

Sarawak Digital Economy Corporation Berhad

Reference Access Offer

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SDEC Reference Access Offer

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SDEC Sarawak Digital Economy Corporation Berhad

Company Registration No. 201801003190 (1265203-A)

Tingkat 18, Wisma Bapa Malaysia,
Petra Jaya 93502
Kuching, Sarawak

Recitals

- 1 SDEC is licensed under the Act and, pursuant to its licence(s) under the Act, may offer network facilities and network services within Malaysia.
- 2 The Access Seeker is a licensed operator under the Act, and operates pursuant to its licence(s) in Malaysia.
- 3 The Access Seeker wishes to be able to rely on the network facilities operated by SDEC to offer certain services to its Customers.
- 4 This Reference Access Offer sets out the terms and conditions subject to which the network facilities will be provided by SDEC to the Access Seeker.
- 5 For the Access Seeker to acquire the Facilities and/or Services from SDEC it must enter into an Access Agreement in accordance with the terms set out in this Reference Access Offer.

PART A – INTRODUCTION AND PRINCIPLES

1 Definitions and Interpretation

1.1 Definitions

The meanings of the terms used in this Reference Access Offer are set out below.

Term	Meaning
Access Agreement	an executable document that gives effect to this RAO entered into between the Access Seeker and SDEC;
Access List Determination	the Commission Determination on Access List, Determination No. 6 of 2021 which contains the list of Facilities and Services determined by the Commission under Chapter 3 of Part VI of the Act, as it may be amended, superseded and replaced, from time to time;
Access Request	means a request for access made by the Access Seeker under Section 4 and containing the information required in Section 4.2;
Access Seeker	a network facilities provider, a network service provider, an applications service provider or a content applications service provider who is a licensee as defined in the Act and who makes a written request for access to the Facilities and/or Services;
Access Seeker Data	has the meaning given in Section 18(a)(1);
Access Seeker Material	any Material which is owned or licensed by the Access Seeker, and provided by the Access Seeker to SDEC under the Access Agreement, including any technical data, and any development, modification, enhancement, improvement or adaptation of such materials;
Act	the Communications and Multimedia Act 1998 [Act 588], as it may be amended, superseded, and replaced, from time to time;
Additional Financial Security	the additional financial security that may need to be paid by the Access Seeker in accordance with Section 24.3;
Adjustment Period	has the meaning given in Section 22.9;
Annual Security Audit	has the meaning given in Section 14.3(a);
Billing Cycle	the regular periodic basis on which SDEC shall issue Invoices for the supply of access to Facilities and/or Services during each Billing Period, as specified in this RAO;
Billing Period	the period over which the supply of Facilities and/or Services is measured for the purposes of billing as contemplated in Section 22.2(a), which shall be no more than one month and in accordance with the relevant calendar month, unless otherwise agreed between the parties;

Business Day	a day other than the following days: <ol style="list-style-type: none"> 1 a Saturday and Sunday; 2 in states where Friday is observed as the weekly holiday, a Friday and Saturday; or 3 a day which is lawfully observed as a national public holiday throughout Malaysia;
Capacity Allocation Policy	has the meaning given in Section 7.32;
Change Notice	has the meaning given in Section 11.3;
Claim	any claim, demand, proceeding, liability, or cause of action of any nature, whether present or future, at law, in equity, under statute or otherwise;
Closed Number Area	a set of digit(s) beginning with the trunk prefix "0" which forms the first part of a national number, and which indicates the defined geographical area within Malaysia where the Customer's fixed number is located, provided always that "09" in the states of Pahang, Terengganu and Kelantan will be treated as one Closed Number Area, "082" to "086" in the state of Sarawak will be treated as one Closed Number Area and "087 to 089" in the state of Sabah will be treated as one Closed Number Area;
Commencement Date	the date the last party to an Access Agreement executes that Access Agreement or any other date as may be mutually agreed between the parties to the Access Agreement which signifies the commencement / effectiveness of the Access Agreement;
Commission	the Malaysian Communications and Multimedia Commission established under the Act;
Common Antenna Systems	has the meaning as described in paragraph 3 of the Access List Determination;
Confidential Information	all information, know-how, ideas, concepts, technology, manufacturing processes, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of the Disclosing Party, but does not include: <ol style="list-style-type: none"> 1 information which is or becomes part of the public domain (other than through any breach of the Access Agreement); 2 information rightfully received by the Receiving Party from a third person without a duty of confidentiality being owed to the third person, except where the Receiving Party has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the Disclosing Party; 3 information which has been independently developed by the Receiving Party; or 4 information required by Law or the business rules of any stock exchange to be disclosed, provided that: <ol style="list-style-type: none"> (i) the Receiving Party, gives 24 hours' notice to the Disclosing Party of the particulars of the required disclosure; and (ii) the Receiving Party provides the Disclosing Party with all

	assistance reasonably required by the Disclosing Party (at the Disclosing Party's cost) to enable the Disclosing Party to take any steps available to it to prevent that disclosure or to ensure that it occurs subject to a reasonable obligation of confidence;
Confidentiality Agreement	the confidentiality agreement set out in Schedule 4;
Consequential Loss	any Loss that does not arise naturally (that is, according to the usual course of things) from the event giving rise to the Loss, and includes any loss of profit, loss of opportunity, loss of or corruption of data, loss of business reputation, loss of savings and loss of revenue;
Contract Year	each twelve (12) month period of an Access Agreement starting on the Commencement Date;
Creditworthiness Information	publicly available information requested by SDEC in accordance with Section 23.1 regarding the ability for the Access Seeker to meet any liabilities it may have under an Access Agreement;
Customer	a person or entity having a contractual relationship with the Operator for the provision of communications by means of the Operator's facilities and/or services;
Defaulting Party	has the meaning given in Section 33.3;
Disclosing Party	the party disclosing Confidential Information;
Dispute	has the meaning given to it in Section 2(a) of Schedule 2;
Dispute Resolution Procedures	the procedures outlined in Schedule 2;
Duty	any stamp, transaction or registration duty or similar charge imposed by any Tax Authority and includes, but is not limited to, any interest, fine, penalty, charge or other amount imposed in respect of the above, but excludes any Tax;
End-to-End Transmission Service	has the meaning as described in paragraph 5(15) of the Access List Determination;
Equipment	any equipment (whether hardware or software) or device which is part of or within a Network;
Equivalence of Inputs	a concept that describes an Access Provider providing to itself and to all Access Seekers the same Facilities and services on the same terms and conditions including at the same price and service levels, using the same systems and processes and to the same timescales;
ETI	has the meaning given in Section 12.12(c);

Facilities	network facilities and/or other facilities which facilitate the provision of network services or applications services, including content applications services as provided by SDEC under this RAO and/or Access Agreement in Section 2.5;
Facilities and/or Service Change	Has the meaning given in Section 11.2(b);
Fees	the fees payable by an Access Seeker for the provision of Facilities and/or Services as set out in this RAO or the Access Agreement;
Forecast	a forecast made by the Access Seeker referred to in Section 6.6;
Forecast Information	has the meaning given to it in Section 6.6;
Forecast Request	a request by SDEC for Forecast Information from the Access Seeker, as described in Section 6.6;
Force Majeure	an event or circumstance beyond the reasonable control of an Operator which affects the Operator's ability to perform its obligation under this RAO or under an Access Agreement. For completeness, in respect of Force Majeure affecting SDEC shall include an act of God, adverse weather conditions, epidemics or pandemics, flood, fire, earthquake and other natural occurrences, electrical failures and blackouts, war, terrorism, civil commotion and riots, strikes and industrial action not impacting solely on the party or an act or omission of a Government Agency;
Functionality Change	has the meaning given in Section 11.2(e);
Good Industry Practice	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading wholesale telecommunication company within the mobile communication sector in Malaysia;
Government Agency	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in Malaysia and includes the Commission;
Group Member	each party and their Related Corporations;
High Priority Area	Each of the following locations, facilities or areas: <ol style="list-style-type: none"> 1 Federal and State Government administration centres; 2 Transportation hubs, including MRT stations, airports, train stations; 3 Transportation lines or routes, including railways and highways; 4 High economic impact areas, including industrial parks and economic corridors; 5 Identified Government projects under RMK-12; 6 Jalanan Digital Negara (JENDELA) projects; 7 Areas identified by the Commission or Government as "high priority" for 5G deployment; and 8 Any other location, facility or area where SDEC has been granted the exclusive right to install, supply access to, or maintain, any Facilities;

Indemnified Party	Has the meaning given in Section 27.1;
Indemnifying Party	Has the meaning given in Section 27.1;
Infrastructure Sharing	has the meaning as described in paragraph 5(7) of the Access List Determination;
Infringement Notifying Party	has the meaning given in section 19.4(a);
Infringement Receiving Party	has the meaning given in section 19.4(a);
Insolvency Event	means where a party has become subject to a winding up order (whether compulsorily or voluntarily) or cases 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 party's assets are subject of any form of distress or execution or any analogous insolvency event related to the party has occurred in any jurisdiction;
Intellectual Property Rights	all rights conferred under statute, common law and equity in and in relation to trade marks, trade names, logos and get up, inventions, patents, designs, copyright, circuit layouts, Confidential Information, know-how and trade secrets and all rights and interests in them or licences to use any of them;
Interconnect Steering Group or ISG	has the meaning given in Schedule 2;
Interference Notifying Operator	has the meaning given in Section 13.5;
Interface Change	has the meaning given in Section 11.2(a);
Interfering Operator	has the meaning given in Section 13.5;
Invoice	the invoice for amounts due in respect of the supply of the Facilities and/or Services during a Billing Period;
ISG Receiving Party	has the meaning given in Section 5(a) of Schedule 2;
Law	any one or more of the following: <ol style="list-style-type: none"> 1 legislation, including regulations, by-laws and other subordinate legislation and/or a decision by a Government Agency, statutory tribunal, Malaysian authority or commission or similar governmental body; 2 treaties, conventions, agreements, compacts and similar instruments that have been ratified or adopted by Malaysia; and 3 guidelines, policies, standards and codes of Malaysia, with which the parties are legally required to comply;

Logo	<ol style="list-style-type: none"> 1 in the case of the Access Seeker, the names, trade marks (whether registered or not and whether in word or stylized formats), logos, slogans or graphics (including the visual identity system) of the Access Seeker; and 2 in the case of SDEC, the names, trade marks (whether registered or not and whether in word or minimize formats), logos, slogans or graphics (including the visual identity system) of SDEC;
Loss	any damage, loss, liability, fine, penalty, cost, charge, expense (including reasonable legal costs), outgoing or payment;
Maintenance Operator	has the meaning given in section 12.13;
Material	material in whatever form, including documents, specifications, designs, plans, reports, products, concepts, inventions, processes, formulae, know-how, graphic layouts, images, software and hardware;
Minimum Financial Security	the minimum amount of financial security that must be paid by the Access Seeker in accordance with Section 24.1. The Minimum Financial Security as at the Commencement Date is Ringgit Malaysia Two Million Only (RM2,000,000) and (unless otherwise determined by SDEC in writing) must be in the form of a bank guarantee;
Minimum Service Term	has the meaning given in Section 29.2;
Minister	has the meaning given in the Act;
MSA Determination	the Commission Determination on Mandatory Standard Access No. 1 of 2022, as may be amended, supplemented and/or superseded from time to time;
Network	network facilities and/or network services comprising a system, or series of systems within Malaysia, that carries or is capable of carrying communications by means of guided or unguided electromagnetic energy or both, and in relation to an Operator, means so much of the network as is owned or operated by the Operator;
Non-Binding Forecast Period	for the purposes of Section 6.16, any period of time in which the Forecast is non-binding except to the extent a Forecast has been confirmed in accordance with Section 6.3;
Non-Defaulting Party	has the meaning given in Section 33.3;
Notice	has the meaning given to it in Section 35.1;
Notice of Receipt	the acknowledgment of receipt of the Order from an Access Seeker, as described in Sections 7.5 and 7.6;

Notifying Operator	has the meaning given to it in Section 11.2(a);
Operational Support System or OSS	the interactive operational support system provided, or to be provided by SDEC to the Access Seeker to perform the functions required in respect of access to Facilities and/or Services including but not limited to the service fulfilment and service assurances operational support system;
Operator	means: <ol style="list-style-type: none"> 1 a network facilities provider; 2 a network service provider; 3 An applications service provider; and/or 4 A content applications service provider, <p>who is either SDEC (as an Access Provider) or the Access Seeker. The term “Operators” shall refer to both SDEC and the Access Seekers;</p>
Order	the order which an Access Seeker must give to SDEC to obtain access to Facilities and/or Services, as described in Section 7.2;
OSS Change	has the meaning given in Section 11.2(d);
Other Network Change	has the meaning given in Section 11.2(c);
Personal Data	has the meaning given to it in the Privacy Laws;
Personnel	in relation to an entity, the individuals who are directors, officers, employees, agents, professional advisers, and contractors or subcontractors of the entity and the directors, officers, employees, agents, professional advisers and contractors of a contractor or subcontractor of the entity;
Point of Interconnection or POI	has the meaning given to it in paragraph 3 of the Access List Determination;
Point of Interface	a point at or between network facilities which demarcates the network of an Access Provider and the network of an Access Seeker and is the point at which a communication is transferred between those network facilities and includes POI;
Privacy Laws	<ol style="list-style-type: none"> 1 the <i>Personal Data Protection Act 2010 [Act 709]</i>; 2 any legislation (to the extent that such legislation applies to a party or any other recipient of Personal Data) from time to time in force in: <ol style="list-style-type: none"> (i) Malaysia; or (ii) any other jurisdiction (to the extent that any Personal Data, or a party is subject to the laws of that jurisdiction), affecting privacy, Personal Data or the collection, handling, storage, processing, use or disclosure of personal information; and 3 any ancillary rules, regulations, orders, directions, directives, binding codes of conduct, standards or other instruments made

or issued under any of the legislation referred to in paragraphs (1) and (2), as amended from time to time;

Provisional Invoice has the meaning given in Section 22.8;

RAO or Reference Access Offer this document;

Receiving Party the party receiving Confidential Information;

Recipient Operator has the meaning given in Section 11.2(b);

Rejection Notice has the meaning given in Section 6.13;

Related Corporation has the meaning given in the *Companies Act 2016* [Act 777];

Relevant Change has the meaning given to it in Section 11.2 and includes any Interface Change, Facilities and/or Service Change, Other Network Change, OSS Change and Functionality Change;

Required Insurance has the meaning given in Section 28.2;

Respondent has the meaning given in Section 26.2;

SDEC Sarawak Digital Economy Corporation Berhad (Company Registration No. 201801003190 (1265203-A));

SDEC Data has the meaning given in Section 18(a)(2);

SDEC Infrastructure the infrastructure and equipment owned or licensed by SDEC;

SDEC Material any Material which is owned or licensed by SDEC, and provided by SDEC to the Access Seeker under the Access Agreement, including any technical data, and any development, modification, enhancement, improvement or adaptation of such materials.

SDEC Website <https://sdec.com.my/web/>

Service Credit the service credit payable in the event the Service Level is not met, as set out in the Access Agreement;

Service Level a measurable metric relating to SDEC's Facilities and/or Services that SDEC is expected to meet, including as described in this RAO or the Access Agreement;

Service Qualifications means in relation to Infrastructure Sharing and Transmission Service, a desk and/or field study that may be conducted under Section 7 and may include (where relevant) the testing of a line to ascertain whether it could be used in response to an Access Request and/or an Order or proposed Order;

Service Specific Obligations	the obligations which relate to specific types of Facilities and/or Services set out in Part D and which add to or vary the obligations in respect of those Facilities and/or Services;
Services	the network services and/or other services which facilitate the provision of network services or applications services as provided by SDEC under this RAO and/or Access Agreement, as set out in Section 2.5;
Site	the SDEC's site where access to Facilities and/or Services is offered and provided under this RAO;
Tax	any tax, levy, charge, impost, fee, deduction, goods and services tax, value added tax, use tax, sales tax, service tax, property tax, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Tax Authority, not including any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of the above and any Duty;
Tax Authority	means the Government of Malaysia, any Government Agency and any federal, state, provincial, regional, territorial, local, quasi-governmental or other fiscal, revenue, customs or excise authority, body or official competent to impose, collect or assess taxes, levies, excises or similar charges, including any other such entities in Malaysia;
Technical Expert	has the meaning given in Section 5 of Schedule 2;
Term	has the meaning given in Section 29;
Third Party Supplier	a third party engaged by either SDEC or the Access Seeker as applicable
Transmission Service	means each of the Trunk Transmission Service, the Wholesale Local Leased Circuit Service and the End-to-End Transmission Service;
Trunk Transmission Service	has the meaning as described in paragraph 5(12) of the Access List Determination;
Unauthorised Act	has the meaning given in Section 17.5(b);
Validity Period	has the meaning given in Section 7.13(e); and
Wholesale Local Leased Circuit Service	has the meaning as described in paragraph 5(6) of the Access List Determination.

1.1

Interpretation

In this RAO:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this RAO;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;

- (d) other parts of speech and grammatical forms of a word or phrase defined in this RAO have a corresponding meaning;
- (e) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to a section, schedule, attachment or exhibit is a reference to a section of, and a schedule, attachment or exhibit to, this RAO.
- (g) a reference to a party means a party to the Access Agreement entered into between SDEC and the Access Seeker;
- (h) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (i) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (j) a reference to a party to a document includes that party's successors and permitted assignees;
- (k) a reference to an agreement other than this RAO includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (l) no provision of this RAO will be construed adversely to a party because that party was responsible for the preparation of this RAO or that provision;
- (m) a reference to a body, other than a party to the Access Agreement (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (o) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (p) if an act prescribed under this RAO to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (q) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day;
- (r) a reference to time is a reference to Kuala Lumpur time; and
- (s) specifying anything in this RAO after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.2 **Components**

This RAO includes any schedule specified as forming part of this RAO in section 2.3.

