 Time for Rejection

Fibrecomm shall give notice of any rejection to the Access Seeker:

- (a) within fifteen (15) Business Days of receipt of the relevant Forecast; and
- (b) Such notice of rejection must specify;
 - i) the grounds on which the Fibrecomm rejects the Forecast in accordance with subsection 6.1.10 at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Forecast; and
 - ii) an offer to meet within five (5) Business Days of the notice of rejection of the Forecast to discuss the reasons for rejection and alternative methods of compliance. The meeting shall take place between Fibrecomm and Access seeker if the offer is accepted by the Access Seeker (Rejection Notice).

6.1.12 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 regards the Forecast as being reasonable; or
- (b) to submit a new Forecast which the Access Seeker regards as meeting the Fibrecomm concerns.

6.1.13 Reconsideration by Fibrecomm

Fibrecomm shall reconsider any amended Forecast provided pursuant to subsection 6.1.9, subsection 6.1.10, subsection 6.1.11 and subsection 6.1.12 shall re-apply.

6.1.14 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 Access Seeker unless:

- (a) such costs and expenses were reasonably and necessarily incurred by Fibrecomm.
- (b) Fibrecomm reasonably seeks to mitigate its loss over a six month period (including through its own usage); and
- (c) Fibrecomm only recovers from the Access Seeker 75% of such costs and expenses which could not be mitigated under paragraph 6.1.14(b) above.

6.1.15 Meeting Forecast

Subject to subsection 6.1.9 to 6.1.11, Fibrecomm shall carry out network planning in order to enable the Forecast Requested to be met. If an Access Seeker has confirmed a forecast under subsection 6.1.2, it will be binding on the Access Seeker.

6.2 ORDERING AND PROVISIONING OBLIGATIONS

6.2.1 Contact Point

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

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 (Annexure 2). The following information shall be provided at a level of detail (sufficient for planning provisioning) for access to Facilities and Services:

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

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

6.2.4 Treatment of Order and Service Qualifications

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

6.2.5 Acknowledgement of Receipt

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

6.2.6 Notice of Receipt

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

- (a) the time and date of receipt

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

6.2.7 Further Information

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

6.2.8 Service Qualifications

Fibrecomm shall only conduct Service Qualifications if:

- (a) Fibrecomm reasonably require information from such Service Qualifications which is not readily available; and
- (b) Fibrecomm notifies the Access Seeker that such Service Qualifications are necessary within five (5) Business Days of receiving the Order Date, or, if further information has been requested under subsection 6.2.7 within five (5) Business Days of the expiry of the period in subsection 6.2.7, together with the reasons for such Service Qualifications.

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

6.2.9 Completion of Service Qualification

Fibrecomm shall:

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

6.2.10 Withdrawal of Order following Service Qualifications

Fibrecomm shall permit an Access Seeker to withdraw its Order without penalty within fourteen (14) days after receiving the result of a Service Qualification under subsection 6.2.9.

6.2.11 Acceptance Obligation

Fibrecomm shall use its reasonable efforts to accept and fulfill Orders from the Access Seeker for Facilities and Services which comply with a Forecast accepted by Fibrecomm pursuant to subsection 6.1.9(b).

6.2.12 Time for acceptance/rejection

Fibrecomm must notify the Access Seeker within fourteen (14) days of receiving an Order that the Order is accepted or rejected, save where Fibrecomm undertakes a Service Qualification as contemplated in subsection 6.2.8 in which case the time periods in subsection 6.2.9 are to be added to this fourteen (14) days period. If Fibrecomm notifies the Access Seeker that an Order is rejected, Fibrecomm must advise the Access seeker if it would be able to accept the Order in a modified form.

6.2.13 Notice of acceptance

Fibrecomm notice of acceptance to the Access Seeker must contain the following information:

- (a) the delivery date which must be the date is requested by the Access Seeker or if the date cannot be met by Fibrecomm shall be no later than indicate delivery timeframes set out in subsection 6.2.14;
- (b) the charges applicable to fulfillment of the Order;
- (c) such information as is reasonably necessary for the Access Seeker to benefit from access to the network services and network facilities; and
- (d) a validity period of the acceptance of the Order which shall be no less than 90 days after acceptance.

6.2.14 Indicative delivery times

For the purposes of Section 6.2.13 (a) the following are the indicative delivery timeframes for the following aspects of a Facilities and Services:

Order Type	Indicative Delivery Timeframes
All Orders involving the provision of new Facilities and infrastructure relevant to the Services that are the subjects of the Order.	8 months
All Order involving augmentation of capacity on existing facilities and infrastructure relevant to the Services that are the subject of the Order	60 days

- (a) The indicative delivery timeframes specified in Section 6.2.14 shall commence from the date the Access Seeker confirms an Order in accordance with Section 6.2.15.
- (b) Where a delay in the delivery of an Order is caused by Access Seeker, the delivery date specified in the confirmed Order or indicative delivery time set out above shall be extended for a further period as may be reasonably necessary by the Fibrecomm.

6.2.15 Access Seeker Confirmation

Fibrecomm shall permit an Access Seeker to confirm its agreement to proceed with the Order within the validity period of Fibrecomm acceptance of such Order (as described in paragraph 6.2.13 (d)). Upon such confirmation, Fibrecomm shall fulfill the Order in accordance with the notice of acceptance provided under subsection 6.2.13.

6.2.16 Estimated Charges

If the notice of acceptance provided by Fibrecomm under subsection 6.2.13 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 exceeds the original estimate by more than 10% of the original estimate within fourteen (14) days of the notice given by Fibrecomm under subsection 6.2.16(a).
- (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 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.
- (d) Fibrecomm shall commence work after the Access Seeker confirms it is agreeable to the estimate or revised estimate, such confirmation to be provided by the Access Seeker within fourteen (14) days from the notice given by Fibrecomm under subsection 6.2.16 (a).

