



Reference Access Offer

of

Volksbahn Technologies Sdn Bhd

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# CHAPTER 1 – Introduction, Background and Scope

## 1.1 Introduction

- 1.1.1 This Reference Access Offer (hereinafter referred to as VBT's RAO) is made by Volksbahn Technologies Sdn Bhd (Company No: 1038873-H), a company incorporated under the laws of Malaysia and having its registered office at 15th Floor, Menara Summit, Persiaran Kewajipan USJ 1, 47600 UEP Subang Jaya, Selangor Darul Ehsan on **30 January 2024** pursuant to **Section 5.3.3** of the Commission Determination on the Mandatory Standard on Access, Determination No. 1 of 2022, which came into effect on 1<sup>st</sup> November 2022 ("**MSA Determination**")
- 1.1.2 VBT provides technology services and owns strategic infrastructure platforms in the smart city space. In this capacity VBT has signed a 15 years long-term collaboration agreement with Rapid Rail Sdn. Bhd. (the wholly owned subsidiary of Prasarana Malaysia Berhad) with the main objectives to enhance the attractiveness of public transport through technology services and to increase non-fare based income of Prasarana Malaysia Berhad. Pursuant to the aforementioned collaboration, Prasarana Malaysia Berhad has mandated VBT to form business collaborations with other commercialization parties and has given the exclusive Right of Way to install and operate communication infrastructure at their premises within Kelana Jaya Line (existing line and line extension), Ampang Line ((existing line and line extension) Light Rail Transit ("LRT") and Bus Rapid Transport System ("BRT"). This collaboration arrangement will be managed by Prasarana Integrated Development Sdn Bhd (the wholly owned subsidiary of Prasarana Malaysia Berhad) as the responsible entity for non-fare income of Prasarana Malaysia Berhad.
- 1.1.3 Pursuant to Commission Determination on the Access List, Determination No.6 of 2021 which came into effect 15<sup>th</sup> December 2021 and pursuant to Section 5.3.3 of the MSA Determination, Volksbahn Sdn Bhd ("VBT") is pleased to prepare and maintain an Reference Access Offer ("RAO") in relation to network facilities or network services on the Access List Determination which VBT provides to itself or third parties and which: (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.
- 1.1.4 VBT's RAO is set out as follows:
- (a) Main Text of which consist of 5 Chapters; and
  - (b) Schedules, Annexure and relevant Appendixes

## 1.2 Legislative Background

- 1.2.1 Following the issuance of the Ministerial Direction to Determine a Mandatory Standard on Access, Direction No. 2 of 2003 and in exercise of the powers conferred by Sections 55, 56, 104(2) and 106 of the Act, the Malaysian Communications and Multimedia Commission ("Commission") issued the MSA Determination.
- 1.2.2 MSA Determination Obligations
- 1.2.3 The MSA Determination deals with access to network facilities and network services listed in the Access List Determination and sets out obligations that apply to Operators concerning various access issues which include:
- (a) Disclosure obligation (Section 5.3 of the MSA Determination);
  - (b) Negotiation obligations (Section 5.4 of the MSA Determination);
  - (c) Content obligation (Section 5.5 to 5.16 of the MSA Determination); and
  - (d) Service Specific obligation (Section 6 of the MSA Determination).

### 1.3 Scope of VBT's RAO

- 1.3.1 VBT is a licensed individual network facilities and network services provider under the Act. Pursuant to these licenses, VBT may offer network facilities and network services within the railway corridor of Prasarana Malaysia Berhad and any adjacent area and future area to be determined from time to time.
- 1.3.2 Pursuant to Section 5.3.3 of the MSA Determination, VBT is obliged to prepare and maintain a RAO in relation to network facilities or network services on the Access List Determination which VBT provides to itself or third parties.
- 1.3.3 VBT 's RAO:
- (a) contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and
  - (b) does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination.
- 1.3.4 Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to VBT's RAO.
- 1.3.5 VBT considers VBT 's RAO to be consistent with:
- (a) the standard access obligations stipulated under Section 5 of the MSA Determination and Section 149 of the Act; and
  - (b) the principles of non-discrimination stipulated under Sections 4.1.5 and 4.1.6 of the MSA Determination.
- 1.3.6 For the purposes of clarification, the terms and conditions of VBT 's RAO is applicable to the Facilities or Services and which is relevant to the provisioning of Facilities and Services within VBT 's licenses only. If the Access Seeker requests network facilities or network services outside VBT 's RAO, the terms and conditions for the provision of such network facilities or network services shall remain outside the scope of VBT 's RAO.
- 1.3.7 If an Access Seeker requests VBT to provide it with Facilities or Services other than on the terms and conditions contained in VBT 's RAO, VBT and the Access Seeker will:
- (a) negotiate in good faith in relation to such terms and conditions; and
  - (b) enter into and conduct negotiations in a timely manner.
- 1.3.8 VBT's RAO contains terms and conditions for the following facilities and services:
- (a) Transmission Services
  - (b) Infrastructure Sharing
  - (c) Network Co-Location.

### 1.4 Additional Services

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

### 1.5 Effective Date of VBT's RAO

- 1.5.1 Commencement and Duration of VBT's RAO

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

- (a) a Review; or
- (b) the withdrawal of VBT's RAO in accordance with the terms of VBT's RAO.

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

#### 1.5.2 Amendment to VBT's RAO

1.5.2.1 VBT shall, no less than thirty (30) Business Days of making any amendment to VBT's RAO, provide an amended copy of VBT's RAO showing the proposed changes to the existing RAO to:

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

1.5.2.2 Upon expiry of the thirty (30) Business Days in paragraph 1.5.2.1 above (or such longer period as the Access Provider determines is necessary to finalise the amendments to its RAO), the Access Provider will:

- (a) make available the amended RAO on the Access Provider's publicly accessible website without delay (including updating its date and version number, both on the cover and on each page of the document); and
- (b) provide the updated RAO to the Commission before being made available under paragraph 1.5.2.2 (a) above.

#### 1.5.3 Notice of Withdrawal, Replacement and Variation of VBT's RAO

1.5.3.1 If subject to Section 56 of the Act, the Commission revokes, varies or replaces the Access List Determination relating to the Facilities or Services, VBT may, by giving written notice to all Access Seekers to whom it is supplying Facilities or Services under VBT's RAO, withdraw or replace VBT's RAO with effect from a date no earlier than the effective date of the Commission's revocation.

1.5.3.2 VBT shall comply with Sections 6.4.2 and 6.4.3 of the MSA Determination where it withdraws or varies VBT's RAO pursuant to paragraph 1.5.3.1 above.

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

- (a) the occurrence of a Legislative Event that materially affects the rights or obligations of VBT under VBT's RAO; or
- (b) the occurrence of a Regulatory Event that relates to VBT; or
- (c) a review by the Commission of the MSA Determination pursuant to Section 6.5 of the MSA Determination and which shall include a review by the Commission on the Mandatory Standard Access Pricing

1.5.3.4 Notwithstanding paragraphs 1.5.3.1, 1.5.3.2 and 1.5.3.3 above, VBT may subject to paragraph 1.5.2 above, replace VBT's RAO at any time.

**1.5.4   Availability**

1.5.4.1   Subject to paragraph 1.5.4.2, VBT's RAO shall be made available to an Access Seeker:

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

1.5.4.2   Prior to the provision of VBT's RAO to the Access Seeker, the Access Seeker shall be required to enter into a confidentiality agreement with the Access Provider.

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## CHAPTER 2 – Interpretation

2.1 The following words have these meanings in this VBT RAO unless the contrary intention appears: -

Words	Interpretation
<b>Act</b>	the Communications and Multimedia Act 1998
<b>Access Agreement or “AA”</b>	<p>an Access Agreement executed between Access Seeker and Access Provider for VBT to provide requested Facilities and/or Services subject upon commercially negotiated terms and conditions and in accordance with the terms therein contained and registered with the Commission in accordance with Section 150 of the Act pursuant to:</p> <p>(a) an Access Request made in accordance with <b>Sections 4.1 to 4.9</b> (also referred to as “<b>Access Agreement Template</b>” or “<b>AAT</b>”); or</p> <p>(b) a fast track application process made in accordance with <b>Section 4.10</b> (also referred to as “<b>Fast Track Access Agreement</b>” or “<b>FTAA</b>”); and</p> <p>which contains the terms and conditions based on VBT’s RAO.</p>
<b>Access List Determination</b>	Commission Determination on Access List, Determination No.6 of 2021 which contains List of Facilities and Services determined by the Commission under Chapter 3 of Part VI of the Act
<b>Associated Tower Sites</b>	Land owned, leased or tenanted by an Operator surrounding or on which the tower is situated, including necessary right-of-way and permission to dig
<b>RAO Term</b>	the period of five (5) years commencing from the date set out in Condition 1.1.1 or such other period as may be specified by VBT from time to time
<b>Access Request</b>	a request made by the Access Seeker to VBT for access to Facilities or Services and containing the information in Condition 4.1.3
<b>Access Seeker</b>	<p>an Operator who:</p> <p>(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</p> <p>(b) makes a written request for access to Facilities and/or Services.</p>
<b>Access Service</b>	a service for the carriage of agreed Communication along VBT’s Facilities and Services between the POIs/POPs.
<b>Bank Guarantee</b>	a guarantee, executed in favour of VBT by a licensed bank in Malaysia approved by the VBT pursuant to Section 4.3 on behalf of the Access Seeker
<b>Billing Dispute</b>	the dispute of an invoice prepared by an Operator to the Other Operator which is made in good faith
<b>Billing Period</b>	one (1) calendar month period over which the supply of Facilities and/or Services is measured for the purposes of billing unless otherwise agreed between the Operators
<b>Business Day</b>	a day on which banks are open for general banking business in Kuala Lumpur, Wilayah Persekutuan, other than a Saturday and Sunday or a public holiday

<b>Words</b>	<b>Interpretation</b>
<b>Charges</b>	the sums payable by the Access Seeker to VBT for accessing and/or being provided the Facilities and/or Services
<b>Commencement Date</b>	the date on which the Operators enter into the Access Agreement or such other date as agreed between the Operators
<b>Commission</b>	the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998
<b>Communication</b>	any communication, whether between persons and persons, things and things, or persons and things in the form of sound, data, text, visual images, signals, or any other form or any combination of those forms and, where the context permits, includes an attempt to establish a communication
<b>Communications Service</b>	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)
<b>Confidentiality Agreement</b>	a confidentiality agreement entered into between VBT and the Access Seeker in accordance with Section 5.3.8 of the MSA Determination
<b>Creditworthiness Information</b>	the information required by VBT to assess the creditworthiness of the Access Seeker which are more particularly described in Section 4.2 of VBT's RAO and such other information as may be required from time to time
<b>Customer</b>	in relation to an Operator, a person having a contractual relationship with the Operator for the provision of Communications Services
<b>Determination</b>	any lawful determination made by the Commission and/or the Minister, pursuant to Chapter 2 of Part V of the Act
<b>Direction</b>	any lawful direction made by the Commission pursuant to Chapter 1 of Part V of the Act.
<b>Effective Date</b>	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)
<b>End to End Transmission Services</b>	has the meaning as described in paragraph 5(15) of the Access List Determination
<b>Equipment</b>	any equipment (whether hardware or software), or device which is part of or within the Network.
<b>Facilities</b>	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 VBT's RAO
<b>Facilities Access</b>	in relation to Facilities, means a service for the provision of access to network facilities and/or premises
<b>Fast Track Application Service</b>	a Facility or Service that is subjected to the fast track application process which is more particularly set out in Section 4.10
<b>Fast Track Security Sum</b>	the security:



<b>Words</b>	<b>Interpretation</b>
	<p>(a) in the form of a Bank Guarantee and/ or Security Deposit, deposited with VBT in accordance with Condition 4.10.3 for the Fast Track Application Service; and</p> <p>(b) which amount is Ringgit Malaysia Fifty Thousand (RM50,000) only for each Facility or Service for which access is sought or any other amount to be mutually agreed.</p>
<b>Fast Track Service Order Form</b>	the application form to be completed by an Access Seeker with respect to the Fast Track Application Service which is more particularly set out in Appendix 1 of VBT's RAO
<b>Infrastructure Sharing</b>	has the meaning as described in paragraph 5(7) of the Access List Determination
<b>Instrument</b>	any lawful instrument which is issued by the Commission pursuant to the Act
<b>Insurance Information</b>	the insurance information required by VBT pursuant to Section 4.4
<b>Connecting Link</b>	a physical link connecting the Networks of two Operators
<b>Interconnection</b>	interconnection of the Operators' Networks; for the purposes of VBT providing Access Services to the Access Seeker in relation to a Communication via a POI/POP and using agreed interfaces and signaling systems
<b>Invoice</b>	the invoice for amounts due in respect of the supply of requested Facilities or Services during a Billing Period
<b>Legislative Event</b>	<p>means:</p> <p>(a) the enactment, amendment, replacement or repeal of the Act;</p> <p>(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;</p> <p>(c) the registration, determination, promulgation, issue, amendment or replacement of any industry code with which VBT is required or obliged to comply; and/or</p> <p>(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 VBT's RAO contravenes any provision of any law, except to the extent that the making of such determination, direction or finding constitutes a Regulatory Event.</p>
<b>Licence</b>	an individual licence granted by the Minister pursuant to the Act for Communication Services.
<b>Manuals</b>	the Technical and Implementation Manual, the Operations and Maintenance Manual and other manuals which the Operators establish pursuant to the Access Agreement
<b>Minimum Value</b>	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 VBT to the Access Seeker for a ninety (90) day period
<b>Minister</b>	the Minister of Communications or, if different, the Minister administering the Act

Words	Interpretation
<b>Network</b>	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. In relation to an Operator, mean so much of the network as is owned and operated by the Operator
<b>Network Capacity</b>	equipment and facilities required to be installed in VBT's Network for use in the provision of one or more Access Services.
<b>Network Location</b> <b>Co-</b>	has the meaning as described in paragraph 5(9) of the Access List Determination
<b>Network Conditioning</b>	the conditioning, equipping and installation of facilities at VBT's Network to enable the provision of one or more Access Services
<b>Operators</b>	VBT and the Access Seeker collectively
<b>Other Operator</b>	either:  (a) VBT; or (b) the Access Seeker,  as the context requires
<b>Point of Interconnect or "POI"</b>	any technically feasible point which demarcates the Network of VBT 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
<b>Point of Presence" or "POP"</b>	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
<b>Regulatory Event</b>	(a) the declaration, modification, variation or revocation of the MSA Determination; (b) the giving of a lawful direction to VBT by the Commission relating to VBT's RAO; and/or (c) the giving of a lawful direction to VBT by the Minister relating to VBT's RAO.
<b>Review</b>	a review of the MSA Determination and/or a review of the Mandatory Standard on Access Pricing
<b>RM</b>	Ringgit Malaysia which shall be the monetary currency used in VBT' RAO unless otherwise provided
<b>Security Sum</b>	the security:  (a) in the form of a Bank Guarantee, deposited with VBT in accordance with Section 4.3 for the supply of Facilities or Services and  (b) which amount is equivalent to the Minimum Value
<b>Services</b>	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 VBT's RAO
<b>Service Ordering Procedures</b>	the procedures governing the forecasting, planning and ordering of relevant Facilities and Services as set out in the relevant Manuals
<b>Standard Access Obligations" or "SAO"</b>	has the meaning prescribed in Section 149 of the Act
<b>Technical Specifications</b>	means any technical parameters, specifications and procedures applicable to Interconnection of the Operators' Network and

Words	Interpretation
	provision of Access Services documented in VBT's RAO or any manuals referred to in the Access Agreement
<b>VBT</b>	Volksbahn Technologies Sdn Bhd (Reg..No. 20130100901 (1038873-H)) and in VBT's RAO, is the Access Provider unless otherwise stated

## 2.2 In VBT's RAO except where the contrary intention appears;

- (a) the singular includes the plural and vice versa; and
- (b) a document includes all amendments or supplements to that document, or replacements or novations of it; and
- (c) a reference to a statute, ordinance, regulations, code or other law and other instruments under it, shall include any statute, ordinance, regulation, code and other law consolidating, amending, re-enacting or replacing of any of them from time to time relating thereto or in connection therewith; and
- (d) a reference to a person includes a firm, body corporate, unincorporated association or an authority; and
- (e) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; and
- (f) if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the next Business Day and any reference to acts that have to be done or to be done by or on or before a particular day or Business day means by or on or before the close of business at 5.00pm on that particular day or Business Day; and
- (g) a reference to a related body corporate of an Operator has the same meaning as in the Companies Act 2016; and
- (h) a reference to a third party is a reference to a person who is not a party to VBT's RAO; and
- (i) in relation to an Access Service for the carriage of a communication it refers to the carriage of a communication between the POIs/POPs along VBT's Network but does not include any Communication for which the Access Service is provided with the assistance a third party's Facilities or Services; and
- (j) no rule of construction and/or interpretation applies to the disadvantage and/or detriment of the Operator having control and/or responsibility for the preparation of VBT's RAO; and
- (k) headings are included for convenience and do not affect the interpretation of VBT's RAO.

# CHAPTER 3 – Principles of Access and Interconnection

## 3.1 Services

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

## 3.2 Eligibility for Access of Services

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

### **3.3 Principles of Access and Interconnection**

#### **3.3.1 Access Terms and Conditions**

- 3.3.1.1 Subject to Section 3.2 and subject to the reasonably and commercially negotiated terms and conditions, VBT shall if requested to do so by an Access Seeker, supply a Facility and/or Services to the Access Seeker where such Facility and/ or Service must be:
- a) of at least the same or more favorable technical standard and quality as the technical standard and quality provided for itself on the Access Provider's Facilities and/ or Services: and
  - b) provided on an equitable and a non-discriminatory basis.

### **3.4 Dispute Resolution**

- 3.4.1 Each party shall use all reasonable endeavours to resolve any disputes arising from or in connection with VBT's RAO.
- 3.4.2 Saved as mentioned below, if any disputes or difference of any kind shall arise between the parties in connection with or arising out of VBT's RAO, the Dispute Resolution Procedure in Annexure A of the MSA Determination as attached in Annexure IV shall be adhered to.
- 3.4.3 A dispute shall first be attempted to be resolved by negotiation between the parties. If the parties to the Dispute cannot or otherwise fail to reach an agreement, the parties shall always be entitled to seek resolution of the Dispute by the Commission in accordance with Section 151 of the Act, and the Commission will decide the Dispute if it is satisfied that:
- a) the parties will not reach agreement or will not reach agreement in a reasonable time;
  - b) the notification of the Dispute if not trivial, frivolous or vexatious; and
  - c) the resolution of the Dispute would promote the objects of the Act.
- VBT shall not prevent the Access Seeker from notifying a Dispute to the Commission in accordance with the Act.
- 3.4.4 An Operator may not commence court proceedings relating to a Dispute which is subject of these Dispute Resolution Procedure until it has complied with each applicable process in these Dispute Resolution Procedure, other than an application for urgent interlocutory relief. Nothing in this Condition shall be construed as ousting the jurisdiction of any court.
- 3.4.5 During a Dispute and any dispute resolution process invoked in accordance with the Annexure A of the MSA, the parties must continue to fulfill respective obligations under the Access Agreement between them.
- 3.4.6 Subject to Chapter 7 of Part V of the Act, an arbitrator of a Dispute (including a Technical Expert or the Commission, in accordance with the Annexure A of the MSA) may decide not to determine the Dispute if the arbitrator considers that the Dispute trivial, frivolous or vexatious, of if there is insufficient evidence before the arbitrator to determine the Dispute.
- 3.4.7 The costs of the arbitration are to be shared equally between the parties, unless the arbitrator of the Dispute has decided not to determine the Dispute in accordance with Condition 3.4.6 above. Consequently, the party that initiated the Dispute must pay the other party's cost

### **3.5 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 VBT's RAO in accordance with the Confidentiality Agreement signed between the parties. For avoidance of doubt, VBT's Confidentiality Agreement shall be in conformity with paragraph (a) to (e) of Sub-section 5.3.8 of the MSA as follows;

- a) Shall be reciprocal
- b) Shall be no broader than the confidentiality provisions in the Access Provider's RAO
- c) Shall be no broader than necessary to protect the legitimate commercial interest of the Disclosing Party
- d) Shall include provisions prohibiting the Receiving Party from disclosing information to third parties or using information other than as necessary for the purposes of assessing a request for access; and
- e) Shall not prevent the disclosure of Confidential Information or other information to the Commission by the Receiving Party.

### **3.6 Intellectual Property**

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

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## CHAPTER 4 – Access Request Procedures

### 4.1 Application for Access to Services

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

4.1.1 (A) An Access Provider may require an Access Seeker to provide an Access Request to the Access Provider if:

- a. There is no Access Agreement in force between the Access Provider and the Access Seeker governing access to the Facilities and/ or Services to which the Access Seeker seeks access; or
- b. There is such an Access Agreement, but;
  - i. The current term of that Access Agreement will expire or terminate within the next four (4) months; or
  - ii. The requested Facilities and/ or Services are outside the scope of that agreement

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

4.1.3 The Access Request must:

- (a) contain the name and contact details of the Access Seeker,
- (b) specify the Facilities or Services in respect of which access is sought;
- (c) indicate whether the Access Seeker wishes to accept VBT's RAO; to negotiate amendment to the RAO; or negotiate an Access Agreement on alternative terms;
- (d) contain the information (if any) as set out in Section 5.3.7 of the MSA Determination that the Access Seeker reasonably requires VBT 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 VBT;
- (f) specify forecasts of the capacity which the Access Seeker reasonably requires, having regards to VBT's disclosed provisioning cycle and forecasting as described herein;
- (g) provide the relevant information relating to the Access Seeker's Network and the functionality of its Services, to the extent that the Access Seeker is aware that such information may affect VBT's Network;
- (h) contain confirmation that the Access Seeker is not currently being supplied with the requested Facility or Service;
- (i) specify the type of communications licences held by the Access seeker and a copy of the licence where a copy had not been previously provided;
- (j) contain Creditworthiness Information as set out in **Section 4.2**;
- (k) be accompanied by a Security Sum as set out in **Section 4.3**;
- (l) contain Insurance Information as set out in **Section 4.4**;
- (m) contain relevant technical information relating to the interface standard RAOs of the Access Seeker; and
- (o) such other information that VBT may reasonably request.

