

Technology Park Malaysia Corporation Sdn. Bhd.

(Company No. 377141-T)

REFERENCE ACCESS OFFER

TPM's Reference Access Offer ("RAO")

Table of Contents

CHAPTER 1	–	Introduction, Background and Scope
CHAPTER 2	–	Interpretation and definition of the terms used in TPM's RAO
CHAPTER 3	–	Principles of Access
CHAPTER 4	–	Access Request Procedures
CHAPTER 5	–	Notices and Contact details
Schedules		
SCHEDULE A	–	Ordering and Provisioning Obligations
SCHEDULE B	–	Billing and Settlement Obligations
Annexes		
ANNEXURE I	–	List & Description of Facilities and Services
ANNEXURE II	–	Charges and Charging Principles
ANNEXURE III	–	Service Order Form

Reference Access Offer (“RAO”)

CHAPTER 1 – Introduction, Background and Scope

1.1 Preliminary

1.1.1 This Access Reference is made by Technology Park Malaysia Corporation Sdn Bhd (Company No: 377141-T) (“TPM”), a company incorporated under the laws of Malaysia and having its business address office at L5-E-4, Enterprise 4, Technology Park Malaysia, Lebuhraya Puchong – Sg Besi, Bukit Jalil, 57000 Kuala Lumpur on **31 July 2017** pursuant to **section 5.3.3** of the Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016, which came into effect on 1st January 2017 (“MSA Determinations”)

1.1.2 Pursuant to Commission Determination on the Access List, Determination No.2 of 2015 which came into effect 1st September 2015 and pursuant to section 5.3.3 of the MSA Determination, TPM 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 TPM 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.

1.1.3 This RAO is set out as follows:

- (a) Main Text which consist of 5 Chapters; and
- (b) Schedules, Annexure and relevant Appendices

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 Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016 and in exercise of the powers conferred by sections 55, 56, 104(2) and 106 of the Communications and Multimedia Act 1998 (Act 588) (“Act”), the Malaysian Communications and Multimedia Commission (“Commission”) issued the MSA Determination.

1.2.2 MSA Determination Obligations

1.2.2.1 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 (Sections 5.5 to 5.16 of the MSA Determination); and

- (d) Service Specific obligation (Section 6 of the MSA Determination).

1.2.3 Disclosure Obligations

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

- (a) prepare and maintain an RAO;
- (b) make the RAO available;
- (c) follow prescribed procedures after acceptance of the RAO; and
- (d) follow prescribed procedures for any amendment of the RAO

1.2.4 The role of Standard Access Obligations

1.2.4.1 Pursuant to sections 55 and 145 of the Act, the Commission may determine the list of network facilities and network services, which may be listed in the access list. Accordingly, the Commission has issued the Access List Determination. Pursuant to section 149 of the Act, an Access Provider is required to comply with the standard access obligations in providing the network facilities and network services that are listed in the Access List Determination.

1.2.4.2 The standard access obligations facilitate the provision of access to the network facilities and network services listed in the Access List Determination by Access Seekers in order that Access Providers can provide network facilities, network services, and other facilities and/or services which facilitate the provision of network services or applications services, including content applications services.

1.2.4.3 Section 149 of the Act specifies the terms and conditions upon which the Access Provider must comply with the standard access obligations. Section 149(2) provides that the access provided by the Access Provider shall be:

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

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

1.3 **Scope of TPM's RAO**

1.3.1 TPM is a licensed individual network facilities and network services provider under the Act.

- 1.3.2 Pursuant to Section 5.3.3 of the MSA Determination, TPM is obliged to prepare and maintain an RAO in relation to network facilities or network services on the Access List Determination which TPM provides to itself or third parties.
- 1.3.3 TPM'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 TPM's RAO.
- 1.3.5 TPM considers TPM'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;
 - (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 TPM's RAO is applicable to the Facilities or Services and which is relevant to the provisioning of facilities and services within TPM's licenses only. If the Access Seeker requests network facilities or network services outside TPM's RAO, the terms and conditions for the provision of such network facilities or network services shall remain outside the scope of TPM's RAO.
- 1.3.7 If an Access Seeker requests TPM to provide it with Facilities or Services other than on the terms and conditions contained in TPM's RAO, TPM 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 TPM's RAO contains terms and conditions for the following facilities and services:-
- (a) Duct and Manhole Services.