2 **Background, Scope and Structure**

2.1 **Background and objectives**

- (a) The parties acknowledge and agree that this RAO has been prepared with reference to the MSA Determination and Access List Determination.
- (b) The parties intend to enter into an Access Agreement based on terms and conditions in this RAO.

2.2 Scope

- (a) This RAO sets out the terms and conditions upon which SDEC will enter into an Access Agreement with Access Seeker for the supply of the Facilities and/or Services.
- (b) In accordance with the Act and subject to exemptions determined by the Minister, SDEC will provide access on reasonable terms and conditions to the Facilities and/or Services to any:
- (1) network facilities provider;
 - (2) network services provider;
 - (3) applications services provider; or
 - (4) content applications services provider,
- who makes a written request to SDEC for access.

2.3 Structure and precedence

- (a) The parties acknowledge and agree that the Access Agreement that is formed between them in accordance with the process set out in this RAO, will be made up of the following parts:

Title	Description
1. The Access Agreement	Executable document setting out any special conditions that apply in addition to the terms of this RAO.
2. The Head Terms	Sections 1 to 36 of this RAO.
Part A – Introduction and Principles	
Part B – Access to the Services	
Part C – Operational Management	
Part D – Service Specific Obligations	
Part E – Information and Rights Management	
Part F – Financial Management	
Part G – Risk Management	
Part H – Agreement Management	
3. The Schedules	Schedule 1 to Schedule 4 of this RAO.

- (b) To the extent of any inconsistency between the Access Agreement, the Head Terms and the Schedules, that inconsistency will be resolved by giving the terms precedence in the order set out in Section 2.3(a).

2.4 Formation of an Access Agreement

As soon as reasonably practicable after the Commencement Date, and in any event within seven (7) Business Days, the parties shall take all steps necessary to apply to the Commission for registration of the Access Agreement.

2.5 Facilities and Services

The relevant Facilities and/or Services offered to be provided by SDEC under this RAO are (i) Infrastructure Sharing; and (ii) Transmission Services.

3 General Principles of Access

3.1 Reasonableness

- (a) SDEC may refuse a request if:
 - (1) supply of the relevant listed Facilities and/or Services would not be reasonable; or
 - (2) supply of the relevant listed Facilities and/or Services would be reasonable, but the terms and conditions requested by the Access Seeker are not reasonable.
- (b) A request for access to a listed Facilities and/or Services may not be reasonable if one or more of the criteria in Section 4.8 are satisfied. For clarity, this RAO does not intend or attempt to narrow the grounds of refusal upon which a party may rely upon under the Act.
- (c) The Act provides for several mechanisms to determine terms and conditions if the parties are unable to reach agreement on the terms and conditions of supply, including dispute resolution by the Commission.

3.2 Non-discrimination

- (a) As required by subsection 149(2) of the Act, SDEC must provide the Facilities and/or Services and such access must be:
 - (1) of at least the same or more favourable technical standard and quality as the technical standard and quality provided for itself on SDEC's Facilities and/or Services; and
 - (2) provided on an equitable and a non-discriminatory basis.
- (b) For the purpose of this RAO, the non-discrimination principle and the term "non-discriminatory" apply on an Equivalence of Inputs basis and require a comparison of:
 - (1) the basis on which a Facility and/or a Service is provided by SDEC to the Access Seeker; with
 - (2) the basis on which that Facility and/or Service is provided by SDEC to itself and to other Access Seekers.
- (c) Nothing in this RAO will limit the Access Seeker's ability to freely request and agree on access to the Facilities and/or Services that are either superior or inferior (in terms of technical standard and quality) to that which SDEC provides to itself.

3.3 Customer Principles

- (a) All Operators must recognize and act consistently with the Customer relationship principles to in Section 3.3(b).
- (b) Customer relationship principles:
 - (1) A Customer will be regarded as a Customer of an Operator when the Customer utilizes Facilities and/or Services provided to that Customer by the Operator.
 - (2) The same person may be a Customer of more than one Operator:
 - (A) in respect of the same or different Facilities provided by different Operators;
 - (B) in respect of the same or different Services provided by different Operators; or
 - (C) in respect of Facilities provided by one Operator and Services provided by another Operator.
 - (3) The supply by an Operator to another Operator, which the latter Operator then utilizes in providing Facilities and/or Services to its Customers, does not mean that those Customers are also Customers of the first-mentioned Operator.

- (4) Each Operator will be responsible for billing its own Customers, unless express agreement to the contrary is made by SDEC and the Access Seeker. An agreement to the contrary may include, without limitation:
 - (A) SDEC billing on behalf of the Access Seeker; or
 - (B) SDEC in its own right billing the Customer of the Access Seeker and making a separate payment to the Access Seeker.
- (c) SDEC is expressly prohibited from using any Access Seeker's Customer information to market or offer to supply its goods or services to that or any other Customer, except where:
 - (1) the Customer information is publicly available; or
 - (2) the Customer information has been received or developed by SDEC from sources other than the Access Seeker,

and, in either case, the information has not been collected or generated with reference to, or combined with or compared to, information provided in connection with SDEC's supply of the Facility and/or Service. This includes any use or intended use by SDEC to dissuade that Customer from entering into a contractual relationship with the Access Seeker for retail services that use the Facility and/or Service as an input or more generally, to persuade that Customer to enter into a contractual relationship with SDEC for SDEC's retail services.

3.4 **No exclusivity and no restriction on re-sale**

- (a) SDEC must not, in relation to the supply of a Facility and/or Service, include a term or condition in an Access Agreement preventing an Access Seeker from acquiring the same or any other Facility and/or Service from another Operator.
- (b) SDEC must not, in relation to the supply of a Facility and/or Service, include a term or condition in an Access Agreement preventing an Access Seeker from re-supplying that Facility and/or Service to any person.

3.5 **Necessary Third Party Involvement causing or contributing to non-compliance in timeframe**

If:

- (a) SDEC fails to comply with a timeframe under this RAO; and
- (b) SDEC considers that such failure was caused or contributed to by necessary third party involvement or other matters reasonably outside SDEC's control (for example, where approval from local or other authority is required),

SDEC must notify the Commission of such non-compliance and such third party involvement, and provide the contact details of such third party, to permit the Commission to investigate the non-compliance.

PART B – ACCESS TO THE FACILITIES AND/OR SERVICES

4 Application for Access to Facilities and/or Services

4.1 Access Request

An Access Seeker may request the provision of the Facilities and/or Services by submitting an Access Request to SDEC. This section only applies if:

- (a) there is no Access Agreement in force between SDEC and the Access Seeker governing access to the Facilities and/or Services to which the Access Seeker seeks access;

- (b) there is such an Access Agreement, but:
 - (1) the current term of that Access Agreement will expire or terminate within the next four (4) months; or
 - (2) the requested Facilities and/or Services are outside the scope of that agreement.

SDEC shall develop a process for desk/field studies and Service Qualifications that the Access Seeker may take up prior to entering into an Access Agreement.

4.2 **Required information**

An Access Request must contain the following information:

- (a) the name and contact details of the Access Seeker;
- (b) the Facilities and/or Services in respect of which access is sought;
- (c) a list of the relevant licenses held by the Access Seeker and a copy of the licence where a copy had not been previously provided;
- (d) whether the Access Seeker wishes to accept this RAO or to negotiate amendments to the RAO or to negotiate an Access Agreement on alternative terms;
- (e) specify the ready for service date(s) for the Facilities and/or Services that is being sought by the Access Seeker;
- (f) specify the QoS for each Facility and/or Service the Access Seeker requires;
- (g) the information (if any) the Access Seeker reasonably requires SDEC to provide for the purposes of the negotiations. The type of information which may be requested by the Access Seeker is described in, but not limited to the specific items set out in, Section 4.4;
- (h) two (2) copies of the Confidentiality Agreement properly executed by the Access Seeker (in the form prescribed by SDEC);
- (i) preliminary information regarding the scale and scope of the Facilities and/or Services that the Access Seeker expects to acquire from SDEC pursuant to the Access Request;
- (j) relevant technical information relating to the interface standards of the Equipment of the Access Seeker;
- (k) 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 the SDEC's Network;
- (l) Creditworthiness Information in accordance with SDEC's requirements, as set out in Section 23;
- (m) assessed security (or, if applicable, confirmation of security provided) in accordance with SDEC's security requirements, as set out in Section 24;
- (n) insurance information in accordance with SDEC's insurance requirements, as set out in Section 28; and
- (o) such other information as SDEC may reasonably request for the sole purpose of providing access to the requested Facilities and/or Services.

4.3 **Non-permitted information**

Notwithstanding anything else in this RAO, SDEC shall not impose an obligation on an Access Seeker to provide any of the following information to SDEC (whether as a condition of the provision of further information or as a condition of assessing the Access Seeker's application, or at any other time):

- (a) the Access Seeker's proposed service launch date (though SDEC may request the Access Seeker to specify any ready-for-service dates which the Access Seeker requires from SDEC in respect of the requested Facilities and/or Services);

- (b) details of the functionality of the Access Seeker's proposed service, except to the extent that such functionality may affect SDEC's Network;
- (c) details of the Access Seeker's network rollout plans, except to the extent that such rollout plans relate to ready-for-service dates requested by the Access Seeker;
- (d) details of the Access Seeker's current or proposed retail charges;
- (e) details of the Access Seeker's marketing strategy or proposed client base;
- (f) financial information relating to the Access Seeker's business, except to the extent that such information may be required pursuant to the creditworthiness requirements in Section 23;
- (g) details of any other supply arrangements or agreements to which the Access Seeker is or may be a party, except to the extent that such details are directly relevant to technical characteristics of the requested Facilities and/or Service; or
- (h) any other commercially sensitive information of the Access Seeker which is not strictly required by SDEC to supply the requested Facilities and/or Service.

4.4 **Information disclosure**

- (a) SDEC shall 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 (to the extent such information is in the possession or control of SDEC and/or not subject to any confidentiality obligation):
 - (1) any supplementary details of the Facilities offered by SDEC not included in the RAO, including details concerning all POIs (where applicable) 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 (where applicable);
 - (2) any supplementary access charges for access to the Facilities and/or Services not included in the RAO (for example, discounts for inferior Service Levels or surcharges for enhanced Service Levels);
 - (3) 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 the 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, SDEC's Network;
 - (4) supplementary details of SDEC's operational processes and procedures not included in the RAO;
 - (5) supplementary details of SDEC's provisioning cycles not included in the RAO and any impact such cycles may have upon an Access Request by the Access Seeker;
 - (6) details of SDEC's alternative quality of service targets not included in the RAO and actual achievements of service targets in respect of the Facilities and/or Services which may be the subject of the Access Request;
 - (7) any security requirements, insurance requirements and creditworthiness information (including a credit assessment form, if available) required by SDEC; and
 - (8) SDEC's reasons for failing to supply any of the information referred to in this Section 4.4.
- (b) Prior to the provision of information under this Section 4.4, SDEC may request the Access Seeker enter into the Confidentiality Agreement.

4.5 **Obligations upon receipt**

SDEC shall, within ten (10) Business Days of receipt of an Access Request, respond to the Access Seeker in writing acknowledging receipt of the Access Request and stating that:

- (a) if the Access Seeker is willing to accept this RAO, SDEC must provide access in accordance with the RAO;
- (b) if Section 4.5(a) does not apply, SDEC is willing to proceed to negotiate amendments to the RAO or an Access Agreement on alternative terms;
- (c) SDEC refuses the Access Request in accordance with Section 4.7; or
- (d) SDEC requires specified additional information to make a decision on the Access Request in accordance with Sections 4.5(a) to 4.5(c), and once such information is received from the Access Seeker, SDEC will reconsider the Access Request in accordance with this section and the ten (10) Business Days for SDEC to consider the Access Request will recommence from SDEC's receipt of all relevant information from the Access Seeker.

SDEC shall provide a copy of its response to the Commission at the same time that SDEC provides the response to the Access Seeker.

4.6 **Acceptance response**

If SDEC responds that access will be provided in accordance with this RAO as described in Section 4.5(a), SDEC must, within ten (10) Business Days of such response, provide two (2) copies of the RAO executed by SDEC to the Access Seeker and one (1) copy of the executed confidentiality agreement returned by the Access Seeker in accordance with Section 4.2(h) that has also been properly executed by SDEC.

4.7 **Refusal response**

If SDEC decides to refuse the Access Request under Section 4.5(c), SDEC must set out in its response to the Access Seeker:

- (a) the grounds in Section 4.8 on which SDEC is relying;
- (b) the basis of SDEC's decision with sufficient particulars to enable the Access Seeker to make its own assessment about the applicability of the specified grounds of refusal;
- (c) a place, date and time, not later than seven (7) Business Days from the date of SDEC's response, at which representatives of SDEC authorized to review SDEC's assessment of the Access Request will be available to meet with representatives of the Access Seeker, for the purpose of discussing the refusal of the Access Request.

At this meeting, the Access Seeker may request SDEC to substantiate its reasons for refusal (and SDEC shall do so), and if access has been refused on the basis of the grounds in:

- (1) Section 4.8(b), SDEC must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker;
- (2) Section 4.8(d), SDEC must identify when additional capacity or space is likely to be available; and
- (3) Section 4.8(e), SDEC must identify the form of security requirement which would satisfy its concern that the Access Seeker may fail to make timely payment for the requested Facilities and/or Services, its reasons for the security requirement and why it considers such concern cannot be addressed through a security requirement under Section 24.3.

4.8 **Grounds for refusal**

Except where expressly permitted otherwise under the Act and/or the MSA Determination, SDEC shall not refuse an Access Request, except on the grounds that:

- (a) SDEC does not currently supply, or provide access to, the relevant Facilities and/or Services to itself or to any third parties (in which case it shall identify any alternative facilities and/or services

which it does provide to itself or to any third parties, which may be acceptable substitutes), except where the Access Seeker compensates SDEC for the original supply of access to the Facilities and/or Services to the Access Seeker;

- (b) the Access Seeker has not provided all of the information required to be provided in accordance with Section 4.2;
- (c) it is not technically feasible to provide access to the Facilities and/or Services requested by the Access Seeker;
- (d) subject to this RAO, SDEC has insufficient capacity or space to provide the requested Facilities and/or Services;
- (e) SDEC has reasonable grounds to believe that the Access Seeker may fail to make timely payment for the requested Facilities and/or Services and such concern cannot be addressed through a security requirement in accordance with this RAO;
- (f) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities; or
- (g) there are reasonable grounds for SDEC to refuse access in the national interest.

4.9 **Technical infeasibility**

For the purposes of Section 4.8(c), SDEC shall not refuse an Access Request on the grounds of technical infeasibility unless SDEC 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 SDEC 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 SDEC 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 SDEC asserts that meeting the Access Request would have an adverse impact on network reliability, SDEC 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) SDEC must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this section) improvements that would allow SDEC to meet the Access Request (in whole, or in part, and including for an interim period until any primary difficulties can be resolved).

4.10 **Capacity constraints**

- (a) SDEC may only refuse an Access Request on the ground that SDEC has insufficient capacity or space under Section 4.8(d) where SDEC notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because the requisite capacity is:
 - (1) already carrying traffic to full capacity or near full capacity; or
 - (2) already reserved for future use by SDEC or other Access Seekers, 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, SDEC must promptly inform the Access Seeker and, if required by the Access Seeker, re-consider the Access Request in accordance with the process set out in this Section 4; and
 - (3) in the case of both Sections 4.10(a)(1) and 4.10(a)(2), SDEC is unable to expand capacity to meet the requirements in the Access Seeker's Access Request.
- (b) Where SDEC refuses an Access Request, SDEC shall notify the Commission within five (5) Business Days of that refusal together with an explanation for its reason for refusal.

4.11 **Dispute resolution**

If, following the meeting between the parties required to be held pursuant to Section 4.7(c), for the purposes of discussing SDEC's refusal of an Access Request, the parties have been unable to resolve any differences about the validity of the Access Request and the Access Seeker disagrees with SDEC's refusal of the Access Request, either party may request resolution of the dispute in accordance with the Dispute Resolution Procedures.

4.12 **Fast Track Application Process**

This Section relates to the process for fast-track application and agreement for Access Seekers.

- (a) An Access Seeker is only eligible for the fast-track application process if it fulfils the following criteria:
 - (1) The request for access to the Facility and/or Service under this RAO will not have a material impact on SDEC's current level of network resources; and
 - (2) The Access Seeker is willing to accept and willing to execute based on the RAO.
- (b) In order for such Access Seeker to gain access to the Facility and/or Service under the fast-track application and agreement process, the Access Seeker shall:
 - (1) Submit to SDEC the prescribed fast-track application form;
 - (2) Provide the security pursuant to Section 4.12(d)(2) within five (5) Business Days;
 - (3) Pay the one-time non-refundable processing fee;
 - (4) Execute two (2) copies of the RAO within ten (10) Business Days of receipt of the RAO from SDEC and to return one (1) executed copy of the RAO to SDEC.
- (c) SDEC may reject a fast-track application for any of the following reasons:
 - (1) SDEC does not current supply, or provide access to, the relevant Facilities and/or Services to itself or to any third parties (in which case it shall identify any alternative facilities and/or services which it does not provide to itself or to any third parties, which may be acceptable substitutes), except where the Access Seeker compensates SDEC for the original supply of access to Facilities and/or Services to the Access Seeker;
 - (2) SDEC has reasonable grounds to believe that the Access Seeker may fail to make timely payment for the requested Facilities and/or Services and such concern cannot be addressed through a security requirement in accordance with this RAO; or
 - (3) There are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities and/or Services.
- (d) Upon acceptance by SDEC of a fast-track application from an Access Seeker, SDEC shall:
 - (1) Forward two (2) copies of the executed RAO to the Access Seeker within ten (10) Business Days of SDEC's receipt of the fast-track application, or a notice of refusal that sets out the grounds for refusal under Section 4.12(c) (including the basis on which those grounds apply);
 - (2) Determine the required security sums under Section 24 of this RAO within five (5) Business Days of SDEC's receipt of a fast-track application; and
 - (3) Provide the Commission with a copy of the response at the same time it provides the response to the Access Seeker under Section 4.12(d)(1).