### 4.2 Creditworthiness Information

4.2.1 VBT reserved the right to obtain Creditworthiness Information of the Access Seeker for the Access Request including 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 VBT provided that such information are information which are publicly available.
- 4.2.2 The Creditworthiness information, where possible shall be used to assess the Access Seeker's capacity and capability to subscribe the Facilities and Service commensurate with an estimated value of the access to the Facilities or Services to be provided by VBT to the Access Seeker.

### **4.3 Security Sum**

- 4.3.1 An Access Request shall be accompanied by a Security Sum. The security that may be given by the Access Seeker shall be in the form of a Bank Guarantee and/ or Security Deposit. The determination of the Security Sum shall be concluded based on the creditworthiness of the Access Seeker (including prior record of payment by the Access Seeker) as appeared in Section 4.2 and Condition 4.6.6 herein and security previously reasonably required by VBT.
- 4.3.2 The security amount impose by VBT will commensurate with a commercially reasonable estimate of the charges that will be incurred by the Access Seeker:
- a. for Facilities and/or Services with a minimum period of Access, a maximum of six months for those Facilities and/or Services; and
  - b. for Facilities and/or Services without a minimum period of Access, a single Billing Period for those Facilities and/or Services.
- 4.3.3 VBT will not impose a security requirement on Access Seeker which;
- a. exceeds a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the minimum period of access to Facilities and/ or Services to be provided by VBT to the Access Seeker; or
  - b. is designed to, or has the effect of, denying or delaying the Access Seeker's access to Facilities and/ or Services.
- 4.3.4 VBT will only vary the amount and type of any security requirements imposed on Access Seeker:
- (a) a maximum of once in any twelve (12) month period;
  - (b) if there is a material increase in the credit risk to VBT due to changes in either or both of the circumstances under paragraphs 4.3.2(a) and 4.3.2(b) above; and
  - (c) if VBT determines, acting reasonably, that the variation will materially reduce or remove the increased credit risk.
- If amounts contained in Invoices are disputed in good faith, this will not constitute a material increase in the credit risk to VBT for the purposes of this Condition 4.3.4.

### **4.4 Insurance Information**

- 4.4.1 Subject to Condition 4.4.2, An Access Request shall be accompanied by the following insurances:
- (a) Worker's Compensation and/or Social Security Insurance and/or Employer's Liability Insurance and/or other insurance with statutory limits as required by the laws of Malaysia to provide for payment to its employees or in connection with the work covered by the Access Agreement that may be entered and/or their dependents; and
  - (b) Comprehensive general Liability Insurance of an amount which is not in excess of Ringgit Malaysia Twenty Million (RM20,000,000) for any one claim or series of claims



arising out of an accident for occurrence in connection with the Access Agreement that may be entered into resulting in bodily injury and/or personal injury including death and property damage of an Operator which shall arise out of or in consequence of any acts of omissions of the Other Operator. Such policy shall include contractual liability

- 4.4.2 For the purpose of clarification, the insurance provided by the Access Seeker pursuant to Condition 4.4.1 shall commensurate with the reasonable sum, which is to be agreed by VBT and need not specifically list VBT's name as the beneficiary.

## **4.5 Processing of Access Request**

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

Subject to Section 4.10, VBT 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 Condition 4.5.3, request additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request; or
- (b) Indicate whether it is willing to provide access to Facilities or Services in accordance with VBT's RAO; or
- (c) Indicate whether it is willing to proceed to negotiate amendments to the RAO or an Access Agreement on alternative terms; or
- (d) Refuses the request in accordance to Section 4.6 herein below.

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

Access Provider will provide the following information to an Access Seeker within ten (10) business days of receipt of a written request from that Access Seeker for the provision of access (whether or not on the basis of VBT's RAO)

- i. Any supplementary details of a Facility and/ or Services offered by the Access Provider not included in VBT's RAO, including details concerning all POIs and other locations (including sites deemed to be critical national information infrastructure and other secure sites) at which physical co-location, virtual co-location or in -span interconnection is available to Access Seekers;
- ii. Any supplementary access charges for access to Facilities and/ or Services not included in VBT's RAO (for example, discounts for inferior service level or surcharges for enhanced service levels);
- iii. All supplementary technical information relating to the Facilities and/ or Services which may be the subject of the Access Request, which are not included in VBT's RAO, including but not limited to any physical and logical interfaces of its Network necessary to allow the development and deployment of communications services, value added services and communications equipment that can interconnect to, and interoperate with, the Access Provider's Network;
- iv. Supplementary details of the Access Provider's operational processes and procedures not included in VBT's RAO (e.g regarding escorted access at sites deemed to be critical national information infrastructure or other secure sites);
- v. Supplementary details of the Access Provider's provisioning cycles not included in VBT's RAO and any impact such cycles may have upon an Access Request by the Access Seeker (e.g capacity constraints);
- vi. Details of the Access Provider's alternative quality of services target not included in VBT's RAO and actual achievements of service targets in respect of the Facilities and/ or Services which may be the subject of the Access Request;
- vii. Any security requirements, insurance requirements and credit worthiness information (including a credit assessments form, if available) required by the Access Provider.

viii. The Access Provider's reasons for failing to supply any of the above information

#### 4.5.2 Non-refundable resource

4.5.2.1 In accordance with Section 5.7.28 of the MSA Determination VBT 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 VBT for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Facilities and Services for the purposes of interconnection.

4.5.2.2 The one-off non-refundable resource charge shall also be inclusive of a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request as VBT is required to allocate manpower and other resources for the same. Such nonrefundable processing fee is only applicable to requested Facilities and Services that can be offered and made available by VBT. The non-refundable processing fees for the respective Facilities and Services will be mutually agreed by the Operators from time to time subject to the minimum of RM1,500. A breakdown of the one-off non-refundable resource charge shall include but not limited to the following: -

No.	Description	Range of Charge (RM)
1	Processing Fee	100 - 200
2.	Deployment of VBT qualified personnel	(200 – 500) per manday*
3.	Coordination for obtaining Prasarana's Work Permit and assistance from the certified Prasarana personnel.	(200 – 500) per manday*
4.	Mobilization	1000 per request

\*Minimum one (1) manday.

Notwithstanding the foregoing, in the event that additional and non-routine administrative work is required to process the Access Request where there is insufficient and/or erroneous information provided by the Access Seeker or where the Access Seeker varies or changes the information provided, VBT shall be entitled to charge additional and non-routine processing fee for undertaking such additional and non-routine work as additional resources are required to do the same.

## 4.6 **Assessment of Access Request**

### 4.6.1 Reason for Refusal

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

- (a) in VBT's reasonable opinion, the Access Request does not contain the information reasonably required by VBT's RAO provided that VBT has sought the information from the Access Seeker under Condition 4.5.1 of VBT's RAO and has not received that information within twenty (20) Business Days of making such a request;
- (b) VBT does not currently supply or provide access to the requested Facilities or Services to itself or to any third parties, except where the Access Seeker compensates VBT for the supply of access to such Facilities or Services;
- (c) It is not technically feasible to provide access to the requested Facilities or Services;
- (d) VBT has insufficient capacity to provide the requested Facilities or Services;

- (e) there are reasonable grounds in VBT's opinion to believe that the Access Seeker would fail, to make timely payment for the supply of the relevant Facility or Service; or
- (f) there are reasonable grounds in VBT'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
- (g) there are reasonable grounds for VBT to refuse access in the national interest; or
- (h) the access is being sought to facilities and/or services which are not in the Access List Determination; or
- (i) the technical proposal submitted by the Access Seeker was not approved by Rapid Rail Sdn Bhd for Facilities and Services provided within the Right of Way granted by Rapid Rail Sdn Bhd to VBT.

#### 4.6.2 Determination of technical infeasibility

For the purpose of determining technical infeasibility in paragraph 4.6.1(d), VBT shall not refuse an Access Request on the grounds of technical infeasibility unless the Access Provider establishes that there are substantial technical or operational concerns preventing the fulfilment of the Access Request. Each of the following matters shall be taken into account in determining whether access is technically feasible;

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

#### 4.6.3 Determination of capacity constraints

For the purpose of determining capacity constraints in paragraph 4.6.1 (e), VBT may only refuse an Access Request on the ground that VBT has insufficient capacity or space under Sub-section 5.4.11(d) of MSA Determination where VBT notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because the requisite capacity is:

- a) already carrying traffic to full capacity or near full capacity; or
- b) already reserved for future use by VBT or another Access Seeker, where such future use shall commence not later than six (6) months from the date of the Access Request. If the reserved capacity is not subsequently used by the reserving party within seven (7) months from the date of the Access Request, VBT shall promptly inform the Access Seeker and, if required by the Access Seeker, re-consider the Access Request in accordance with the relevant process set out herein; and
- c) in the case of both paragraph (a) and (b) above, VBT is unable to expand capacity to meet the requirement in the Access Seeker's Access Request.

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

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

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

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

#### 4.6.6 Assessment of Creditworthiness

4.6.6.1 In determining the creditworthiness of the Access Seeker, VBT may request additional information but is not limited to the matters referred to in **Section 4.2**.

4.6.6.2 In determining the creditworthiness of the Access Seeker, VBT shall not take into account amounts outstanding for Facilities or Services previously provided by VBT 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 VBT to the extent that there is a bona fide dispute in relation to the amounts outstanding by the Access Seeker to VBT and the Access Seeker is relying on such terms and conditions as basis for its non-payment.

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

4.7.1 Where VBT rejects the Access Request, VBT 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 **Condition 4.5.1**, as the case may be;
- (b) provide reasons for rejection under Condition 4.6.1 above to the Access Seeker;
- (c) provide the basis for VBT'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 VBT 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 VBT to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in **paragraph 4.6.1(e)**, VBT must identify when additional capacity is likely to be available.

4.7.2 Where the Operators are unable to resolve their differences following the meeting held pursuant to paragraph 4.7.1(d), either Operator may request resolution of the dispute in accordance with dispute resolution procedures in Annexure A of the MSA Determination.

4.7.3 If the Access Provider refuses an Access Request, it will notify the Commission within five (5) Business Days of that refusal together with an explanation of its reason for refusal under condition 4.7.1 above.

### 4.8 **Acceptance of Access Request**

4.8.1 Where VBT agrees to provide access to Facilities or Services to the Access Seeker in accordance with VBT's RAO, VBT shall within ten (10) Business Days of such response under paragraph 4.5.1(b), provide the Access Seeker with two copies of the executed Access Agreement, for execution by the Access Seeker and one (1) copy of the executed confidentiality agreement returned by Access Seeker.

4.8.2 Where the Access Seeker wish to negotiate an Access Agreement, the Operators shall comply with the requirements in Section 5.4 of the MSA Determination wherever relevant including but not limited to Sections 5.4.1, 5.4.2, 5.4.3, 5.4.4 and 5.4.13 of the MSA Determination in negotiating and concluding an Access Agreement.

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

- (a) a Security Sum has been provided in accordance with Sections 4.1 and 4.3; and

- (b) an Access Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with Section 150 of the Act.

#### 4.9 Negotiations on Access Request

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

- (a) the names of personnel of VBT's representatives in the negotiations and in respect of those personnel:
  - i. his or her contact details;
  - ii. his or her job title; and
  - iii. details of his or her availability for the access negotiations;
- (b) the identity of the negotiating team leader, and VBT shall ensure that the negotiating team leader shall have authority to make binding representations on behalf of VBT in relation to matters arising from the negotiations (subject to final approval from VBT's Managing Director, if required)
- (c) the information which is reasonably required from the Access Seeker for the purposes of negotiations;
- (d) a date and time not later than fifteen (15) Business Days from the date of the Access Provider's response, at which VBT's representatives will be available for the initial meeting with the representatives of the Access Seeker.
- (e) One copy of the executed Confidentiality Agreement (in accordance with paragraph 4.1.3 (e) above that has also been properly executed by the Operators.

#### 4.10 Fast Track Application Process

- 4.10.1 (a) The fast track application process set out in this **Section 4.10** shall be applicable to **Transmission Service** only;
- (b) For the purpose of clarification, where an Access Seeker requests for a Facility or Service that is not listed in **Condition 4.10.1 (a)** above in relation to a Fast Track Application Service, the fast track application process shall not be applicable and the Access Seeker shall be required to put in an Access Request for the requested Facilities and Services in accordance with **Sections 4.1 to 4.9**.
- 4.10.2 An Access Seeker is eligible for the fast track application process if it fulfils the following criteria:
  - (a) The Access Seeker is duly licensed to provide the Facilities or Services for which access is sought;
  - (b) the access requirements of the Access Seeker do not in VBT's opinion, have a material impact on VBT's current level of network resources; and
  - (c) the Access Seeker is willing to accept the terms and conditions for the requested Facility or Service as stipulated in the Access Agreement without negotiation;
- 4.10.3 Subject to Condition 4.10.2, where an Access Seeker who is eligible for the fast track application process wishes to utilize the fast track application process, the Access Seeker shall:
  - (a) forward to VBT a duly completed and signed Fast Track Service Order Form;
  - (b) deposit a Fast Track Security Sum where the process in determining the Security Sum shall be as set out under Section 4.3 herein;
  - (c) pay a non-refundable processing fee to be determined by VBT for undertaking the necessary administrative work to process the fast track application; and

- (d) lodge with VBT two copies of the signed Access Agreement with suggested amendments to the technical matters (if any and approved by VBT).
- 4.10.4 Within ten (10) Business Day of the Access Provider's receipt of a fast track application, the Access Provider will:
- (a) provide the Access Seeker with two (2) copies of the Access Agreement executed by the Access Provider, or a notice of refusal that sets out the grounds for refusal under condition 4.6.1 above (including the basis on which those grounds apply); and
  - (b) provide the Commission with a copy of the response at the same time that it provides the response to the Access Seeker under paragraph 4.10.4 (a) above.
- 4.10.5 Where VBT accepts the Access Seeker's fast track application, VBT:
- (a) may impose a one-off resource charge for allocation of manpower and other resources in accordance with **Condition 4.5.2** and
  - (b) shall within ten (10) Business Days of receipt of the fast track application, execute the Access Agreement as appended in the Appendix.
- 4.10.6 VBT 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 **Condition 4.10.3**; and
  - (b) an Access Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with Section 150 of the Act.
- 4.10.7 For the purpose of clarification, if the Access Seeker wishes to obtain the Fast Track Application Services but is not agreeable to the terms and conditions of the Access Agreement, VBT is not obliged to process the fast track application further and the Access Seeker shall be required to put in a new Access Request in accordance with **Sections 4.1- 4.9**.

#### 4.11 Terms, Suspension and Termination Obligations

- 4.11.1 Term: Access Provider shall, unless otherwise required by the Access Seeker, enter into Access Agreements with a term of no less than five (5) years from the date of execution of the Access Agreement
- 4.11.2 Subject to Condition 4.11.5 of VBT's RAO, an Access Provider may only terminate an Access Agreement if any of the following circumstances occur and the Access Provider has notified the Access Seeker that it will terminate where;
- a) the Access Seeker has materially breached the Access Agreement, the Access Provider has notified the Access Seeker that it will terminate in no less than one (1) month if the Access Seeker has not remedied its breach by the end of that period and the Access Seeker has failed to remedy its breach in accordance with such notification;
  - b) the Access Seeker has become subject to a winding up order (whether compulsory or voluntarily) or cease to trade in the normal course of business or become insolvent or a receiving order is made against it or has entered into any agreement or composition with or assignment for the benefit of its creditors or the Access Seeker's assets are subject of any form of distress or execution or any analogous insolvency event related to the Access Seeker has occurred in any jurisdiction; or
  - c) a Force Majeure has continued for a period of more than three (3) months
- The Access Provider 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.
- 4.11.2A Except where otherwise permitted under the Access Agreement, the Access Seeker may only terminate the Access Agreement, whether in whole or in part (for example, only to the extent

relating to a particular Facility or Service, or at a particular site), if any of the circumstances referred to in paragraphs (i), (ii) or (iii) below apply, and the Access Seeker has notified the Access Provider that it will terminate where:

(i) the Access Provider has materially breached the Access Agreement, the Access Seeker has notified the Access Provider that it will terminate in no less than one (1) month if the Access Provider has not remedied its breach by the end of that period and the Access Provider has failed to remedy its breach in accordance with such a notification;

(ii) the Access Provider has become subject to a winding up order (whether compulsorily or voluntarily) or ceases to trade in the normal course of business or becomes insolvent or a receiving order is made against it or has entered into any agreement or composition with or assignment for the benefit of its creditors or the Access Provider's assets are subject of any form of distress or execution or any analogous insolvency event related to the Access Provider has occurred in any jurisdiction; or

(iii) a Force Majeure has continued for a period of more than three (3) months.

4.11.3 **Change in law:** Where continued operation of an Access Agreement or access to any Network, Facilities and/ or Services provided under it is or will be unlawful (as a result of a legislative change), the Access Seeker and the Access Provider must meet within five (5) business days of becoming aware of the relevant change in law to review whether access to the relevant Network, Facilities and/ or Services may be provided by the Access Provider on different terms and conditions (which are acceptable to the Access Seeker). If the parties cannot agree to the provision of access on different terms and conditions, either party may request resolution of the dispute in accordance with the Dispute Resolution Procedures.

4.11.4 **Suspension:** Subject to Condition 4.11.5 of VBT's RAO, an Access Provider may only suspend access to any Facilities and/ or Services in the following circumstances;

- a) the Access Seeker's facilities materially and adversely affect the normal operation of the Access Provider's Network, or are a material threat to any person's safety;
- b) the Access Seeker's facilities or the supply of services pose an imminent threat to life or property of the Access Provider, its employees or contractors;
- c) the Access Seeker's facilities cause material, physical or technical harm to any facilities of the Access Provider or any other person;
- d) where the Access Seeker has failed to pay invoices in accordance with the relevant Conditions herein and has failed to rectify such non-compliance within thirty (30) days of receiving notice from the Access Provider (and subject to any right that the Access Seeker has under relevant Condition herein to dispute any amount in an invoice);
- e) where the Access Seeker has failed to provide the new security amount as required under Section 4.3 of VBT's RAO;
- f) where Force Majeure applies; or
- g) the Access Seeker breaches any laws, regulations, rules or standard which has a material and adverse effect on the Access Provider or the provision by the Access Provider of Facilities and/ or Services under the Access Agreement

For the purpose of this Condition 4.11.4, an Access Provider must provide the Access Seeker with five (5) Business Days' notice, including reasons, prior to suspending access to any Facilities and/ or Services. The Access Provider shall forward to the Commission a copy of the notice of suspension at the same time as providing the notice of suspension to the Access Seeker.

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

- a) Shall only give effect to the proposed termination, suspension or material variation with the Commission's written consent and subject to any time delay or conditions which the Commission may specify (if any).
- b) Must not give effect to the proposed termination, suspension or material variation unless the Access Provider has received written consent from the Commission to such termination, suspension or material variation; and
- c) Shall take all steps practicable to minimize disruptions and inconvenience to the Customers of the Access Seekers, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the suspension or termination of the Access Agreement, or access to Facilities and/ or Services provided under it.

4.11.6 Post-termination fees: An Access Provider 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 of the Facilities or Services provided that:
  - i. such charges must be reduced to reflect any cost savings to the Access Provider from not having to supply the Facilities and/or Services to the extent that they have been terminated or suspended; and
  - ii. the Access Provider must use reasonable endeavours to mitigate its costs of termination or suspension and maximise cost savings under paragraph 4.11.6 (b) above.

4.11.7 Upfront charges refund: On termination of an Access Agreement or access to any Facilities and/or Services provided under it, the Access Provider 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.

4.11.8 Deposits and guarantees: Notwithstanding the obligation in Condition 4.11.7 above, the Access Provider shall:

- (a) within two (2) months of termination of the Access Agreement refund to the Access Seeker any deposit paid provided all other amounts payable by the Access Seeker to the Access Provider 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 the Access Provider as at the date of termination.

#### **4.12 Form of Negotiation**

4.12.1 Any meeting or negotiation between the Operators may take place in person, or virtually by conference call, video conference or using other communications technology with participants in one or more geographical places (or in combined form).