1.4 Additional Services

- 1.4.1 In addition, the Operators are free to consider TPM'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 TPM's RAO

1.5.1 Commencement and Duration of TPM's RAO

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

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

1.5.1.2 TPM's RAO has no effect on contractual arrangements for the supply of Facilities and Services by TPM 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 TPM's RAO

1.5.2.1 TPM shall, no less than twenty (20) Business Days of making any amendment to TPM's RAO, provide a copy of the amendments, or an amended copy of TPM's 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.

1.5.3 Notice of Withdrawal, Replacement and Variation of TPM'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, TPM may, by giving written notice to all Access Seekers to whom it is supplying Facilities or Services under TPM's RAO, withdraw or replace TPM's RAO with effect from a date no earlier than the effective date of the Commission's revocation.

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

1.5.3.3 In addition to Section 1.5.3.2 above, TPM may give the Access Seekers to whom it is supplying Facilities and Services under TPM's RAO a notice of a variation or replacement of TPM'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 TPM under TPM's RAO; or
- (b) the occurrence of a Regulatory Event that relates to TPM; 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 Sections 1.5.3.1, 1.5.3.2 and 1.5.3.3 above, TPM may subject to Section 1.5.2 above, replace TPM's RAO at any time.

1.5.4 Availability

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

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

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

CHAPTER 2 – Interpretation

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

“Act” means the Communications and Multimedia Act 1998.

“Access Agreement” or **“AA”** means an Access Agreement executed between Access Seeker and TPM for TPM to provide requested Facilities and/or Services subject upon commercially negotiated terms and conditions and in accordance with the terms therein contained and registered with the Commission in accordance with Section 150 of the Act.; or

“Access List Determination” means Commission Determination on Access List, Determination No.2 of 2015 which contains List of Facilities and Services determined by the Commission under Chapter 3 of Part VI of the Act.

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

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

“Access Seeker” means an Operator who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Legislative Event” means:

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

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

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

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

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

“Operators” means TPM and the Access Seeker collectively.

“Other Operator” means either:

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

as the context requires.

“Regulatory Event” means:

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

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

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

“Security Sum” means the security:

- (a) in the form of a Bank Guarantee, deposited with TPM in accordance with Section 4.3 for the supply of Facilities or Services; and

(b) which is equivalent to the Minimum Value .

“Services” means the services provided by TPM as particularly described in section 1.3.8, which are listed in the Access List Determination and offered in TPM's RAO.

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

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

2.2 In TPM'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 TPM's RAO; and
- (i) 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 TPM's RAO; and
- (j) headings are included for convenience and do not affect the interpretation of TPM's RAO.

CHAPTER 3 – Principles of Access

3.1 Services

- 3.1.1 TPM's RAO sets out the terms and conditions upon which Access Seekers may access TPM's Facilities and/or Services.
- 3.1.2 Subject to Section 1.3.6, TPM's RAO applies only to the Facilities and/or Services.
- 3.1.3 The general terms for access to TPM'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 TPMs' Facilities and Services listed in the Access List Determination are set out in **Schedule A of the Access Agreement Template**.
- 3.1.5 The obligations on technical and network operational matters for TPM's Facilities and Services listed in the Access List Determination are set out in **Schedule C of the Access Agreement Template**.
- 3.1.7 The **Annexures to the RAO** are set out as follows:
- (a) ANNEXURE I – List & Description of Facilities and Services
 - (b) ANNEXURE II – Charges
 - (c) ANNEXURE III – Service Order Form Template

3.2 Eligibility for Access of Services

- 3.2.1 TPM 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 TPM provides the Access Seeker with access to the Facilities or Services pursuant to **Section 3.2.1**, the charges for the requested Facilities or Services shall be negotiated between the Access Seeker and TPM subject to any mandatory standard on access pricing determined by the Commission.

3.3 Principles of Access

3.3.1 Access Terms and Conditions

3.3.1.1 Where TPM provides access to an Access Seeker to a Facility and/or Services, TPM shall do so on non-discriminatory basis subject to the reasonably and commercially negotiated terms and conditions.

3.4 Dispute Resolution

3.4.1 Each party shall use all reasonable endeavours to resolve any disputes arising from or in connection with TPM's RAO.

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

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 TPM's RAO in accordance with the Confidentiality Agreement signed between the parties.

CHAPTER 4 – Access Request Procedures

4.1 Application for Access to Services

4.1.1 Where an Access Seeker makes a request to TPM to supply Facilities or Services, the Access Seeker shall submit an Access Request to TPM.