6.2.17 Reasons for rejection

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

- (a) it is not technically feasible to provide access to the Facilities or Services requested by the Access Seeker;
- (b) Fibrecomm has insufficient capacity to provide the requested Facilities or Services;

- (c) Subject to Section 6.2.19, the Order is in excess of agreed Forecast levels;
- (d) The Order or variation request duplicates an Order awaiting fulfillment;
- (e) An Access Seeker has not obtained necessary related agreements from Fibrecomm (e.g. Facilities access for a new Point of Interface);
- (f) There are reasonable grounds to believe that the Access seeker would fail, to a material extent, to comply with the terms and conditions of the Access Agreement; or
- (g) There are grounds to believe that the Access Seeker would fail, in connection with the supply of the Facilities or Services to protect the integrity of a Network, or the safety of individuals working on, or using services supplied by means of a Network or Equipment.

6.2.18 Notice of rejection

Fibrecomm notice of rejection 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

Notwithstanding paragraph 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 or Services or both which are in excess of the relevant Forecast.

Fibrecomm is only required to do so if the meeting the Forecasts requirement of other Operators and of its own business units, 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 the Access seeker, other Operators and its own business units.

Fibrecomm is not required to supply Facilities and Services or both in excess of Forecast if, despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of Forecast Services provided to other Operators or its own business-or both.

6.2.20 Required extra capacity

Fibrecomm may require an Access Seeker to procure such additional capacity on the Access Seeker's side of the Network as Fibrecomm, in good faith and reasonably estimates, may be required by the Access Seeker to meet demand.

Where the Access seeker fails to so procure additional capacity and the demand exceeds the capacity on the Access Seeker's Network, Fibrecomm must notify the Access seeker in writing and the Access seeker and Fibrecomm must meet (

no later than 5 Business days after receipt of the notice from Fibrecomm) to attempt to identify alternative sources of capacity.

If the matter cannot be resolved within 10 Business Days of the date of that meeting, Fibrecomm may bar or block calls to the Access seeker's network to extent necessary to minimize congestion within the Fibrecomm's Network.

6.2.21 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.

6.2.22 Delivery dates

Fibrecomm shall deliver the ordered access to Facilities or Services by the date specified in the notice of acceptance (as provided under subsection 6.2.13)

6.2.23 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 or Services or both at earlier delivery date.

6.2.24 Delayed delivery dates

Fibrecomm shall:

- (a) notify an Access Seeker of the delay to a delivery date and the revised delivery date, together with the reasons for the delay, as soon as practicable after Fibrecomm becomes aware of the possible delay;
- (b) permit the Access Seeker notified under paragraph 6.2.24 (a) above to cancel the Order without penalty if the delay is longer than fourteen (14) days; and
- (c) provide the Access Seeker with a remedy in accordance with subsection 6.2.33.

6.2.25 Cancellation and variation of Orders

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

6.2.26 Cancellation penalty

Except where this ARD provides that cancellation is to be at no penalty, Fibrecomm shall only charge an Access seeker which has cancelled or varied an Order no more than the costs necessarily incurred by Fibrecomm in relation to the cancelled or varied Order, reduced by the level at which those costs have been or would have been (had Fibrecomm used its best endeavours to do so), mitigated over a six (6) month period after the date of cancellation or variation.

6.2.27 Testing and provisioning

Fibrecomm shall:

- (a) co-operate with the Access Seeker in relation to the testing and provisioning of ordered Facilities or Services or both; and
- (b) treat an Access Seeker's testing and provisioning on an equivalent basis to that which Fibrecomm treats itself.

6.2.28 Resource charge

Fibrecomm may 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 the Access seeker to test and provide a new Facilities and Services for purposes of interconnection.

6.2.29 Queuing policy

Fibrecomm shall establish and demonstrate and maintain a queuing policy system which:

- (a) shall be non-discriminatory
- (b) shall treat the Order of Access Seeker on an equivalent basis to that which Fibrecomm treats its own Orders for similar Services; and
- (c) shall seek to maximize the efficiency of its Ordering and provisioning process.

6.2.30 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 their acceptance on Fibrecomm queue.

6.2.31 Constrained capacity

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

- (a) the Access seeker pursuant to the relevant Forecast;
- (b) other Access Seeker, pursuant to their relevant Forecasts; and
- (c) Fibrecomm for its own purposes

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

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

6.2.32 Capacity Allocation Policy

If Fibrecomm claims or likely to claim that it has insufficient capacity to meet an Access Seeker's Forecast or Order, Fibrecomm shall maintain a Capacity Allocation Policy which:

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

6.2.33 Late delivery

If Fibrecomm fails to meet any timeframe in subsection 6.2.14 with respect to the delivery of access to Facilities or services pursuant to an Order made in accordance with subsection 6.2 except where such failure has been caused solely by the Access seeker's delay, that Fibrecomm shall without limitation to any other rights the Access seeker may have under subsection 6.2 or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring charges payable for access to the Facilities or services over a period equal to the period of Fibrecomm delay.

CHAPTER 7 - BILLING AND SETTLEMENT OBLIGATIONS

7.1 BILLING

7.1.1 General Principle

Unless otherwise agreed Fibrecomm will invoice Charges in advance based on each Billing Period. Each Invoice will be issued 30 days before the commencement of each Billing Period. Charges shall be payable from the date the Facilities and/or Services are provided.

7.1.2 Billing Information

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

7.1.3 Billing Error

If an Access Seeker discovers an error in an invoice, it must notify Fibrecomm. If Fibrecomm made such error, it shall make the necessary adjustment to correct that error in the next Invoice.

7.1.4 Currency

Unless otherwise agreed, 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 Services provided to the Access Seeker, in monthly tranches.

7.2 SETTLEMENT

7.2.1 Payment Period

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.

7.2.2 Method of Payment

The Access Seeker must pay an Invoice by electronic funds transfer or exceptionally, by bank cheque to the nominated accounts of Fibrecomm if agreed by Fibrecomm

7.2.3 Billing Disputes

In the event the Access Seeker wishes to dispute an Invoice, the Access Seeker shall notify Fibrecomm in writing within fourteen (14) days after the date of receipt of such Invoice, otherwise, the Access Seeker shall be deemed to have accepted the Invoice and the Charges there under shall be payable in accordance with Section 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.

7.2.4 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.