## CHAPTER 5 – Notices

Any communications in respect of VBT's RAO should be made in writing to:

Attention : Commercial Department

Address : Level 21-7&8, Oval Damansara  
No. 685, Jalan Damandara  
60000 Kuala Lumpur  
Malaysia

Telephone : 03 - 77356288

# APPENDIX 1

## FAST TRACK AGREEMENT

### Terms and Conditions

1. This Fast Track Service Order Form shall form a part of the Access Agreement made or to be made between the Access Provider and the Access Seeker for the provisioning of Fast Track Services as detailed in Part B of the Fast Track Service Form (hereinafter referred to as “Services”). Pending the signing of the Access Agreement, the terms and conditions herein shall apply to the Services.
2. Access Seeker shall pay Access Provider the sum equivalent to two (2) month recurring Charges which shall be non refundable being the advanced payment for the first month charge, on or before the confirmation of this Order.
3. Access Provider shall be responsible for the installation and commissioning of the Services for each Link. Following such installation and commissioning Access Provider shall carry out the Acceptance Tests to establish whether the Services in respect of each Link are Ready For Service. Access Provider shall issue Acceptance Certificates to Access Seeker when Access Provider considers the Acceptance Tests have been successfully concluded and Access Seeker shall within 24 hours therefrom, notifies Access Provider that its own testing have failed due to a problem with such Service and provides Access Provider with a detailed technical report on such testing or signs acceptance on the Acceptance Certificate, whichever is relevant, failing which the Service shall be Ready For Service and the Acceptance Certificate deemed accepted. If, however, Access Seeker does so notify Access Provider then Access Provider shall either replace or repair, at its sole option, such Service or any part thereof and repeat the Acceptance Tests until they are successfully concluded.
4. Subject to Clause 2 herein, the Services shall be Ready For Service on the Ready For Service Date, which shall be the date as stipulated in the Fast Track Order Form **OR** in the Acceptance Certificate whichever is earlier.
5. In consideration of the Services granted by Access Provider to Access Seeker, Access Seeker shall pay Access Provider monthly in advance the recurring Charges from the Commencement Date, which is the Ready For Service Date as stipulated in the Acceptance Certificate. All recurring Charges are due thirty (30) days from the date of invoice.
6. The Term of the Services shall commence from the Commencement Date and shall be in force and in effect for the Term as stipulated overleaf unless earlier terminated in accordance to the provisions of this Agreement.
7. A party shall have the right (without prejudice to its other rights) to terminate this Agreement by notice in writing to the other party in any of the following events: (a) a liquidator (other than for the purpose of solvent amalgamation or reconstruction), administrative receiver, administrator, receiver or person of similar function is appointed in respect of the whole or part of the assets and/or undertaking of the other party or the other party enters into an arrangement or composition with its creditors, or if it becomes “unable to pay its debts” as that term may be defined in the solvency laws of the other party's country or state of incorporation, or other circumstances arise which entitle a court or a creditor to appoint an administrative receiver, administrator, receiver or person of similar function to make a winding-up order in relation to the other party; or (b) the other party fails to make any payment when due or shall default in due performance or observance of any material obligation under this Agreement and (in the case of a remediable breach) fails to remedy the breach within a reasonable time (not less than 30 days) specified by the terminating party in a notice so to do.
8. In the event this Agreement is earlier terminated due to a default of Access Seeker or Access Seeker cancels a Service prior to the expiration of the Term for that Service, Access Seeker shall upon demand pay Access Provider the entire Charges for the Term, being liquidated ascertained damages (LAD) for early termination or cancellation Charges as the case may be. When

calculating the LAD, credit shall be given for the Charges paid up to termination of Agreement or cancellation of Service as the case may be.

9. Interest will be imposed on any late payments from the due date until full settlement at the rate as stipulated in the Access Agreement.
10. Access Provider shall not be liable in any manner whatsoever to Access Seeker for any loss of profits goodwill consequential or economic loss (including any action taken against Access Seeker by third parties), whether direct or indirect, even if such loss is reasonably foreseeable or Access Provider has been informed by Access Seeker of the possibility of Access Seeker incurring the same.
11. Access Seeker shall not do or permit to be done anything which may infringe or violate any law or regulations pertaining to the utilization of the Services and to be solely liable and responsible for any infringement or violation against such laws or regulations and to fully indemnify Access Provider and keep Access Provider indemnified in respect thereof.
12. Access Seeker shall not do or permit anything to be done to damage Access Provider's equipment or any part thereof or cause a disruption to any services that Access Provider may be able to provide to other third parties and to fully indemnify Access Provider and keep Access Provider indemnified in respect thereof.
13. Access Seeker shall upon the termination or expiry of this agreement remove its equipment from the Access Provider network at its own costs and expenses.
14. In the event of conflict between the terms herein and the terms in the Access Agreement, the terms in the Access Agreement shall prevail.
15. All Appendixes to this Agreement and all certificates and other agreement delivered pursuant to this Agreement shall form part of this Agreement.

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# SCHEDULE A

## FORECAST, ORDERING AND PROVISIONING OBLIGATIONS

### 1. Forecast Obligation

#### 1.1 General Principal

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

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

#### 1.2 Confirmation of forecast

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

#### 1.2A Alternative or no Procedure

Access Provider and Access Seeker may agree to an alternative forecasting and ordering procedure other than as set out in Section 1 of this Schedule A herein as part of an Access Agreement or to dispense with such forecasting procedure altogether. If agreement is reached about such matters, the Access Provider and Access Seeker will be bound by the terms of that alternative procedure (or mutual dispensation) and not Section 1 of Schedule A herein.

#### 1.3 Forecast Request

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

- (a) The capacity of Facilities or Services which the Access Seeker seeks
- (b) The total period of time covered by each Forecast shall be **12 months**;
- (c) The minimum intervals or units of time to be used in making the Forecast is **12 months** unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services;
- (d) The Network area or operational area of the Forecast in relation to Access Provider's Network topology;
- (e) The maximum frequency to update or to make further forecast is once a year; and
- (f) Such other information that Access Provider reasonably requires in order to provide access to Facilities or Services requested by the Access Seeker.

To be in compliance with Sub-section 5.6.8 of the MSA, Access Provider will only require Access Seeker to provide Forecast in accordance with a Forecast Request no sooner than for (4) weeks after receipt of a Forecast Request.

#### 1.4 Respond to Forecast – Access Provider shall;

- a) Within two (2) Business Days acknowledge receipt of each Order; and
- b) Within five (5) Business Days of either issuing the Notice of Receipt in respect of an Order,

notify whether an Order is accepted or rejected

#### 1.5 Time of rejection

- a) Access Provider may notify the Access Seeker of any rejection within fifteen (15) Business Days of receipt of the relevant forecast.
- b) Such notice of rejection must specify the grounds of rejection and an offer to meet within five (5) business days of the notice of rejection to discuss the reasons for rejection and alternative methods of compliance.

#### 1.6 Negotiating an Agreed Forecast

- a) If a forecast is rejected, Access Provider must:
  - a) give reasons why it is unable to meet the Forecast;
  - b) indicate the level that Access Provider can meet, and
  - c) offer to meet with the Access Seeker within 5 Business Days of the rejection notice to discuss the reasons for the rejection and alternatives open to the Access Seeker.
- b) The Access Seeker may reconsider its Forecasts following a rejection notice. Within 21 Business Days of receipt of the notice, the Access Seeker must either:
  - a) confirm its rejected Forecast and explain why the Forecast is reasonable; or
  - b) submit a new Forecast that meets Access Provider's concerns,failing which the Forecast are deemed to be rejected by Access Provider.

If the Access Seeker confirms its Forecast within 21 Business Days, Access Provider will reconsider the Forecast and respond in the manner specified in Section 1.4 (“**Response to Forecast**”) and this Section 1.6.

#### 1.7 Ground of Rejecting a Forecast

Access Provider may reject Forecast if:

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

#### 1.8 Over Forecasting

- a) If the level of Orders made by the Access Seeker are below the Agreed Forecast over the relevant Forecast period, Access Provider may require the Access Seeker to contribute to the costs and expenses incurred by Access Provider due to its acceptance of the Agreed Forecast.
- b) An Access Provider may seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an Access Seeker if the Forecast is not met by the Access Seeker provided:
  - i. the relevant portion of the Forecast that was not met by the Access Seeker does

- ii. not relate to a Non-Binding Forecast Period; such costs and expenses were reasonably and necessarily incurred by the Access Provider; and
  - iii. the Access Provider has reasonably sought to mitigate its loss over a period not greater than the relevant Forecast period.
- c) An Access Provider may seek to recover any costs or expenses incurred due to its acceptance of a Forecast. The Access Provider shall be entitled to recover 75% of such costs or expenses which could not be mitigated under Condition 1.8. (b) above.

### 1.9 Meeting Agreed Forecast

The Access Provider must use reasonable efforts to meet Orders that are within the Agreed Forecast, as provided in Condition 2.6.1 below of this Schedule A of VBT's RAO

### 1.10 Use Forecast Information

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

## 2. Ordering and Provisioning Obligations

### 2.1 Ordering Contact and Information

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

Commercial Department  
Volksbahn Technologies Sdn Bhd  
Level 21-7&8, Oval Damansara  
No. 685, Jalan Damansara  
60000 Kuala Lumpur

Attention : Head of Sales  
Tel : 03-77356288

- 2.1.2 The Order must be in the form specified by Access Provider and must contain the following information:
- a) Facilities or Services to which access is requested;
  - b) The location of the points of delivery of the Facilities or Services requested ("Delivery Points");
  - c) A requested time for fulfillment of the Order ("Requested Delivery Date");
  - d) Information on the Access Seeker's Equipment to be used in connection with the Order; and
  - e) Such other information that Access Provider reasonably requires provisioning the Order.

- 2.1.3 Access Seeker shall use VBT's standard Service Order Form for the purposes of ordering Services.

### 2.2 Acknowledgment of Receipt

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

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

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

2.2.3 If the Access Seeker resubmits a completed Order more than 14 Business Days of the Order having been returned by Access Provider, the Order is deemed to be a fresh Order.

2.2.4 Wherever relevant, the Access Provider will include in its acknowledgement of receipt the following information:

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

### 2.3 Use of Ordering Information

2.3.1 Ordering Information provided by the Access Seeker is Confidentiality Information belonging to the Access Seeker and may be used only by those persons within Access Provider whose role is:

- a) within Access Provider's group for the purpose of provisioning an Order; and
- b) for network planning and engineering purposes.

### 2.4 Further Information

2.4.1 Access Provider may, at any time after the Order Date, request further information about the Order as is reasonably necessary to clarify an order. The Access Seeker will be given ten (10) business days or more to respond to Access Provider's request for further information and may, acting reasonably:

- (a) Treat the Order as suspended until the information requested is received; and
- (b) Remove the Order from Access Provider's queue and insert the Order at a later position in the queue when the information requested is received.

### 2.5 Respond to an Order

2.5.1 Access Provider shall indicate whether it accepts or rejects an Order within:

- (a) ten (10) Business Days of the Order Date; or
- (b) if a Service Qualification as described in Section 2.7 below is performed in respect of that Order - fourteen (14) Business Days of the Order Date plus the period for completing the Service Qualification.

2.5.2 Access Provider may reject an Order where:

- (a) it is not technically feasible to provide access to the Services requested by the Access Seeker;

- (b) Access Provider has insufficient capacity to provide the requested Services;
- (c) the Order is in excess of agreed Forecast levels;
- (d) the Order duplicated an Order awaiting fulfillment;
- (e) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions of this Access Agreement and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through the application of a security requirement in accordance with VBT's RAO; or
- (f) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Facilities and/or Services, to protect:
  - (i) the integrity of a Network; or
  - (ii) the safety of the individuals working on, or using services supplied by means of a Network or Equipment and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through the application of reasonable security or escorted access requirements).

2.5.3 If the Order is accepted, Access Provider must specifying its Notice of Acceptance:

- a) an indicative date when the Services requested in the Order will be ready to be provided ("Indicative Fulfillment Date"), subject to the Order being confirmed by the Access Seeker and any Indicative Fulfillment Date as confirmed by the Access Seeker shall be the Agreed Ready For Service Date;
- b) the date when civil works (if any) are intended to commence;
- c) an estimate of the Charges for fulfilling the Order, including without limitation additional works such as internal wiring, right of way, land rental, local authority permits and third-party deposits, where the actual Charges will be imposed subject to 2.5.7 of Schedule A herein;
- d) such information as is reasonably necessary for the Access Seeker to benefit from access to the Service; and
- e) a validity period of 90 days from the date of the Notice of Acceptance for the Access Seeker to confirm the Order if the Access Provider accepts the Order subject to changes. If the Access Provider accepts the Order without change, the Access Seeker's confirmation of the Order is not required.

2.5.3A Commencement of delivery timeframes:

The applicable delivery timeframe for an Order, as determined under paragraph 2.5.3 (a) above, shall commence from:

- (a) where the Access Seeker's confirmation of an Order is required under paragraph 2.5.3 (a) and (e ) above, the date the Access Seeker confirms the Order in accordance with that paragraph; and
- (b) in any other case, from the date of the Access Provider's Notice of Acceptance.

2.5.4 The Indicative Fulfillment Date must be:

- a) the Requested Delivery Date; or,
- b) if that Requested Delivery Date cannot be met, a date that is within:
  - i the indicative delivery timeframe or activation timeframe relevant Service/Facility specified in the Annexure I – List and Description of Facilities and Services for the purpose of this Condition 2.5.4; or
  - ii the period of time taken by the Access Provider to deliver, or activate, such Facilities and/or Services for itself,
 whichever is shorter;

2.5.5 Access Seeker may cancel or vary an Order at any time subject to Section 2.8 of this



## Schedule A

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

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

2.5.7 If the Charges will exceed the estimate to fulfill the Order under paragraph 2.5.3 (c) above:

- a) the Access Provider shall provide the Access Seeker with a 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 fulfil the Order
- b) the Access Provider shall permit the Access Seeker to withdraw the Order without penalty within ten (10) Business Days of the notice given by the Access Provider under paragraph 2.5.7(a) above if the revised estimate in that notice exceeds the original estimate by more than ten percent (10%);
- c) where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope of work provided by the Access Provider due to
  - i. information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker; or
  - ii. a change in the scope of work by the Access Seeker,the Access Seeker shall be obliged to pay the Access Provider for the actual cost incurred (but in no other circumstances); and
- d) the Access Provider shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate, whereby such confirmation is to be provided by the Access Seeker within the timeframe set out in paragraph 2.5.3(e) or 2.5.7.(b) of this Schedule A, as applicable

## 2.6 Accept and Fulfilling Order

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

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

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

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

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

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

- 2.6.5 Access Provider may require Access Seeker to procure additional capacity on the Access Seeker's side of the Network to the extent that the Access Provider, in good faith and reasonably, estimates that the Operators may require additional capacity to meet demand and a failure by the Access Seeker to procure that additional capacity may cause an adverse impact on the operation of the Access Provider's Network. Where the Access Seeker fails to so procure additional capacity and the demand exceeds the capacity on the Access Seeker's Network, the Access Provider will notify the Access Seeker in writing, and the Access Seeker and the Access Provider shall meet no later than five (5) Business Days after receipt of the notice from the Access Provider to attempt to identify alternative sources of capacity. If the matter cannot be resolved within ten (10) Business Days of the date of that meeting, the Access Provider may bar or block services to the Access Seeker's Network to the extent necessary to minimise congestion within the Access Provider's Network.

## 2.7 Service Qualifications

- 2.7.1 Access Provider may conduct pre-Order Service Qualifications for itself for any given Facility and/or Service. The Access Provider will only conduct post-Order Service Qualification if no pre-Order Service Qualification has not been completed for that Facility and/or Service and:

- (a) Access Provider reasonably require information from such Service Qualifications which is not readily available; and
- (b) Access Provider notifies the Access Seeker that such Service Qualifications are necessary within two (2) Business Days of receiving the Order Date, or, if further information has been requested under Section above 2.4 within two (2) Business Days of the expiry of the period for further information, together with the reasons for such Service Qualifications.

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

### 2.7.2 Completion of Service Qualifications

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

notice under paragraph 2.7.2 (a), of the available capacity and timeframe for the fulfilment of the Order at the available capacity and (if relevant) with such augmentation as may be required to fulfil the Order as submitted.

**2.7.3 Withdrawal of Order following Service Qualifications**

Access Seeker shall accept or withdraw the order within ten (10) Business days after receiving the result of a Service Qualification under Condition 2.7.2. above Access Provider shall permit an Access Seeker to withdraw its Order without penalty except that the Access Provider may recover from the Access Seeker reasonable costs incurred by the Access Provider for the Service Qualification undertaken of the withdrawn Order (irrespective of whether the Access Provider has accepted the Order or not) before the earlier of:

- (a) ten (10) Business Days after the Access Seeker receives the result of a Service Qualification under Condition 2.7.2; and
- (b) one (1) Business Day before the Access Provider commences civil works to provision the Order (where the civil works are required to provision the Facility and/or Service within the delivery timeframe specified in the Notice of Acceptance), and any civil works to be conducted must be subject to the issuance of a notice in writing by the Access Provider, which may be in the form of a Notice of Acceptance if civil works is to occur after the Access Provider has accepted the Order.

**2.8 Cancellation or variation penalty**

- 2.8.1 If an Order is cancelled or varied by Access Seeker, Access Provider may ask the Access Seeker to pay any costs reasonably incurred by Access Provider in respect of the Order.
- 2.8.2 The cost which Access Seeker is required to pay shall not exceed the lesser of the following amounts;  
The sum of cost necessarily incurred by the Access Provider which is directly attributable to the cancellation or variation; or  
An amount equal to the sum of charges that would have been payable by the Access Seeker in the six (6) months immediately following the cancellation or variation had the Order not been cancelled or varied.

**2.9 Allocation of Constrained Capacity**

- 2.9.1 Capacity on Access Provider's Network is constrained if the capacity that is immediately available to meet the relevant Service ("Available Capacity") is less than the total capacity required ("Required Capacity") to meet:
  - b) the Access Seeker's Agreed Forecast and those of other Operators;
  - c) Access Provider's own Forecast; and
  - d) any redundant capacity ("Redundant Capacity") that is reasonable for Access Provider to reserve in respect of the relevant Service.
- 2.9.2 The Access Provider must maintain a policy for allocating constrained capacity ("Capacity Allocation Policy"). This policy shall:
  - a) be disclosed, free of charge, to each Access Seeker upon entry into an Access Agreement, the Commission upon the Effective Date, to both Access Seekers with whom the Access Provider has an Access Agreement and the Commission each time it is amended, any other Operator on request;
  - b) set out the principle in accordance with which the Access Provider shall determine how to allocate capacity between its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest and any other Operator, in circumstances where the amount of

capacity available is less than the aggregate of capacity required by the Access Provider's own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest, and the other Operator;

- c)
  - i be fair and reasonable
  - ii. be consistent, so far as practicable, with Access Provider's general duty of non-discrimination in accordance with Sub-section 149(2) of the Act;
  - iii. treat the Access Seeker's requirements on an equivalent basis to that which Access Provider treats itself for the same Service; and
  - iv. allocate the Available Capacity less the Redundant Capacity (if any) in proportion to each operator's Forecast (including Access Provider's own Forecast); and
- d) set out the Access Provider's plans to expand their capacity over time (if any), where such information must be provided to Access Seekers on a non-discriminatory basis in terms of its content and frequency updates.

2.9.3 If Access Provider anticipates that it may not be able to meet the Access Seeker's Forecast (whether agreed or not) because of constrained capacity, Access Provider must:

- a) notify the Access Seeker that capacity is constrained; and
- b) allocate the Available Capacity between itself, the Access Seeker and other Operators in accordance with the Capacity Allocation Policy.

## 2.10 Delivery, Delay, Cancellation and Variation of Orders

2.10.1 The Access Provider shall deliver the ordered Service to Access Seeker by the Agreed Ready For Service Date (as provided under Condition 2.5.3).

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

2.10.3 If Access Seeker defers an Agreed Ready For Service Date, Access Seeker shall be liable to any cost incurred by Access Provider in relation thereto.

2.10.4 If Access Seeker is not able to use the Facilities or Services on the Agreed Ready For Service Date not due to Access Provider's fault, the Facilities or Services are deemed provided and Access Seeker shall be subject to the rental charges commencing from the Agreed Ready For Service Date.

2.10.5 Where there is a delay in the delivery of an Order, and the delay is caused by either the Access Provider or by a third party, that is not acting under the Access Provider's direction or control, the Access Provider shall:

- (a) notify the Access Seeker of the delay to a delivery date and the revised delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;
- (b) permit the Access Seeker notified under paragraph 2.10.5 (a) above to cancel the Order without penalty if the delay is longer than the equivalent time period for delivery of the Facility and/or Service; and
- (c) the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date.

2.10.6 Where there is a delay in the delivery of an Order caused by the Access Seeker:

- (a) the Access Provider shall notify the Access Seeker of the delay to the delivery date as soon as practicable after the Access Provider becomes aware of it;
- (b) the Access Provider and Access Seeker must work together to minimise the delay;
- (c) the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date; and
- (d) the Access Seeker shall, without limitation to any other rights the Access Provider may have in the Access Agreement or law, provide a rebate to the Access Provider. The rebate shall be for an amount equivalent to the recurring charges payable for the Facilities and/or Services prorated daily for the number of days delayed.

## 2.11 Testing and Commissioning

An Access Provider shall:

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

## 2.12 Resource Charge

An Access Provider may charge the Access Seeker a one-off fee as set out in paragraph 4.5.2.2 of Chapter 4 (Access Request Procedure) of VBT's RAO where the rate was determined by reference to the costs incurred by the Access Provider for allocation of manpower and other resources to enable the Access Provider to test and provide the requested Facilities or Services.

## 2.13 Late Delivery

Subject to Section 2.13A below, if an Access Provider fails to meet any timeframe in Condition 2.10.1 above with respect to the delivery of access to Facilities or Services pursuant to an Order made in accordance with the Access Agreement except when such failure is caused solely by the Access Seeker's delay or a delay caused by a third party, that is not acting under the Access Provider's direction or control (for example, where a local authority or landowner delays providing necessary approvals for works to commence), Access Provider shall, without limitation to any other rights the Access Seeker may have in the Access Agreement or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring charges payable for the Facilities or Services prorated daily for the number of days delayed subject to a maximum sum of 1 month's recurring charge.