4.1.2 The purpose of such Access Request is to provide TPM with sufficient information to assess the Access Seeker's request for the supply of Facilities or Services under TPM'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 TPM'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 TPM to provide for the purposes of the access negotiations;
- (e) contain two (2) sets of confidentiality agreement properly executed by the Access Seeker in the form prescribed by TPM;
- (f) contain information about the capacity of the Facilities and/or Services which the Access Seeker expects to obtain from TPM;
- (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 TPM's Network;
- (h) contain Creditworthiness Information as set out in **Section 4.2**;
- (i) if required by TPM, be accompanied by a Security Sum as set out in **Section 4.3**;
- (j) contain Insurance Information as set out in **Section 4.4**;
- (k) contain relevant technical information relating to the interface standards of the Equipment of the Access Seeker; and
- (l) such other information that TPM may reasonably request.

4.2 Creditworthiness Information

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

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

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

4.3 Security Sum

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

4.4 Insurance Information

4.4.1 Subject to Section 4.4.2, an Access Request shall, if required by TPM, be accompanied by the following insurances:

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

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

4.5 Processing of Access Request

4.5.1 Acknowledgement of Receipt of Access Request

TPM shall within ten (10) Business Day of receipt of the Access Request inform the Access Seeker in writing that it has received the Access Request and:

- (a) Subject to Section 4.5.3, request additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request; or
- (b) Indicate whether it is willing to provide access to Facilities or Services in accordance with TPM'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 TPM within twenty (20) Business days from the date of request, TPM shall reconsider the Access Request in accordance with this Section 4.5.1 upon receipt of such additional information.

4.5.2 Non-refundable resource

4.5.2.1 In accordance with Section 5.7.28 of the MSA Determination TPM 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 TPM for the allocation of manpower and other resources to enable itself to test and provide new Facilities and Services as per Access Seeker's request.

- 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 TPM is required to allocate manpower and resources for the same. Such non-refundable processing fee is only applicable to requested Facilities and Services that can be offered and made available by TPM. Notwithstanding the foregoing, in the event that additional and non-routine administrative work is required to process the Access Request where there is sufficient and/or erroneous information provided by the Access Seeker or where the Access Seeker varies or changes the information provided, Fi such additional and non-routine work as additional resources are required to do the same.
- 4.5.2.3 If the Access Seeker does not proceed with the Access Request accepted by TPM, the processing fees will not be refunded to the Access seeker. However, if the Access Seeker proceeds with the Access Request accepted by TPM, the processing fee will be set-off against the Charges for the requested Facilities and Services after acceptance of the Access Request by TPM

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, TPM 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 TPM's reasonable opinion, the Access Seeker's Access Request was not made in good faith and TPM shall set out the basis on which the Access Request was not made in good faith;
- (b) in TPM's reasonable opinion, the Access Request does not contain the information reasonably required by TPM's RAO provided that TPM has sought the information from the Access Seeker under Section 4.5.1 of TPM's RAO and has not received that information within twenty(20) Business Days of making such a request;
- (c) TPM 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 TPM for the supply of access to such Facilities or Services;
- (d) It is not technically feasible to provide access to the requested Facilities or Services;
- (e) TPM has insufficient capacity to provide the requested Facilities or Services;
- (f) there are reasonable grounds in TPM's opinion to believe that the Access Seeker would fail, to make timely payment for the supply of the relevant Facility or Service; or
- (g) there are reasonable grounds in TPM's opinion to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities or Services; or

- (h) there are reasonable grounds for TPM to refuse access in the national interest; or
- (i) the access is being sought to facilities and/or services which are not in the Access List Determination.

4.6.2 Determination of lack of technical feasibility

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

4.6.3 Determination of capacity constraints

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

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

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

4.6.6 Assessment of Creditworthiness

- 4.6.6.1 In determining the creditworthiness of the Access Seeker, TPM may have regard for the requirements stipulated by this RAO which include, 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, TPM shall not take into account amounts outstanding for Facilities or Services previously provided by TPM 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 TPM to the extent that there is a bona fide dispute in relation to the amounts outstanding by the Access Seeker to TPM 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 TPM rejects the Access Request, TPM shall:

- (a) promptly notify the Access Seeker in writing within ten (10) Business Days from receipt of the Access Request or additional information requested

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

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

4.8 Acceptance of Access Request

4.8.1 Where TPM agrees to provide access to Facilities or Services to the Access Seeker in accordance with TPM's RAO, TPM shall within ten (10) Business Days of such response under Section 4.5.1(b), provide the Access Seeker with two copies of the executed 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 Sections 5.4.1, 5.4.2, 5.4.3, and 5.4.4 of the MSA Determination in negotiating and concluding an Access Agreement.