7.2.5 Billing Dispute Resolution

Fibrecomm and Access Seeker must use their reasonable endeavors to promptly resolve any dispute notified under Section 7.2.3 herein and where relevant the parties must comply with the Dispute and Resolution Procedures in Annexure A of the MSA Determination which are applicable to the billing disputes.

7.2.6 Late Payment Charges

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 date, in accordance to Section 7.2.1 above.

7.3 Security Sum

7.3.1 The Access Seeker shall have deposited or procured the deposit of the Security Sum or Fast Track Security Sum as security for the performance of all the Access Seeker's obligations under the Access Agreement. For the purpose of clarification, the Security Sum or the Fast Track Security Sum does not relieve the Access Seeker from its obligations to pay amounts to Fibrecomm as they become due and payable, nor does it constitute a waiver of Fibrecomm's right to suspend, disconnect, or terminate the relevant Facilities and/or Services due to non-payment of any sums due or payable to Fibrecomm.

7.3.2 (a) Fibrecomm shall be entitled, from time to time, to revise the Security Sum and Fast Track Security Sum in any of the following event:-

- (i) where, in the reasonable opinion of Fibrecomm, the amount of the Security Sum and Fast Track Security Sum is less than the Minimum

Value calculated over a ninety (90) day period determined by Fibrecomm;

- (ii) where, in the opinion of Fibrecomm, there is a material change in circumstances in relation to the Access Seeker's creditworthiness. In such cases, Fibrecomm may request for additional security in addition to the Minimum value to sufficiently and reasonably mitigate its risk in providing the relevant Facilities and/or Services to the Access Seeker. For clarification, material change in circumstances includes, but is not limited to, failure to pay on the due date in respect of three (3) Invoices rendered in the preceding six (6) months, so long as those amounts have not been disputed in good faith; and/or
 - (iii) upon the provisioning of new or additional Facilities and/or Services to the Access Seeker, to ensure that the Security Sum or Fast Track Security Sum is equivalent to the Minimum Value after taking into consideration the estimated value of new or additional Facilities or Services provided or to be provided over a ninety (90) day period.
- (b) Where the Security Sum or Fast Track Security Sum is, at any time, less than the Minimum Value (including when a demand has been made by Fibrecomm) calculated over a ninety (90) day period determined by Fibrecomm, the Access Seeker shall within thirty (30) days from the written request of Fibrecomm, deposit a new security equivalent to the Minimum Value.
 - (c) Where the Access Seeker deposits cash, such monies shall be deposited in a separate interest bearing account ("**said accounts**") and any interest accrued thereon be held by Fibrecomm in addition to the original sum placed as the Security Sum or the Fast Track Security Sum. Fibrecomm shall forward to the Access Seeker a statement of the said accounts annually.

7.3.3 (a) The Security Sum or Fast Track Security Sum deposited by the Access Seeker with Fibrecomm and any interest thereon, shall only be used for the purposes set out in **Section 7.3.1**. Fibrecomm may at its discretion call upon or deduct the Security Sum or Fast Track 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 or Fast Track Security Sum shall not be construed as a set-off or counterclaim.

- (b) Without prejudice to Fibrecomm's rights under the Access Agreement and/or under law, upon termination of the Access Agreement:
 - (i) the Security Sum or Fast Track Security Sum deposited with Fibrecomm or parts thereof together with the interest thereon, (if any) shall be returned and/or refunded to the Access Seeker within sixty (60) days from the date of termination provided that all other amounts payable by the Access Seeker to Fibrecomm have been paid; and
 - (ii) Fibrecomm shall immediately in writing unconditionally waive its rights under any guarantee provided as Security Sum or Fast Track 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 gGuarantee 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.

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;
 - (iv) network routes (including which party is responsible for provisioning Interconnect Link); and
 - (v) handover arrangements and relevant Points of Interface.

8.2 POINT OF INTERFACE PROCEDURES

8.2.1 Interconnection

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

8.2.2 Point of Interface locations

Subject to subsection 8.2.3, Fibrecomm shall publish on its website and keep updated a list of the general locations:

- (a) at which physical co-location is available;
- (b) in respect of which virtual co-location is available; and
- (c) in respect of which in-span interconnection is available on and from the date of publication for the following 12 months.

8.2.3 Virtual and in-span interconnection

Each Operator shall offer virtual 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, an Access Provider shall take reasonable steps to optimise its usage of the space, including through the upgrading of Facilities. If the Access Provider has used its best efforts to accommodate all Access Seekers and it is not physically possible for any further Access Seekers to be accommodated, the Access Provider shall be excused from providing physical interconnection at such location.

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. Fibrecomm shall promptly accept or reject a request by an Access Seeker under this Section, and provide the Access Seeker with reasons if it rejects 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 Section 8.2.2, or when determining a request under Section 8.2.5, each Access Provider shall have regard to the following:

- (a) Fibrecomm shall offer interconnection and co-location at any other technically feasible point;
- (b) Fibrecomm may offer more than one form of interconnection in relation to a particular location (e.g. physical interconnection and virtual interconnection);
- (c) 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 2 years) and the needs of other Access Seekers who are currently occupying or have Ordered additional space from Fibrecomm; and
- (d) any possible re-arrangement of its Equipment configuration 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 as a result of a third party landlord's notice (under an arm's length tenancy agreement), Fibrecomm shall provide no less than:

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

Where Fibrecomm is required to vacate the site where a Point of Interface is located as a result of a third party landlord's notice (under an arm's length tenancy agreement), Fibrecomm shall provide all relevant Access Seekers with as much notice as possible in relation to the matters in Sections 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 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 another Facilities or Services and shall provide to the Access Seeker access to an alternative Facilities or Services on terms and conditions and at a recurring charge which are not disadvantageous to the Access Seeker, relative to the terms and conditions and recurring charge applying in respect of the Facilities or Services that is proposed to be decommissioned, for a period not less than 3 years from the date of decommissioning.

8.3.4 Decommissioned Facilities/Service compensation

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

- (a) moving the Access Seeker's Equipment from the decommissioned Facilities to the alternative Facilities offered in accordance with Section 8.3.3; or

- (b) re-arranging Equipment to connect to the alternative network services offered in accordance with Section 8.3.3.