2.13A Access Provider shall not be liable for failures or delays in meeting the Agreed Ready for Service Date or any timeframe of delivery for Services due to any of the following reasons:

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

## 2.14 Queuing Policy

An Access Provider shall establish and maintain a queuing policy for each Facility and/ or Service: which;

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

## 2.15 Treatment of Orders and Service Qualifications

Access Provider shall:

- a. establish a single queue for all Orders and Service Qualifications for a given type of Facility and/or Service, whether those Orders and Service Qualifications are required for itself or Access Seeker;
- b. give the equivalent priority to the handling of all Orders and Service Qualifications in each queue;
- c. otherwise treat all Orders and Service Qualifications in each queue in compliance with its queuing policy established under Section 2.14 above; and
- d. shall promptly notify the Access Seeker at the time of providing an acknowledgment of receipt of the Order under condition 2.2.1 of this Schedule A of VBT's RAO (and as specified in the Notice of Receipt under condition 2.2.4 of this Schedule A of VBT's RAO), of their acceptance of, and position in, the Access Provider's queue.

## 2.16 Other Uses

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

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# SCHEDULE B

## BILLING AND SETTLEMENT OBLIGATIONS

### 1. Billing

#### 1.1 General Principle

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

#### 1.2 Billing information

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

#### 1.3 Billing error

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

#### 1.4 Back billing

Any omitted or miscalculated Charges from an invoice within one (1) month after end of the billing cycle may be included in a later invoice, provided the Charges are substantiated and the inclusion or amendment shall be made within three (3) months from the issuing of the original invoice in which the omitted or miscalculated Charges should have been included.

#### 1.5 Provisional billing

Where the Access Provider is unable to issue an Invoice within one (1) month after the end of the Billing Cycle, it may issue an Invoice to an Access Seeker for a provisional amount, based on the last Invoice (**provisional invoice**). In such circumstances, Access Provider may invoice an Access Seeker for a provisional amount for a period of not more than three successive Billing Periods, provided the amount of the provisional Invoice is no more than the average of the most recent three Invoices. Where there have not been three (3) past Invoices for access to the relevant Services or Facilities, Access Provider may issue a provisional Invoice up to the full value of the amount based on the most recent Invoice. The Access Seeker shall pay the Provisional Amount by the Due Date. The Provisional Amount will be adjusted in the next invoice or as soon as practicable but not later than sixty (60) days after the month in which the charges were incurred or such other time period as may be agreed in writing ("**Adjustment Period**"). If an adjustment is not made within the Adjustment Period, the Access Seeker shall treat the Provisional Amount as the actual invoice.

#### 1.6 Adjustment period

Where a Provisional Invoice is issued by the Access Provider, within the next two (2) months or such other time period as may be agreed in the Access Agreement ("**Adjustment Period**"), the Access Provider must issue an invoice for the actual amount due for access to the relevant Facilities and/ or Services. If that Invoice for the actual amount is not issued within the Adjustment Period, the Access Seeker shall treat the provisional amount as the actual amount. If the actual amount for a particular Billing Period is higher than the provisional amount for the Billing Period,

then the Access Seeker will pay in full such difference (free of interest) within one (1) month from the receipt of the actual invoice to the Access Provider. If the actual amount for a particular Billing Period is lower than the provisional amount for the Billing Period, then the Access Provider will reimburse in full such difference (free of interest) within one (1) month from the receipt of the actual Invoice to the Access Seeker

#### 1.7 Currency

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

#### 1.8 Other billing information

An Operator must provide to any Operator with which it interconnects, information within its possession that is reasonably necessary to allow the Other Operator to provide accurate and timely billing services to itself, other Operators and Customers.

#### 1.9 Summarised invoice and billing information

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

#### 1.10 No set-off

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

### 2. Settlement

#### 2.1 Time for payment

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

#### 2.2 Method of payment

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

#### 2.3 Billing disputes

In the event the Access Seeker wishes to dispute an invoice, the Access Seeker shall notify Access Provider in writing within thirty (30) Business Days after the date of receipt of such invoice.

The dispute notification shall provide the following information: -

- (a) the reasons for which the Access Seeker disputes the Invoice;
- (b) the amount in dispute;
- (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 a report, indicating any relevant traffic data which is in dispute.

#### 2.4 Withholding of Disputed amounts



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

## 2.5 Billing Dispute Resolutions

Saved as mentioned in 3.4 of VBT's RAO, where relevant the parties must comply with the Dispute Resolution Procedures applicable to the billing disputes in Annexure A of the MSA.

- (a) The Access Seeker notifies VBT within fifteen (15) Business Days from the date of receipt of the invoice of such dispute (unless otherwise agreed by the Access Provider and Access Seeker in the Access Agreement); and
- (b) The Access Seeker's notification specifies the information referred to in Section 2.3 above.

## 2.6 Interest

Subject to withholding of amounts being disputed in good faith in accordance to Section 2.4, Access Provider reserve the right to charge interest in any amount outstanding from the Access Seeker from time to time, in respect of that overdue sum at the rate of two percent (2%) per annum above Malayan Banking Berhad's base rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than sixty (60) days will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad's base rate calculated from the due date until the date of receipt of the full payment by Access Provider. For clarification, an Access Provider shall not charge interest on an amount which is disputed by an Access Seeker in good faith.

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# SCHEDULE C

## TECHNICAL AND NETWORK OPERATIONAL OBLIGATIONS

### 1. (Not use)

#### 1.1. (Not use)

### 2. Point of interface procedures

#### 2.1. Interconnection

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

2.1.2. A Point of Interface may be a Point of Interconnection (“**POI**”) or a Point of Presence (“**POP**”). A POI may be implemented in any of the following two (2) configuration options:

a) In – Span Interconnection

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

b) Physical Co-Location

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

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

2.1.4. Locations available for VBT’s POIs are as listed in Annexure III of VBT’s RAO.

2.1.5. The Access Seeker may request a Point of Interface at a location not specified by the Access Provider under Condition 2.1.4. The Access Provider must consider the request in good faith and must, acting reasonably, accept or reject the request. If the request is rejected, the Access Provider must give reasons for the rejection.

2.1.6. When determining which locations are to be listed as a Point of Interface under Condition 2.1.4. or when considering a request under Condition 2.1.5:

- a) the Access Provider must offer Co-Location at any other technically feasible point;
- b) the Access Provider may offer more than one form of connecting configuration in relation to a particular location;
- c) the Access Provider must not reserve space other than for its own current needs, its future needs (calculated by use of a reasonably projected rate of growth over two (2) years) and the needs of other Operators who are currently occupying or have ordered additional space from the Access Provider; and
- d) the Access Provider must have regard to any possible rearrangement of its Equipment to eliminate space inefficiencies.

2.1.7. Access Provider must take reasonable steps to optimise its use of physical space (including by upgrading its facilities). If reasonable steps have been taken and no further physical space is available at a Point of Interface location, the Access Provider is not obliged to grant Physical Co-Location to the Access Seeker at that location.

2.1.8. The Access Seeker may share Physical Co-Location with another Operator subject to the terms and conditions to be agreed provided always:

- a) the Access Seeker first notifies the Access Provider in writing of the other Operator's identity before sharing physical Co-Location with the other Operator; and
- b) Access Seeker warrants that the other Operator will comply with the Access Seeker's obligations in relation to the physical Co-Location.

## 2.2. Point of Interface Factor

### 2.2.1. Provisioning of New POI (a) In-span interconnection

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

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

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

### 2.2.2. Establishment for a New POI

If the Access Seeker wishes to establish a new POI, the Access Seeker must notify the Access Provider in advance. The identification for POI shall be notified in advance in accordance with the MSA Determination. Before the acceptance of the establishment of a new POI, the following information has to be available and the arrangements to be finalised before the planning for a new POI Connecting Link be done. They are:

- i the number of routes and nodes that will be served by the Connecting Link provided at the proposed POI shall be indicated;
- ii leased circuits requirements (non POI if required); and
- iii method of provisioning whether In-span or Virtual Co-location.

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

- a) The following information must be available before the decision to provide additional connecting capacity at the existing POI. They are:
  - i Existing Transmission Facilities;
  - ii The utilization of each available Transmission media; and
  - iii The bandwidth capacity leased by the Access Seeker, if applicable
- b) The provision of additional Connecting Link at the POI shall be agreed once the circuit utilisation of the existing connecting facilities is at 75%.
- c) The need for migrating from existing Virtual Co-location to the In-span Interconnected bearer shall be permitted once the In-span Interconnect bearer is established in accordance with the MSA Determination and the capacity of the new POI is sufficient to cater for migration.

#### 2.2.4. POI Location Considerations

Technical consideration for POI shall be as follows:

- a) Transmission facility has the capacity to interconnect with each other party's networks.
- b) Timely and efficient deployment of sufficient capacity of links to support the required grade of service to support the traffic as may be required by the Access Seeker.
- c) Preservation of network security.

### 3. Decommissioning Obligations

#### 3.1. Decommissioning of POIs

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

#### 3.2. Decommissioning notice

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

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

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

#### 3.3. Co-operation

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

#### 3.4. Decommissioned Point of Interface compensation

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

- a) decommissioning any links to the Point of Interface that is proposed to be decommissioned, that are, or will be, rendered redundant by the proposed decommissioning; and
- b) installing or otherwise procuring links between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to Section 3.1 above

For the avoidance of doubt, the Access Provider shall not be liable for the above compensation in Conditions 3.4 (a) and (b) if the decommissioning of any links to the Point of Interface is requested by the Access Seeker or if the Access Provider is required by the landlord or local authority to vacate the premises in which the Point of Interface that is proposed to be decommissioned is located.

3.5. The cost of decommissioned Facilities and/or Services if requested by the Access Seeker shall be borne by the Access Seeker including decommissioning caused by Force Majeure: -

- a) moving the Access Seeker's Equipment from the decommissioned Facilities to alternative Facilities offered or
- b) re-arranging Equipment to connect to alternative Services offered.

### 3.6 Alternative Arrangements

The Access Provider which notifies an Access Seeker of its intention:

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

### 4. (Not use)

### 5. Operation and Maintenance Obligations

- 5.1. Each Operator shall be responsible for the operations and maintenance of its own facilities and services.
- 5.2. Each Operator shall establish and maintain a fault reporting service that allows Customers who are directly connected to the Network of that Operator and to whom that Operator supplies Facilities and/or Services (inter alia) to report faults relating to any Network, Facility and/or Service.
- 5.3. Each Operator will advise all of its directly connected Customers to report all faults to the fault reporting service described in Section 5.2 above.
- 5.4. **Non-discriminatory fault reporting and identification:** An Operator shall:
  - i. perform fault reporting and identification on a non-discriminatory basis; and
  - ii. treat the faults reported by another Operator on an equivalent basis as it treats the faults reported by itself.
- 5.5. The Operator in whose Network the fault occurs is responsible for rectifying it and restoring services including for the purpose of restoring the supply of Facilities and/or Services which are used in another Operator's Network.

- 5.6. **Major inter-working faults:** If a major fault occurs which affects communication that crosses or would cross both Operators' Networks, initial responsibility for identifying the fault rests with the Operator who first becomes aware of the fault.
- 5.7. **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 another operator's Network, network facilities, network services or Equipment, the first-mentioned Operator must promptly inform the other Operator of:
- the existence of the fault;
  - the actions being taken by the first-mentioned Operator to rectify the identified faults and restore the service; and
  - the outcome of those actions.
- 5.8. Each Operator is responsible for establishing and maintaining a fault reporting service at its own cost irrespective of the location of the fault.
- 5.9. Each Operator shall give priority to faults in the following order:
- the highest service loss impact in terms of the number of Customers affected;
  - those which have been reported on previous occasions and have re- occurred; and
  - all other faults.
- 5.10. Each Operator shall rectify faults on a non-discriminatory basis.
- 5.11. **Target times:** Each Operator shall respond to and rectify faults within the lesser of:
- timeframes set out in a relevant service specific obligation in Annexure I – List and description of Facilities and Services attached herein or, if there is no such timeframe, the response timeframes, progress update frequencies and rectification timeframes set out in the table below;
  - timeframes which will result in compliance by all affected Operators with any applicable mandatory standards that apply to service availability and restoration; and
  - timeframes equivalent to that which the Access Provider provides to itself.

<u>Priority Level</u>	<u>Fault types</u>	<u>Response Timeframe</u>	<u>Progress Update Frequency</u>	<u>Rectification time</u>
Level 1	1. Major switch outage 2. Transmission bearer total outage 3. Route blocking > 30% 4. Major signalling problem	Within one (1) hour	Every one (1) hour	Four (4) hours
Level 2	1. Minor switch outage 2. Minor routing issue 3. Minor signalling problems 4. Route blocking 10%-30%	Within four (4) hours	Every four (4) hours	Twenty-four (24) hours
Level 3	1. Faults affecting single or small number of Customers 2. Route blocking <10%	Within twenty-four (24) hours	Every twenty-four (24) hours	Seventy-two(72) hours

<u>Priority Level</u>	<u>Fault types</u>	<u>Response Timeframe</u>	<u>Progress Update Frequency</u>	<u>Rectification time</u>
Level 4	1. Remote congestion 2. External Technical Irregularities ("ETI") 3. Other performance related issues	Within forty-eight (48) hours	Every forty-eight (48) hours	Ten (10) Business Days

5.12. **Planned maintenance:** If an Operator intends to undertake planned maintenance ("Maintenance Operator") which may affect an Access Seeker's Network, Facilities and/or Services, the Maintenance Operator must:

- i. provide at least the greater of the time which it notifies its own Customers and ten (10) Business Days' notice of the planned maintenance;
- ii. use its reasonable endeavours to minimise any disruption to the carriage of communications that crosses or would cross both Operators' Networks, and which are caused by the maintenance or re-routing; and
- iii. where the Operators agree that it is practicable, provide alternative routing or carriage at no additional cost to the Access Seeker.

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

5.14. **Emergency maintenance:** If a Maintenance Operator needs to undertake emergency maintenance which may affect the Other Operator's Network, the Maintenance Operator must, if it is able to:

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

5.15. Access Provider shall maintain a twenty-four (24) hours a day, seven (7) days a week fault reporting and rectification service.

5.16. **Complaints handling:** The Operators must report all access outages that relate to Networks, Services and/or Facilities to the Access Provider's relevant fault reporting and rectification service.

## 6. Network Facilities Access and Co-location

6.1. Unless otherwise agreed by the Operators, each POI will be physically installed and housed at the Access Provider's available POI locations as listed in Annexure III. All Operators shall mark or label their Equipment in such manner that they can be easily identified as the Equipment of the Operator.

6.2. The Operators will negotiate and agree on all applicable terms and conditions in respect of technicalities for the provision of Services, in addition to those provided for in Section 6.1, as required.

6.3. The Operators may negotiate and agree on the location of the POI. For purpose of clarification, it is hereby agreed that in order to minimise the cost and to promote efficiency of Network deployment, the technical manner and the location of the POI must minimise the length of any

link which either Operator will need to build and to this end the mode of provisioning Connecting Link shall be by way of fiber or wireless transmission or any other method of interconnection as agreed by the Operators.

- 6.4. The Operators will agree to all applicable terms and conditions in respect of access to the agreed POI locations as well as any other operations and implementation issues, in addition to those provided for in Section 6.3, as required.
- 6.5. The Operators acknowledge and agree that the Commission may issue a framework or guidelines pertaining to the establishment and maintenance of POIs and access to the Facilities of telecommunications network of the Operators. In the event that such framework or guidelines are issued by the Commission, the Operators agree to review, and where necessary, revise and/or modify the relevant provisions of this agreement to ensure consistency with the framework or guidelines.
- 6.6. An Operator shall permit, and do all things reasonably necessary to allow the Other Operator to maintain its Equipment at or in the Facilities to which access has been granted. This may include, for example, the provision of physical access. For the purposes of this Section 6.6, an Operator shall be permitted to maintain its Equipment at or on the Facilities if the Other Operator allows external contractors or other third parties to maintain similar Equipment on the Facilities.
- 6.7. The utility cost in respect of the Facilities as contemplated in this Section 6 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.
- 6.8. It is agreed that for the purposes of providing Connecting Link to trunk connection to and from POI's, equipment can be shared in Access Seekers' premises and Access Provider shall have the right to co-locate and to offer virtual co-location (either by fibre or wireless) to the other Operator with a Licence (other than the Operator hereto) in Access Seeker premises.

## 7. Technical Obligations

- 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 and are not inconsistent with any technical obligations set out in the MSA Determination.
- 7.2. **Prevention of technical harm:** An Operator must take reasonable measures to ensure that access do not cause physical or technical harm to the other Operator's Network, which measures shall be no less robust than the measures which the Operator takes in respect of new facilities or Equipment incorporated into its own Network.
- 7.3. **Technical Standards:** An Operator must comply with any applicable technical standard adopted by the Commission under Chapter 3 of Part VII of the Act.
- 7.4. **No Interference:** An Operator must not do anything, or knowingly permit any third person to do anything, in relation to Network, network facilities, network services or Equipment which:
  - a) causes interference; or
  - b) materially obstructs; interrupts or impedes the continuous use or operation of, the Network, network facilities, network services or Equipment of another Operator.
- 7.5. **Notice of interference and rectification:** If an Operator notifies ("**Notifying Operator**") another Operator that the other Operator's Network, network facilities, network services or Equipment is causing interference to the Notifying Operator's Network, network facilities, network services or Equipment:
  - a) the other Operator shall rectify the situation as soon as possible, and in any case, within twenty-four (24) hours of receiving notice from the Notifying Operator, so that no interference is caused; or



- b) If the other Operator shall not able to locate the source of the interference within twenty four (24) hours under Condition 7.5(a) above, the other Operator shall promptly notify the Notifying Operator, and both Operators shall meet as soon as possible, and in any case, within twenty-four (24) hours of such notice and jointly examine each other's Network, network facilities, network services or Equipment to locate the source of the interference.

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# ANNEXURE I

## List and description of Facilities and Services

### A. List of Facilities and Services

#### 1. General

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

1.2 The following table tabulates the Facilities and Services provided by VBT:

Item	Facilities / Services	Capacities/Size
1	Transmission Service	
	Bandwidth Services:-	
	(a) (Metro-E Services (Layer 2))	1Gbps – 10Gbps 10Gbps ~ 100Gbps
	(b) Lambda Services (Layer 1)	10GE, 40GE, 100GE FC (1G, 2G, 4G, 10G)
	(c) OTN Services (Layer 1)	OTU2, OTU2e (10G) OTU4 (100G)
2	Infrastructure Sharing:	
	Tower / 30M / 24M / 18M Pole Space Minimast Unipole Boom / Tripod	Per Tier
3	Network Co-Location	No of rack or cabinet

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

### B. Service Description

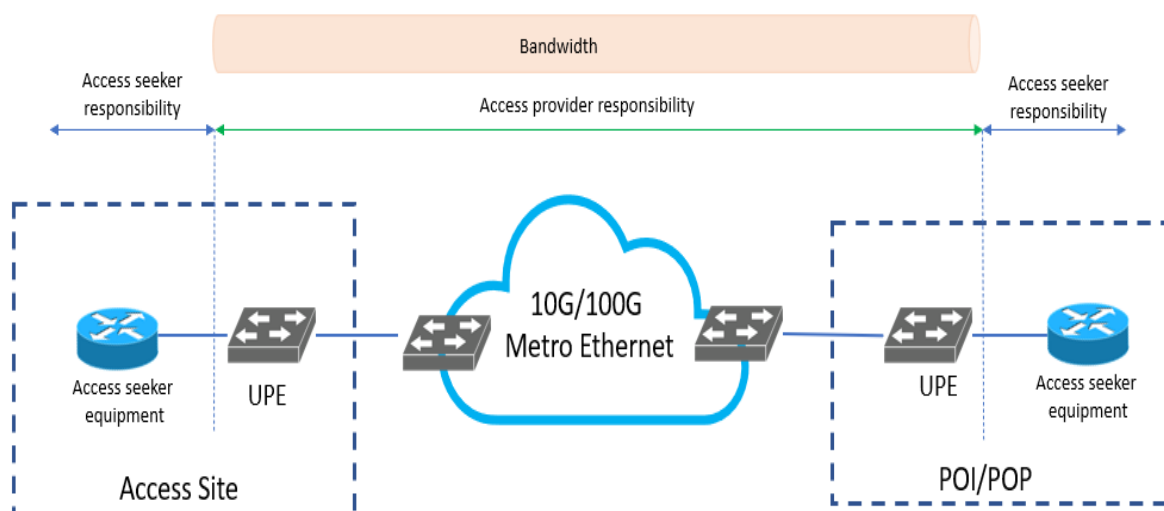
#### B.1 Transmission Service

##### 1. General

1.1 Section B1 of Annexure I sets out the terms and conditions which are applicable to Transmission Service.

1.2 Transmission Service is a Facility and Service by Bandwidth Services connection for the carriage of communications between transmission points of the Access Provider via network interfaces at

such agreed transmission rate between Access Provider and Access Seeker. The following diagram illustrates the Transmission Service:



**Figure 1: Transmission Services**

## 2. Provision of Transmission Services

- 2.1 Subject to the Access Seeker complying with the Ordering And Provisioning Obligations in **Schedule A**, Access Provider will provide in accordance with the terms and conditions of this Access Agreement and the applicable Schedules and Annexure herein, Transmission Services requested by the Access Seeker.
- 2.2 Where the Access Seeker leases Transmission Services from Access Provider, Access Provider's Equipment shall be permitted to be located in the Access Seeker's premises without charge, in accordance with the relevant technical specifications in Section 5.13 of the MSA Determination, Schedule C and Section B.3 below.
- 2.3 The Access Seeker shall provide Access Provider reasonable access to its premises when Access Provider reasonably requires it for the purpose of installing, maintaining, modifying or removing Equipment related to the provision of Transmission Services by Access Provider.
- 2.4 Access Provider shall ensure that the Transmission Services conform to the QOS Standards and Technical Specifications, subject to the Access Seeker's use of those Transmission Capacity Services in accordance with the Technical Specifications and other agreed requirements.
- 2.5 The minimum period in which the Access Seeker may lease Transmission Services is one (1) year.
- 2.6 The Access Seeker will pay to Access Provider for Transmission Services stated in **Section B.1 of Annexure I** provided by Access Provider, Charges in accordance with the applicable provisions set out in **Annexure II**.
- 2.7 The indicative delivery timeframe for the Transmission Service is:
  - a. If no new network facilities are required to supply the Transmission Service, twenty (20) business days for Urban Areas, thirty (30) Business Days for non-urban areas and mutually agreed timeline by the parties for geographically difficult regions (like unpaved roads, hills and remote islands).