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

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

4.9 Negotiations on Access Request

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

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

negotiating team leader shall have authority to make binding representations on behalf of TPM in relation to matters arising from the negotiations;

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

CHAPTER 5 – Notices

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

Attention : TPM IT Sdn Bhd
Address : Level 2, Enterprise 4
Technology Park Malaysia
Lebuhraya Sg Besi – Puchong
Bukit Jalil
57000 Kuala Lumpur, Malaysia

Telephone : 03-8996 8166
Facsimile : 03-8998 1964

SCHEDULE A

ORDERING AND PROVISIONING OBLIGATIONS

1. ORDERING AND PROVISIONING OBLIGATIONS

1.1 Ordering Contact and Information

1.1.1 The Access Seeker must submit all Orders to TPM at the following address:

Attention : TPM IT Sdn Bhd
Address : Level 2, Enterprise 4
Technology Park Malaysia
Lebuhraya Sg Besi – Puchong
Bukit Jalil
57000 Kuala Lumpur, Malaysia

Telephone : 03-8996 8166

Facsimile : 03-8998 1964

1.1.2 The Order must be in the form specified by TPM 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 Service requested (**“Delivery Points”**);
- (c) A requested time for fulfilment of the Order (**“Requested Delivery Date”**);
- (d) Information on the Access Seeker’s Equipment to be used in connection with the Order; and
- (e) Such other information that TPM reasonably requires to provision the Order.

1.1.3 Access Seeker may use the Service Order Form in the format shown in Annexure III for the purposes of ordering Services.

1.2 Acknowledgement of Receipt

1.2.1 Within 2 Business Days of receipt of an Order, TPM 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 TPM to clarify or complete the Order.

- 1.2.2 If the Access Seeker resubmits a completed Order within 14 Business Days of the Order having been returned by TPM, the Order Date is the day the Order is resubmitted by the Access Seeker.
- 1.2.3 If the Access Seeker resubmits a completed Order more than 14 Business Days of the Order having been returned by TPM, the Order is deemed to be a fresh Order.
- 1.3 Use of Ordering Information
 - 1.3.1 Ordering Information provided by the Access Seeker is Confidentiality Information belonging to the Access Seeker and may be used only by those persons within TPM whose role is:
 - (a) within TPM's group for the purpose of provisioning an Order; and
 - (b) for network planning and engineering purposes.
- 1.4 Further Information
 - 1.4.1 TPM 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 TPM's request for further information and TPM may, acting reasonably:
 - (a) Treat the Order as suspended until the information requested is received; and
 - (b) Remove the Order from TPM's queue and insert the Order at a later position in the queue when the information requested is received.
- 1.5 Respond to an Order
 - 1.5.1 TPM 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 sub-clause 1.7 below is performed in respect of that Order - fourteen (14) Business Days of the Order Date plus the period for completing the Service Qualification.
 - 1.5.2 TPM may reject an Order where:
 - (a) it is not technically feasible to provide access to the Services requested by the Access Seeker;
 - (b) TPM has insufficient capacity to provide the requested Services;
 - (c) the Order duplicated an Order awaiting fulfillment;

- (d) the Access Seeker has not obtained from TPM the necessary related agreements;
- (f) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions of this Access Agreement, including;
- (g) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Services, to protect:
 - (i) the integrity of a Network; or
 - (ii) the safety of the individuals working on, or using Facilities or Services supplied by means of a network or Equipment.

1.5.3 If the Order is accepted, TPM must specify in 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;
- (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 after acceptance for the Access Seeker to confirm the Order.

1.5.4 The Indicative Fulfillment Date must be:

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

1.5.5 If the Order is rejected, TPM 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.

1.6 Accept and Fulfilling Orders

1.6.1 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.
- 1.6.2 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) requirements of Access Seeker including those of other Operators.
- 1.6.3 Having regard to its obligations under Assessment of Access Request in Chapter 4 of TPM's RAO, TPM is not required to fulfil Orders that are in excess of contractual requirements where this would materially degrade the quality of Services provided by TPM to other Operators and to itself.

1.7 Service Qualifications

1.7.1 TPM may conduct Service Qualifications if:

- (a) TPM reasonably require information from such Service Qualifications which is not readily available; and
- (b) TPM notifies the Access Seeker that such Service Qualifications are necessary within five (5) Business Days of receiving the Order, or, if further information has been requested under subsection 1.4 within five (5) Business Days of the expiry of the period for further information, together with the reasons for such Service Qualifications.