5 Negotiation of Access Agreement

5.1 Negotiation response

If SDEC is willing to proceed with negotiation of the Access Request (as described in Section 4.5(b)), SDEC must set out in its response to the Access Seeker:

- (a) a place, date and time, not later than fifteen (15) Business Days from the date of SDEC's response, when SDEC's representative that is authorised to negotiate the terms of the Access Agreement, will be available for an initial meeting with the Access Seeker's representative that is authorised to negotiate the terms of the Access Agreement; and
- (b) one (1) copy of the executed Confidentiality Agreement returned by the Access Seeker in accordance with Section 4.2(f) that has also been properly executed by SDEC.

5.2 Initial meeting

Unless otherwise agreed between the parties, each party must ensure that its representatives meet on the date notified pursuant to Section 5.1(a) and that such representatives:

- (a) agree on a timetable for the negotiations, including milestones and dates for subsequent meetings within the applicable timeframe for negotiations under Section 5.3(b);
- (b) agree on negotiating procedures, including:
 - (1) calling and chairing meetings;
 - (2) responsibility for keeping minutes of the meetings;
 - (3) clearly defined pathways and timetables for escalation and resolution by each party of matters not agreed in the meetings;
 - (4) procedures for consulting, and including in the negotiating process, relevant experts from each of the parties; and
 - (5) procedures for preparing and exchanging position papers;
- (c) review the information requested and provided to date and identify information yet to be provided by each party; and
- (d) identify what technical investigations, if any, need to be made and by whom such investigations should be made.

5.3 Timing

If either party wishes to negotiate an Access Agreement with the other party,

- (a) both parties shall notify the Commission when the negotiations for the Access Agreement begin under this section;
- (b) each party must use their best endeavours to conclude the Access Agreement within:
 - (1) where there is no Access Agreement in place between the parties, four (4) months; or
 - (2) where there is already a commercial agreement or an Access Agreement in place between the parties, three (3) months,

after a written request by the Access Seeker to commence negotiations under Section 4.2(d) and SDEC's response confirming it is willing to proceed to negotiate under Section 4.5(b).

- (c) if negotiations are not completed within the applicable timeframe specified under Section 5.3(b):
 - (1) the parties may jointly apply to the Commission for an extension of time to negotiate the Access Agreement and, if the extension of time is not granted by the Commission, there shall be deemed to be a dispute between the parties and the Dispute Resolution Procedures shall take effect; or

- (2) either party may initiate the Dispute Resolution Procedures; and
- (d) if the Commission grants an extension of time under Section 5.3(c)(1), it may do so subject to such conditions as it specifies (such as an ongoing requirement to provide updates on negotiations at specified intervals and the right to reduce or extend any extension).

5.4 **Good Faith**

SDEC and the Access Seeker shall co-operate, in good faith and in a commercially reasonable manner, in negotiating and implementing the terms of its Access Agreements. This includes:

- (a) acting promptly, honestly, and not perversely, capriciously or irrationally;
- (b) avoiding the imposition of unreasonable restrictions or limitations on the provision of access to Facilities and/or Services (such as refusing to provide particular forms of access that an Access Provider provides to itself); and
- (c) avoiding unnecessary disputes and resolving disputes promptly and fairly.

5.5 **Confidentiality**

Each party must protect from disclosure any Confidential Information provided by the other party in the course of negotiating an Access Agreement and during the Term of an Access Agreement in accordance with the Confidentiality Agreement.

5.6 **Additional matters**

SDEC shall not do, or threaten to do, anything that has the effect or likely effect of, any of the following:

- (a) refuse to negotiate terms of access not related to price, for the reason that the rate, charge, charging principles or methodologies of access have not been agreed upon;
- (b) refuse to negotiate access to the Facilities and/or Services because the Access Seeker has not agreed to acquire access to other Facilities and/or Services or because the Access Seeker has not agreed to acquire a particular configuration, option or feature of a requested Facility and/or Service;
- (c) require an Access Seeker to enter into a confidentiality agreement, the terms of which would preclude the disclosure of information requested by the Commission or required to be disclosed for the purposes of dispute resolution;
- (d) require an Access Seeker to warrant that the Access Agreement complies with all applicable laws;
- (e) refuse to include in any Access Agreement a provision permitting variation of the Access Agreement in the event of any change in rules, applicable laws or applicable regulations (including Commission decisions and determinations);
- (f) make any negotiation conditional on the Access Seeker first obtaining any regulatory approval or consent;
- (g) intentionally mislead or coerce an Access Seeker into reaching an agreement, which would not otherwise have been reached if not for the misleading act or coercion;
- (h) intentionally obstruct or delay negotiations or any dispute resolution process;
- (i) fail to nominate representatives who have sufficient authority and with sufficient availability to progress negotiations in a timely and efficient manner; and
- (j) fail to provide information that is necessary to conclude an Access Agreement including, without limitation:
 - (1) information about the SDEC's Network that the Access Seeker reasonably requires in identifying the network elements or network components to which it requires access; and
 - (2) information about the basis of the determination of rates, charges or fees.

6 Forecasting

6.1 General

Subject to Section 6.3 and 6.4, SDEC may require, as a condition of accepting orders for access to the Facilities and/or Services from the Access Seeker (but not as a prerequisite for entering into an Access Agreement), that the Access Seeker provide forecasts in good faith with regards to a certain period of supply of access to Facilities and/or Services in accordance with Section 6.

6.2 Prerequisite information

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

6.3 Confirmation of Forecast

If SDEC, acting reasonably will incur significant costs to ensure that access can be provided in accordance with a Forecast, SDEC may request the Access Seeker to confirm the relevant Forecast. Once confirmed, the Forecast is deemed to be an order for the purposes of this RAO, and Section 7 will apply.

6.4 Alternative or no procedure

SDEC and the Access Seeker may agree to an alternative forecasting and ordering procedure other than that set out in Section 6 as part of an Access Agreement or to dispense with such procedure altogether. If agreement is reached about such matters, SDEC and the Access Seeker will be bound by the terms of that alternative procedure and not Section 6.

6.5 Non-binding

Subject to Section 6.3, SDEC shall not require the Access Seeker to provide Forecasts that are legally binding on the Access Seeker, except to the extent that SDEC is permitted to recover costs and expenses as set out in Section 6.16.

6.6 Forecast request

SDEC may request the Access Seeker to provide, with a sufficient level of detail to enable SDEC to carry out network planning and provisioning, the following information ("**Forecast Information**"):

- (a) the Facilities and/or Services in respect of which Forecasts are required;
- (b) the requested time for delivery;
- (c) the detailed addresses of the location of the points of delivery and location maps, if necessary;
- (d) equipment of the Access Seeker to be used in connection with the Forecast;
- (e) the configuration of the Facilities and/or Services;
- (f) contact person and telephone number;
- (g) whether way-leave or governmental authority written approval is required to be obtained;
- (h) the total period of time covered by each Forecast, which period:
 - (1) shall be determined having regard to SDEC's own planning and provisioning cycles and the forecasting requirements which apply to the Access Seeker's own business units in using the relevant Facilities and/or Services; and
 - (2) shall be the shorter of the period set out in the relevant Service Specific Obligations and the period of forecasting which SDEC provides to itself for network planning and provisioning purposes;

- (i) the intervals or units of time to be used in making the Forecast, which shall be the shorter of the period set out in the relevant Service Specific Obligations and the intervals of time in which SDEC provides forecasting to itself;
- (j) the network area or operational area to which Forecasts shall relate, which area shall correspond to that which SDEC uses for its own network planning and provisioning;
- (k) the frequency with which a Forecast must be updated or a further Forecast made in accordance with this RAO, which shall be the shorter of the period set out in the relevant Service Specific Obligations and the length of time after which SDEC provides itself with the updated or further Forecast; and
- (l) such other information that SDEC reasonably requires in order to provide access to Facilities and/or Services requested by the Access Seeker (which shall not include any information that SDEC does not provide to itself in connection with forecasting for its own facilities and/or services).

6.7 **Non-permitted information**

SDEC must not request the Access Seeker to provide a Forecast that contains:

- (a) any information that is or would allow SDEC to infer any non-permitted information listed under Section 4.3; or
- (b) any information that identifies or would enable the identification of Customers or particular services of the Access Seeker.

6.8 **Forecast provision**

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

6.9 **Use of Forecast Information**

Forecast Information provided by the Access Seeker shall be treated by SDEC as Confidential Information of the Access Seeker and shall only be used by those personnel of SDEC whose role is within either:

- (a) SDEC's wholesale or interconnection group; or
- (b) that part of the network engineering group of SDEC responsible for interconnection or access,

for the purpose of responding to and planning for the Forecast and related orders. SDEC must maintain records that indicate which persons are provided access to Forecast Information and, on request from the Commission, provide a copy of such records certified by the SDEC's Chief Executive Officer or Chief Operating Officer.

6.10 **Distribution of forecast information**

SDEC may only distribute Forecast Information of the Access Seeker outside the groups of people referred to in Section 6.9 if:

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

6.11 **Time for response**

SDEC must notify the Access Seeker within five (5) Business Days of receiving a Forecast whether or not SDEC considers the Forecast to be non-compliant with the Forecast Request and:

- (a) If, SDEC considers that the Forecast does not comply with the Forecast Request, to specify in that notice the additional information which the Access Seeker is to provide to comply with the Forecast Request and SDEC will not require such information to be provided sooner than four (4) weeks after such a notice; or

- (b) If SDEC considers that the Forecast does comply with the Forecast Request, to specify in that notice that the Forecast is provisionally accepted subject to verification of the details of the Forecast and the matters set out in Section 6.12(a) to 6.12(d).

6.12 **Reasons for rejection**

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

- (a) total current usage of the Facilities and/or Services by SDEC and all Access Seekers;
- (b) the current rate of growth of the Access Seeker's usage of the Facilities and/or Services;
- (c) the current rate of growth of total usage of the Facilities and/or Services by SDEC and all Access Seekers; and
- (d) subject to Sections 7.31 and 7.32, the amount of capacity in the Facilities and/or Services that SDEC currently has available and can reasonably provision for the Access Seeker over the Forecast period which must be at least equivalent to that which SDEC can reasonably provision for itself.

In addition to the above, SDEC may also reject a Forecast from an Access Seeker where:

- (i) SDEC discovers that it is not able to provide the Facilities and/or Services (wherein the basis of rejection will be provided by SDEC);
- (ii) the delivery of the Facilities and/or Services Forecasted by the Access Seeker is required within a period shorter than the indicative minimum timeframe specified in Section 7.14 or the period set out in Part D of this RAO, whichever is the shorter;
- (iii) it is not technically feasible to provide access to the Facilities or Services requested by the Access Seeker;
- (iv) 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/or
- (v) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Facilities or Services to protect the integrity of SDEC's network; or the safety of individuals working on, or using services supplied by means of, SDEC's network or Equipment.

6.13 **Time for acceptance or rejection**

SDEC must give notice of any acceptance or rejection ("**Rejection Notice**") of a Forecast to the Access Seeker:

- (a) within fifteen (15) Business Days of receipt of the relevant Forecast; and
- (b) such Rejection Notice (if any) must specify:
 - (1) the grounds on which SDEC rejects the Forecast in accordance with the terms of Section 6.12, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Forecast; and
 - (2) an offer to meet within five (5) Business Days of the Rejection Notice of the Forecast to discuss the reasons for rejection and alternative methods of compliance. The meeting shall take place between SDEC and the Access Seeker if the offer is accepted by the Access Seeker.

6.14 **Reconsideration by Access Seeker**

SDEC must allow the Access Seeker to reconsider its Forecast following a Rejection Notice and allow the Access Seeker, within twenty-one (21) Business Days of receipt of a Rejection Notice, either:

- (a) to confirm its rejected Forecast, and explain why the Access Seeker considers that SDEC is obliged to accept the Forecast; or
- (b) to submit a new Forecast which the Access Seeker regards as meeting SDEC's concerns.

6.15 **Reconsideration by SDEC**

SDEC shall reconsider any re-submitted or amended Forecast provided pursuant to Section 6.14 and Section 6.11 to 6.13 shall re-apply.

6.16 **Recovery for over-forecasting**

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

- (a) the relevant portion of the Forecast that was not met by the Access Seeker does not relate to a Non-Binding Forecast Period;
- (b) such costs and expenses were reasonably and necessarily incurred by SDEC;
- (c) SDEC reasonably seeks to mitigate its loss (including through its own usage) provided SDEC shall not be required to do so for any greater period than the relevant Forecast period; and
- (d) SDEC only recovers from the Access Seeker, seventy-five percent (75%) of such costs and expenses which could not be mitigated under Section 6.16(c) above.

6.17 **Meeting forecasts**

Subject to Section 6.11 to 6.13, SDEC must carry out network planning in order to enable Forecasts to be met. If the Access Seeker has confirmed a Forecast under Section 6.3, it will be binding on the Access Seeker.

7 Ordering and Provisioning Obligations

7.1 **Contact point or mechanism**

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

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

7.2 **Order content**

Prior to access being provided, SDEC may require the Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. SDEC may request the Access Seeker to provide, at a level of detail (sufficient for planning and provisioning), the following information in an Order for access to Facilities and/or Services:

- (a) the Facilities and/or Services to which access is requested;
- (b) a requested date and time for delivery;
- (c) the location of the points of delivery;
- (d) Equipment of the Access Seeker to be used in connection with the Order, to the extent it may adversely affect SDEC's Network; and
- (e) such other information that SDEC reasonably requires in order for it to provision access to the Facilities and/or Services as requested by the Access Seeker, provided that such information shall not include any information which:
 - (1) SDEC does not require from itself for similar provisioning;

- (2) identifies, or which enables the identification of a Customer or services of the Access Seeker; or
- (3) Is non-permitted information under Section 4.3.

7.3 **Use of ordering information**

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

- (a) SDEC's wholesale or interconnection group; and
- (b) that part of the network engineering group of SDEC responsible for interconnection or access, for the purpose of responding to and provisioning for the Order.

7.4 **Treatment of Orders and Service Qualifications**

SDEC shall:

- (a) establish a single queue for all Orders and Service Qualifications for a given type of Facility and/or Service, whether those Orders and Service Qualifications are required for itself or any Access Seekers;
- (b) give the equivalent priority to the handling of all Orders and Service Qualifications in each queue; and
- (c) otherwise treat all Orders and Service Qualifications in each queue in compliance with its queuing policy established under Section 7.29.

7.5 **Acknowledgement of receipt**

SDEC shall acknowledge receipt of an Order for Facilities and/or Services, in writing (or any other material or electronic form as agreed by the parties), within the period specified in the Service Specific Obligations for the purposes of this Section.

7.6 **Notice of Receipt**

SDEC must include in its Notice of Receipt the following information:

- (a) the time and date of receipt of the Order;
- (b) a list of any additional information reasonably required by SDEC from the Access Seeker to provision the Order;
- (c) whether SDEC needs to perform post-Order Service Qualification because information is not readily available to SDEC, 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 SDEC's queue.

7.7 **Further information**

SDEC shall allow the Access Seeker a period of up to ten (10) Business Days after a request for additional information under Section 7.6(b) to provide SDEC with such information.

7.8 **Service Qualification**

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

- (a) no pre-Order Services Qualification has been completed in accordance with the process to be developed under Section 4.1;
- (b) SDEC reasonably requires information from post-Order Service Qualifications which are not readily available; and

- (c) SDEC notifies the Access Seeker that the post-Order Service Qualifications are necessary (together with the reasons for needing to take such Service Qualifications) at the time of providing (and as specified in) SDEC's Notice of Receipt under Section 7.6 or if further information has been requested under Section 7.7, within two (2) Business Days upon the expiry of the period specified in Section 7.7.

For clarification, the Access Seeker may also seek SDEC's consent to perform a Service Qualification on its own, and such consent must not be unreasonably withheld.

7.9 **Commencement and completion of Service Qualifications**

- (a) SDEC 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:
 - (1) fifteen (15) Business Days after the date of the Notice of Receipt; and
 - (2) the time within which SDEC 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 SDEC's direction or control:
 - (1) SDEC shall notify the Access Seeker of the delay to the delivery date as soon as practicable after SDEC becomes aware of it;
 - (2) SDEC and Access Seeker must work together to minimise the delay; and
 - (3) the delivery date shall be extended for a further period as reasonably necessary, and SDEC shall promptly notify the Access Seeker of the revised completion date.
- (c) If the relevant Facilities and/or Services available to SDEC are below the capacity required to provide the relevant Facilities and/or Services to the Access Seeker, SDEC shall notify the Access Seeker, at the same time as providing notice under Section 7.9(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.

7.10 **Withdrawal of Order following Service Qualifications**

SDEC shall permit the Access Seeker to withdraw its Order without penalty, except that it may recover from the Access Seeker reasonable costs incurred by SDEC for any Service Qualification undertaken in respect of the withdrawn Order (irrespective of whether SDEC 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 Section 7.9; and
- (b) one (1) Business Day before SDEC 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 SDEC, which may be in the form of a Notice of Acceptance if civil works is to occur after SDEC has accepted the Order.

7.11 **Acceptance obligation**

SDEC shall use its reasonable efforts to accept and fulfil Orders from the Access Seeker for Facilities and/or Services which comply with a Forecast accepted by SDEC pursuant to Section 6.

7.12 **Time for acceptance or rejection**

SDEC shall notify the Access Seeker that an Order is accepted or rejected within:

- (a) the specified timeframe in the Service Specific Obligations sections for the purposes of this section; or
- (b) the timeframe within which it accepts or rejects equivalent Orders for itself,

whichever is shorter.