- b. If new network facilities are required to supply the Transmission Service, sixty (60) business days for Urban Areas, ninety (90) Business Days for non-urban areas and mutually agreed timeline by the parties for geographically difficult regions (like unpaved roads, hills and remote islands).

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

Parameter	Threshold %
Network availability (Trunk Transmission Service only)	≥ 99.9%
Latency (Intra-region): • within Peninsular Malaysia • within Sabah • within Sarawak	Between >1ms and <40ms
Latency (Inter-region) • between Peninsular Malaysia and Sabah • between Peninsular Malaysia and Sarawak • between Sabah and Sarawak	≥ 40ms

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

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

- 2.10 Amount of rebate: The amount of any rebate for the purposes of Section 2.9 above shall, at a minimum, reflect:

- (a) the reduced costs that would have been incurred by the Access Seeker in acquiring the relevant Transmission Service with a service level availability equivalent to that provided by the Access Provider;
- (b) any other diminution in value (including any rebates paid by the Access Seeker to end users) in the Transmission Service provided to the Access Seeker due to the Access Provider's failure to comply with the service level availability required under the Commission Determination on the Mandatory Standards for Quality of Service (Digital Leased Line Service), Determination No.3 of 2009, including such modification or variation and any other mandatory standards that may be determined by the Commission from time to time; and
- (c) the maximum cap on the rebate offered shall be a sum mutually agreed upon between Access provider and Access Seeker.

- 2.11 No bundling:

An Access Provider shall not require an Access Seeker to purchase a Transmission Service together with any other Transmission Service. For example, an Access Provider shall not require an Access Seeker to purchase a Trunk Transmission Service between a pair of technically feasible network transmission points with another Trunk Transmission Service between another pair of technically feasible network transmission points.

## 2.12 Equivalence of Inputs:

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

**B.2 Infrastructure Sharing**

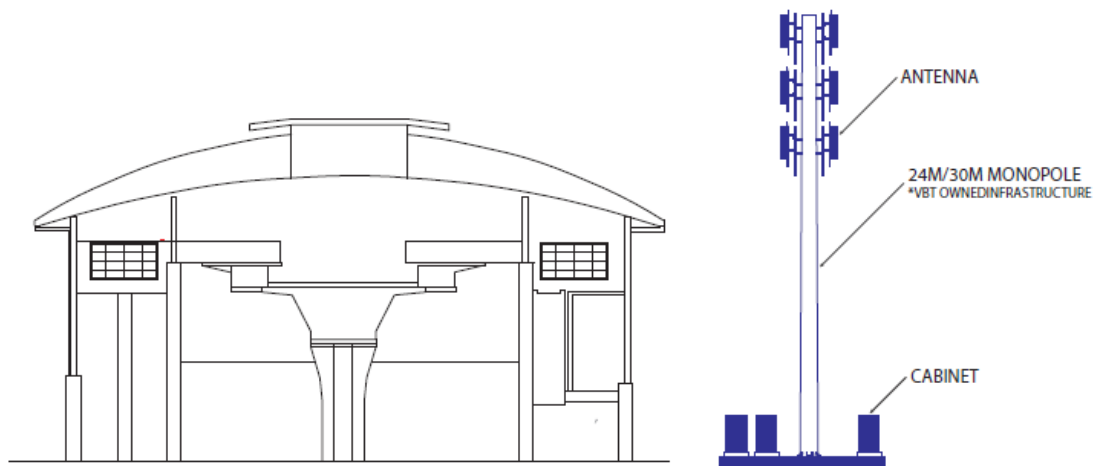
## 1. General

1.1 Section B.2 of Annexure 1 sets out the terms and conditions which are applicable to Infrastructure Sharing. Save as mentioned below, all terms and conditions are subject to strict adherence of Sub-section 6.8 of the MSA Determination.

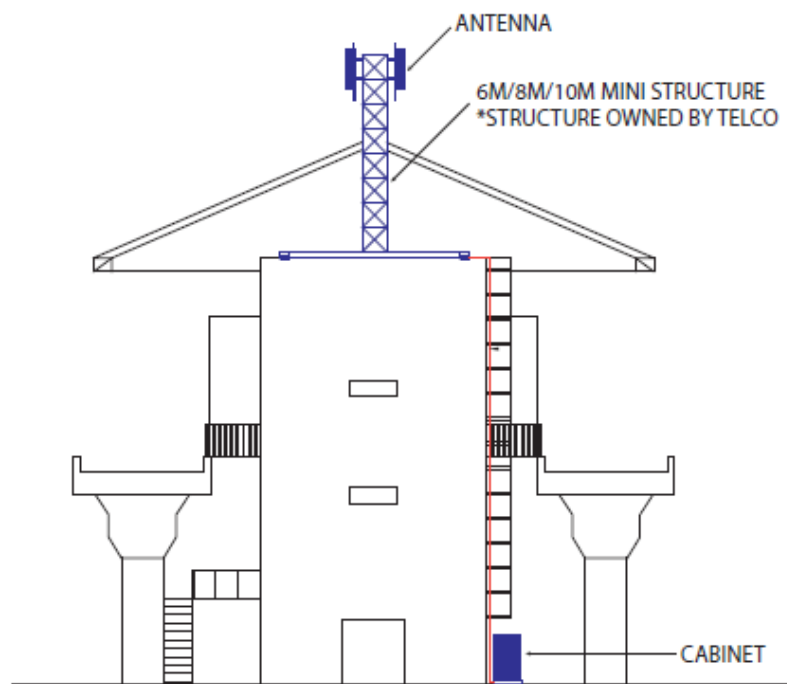
## 2. Type of infrastructure sharing

2.1 The types of Infrastructure Sharing provided by Access Provider are:

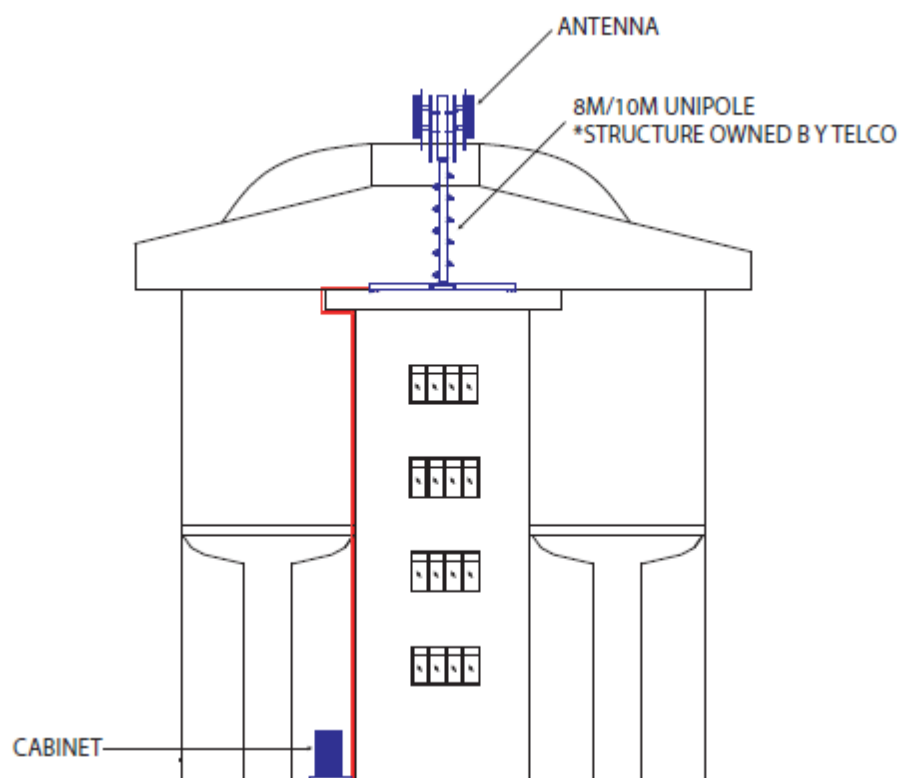
Infrastructure Sharing, which refers to the provision of space at specified network facilities to enable the Access Seeker to install and maintain its own equipment necessary for the provision of the Access Seeker's services through the Facilities and/or Services of Access Provider. The specified network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



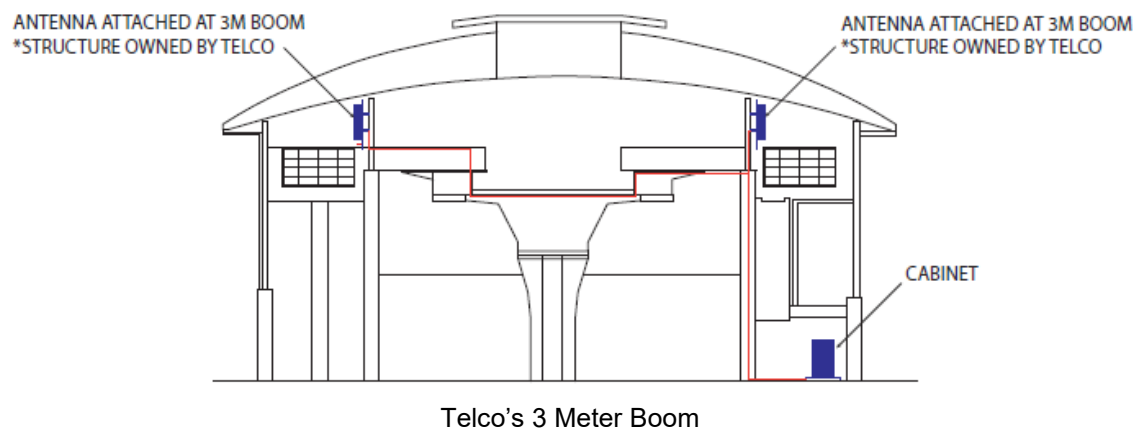
VBT's 30M Monopole



Telco's Mini-Structure at Rooftop



Telco's Uni-pole Structure at Rooftop



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

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

- a) Access Provider is the legal owner of the specified network facility;
- b) the Access Seeker has the appropriate license from the relevant authorities to operate the service for the purpose for which the equipment is to be installed; and
- c) there is no space constraint.

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

#### 4.1 Duration

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

### 5. Specific Terms and Conditions for Shared Space

#### 5.1 Use of Shared Space

5.1.1 The Access Seeker shall only use the Shared Space for the sole purpose of providing communication services and shall not do or permit to be done any act or thing which is illegal or may become a nuisance or give reasonable cause for complaint by the owner or any of the other access seekers in Access Provider's Shared Space or any other buildings adjoining the Shared Space.

#### 5.2 Storage

5.2.1 The Access Seeker shall not permit to be kept on the Shared Space or any section thereof:

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

**5.3     Increase in Premium**

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

**5.4     Repair**

- 5.4.1 In the event of any damage caused to the Shared Space by the Access Seeker, the Access Seeker shall, at its own cost and expense, restore and to forthwith make good any replacement and/or repair (fair wear and tear excepted) as specified in the notice in writing given by Access Provider to the Access Seeker specifying therein all necessary replacements and/or repairs to be effected.
- 5.4.2 If the Access Seeker fails to effect the replacements and/or repairs within the time period stipulated in the notice, Access Provider may, whether or not together with its workmen, enter the Shared Space and make all necessary replacements and/or repairs. The costs for all such necessary replacements and/or repairs shall be a debt due from the Access Seeker and shall be recoverable by Access Provider save where the replacements and/or repairs were due to the natural failure of the structure or due to Access Provider.

**5.5     Tenantable condition**

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

**5.6     Consents, Licences and Approvals**

- 5.6.1 The Access Seeker shall be fully responsible to obtain all necessary consents, permits, approvals and licenses from third parties and governmental authorities or agencies to carry out/provide its communications services at the Shared Space including operating and using all equipment, systems, cables, links and devices.
- 5.6.2 The Access Seeker shall further observe and comply with all laws, bye-laws, rules and regulations affecting the Access Seeker which are now in force or which may hereafter be enacted.
- 5.6.3 The Access Seeker shall further observe and perform and cause all its employees, independent contractors, agents or invitees to observe and perform all rules and regulations made by Access Provider from time to time and notified to the Access Seeker in writing Provided Always that Access Provider shall not be liable to the Access Seeker in any way for violation of the rules and regulations by any person including the Access Seeker or its employees, independent contractors, agents or invitees.



## 5.7 Sub-letting and Assignment

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

## 5.8 Payment of Quit Rents, Rates and Taxes

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

## 5.9 Access Provider's Covenant

- 5.9.1 Access Provider does not warrant or represent that it has obtained all the necessary approvals or permits from the relevant authorities to erect the infrastructure on the site in which the Shared Space has been rented to the Access Seeker. In the event that Access Provider is required by the relevant authorities to dismantle the infrastructure on the site such that the Access Seeker is not able to:

- a) install or utilise the equipment, system or devices thereon; or
- b) provide its communication services at the Shared Space,

the Access Seeker may, notwithstanding the minimum three (3) year period, terminate the Infrastructure Sharing at the Shared Space without liability. The Operators agree that the remedies set out in this **Condition 5.9.1** above shall be the only remedy against Access Provider and Access Provider shall not be liable to the Access Seeker for any damages, costs and/or expenses including but not limited to the costs of dismantling and removing the Access Seeker's equipment, system or devices. However, Access Provider will use its reasonable endeavours to offer the Access Seeker other suitable sites.

For avoidance of doubt, the authorities in the aforementioned clause is also referring to approval from Rapid Rail Sdn Bhd and/ or Prasarana Integrated Development Sd Bhd and/ or Prasarana Malaysia Berhad

## 5.10 Utilities

- 5.10.1 The Access Seeker shall be responsible to apply for its own individual meter and power supply to the Shared Space and shall be further responsible for and bear the cost of all electricity utilised by the Access Seeker at the Shared Space

- 5.10.2 In the event that the Access Seeker's application to the relevant authority for an individual meter is not successful, the Access Seeker may, subject to Access Provider's prior written approval, utilise the electricity supplied to Access Provider at that premises provided that:

- a. Access Provider is of the opinion that the electricity power load is sufficient to be shared with the Access Seeker and other access seekers within its Shared Space;
- b. the Access Seeker reimburse Access Provider for all electricity charges utilised by the Access Seeker at the Shared Space, the charges of which shall be determined by Access Provider; and
- c. Approval from Rapid Rail Sdn Bhd is obtained

5.11 To Permit Access Provider to Enter and View Condition

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

5.12 Installation of Equipment

- 5.12.1 The Access Seeker shall ensure that all equipment, system or devices on the Shared Space shall:

- a) be type-approved and comply with all relevant laws and regulations;
- b) not cause any frequency interference to Access Provider's and/or any of the other access seekers' equipment or services provided in or around the Shared Space. Where the Access Seeker's equipment causes frequency interference to Access Provider's and/or other access seekers' equipment or services provided in or around the Shared Space, the Access Seeker shall immediately (and in any event no longer than 24 hours) take all such necessary steps to stop any such interference; and/or
- c) be electromagnetically compatible [in accordance with the prescribed standards] and shall not cause electromagnetic interference to the Access Provider's and/or any of the other access seekers' equipment or services provided in or around the Shared Space. Where the Access Seeker's equipment causes electromagnetic interference to Access Provider and/or other access seekers' equipment or services provided in or around the Shared Space, the Access Seeker shall immediately (and in any event no longer than 24 hours) take all such necessary steps to stop any such interference.

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

- 5.12.3 The Access Seeker shall not damage, tamper, modify, alter or handle any equipment, system or devices belonging to Access Provider or any other access seeker in the Shared Space and/or the Shared Space without the prior written approval of Access Provider and/or the other access seeker.

5.13 Installation of Electrical Points and Plumbing Connection

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

5.14 Safety and Health and Security Procedures

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

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

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

5.15 Exclusive Possession

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

5.16 Vacating the Shared Space

5.16.1 The Access Seeker shall on the expiration or termination of the Infrastructure Sharing at each Shared Space, at its own cost and expense, remove all its equipment, system and devices which may have been installed by the Access Seeker and to peaceably and quietly yield up the Shared Space to Access Provider with all Access Provider's fixtures and additions thereto in good and tenantable repair and condition in accordance with the covenants herein contained.

5.16.2 The Access Seeker shall be given a grace period of five (5) Business Days to vacate the Shared Space effective from the expiry or termination of the Infrastructure Sharing during which no monthly rental will be charged by Access Provider. Should the equipment, system or devices not be removed within the grace period, Access Provider shall have the right to:

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

5.17 Relocation of Tower/Cabin

5.17.1 Notice of relocation

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

#### 5.17.2 Disruption of Service during Relocation

During the relocation of any Tower/Cabin utilised for the purpose of Infrastructure Sharing there shall not be any disruption to the Service of Access Seeker under the Agreement for any period in excess of six (6) hours for each relocation PROVIDED that all relocation exercises shall be conducted during low peak hours only (herein defined as the hours between 0001 and 0600).

#### 5.18 Compliance with Land Owners requirements

- 5.18.1 Access Seeker shall ensure that its employees, agents, contractors and servants observe and adhere at all times to the obligations and conditions imposed or shall be imposed by Rapid Rail Sdn Bhd and entities within Prasarana Malaysia Berhad, the landowner of the railway corridor or any other landowner in the future (hereinafter referred to as the "Landowner"), upon which the Towers and Cabins are erected and shall ensure its employees, servants, agents and contractors shall not do or omit to do anything which is in breach of such conditions and obligations as imposed by the Landowner in relation to the use of the Cabin and Tower Space as Infrastructure Sharing.

#### 5.19 Insurance

- 5.19.1 Access Seeker shall procure insurance at its own costs and expense to cover and protect Access Seeker's own goods, property and Equipment in near under over or outside the Cabin or Tower Space utilised as Infrastructure Sharing against theft, public liability, fire, property damage consequential loss and others and Access Seeker hereby agrees that it stores and/or use the Cabin or Tower Space at its sole risk and shall not hold Access Provider liable in the event Access Seeker suffers loss or damage as a result thereof.

#### 5.20 Delivery timeframe

- 5.20.1 Subject always to mutual agreement between the parties, the indicative delivery timeframe for Infrastructure Sharing is as follows:
- (a) for ground-based towers and new sites, ninety (90) Business Days;
  - (b) for Common Antenna Systems in High Priority Areas, ten (10) Business Days;
  - (c) for fixed telecommunications poles, ten (10) Business Days; and
  - (d) for all other structures, forty (40) Business Days.

For clarification, the indicative delivery timeframe in this Condition 5.20.1 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with Condition 2.5.3 of Schedule A in VBT's RAO.

#### 5.21 Site Access to Access Seeker

- 5.21.1 Physical access: Where required to fulfil an Order for Infrastructure Sharing or for the Access Seeker to perform operations or maintenance activities, an Access Provider shall allow an Access Seeker, its nominated employees and/or contractors to physically access the Access Provider's network facilities and the Access Seeker's Equipment, and to have physical control over the Access Seeker's Equipment located at such network facilities, at equivalent times and in accordance with equivalent processes and procedures as are applicable to itself
- 5.21.2 Nominated personnel: The employees and/or contractors nominated by the Access Seeker under Conditions 5.21.1, 5.21.3 and 5.21.4 of this Annexure I will be reasonable, having regard to: -
- a. the position of each person and the number of persons nominated; and

- b. the position of each of the Access Provider's own personnel and the number of the Access Provider's personnel to which the Access Provider provides physical access to such network facilities.

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

- a. bear the costs of such escort service;
- b. subject to paragraph 5.21.3(d) of this Annexure, provide immediate physical access to the Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;
- c. subject to paragraph 5.21.3(d) of this Annexure I, provide physical access at the time requested by an Access Seeker for planned maintenance requests on the shorter of
  - I. two (2) Business Days' notice for manned sites and five (5) Business Days' notice for unmanned sites; and
  - II. the period of notice which it requires from itself when providing itself with physical access for planned maintenance;
- d. for both planned and emergency maintenance requests at unmanned sites only, have its escort arrive within the shorter of:
  - I. thirty (30) minutes of time required by the Access Seeker pursuant to paragraph 5.21.3(b) or 5.21.3(c) of this Annexure I (as applicable) plus a reasonable window to allow for travel time (which must be estimated in an operations and maintenance manual given to the Access Seeker, or estimated at the time of responding to the Access Seeker's physical access request); and
  - II. the period of time it requires for its escorts to arrive for planned and emergency maintenance at unmanned sites

5.21.4 Absence of escort: For the purposes of Condition 5.21.1 of this Annexure I, if an escort does not arrive at the Access Provider's property within the timeframe specified in Condition 5.21.3, the Access Seeker's nominated employees and/or contractors may proceed to enter the Access Provider's property without an escort.