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 which necessitates a change in the hardware or software (including interface software) of the other Party's Network in Order to ensure the continued proper operation and compatibility of the Parties' respective Networks, services and procedures.

8.4.2 Types of changes

The following kinds of proposed Network Changes maybe within the scope of Section 8.4.1:

- (a) any change by the Party proposing to make the change (Notifying Party) to any technical specification of the interconnection interface between their respective Networks (Interface Change);
- (b) any change by the Notifying Party to any technical specification or characteristic of the Facilities or Services to which the other Party (Recipient Party) has access which will or might affect:
 - (i) the Recipient Party's Network;
 - (ii) the Recipient Party's use of the Facilities or Services provided by the Notifying Party (Service Change);
- (c) any change by the Notifying Party to any technical specification or characteristic of that Notifying Party's Network which will or might affect the Recipient Party's Network (Network Change);
- (d) any change by the Notifying Party to 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 Party of the features, functions or capabilities of the Facilities or Services to which the Recipient Party has access, which enhancement the Notifying Party proposes to make available either:
 - (i) to itself; or
 - (ii) to any other Operator (Functionality Change),(collectively referred to as Relevant Changes).

8.4.3 Notification of change

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

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

Relevant Change:	Notice Period
Interface Change	3 months
Network Change	3 months
Service Change	3 months
OSS Change	3 months
Functionality Change	3 months

8.4.4 Post-notification procedures

The Notifying Party shall:

- (a) meet with representatives of the Recipient Party on the date set out in the Change Notice or as soon as practicable thereafter (but no later than the notice period set out in the table in Section 8.4.3), for the purpose of discussing the Relevant Change and any changes that may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant Changes;
- (b) provide any additional information reasonably requested by the Recipient Party no later than 10 Business Days after the Recipient Party's request for such additional information; and
- (c) take reasonable account of concerns raised and proposals made by the Recipient Party to minimise any adverse impact of the Relevant Changes on the Recipient Party and revise the Change Notice accordingly.

8.4.5 Testing

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

- (a) co-operate with a Recipient Party in relation to the development of procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Parties' respective Networks;
- (b) jointly carry out testing with the Recipient Party no less than 20 Business Days before the Notifying Party proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under Section 8.4.5(a).

8.4.6 Testing failure

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

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

8.5 NETWORK FACILITIES ACCESS AND CO-LOCATION

8.5.1 Scope

This subsection 8.5 applies where co-location or access is to be provided to or at the Facilities under this Fibrecomm's ARD.

8.5.2 Inspection

Fibrecomm shall allow nominated employees or contractors of a potential Access Seeker to physically inspect the Facilities of Fibrecomm during normal business hours provided that:

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

8.5.3 Physical access

(a) Fibrecomm shall allow an Access Seeker, its employees and contractors to physically access its Facilities and have physical control over the Access Seeker's Equipment located at such Facilities, twenty-four (24) hours a day,

seven (7) days a week. subject to the terms and conditions of any tenancy agreement provided always, the Fibrecomm is given five (5) Business Days prior written notice.

- (b) Where access to the Fibrecomm network facilities/premises is required for emergency maintenance and repairs, the Access Seeker shall provide Fibrecomm with a verbal notice on the day access is required and a facsimile confirmation within twenty four (24) hours.
- (c) Notwithstanding Condition 8.5.3(a) and 8.5.3(b) above, access to Fibrecomm network facilities/premises shall at all times be subject to the terms and conditions of the respective tenancy agreement which shall be made known to the Access Seeker by Fibrecomm at the time of fulfillment of an Order.

8.5.4 Escorts

If Fibrecomm determines that it is necessary to have an escort present when employees or contractors wish to enter onto Fibrecomm's property, Fibrecomm shall:

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

8.5.5 Absence of escort

For the purposes of subsection 8.5.4, if an escort does not arrive at Fibrecomm property within 30 minutes of the scheduled commencement of the visit by the Access Seeker, the Access Seeker's staff may proceed to enter Fibrecomm's property without an escort subject always to security requirements of Fibrecomm's and the terms and conditions of any tenancy agreement.

If the tenancy agreement requires that the Access Seeker be escorted by Fibrecomm in order to gain physical access to the Fibrecomm network facility, Fibrecomm shall escort the Access Seeker.

8.5.6 Site register

The Access Seeker must establish and maintain a register of all persons who visit Fibrecomm's property, which must be made available for inspection by Fibrecomm, upon request.

If the Access Seeker does not maintain or properly maintain a site register, Fibrecomm may prohibit any representatives of the Access Seeker from entering the premises.

8.5.7 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 2 years) and the needs of other Access Seekers who are currently occupying or have ordered space from Fibrecomm.

8.5.8 Allocation of space

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

8.5.9 Re-configuration

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 or endeavouring to transfer the Equipment to an alternative location.

8.5.10 Advice to the Commission

Fibrecomm shall notify the Commission every twelve (12) months of its space requirements over a three (3) year period from the date of notification, together with a reconciliation of its reservation over the previous twelve (12) months with its actual space needs.

8.5.11 Preparatory work by the Access Seeker

If preparatory work is necessary for the purposes of allowing the Access Seeker to obtain access to or co-locate at or on Fibrecomm's Facilities, Fibrecomm shall permit the Access Seeker's employees or contractors to perform such preparatory work if the Access Seeker satisfies Fibrecomm (acting reasonably and in accordance with the guidelines referred to below) that such employees or contractors have the necessary qualifications. Fibrecomm shall publish and make available a policy about the necessary qualifications of employees and contractors who will be permitted to perform preparatory work under this subsection 8.5.11, such policy to be non-discriminatory in its application to Fibrecomm and the Access Seeker personnel who perform similar functions.

If the Operators agree that Fibrecomm shall carry out the Preparatory Work on behalf of the Access Seeker, then Fibrecomm shall undertake the Preparatory Work and the Access Seeker shall furnish all necessary and sufficient co-operation to Fibrecomm to complete the Preparatory Work. The Access Seeker agrees to pay Fibrecomm for undertaking the Preparatory Work.