If SDEC notifies the Access Seeker that an Order is rejected, SDEC shall advise the Access Seeker of the grounds of rejection and whether SDEC would be able to accept the Order in a modified form.

7.13 **Notice of Acceptance**

SDEC's Notice of Acceptance to the Access Seeker shall contain the following information:

- (a) the delivery date or activation date (as applicable) which must be the date that is requested by the Access Seeker, or if that date cannot be met by SDEC, then no later than:
 - (1) the indicative delivery timeframe or activation timeframe specified in the Service Specific Obligations for the purpose of this section; or
 - (2) the period of time taken by SDEC to deliver, or activate, such Facilities and/or Services for itself,

whichever is shorter;
- (b) the date when civil works (if any) are intended to commence;
- (c) the charges applicable to fulfil the Order, including without limitation additional works such as internal wiring, right of way, land rental, local authority permits and third-party deposits;
- (d) such information as is reasonably necessary for the Access Seeker to benefit from access to the Facilities and/or Services; and
- (e) the validity period (which shall be a period of three (3) months commencing from the date of the Notice of Acceptance ("**Validity Period**").

7.14 **Commencement of delivery timeframes:**

- (a) The applicable delivery timeframe for an Order, as determined under Section 7.13(a), shall commence from:
 - (i) where the Access Seeker's confirmation of an Order is required under Section 7.15, the date the Access Seeker confirms the Order in accordance with that subsection; and
 - (ii) in any other case, from the start of the Validity Period,

unless a longer time period is requested by the Access Seeker and agreed to in writing by SDEC.

- (b) The delivery timeframes specified in Section 7.14 shall further be subject to the obtaining of any required way-leave and/or governmental authority written approval in relation to an Order. In the foregoing instance the commencement date of the delivery timeframe shall be the date on which last of the requisite way-leave and/or governmental authority prior written approval has been obtained and the conditions imposed under or in connection with that approval has been fulfilled by the Access Seeker.

For the avoidance of doubt, SDEC is not required to commence work on an Order unless and until all requisite way-leave and/or governmental authority written approval has been obtained and the conditions imposed under or in connection with that approval has been fulfilled by the Access Seeker.

- (c) Where a delay in the delivery of an Order is caused by the Access Seeker or by any government authority or agency or third party (not within the control of the Operators), the delivery date specified in the confirmed Order or indicative delivery time set out above shall be extended for a further period as may be reasonably required by SDEC. 'Third party' in this context refers to a third party who is not within the control of the Operators but shall not include a contractor or supplier of the Operators for the supply of Equipment, material, plant and services for the fulfilment of an Order unless that contractor or supplier is not able to perform its obligations to the Operator due to Force Majeure (wherein such contractor or supplier shall then be regarded as a third party not within the control of the Operator).
- (d) Where an Order has been confirmed by the Access Seeker in accordance with Section 7.14, the Access Seeker may request for a change in the delivery dates of the Facilities and/or Services ordered subject to SDEC first agreeing in writing to the same.

7.15 **Access Seeker's confirmation:**

- (a) The Access Seeker's confirmation of an Order is not required if SDEC accepts the Order without change. A change may include circumstances where delivery dates are delayed, estimated charges are exceeded, a post-Order Service Qualification is required or any other matter that requires further confirmation from the Access Seeker before SDEC can proceed with the Order.
- (b) Where the Access Seeker's confirmation is required for SDEC to proceed with fulfilling an Order as provided for under Section 7.15(a) above, SDEC shall permit the Access Seeker to provide its confirmation within the Validity Period and shall not provision the Order until the confirmation is received. Upon receipt of such confirmation, SDEC shall fulfill the Order in accordance with the Notice of Acceptance.
- (c) For the avoidance of doubt, the Access Seeker shall be deemed to have confirmed its agreement to proceed with the Order in relation to an accepted Forecast.
- (d) Notwithstanding anything to the contrary, in the event the necessary:
 - (i) Government Agency's written approval; and/or
 - (ii) way-leave from third parties to fulfil the Order

is not obtained, within six (6) months from the date of the Access Seeker's confirmation of the Order pursuant to Section 7.15, either Operator may, without liability, cancel the Order at any time by giving written notice to the other Operator, save that the Access Seeker shall be responsible for costs incurred by SDEC up to the effective date of cancellation, subject to Clause 7.26.

7.16 **Estimated charges**

Where Notice of Acceptance contains estimates of charges (e.g. based on time and materials):

- (a) SDEC shall not exceed the estimate without providing the Access Seeker with a written notice prior to exceeding the estimate that:
 - (1) the estimate will likely be exceeded;
 - (2) an explanation of the reasons for exceeding the estimate; and
 - (3) a further estimate of the charges for the work necessary to fulfill the Order;
- (b) SDEC shall permit the Access Seeker to withdraw the Order without penalty within ten (10) Business Days of the notice given by SDEC under Section 7.16(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 SDEC exceeds an estimate or revised estimate for a specific scope of work provided by SDEC due to:
 - (1) information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker; or
 - (2) a change in the scope of work by the Access Seeker,the Access Seeker shall be obliged to pay SDEC for the actual cost incurred (but in no other circumstances); and
- (d) SDEC 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 Section 7.13(e) or Section 7.16(b), as applicable.

7.17 **Reasons for rejection**

SDEC may reject an Order from the Access Seeker:

- (a) subject to Section 4.9 (as if references to 'Access Request' in that section were references to 'Order'), it is not technically feasible to provide access to the Facilities and/or Services requested by the Access Seeker;

- (b) subject to compliance with Section 7.31 and 7.32, SDEC has insufficient capacity to provide the requested Facilities and/or Services;
- (c) subject to Section 7.19, the Order is in excess of the agreed Forecast levels;
- (d) the Order or variation request duplicates an Order awaiting fulfilment;
- (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 the Access Agreement and such concern cannot be addressed to SDEC's satisfaction, acting reasonably; 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 the integrity of a Network, or the safety of individuals working on or using services supplied by means of a network or equipment and such concern cannot be addressed to SDEC's satisfaction acting reasonably.

7.18 **Notice of rejection**

SDEC's notice of rejection of an Order to the Access Seeker shall:

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

7.19 **Order in excess of Forecast**

Notwithstanding Section 7.17(b), SDEC shall use its reasonable efforts to provide sufficient capacity to enable SDEC to accept and fulfill Orders from the Access Seeker for Facilities and/or Services, which are in excess of the relevant Forecast. SDEC is only required to do so if, after meeting the Forecast requirements of other Access Seekers and itself, there is available capacity or SDEC could readily upgrade existing capacity. SDEC shall allocate the available capacity on a non-discriminatory basis to meet the over Forecast requirements of all Access Seekers and itself. For completeness, SDEC is not required to supply Facilities and/or Services in excess of the Forecast if, despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of Facilities and/or Services provided to all Access Seekers and/or itself or the commercial investment to be incurred by SDEC is not an investment in respect to which SDEC will have any commercial use.

7.20 **Required extra capacity**

SDEC may require the Access Seeker to procure additional capacity on the Access Seeker's side on the Network to the extent that SDEC, 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 SDEC's Network. Where the Access Seeker fails to so procure additional capacity and the demand exceeds the capacity on the Access Seeker's Network, SDEC shall notify the Access Seeker in writing, and the Access Seeker and SDEC shall meet no later than five (5) Business Days after receipt of the notice from SDEC 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, SDEC may bar or block calls or traffic to the Access Seeker's Network to the extent necessary to minimize congestion within SDEC's Network.

7.21 **Other uses**

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

7.22 **Delivery dates**

SDEC shall deliver the Order for the Facilities and/or Services by the delivery date or activation date (as applicable) as specified in the Notice of Acceptance or extended delivery date (if any) as determined in accordance with Section 7.24.

7.23 **Early delivery dates**

If SDEC, 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 and/or Services at the earlier delivery date.

7.24 **Delayed delivery dates**

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

- (a) The delay is caused by SDEC or by a third party that is not acting under SDEC's direction or control:
 - (1) SDEC shall notify the Access Seeker of the delay to the delivery date, together with the reasons for the delay, as soon as practicable after SDEC becomes aware of the possible delay;
 - (2) SDEC shall permit the Access Seeker to cancel the Order without penalty if the delay is longer than equivalent time period for delivery of the Facilities and/or Service; and
 - (3) The delivery date shall be extended for a further period as reasonably necessary and SDEC shall promptly notify the Access Seeker of the revised delivery date; or
- (b) Where the delay is caused by the Access Seeker:
 - (1) SDEC shall notify the Access Seeker of the delay to the delivery date as soon as practicable after SDEC becomes aware of it;
 - (2) SDEC and Access Seeker must work together to minimize the delay; and
 - (3) The delivery date shall be extended for a further period as reasonably necessary, and SDEC shall promptly notify the Access Seeker of the revised delivery date.

7.25 **Cancellation and variation of Orders**

The Access Seeker is allowed to cancel or vary an Order at any time subject to Section 7.26.

7.26 **Cancellation or variation penalty**

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

- (a) SDEC may impose a charge for the cancellation or variation of the Order; and
- (b) the charge which the Access Seeker is required to pay shall not exceed the lesser of the following amounts:
 - (1) the sum of costs necessarily incurred by SDEC which is directly attributable to the cancellation or variation; or
 - (2) 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,

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

7.27 **Testing and provisioning**

SDEC:

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

7.28 **Resource charge**

SDEC may charge the Access Seeker a one-off non-refundable resource fee (including processing fees and additional and non-routine processing fees) to be determined by reference to the costs incurred by SDEC, for allocation of manpower and other resources to enable SDEC to test and fulfil an Order for new Facilities. Upon request, SDEC shall provide a detailed statement (including specifying the methodology and unit costs for calculating any fees) in writing to the Access Seeker of the scope of works to be undertaken, the expected duration, the number and designation of the personnel involved and the rate of charges. SDEC shall not be obliged to commence work until the scope of works and the said resource charges have been agreed to in writing by the Access Seeker.

The Operators agree that the one-off non-refundable resource charge shall also be inclusive of a non-refundable processing fee for undertaking necessary work to process the Order as SDEC is required to allocate manpower and resources for the same. In the event that additional and non-routine administrative work is required to process the Order where there is insufficient and/or erroneous information provided by the Access Seeker or where the Access Seeker varies or changes the information provided, SDEC shall be entitled to charge an additional reasonable fee for undertaking such additional and non-routine work as additional resources are required to do the same.

7.29 **Queuing policy**

SDEC shall establish and maintain a queuing policy for each of the Facilities, which:

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

7.30 **Acceptance on queue**

SDEC shall promptly notify the Access Seeker at the time of providing an acknowledgement of receipt of the Order under Section 7.5 (and as specified in the Notice of Receipt under Section 7.6), of their acceptance of, and position in, SDEC's queue.

7.31 **Constrained capacity**

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

- (a) the Access Seeker pursuant to the relevant Forecast and/or Order;
- (b) other Access Seekers, pursuant to their relevant Forecasts and/or Orders; and
- (c) SDEC, for the purposes of its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest,

would in aggregate, exceed the capacity which SDEC will be in a position to be able to provide, SDEC shall:

- (d) notify all Access Seekers to whom relevant capacity is supplied; and
- (e) allocate the available capacity between itself, the Access Seeker and other Access Seekers in accordance with SDEC's Capacity Allocation Policy.

7.32 **Capacity Allocation Policy**

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

- (a) shall be disclosed, free of charge, to each Access Seeker upon entry into an Access Agreement, the Commission, to both Access Seekers with whom SDEC has an Access Agreement and the Commission each time it is amended, and any other Operator on request;
- (b) shall set out the principles in accordance with which SDEC 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 SDEC'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) shall:
 - (1) be fair and reasonable;
 - (2) be consistent, so far as practicable, with SDEC's general duty of non-discrimination in accordance with subsection 149(2) of the Act;
 - (3) treat the requirements of all Access Seekers on an equivalent basis to the requirements of SDEC's own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest; and
 - (4) allocate the available capacity in the relevant Facilities and/or Services in proportion to each Operator's Forecast and/or Order requirements; and
- (d) shall set out SDEC'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 of updates.

7.33 **Late delivery**

If SDEC fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with Section 7.24(a)(3), except where such failure has been caused solely by the Access Seeker's delay or a delay by a third party that is not acting under SDEC's direction or control, SDEC shall, without limitation to any other rights the Access Seeker may have under Section 7 or law, provide a rebate to the affected Access Seeker provided always that the rebate shall not exceed 5% of the annual Fees payable for access to the affected Facility or Service. The rebate shall be for an amount equivalent to the recurring charges payable for access to the Facilities and/or Services for the period of SDEC's delay only. The rebates may only be used by the Access Seeker for future Invoices for the same Facility or Service only. If SDEC alleges that a failure has been caused solely by Access Seeker's delay or a delay by a third party not acting under SDEC's direction or control, SDEC shall have the burden of demonstrating:

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

7.34 **Contractors under direction or control**

For clarity, any employees and contractors of SDEC shall be deemed to be acting under the direction or control of SDEC for the purposes of Section 7.

8 **Supply of Facilities and/or Services**

8.1 **Obligation to provide the Facilities and/or Services**

SDEC will provide the Facilities and/or Services to the Access Seeker in accordance with the terms of this RAO and the Access Agreement.

8.2 **Receipt of the Services and Access Seeker provision to end user customers**

- (a) The parties acknowledge and agree that the Facilities and/or Services will be provided by SDEC to the Access Seeker who will utilize the Facilities and/or Services to develop and provide further services to end user customers.
- (b) The Access Seeker must not use, or knowingly permit the Facilities to be used: for
 - (1) any illegal, immoral, indecent or unlawful purpose;
 - (2) in any way that may infringe Intellectual Property Rights; or

- (3) in any way that may be in breach of any obligation of confidence, privacy or any other rights.
- (c) The Access Seeker acknowledges and agrees that subject to the applicable Commission Determination on the Mandatory Standards for Quality of Service and/or any lawful instrument which is issued by the Minister and/or Commission pursuant to the Act ("**QoS Standards and Instruments**") related to the Facilities and/or Services provided by SDEC, SDEC has no control whatsoever over the accuracy, quality or integrity of the information, data or programs accessed or transmitted via its Network or for the loss of messages, information, data or images resulting from delays, non-deliveries, mis-deliveries or service interruptions.
- (d) SDEC has no control whatsoever over the information, images or other content transmitted through its Network. As such, SDEC shall not be responsible for the content of any Communications conveyed by making use of its Facilities and/or Services.
- (e) SDEC does not warrant that:
 - (1) the Facilities and/or Services will meet the requirements of any third party; or
 - (2) subject to the target times and QoS Standards and Instruments related to the Facilities and/or Services provided by SDEC, the operation of the Facilities and/or Services will be uninterrupted or error-free.
- (f) The Access Seeker shall only offer its services to its Customers under its own brand without any use of, or reference to SDEC's brands. The Access Seeker agrees not to offer any service under any brand, including any trademark, trade name or company name, of SDEC unless the use of the brand(s) of SDEC is explicitly provided for under the relevant Access Agreement.
- (g) The Access Seeker shall ensure that any Equipment connected to SDEC's Network complies with the technical specifications specified by the SDEC and are type approved.
- (h) The Access Seeker must ensure that all contracts with end user customers contain equivalent restrictions to those set out in Section 8.2(b).
- (i) The Access Seeker must take all necessary steps to enforce contractual restrictions against end user customers equivalent to those set out in Section 8.2(b) (including by suspending or terminating an infringing end user customer's access to the Facilities and/or Services).
- (j) The Access Seeker must ensure their end user customers are subject to fair and/or acceptable use policy (or equivalent) that is consistent with Good Industry Practice and take all reasonable steps to properly enforce such policies to protect the quality, availability and integrity of the SDEC's Facilities, services and/or Network.
- (k) The Access Seeker must not, and must not permit any third party or end user customer, to:
 - (1) do anything that may interfere with the SDEC's Facilities, Services and/or Network owned or operated by SDEC (and its third party service providers); or
 - (2) without the prior written consent of SDEC, connect or knowingly permit any third party to connect any Equipment to the SDEC's Facilities, Services and/or Network except as permitted by this RAO.

8.3 **Co-operation**

The Access Seeker must:

- (a) provide all assistance reasonably requested by SDEC (or any third party subcontractor acting on behalf of SDEC) in connection with the provision of Facilities and/or Services;
- (b) participate in any training and other familiarisation processes from time to time to allow the Access Seeker to obtain the knowledge necessary to receive the Facilities and/or Services; and
- (c) not cause any detriment, inconvenience or damage to any other Access Seekers, SDEC, or other third parties in its receipt of the Facilities and/or Services.

8.4 **Suspension of Facilities and/or Services**

- (a) Subject to SDEC complying with the notification requirements in Section 30.6, SDEC will have the right to suspend the supply of a Facilities and/or Service (or any functionality within a Facility and/or Service) where required by a Government Agency, or pursuant to any other legal obligation or if reasonably required by SDEC to prevent fraud.
- (b) SDEC will, at the Access Seeker's expense, assist the Access Seeker in any related appeals to a Government Agency.

PART C – OPERATIONAL MANAGEMENT

9 **Point of Interface Procedures**

9.1 **Interconnection**

Where applicable and contemplated under the terms of this RAO, each party shall interconnect and keep its Network interconnected with the Network of the party in accordance with the terms of the Access Agreement with that party.

9.2 **Point of Interface locations**

- (a) Subject to Paragraph 6.9.31 of the MSA Determination SDEC shall publish on its publicly accessible website and keep updated a list of general locations and technically feasible points:
 - (1) at which physical co-location is available;
 - (2) in respect of which virtual co-location is available; and
 - (3) in respect of which in-span interconnection is available,on and from the date of publication for the following twelve (12) months.