5.21.5 Site register: The Access Seeker must establish and maintain a register of all persons who visit the Access Provider's property on the Access Seeker's behalf, which must be made available for inspection by the Access Provider, upon request.

5.22 The Access Provider shall:

- (a) ensure that it maintains in reasonable working condition all fixed telecommunications poles which comprise specified network facilities (as that term is used in the description of the Infrastructure Sharing Service), subject to paragraph 5.22 (b) below; and
- (b) on notice by an Access Seeker, or upon otherwise becoming aware, that any fixed telecommunications pole does not comply with paragraph 5.22 (a) above, perform within forty (40) Business Days such activities as required to rectify such non-compliance.

5.23 In addition to the grounds for refusal in Condition 4.6.1 of Chapter 4 in VBT's RAO, an Access Provider may, based on reasonable safety and security reasons, refuse

an Order Request to fixed telecommunication poles being utilised for critical government services, including in connection with government agencies, the military, or the police.

5.24 In addition to Section 2.9 of Schedule A of VBT's RAO, the principles on Capacity Allocation Policy for Infrastructure Sharing Services to be applied by the Access Provider shall be based on an equivalent basis between itself and other Access Seekers, where:

(a) the Access Provider has already taken steps to optimise space by using the current available technology, including removing any unused cables;

(b) the Access Provider shall determine the available space only after considering:

(i) the requirements for Infrastructure Sharing Services for the Access Provider's then existing maintenance purpose; or

(ii) the reservation of the Infrastructure Sharing Service for future use by the Access Provider or another Access Seeker, applicable on an equivalent basis for six (6) months, upon receipt of an Order; and

(c) the allocation of available space shall be:

(i) on a first-come, first-served basis;

(ii) applicable to reserved capacity that is not used by either the Access Provider or an Access Seeker within the seven (7) months from the date of the Order; and

(iii) to the extent possible, based on efficient allocation principles to minimise space wastage.

5.25 Service Assurance Targets for Infrastructure Sharing:

Severity	Service Definition	Fault Type (Including but not limited)	Response Time	Progress Update Frequency	Temporary Restoration Time	Rectification Time	Incident Report (RCA) Issuance
Level 1	Hub Sites (a site with more than 5 child sites)	<ul style="list-style-type: none"> <li>*Outage caused by fault of AC power supply system owned by Access Provider</li> <li>*Outage caused by power issue at landlord/building</li> </ul>	1 hour	Every 1 hour	4 hours	48 hours	48 hours

		<ul style="list-style-type: none"> <li>• Outage caused by CME issues</li> <li>• Outage due to flooding</li> </ul>					
Level 2	End Sites (Site that is not a Hub Site)	<ul style="list-style-type: none"> <li>• *Outage caused by fault of AC power supply system owned by Access Provider</li> <li>• *Outage caused by power issue at landlord/building</li> <li>* Outage caused by CME issues</li> <li>• Outage due to flooding</li> </ul>	1 hour	Every 2 hours	4 hours	7 Business Days	5 Business Days
Level 3	No Service Affecting Fault	*Issues related to power system asset belonging to Access Provider, landlord/building site access or CME issues	1 hour	Every 24 hours	24 hours	14 Business Days	N/A

**Note: \*This shall not apply to cases where the Access Seeker applies for and/or uses its own power source/system for the Services**

(i) All faults reported shall be ascribed with a Severity Level set out above and parties shall cooperate with one another to achieve Rectification Times based on the severity of the fault reported.

(ii) "Progress Update Frequency" means the frequency at which the Access Seeker may call the Access Provider for restoring the fault to obtain a verbal or written progress update.

(iii) "Response Time" refers to the time for the Access Provider to respond to the fault and is measured from the time the fault is reported by the Access Seeker to the Access Provider.

(iv) "Rectification Time" refers to the time for the Access Provider to rectify a fault and is determined by the period the reporting of a fault by the Access Seeker to the Access Provider and the rectification of the fault on a permanent basis.

(v) "Temporary Restoration Time" refers to the time for the Access Provider to temporarily rectify a fault and is determined by the period between the reporting of a fault by the Access Seeker to the Access Provider and the rectification of the fault on a temporary basis.

- 5.26 REBATES: If the Access Provider is unable to provide the Service due to negligence on its part (e.g., poorly designed structure or platform that does not function properly, the Access Provider failed to pay rental to its Landlord on time, the Access Provider failed to provide site access), without limiting the Access Provider's obligation to provide any applicable rebates under Condition 2.13 Schedule A of this VBT RAO, affected Access Seekers are entitled to a rebate for not meeting the Service Assurance Target under Condition 5.25 above, which shall at a minimum reflect the rental amount paid or to be paid by the Access Seeker to the Access Provider for the period of site downtime.

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**B.3 Network Co-Location****1. General Terms and Conditions on Network Co-Location – Scope of Services****1.1 The Network Co-Location Service is a Facility and/or Service which comprises:**

- (a) Physical Co-Location, which refers to the provision of space at an Access Provider'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 any party. Physical Co-Location includes physical space, power, environmental services (such as heat, light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access Seeker;
- (b) virtual co-location, which refers to the provision of Facilities or Services at an Access Provider's premises to enable the acquisition by the Access Seeker of Facilities and Services in this Agreement, where equipment is owned and maintained by the Access Provider; or
- (c) in-span interconnection, which is the provision of a POI at an agreed point on a physical cable linking an Access Provider's network facilities to an Access Seeker's network facilities

**1.2 Network premises at which co-location is to be provided includes switch sites, other customer access modules including roadside cabinets and such other network facilities locations associated with the provision of a Facility or Service in VBT's RAO, and includes Co-Location provided at any location where main distribution frame is housed.****2. Specific Terms and Conditions:****2.1 Network Co-Location at a Designated Site, agreed between the Operators, shall be for a fixed period of three (3) years unless a lesser period is stipulated by the Access Provider (where the Access Provider's right to use the Designated Site is less than three (3) years) and may be further renewed subject to the mutual agreement of the Operators. The Access Seeker shall within six (6) months prior to the expiry of the term of the Network Co-Location at the Designated Site notify the Access Provider in writing as to whether or not it wishes to renew the term of the Network Co-Location at the Designated Site. If the Access Seeker notifies the Access Provider that it wishes to renew the term of the Network Co-Location at a Designated Site but the Access Provider's lease or tenancy to use the land on which the Designated Site expires upon or will expire in the renewed term, the Access Provider shall, within one (1) month from the date of receipt of the Access Seeker written notice, inform the Access Seeker as to its intention whether to renew or not its lease or tenancy of the said land****2.2 The term of the Network Co-Location shall commence on the date ("Commencement Date"):**

- a) the Access Provider makes available for physical possession the co-located space at the Designated Site ("Co-located Space") in accordance with the agreed specifications and the Access Provider has notified the Access Seeker in writing of the same; or
- b) the Access Seeker takes physical possession of the Co-located Space at the Designated Site,

whichever is the earlier.

**2.3 The Access Provider agrees to provide Network Co-Location Service to the Access Seeker in accordance with the terms of VBT's RAO.**

- 2.4 The Access Seeker shall pay to the Access Provider for Network Co-Location Service provided by the Access Provider, the Charges in accordance with the applicable provisions set out in **Section IV of Annexure II**.

### 3. Forecast

- 3.1 The Access Provider shall only request Forecasts where:
- a) the maximum period of time covered by Forecasts regarding Network Co-Location Service is one (1) year;
  - b) the minimum intervals or units of time to be used in Forecasts regarding Network Co-Location Service is one (1) year; and
  - c) the maximum frequency to update or to make further Forecasts regarding Network Co-Location Service is once a year.

### 3A. Inspection prior to Order

- 3A.1 The Access Provider will allow nominated employees and/or contractors of a potential Access Seeker to physically inspect network facilities of the Access Provider during normal business hours provided that 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.

### 4. Acknowledgement of receipt

- 4.1 The Access Provider shall acknowledge receipt of each Order for the Network Co-Location Service within two (2) Business Days.

### 5. Time for acceptance or rejection

- 5.1 The Access Provider must notify an Access Seeker that an Order for the Network Co-Location Service is accepted or rejected within ten (10) Business Days after:
- a. issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under Condition **2.7.1 Schedule A** of this VBT's RAO; or
  - b. providing the Access Seeker with the result of post-Order Service Qualification under Condition **2.7.2 of Schedule A** of this VBT's RAO, where the Access Provider has undertaken post-Order Service Qualification for that Order under Condition **2.7.1 Schedule A** of this VBT's RAO.

### 6. Indicative delivery timeframe

- 6.1 The indicative delivery timeframe for Network Co-Location Service is twenty (20) Business Days. For clarification, the indicative delivery timeframe commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with Condition 2.5.3 Schedule A of VBT's RAO.

### 7. Billing Cycle

- 7.1 The Billing Cycle for Network Co-Location Services will be one (1) year in advance for the first year and quarterly in advance for subsequent years.

## 8. Pre-requisites for Applying for Network Co-Location Services

### 8.1 General Pre-requisites for Network Co-Location

8.1.1 The Access Provider shall be obliged to provide to the Access Seeker Network Co-Location at the designated sites ("**Designated Sites**") if:

- (a) the Access Provider:
  - (i) is the legal owner of the Designated Site; or
  - (ii) has exclusive rights of use of the Designated Sites pursuant to a licence, lease or tenancy agreement and the Access Provider has been granted the requisite approval by the owner or landlord of Designated Sites to permit the Access Seeker to use space for physical co-location in accordance with the terms herein contained.
- (b) the Access Seeker has the appropriate license under the Act and its subsidiary legislation to operate the service for the purpose for which the Equipment is to be installed and other approvals from relevant authority, where required;
- (c) there is sufficient space at the Designated Sites; and
- (d) it is technically feasible to implement Network Co-Location at the Designated Site.

8.1.2 The list of the Designated Sites may be obtained from the Access Provider upon written request.

## 9. Publication of co-location locations and provision of co-location by Access Provider

- a) Subject to Section 24 below, the Access Provider shall publish on its publicly accessible website and keep updated a list of the general locations and technically feasible points at which physical co-location is available;
- b) Subject to Section 11 below, where required due to physical constraints, Access Provider will jointly agree with Access Seeker as to which Access Seeker should be given the right to physically co-locate at each POI and each network facility and such access shall be granted on a non-discriminatory basis; and
- c) Where physical co-location cannot be granted to the Access Seeker, the Access Seeker shall be granted either virtual co-location or in-span interconnection as requested by Access Seeker.

## 10. Deemed Access Provider

- 10.1 If the Access Seeker (referred to in this **Section 10.1** as the "**Deemed Access Provider**") obtains physical co-location at a POI or network facility from the Access Provider (referred to in this **Section 10.1** as the "**Principle Access Provider**"), and the Principle Access Provider is unable to provide virtual co-location or in-span interconnection as required in **Section 9 (c)** above, it shall be deemed to be the Access Provider for the purposes of this Section B.3. The Deemed Access Provider shall be required to permit access to Access Seekers following the same procedures for permitting access as those required to be followed by the Principle Access Provider. Within two (2) Business Days of reaching a co-location agreement with the Access Seeker, the Deemed Access Provider must notify the Principle Access Provider of the existence of the agreement and the identity of the Access Seeker, and must ensure that the Access Seeker complies with relevant co-location obligations contained in this

**Section B.3.** The Deemed Access Provider shall be responsible to the Principle Access Provider for all acts and omissions of any Access Seekers in connection with providing access to Facilities and/or Services under its co-location agreement.

#### **11. Lack of space**

- 11.1 Subject to **Section 12** below, if there are space constraints at a particular location, the Access Provider shall take reasonable steps to optimise its usage of the space, including through the upgrading of facilities and transferring Equipment to an alternative location. If the Access Provider 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:
- a. notify the Commission of the lack of space at the location;
  - b. provide any supplementary information which may be requested by the Commission (which may include physical inspections by the Commission); and
  - c. be excused from providing physical co-location at that location unless and until the Commission considers that physical co-location can and must be provided, in which case the Access Provider shall provide physical co-location as directed by the Commission.

#### **12. Reservation of space**

- 12.1 The Access Provider shall not reserve space other than for its own current needs, its future needs, [calculated by use of a reasonably projected rate of growth over two (2) years] and the needs of other Access Seekers who are currently occupying or have ordered space from the Access Provider.

#### **13. Allocation of space**

- 13.1 The Access Provider 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.

#### **14. No minimum space requirement**

- 14.1 The Access Provider shall not impose minimum space requirement on the Access Seeker.

#### **15. Notice of refusal**

- 15.1 If the Access Provider proposes to refuse, or refuses a request for physical co-location from the Access Seeker on the basis of current or future needs of the Access Provider and/or the needs of other access seekers who are currently occupying or have ordered additional space from the Access Provider, it must also notify the Access Seeker and the Commission of:
- (a) the space currently used by the Access Provider;
  - (b) the amount of space reserved for the Access Provider's future needs;
  - (c) the space currently occupied by other access seekers;
  - (d) the space ordered by other access seekers; and

- (e) the total amount of space potentially available but for the uses set out above.

#### **16. Preparatory work by the Access Seeker**

- 16.1 If preparatory work is necessary for the purposes of allowing the Access Seeker to obtain access to an Access Provider's network facilities/premises, such Access Provider shall permit the Access Seeker's employees or contractors to perform such preparatory work if the Access Seeker satisfies the Access Provider (acting reasonably and in accordance with the policy referred to in this **Section 16.1**) that such employees or contractors have the necessary qualifications. The Access Provider shall publish and make available a policy about the necessary qualifications applicable to employees and/or contractors who will be permitted to perform preparatory work under this **Section 16.1**, and such policy to be non-discriminatory in its application to the Access Provider's personnel and the Access Seeker's employees and/or contractors who perform similar functions.
- 16.2 If the Operators agree that the Access Provider shall carry out the preparatory work on behalf of the Access Seeker, then the Access Provider shall undertake the preparatory work and the Access Seeker shall furnish all necessary and sufficient co-operation to the Access Provider to complete the preparatory work. The Access Seeker agrees to pay the Access Provider for undertaking the preparatory work.

#### **17. Preparatory work by the Access Provider**

- 17.1 If the Access Provider agrees to perform preparatory work and does so on the basis of an estimated charge (e.g. based on a time and materials basis):
  - (a) the Access Provider 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) the Access Provider shall permit the Access Seeker to withdraw the request for preparatory work without penalty if the revised estimate exceeds the original estimate by more than ten percent (10%) of the original estimate.
- 17.2 Notwithstanding Section 17.1 above, where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope of works provided by the Access Provider 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 the Access Provider for the actual cost incurred.

#### **18. Delays**

- 18.1 If the Access Provider agrees to perform preparatory work and the Access Provider is or is likely to be unable to perform such work within the agreed timeframe, the Access Provider shall:
  - a) notify the relevant Access Seeker of the delay to a delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;

- b) permit the Access Seeker notified under Sub-section **18.1(a)** above to cancel the preparatory work without penalty if the delay is longer than ten (10) Business 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.

## **19. Security caging**

- 19.1 The Access Provider shall not require the use of cages or similar structures to physically segregate co-located Equipment, or Equipment to be located at or on network facilities of the Access Provider.

## **20. Equipment allowance**

- 20.1 The Access Provider shall permit the Access Seeker to locate Equipment on or at the Access Provider's network facilities which is necessary for the purposes of obtaining the benefit of access to the Facilities and/or Services provided in accordance with this Access Agreement, including but not limited to multi-functional Equipment which may also be used for purposes other than those specified in this **Section 20.1**.

## **21. Marking**

- 21.1 The Operators will mark or label their Equipment in such a manner that they can be easily identified as the Equipment of the Operator.

## **22. Maintenance, Physical Access and Site Register**

- 22.1 The Access Provider shall permit, and do all the things reasonably necessary to allow the Access Seeker to maintain its Equipment at or on the network facilities/premises to which access has been granted under Section 5 of Schedule C of VBT RAO.
- 22.2 Where required to fulfil an Order for a Network Co-Location Service or for the Access Seeker to perform operations or maintenance activities, an Access Provider shall allow an Access Seeker, its nominated employees and/or contractors to physically access the Access Provider's network facilities and the Access Seeker's Equipment, and to have physical control over the Access Seeker's Equipment located at such network facilities, at equivalent times and in accordance with equivalent processes and procedures as are applicable to itself. An Access Provider must not prevent or restrict access to any network facility or site for reasons concerning national or operational security reasons and may only apply reasonable security procedures and processes that comply with the obligations under paragraph 24.2 below of this Section B.3 Network Co-Location, Annexure 1.
- 22.3 The Access Seeker must establish and maintain a register of all persons who visit the Access Provider's property on the Access Seeker's behalf, which must be made available for inspection by the Access Provider, upon request.

## **23. Extensions**

- 23.1 The Access Provider shall reasonably permit the Access Seeker, at the Access Seeker's cost, to extend network facilities of the Access Provider as may reasonably be required to meet the Access Seeker's requirements in the circumstances and to the extent technically feasible.

**24. Security and critical national information infrastructure:**

- 24.1 The Access Provider may decline to publish information in connection with particular Points of Interface and other locations where Facilities are located, for national or operational security reasons, but in such circumstances, the Access Provider shall:
- (a) promptly provide such information to other Operators on request, subject only to the Operators entering into a confidentiality agreement in accordance with this Standard;
  - (b) offer to provide, and if the offer is accepted, provide, updated location details to such Operators as Points of Interface and Facilities are withdrawn, introduced and changed; and
  - (c) provide all such information to the Commission and, on a six (6) monthly basis, the locations at which the Access Provider is offering to supply Network Co-Location Service, the locations at which Access Seekers have requested Network Co-Location Service and the locations at which the Access Provider is actively supplying Network Co-Location Service.
- 24.2 The Access Provider may establish reasonable security procedures and processes (such as identity checks) to apply to personnel of Access Seekers who will physically access Points of Interface or other locations where Facilities are located. However, such procedures and processes shall:
- (a) not completely or substantially prohibit an Access Seeker from physically accessing a Point of Interface or other relevant location unless the Access Provider has been directed in writing to do so by the Government (in which case, the Access Provider shall notify the Commission); and
  - (b) be no more restrictive or onerous than the procedures and processes that the Access Provider imposes on its own personnel who physically access the same Points of Interface and locations.

**25. Specific Terms and Conditions for Physical Co-Location****25.1 Use of Co-Located Space**

- 25.1.1 The Access Seeker shall only use the Co-Located Space for the sole purpose of providing Communication Services and shall not do or permit to be done any act or thing which is illegal or may become a nuisance or give reasonable cause for complaint by the owner or any of the other access seekers in the Access Provider's Designated Site or any other buildings adjoining the Designated Site.
- 25.1.2 If the Access Seeker has not complied with **Condition 25.1.1 above**, the Access Seeker shall take the necessary rectification or remedial action to address any complaints made by the Access Provider or other access seekers in the Designated Site.
- 25.1.3 The Access Seeker's right to use the Co-Located Space and the right of access does not entitle the Access Seeker to any proprietary rights or interest whether under statute, common law, equity or any theory of law in any building, land, fixture, other structure or in or to the Designated Site.
- 25.1.4 Where the Designated Site is owned or controlled by a third party ("**Site Owner**") and the Access Provider's use of the Designated Site is pursuant to a licence, tenancy or lease, the Access Provider shall be

under no obligation to seek any renewal of the term of the licence, tenancy or lease. The Access Seeker agrees that it shall not seek a licence, tenancy or lease to the Designated Sites from the Site Owner unless the Access Provider signifies in writing that it is no longer interested in the use of the Designated Sites or the Site Owner advertises or makes or takes any action to indicate that the Designated Site is up for tenancy or lease to the best available offer.

## 25.2 Storage

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

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

25.2.2 The Access Seeker may store fuel for its generator sets kept in the Co-Located Space provided that there is sufficient space for its safe storage and the amount of fuel does not exceed that stored by the Access Provider for its own usage at the same Co-Located Space.

## 25.3 Increase in Premium

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

## 25.4 Repairs

25.4.1 In the event of any damage caused to the Co-Located Space by the Access Seeker, the Access Seeker shall, at its own cost and expense, restore and to forthwith make good any damage to the original state and condition (fair wear and tear excepted) as specified in the notice in writing given by the Access Provider to the Access Seeker specifying therein all necessary replacements and/or repairs to be effected to the building, plant, facilities and equipment.

25.4.2 If the Access Seeker fails to effect the replacements and/or repairs within the time period stipulated in the notice (which period must be a reasonable time), the Access Provider may, whether or not together with its workmen, enter the Co-Located Space and make all necessary replacements and/or repairs to the building, plant, facilities and equipment. The costs for all such necessary replacements and/or repairs shall be a debt due from the Access Seeker and shall be recoverable by the Access Provider save where the replacements and/or repairs were due to the natural failure of the structure or due to the Access Provider.

## 25.5 Tenantable Condition



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

25.6 Consents, Licences and Approvals

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

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

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

25.7 Payment of Quit Rents, Rates and Taxes

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

25.8 The Access Provider's Covenant

25.8.1 the Access Provider shall obtain all the necessary authorization, approvals or permits from the relevant authorities (including Federal and State Government) to erect the infrastructure on those Designated Sites in which the Co-Located Space will be rented to the Access Seeker or use or occupy the land on those Designated Sites.