8.5.12 Preparatory work by Fibrecomm

If Fibrecomm agrees to perform preparatory work and does so on the basis of an estimated charge (e.g. based on a time and materials basis):

- (a) Fibrecomm shall not exceed the estimate without providing the Access Seeker with prior written notice that:

- i. the estimate will likely be exceeded; and
 - ii. a further estimate of the charges for the work necessary to complete the preparatory work;
- (b) Fibrecomm shall permit the Access Seeker to withdraw the request for preparatory work without penalty if the revised estimate exceeds the original estimate by more than 10% of the original estimate within fourteen (14) days of the notice given by Fibrecomm under Condition 8.5.12(a). If the Access Seeker fails to withdraw the request within the said time period, the Access Seeker is deemed to have accepted the revised estimate charges.
- (c) Notwithstanding Condition 8.5.12, where the actual cost incurred by Fibrecomm exceeds an estimate or revised estimate for a specific scope of works provided by Fibrecomm due to information or facts which are inaccurate or erroneous, or which were not disclosed or provided by the Access Seeker, or due to a change in the scope of work by the Access Seeker, the Access Seeker shall be obliged to pay Fibrecomm for the actual cost incurred.

8.5.13 Delays

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

- (a) notify the relevant Access Seeker of the delay to a delivery date, together with the reasons for the delay, as soon as practicable after Fibrecomm becomes aware of the possible delay;
- (b) permit the Access Seeker notified under paragraph 8.5.13(a) to cancel the preparatory work without penalty if the delay is longer than fourteen (14) days; and
- (c) compensate the Access Seeker for the costs it has incurred as a result of delay, subject to the Access Seeker using reasonable endeavours to mitigate those costs.

8.5.14 Utilities and ancillary services

If Fibrecomm has permitted access or physical co-location at a particular location or Facilities Fibrecomm must, where the relevant utilities and ancillary services are within Fibrecomm's control, ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access or co-location, including but not limited to:

- (a) access to roads;
- (b) access to land;
- (c) power, including the provision of back up power;

- (d) environmental services (including but not limited to heat, light, ventilation and air-conditioning, fire protection);
- (e) security, taking care to ensure that its agents, representatives or subcontractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft; and
- (f) site maintenance.

8.5.15 Equipment allowance

Subject to any restrictions under any tenancy agreement and/or terms and condition agreed by the Operators, Fibrecomm shall permit an Access Seeker to locate Equipment on or at Fibrecomm's Facilities which is necessary for the purposes of obtaining the benefit of access to the Facilities and Services provided, including but not limited to multi-functional Equipment which may also be used for purposes other than those specified in this subsection 8.5.15.

8.5.16 Marking

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

8.5.17 Maintenance

Fibrecomm shall permit, and do all things reasonably necessary to allow an Access Seeker to maintain its Equipment at or on the Facilities to which access has been granted. This may include, for example, the provision of physical access. For the purposes of this subsection 8.5.17 and subject to any restrictions under any tenancy agreement, an Access Seeker shall be permitted to maintain its Equipment at or on the network facilities if Fibrecomm allows external contractors or other third parties to maintain similar Equipment on the Facilities.

8.5.18 Extensions

Fibrecomm shall reasonably permit the Access Seeker, at the Access Seeker's cost, to extend Facilities of Fibrecomm as may reasonably be required to meet the Access Seeker's requirements in the circumstances and to the extent technically feasible.

Prior to any extension works being carried out, the Access Seeker shall submit a written proposal to Fibrecomm detailing the works to be carried out and the impact of such works on Fibrecomm's network.

8.5.19 Cost

The utility costs in respect of the Facilities as contemplated in this subsection 8.5.19 shall be apportioned (in accordance with fair and equitable principles) against the utility and ancillary costs charged to other Access Seekers at the relevant location.

8.5.20 Conditional supply

Fibrecomm shall not require an Access Seeker to acquire other Facilities and Services from Fibrecomm as a condition of providing access to Facilities or Services under Fibrecomm's ARD. For example, Fibrecomm shall not make

access to network facilities conditional on the acquisition of network services (such as transmission services) or any other service (e.g. a maintenance service).

8.6 Operations And Maintenance Obligations

8.6.1 Operations & maintenance responsibility

Each Operator shall be responsible for the operations and maintenance of its own Facilities and Services.

8.6.2 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 services (inter alia), to report faults relating to any Network or support system.

8.6.3 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.

8.6.4 Non-discriminatory fault reporting and identification

An Operator shall perform fault reporting and identification on a non-discriminatory basis.

8.6.5 Cross-referrals

If a Customer reports a fault to an Operator:

- (a) when the Customer is directly connected to another Operator; or
- (b) which clearly relates to a Network or support system of another Operator that Operator shall promptly inform the other Operator of the reported fault, or refer that Customer to the other Operator's fault reporting service.

8.6.6 Network fault responsibility

The Operator in whose Network the fault occurs is responsible for rectifying it and restoring services.

8.6.7 Transmission service faults

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

8.6.8 Major inter-working faults

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

8.6.9 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 restore service and to further identify and rectify the fault; and
- (c) the outcome of those actions.

8.6.10 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.

8.6.11 Fault priority

Each Operator shall give priority to faults which have:

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

8.6.12 Fault rectification

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

In undertaking service restoration, the Operators shall have regard to matters including the following:-

- (a) service restoration shall take priority over Equipment repair;
- (b) available standby capacity shall be automatically brought it and/or undertaking network management actions shall be undertaken to restore service;
- (c) performing testing to determine the nature and location of the fault in cooperation with the distant end as necessary;
- (d) immediate rectification of an identified fault, if possible;
- (e) where the source of a fault cannot be quickly identified and rectified, the Operator who has identified the fault shall notify the other Operator of the

problem and keep that other Operator informed of progress in relation to the identification and rectification of the fault;

- (f) where the source of a fault has been identified by an Operator but immediate rectification is not feasible, the Operator responsible for rectification shall immediately notify the other Operator of the estimated fault rectification time (based on the Operator rectifying the fault using its best endeavours in view of the nature of the fault and its effect on services);
- (g) where an Operator has rectified a fault on a temporary basis, that Operator shall inform the other Operator of this fact and provide the timeline required for permanent rectification; and
- (h) faults unresolved within stipulated target times shall be discussed at regular operation and maintenance meetings;