9.3 **Access Seeker requested Point of Interface**

SDEC shall reasonably consider a request by the Access Seeker to interconnect at a point other than that specified under Section 9.2. SDEC shall promptly notify the Access Seeker whether it accepts or refuses a request by the Access Seeker under this section, and provide the Access Seeker with reasons if it refuses the Access Seeker's request.

9.4 **Network responsibility**

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

9.5 **Third party Point of Interface**

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

9.6 **Point of Interface factors**

When determining which locations are to be listed under Section 9.2(a) or determining a request under Section 9.3, SDEC will have regard to each of the following:

- (a) SDEC shall offer (but not shall not require) POI and co-location for every Closed Number Area throughout Malaysia in which SDEC has network facilities;
- (b) in addition to offering POI and co-location in accordance with Section 9.6(a) above, SDEC shall offer interconnection and co-location at each other technically feasible point;

- (c) SDEC shall offer (but shall not require) physical co-location in at least one POI location for every Closed Number Area through Malaysia in which SDEC has network facilities, but may additionally offer (but shall not require) other forms of co-location in relation to a particular location if requested by the Access Seeker;
- (d) SDEC shall not reserve space other than the needs of itself, future needs for itself (calculated by use of a reasonably projected rate of growth over two (2) years) and the needs of other Access Seekers who are currently occupying or have ordered additional space from SDEC; and
- (e) any possible re-arrangement of the configuration of its Equipment to eliminate space inefficiencies.

10 Decommissioning

10.1 Decommissioning notice

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

- (a) One (1) year's notice in writing to the Access Seeker(s) prior to any decommissioning of a Point of Interface; or
- (b) Six (6) months' notice in writing to the Access Seeker prior to the decommissioning of any Facilities and/or Services which rely on SDEC's use of that site.

Where SDEC is required to vacate the site as a result of a third party landlord (under an arm's length tenancy agreement) or a local authority's / Government Agency's notice, SDEC shall provide the Access Seeker(s) as much notice as possible in relation to the matters in Section 10.1(a) and 10.1(b) above.

10.2 Co-operation

The Parties shall co-operate and negotiate with the Access Seeker(s) in relation to the timetable for decommissioning of the relevant Point of Interface and/or Facilities and/or Services.

10.3 Alternative arrangements

If SDEC notifies the 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 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 that are proposed to be decommissioned, for a period that is not less than three (3) years from the date of decommissioning.

10.4 Decommissioned Point of Interface compensation

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

- (a) Decommissioning any links to the Point of Interface that are proposed to be decommissioned, that are or will be rendered redundant by the proposed decommissioning;

- (b) Installing or otherwise procuring links between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to Section 10.3(a); and
- (c) The carriage of traffic between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to Section 10.3(a) for a period that is not less than three (3) years from the date of decommissioning.

10.5 **Decommissioned Facilities compensation**

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

- (a) moving the Access Seeker's Equipment from the decommissioned Facilities to alternative Facilities offered in accordance with Section 10.3(b); or
- (b) Re-arranging Equipment to connect to alternative Services offered in accordance with Section 10.3(b).

11 Network Change

11.1 **Scope**

This Section applies where a party proposes to implement a Network Change of a type referred to in Section 11.2 which necessitates a change in the hardware or software (including interface software) of the other party's Network in order to ensure the continued proper operation and compatibility of the parties' respective Networks, services and procedures.

11.2 **Types of changes**

The following kinds of proposed Network Changes may be within the scope of Section 11.1:

- (a) Any change by the party proposing to make the change ("**Notifying Operator**") to any technical specification of the interconnection interface between their respective Networks ("**Interface Change**");
- (b) Any change by the Notifying Operator to any technical specification or characteristics of the Facilities and/or Services to which the other Party ("**Recipient Operator**") has access to, which will or might affect:
 - (1) The Recipient Operator's Network; or
 - (2) The Recipient Operator's use of the Facilities and/or Services provided by the Notifying Operator,
 ("**Facilities and/or Service Change**");
- (c) Any change by the Notifying Operator to any technical specification or characteristic of that Notifying Operator's Network which will or might affect the Recipient Operator's Network ("**Other Network Change**");
- (d) Any change by the Notifying Operator to any of the operational support systems used in inter-carrier processes, including without limitation:
 - (1) The billing system;
 - (2) The portals for service fulfilment, service assurance and network and home pass information; or
 - (3) the ordering and provisioning systems;
 ("**OSS Change**"); and

(e) any enhancement by the Notifying Operator of the features, functions or capabilities of the Facilities and/or Services to which the Recipient Operator has access, which enhancement the Notifying Operator proposes to make available either:

- (1) to itself; or
 - (2) to any other operators,
- ("Functionality Change"),

(collectively, "Relevant Changes")

11.3 Notification of change

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

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

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

11.4 Post-notification procedures

The Notifying Operator shall:

- (a) meet with the representatives of the Recipient Operator on the date set out in the Change Notice or as soon as practicable thereafter (but no later than the notice period set out in Section 11.3), for the purpose of discussing the Relevant Changes and any changes that may be necessary or desirable for the Recipient Operator to make to its Network, services or procedures in consequence of the Relevant Changes;
- (b) provide any additional information reasonably requested by the Recipient Operator no later than ten (10) Business Days after the Recipient Operator's request for such additional information; and
- (c) take reasonable account of concerns raised and proposals made by the Recipient Operator to minimize any adverse impact of the Relevant Changes on Recipient Operator and revise the Change Notice accordingly.

11.5 Testing

The Notifying Operator must, bearing its own cost in doing so:

- (a) co-operate with the Recipient Operator to develop procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Parties' respective Networks, including where required by implementing a proof of concept (POC); and
- (b) jointly carry out testing with the Recipient Operator in a timely manner, using its best endeavours to accommodate any timing requested by the Recipient Operator and, in any case, no less than twenty (20) Business Days before the Notifying Operator proposes to effect the Relevant

Changes. The testing shall be conducted in accordance with the testing procedures developed under Section 11.5(a) above.

11.6 **Testing failure**

Subject to the Recipient Operator having co-operated with the Notifying Operator in relation to the conduct of tests under Section 11.5, if such tests:

- (a) are not accepted by ten (10) Business Days prior to the date when the Notifying Operator proposes to effect the Relevant Changes; or
- (b) do not provide reasonable assurance of the continued proper operation and compatibility of the Parties' respective Networks, services and procedures, the Notifying Operator must postpone implementation of the Relevant Changes. The period of postponement will be the period necessary to allow the steps in Sections 11.3 to 11.5 to be repeated.

12 **Operations and Maintenance**

12.1 **Operations and maintenance obligations**

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

12.2 **Fault reporting service**

Each Operator shall establish and maintain a fault reporting service that allows the 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.

12.3 **Customer notification**

Each Operator will advise all of its directly connected Customers to report all faults to the fault reporting service described in Section 12.2.

12.4 **Non-discriminatory fault reporting and identification**

An Operator shall:

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

12.5 **Cross-referrals**

If the Customer reports a fault to an Operator:

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

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

12.6 **Network fault responsibility**

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

12.7 **Major inter-working faults**

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

12.8 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:

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

12.9 Bear own costs

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

12.10 Fault priority

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

- (a) The highest service loss impact in terms of the number of Customers affected;
- (b) Those which have been reported on previous occasions and have re-occurred; and
- (c) All other faults.

12.11 Fault rectification

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

12.12 Target times

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

- (a) Timeframes set out in a relevant Service Specific Obligations or, if there is no such timeframe, the response timeframes, progress update frequencies and rectification timeframes set out in the table below;
- (b) Timeframes which will result in compliance by all affected Parties with any applicable mandatory standards that apply to service availability and restoration; and
- (c) Timeframes equivalent to that which SDEC provides to itself.

Priority Level	Fault Types (examples)	Response Timeframe	Progress Update Frequency	Rectification Timeframe
Level 1	Major switch outage Transmission bearer total outage Route blocking >30% Major signalling problem Major routing issues Fraudulent calls	Within one (1) hour	Every one (1) hour	Four (4) hours
Level 2	Minor switch outage Minor routing issue Minor signalling problems Route blocking 10%- 30% Cross line and silent calls Mobile number portability issues	Within four (4) hours	Every four (4) hours	Twenty Four (24) hours
Level 3	Faults affecting single or small number of customers Route blocking <10%	Within twenty four (24) hours	Every twenty four (24) hours	Seventy Two (72) hours
Level 4	Remote congestion External Technical Irregularities ("ETI")	Within forty eight (48) hours	Every forty eight (48) hours	Ten (10) Business Day

	Other performance related issues			
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Notes:

- All faults reported shall be ascribed with a “Priority Level” as set out in the table above for response and rectification purposes and the parties shall cooperate with one another to achieve the target timeframes corresponding to the severity of the fault reported as set out in that table.
- “Response Timeframe” refers to the timeframe for the party whose Network, Facility and/or Service is faulty to respond to and appropriately attend to the fault. “Response Timeframes” are to be measured from either the time the fault is notified by the other party or from the time when the party first becomes aware of the fault, whichever is the earlier.
- “Progress Update Frequency” refers to the frequency to update the other party until the fault is rectified.
- “Rectification Timeframe” refers to the time taken by the party to rectify a faulty Network, Facility and/or Service and is determined by the period between the reporting of a fault to the relevant fault reporting service of the party and the rectification of the fault on a permanent or temporary basis, (provided that if rectified on a temporary basis, the party must continue attempting to achieve a permanent rectification without delay).

12.13 **Planned maintenance**

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

- (a) provide at the greater of the time which it notifies its own Customers and ten (10) Business Days’ notice of the planned maintenance;
- (b) use its reasonable endeavours to minimize any disruption to the carriage of communications that crosses or would cross both Parties’ Network, and which is caused by the maintenance or re-routing; and
- (c) where the parties agree that it is practicable, provide alternative routing or carriage at no additional cost to the Access Seeker.

12.14 **Planned maintenance windows**

A Maintenance Operator shall undertake planned maintenance within the time window agreed with the other party, and where the time window for such planned maintenance has the least effect on the end users.

12.15 **Emergency maintenance**

If a Maintenance Operator needs to undertake emergency maintenance which may affect the other party’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 minimize any disruption to the carriage of communications that crosses or would cross any other party’s Network, and which is caused by the maintenance or re-routing; and
- (c) where the parties (acting reasonably) agree that it is practicable, provide alternative routing or carriage at no additional cost to the other Party.

12.16 **Hours of fault reporting and rectification**

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

12.17 **Complaints handling**

The Operators must report all interconnection and access outages that relates to Networks, Services and/or Facilities to SDEC's fault reporting and rectification service.

12.18 **Routine testing**

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

13 **Technical Obligations**

13.1 **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.

13.2 **Prevention of technical harm**

Each Operator must take reasonable measures to ensure that interconnection and 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.

13.3 **Technical Standards**

Each Operator must comply with any applicable technical standard(s) adopted or required by the Commission under Chapter 3 of Part VII of the Act.

13.4 **No interference**

Each Operator must not do anything, or knowingly permit any third person to do anything, in relation to a 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, Facilities, services or Equipment of the other Operator.

13.5 **Notice of interference and rectification**

If an Operator notifies ("**Interference Notifying Operator**") another Operator that the other Operator's ("**Interfering 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 Interfering 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 Interfering Operator is not able to locate the source of the interference within 24 hours under Section 13.5(a) above, the Interfering Operator shall promptly notify the Notifying Operator, and both parties shall meet as soon as possible and, in any case, within 24 hours of such notice and jointly examine each other's Network, network facilities, network services or Equipment to locate the source of the interference.

14 Security Obligations

14.1 Compliance with security policies by Access Seeker

- (a) The Access Seeker must comply with and must ensure that its Personnel accessing any Facilities owned or operated by SDEC (including any online systems or Points of Interface) comply with, the information technology or security policies, standards, requirements or procedures notified to the Access Seeker by SDEC with respect to those Facilities from time to time.
- (b) The Access Seeker must immediately notify SDEC as soon as it becomes aware of an actual or potential breach of the policies, standards, requirements or procedures referred to in Section 14.1(a) and assist SDEC in any investigations regarding that actual or potential breach.

14.2 Risks to the Networks

- (a) Each Operator must adopt a responsive and proactive approach to addressing risks to its own Network which seeks to identify, mitigate and manage risks in line with Cyber Security Act 2024, ISO 27001, Good Industry Practice and any applicable guidelines set by the National Cyber Security Agency designated under Section 25(1) of the Cyber Security Act 2024, with such security measures intended to:
 - (1) ensure that data transmitted by an end user customer is transmitted in a secure manner over each Operator's Network;
 - (2) ensure that appropriate access controls are implemented to prevent unauthorised access and to protect Facilities and other equipment used in each party's Network from both internal and external threats;
 - (3) ensure that vulnerability risks are managed, and that there is a process in place to patch any security vulnerabilities;
 - (4) ensure that there is appropriate segmentation between Networks to prevent interference, data access from unauthorised parties and data interception; and
 - (5) ensure that appropriate measures are implemented to secure the interconnection links and the transmission Equipment between each party's Network.
- (b) Without limiting Section 14.2(a), each party must implement, and regularly review during the Term, information technology and security policies, standards and procedures, relating to cybersecurity, data privacy and protection, network security and net neutrality. These policies, standards and procedures must adopt industry best practice and appropriate standards in line with the Global System for Mobile Communications (GSMA), the International Telecommunication Union Telecommunication Standardisation Sector (ITU-T) and the International Organisation for Standardisation (ISO) 27001.
- (c) Each Operator must establish and operate a security operations centre, which will operate on a twenty-four (24) hours a day, seven (7) days a week basis, to provide proactive monitoring and detection, mitigating and co-ordination of responses to any malicious cybersecurity threats that could potentially lead to disruption of the SDEC's Network, Facilities or the Services, interception of the Facilities and/or Services, unauthorised disclosure of Personal Data or Confidential Information, or other material security breaches in connection with the Facilities and/or Services.
- (d) Each Party also undertakes to comply with the Cyber Security (Notification of Cybersecurity Incident) Regulations 2024 ("**Cybersecurity Notification Regulations**") in relation to the required notification for cybersecurity incident that has or might have occurred in respect of the network infrastructure or national critical information infrastructure owned or operated by the Party ("**Notifying Party**"). Where such cybersecurity incident involving the Notifying Party also affects the other Party's national critical information infrastructure, assets, network or telecommunications system, the Notifying Party shall also notify the other Party with reasonable information and within reasonable timeline to enable the other Party to comply with the Cybersecurity Notification Regulations.

Review of security processes

- (a) Each Operator must (at its own cost) undertake an annual security audit of its own Network and Facilities ("**Annual Security Audit**") to monitor and evaluate the security controls implemented by itself in accordance with this Section 14.
- (b) At each Operator's discretion the Annual Security Audit may involve the use of one or more third party external auditors.
- (c) Each Operator must manage and address any risks identified during the Annual Security Audit within a commercially reasonable period of time with respect to the threat posed by the security risk identified.
- (d) Each Operator agrees to promptly share the results of each Annual Security Audit with the other party (who acknowledge and agree that the results of the Annual Security Audit will constitute the Confidential Information of that Operator).
- (e) Each Operator agrees to provide any assistance reasonably requested by the other Operator in connection with each Annual Security Audit.

PART D – SERVICE SPECIFIC OBLIGATIONS

15 Service Specific – Infrastructure Sharing

15.1 Application

This Section 15 applies where access to Infrastructure Sharing has been requested or is to be provided.

15.2 Forecasts

For the purposes of Section 6.6, SDEC shall only request forecasts where:

- (a) The maximum period of time covered by Forecasts regarding Infrastructure Sharing is one (1) year;
- (b) The minimum intervals or units of time to be used in Forecasts regarding Infrastructure Sharing is one (1) year; and
- (c) The maximum frequency to update or to make further Forecasts regarding Infrastructure Sharing is once a year.

15.3 Acknowledgement of receipt

For the purpose of Section 7.5, SDEC shall acknowledge receipt of each Order for Infrastructure Sharing within two (2) Business Days.

15.4 Time for acceptance or rejection

Subject to any shorter timeframe required under Section 7.12, SDEC must notify the Access Seeker that an Order for Infrastructure Sharing is accepted or rejected within ten (10) Business Days after:

- (a) Issuing the Notice of Receipt in respect of the Order, where SDEC did not undertake any post-Order Service Qualification for that order under Section 7.8; or
- (b) Providing the Access Seeker with the result of post-Order Service Qualification under Section 7.9, where SDEC has undertaken post-Order Service Qualification for that Order under Section 7.8.

15.5 Indicative delivery timeline

For the purposes of Section 7.13(a)(1), the indicative delivery timeframe for Infrastructure Sharing is:

- (a) For ground-based towers, fixed telecommunications structures and new sites, ninety (90) Business Days; and
- (b) For Common Antenna Systems in High Priority Areas:
 - (1) Which are existing Common Antenna Systems, forty (40) Business Days; and
 - (2) Which are new Common Antenna Systems, one hundred and twenty (120) Business Days; and
- (c) For all other structures (including but not limited to monopole, street furniture and rooftop towers), forty (40) Business Days,

or such other timeframe as may be mutually agreed between the Parties.

For clarification, the indicative delivery timeframe in this Section 15.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with Section 7.14. SDEC shall provide progress updates of the site delivery to the Access Seeker on a monthly basis.

15.6 Billing Cycle

For the purposes of Section 22.2(c), between the Operators, the Billing Cycle for Infrastructure Sharing will be one (1) year in advance for the first year and monthly (or such other mutually agreed period) in advance for subsequent years.

15.7 Physical access

Where required to fulfil an Order for Infrastructure Sharing or for the Access Seeker to perform operations or maintenance activities, SDEC shall allow an Access Seeker, its nominated employees and/or contractors to physically access SDEC'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.

15.8 Nominated personnel

The employees and/or contractors nominated by the Access Seeker under Section 15.7, 15.9 and 15.10 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 SDEC's own personnel and the number of SDEC's personnel to which SDEC provides physical access to such network facilities.