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

1.7.2 Completion of Service Qualifications

TPM shall:

- (a) Complete any Service Qualification in respect of an Order within twenty-one (21) Business Days of the commencement of the Service Qualification;
- (b) Inform the Access Seeker of the result of any Service Qualification within ten (10) Business Days of the completion of such Service Qualification.

1.7.3 Withdrawal of Order following Service Qualifications

TPM shall permit an Access Seeker to withdraw its Order without penalty within ten (10) days after receiving the result of a Service Qualification under sub-clause 2.7.2.

1.8 Cancellation and Variation of Orders

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

1.9 Delivery of Service

1.9.1 The Access Provider shall deliver the ordered Service to Access Seeker by the Agreed Ready For service Date (as provided under subsection 1.5.3).

1.9.2 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.

1.9.3 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.

1.9.4 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.

1.9.5 An Access Provider shall :

- (a) Notify an Access Seeker of the delay to a delivery date and the revised delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;
- (b) permit the Access Seeker to cancel the Order without penalty if the delay is longer than fourteen (14) days; and
- (c) provide the Access Seeker with a remedy in accordance with subsection 1.12.

1.10 Testing and Commissioning

An Access Provider shall:

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

1.11 Resource Charge

An Access Provider may charge the Access Seeker a one-off fee, to be determined by reference to the costs incurred by the Access Provider for allocation of manpower and other resources to enable the Access Seeker to test and provide new Facilities or Services for purpose of interconnection.

1.12 Late Delivery

Subject to subsection 1.12.1 below, if an Access Provider fails to meet any timeframe in subsection 1.9.1 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 caused solely by the Access Seeker's delay 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 rental charges payable for the Facilities or Services prorated daily for the number of days delayed subject to a maximum sum of 1 month's rental.

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

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

-End of Page-

SCHEDULE B
BILLING AND SETTLEMENT OBLIGATIONS

BILLING AND SETTLEMENT OBLIGATIONS

1. BILLING

1.1 General Principle

Unless otherwise agreed TPM will invoice Charges incurred in each preceding Billing Period before 15th day of the current calendar month and Access Seeker shall pay the Charges to TPM within thirty (30 days) upon receipt of such an invoice.

1.2 Billing Information

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

1.3 Billing Error

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

1.4 Back Billing

Any omitted or miscalculated Charges from an invoice 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 or within thirteen (13) months from the month in which the Services were provided, whichever is later.

1.5 Provisional Billing

Where TPM is unable to issue an Invoice, it may issue an Invoice to an Access Seeker for a provisional amount, based on the last Invoice (**provisional invoice**). In such circumstances, TPM 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, TPM may issue a provisional Invoice up to the full value of the amount based on the most recent Invoice. The Access Seeker shall pay the Provisional Amount by the Due Date. The Provisional Amount will be

adjusted in the next invoice or as soon as practicable but not later than sixty (60) days after the month in which the charges were incurred or such other time period as may be agreed in writing (“**Adjustment Period**”). If an adjustment is not made within the Adjustment Period, the Access Seeker shall treat the Provisional Amount as the actual invoice.

1.6 Currency

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

2. SETTLEMENT

2.1 Time for Payment

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

2.2 Method of Payment

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

2.3 Billing Disputes

In the event the Access Seeker wishes to dispute an invoice, the Access Seeker shall notify TPM 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; and
- (c) details required to identify the relevant invoice and Charges in dispute including the account number, the invoice reference number, the invoice date, the invoice amount; and the billing verification information.

2.4 Withholding of Disputed Amounts

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

2.5 Billing Dispute Resolution

Where relevant the Parties must comply with the Dispute Resolution Procedures applicable to the billing disputes in Annexure A of the Mandatory Standard on Access (“MSA”) [Determination No 2 of 2005].

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

2.6 Interest

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

-End of Page-

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 TPM to the Access Seeker.

1.2 The following tabulates the Facilities and Services provided by TPM.

“Ducting and Manhole Services”

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

B. SERVICE DESCRIPTION

B.1 DUCT AND MANHOLE ACCESS SERVICES

1. General

1.1 Section B 1 of Annexure I sets out the terms and conditions which are applicable to Duct and Manhole Access Service.

1.2 Duct and Manhole Access is a Facility and/or Service which comprises the provision of physical access to:

- (a) Lead-In Ducts and associated manholes
- (b) Mainline Ducts and associated manholes in areas in which TPM has exclusive rights to develop or maintain duct and manhole infrastructure, whether or not in combination with other Facilities and Services.
- (c) Sub-ducts where there is no room for the Access Seeker to install its own sub-ducts.