25.8.2 In the event that:

- a) the Access Provider is required by the relevant authorities to dismantle the infrastructure on the Designated Site; or
- b) any governmental or State authority or owner/landlord of the Designated Sites, requires the Access Provider to vacate the Designated Site for whatsoever reason,

such that the Access Seeker is not able to:

- (i) install or utilise the Equipment, system or devices thereon; or

- (ii) provide its Communication Services at the Designated Site,

the Access Seeker and/or the Access Provider may, notwithstanding the minimum term, terminate the Network Co-Location at Co-Located Space without liability. Any advance payment will be refunded on a pro-rated basis. The Operators agree that the remedies set out in this **Condition 25.8.2** shall be the only remedy against the Access Provider and the Access Provider shall not be liable to the Access Seeker for any damages, costs and/or expenses including the costs of dismantling and removing the Access Seeker's Equipment, system or devices. However, the Access Provider will use its reasonable endeavours to offer the Access Seeker other suitable Designated Sites.

- 25.8.3 Where the Access Provider is required by any governmental authority or agency or any state backed company to sell or dispose the Designated Site to the governmental authority or its nominated person or entity, the Access Provider will use its endeavours (but does not guarantee that it will be able) to sell the Designated Site subject to any existing rights of the Access Seeker to use the Co-Located Space on the Designated Site. However, where the third party purchaser requires that the Access Seeker vacate the Co-Located Space prior to the sale of the Designated Site, the Access Seeker shall dismantle its Equipment, system and devices and vacate the Co-Located Space prior to the sale of the said Designated Site to the third party. Any advance payment will be refunded on a pro-rated basis within sixty (60) days from the notice to dismantle, failing which interest at the rates specified in **Section 2.6 of Schedule B** shall apply. The Operators agree that the Access Seeker and/or the Access Provider may, notwithstanding the minimum term, terminate the Network Co-Location at the Co-Located Space without liability. The Operators agree that the remedies set out in this **Condition 25.8.3** shall be the only remedy against the Access Provider and the Access Provider shall not be liable to the Access Seeker for any damages, costs and/or expenses including the costs of dismantling and removing the Access Seeker's equipment, system or devices except for damage to the Access Seeker's Equipment, system or devices caused by the Access Provider.

## 25.9 Utilities and Ancillary Services

- 25.9.1 The Access Seeker shall be responsible to apply for its own individual meter and power supply to the Co-Located Space and shall be further responsible for and bear the cost of all electricity utilised by the Access Seeker at the Co-Located Space.
- 25.9.2 In the event that the Access Seeker's application to the relevant authority for an individual meter is not successful, the Access Seeker may:
- a) subject to the Access Provider's prior written approval, utilise the electricity supplied to the Access Provider at that premises provided that:
    - (i) the Access Provider is of the opinion that the electricity power load is sufficient to be shared with the Access Seeker and other access seekers within its Designated Site; and
    - (ii) the Access Seeker reimburse the Access Provider for all electricity charges utilised (and any other additional charges for back-up power) by the Access Seeker at the Co-Located Space, the charges of which are set out in

the Charges and Charging Principles in **Annexure II of VBT's RAO**; or

- b) where the Access Provider is not able to provide the electricity supply to the Access Seeker, the Access Seeker shall be entitled to bring and install its own generator at the Co-Located Space at the Designated Site.

25.9.3 Access Provider will, where the relevant utilities and ancillary services are within the Access Provider'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 to the same extent that the Access Provider provides to itself, including but not limited to:

- (a) access to roads;
- (b) access to land;
- (c) power, including the provision of back-up power subject to paragraph 25.9.1 and 25.9.2 above;
- (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.

25.9.4 The utility and ancillary costs in respect of the network facilities as contemplated in paragraph 15.9.3 above shall be apportioned (in accordance with fair and equitable principles) between the Access Provider and all Access Seekers at the relevant location.

#### 25.10 To Permit the Access Provider to Enter and View Condition

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

#### 25.11 Installation of Equipment

25.11.1 The Access Seeker shall ensure that all Equipment, system or devices on the Co-Located Space shall:

- a) be type-approved and comply with all relevant laws and regulations;
- b) not cause any frequency interference to the Access Provider's and/or any of the other access seekers' equipment or services provided in or around the Co-Located Space;
- c) be electromagnetically compatible in accordance with the prescribed standards and shall not cause electromagnetic interference to the Access Provider's and/or any of the other access seekers' equipment or services provided in or around the Co-Located Space; and

- d) not be connected to any equipment belonging to the Access Provider unless mutually agreed upon at the time of acceptance of the Order from the Access Seeker.

For the purposes of **paragraph 25.11.1 (b) and (c) above**, the Operators agree that where the Access Seeker's Equipment causes frequency interference or electromagnetic interference to the Access Provider and/or other access seekers' equipment or services provided in or around the Co-Located Space, the Access Provider shall provide immediate verbal notification followed by a written notice within 24 hours to the Access Seeker. The Access Seeker shall immediately (and in any event no longer than 24 hours) upon receipt of the verbal notification take all such necessary steps to stop any such interference.

25.11.2 In the event that:

- a) the Access Seeker fails to fulfil its obligations under **Condition 25.11.1** above; or
- b) the Equipment, system or devices of the Access Seeker is or poses a threat or danger to:
  - (i) the public health as declared by the government or manufacturer of the equipment or system or device; or
  - (ii) public safety; or
  - (iii) the Access Provider and/or other access seeker's facilities, equipment, device or system,

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

25.11.3 The Access Seeker shall only be permitted to install its Equipment (which shall include equipment, system and/or devices licensed or leased or hired) on the Co-Located Space for the provision of its Communications Services and shall not be permitted to install any other operator's equipment, system and/or devices on the Co-Located Space without the prior written approval of the Access Provider.

25.11.4 The Access Seeker shall not damage, tamper, modify, alter or handle any Equipment, system or devices belonging to the Access Provider or any other access seeker in the Designated Site and/or the Co-Located Space without the prior written approval of the Access Provider and/or the other access seeker.

25.11.5 The Access Seeker is responsible for obtaining its own insurance for its Equipment and shall purchase the necessary insurances when carrying out any works including installation works on the Access Provider's Designated Site. In particular, the Access Seeker shall obtain or procure an Erection All Risks insurance against all risks of physical loss or damage to the Access Seeker's work whereby the Access Provider is a named insured (either solely or jointly) in the insurance policy for the duration of the works and the insurance shall be in the amount which is sufficient to insure the full value of the works carried out by the Access Seeker.

#### 25.12 Installation of Electrical Points and Plumbing Connection

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

#### 25.13 Installation Works

25.13.1 The Access Seeker shall submit the installation and work plan which shall include installation and works schedule and work methods to the Access Provider and obtain the Access Provider's written approval prior to undertaking the installation or upgrading or any equipment in the Designated Sites or site preparation works.

25.13.2 Where required by the Access Provider, the Access Seeker shall secure certification by an independent consultant engineer that the installation or upgrading of its equipment in the Designated Sites or site preparation works undertaken and completed comply with the terms of all approvals, authorisation, permits, consents and clearances and the installation plans submitted to the Access Provider.

25.13.3 Any revision to or revocations of the approvals, authorisations, consents, permits, clearances and installation plans shall be notified to the Access Provider. All revision to the installation plans must be approved in writing by the Access Provider.

25.13.4 No work shall be undertaken by the Access Seeker at a Designated Sites, in the event, the approvals, consents, permits, authorisations and clearances are revoked.

25.13.5 The Access Provider shall be entitled at any time to visit and inspect the installation works and the site preparation works.

25.13.6 Upon completion of the installation works and site preparation works, the Access Seeker shall inform the Access Provider.

25.13.7 The Access Provider shall be entitled to conduct an inspection of the Designated Sites to verify that the installation of equipment at the Designated Sites and completion of the site preparation works comply with the approved installation and work plan. In the event there is any non-compliance by the Access Seeker, the Access Seeker shall commence, and complete rectification works within ten (10) Business Days failing which the Access Provider shall be entitled to terminate the licence granted herein.

25.13.8 All connections of the Access Seeker's equipment to the Facilities of the Access Provider shall be carried out by the Access Provider and the Access Seeker shall pay the reasonable cost incurred by the Access Provider.

#### 25.14 Safety and Health and Security Procedures

25.14.1 The Access Seeker shall comply with the provisions and requirements of the Occupational Safety and Health Act 1994 ("OSHA"). These provisions include the usage of personal protective equipment such as safety helmet, safety boots, safety goggles and other safety gadgets as prescribed by OSHA.

25.14.2 The Access Seeker shall exercise due care in the execution of their work so as to prevent accidents and are required to report any incidents

including but not limited to accidents as a result of their works to the Access Provider within twenty four (24) hours from the time of the occurrence.

25.14.3 The Access Seeker shall comply and cause its employees, agents and contractors to comply with all guidelines, rules and regulations issued by the Access Provider (and which rules and regulations equally apply to all access seekers) from time to time on site access and security procedures with respect to access to and use of the Co-Located Space. Further, the Access Seeker shall undertake all such necessary measures to ensure the security of its Co-Located Space prevents unauthorised access to the Co-Located Space.

#### 25.15 Exclusive Possession

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

#### 25.16 Vacating the Co-Located Space

25.16.1 The Access Seeker shall on the expiration or termination of the Physical Co-Location at each Co-Located Space, at its own cost and expense, remove all its equipment, system and devices which may have been installed by the Access Seeker and to peaceably and quietly yield up the Co-Located Space to the Access Provider with all the Access Provider's fixtures and additions thereto in good and tenantable repair and condition (fair wear and tear excepted) in accordance with the covenants herein contained.

25.16.2 The Access Seeker shall be given:

- a) a grace period of five (5) Business Days effective from the expiry or termination of the Physical Co-Location at the Co-Located Space; or
- b) where the infrastructure on the Designated Site is to be dismantled or the Access Provider is to vacate the Designated Site in accordance with **Section 25.8**, such reasonable grace period as may be specified by the Access Provider taking into consideration the time lines provided by the relevant authorities (including any extension obtained from the relevant authorities) or the owner of the land / landlord to the Access Provider to dismantle the infrastructure or to vacate the Designated Site provided always that the Access Seeker must vacate the Co-Located Space earlier than the stipulated time line provided to the Access Provider to enable the Access Provider to comply with the requisite time lines,

to vacate the Co-Located Space, during which no monthly rental will be charged by the Access Provider. Should the equipment, system or devices not be removed within the grace period as stated in **paragraph 25.16.2(a) above**, the Access Provider shall have the right to:

- i. charge for the use of the Co-Located Space at the rate of two (2) times the current rental or the cost of reinstatement as debt due and payable; and

- ii. without any liability to the Access Seeker, dispose of the equipment, system or devices in such manner as the Access Provider deems fit with a one (1) month's written notice. If the Access Seeker fails to settle any debt due, the Access Provider shall have a lien on the equipment, system or devices and is entitled to retain such equipment, system or devices or to sell the equipment, system or devices at a commercially reasonable price in such manner as it deems fit for payment of any such debt and the cost of sale shall be borne by the Access Seeker. The Access Provider shall be entitled to set off the proceeds from the sale of the equipment, system or devices against any and all debts due by the Access Seeker to the Access Provider.

26. **Specific Terms and Conditions for Virtual Co-Location**

- 26.1 Virtual Co-Location at a Designated Site shall be subject to the availability of the equipment which the Access Seeker is requesting the Access Provider to own and maintain on its behalf.
- 26.2 The terms of Virtual Co-Location at a Designated shall be subject to terms and conditions (including the Charges thereof) to be mutually agreed on a case by case basis.

27. **Nominated Personnel**

The employees and/or contractors nominated by the Access Seeker to inspect and/or access the Access Provider's network facilities, access the Co-Location space and/or enter the Service Provider's premises or property with or without escort under VBT's RAO shall be reasonable, having regard to:

- (a) the position of each person and the number of persons nominated; and
- (b) the position of each of the Access Provider's own personnel and the number of the Access Provider's personnel to which the Access Provider provides physical access to such network facilities.

28. **Escorts**

- 28.1 The Access Provider is only permitted to require an escort to be present when nominated employees and/or contractors of the Access Seeker wish to enter into the Access Provider's property if the Access Provider requires an escort for its own employees or contractors in the same circumstances. If an Access Provider determines that it is necessary to have an escort present when the nominated employees and/or contractors of the Access Seeker wish to enter into the Access Provider's property, the Access Provider shall
  - a. bear the costs of such escort service;
  - b. subject to paragraph 28.1(d) below, provide immediate physical access to the Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;
  - c. subject to paragraph 28.1(d) below, provide physical access at the time requested by an Access Seeker for planned maintenance requests on the shorter of
    - I. two (2) Business Days' notice for manned sites and five (5) Business Days' notice for unmanned sites; and
    - II. the period of notice which it requires from itself when providing itself with physical access for planned maintenance;

- d. for both planned and emergency maintenance requests at unmanned sites only, have its escort arrive within the shorter of:
  - III. thirty (30) minutes of time required by the Access Seeker pursuant to paragraph 28.1 (b) or 28.1(c) above (as applicable) plus a reasonable window to allow for travel time (which must be estimated in an operations and maintenance manual given to the Access Seeker, or estimated at the time of responding to the Access Seeker's physical access request); and
  - IV. the period of time it requires for its escorts to arrive for planned and emergency maintenance at unmanned sites

28.2 Absence of escort

For the purposes of paragraph 28.1 above, if an escort does not arrive at the Access Provider's property within the timeframe specified in paragraph 28.1, the Access Seeker's nominated employees and/or contractors may proceed to enter the Access Provider's property without an escort.

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# ANNEXURE II

## Charges and Charging Principles

### 1. General

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

### 2. Type of Charges

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

Type of	Type of Charges	Details	Billing Period/
Transmission Service	Recurring Charges	1. Rental	Quarterly unless otherwise mutually agreed by Operators
	One – Time Charges	1. Installation Charges 2. Interconnection Charges	Before Ready For Service Date
Infrastructure Sharing	Recurring Charges	1. Rental	1 year in advance for the first year and quarterly in advance for subsequent years
	One – Time Charges	1. Supervision Charges (These are Charges for supervision of works to be conducted by Access Seeker at the site of the specified network facility)	Before Handover Date and/or before Access Seeker commences work at site
Network Co-Location	Recurring Charges	1. Rental	1 year in advance for the first year and quarterly in advance for subsequent years
	One – Time Charges	Installation charges	Before Ready For Service Date

- 2.2 The recurring Charges including rental Charges shall commence to be payable from the date Service is provided and shall be paid according to the Billing Period elected by the Access Seeker in the Service Order Form and payments shall be made in advance on or before the payment periods.

- 2.3 In relation to Charges which are subject to taxes, Access Seeker shall also be liable to pay any government taxes (including Sales tax (if any) and Good and Service Tax (GST)) relevant to the Service provided it is legally required to be paid by the Access Seeker and utility charges imposed on utilization of the Infrastructure Sharing. Where applicable such taxes shall be added to the

- invoice and shall be paid to Access Provider at the same time as the relevant invoice is settled in accordance with Section 2.1 above.
- 2.4 In relation to the One –Time Charges for each Service, Access Seeker shall pay the Charges no later than the Ready For Service Date or Handover Date, whichever is relevant.
- 2.5 All amounts payable by Access Seeker pursuant hereto shall be paid in full free and clear of all bank or transfer charges imposed by the Access Seeker bank(s) to such account(s) as Access Provider may by notice to Access Seeker designate without reduction for any deduction or withholding for or on account of any tax, duty or other charge of whatever nature imposed by any taxing authority. If Access Seeker is required by law to make any deduction or withholding from any payment hereunder, Access Seeker shall pay such additional amount to Access Provider so that after such deduction or withholding the net amount received by Access Provider will be not less than the amount Access Provider would have received had such deduction or withholding not been required. Access Seeker shall make the required deduction or withholding, shall pay the amount so deducted or withheld to the relevant governmental authority and shall promptly provide Access Provider with evidence of such payment.
- 2.6 Any type of Charges chargeable to the Access Seeker shall be determined and made known to the Access Seeker before the commencement of the Service and shall not be changed for the duration of the Service period unless mutually agreed between the Operators or unless provided otherwise in the Access Agreement.
- 3 Charging Principle of Rental
- 3.1 Transmission Service
- 3.1.1 The rental Charges for Transmission Service are charged according to the link from end-to-end of the Facilities or Services.
- 3.1.2 In relation to Transmission Service the rate of charge for rental are based on the following factors:
- Capacity of the Bandwidth Services;
  - Straight line distance of the link in the Service;
  - Geographical location of the link in the Service; and
  - Required Service Availability for the link in the Service
- 3.1.3 Transmission Services Supplied by Access Provider shall, only to the extent necessary, be subject to the recurring Charges listed in Table A herein below which are charges based on the Commission Determination on the Mandatory Standard on Access Pricing duly declared by the Commission.
- 3.1.4 The Access Seeker will not be entitled to terminate any of the lease agreements in respect of any Transmission Service in the first year. If the Access Seeker terminates the Access Seeker shall pay the applicable charges for the minimum period of one (1) year irrespective of use. After the first year, the Access Seeker may terminate the lease agreement by providing Access Provider three (3) months prior written notice. Any advance payment for the utilised portion of the lease agreement will be refunded on a pro-rated basis. Upon expiry, the lease agreement will be automatically renewed for the same duration unless either Operator gives a written notice to the other Operator, three (3) months prior to the expiry of the agreement, stating its intention not to renew the agreement.
- 3.1.5 The payment terms for Transmission Service is as follows:
- for the first year, one (1) year in advance; and
  - for subsequent years, quarterly in advance.
- 3.1.6 The contract period for the lease agreement shall commence from the date of commissioning of the respective Transmission Service circuit.

**3.2 Rental Charges for Infrastructure Sharing**

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

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

**3.3 Rental Charges for Network Co-location are charged according to per rack basis.****4 Charging Principle on One Time Charge**

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 from Access Provider or its contractor or agent on the works to be conducted by the Access Seeker at the site of the Shared Space.

**5 Charging Principle For Service Outside Access Provider's Existing Network Topology**

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

**6 Cancellation Charges**

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

**7 Rental Charges for the respective Services are subject to the terms stated in the relevant Tables. Please refer to the Tables below for the rental Charges for the respective Services:-**

**Table A:** Charges for Transmission Services

**Table B:** Infrastructure Sharing

**Table C:** Network Co-Location

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**Table A:** Transmission ServicesEnd-to-End Transmission Services^

<b>Within Peninsular Malaysia and Within Sabah &amp; Sarawak</b>	<b>Ringgit Malaysia Per Month</b>		
	<b>2023</b>	<b>2024</b>	<b>2025</b>
1 Gbps	6,561	4,663	2,765
3 Gbps	17,669	11,741	5,813
5 Gbps	28,383	18,622	8,861
6 Gbps	33,977	22,181	10,385
7 Gbps	39,571	25,740	11,909
8 Gbps	45,165	29,299	13,433
9 Gbps	50,759	32,858	14,957
10 Gbps	56,353	36,417	16,482
Installation (non-recurring charge)	6,571	6,768	6,971

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

- a) SLA 99.90%
- b) No rebate applicable for the services offered
- c) MTTR is on best effort
- d) The services are only applicable on circuits terminating at Access Provider's existing nodes as listed in item A under Annexure III
- e) The price is not inclusive of internal cabling and cross connect charges to Access Seekers equipment/ premises
- f) For Nodes within **Prasarana** corridor, the Right of Way charges imposed by Prasarana including other additional charges shall be added to the services. The final price for services within the Prasarana Corridor shall be subject to final negotiation to take into consideration of these additional charges.

Trunk Transmission Services^

<b>Within Peninsular Malaysia and Within Sabah &amp; Sarawak</b>	<b>Ringgit Malaysia Per Month</b>		
	<b>2023</b>	<b>2024</b>	<b>2025</b>
1 Gbps	5,357	3,440	1,524
3 Gbps	16,071	10,322	4,572
5 Gbps	26,785	17,203	7,620
6 Gbps	32,142	20,643	9,145
7 Gbps	37,499	24,084	10,669
8 Gbps	42,856	27,524	12,193
9 Gbps	48,214	30,965	13,717
10 Gbps	53,570	34,405	15,241
Installation (non-recurring charge)	2,738	2,820	2,905

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

- a) SLA 99.90%
- b) No rebate applicable for the services offered
- c) MTTR is on best effort
- d) The services are only applicable on circuits terminating at Access Provider's existing nodes as listed in item A under Annexure III
- e) The price is not inclusive of internal cabling and cross connect charges to Access Seekers equipment/ premises
- f) For Nodes within **Prasarana** corridor, the Right of Way charges imposed by Prasarana including other additional charges shall be added to the services. The final price for services within the Prasarana Corridor shall be subject to final negotiation to take into consideration of these additional charges.

**Table B:** Infrastructure Sharing

	Ringgit Malaysia Per Month		
	2023	2024	2025
1st Tier	10,400	10,400	10,400
2nd Tier	9,750	9,750	9,750
3rd Tier	9,100	9,100	9,100
4th Tier	8,450	8,450	8,450

\*The price stated is for a minimum supply term of 7 years. It includes site rental and subject to terms and conditions.