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

8.6.13 Target times

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

Priority Level	Fault Types (examples)	Response Time	Restoration Time
Level 1 (Minor)	1. Air condition failure that causes the Equipment to run in abnormal temperature.	Within 2 hours	24 hours
Level 2 (Major)	1. Network fault at one route or path. 2. Fault due to intermittent or flapping network event. 3. Power supply (AC-TNB & DC-Rectifier) failure but Equipment still running on battery.	Within 2 hours	12 hours
Level 3 (Critical)	1. Fault due to no protection route (1+0) 2. Fault due to total network failure. 3. Fault due to third party network failure. 4. Single point of failure such as one system or one interconnection point. 5. Power supply (AC&DC) failure resulting in Equipment failure. 6. Instable power supply that caused Equipment failure.	Within 2 hours	4 hours

Explanatory Notes to Section 8.5.13:

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

8.6.14 Planned maintenance

If an Operator (Maintenance Operator) intends to undertake planned maintenance which may affect an Access Seeker’s Network, the Maintenance Operator shall:

- (a) provide at least 10 Business Days notice of the planned maintenance;
- (b) use its reasonable endeavours to minimise any disruption to the carriage of communications which cross or are to cross both Operators’ Networks, and which are caused by the maintenance or rerouting; and
- (c) where practicable and agreed by the Operators, provide alternative outing or carriage at no additional cost to the Access Seeker.
- (d) in the event that both Operators are involved in the planned maintenance activities, interconnect testing must be carried out by both Operators on completion of the planned maintenance activity to ensure no inter-working problems arise. If only one Operator is involved in the planned maintenance activities, then only that Operator is required to perform the interconnect testing and such testing shall be determined on a case by case basis; and
- (e) if the planned maintenance is not restored to full service within the expected duration, the additional maintenance time shall be regarded as an unplanned outage occasioned by a planned outage and the procedure for dealing with unplanned outages applies. The Operator responsible for the outage shall inform the other Operator of the cause of the unplanned outage.

8.6.15 Planned maintenance windows.

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

8.6.16 Emergency maintenance

If an Operator (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 which cross or are to cross both Operator's Networks, and which are caused by the maintenance or rerouting; and
- (c) where practicable and agreed by the Operators, provide alternative routing or carriage at no additional cost to the other Operator.

8.6.17 Hours of fault reporting and rectification

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

8.6.18 Complaints Handling

The Operators shall report all interconnection outages that relate to Facilities and/or Services to the respective Fault Reporting Centre.

8.6.19 Routine Testing

The Operators shall conduct interconnection service tests at agreed half yearly 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.

8.7 TECHNICAL OBLIGATIONS

8.7.1 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 ARD.

8.7.2 Prevention of technical harm

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

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

8.7.3 Technical Standards

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

8.7.4 No Interference

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

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

8.7.5 Notice of interference and rectification

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

- (a) the other Operator shall rectify the situation so that no interference is caused within 24 hours of receiving notice from the Notifying Operator; or
- (b) if the other Operator is not able to locate the source of the interference within 24 hours under Section 8.7.5(a), the other Operator shall promptly notify the Notifying Operator, and both Operators shall meet within 24 hours of such notice and jointly examine each other's network facilities, network services or Equipment to locate the source of the interference.

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 3 years from the execution date of the said Access Agreement.

9.2 Term of Supply

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

Services	Minimum term
Domestic Network Transmission Services	12 months
Co-location Services	12 months

9.3 Termination

Subject to Section 9.6, Fibrecomm may terminate an Access Agreement or part thereof if any of the circumstances referred to in Section 9.3(a), 9.3(b) or 9.5(c) below apply and Fibrecomm has notified the Access Seeker of its intention to terminate the Access Agreement:-

- (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 30 days if the Access Seeker does not remedy its breach by the end of that period; or
- (b) the Access Seeker is subject to a winding up order; or
- (c) a Force Majeure has continued for a period of more than 90 days.

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.

9.4 Change In Law

Where the continued operation of the Access Agreement or access to any 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 5 Business Days of becoming aware of the relevant change in law to review whether access to the relevant Facilities and/or Services may be provided by Fibrecomm on different terms and conditions (which are acceptable to the Access Seeker). If the Operators cannot agree to the provision of access on different terms and conditions, Fibrecomm may terminate the provision of access to the relevant Facilities and/or Services.

9.5 Suspension

Subject to Section 9.6, Fibrecomm may only suspend access to any Facilities and/or Services in the following circumstances:

- (a) the Access Seeker is in breach of a material obligation and fails to remedy such breach within 30 days (or 7 days for breach of payment obligations) of receiving written notice from Fibrecomm to remedy such breach;
- (b) the Access Seeker's Facilities materially adversely affect the normal operation of Fibrecomm's Network or are a material threat to any person's safety;
- (c) the Access Seeker's Facilities or the supply of Facilities and/or Services pose an imminent threat to life or property of Fibrecomm, its employees or contractors;
- (d) the Access Seeker's Facilities cause material physical or technical harm to any Facilities of Fibrecomm or any other person;
- (e) where the Access Seeker has failed to pay Invoices in accordance with Section 7 of this ARD;
- (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 5 Business Days notice in writing, including written reasons, prior to suspending access to any Facilities and/or Services.

9.7 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 Section 9.1 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 Section 9.7, Fibrecomm shall:

- (a) within 60 days of termination of the Access Agreement refund to the Access Seeker any deposit paid (without interest) 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 Interconnect Steering Group (“ISG”)

9.12.1 Establishment of the ISG

The Operators will establish a body to be known as the “Interconnect Steering Group” or “ISG” which will be responsible for coordinating the activities of the Operators, the operation of the Access Agreement and any matter specifically referred to the ISG under this ARD. The ISG may establish such working groups as it thinks fit to report to it on particular issues.

9.12.2 Representation

Fibrecomm and the Access Seeker will be equally represented on the ISG and such representatives shall fully represent and shall be authorized to bind the Parties with regard to decisions made by the ISG.