15.9 Escorts

SDEC is only permitted to require an escort present when nominated employees and/or contractors of the Access Seeker wish to enter into SDEC's property if SDEC requires an escort for its own employees or contractors in the same circumstances. If SDEC 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 SDEC's property, SDEC shall:

- (a) Bear the costs of such escort services;
- (b) Subject to Section 15.9(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 Section 15.9(d) below, provide physical access at the time requested by the Access Seeker for planned maintenance requests on the shorter of:
 - (1) Two (2) Business Days' notice for manned sites and five (5) Business Days' notice for unmanned sites; and
 - (2) 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:
 - (1) Thirty (30) minutes of time required by the Access Seeker pursuant to Section 15.9(b) or 15.9(c) (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 requests); and
 - (2) The period of time it requires for its escorts to arrive or planned and emergency maintenance at unmanned sites.

15.10 Absence of escort

For the purposes of Section 15.7, if an escort does not arrive at SDEC's property within the timeframe specified in Section 15.9, the Access Seeker's nominated employees and/or contractors may proceed to enter SDEC's property without an escort.

15.11 Site register

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

15.12 Utilities and ancillary services

SDEC must, where the relevant utilities and ancillary services are within SDEC's control ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access to the same extent that SDEC provides to itself, including but not limited:

- (a) Access to roads;
- (b) Access to land;
- (c) Power, including the provision of back-up power, subject to mutual agreement between the Access Seeker and SDEC;
- (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 sub-contractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft; and
- (f) Site maintenance.

15.13 Cost

The utility and ancillary costs in respect of the network facilities provided by SDEC to the Access Seeker as contemplated in Section 15.12 shall be apportioned (in accordance with fair and equitable principles) and mutually agreed between SDEC and all Access Seekers at the relevant location.

15.14 Augmentation of Common Antenna Systems

SDEC shall use all reasonable endeavours to augment in-building Common Antenna Systems to the extent required to enable SDEC to supply access to such in-building Common Antenna Systems on request by an Access Seeker.

15.15 Reporting

As required under paragraph 5.3.12(l) of the MSA Determination, SDEC shall notify the Commission in writing of any specified network facilities (as that term is used in the description of the Infrastructure Sharing Service) that support, or have the capability to support, the installation of mobile network equipment along, or in close proximity to:

- (a) a street;
- (b) a road;
- (c) a path;
- (d) a railway corridor;
- (e) a park; or
- (f) such other outdoor area that may be accessed by members of the public,

including but not limited to billboards, public transit shelters, poles, traffic light poles, bridges and road gantries.

15.16 Maintenance and rectification

SDEC shall:

- (a) ensure that it maintains in reasonable working condition all fixed telecommunications structure which comprise specified network facilities (as that term is used in the description of the Infrastructure Sharing Service), subject to Section 15.16(b); and
- (b) on notice by an Access Seeker, or upon otherwise becoming aware, that any fixed telecommunications structures does not comply with Section 15.16(a), perform within forty (40) Business Days such activities as required to rectify such non-compliance.

15.17 Grounds for refusal

In addition to the grounds for refusal in Section 4.8, SDEC may, based on reasonable safety and security reasons, refuse an Order Request to fixed telecommunication structures being utilised for critical government services, including in connection with government agencies, the military or the police.

15.18 Capacity Allocation Policy

In addition to Section 7.32, SDEC's Capacity Allocation Policy for Infrastructure Sharing Services shall set out the principles to be applied on an equivalent basis between itself and other Access Seekers, where:

- (a) SDEC has already taken steps to optimise space by using the current available technology, including removing any unused cables;
- (b) SDEC shall determine the available space only after considering:
 - (1) the requirements for Infrastructure Sharing Services for SDEC's then existing maintenance purpose;
 - (2) the reservation of the Infrastructure Sharing Service for future use by SDEC or another Access Seeker, applicable on an equivalent basis for six (6) months, upon receipt of an Order; and
 - (3) the structural integrity of the infrastructure to safely accommodate additional capacity; and
- (c) the allocation of available space shall be:
 - (1) on a first-come, first-served basis;
 - (2) applicable to reserved capacity that is not used by either SDEC or an Access Seeker within the seven (7) months from the date of the Order; and
 - (3) to the extent possible, based on efficient allocation principles to minimize space wastage.

16 Service Specific – Transmission Services

16.1 Application

This Section 16 applies where access to Transmission Service has been requested or is to be provided.

16.2 Forecasts

For the purposes of Section 6.6, SDEC shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Transmission Services is one (1) year;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Transmission Services is one (1) year; and
- (c) the maximum frequency to update or to make further Forecasts regarding Transmission Services is once a year.

16.3 Acknowledgement of receipt

For the purposes of Section 7.5, SDEC shall acknowledge receipt of each Order for a Transmission Service within two (2) Business Days. For clarification, SDEC may acknowledge receipt of Orders in batches of no more than twenty (20) Orders per batch.

16.4 Time for acceptance or rejection

Subject to any shorter timeframe required under Section 7.12, SDEC must notify an Access Seeker that an Order for a Transmission Service is accepted or rejected within ten (10) Business Days after:

- (a) Issuing the Notice of Receipt in respect of the Order, where SDEC did not undertake any post-Order Service Qualification for that Order under Section 7.8; or

- (b) Providing the Access Seeker with the result of post-Order Service Qualification under Section 7.9, where SDEC has undertaken post-Order Service Qualification for that Order under Section 7.8.

16.5 Indicative delivery timeframe

For the purposes of Section 7.13(a)(1), and unless otherwise agreed between SDEC and Access Seeker having regard to the volume of the relevant Order(s), the indicative delivery timeframe for Transmission Services is:

- (a) if no new network facilities are required to supply the Transmission Services, twenty (20) Business Days for urban areas, thirty (30) Business Days for non-urban areas and mutually agreed upon timeline between Access Seeker and SDEC for geographically difficult regions (like unpaved roads, hills, and remote islands); or
- (b) if new network facilities are required to supply the Transmission Services, sixty (60) Business Days for urban areas, ninety (90) Business Days for non-urban areas and mutually agreed upon timeline between Access Seeker and SDEC for geographically difficult regions (like unpaved roads, hills, and remote islands),

or such other timeframe as may be mutually agreed between the Parties.

For clarification, the indicative delivery timeframe in this Section 16.5 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with Section 7.14.

16.6 Billing Cycle

For the purposes of Section 22.2(c), between the Operators, the Billing Cycle for Transmission Services will be quarterly.

16.7 Reporting

As required under paragraph 5.3.12(1) of the MSA Determination, SDEC shall notify the Commission in writing of:

- (a) each technically feasible network point at which a Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the Transmission Services are supplied at those points);
- (b) each network interface through which a Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the Transmission Services are supplied using those interfaces);
- (c) each bit rate at which a Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the Transmission Services are supplied at those bit rates); and
- (d) whether the Transmission Service is supplied in conjunction with any other Facility and/or Service.

16.8 No bundling

SDEC shall not require an Access Seeker to purchase a Transmission Service together with any other Transmission Service. For example, SDEC 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.

Notwithstanding the foregoing, SDEC and the Access Seeker may mutually agree to bundle Transmission Services where such bundling is offered on an optional basis.

16.9 Quality of Service

SDEC shall provide access to the Trunk Transmission Service and End-to-End Transmission Service to Access Seekers 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	≥ 99.99%
Latency (Intra-region) within Sarawak	Between > 1ms and < 40ms

For the avoidance of doubt, where the Trunk Transmission Service and/or End-to-End Transmission Service involve services provided by a third party service provider which is outside of SDEC's control, SDEC shall only be required to use its best endeavours to fulfil the quality of service as set out above.

16.10 Equivalence of Inputs

SDEC must 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.

PART E - INFORMATION AND RIGHTS MANAGEMENT

17 Confidentiality

17.1 General obligation of confidentiality

- (a) Subject to Sections 17.2 and 17.3, each party agrees to keep confidential, and must ensure that its directors, officers, employees and agents keep confidential, and not to use or disclose, other than as expressly permitted by this RAO or the Access Agreement, any Confidential Information of another party.
- (b) Each party must establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure and use the same degree of care as it uses to protect its own confidential information or which a prudent person would use to protect the Confidential Information (whichever standard is the higher).

17.2 Permitted use and disclosure of Confidential Information by SDEC

- (a) Subject to Section 17.2(b), Confidential Information of the Access Seeker may be used and disclosed by SDEC:
 - (1) for the purposes of undertaking planning, maintenance, construction, provisioning, testing, operations or reconfiguration of the Network;
 - (2) for the purposes of understanding the needs of the Customers and to improve the experience of the Customers;
 - (3) for the purpose of developing, supplying or marketing new services;
 - (4) to the directors, officers, employees, agents, Third Party Suppliers or professional advisors (each of whom must be under a similar duty of confidentiality);
 - (5) to comply with any reporting requirements that may be imposed on it by a Government Agency;

- (6) where that information relates to the activity of Customers (individually or as a whole), but which does not identify and cannot be used to identify the activity of Customers (individually or as a whole) separately from other Customers;
 - (7) for billing purposes; and
 - (8) to the extent necessary for SDEC to exercise its rights or perform its obligations under this RAO and the Access Agreement.
- (b) Any disclosure by SDEC for the purposes referred to in Section 17.2(a) must only occur:
- (1) on a 'need to know' and confidential basis;
 - (2) solely to persons who, in SDEC's reasonable opinion, require the information to carry out or give effect to the purposes listed in Section 17.2(a); and
 - (3) if SDEC ensures that any person to whom it discloses the Confidential Information of the Access Seeker under this section keeps that Confidential Information confidential.

17.3 **Permitted use and disclosure of Confidential Information by Access Seeker**

- (a) Subject to Section 17.3(b), Confidential Information of SDEC may be used and disclosed by Access Seeker to the extent necessary:
- (1) to use the Facilities and/or Services;
 - (2) to the directors, officers, employees, agents, Third Party Suppliers or professional advisors (each of whom must be under a similar duty of confidentiality);
 - (3) to on-supply the Services to Customers; and
 - (4) to exercise its rights or perform its obligations under this RAO or the Access Agreement.
- (b) Any disclosure by Access Seeker for the purposes referred to in Section 17.3(a) must only occur:
- (1) on a 'need to know' and confidential basis;
 - (2) solely to persons who, in the Access Seeker's reasonable opinion, require the information to carry out or give effect to the purposes listed in Section 17.3(a); and
 - (3) if the Access Seeker ensures that any person to whom it discloses the Confidential Information of SDEC under this section keeps that Confidential Information confidential.

17.4 **Co-operation in the protection of Confidential Information**

Each party agrees to co-operate with the other to protect the confidentiality of the other party's Confidential Information.

17.5 **Unauthorised acts in relation to Confidential Information**

- (a) An unauthorised act in relation to Confidential Information occurs if there is any unauthorised disclosure, use, or access, attempted unauthorised disclosure, use or access, or loss of such Confidential Information.
- (b) If a Receiving Party becomes aware of any unauthorised disclosure, use, or access, attempted unauthorised disclosure, use or access, or loss in relation to a Disclosing Party's Confidential Information ("**Unauthorised Act**"), it must:
- (1) notify the Disclosing Party as soon as it becomes aware of such Unauthorised Act;
 - (2) promptly provide the Disclosing Party with full details of, and assist the Disclosing Party in investigating, that Unauthorised Act;
 - (3) co-operate with the Disclosing Party in any investigation or litigation against third parties deemed necessary by the Disclosing Party to protect its rights in its Confidential Information; and
 - (4) use its reasonable endeavours to prevent a recurrence of that Unauthorised Act.

17.6 Remedies

Each party acknowledges that:

- (a) the Disclosing Party, its Group Members, or Personnel may suffer financial and other Loss if any Unauthorised Act occurs in relation to Confidential Information, and that monetary damages would be an insufficient remedy; and
- (b) in addition to any other remedy available at law or in equity, the Disclosing Party or its Group Members or Personnel are entitled to injunctive relief to prevent a breach of, and to compel specific performance of, this Section 17.

17.7 No warranty

Each party acknowledges and agrees that except where expressly contemplated by this RAO or the Access Agreement, no warranty is given by the Disclosing Party that the Confidential Information is or will be correct.

17.8 Return of Confidential Information on demand

On demand by the Disclosing Party, the Receiving Party must return, destroy or delete the Disclosing Party's Confidential Information within fourteen (14) days (or such other period that is mutually agreed) except to the extent it is impracticable to do so, or necessary to comply with the Receiving Party's internal governance processes, or any applicable Law.

17.9 Application to other parts of this RAO

The rights arising under this Section 17 do not exclude or limit any other rights of either party, including rights to use Intellectual Property Rights in accordance with this RAO.

18 SDEC and Access Seeker Data

- (a) Each party must provide the other party with all data or information required to:
 - (1) in the case of SDEC, supply and/or maintain the Facilities and/or Services or to perform its obligations under this RAO and the Access Agreement ("**Access Seeker Data**"); and
 - (2) in the case of the Access Seeker, to receive the Facilities and/or Services and perform its obligations under this RAO and the Access Agreement ("**SDEC Data**").
- (b) Each party represents and warrants that:
 - (1) it holds all necessary legal rights, title, consents and authority to provide the other party with SDEC Data and Access Seeker Data (as applicable) and authorises the other party to use such data in accordance with Section 18(d);
 - (2) all consents and authorisations are freely given, informed and in accordance with the Privacy Laws;
 - (3) its supply of the SDEC Data and Access Seeker Data (as applicable) will not infringe the Intellectual Property Rights of any person;
 - (4) the SDEC Data and Access Seeker Data (as applicable) is complete, accurate, up to date and not misleading at the time it is provided; and
 - (5) it will supply SDEC with all information to correct and update the SDEC Data and Access Seeker Data (as applicable) from time to time and each party authorises the other to apply those corrections and updates.
- (c) The Access Seeker acknowledges that the quality of the Facilities and/or Services relies on the Access Seeker Data it provides and SDEC will not be liable for any Loss arising from failure or delay by the Access Seeker in providing the Access Seeker Data or for any inaccuracy, omission or other defect in the Access Seeker Data.

- (d) Where permitted by Law:
- (1) SDEC grants the Access Seeker and its Related Corporations a non-exclusive, non-transferable, royalty-free licence to use the SDEC Data to the limited extent necessary to receive the Facilities and/or Services and to fulfil its obligations under this RAO and the Access Agreement; and
 - (2) the Access Seeker grants SDEC and its Related Corporations a non-exclusive, perpetual, irrevocable, transferable, royalty-free licence to use and sub-licence the Access Seeker Data to supply the Facilities and/or Services to the Access Seeker and to others, to otherwise fulfil SDEC's obligations under this RAO and the Access Agreement, to validate and enhance the Services, and for any other lawful purpose or for any purpose expressly authorised by the Access Seeker.

19 Intellectual Property Rights

19.1 Acknowledgement of ownership

- (a) Nothing in the Access Agreement operates to transfer or assign ownership of Intellectual Property Rights.
- (b) All Intellectual Property Rights in any information, data, products or services prepared or supplied by either party for use in connection with this RAO and the Access Agreement shall remain the sole property of the contributing party.

19.2 Licence to SDEC Material

SDEC grants to the Access Seeker a revocable, non-exclusive, royalty-free, non-transferable, worldwide licence for the Term to:

- (a) use, reproduce, communicate (but only to the extent permitted in this RAO for marketing purposes), adapt or exploit the Intellectual Property Rights in any SDEC Material that is embodied in the Facilities and/or Services; and
- (b) use, reproduce and communicate any other SDEC Material that is provided to the Access Seeker by SDEC,

solely to the extent required for the Access Seeker to perform its obligations and exercise its rights under this RAO and the Access Agreement, including:

- (c) to use the Facilities and provide the Facilities on to its Customers; and
- (d) to develop and connect its Equipment and Network to the Network operated by SDEC,

subject at all times to any relevant third party licences (and where such third party licences apply, SDEC must do all things reasonably necessary to procure from the third party a sufficient licence to comply with the terms of this section). The licence granted in this Section 19.2 includes the right of disclosure to Third Party Suppliers, and use by appropriate Third Party Suppliers, engaged by the Access Seeker provided such disclosure or use complies with the applicable terms of this RAO and the Access Agreement.

19.3 Licence to Access Seeker Material

The Access Seeker grants to SDEC and its Related Corporations an irrevocable, non-exclusive, royalty free, non-transferable licence to reproduce, communicate and adapt Access Seeker Material internally by any SDEC Group Member to the extent necessary for any SDEC Group Member to supply the Facilities and/or Services to the Access Seeker and to undertake any activities that are ancillary to the supply of Facilities and/or Services to the Access Seeker, subject at all times to any relevant third party licences (and where such third party licences apply, the Access Seeker must do all things reasonably necessary to procure from the third party a sufficient licence to comply with the terms of this section).

Infringement claim process

- (a) Each party (“**Infringement Notifying Party**”) must promptly notify the other party (“**Infringement Receiving Party**”) if any claim or demand is made or brought against the Infringement Receiving Party for infringement of any Intellectual Property Rights which affects the provision, receipt or use of the Facilities and/or Services.
- (b) The Infringement Receiving Party shall, at its own expense, conduct any litigation arising from such claim or demand and all negotiations in connection with such claim or demand and the Infringement Notifying Party agrees that the Infringement Receiving Party shall have exclusive control of any such litigation and such negotiations. The Infringement Receiving Party will not enter into a settlement or compromise or otherwise admit liability on behalf of the Infringement Notifying Party without the Infringement Notifying Party’s prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).
- (c) Where SDEC is the Infringement Receiving Party, and a claim or demand is made or an action brought to which Section 19.4(a) may apply, or if in the reasonable opinion of SDEC such a claim or demand may be brought, then SDEC may either:
 - (1) modify or substitute any or all of the Services affected without materially reducing or altering the performance and functionality of the Services; or
 - (2) procure a licence for the Access Seeker to use the Intellectual Property Rights which are infringing or alleged to be infringing.
- (d) Where SDEC is the Infringement Receiving Party, SDEC may suspend the Facilities and/or Services for the purpose of carrying out a modification or substitution in accordance with Section 19.4(c)(1) without liability to the Access Seeker, provided SDEC uses reasonable efforts to minimise the length of any suspension.