2. Provision of Duct and Manhole Services

2.1 Subject to the Access Seeker complying with the Ordering and Provisioning

Obligations in **Schedule A**, TPM will provide in accordance with the terms and conditions of this Access Agreement and the applicable Schedules and Annexure herein, Duct and Manhole Services requested by the Access Seeker.

- 2.2 Provision of physical access includes the provision of
- (a) Space at specified network facilities to enable an Access Seeker to install and maintain its own lines, equipment and sub-ducts;
 - (b) Access for the personnel of the Access Seeker.
- 2.3 The Access Seeker shall provide TPM reasonable access to its premises when TPM reasonably requires it for the purpose of installing, maintaining, modifying or removing Equipment related to the provision of Duct and Manhole Services by TPM.
- 2.4 TPM 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 Access Seeker will pay to TPM for Transmission Services stated in **Section B.1 of Annexure I** provided by TPM, Charges in accordance with the applicable provisions set out in **Annexure II**.

3. Pre-Requisites for applying Duct and Manhole Access

- 3.1 TPM shall not be obliged to provide to the Access Seeker the Duct and Manhole Access unless:
- (a) TPM:
 - (i) is the owner of the Duct and Manhole; or
 - (ii) has exclusive rights of use of the Duct and Manhole pursuant to a lease or tenancy agreement with the owner of the Duct and Manhole and TPM has been granted the requisite approval by the owner of the said Duct and Manhole to permit the Access Seeker to use the Duct and Manhole;
 - (b) the Access Seeker has the appropriate license under the Act and its subsidiary legislation to operate the service and other approvals from relevant authorities, where required;
 - (c) there is sufficient space; and
 - (d) the Technical Proposal from the Access Seeker has been accepted by TPM.

4. Duration of Duct and Manhole Access

- 4.1 Duct and Manhole Access agreed between the Operators, shall be for a fixed period of three (3) years unless a lesser period is stipulated by TPM (where TPM's right to use the Duct and Manhole 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 Duct and Manhole notify TPM in writing as to whether or not it wishes to renew the term of the Duct and Manhole Access.
- 4.2 The term of the Duct and Manhole Access shall commence on the date ("Start Date"):
- (a) TPM makes available for physical possession the Duct and Manhole space in accordance with the agreed specifications in the Technical Proposal and the TPM has notified the Access Seeker in writing of the same; or
 - (b) the Access Seeker takes physical possession of the Duct and Manhole, whichever is the earlier.

5. Use of Duct and Manhole

- 5.1 The Access Seeker shall only use the Duct and Manhole 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 from TPM, or owner or any of the other access seekers.
- 5.2 The Access Seeker shall not sub-let the Duct and Manhole without the prior written approval of TPM.
- 5.3 TPM shall not be responsible for any damage to the Access Seeker's equipment, system and/or devices in the Duct and Manhole caused by fire, water leakage, air-conditioning/mechanical ventilation failure, power fluctuation/interruption and/or by any other causes or reasons.

-End of Page-

ANNEXURE II

CHARGES

CHARGES FOR DUCT AND MANHOLE ACCESS

1. General

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

2. Type Of Charges

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

- (a) a monthly charge of RM1,000.00 based on per cable (point-to-point) basis regardless of length, for the existing cables of the Access Seeker; and
- (b) a monthly charge of RM1,000.00 based on per cable (point-to-point) basis regardless of length, for each and every cable to be installed by Access Seeker.

(Hereinafter items (a) and (b) above shall be collectively referred to as "the Charges").

- 2.2 TPM shall issue its invoice for the Charges incurred for the preceding month before 15th day of the current calendar month and Access Seeker hereby agrees to pay the Charges to TPM within thirty (30) days upon receipt of such an invoice.

- 2.3 In the event Access seeker fails to pay the Charges within thirty (30) days upon receipt of the invoice as stipulated under clause 2 above (whether the same shall have been formally demanded or not) Access Seeker shall pay the penalty at the rate of one percent (1%) per annum above Maybank Berhad's Base Lending Rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than sixty (60) days will bear interest at the rate of two percent (2%) per annum above Maybank Berhad's Base Lending Rate calculated from the due date until the date of receipt of the full payment by TPM.

-End of Page-

ANNEXURE III
SERVICE ORDER FORM