9.12.3 Timing

The ISG shall be established within 14 days from the Commencement Date and thereafter shall meet within 14 days from the date of written request by either Party.

9.13 Force Majeure

- 9.13.1** 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.

9.13.2 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 1 month from the date of the Affected Party's written notification under Section 9.13.1, 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.

9.14 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.

9.15 Costs and expenses

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

9.16 Governing Law

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

9.17 Assignment

Neither party shall be entitled to assign, transfer or novate any of its rights, obligations or liabilities without the prior written consent of the other party.

CHAPTER 10- CHARGES AND CHARGING PRINCIPLES

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. Charges for Transmission Services in relation to Domestic Network Transmission Services shall only be applicable until the Sunset Date, after which period, Fibrecomm shall review the Charges in accordance with the variation on Mandatory Standard on Access Pricing issued by the Commission.

10.2 Type Of Charges

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

Type of Services	Type of Charges	Details	Billing Period
Domestic Network Transmission Service	Recurring Charge (RM/circuit/annum or quarter or month)	1. Rental of Bandwidth	Monthly/ Quarterly/ Yearly
Charging for Private Leased Circuit based on Bandwidth Speed of: 1. E1 2. E3 3. DS3 4. STM-1	One-Time Charge (RM/one time/ circuit)	1. Installation Charge	Before Ready for Service Date
Charging for Ethernet Private Line Service based on Bandwidth Speed of per Mbps and type of Ethernet ports.	Recurring Charge (RM/Mbps/annum or quarter or month)	1. Rental of Bandwidth (per Mbps)	Monthly/ Quarterly/ Yearly
	Recurring Charge (RM/port/annum or quarter or month)	2. Rental of Ethernet Port	Monthly/ Quarterly/ Yearly
	One-Time Charge (RM/one time)	1. Installation charge	Before Handover Date and/or before Access seeker commence work at site
Network Co-Location Service: Charging for Co-location Space based on space of: 1. Rack Space – minimum of 3U, 24U and 42U (per rack space) 2. Floor Space - Charge per square foot	Recurring Charge a) Rack Space Charges- (RM/rack space /annum or quarter or month) b) Floor Space Charges (RM/sq. ft/annum or quarter or month)	1.Rental	Monthly/ Quarterly/ Yearly

	One-Time Charge (RM/one time)	1. Installation charge	Before Handover Date and/or before Access seeker commence work at site
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10.2.2 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 ARD.

10.2.3 In relation to rental Charges, Access Seeker shall also be liable to pay any government taxes (including sales tax) relevant to the Service provided it is legally required to be paid by the Access Seeker. Where applicable such taxes shall be added to the invoice and shall be paid to Fibrecomm at the same time as the relevant invoice is settled in accordance with Chapter 7 of Fibrecomm's ARD.

10.2.4 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, which ever is relevant.

10.3 Charging Principle on Rental

10.3.1 The rental Charges for the Facilities and/or Services are charged according to the link from end-to-end of the Facilities or Services.

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

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

10.3.3 The rental Charges for Network Co-Location Service are charged according to the type of Network Location Service provided to Access Seeker.

The rental rate shall be based on the following factors:

- (a) Size of the shared space;
- (b) Type of utilities requirement at the shared space

10.4 Charging Principle on One- Time Charges

One-Time charges are installation charges, interconnect charges and supervision charges which may be charged to the Access Seeker in relation to the Service provided to the Access Seeker and such charges may vary from case to case depending on the extent and complexity of the work involved for the installation, interconnection or supervision work related thereto.

Supervision charges are charged according to the number of times that supervision work is required of Fibrecomm or its contractor or agent on the works to be conducted by the Access Seeker at the site of the Shared Space.

10.5 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.

10.6. Cancellation Charges

If Access Seeker cancels a confirmed order for a Service, Access Seeker shall be liable to pay Fibrecomm cancellation charges in accordance with the terms and conditions of Fibrecomm's ARD.

ANNEXURE I-SERVICE ORDER FORM

1- Domestic Network Transmission Service

SERVICE ORDER FORM



INSTRUCTIONS: 1. Please double click the shaded fields to fill out, delete or amend details. SOF No:
 2. Please fill out ALL shaded fields.

1 - CUSTOMER INFORMATION

Date:

Company Name:

Correspondence Address:

Postal Code: City/State:

Contact Person Details:
 Title: Mr. Mrs. Miss Name:

Telephone Number: Mobile Number: Fax Number:

E-mail:

2 – BILLING AND PRICING DETAILS

Company Name:

Correspondence Address:

Postal Code: City/State:

Contact Person Details:
 Title: Mr. Mrs. Miss Name:

Telephone Number: Mobile Number: Fax Number:

E-mail:

Payment Term : Monthly In Advance Quarterly In Advance Yearly In Advance

Pricing Details:

Charge Type	Charges (RM)
Installation (<i>One Time</i>)	
Rental of Service	
Others	

3 - SERVICE DESCRIPTION AND CONTRACT INFORMATION

INSTALLATION ADDRESS SITE A	INSTALLATION ADDRESS SITE B
This is (Check where applicable) <input type="checkbox"/> New Location : <input type="checkbox"/> Existing FIBRECOMM Nodes : 	This is (Check where applicable) <input type="checkbox"/> New Location : <input type="checkbox"/> Existing FIBRECOMM Nodes :
Company: 	Company:
Address: 	Address:

City/State:	Postal Code:	City/State:	Postal Code:
Is this an end-user premise? <input type="checkbox"/> Yes <input type="checkbox"/> No		Is this an end-user premise? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Is the customer premises Co-Located in a FIBRECOMM Node/PoP? <input type="checkbox"/> Yes <input type="checkbox"/> No		Is the customer premises Co-Located in a FIBRECOMM Node/PoP? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Requested RFS Date :		Contract Period(s) : year(s)	

4 – TECHNICAL DETAILS

Bandwidth Speed: Mbps

Site A Interface : Electrical G.703 75Ω Electrical G.703 120Ω Optical G.957 Others :

Site B Interface : Electrical G.703 75Ω Electrical G.703 120Ω Optical G.957 Others :

Additional Information:

4– DECLARATION OF APPLICATION

We hereby agree to be bound by the Access Agreement and/or Fast Track Service Terms and Conditions 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 : _____

Witness by : _____

Name: _____ Business Stamp:

Designation : _____

SERVICE ORDER FORM



INSTRUCTIONS:

a. Please double click the shaded fields to fill out, delete or amend details. SOF No:

b. Please fill out ALL shaded fields.