20 Data Security Requirements

20.1 Data security

- (a) Each party must:
 - (1) apply reasonable security standards and other appropriate measures in respect of data or other information obtained from the other party (including Confidential Information and Personal Data) having regard to the nature of the data or information and the party’s obligations under applicable Law (including the Privacy Laws);
 - (2) ensure that whenever it collects, stores, uses or discloses any of the information referred to in Section 20.1(a)(1) to third parties by any means inside or outside Malaysia that the other party ensures compliance at all times with the provisions and obligations contained in all applicable Laws (including the Privacy Laws), including but not limited to the *Personal Data Protection Act 2010*, its subsidiary legislation and associated *Personal Data Protection Code of Practice* as amended from time to time; and
 - (3) must not allow any person inside or outside of Malaysia to access any such data or information except in compliance with those data security standards and all applicable Laws (including the Privacy Laws).
- (b) Each party must, on request from the other party, provide the other party with an outline of their then current safety and security procedures and safeguards implemented in accordance with Section 20.1(a) with respect to the security of Access Seeker Data and SDEC Data (as applicable).

20.2 **Protection of online systems**

Each party must not, and must ensure that no:

- (a) Group Member; and
- (b) Personnel of any Group Member,

intentionally accesses any software, systems, data, Facilities or Network of the other party that are not related to the Services without the prior written consent of the other party.

21 **Marketing**

- (a) Each party must:
 - (1) comply with any brand guidelines or directions notified by the other party from time to time in respect of the other party's Logos; and
 - (2) not use the other party's Logos on any marketing materials or other materials, except in a manner which has been specifically approved in writing by the other party in advance.
- (b) In its marketing or promotional efforts, the Access Seeker must not make any claims or representations to Customers or the general public regarding the Facilities, including but not limited to download speeds, network capabilities, coverage or any part of the Facilities and/or Services, except to the extent such claims or representations are consistent with information set out in technical specifications publicly available on the SDEC Website or otherwise set out in this RAO and the Access Agreement.

PART F – FINANCIAL MANAGEMENT

22 Billing and Settlement

22.1 Fees

- (a) In consideration for the provision of the Facilities and/or Services, the Access Seeker agrees to pay SDEC the Fees and any other fees, charges and expenses payable by the Access Seeker to SDEC under this RAO or the Access Agreement.
- (b) The Fees for the supply of the Facilities and/or Services are set out in Schedule 1.
- (c) Unless otherwise agreed between the parties, the Access Seeker will be responsible for all of its own costs associated with integration of the Access Seeker's Network and any other facilities or Equipment to the SDEC's Network, Facilities and/or Services. Further, the Access Seeker shall be responsible for and will bear the cost for any assessment rates, charges and/or tax imposed by any local authority / local council / Government Agency on the Access Seeker's Infrastructure and Equipment including but not limited to cabin.

22.2 Invoices

- (a) SDEC shall use its best endeavours to issue to the Access Seeker an Invoice in writing or in electronic form (as requested by the Access Seeker) within one (1) month of the end of each Billing Cycle in accordance with Section 22.2(c) for amounts due in respect of the supply of the Facilities and/or Services during the relevant Billing Period.
- (b) Unless otherwise agreed by SDEC and the Access Seeker in the Access Agreement, SDEC shall specify all Invoices in Ringgit Malaysia and payment shall be made by the Access Seeker in Ringgit Malaysia.
- (c) SDEC shall issue Invoices in accordance with the Billing Cycles specified in the Service Specific Obligations, except where a different Billing Cycle is agreed with the Access Seeker in an Access Agreement.
- (d) SDEC must make available, with each Invoice, such information as may be reasonably necessary for the Access Seeker to verify rates and charges contained in an Invoice.
- (e) An Operator must provide to other 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.
- (f) SDEC 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 a monthly tranches.
- (g) If an Operator discovers an error in an Invoice, it must promptly notify the other Operator. The Operator which made the error must make the necessary adjustments to correct that error within one (1) month of notification.

22.3 Payment

- (a) Subject to Section 22.3(d), Access Seeker must pay each Invoice within one (1) month from the date of receipt of an Invoice. In the event the Access Seeker fails to make payment of any amount due by the due date, SDEC shall have the right to make a call or demand or utilise the Security for payment of the amounts due to SDEC.
- (b) Access Seeker is allowed to pay an Invoice by bank cheque or electronic funds transfer directly to an account nominated by SDEC. All payments must be accompanied by such information which is reasonably required by SDEC to properly allocate payments received, failing which SDEC shall have the absolute discretion to allocate payments received to any amounts due and payable.

- (c) Unless otherwise agreed by SDEC and the Access Seeker in the Access Agreement, SDEC 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).
- (d) SDEC shall allow the Access Seeker to withhold payment of any amount disputed in good faith by the Access Seeker if:
 - (1) the Access Seeker notifies SDEC within fifteen (15) Business Days from the date of receipt of the Invoice of such dispute (or such other period of time agreed by SDEC and the Access Seeker in the Access Agreement); and
 - (2) the Access Seeker's notification specifies the information referred to in section 6(d) of Schedule 2.

22.4 **Taxes**

- (a) The Fees stated in the Invoices are exclusive of Taxes. Where applicable, the Access Seeker will bear and be liable for all Taxes applied in respect of the provision of the Facilities and/or Services or in connection with this RAO and the Access Agreement and SDEC shall be entitled to impose and collect Taxes from the Access Seeker and remit Taxes to the Tax Authority in accordance with the relevant Law where applicable.
- (b) Should any payment made to SDEC by the Access Seeker be subject to withholding tax, then such payment shall be grossed up such that SDEC shall receive the full amount without deduction of any withholding tax.
- (c) The Access Seeker shall support SDEC in obtaining any tax exemptions and tax relief achievable in connection with the performance of the Access Agreement, if any, and shall give all such other assistance as may be reasonably required to avoid or redeem any withholding tax.
- (d) The Access Seeker shall indemnify and keep SDEC indemnified against any liability, claim, suit, penalty, fines, impost, loss, fee, cost (including cost on a solicitor and client basis) and expense whatsoever, so incurred and/or suffered by SDEC, as a result of non-payment of Taxes.

22.5 **Billing Disputes**

SDEC shall allow the Access Seeker to dispute any amount in an Invoice if the Access Seeker notifies SDEC within thirty (30) Business Days after the date of receipt of such invoice, provided that, in any case specified above, the Access Seeker's notification specifies the information referred to in Schedule 2.

22.6 **Late payments**

Except for any amount in an Invoice being disputed by the Access Seeker in good faith in accordance with section 22.5, SDEC may charge interest on any amount outstanding from the Access Seeker from time to time, in respect of that overdue sum for the period beginning on its due date and ending on the date of the receipt of the overdue sum by SDEC. The interest that may be charged by SDEC shall be at the rate of two percent (2%) per annum above Malayan Banking Berhad's base rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than two (2) months will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad's base rate calculated from the due date until the date of receipt by SDEC of full payment. For clarification, SDEC shall not charge interest on an amount which is disputed by the Access Seeker in good faith.

22.7 **Backbilling**

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

22.8 **Provisional billing**

Where SDEC is unable to issue an Invoice within one (1) month after the end of the Billing Cycle in accordance with Section 22.2, it may issue an Invoice to the Access Seeker for a provisional amount, based on the last Invoice (“**Provisional Invoice**”). In such circumstances, SDEC may invoice the Access Seeker for a provisional amount for a period of not more than three (3) successive Billing Cycles, provided that the total provisional amount is no more than the average of the three (3) most recent Invoices. Where there have not been three (3) past Invoices for access to the Services, SDEC may issue a Provisional Invoice up to the full value of the amount based on the most recent Invoice.

22.9 **Adjustment Period**

Where a Provisional Invoice is issued by SDEC, within the next two (2) months or such other time period as may be agreed in the Access Agreement (“**Adjustment Period**”), SDEC 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 SDEC. If the actual amount for a particular Billing Period is lower than the provisional amount for the Billing Period, then SDEC will reimburse in full such difference (free of interest) within one (1) month from the receipt of the actual Invoice to the Access Seeker.

23 **Creditworthiness**

23.1 **Request for Creditworthiness Information**

- (a) If:
- (1) SDEC reasonably believes that the Access Seeker may not be able to meet any liabilities that may arise under this RAO or the Access Agreement (including the obligation to pay the Fees);
 - (2) If the Creditworthiness Information sought is limited to information which is publicly available (on this basis, SDEC may request the Access Seeker to warrant that such information is accurate); and
 - (3) To the extent commensurate with a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the minimum period of access to the Facilities and/or Services in an Access Agreement,

SDEC may request that the Access Seeker provide to SDEC any Creditworthiness Information reasonably requested by SDEC.

- (b) If SDEC makes a request for Creditworthiness Information in accordance with this Section 23.1, the Access Seeker agrees to promptly provide the Creditworthiness Information requested by SDEC, and warrants that any Creditworthiness Information provided to SDEC is accurate and complete as at the date it is provided to SDEC.

24 **Financial Security**

24.1 **Minimum Financial Security**

The Access Seeker must provide SDEC with the Minimum Financial Security within thirty (30) days of entering into the Access Agreement.

24.2 **Varying the Minimum Financial Security**

- (a) SDEC may vary the amount and/or the type of Minimum Financial Security once each Contract Year by providing the Access Seeker with written notice.

- (b) If SDEC amends the Minimum Financial Security in accordance with this Section 24.2, then unless otherwise agreed by the parties in writing:
 - (1) the amended Minimum Financial Security must not exceed an amount equivalent to the average of the three (3) most recent Invoices; and
 - (2) the Access Seeker must provide that amended Minimum Financial Security within thirty (30) Business Days of receiving written notice under Section 24.2(a).

24.3 **Request for Additional Financial Security from Access Seeker**

- (a) At any time during the Term of the Access Agreement, SDEC may issue a notice to the Access Seeker requiring the Access Seeker to provide a reasonable form of Additional Financial Security.
- (b) SDEC shall not impose any security requirements on the Access Seeker unless SDEC determines, acting reasonably, that the Access Seeker presents a credit risk and that imposing the security requirement will materially reduce or remove that risk.
- (c) SDEC shall ensure that the amount and type of any security requirements to be imposed on the Access Seeker are consistent with SDEC's then-current security policy and is commensurate with:
 - (1) a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over:
 - (A) for Facilities and/or Services with a minimum period of access, the minimum period of access to those Facilities; and
 - (B) for Facilities and/or Services without a minimum period of access, a single Billing Period for those Facilities and/or Services,in an Access Agreement,
 - (2) the creditworthiness of the Access Seeker (including prior record of payment by the Access Seeker); and
 - (3) security previously reasonably required by SDEC.
- (d) SDEC must not impose a security requirement on the Access Seeker which:
 - (1) 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 SDEC to the Access Seeker; or
 - (2) is designed to, or has the effect of, denying or delaying the Access Seeker's access to Facilities and/or Services.
- (e) If SDEC issues the Access Seeker with a request for a financial security in accordance with this section the Access Seeker must provide that financial security within thirty (30) Business Days of the request, unless the parties agree otherwise in writing.
- (f) SDEC may request additional or substitute security from the Access Seeker if the Access Seeker is making a new Access Request under and pursuant to this RAO.

PART G – RISK MANAGEMENT

25 Representations and Warranties

25.1 Mutual warranties

Each party represents and warrants to the other that:

- (a) it has the capacity and authority to enter into and perform the Access Agreement;
- (b) the Access Agreement has been executed by a duly authorised representative of that party;
- (c) the making of and performance of the Access Agreement does not conflict with any existing obligations of that party;
- (d) once duly signed the Access Agreement will constitute legal, valid and binding obligations; and
- (e) it will perform its obligations under the Access Agreement in accordance with all applicable Laws.

25.2 Access Seeker Warranties

The Access Seeker warrants and represents to SDEC that:

- (a) it has in place, and that it will maintain for the duration of the Term, all licences, authorisations, registrations, consents and approvals required by applicable Law to:
 - (1) operate as a mobile communications provider in Malaysia; and
 - (2) provide telecommunication services to its Customers;
- (b) there are no actions, suits or proceedings pending or, to the Access Seeker's knowledge, threatened against or affecting the Access Seeker or any of its Group Members before any court or administrative body or arbitral tribunal that might have a material effect on the ability of the Access Seeker to perform its obligations under this RAO and the Access Agreement; and
- (c) it is not suffering an Insolvency Event.

25.3 No other warranties

- (a) Except as expressly provided in this RAO or the Access Agreement, no representation, guarantee, warranty or condition, express or implied, statutory or otherwise, as to condition, quality, performance or fitness for purpose or otherwise is given by either party or by any related body corporate of either party and all such representations, warranties and conditions are excluded except to the extent that their exclusion is prohibited by law.
- (b) Without limiting Section 25.3(a), the Access Seeker acknowledges that SDEC gives no representation or any express or implied warranty in respect of the:
 - (1) condition, state of repair, quality, fitness for purpose or merchantability of the SDEC's Network, Facilities and Services; or
 - (2) speed, accuracy or suitability of the Facilities and/or Services, other than the express warranties provided in this RAO.

26 Liability

26.1 General principle

Save to the extent that another provision of this RAO or the Access Agreement expressly provides for (or expressly excludes or limits) a remedy, a liability or a form of compensation in relation to an act, omission or event, this Section 26 and Section 27 will regulate the liability (whether arising in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach or

any other cause) of a party to the other party under and in relation to this RAO and in relation to an act, omission or event relating to or arising out of this RAO, the Access Agreement or the provision of the Facilities and/or Services.

26.2 **Limitation of liability**

To the extent permitted by law and subject to Sections 26.3, 26.4, and 26.6, the aggregate liability of a party (“**Respondent**”) to the other party in respect of all Claims arising under or in connection with this RAO, the Access Agreement or the provision of the Facilities and/or Services, whether in contract, tort (including negligence), or otherwise, in any Contract Year, is limited to the amount set out in the Access Agreement, such that the Respondent’s liability for a Claim, determined at the time the relevant Claim is to be paid, will not exceed the amount referred to in the Access Agreement less all amounts paid for all other Claims arising in the relevant Contract Year at that time.

26.3 **Liability for Service Failures**

To the maximum extent permitted by law and subject to Sections 26.4 and 26.6:

- (a) the Access Seeker’s sole and exclusive remedy for any failure to meet a Service Level will be the applicable Service Credit; and
- (b) in no event will SDEC be liable to pay Service Credits in excess of the Service Credit Cap as set out in the Access Agreement.

26.4 **Consequential Loss**

To the maximum extent permitted by law and subject to Section 26.6, each party excludes all liability whether in contract, tort (including negligence) or otherwise, for any Consequential Loss arising out of or in connection with this RAO, the Access Agreement or the provision of the Facilities and/or Services.

26.5 **No liability for hacking and malicious code**

To the maximum extent permitted by law and subject to section 26.6, SDEC shall not be liable for damage to property due to hacking and the transmission of malicious codes and/or programs by third parties (other than its Personnel).

26.6 **Exclusions from limitations**

Sections 26.1, 26.3, and 26.4 do not apply to, and neither party excludes or limits any of the following kinds of Loss:

- (a) any liability for death or personal injury of any person caused by any negligent act or omission or wilful misconduct;
- (b) any liability for fraudulent misrepresentation;
- (c) the Access Seeker’s liability to pay any undisputed Fees;
- (d) any liability arising from or in connection with a breach of Section 19 (Confidentiality); and
- (e) any liability arising from a breach of the indemnities in Sections 27.1 and 27.3; and
- (f) any liability arising from or in respect of the electricity supply (including but not limited to any outage and/or disruption).

26.7 **Acknowledgement**

The parties agree that the limitations and exclusions set out in this section are reasonable having regard to all the relevant circumstances, and the levels of risk associated with each party’s obligations under this RAO and the Access Agreement.

26.8 **Duty to mitigate**

- (a) Each party must take all reasonable steps to mitigate its Loss arising in relation to any Claim.

- (b) Each party's liability under the Access Agreement for any Loss suffered by the other party will be reduced to the extent that the Loss was caused or contributed to by:
 - (1) a failure by the other party or its Personnel to comply with the terms of this RAO or the Access Agreement; or
 - (2) the negligent acts or omissions of the other party or its Personnel.

26.9 Third party rights and exclusions

- (a) Except where an indemnity, promise or obligation is expressly stated to be for the benefit of a third party or a Group Member, no person (including an employee or a downstream Access Seeker) other than SDEC or the Access Seeker has or is intended to have any right, power or remedy or derives or is intended to derive any benefit under this RAO or the Access Agreement.
- (b) The Access Seeker agrees that any Claim in connection with this RAO, the Access Agreement or the Facilities and/or Services must be brought under the Access Agreement by the Access Seeker. The Access Seeker acknowledges and agrees that SDEC has no obligation with respect to any Customer and that no Customer can bring a claim against SDEC.
- (c) Subject to Section 27, SDEC will not be liable to the Access Seeker or any third party including a Customer and does not indemnify the Access Seeker for any Claim brought or made by a third party against the Access Seeker, howsoever arising, including:
 - (1) the lack of or loss of interruption or any delays to access, interconnection, transmission or otherwise; and
 - (2) any Claims brought or made against SDEC by any person (including a Customer and other Access Seekers) pursuant to a contractual relationship with the Access Seeker.