**Table C:** Network Co-Location


	Ringgit Malaysia Per Month		
	2023	2024	2025
Per rack	3,500	3,500	3,500


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# ANNEXURE III


## EXISTING POIS/ POPS LIST


### A. List of Existing Nodes and POI for Bandwidth Services

		Fiber Distribution Cabinet (FDC)	Space Rental	Unipole - 6899 Meter	Mini-Structure - 6899 Meter	30 Meter Pole	16/24 Meter Pole	4/6 Meter Blpod/Tripod Boom	3 Meter Boom	Equipment Room	Point Of Interconnect (POI)	Equipment	Cabinet/Rack/ODF	Cabinet ID	Cabinets
Rail Line	Station			Telco Structure											
Monorail	KL Sentral	√	√											MR01	A & B
Monorail	Tun Sambanthan	√	√						√	√	√	√		MR02	A & B
Monorail	Maharajalela	√	√						√		√	√		MR03	A & B
Monorail	Hang Tuah	√	√						√		√	√		MR04	A & B
Monorail	Imbi	√	√								√			MR05	A & B
Monorail	Bukit Bintang	√	√						√		√	√		MR06	A & B
Monorail	Raja Chulan	√	√								√			MR07	A & B
Monorail	Bukit Nenas	√	√						√		√	√		MR08	A & B
Monorail	Medan Tuanku	√	√						√		√	√		MR09	A & B
Monorail	Chow Kit	√	√						√		√	√		MR10	A & B
Monorail	Titivangsa	√	√								√			MR11	A & B

		Fiber Distribution Cabinet (FDC)	Space Rental	Unipole - 9/99 Meter	Mini-Structure - 9/99 Meter	30 Meter Pole	18/20/24 Meter Pole	4/6 Meter Bipod/Tripod Boom	3 Meter Boom	Equipment Room	Point Of Interconnect (POI)	Equipment	Cabinet/Rack/ODF	Cabinet ID	Cabinets
Rail Line	Station			Telco Structure											
Ampang Line	Ampang	√	√								√			S01	A & B
Ampang Line	Cahaya	√	√			√					√	√	√	S02	A & B
Ampang Line	Cempaka	√	√			√					√	√	√	S03	A & B
Ampang Line	Pandan Indah	√	√			√					√	√	√	S04	A & B
Ampang Line	Pandan Jaya	√	√			√					√	√	√	S05	A & B
Ampang Line	Maluri	√	√			√					√	√	√	S06	A & B
Ampang Line	Miharja	√	√						√		√	√		S07	A & B
Ampang Line	Chan Sow Lin	√	√								√			S08	A & B
Ampang Line	Pudu	√	√								√			S09	A & B
Ampang Line	Hang Tuah	√	√								√			S10	A & B
Ampang Line	Plaza Rakyat	√	√								√			S11	A & B
Ampang Line	Masjid Jamek	√	√						√		√	√		S12	A & B
Ampang Line	Bandaraya	√	√								√			S13	A & B
Ampang Line	Sultan Ismail	√	√								√			S14	A & B
Ampang Line	PWTC	√	√								√			S15	A & B
Ampang Line	Titivangsa	√	√						√	√	√	√	√	S16	A & B
Ampang Line	Sentul	√	√			√					√	√	√	S17	A & B
Ampang Line	Sentul Timur	√	√						√		√	√		S18	A & B
Ampang Line	Cheras	√	√			√					√	√	√	S61	A & B
Ampang Line	Salak Selatan	√	√								√			S62	A & B
Ampang Line	Bandar Tun Razak	√	√								√			S63	A & B
Ampang Line	Bandar Tasik Selatan	√	√								√			S64	A & B
Ampang Line	Sungai Besi	√	√								√			S65	A & B
Ampang Line	Bukit Jalil	√	√			√	√				√	√	√	S67	A & B
Ampang Line	Sri Petaling	√	√								√			S68	A & B



		Fiber Distribution Cabinet (FDC)	Space Rental	Unipole - 6/85 Meter	Mini-Structure - 6/85 Meter	30 Meter Pole	18/20/24 Meter Pole	4/6 Meter Blip/Tripod Boom	3 Meter Boom	Equipment Room	Point Of Interconnect (POI)	Equipment	Cabinet/Rack/ODF	Cabinet ID	Cabinets
Rail Line	Station	Telco Structure								Equipment Room	Point Of Interconnect (POI)	Equipment	Cabinet/Rack/ODF	Cabinet ID	Cabinets
LEP Line	Subang Depoh	√	√						√		√	√		SBDT	A & B
LEP Line	Lembah Subang	√	√			√					√	√	√	KJ 25	A & B
LEP Line	Ara Damansara	√	√		√						√	√		KJ 26	A & B
LEP Line	Glenmarie	√	√			√					√	√	√	KJ 27	A & B
LEP Line	Subang Jaya	√	√						√		√	√		KJ 28	A & B
LEP Line	SS 15	√	√								√			KJ 29	A & B
LEP Line	SS18	√	√								√			KJ 30	A & B
LEP Line	USJ 7	√	√					√			√	√		KJ 31	A & B
LEP Line	Taipan	√	√		√						√	√		KJ 32	A & B
LEP Line	Wawasan	√	√	√	√						√	√		KJ 33	A & B
LEP Line	USJ 21	√	√								√			KJ 34	A & B
LEP Line	Alam Megah	√	√								√			KJ 35	A & B
LEP Line	Subang Alam	√	√			√					√	√	√	KJ 36	A & B
LEP Line	Putra Heights	√	√								√			KJ 37 / SA 100	A & B
LEP Line	Puchong Prima	√	√	√							√	√		SA 98	A & B
LEP Line	Puchong Perdana	√	√								√			SA 97	A & B
LEP Line	Bandar Puteri	√	√								√			SA 96	A & B
LEP Line	Taman Perindustrian Puchong(TPP)	√	√								√			SA 95	A & B
LEP Line	Pusat Bandar Puchong	√	√								√			SA 94	A & B
LEP Line	IOI Puchong Jaya	√	√								√			SA 93	A & B
LEP Line	Kinrara BK 5	√	√					√			√	√		SA 91	A & B
LEP Line	Alam Sutera	√	√						√		√	√		SA 90	A & B
LEP Line	Muhibbah	√	√						√		√	√		SA 89	A & B
LEP Line	Awan Besar	√	√			√					√	√	√	SA 88	A & B
BRT Line	Seri Setia	√	√								√			BS 01	A & B
BRT Line	Mentari Court	√	√	√							√	√		BS 02	A & B
BRT Line	Sunway Lagoon	√	√	√							√	√		BS 03	A & B
BRT Line	Sunway Medical	√	√	√							√	√		BS 04	A & B
BRT Line	Sun-U Monash	√	√	√							√	√		BS 05	A & B
BRT Line	South Quay	√	√	√							√	√		BS 06	A & B

		Fiber Distribution Cabinet (FDC)	Space Rental	Unipole - 6/8/9 Meter	Mini-Structure - 6/8/9 Meter	30 Meter Pole	18/20/24 Meter Pole	4/6 Meter Bipod/Tripod Boom	3 Meter Boom	Equipment Room	Point Of Interconnect (POI)	Equipment	Cabinet/Rack/ODF
Location	Building / Site			Telco Structure									
*Outside Corridor	KL Gateway									√	√	√	√
*Outside Corridor	Terminal Bersepadu Selatan (TBS)										√	√	
*Outside Corridor	Berjaya Times Square										√	√	
*Outside Corridor	Wisma Celcom (MHS)										√	√	
*Outside Corridor	Menara AIMS - KL										√	√	√
*Outside Corridor	CX1 Cyberjaya										√	√	
*Outside Corridor	CX2 Cyberjaya										√	√	
*Outside Corridor	CX5 Cyberjaya										√	√	
*Outside Corridor	CJ1 Cyberjaya										√	√	
*Outside Corridor	NTT Cyberjaya										√	√	
*Outside Corridor	KVDC Cyberjaya										√	√	
*Outside Corridor	TM Brickfields										√	√	√
*Outside Corridor	Strategi PJ										√	√	√
*Outside Corridor	The Intermark										√	√	√
*Outside Corridor	Menara Binjai										√	√	√
*Outside Corridor	G-Tower										√	√	
*Outside Corridor	Menara OCBC Masjid Jamek										√	√	√
*Outside Corridor	OCBC Great Eastern Mall - Jalan Ampang										√	√	√
*Outside Corridor	E2 Power Sdn Bhd - Prima Avenue Cyberjaya										√	√	
*Outside Corridor	Menara Public Bank - Jalan Sultan Sulaiman										√	√	√
*Outside Corridor	Bukit Bintang City Centre										√	√	√
*Outside Corridor	LaLaport - Bukit Bintang City Centre										√	√	√
*Outside Corridor	Perla @ Ara Sentral - Ara Damansara									√	√	√	√
*Outside Corridor	KL Eco City										√	√	√
*Outside Corridor	KL Sentral										√	√	
*Outside Corridor	Subang Hi-Tech - CelcomDigi & U-Mobile										√	√	√
*Outside Corridor	UOA Bangsar										√	√	√
*Outside Corridor	Bangsar South										√	√	√

**Note:**

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

# ANNEXURE IV

## DISPUTE RESOLUTION PROCEDURE

### 1. Definitions

#### 1.1 In the Dispute Resolution Procedures set out in this Annexure IV:

- a) "Billing Dispute" means the dispute of an Invoice issued by one party to the other party, which is made in good faith;
- b) "Billing Dispute Notice" means the written notification made by one party to the other party in relation to a Billing Dispute in accordance with Section 6.4 of this Annexure;
- c) "Billing Dispute Notification Period" means the period after the date of receipt of an Invoice during which a Billing Dispute may be raised in relation to that Invoice, as specified in Section 6.2 of this Annexure;
- d) "Billing Representative" means a representative of the party appointed in accordance with the billing procedures set out in Section 6.15 of this Annexure;
- e) "Billing System" means a system to issue Invoices relating to charges payable by each party under an Access Agreement;
- f) "Dispute" has the meaning given to it in Section 2.1 of this Annexure;
- g) "Notice" means the notice issued of intention to escalate the issue to the Interconnect Steering Group, as specified in Section 4.1 of this Annexure; and
- h) "Technical Expert" has the meaning given to it in Section 5.3 of this Annexure.

### 2. Introduction

2.1 Subject to Section 2.2(c) of this Annexure, an Access Provider and an Access Seeker shall adopt and comply with these Dispute Resolution Procedures in relation to any dispute which may arise between an Access Seeker and an Access Provider in relation to or in connection with the supply of Facilities and/or Services to which this Standard applies ("Dispute").

2.2 The following dispute resolution mechanisms are discussed in this section:

- (a) interconnect steering group; and
- (b) subject to specific resolution of disputes, being:
  - i. technical disputes (which must follow the procedure set out in Section 5 of this Annexure if they cannot be resolved through the application of the general dispute resolution provisions in Sections 3 and 4 of this Annexure);
  - ii. Billing Disputes (as defined in Section 1.1 of this Annexure), which must follow the procedures set out in Section 6 of this Annexure; or
  - iii. any other types of disputes, which, if cannot be resolved through the application of the general dispute resolution provisions in Sections 3, 4 and 5 of this Annexure, must be referred to the Commission for resolution.

- 2.3 A Dispute shall first be attempted to be resolved by negotiation between the parties. If the parties to the Dispute cannot or otherwise fail to reach an agreement, the parties shall always be entitled to seek resolution of the Dispute by the Commission in accordance with Section 151 of the Act, and the Commission will decide the dispute if it is satisfied that:
- (a) the parties will not reach agreement, or will not reach agreement in a reasonable time;
  - (b) the notification of the Dispute is not trivial, frivolous or vexatious; and
  - (c) the resolution of the Dispute would promote the objects in the Act.

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

- 2.4 For clarification, unless stated otherwise, all references to Sections, Conditions and paragraphs in this Annexure are references to sections, conditions and paragraphs of this Annexure.

### 3. General

- 3.1 An Operator may not commence court proceedings relating to a Dispute which is the subject of these Dispute Resolution Procedures until it has complied with each applicable process in these Dispute Resolution Procedures, other than an application for urgent interlocutory relief. Nothing in this Section shall be construed as ousting the jurisdiction of any court.
- 3.2 Both parties to a Dispute shall ensure that their representatives acting in relation to a Dispute are of sufficient seniority and have authority to settle a Dispute on their behalf. At the commencement of the Dispute Resolution Procedures, each Party must notify the other Party of the scope of the authority of each of their representatives. If, in the course of the Dispute Resolution Procedures, it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to the representative, a Party may require that those matters be referred to more senior officers of that Party who have authority to settle those matters.
- 3.3 During a Dispute and any dispute resolution process invoked in accordance with this Annexure, an Access Provider and Access Seeker must continue to fulfil their obligations under the Access Agreement between them.
- 3.4 Subject to Section 3.5 of this Annexure, the parties to a Dispute shall exchange information of a type described in this Standard during the course of, and to facilitate, resolution of the Dispute.
- 3.5 Confidential Information of a Party which is disclosed, and any other oral or written submissions made by a Party or a Party's representatives during the course of any dispute resolution process will be subject to the confidentiality restrictions in relevant confidentiality provisions contained in the Confidentiality Agreement prepared in accordance with Sub-section 5.3.8 of the MSA Determination.

- 3.6 A Party must not use information obtained under Section 3.4 of this Annexure or described in Section 3.5 above for any purpose other than to resolve the Dispute.
- 3.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of a Dispute (including a Technical Expert or the Commission, in accordance with this Annexure) may decide not to determine the Dispute if the arbitrator considers that the Dispute is trivial, frivolous or vexatious, or if there is insufficient evidence before the arbitrator to determine the Dispute.
- 3.8 The costs of the arbitration are to be shared equally between the Parties, unless the arbitrator of the Dispute has decided not to determine the Dispute in accordance with Section 3.7 above. If an arbitrator decides not to determine the Dispute, the Party that initiated the Dispute must pay the other Party's costs.
4. Interconnect steering group
- 4.1 In the first instance the Access Seeker and the Access Provider should attempt to resolve the Dispute between themselves. Either party may give written notice ("Notice") to the other party ("Receiving Party") stating its intention to form, within ten (10) Business Days, an Interconnect Steering Group ("ISG") and outline the details of the Dispute.
- 4.2 The Access Provider and the Access Seeker shall form the ISG within ten (10) Business Days, to fulfil the requirements of Section 4.1 above. The ISG shall comprise of representatives of the parties and be headed by a person who holds a position that is at least equivalent to the Chief Officer or Executive Vice President of the Access Provider.
- 4.3 The parties shall provide for:
- (a) subject areas to be dealt with by the ISG;
  - (b) equal representation by the Access Seeker and the Access Provider;
  - (c) chairmanship and administrative functions of the working group to be shared equally; and
  - (d) formal notification procedures to the ISG.
- 4.4 The Access Provider and the Access Seeker shall use reasonable endeavours to attempt to settle the Dispute in the working group for a period of no longer than thirty (30) Business Days from the date of the Notice unless otherwise agreed by the parties, subject always to a Party's right to seek urgent interlocutory relief.
- 4.5 In the event that the parties cannot resolve the Dispute between themselves within the time specified in Section 4.4 of this Annexure, or after any agreed time extension has expired, either Party may notify the other Party that it wishes to refer the issue to:
- (a) to the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with Section 5 of this Annexure); or
  - (b) to the Commission for final arbitration.

4.6 The ISG to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Party of the Notice under Section 4.1 of this Annexure. If the ISG fails to meet or has not been formed within ten (10) Business Days of the receipt by the Receiving Party of the Notice, either party may refer the Dispute:

- (a) to the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with Section 5 of this Annexure); or
- (b) to the Commission for final arbitration.

5. Use of a Technical Expert

5.1 A Dispute will only be referred to a Technical Expert if the provisions of Section 4 of this Annexure have been complied with.

5.2 Once a Dispute is referred to a Technical Expert, it may not be referred back to ISG.

5.3 The person to whom a technical dispute may be referred under this Section 5:

- (a) will be an expert appointed by agreement of the parties or, if the parties cannot agree, by the Commission;
- (b) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communications industry;
- (c) need not be a Malaysian citizen or resident; and
- (d) will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interest,

("Technical Expert").

5.4 If the parties fail to appoint a Technical Expert within ten (10) Business Days of the need to refer a Dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.

5.5 When relying on the services of a Technical Expert, the following dispute resolution procedures will apply to the Technical Expert:

- (a) the parties will present written submissions to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and
- (b) each Party may respond to the other Party's submission in writing within fifteen (15) Business Days from the date of the other Party's submission.

5.6 At the request of either Party and subject to the Parties agreeing, or the Technical Expert deciding within five (5) Business Days of the last written submission, that the arbitration by the Technical Expert should be by documents only, a Technical Expert hearing will be held within fifteen (15) Business Days of the last written submission.

- 5.7 Should a Technical Expert hearing be held, each Party will have the opportunity of making an oral submission. This process will be conducted in private.
- 5.8 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the parties) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.
- 5.9 The Technical Expert will not have the power to appoint any other experts.
- 5.10 The Technical Expert will deliver his or her award within fifteen (15) Business Days of the hearing or of the last written submission where the arbitration is by documents only.
- 5.11 Every Dispute referred to a Technical Expert will be considered separately so that time limits for each Dispute are complied with.
- 5.12 The Technical Expert's decision will be binding on the parties (in the absence of manifest error of fact or law).

6. Billing Dispute resolution

- 6.1 As outlined in the billing provisions of the MSA Determination at Sub-section 5.11, a Party ("Invoicing Party") shall provide to the other Party ("Invoiced Party") an Invoice in writing, or in such electronic form as may be agreed from time to time, for amounts due in respect of the supply of Facilities and/or Services during such Billing Cycle.
- 6.2 An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if:

- (a) in case of any other Facilities and/or Services, the Invoiced Party notifies the Invoicing Party within thirty (30) Business Days after the date of receipt of such Invoice,

provided that, in any case specified above, the Invoiced Party's Billing Dispute Notice specifies the information in accordance with Section 6.4 of this Annexure.

- 6.3 A Billing Dispute may only arise where the Invoiced Party has reasonable grounds to believe that an error has arisen from one of the following circumstances:
  - a) the Invoicing Party's Billing System is, or has been, defective or inaccurate in respect of the recording of the calls which are the subject of the Dispute;
  - b) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Party's Billing System;
  - c) there is, or has been, a fraud perpetrated by the Invoicing Party; or
  - d) the Invoicing Party has made some other error in respect of the recording of the calls or calculation of the charges which are the subject of the Billing Dispute.

- 6.4 A Billing Dispute Notice given under this Section 6 must specify:

- (a) the reasons for which the Invoice is disputed;

- (b) the amount in dispute;
  - (c) details required to identify the relevant Invoice and charges in dispute including:
    - i. the account number;
    - ii. the Invoice reference number;
    - iii. the Invoice date;
    - iv. the Invoice amount; and
    - v. billing verification information; and
  - (d) evidence in the form of a report, indicating the relevant traffic data which is in dispute.
- 6.5 The Invoiced Party may withhold payment of amounts disputed in good faith in accordance with Section 2.4 of Schedule B of VBT's RAO. If the Billing Dispute is resolved against the Invoiced Party, that Invoiced Party shall be required to pay interest at the rate specified in Section 2.6 of Schedule B of VBT's RAO on the amount payable from the due date of the disputed invoice until the date of payment.
- 6.6 Where the Invoiced Party has paid an amount and subsequently notifies the Invoicing Party of a Billing Dispute in relation to that amount within the Billing Dispute Notification Period, the Invoicing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount. Once the Billing Dispute is resolved, if the Invoicing Party is obliged to refund an amount to the Invoiced Party, interest will be payable on the refunded amount at the rate specified in Section 2.6 of Schedule B of VBT's RAO. In such circumstances, interest will be payable from the date the Invoiced Party paid the disputed amount to the date of the refund by the Invoicing Party.
- 6.7 The parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this Section 6.
- 6.8 If the parties are unable to resolve any Billing Dispute within one (1) month (or such other period as the parties may agree) from the date on which the Billing Dispute Notice is received, either Party may seek the consent of the other Party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other party is, however, under no obligation to agree to such extension.
- 6.9 To the extent that a Billing Dispute notified under this Section involves a Billing Dispute with an international correspondent of the Invoicing Party, the Dispute Resolution Procedures shall be suspended for a reasonable period of time pending resolution of the Billing Dispute with that international correspondent. As a general rule, the period of suspension will not exceed four (4) months. However, the parties shall recognise that some Billing Disputes with international correspondents may take longer to resolve, in which case the Invoicing Party must promptly inform the Invoiced Party of the likely period required for resolution.
- 6.10 Once the negotiation period under Section 6.8 of this Annexure (including any extension agreed) and any suspension period under Section 6.9 of this Annexure have expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in Section 6.1 1 of this Annexure ("Billing Dispute Escalation Procedure").



- 6.11 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this Section 6.11 by notifying the Invoicing Party's Billing Representative within Billing Dispute Notification Period of sixty (60) Business Days. Both parties shall then appoint a designated representative who has authority to settle the Billing Dispute, and who is at a higher level of management than the persons with direct responsibility for administration of this Standard. The designated representatives shall meet as often as they reasonably deem necessary to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one party to the other party shall be honoured.
- 6.12 Once any Billing Dispute has been resolved to the parties' satisfaction, any sum to be paid or repaid shall be paid by the relevant party within ten (10) Business Days from the date of resolution of the Billing Dispute
- 6.13 Although it shall be the good faith intention of the parties to use the above Billing Dispute Resolution Procedures to the fullest extent to try to solve Billing Disputes, nothing in this Annexure shall prevent either party from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- 6.14 A party may request a joint investigation of Invoice discrepancies after that party has conducted a comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the parties must agree on the terms of the joint investigation, including:
- (e) the scope of the joint investigation;
  - (f) how the joint investigation will be conducted; and
  - (g) the date by which the joint investigation must be concluded.
- The joint investigation may include the generation of test calls to the other Party's Network.
- 6.15 Enquiries relating to billing, collecting and settlement arrangements or in relation to Network and operational issues may be directed to the Billing Representatives nominated by each party.
- 6.16 Either party may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- 6.17 If the Billing Dispute Escalation Procedure has been exhausted, either party may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the Act.