1 - CUSTOMER INFORMATION

Date :

Company Name :

Correspondence Address :

Postal Code : City/State :

Contact Person Details :
 Title: Mr. Mrs. Miss Name:

Telephone Number : Mobile Number : Fax Number :

E-mail :

2 - BILLING DETAILS

Company Name :

Correspondence Address :

Postal Code : City/State :

Contact Person Details :
 Title: Mr. Mrs. Miss Name:

Telephone Number : Mobile Number : Fax Number :

E-mail :

Payment Term : Monthly In Advance Quarterly In Advance Yearly In Advance

Pricing Details :

Charge Type	Charges (RM)
Installation (<i>One Time</i>)	<i>n/a</i>
Rental of Service (Per Annum)	
Others	

3 – SERVICE DETAILS AND CONTRACT INFORMATION

INSTALLATION ADDRESS DETAILS

Colocation Nodes :

Address :

City/State : Postal Code :

Contact Person : Tel No :

ANNEXURE II-FAST TRACK SERVICE TERMS AND CONDITIONS

1. This Fast Track Service Order Form shall form a part of the Access Agreement made or to be made between the Fibrecomm and the Access Seeker for the provisioning of Fast Track Services as detailed in Part B of the Fast Track Service Form (hereinafter referred to as "Services"). Pending the signing of the Access Agreement, the terms and conditions herein shall apply to the Services.

arrangement or composition with its creditors, or if it becomes "unable to pay its debts" as that term may be defined in the solvency laws of the other party's country or state of incorporation, or other circumstances arise which entitle a court or a creditor to appoint an administrative receiver, administrator, receiver or person of similar function to make a winding-up order in relation to the other party; or
2. Access Seeker shall pay Fibrecomm the sum equivalent to one month recurring Charges which shall be non refundable being the advanced payment for the first month charge, on or before the confirmation of this Order.

(b) the other party fails to make any payment when due or shall default in due performance or observance of any material obligation under this Agreement and (in the case of a remediable breach) fails to remedy the breach within a reasonable time (not less than 30 days) specified by the terminating party in a notice so to do
3. Fibrecomm shall be responsible for the installation and commissioning of the Services for each Link. Following such installation and commissioning Fibrecomm shall carry out the Acceptance Tests to establish whether the Services in respect of each Link are Ready For Service. Fibrecomm shall issue Acceptance Certificates to Access Seeker when Fibrecomm considers the Acceptance Tests have been successfully concluded and Access Seeker shall within 24 hours therefrom, notifies Fibrecomm that its own testing have failed due to a problem with such Service and provides Fibrecomm with a detailed technical report on such testing or signs acceptance on the Acceptance Certificate, whichever is relevant, failing which the Service shall be Ready For Service and the Acceptance Certificate deemed accepted. If, however, Access Seeker does so notify Fibrecomm then Fibrecomm shall either replace or repair, at its sole option, such Service or any part thereof and repeat the Acceptance Tests until they are successfully concluded.
4. Subject to Clause 2 herein, the Services shall be Ready For Service on the Ready For Service Date, which shall be the date as stipulated in the Fast Track Order Form OR in the Acceptance Certificate whichever is earlier.
8. In the event this Agreement is earlier terminated due to a default of Access Seeker or Access Seeker cancels a Service prior to the expiration of the Term for that Service, Access Seeker shall upon demand pay Fibrecomm the entire Charges for the Term, being liquidated ascertained damages (LAD) for early termination or cancellation Charges as the case may be. When calculating the LAD, credit shall be given for the Charges paid up to termination of Agreement or cancellation of Service as the case may be.
9. Interest will be imposed on any late payments from the due date until full settlement at the rate as stipulated in the Access Agreement.
10. Fibrecomm shall not be liable in any manner whatsoever to Access Seeker for any loss of profits goodwill consequential or economic loss (including any action taken against Access Seeker by third parties), whether direct or indirect, even if such loss is reasonably foreseeable or Fibrecomm has been informed by Access Seeker of the possibility of Access Seeker incurring the same.
11. Access Seeker shall not do or permit to be done anything which may infringe or violate any law or regulation pertaining to the utilization of the Services and to be solely

5. In consideration of the Services granted by Fibrecomm to Access Seeker, Access Seeker shall pay Fibrecomm monthly in advance the recurring Charges from the Commencement Date, which is the Ready For Service Date as stipulated in the Acceptance Certificate. All recurring Charges are due thirty (30) days from the date of invoice.

6. The Term of the Services shall commence from the Commencement Date and shall be in force and in effect for the Term as stipulated overleaf unless earlier terminated in accordance to the provisions of this Agreement.

7. A party shall have the right (without prejudice to its other rights) to terminate this Agreement by notice in writing to the other party in any of the following events:

- (a) a liquidator (other than for the purpose of solvent amalgamation or reconstruction), administrative receiver, administrator, receiver or person of similar function is appointed in respect of the whole or part of the assets and/or undertaking of the other party or the other party enters into an

liable and responsible for any infringement or violation against such laws or regulations and to fully indemnify Fibrecomm and keep Fibrecomm indemnified in respect thereof.

12. Access Seeker shall not do or permit anything to be done to damage Fibrecomm's equipment or any part thereof or cause a disruption to any services that Fibrecomm may be able to provide to other third parties and to fully indemnify Fibrecomm and keep Fibrecomm indemnified in respect thereof.

13. Access Seeker shall upon the termination or expiry of this agreement remove its equipment from the Fibrecomm network at its own costs and expenses.

14. In the event of conflict between the terms herein and the terms in the Access Agreement, the terms in the Access Agreement shall prevail.

15. All Appendixes to this Agreement and all certificates and other agreement delivered pursuant to this Agreement shall form part of this Agreement.