27 Indemnities

27.1 Mutual Indemnities

Each party (**Indemnifying Party**) indemnifies the other party, and each of that other party's Group Member and Personnel (the **Indemnified Party**), in respect of any Claim or Loss which an Indemnified Party pays, suffers, incurs or is liable for in connection with:

- (a) any breach of Section 17 (Confidentiality);
- (b) any breach of Section 25.2 (Access Seeker Warranties);
- (c) any breach of Section 33.2 (Anti-Bribery and Anti-Money Laundering);
- (d) any fraud or wilful misconduct by the Indemnifying Party or its Personnel;
- (e) personal injury (including sickness or death) to the extent caused by an act or omission of the Indemnifying Party or its Personnel in relation to this RAO; and
- (f) loss of, damage to, or loss of use of, any tangible property to the extent caused by an act or omission of the Indemnified Party or its Personnel in relation to this RAO,

except to the limited extent that the loss or liability is directly attributable to the act or omission of an Indemnified Party.

27.2 Capped indemnities

Subject to sections 26.2 and 26.4, the Indemnifying Party indemnifies the Indemnified Party against all Losses arising out of or in connection with:

- (a) any infringement of a third party's Intellectual Property Rights in connection with the use of any Intellectual Property Rights in any Material licensed under this RAO or the Access Agreement (except where that use is other than in accordance with the terms of this RAO or the Access Agreement); and

- (b) any breach by the Indemnifying Party of Section 20 (Data Security Requirements).

The parties acknowledge and agrees that the indemnity in Section 27.2(a) will represent the sole and exclusive remedy and form of compensation available to the Indemnified Party in relation to infringement of a third party's Intellectual Property Rights in connection with the use of any Intellectual Property Rights in any Material licensed under this RAO or the Access Agreement.

27.3 **Indemnity for downstream claims**

Access Seeker agrees to indemnify SDEC, and each SDEC Group Member and their Personnel, in respect of any Claim or Loss which each SDEC Group Member and their Personnel pays, suffers, incurs or is liable for in connection with a Customer.

28 **Insurance Requirements**

28.1 **General**

Each party must:

- (a) ensure that the Required Insurances are effected with insurers which are rated not less than A by Standard & Poor's (or an equivalent rating agency) and cover all risks which are reasonable and prudent in accordance with good business practice;
- (b) provide certificates of currency for the Required Insurances upon execution of the Access Agreement, and on each twelve (12) month anniversary of the Commencement Date (or at such other times as agreed between the parties in writing);
- (c) pay any excess or deductible under the Required Insurances; and
- (d) not do or allow anything to be done which would prejudice or otherwise cause the Required Insurances to be terminated.

28.2 **Required insurance**

Each party must effect and maintain at all times during the Term, and at their own cost, the following insurance policies:

- (a) worker's compensation, social security, employer's liability insurance and insurance within statutory limits as required by applicable Law in respect of its employees employed in connection with the work covered by this RAO and the Access Agreement; and
- (b) comprehensive general liability insurance of Ringgit Malaysia Twenty Million (RM20,000,000.00) in the aggregate for any one claim or series of claims arising out of an accident or occurrence in connection with this RAO and the Access Agreement,

(together, the "**Required Insurance**").

PART H – AGREEMENT MANAGEMENT

29 Term

- 29.1 SDEC 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 ("**Term**").
- 29.2 Unless otherwise agreed by SDEC and the Access Seeker in an Access Agreement, and subject to the Access Provider not being able to provide access as a result of Force Majeure, SDEC shall only require the Access Seeker to acquire access to individual Facilities and/or Services under the Access Agreement for a minimum period as follows ("**Minimum Service Term**"):

Facilities and/or Services	Minimum Term
Network Facilities Access	Three (3) years
Transmission Services	Twelve (12) months or Twenty-four (24) months (at SDEC's discretion)

Upon expiry of the relevant Minimum Service Term, an Access Seeker can terminate the Access Agreement at any time without penalty for early termination, provided that the Access Seeker provides three (3) months' notice to SDEC.

30 Termination

30.1 **Termination by SDEC**

Subject to section 30.6, SDEC may terminate the Access Agreement, whether in whole or in part (for example, only to the extent relating to a particular Facility and/or Service or at a particular site) by providing notice to the Access Seeker if:

- (a) SDEC or the Access Seeker is no longer licensed under the Act;
- (b) the Access Seeker has materially breached the Access Agreement (which without limitation includes a breach of sections 13, 14, 17, 19 - 19.3 and 20.1(a), of this RAO), SDEC 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 a notification;
- (c) the Access Seeker has become subject to an Insolvency Event or an Insolvency Event has occurred in respect of the Access Seeker; or
- (d) a Force Majeure has continued for a period of more than three (3) months.

SDEC 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. For clarification, a notice to be given under this Section 30.1 is in addition to the notice required under Section 30.6.

30.2 **Termination by the Access Seeker**

Subject to section 30.6, 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 and/or Service or at a particular site) by providing notice to the Access Seeker if:

- (a) SDEC is no longer licensed under the Act;
- (b) SDEC has materially breached the Access Agreement (which without limitation includes a breach of sections 13, 14, 17, 19.1 – 19.3 and 20.1(a) of this RAO), the Access Seeker has notified SDEC that it will terminate in no less than one (1) month if SDEC has not remedied its breach by

the end of that period and SDEC has failed to remedy its breach in accordance with such a notification;

- (c) SDEC has become subject to an Insolvency Event or an Insolvency Event has occurred in respect of SDEC; or
- (d) a Force Majeure has continued for a period of more than three (3) months.

30.3 **Termination due to a change in Law**

Where continued operation of the Access Agreement or access to any or all of the Network, Facilities and/or services provided under it is or will be unlawful (as a result of a legislative change), the Access Seeker and SDEC 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 SDEC on different terms and conditions that comply with the relevant law as changed (and which terms and conditions 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.

30.4 **Suspension by SDEC**

Subject to Section 30.6, SDEC may suspend access to any Facilities and/or the Services whether in whole or in part, in the following circumstances:

- (a) the Access Seeker's facilities materially and adversely affect the normal operation of the SDEC'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 SDEC, its employees or contractors;
- (c) the Access Seeker's facilities cause material, physical or technical harm to any facilities of SDEC or any other person;
- (d) where the Access Seeker has failed to pay Invoices in accordance with Section 22 and has failed to rectify such non-compliance within thirty (30) days of receiving notice from SDEC (and subject to any right that the Access Seeker has under Section 22 to dispute any amount in an Invoice);
- (e) where the Access Seeker has failed to provide any new security amount as required under section 24;
- (f) where Force Majeure applies; or

the Access Seeker breaches any applicable Law which has a material and adverse effect on SDEC or the provision by SDEC of Facilities and/or Services under this RAO or the Access Agreement. For the purpose of this section 30.4, SDEC must provide the Access Seeker with five (5) Business Days' notice, including reasons, prior to suspending access to any Facilities and/or Services. SDEC 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. For clarification, a notice to be given under this Section 30.4 is in addition to the notice required under Section 30.6.

30.5 **Suspension by either Party**

- (a) If at any time during the term of this Agreement:
 - (1) the requisite approvals for the installation of the Equipment or the continuous use of the SDEC Infrastructure on a given Site cannot be obtained or are otherwise restricted in any way (whether temporarily or otherwise) either by law, order, ordinance or regulation applicable in Malaysia;
 - (2) any building, structure or works of any nature or kind whatsoever are erected in the vicinity of the SDEC Infrastructure (for the provision of the Facilities and/or Services) which screen, shield, or interfere with the signals transmitted or received by the Access Seeker's Equipment;

- (3) the SDEC Infrastructure (for the provision of the Facilities and/or Services) or any part thereof shall become unsafe or unfit for occupation or use from any cause other than the act or default of the Access Seeker;
- (4) the SDEC Infrastructure (for the provision of the Facilities and/or Services) or any part thereof shall be wholly or partially destroyed or damaged so as to become unfit for occupation or use by fire, storm, water, tempest, earthquake, insects, theft, burglary, explosion, riots, civil commotion, enemy action or other inevitable cause and beyond the control of the Parties;
- (5) the registered owner or landlord of any of the Sites, require the Site for his/her/its own use and occupation and decides to terminate the rental of the same;
- (6) the government requires SDEC to dismantle any of the SDEC Infrastructure (for the provision of the Facilities and/or Services) on any of the Sites,

then notwithstanding the provisions herein, and if the unfitness for the occupation and use shall continue for a period of more than seven (7) days then either of the Parties shall be at liberty by giving seven (7) days' notice in writing to the other Party (except for sub-section 31.5(a)(5) aforementioned a thirty (30) days' notice in writing shall be given) to determine the term in respect of the use of the Facilities and/or Services on the relevant Site, created under this RAO and/or Access Agreement hereby created and upon such notice being given, such term hereby created shall absolutely cease and determine and the Access Seeker shall be entitled to any advanced payments paid under the RAO and/or Access Agreement.

- (b) SDEC may notwithstanding anything contained herein gives the Access Seeker within fourteen (14) days from the date of occurrence of any of the circumstances under Section 30.5(a)(1) – (6) above ("**Notice Period**"), a notice stating whether:
 - (A) it intends to rebuild or reinstate the SDEC Infrastructure (as part of the provision of the Facilities and/or Services) and/or Site or any part thereof, the cost of which shall be borne by SDEC; or
 - (B) it does not intend to rebuild or reinstate the SDEC Infrastructure (as part of the provision of the Facilities and/or Services) and/or Site or any part thereof.

In such cases and in respect of the relevant Site, the monthly Fee or a fair and just proportion thereof according to the nature and extent of the damage sustained shall be suspended and cease to be payable from the date on which the SDEC Infrastructure (as part of the provision of the Facilities and/or Service) and/or Site or any part thereof shall be wholly or partially unsafe or unfit for occupation until the SDEC Infrastructure (as part of the provision of the Facilities and/or Services) and/or Site shall have been given rendered fit for habitation and use or termination of the Site, whichever earlier.

- (c) The Access Seeker shall have the right to determine the term for the usage of the SDEC Infrastructure (as part of the provision of the Facilities and/or Service) of the relevant Site without any penalty or termination charges by giving written notice to SDEC at any time after the expiry of the Notice Period but prior to the delivery of the fully rebuilt and reinstated SDEC Infrastructure (as part of the provision of the Facilities and/or Services) and/or Site by SDEC.
- (d) If SDEC does not intend to rebuild or reinstate the SDEC Infrastructure (as part of the provision of the Facilities and/or Services) and/or Site, the term of the usage of the SDEC Infrastructure for the relevant Site shall be determined, without penalty or termination charges, on the date stated in the written notice provided under Section 30.5(b).
- (e) Any such termination as aforesaid shall be without prejudice to the rights of either Party in respect of any antecedent breach, matter or thing.

30.6 **Notice prior to termination or suspension**

- (a) Prior to terminating, suspending or seeking to materially vary the Access Agreement (including any part thereof) or access to any Facilities and/or the Services under it, SDEC must notify the Commission in writing of the action SDEC proposes to take and the reasons why it considers such action is appropriate. The Commission may invite any affected Access Seeker to make submissions to the Commission regarding the proposed termination, suspension or material variation. SDEC:

- (1) shall only give effect to the proposed termination, suspension or material variation with the Commission's written consent and subject to any time delay or conditions which the Commission may specify (if any). The Commission will endeavour to respond to SDEC's notice within ten (10) Business Days or such other period that the Commission considers is reasonable;
 - (2) must not give effect to the proposed termination, suspension or material variation unless SDEC has received written consent from Commission to such termination, suspension or material variation; and
 - (3) shall take all steps practicable to minimise disruptions and inconvenience to the Customers of the Access Seeker, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the suspension or termination of the Access Agreement, or access to Facilities and/or Services provided under it.
- (b) If the parties to the Access Agreement adopt the terms and conditions specified in an access undertaking that has been registered with the Commission in accordance with the Act, the parties must notify the Commission within five (5) Business Days of such adoption. In such circumstances, the terms and conditions of the Access Agreement will continue in force for the remainder of the Term of the Access Agreement, even if the access undertaking is withdrawn or expires prior to the expiry of the Term.

30.7 **Consequences of termination**

Upon termination or expiry of the Access Agreement (in whole or in part, for example, only to the extent relating to a particular Facility or Service, or at a particular Site), for whatever reason:

- (a) the Access Seeker must:
- (1) immediately cease using all of the Facilities and/or Services (where the Access Agreement is terminated) or the relevant Facility and/or Services (where the Access Agreement is partially terminated in respect of the particular Facility and/or Service provided at the relevant Site(s));
 - (2) comply with any reasonable directions given by SDEC;
 - (3) return or destroy (at SDEC's election) all Confidential Information and other property of SDEC (unless otherwise advised by SDEC); and
 - (4) in the case of termination under sections 30.1(b), 30.1(c), 30.3 and 33.3 (where the Access Seeker is the Defaulting Party) only, within twenty (20) Business Days of receiving written demand from SDEC, pay to SDEC in immediately available funds an amount equal to the Fees that would have been payable for the Facilities and/or Services throughout the remainder of the Minimum Service Term; and
- (b) SDEC must:
- (1) 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 Service Term (as described in Section 29.2) provided that:
 - (i) such charges must be reduced to reflect any cost savings to SDEC from not having to supply the Facilities and/or Services to the extent that they have been terminated or suspended; and
 - (ii) SDEC must use reasonable endeavours to mitigate its costs of termination or suspension and maximise cost savings under Section 30.7(b)(1)(B)(i);
 - (2) subject to the Access Seeker complying with Clause 30.7(a), SDEC 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;

- (3) 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 SDEC have been paid; and
 - (4) 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 SDEC as at the date of termination.
- (c) In the event the Access Agreement is terminated due to a Force Majeure event, neither Party shall have any further liability to the other, except for liabilities that accrued prior to the effective date of termination.

Termination or expiry of the Access Agreement, in whole or in part, does not operate as a waiver of any breach by an Operator of any of its provisions and is without prejudice to any rights, liabilities or obligations of any Operator which have accrued up to the date of the termination or expiry, including a right of indemnity.

31 Changes to the Access Agreement and other documents

31.1 Application of this section

The parties acknowledge and agree that this Section 31 applies subject to other provisions in this RAO relating to the change of services.

31.2 Changes to the Access Agreement

Any change to the Access Agreement must:

- (a) be agreed in writing and executed by both parties; or
- (b) be permitted under this Section 31.

31.3 Changes required by Law

SDEC may by mutual agreement change the Access Agreement by providing the Access Seeker with written notice if that change is:

- (a) necessary to comply with any applicable Law or reasonably necessary or otherwise desirable to comply with or respond to a regulatory event;
- (b) in response to a direction or determination made by the Minister relating to the subject matter of the Access Agreement;
- (c) if the Commission issues a direction or determination relating to subject matter of the Access Agreement;
- (d) if the Act is amended in relation to the subject matter of the Access Agreement; or
- (e) if a condition of SDEC's licence is amended or deleted or a new condition is imposed in relation to the subject matter of the Access Agreement.

31.4 Changes to this RAO

- (a) If SDEC proposes to amend this RAO, SDEC must, no less than thirty (30) Business Days before SDEC proposes to effect the changes, provide a copy of the amended RAO showing the proposed changes to the existing RAO, to:
 - (1) All Access Seeker(s) who are being provided with access to Facilities and/or Services under the existing RAO; and
 - (2) all Access Seeker(s) who have requested access to Facilities and/or Services under the existing RAO within the period of three (3) months prior to the making of such amendments, excluding any such Access Seeker who has since indicated that it does not wish to proceed with its Access Request.

For clarification:

- (3) Nothing in Section 31.4 prevents an Access Seeker from initiating a dispute in relation to an amendment to a RAO made by SDEC under this subsection;
 - (4) Where the term and conditions of an Access Agreement are not identical to those in the existing RAO, an amendment to the RAO will not alter the terms of that Access Agreement except as agreed between the Access Provider and Access Seeker; and
 - (5) Without prejudice to an Access Seeker's right to dispute a change to a RAO, where the terms and conditions of an Access Agreement are identical to those in the existing RAO, an amendment to the RAO will be deemed to alter the relevant terms and conditions of that Access Agreement upon the expiry of third (30) Business Days referred to in Section 31.4(a). However, if the Access Seeker disputes the change to the existing RAO within such thirty (30) Business Day period, no amendments to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favour of SDEC.
- (b) Upon expiry of the thirty (30) Business Days in Section 31.4(a) (or such longer period as SDEC determines is necessary to finalise the amendments to its RAO), SDEC will:
- (1) make available the amended RAO on SDEC's publicly available website without delay (including updating its date and version number, both on the cover and on each page of the document); and
 - (2) provide the updated RAO to the Commission within ten (10) Business Days after being made available under Section 31.4(b)(1).

32 Force Majeure

- 32.1 Neither party will be responsible for the performance of any obligation under this RAO or the Access Agreement (except the obligation to pay any Fees) to the extent that the performance of such obligation is prevented by a Force Majeure event.
- 32.2 The party claiming relief due to an event of Force Majeure must promptly notify the other party in writing of the nature and extent of the circumstances giving rise to the Force Majeure event, and must use its best endeavours to mitigate the effect of the Force Majeure event and to carry out its obligations under this RAO or the Access Agreement in any other way that is practicable in the circumstances.

33 Anti-Bribery and Anti-Money Laundering

- 33.1 Each party shall observe and comply with all applicable anti-bribery and anti-money laundering laws and shall ensure that its directors, employees, representatives, agents and sub-contractors do not violate any applicable anti-bribery or any anti-money laundering laws.
- 33.2 Neither party shall, under any circumstances and whether directly or through a third party:
- (a) give, agree to give, promise, offer or authorise the giving, the entry into any agreement to give, promise, offer or payment of, any gratification or financial or other advantage:
 - (1) to any person who is a director, employee or representative of any of the other party's Group Members or acting on its behalf; or
 - (2) to any family member of such director, employee or representative of any other party's group members,as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to this RAO or the Access Agreement, or showing or forbearing to show favour or disfavour to any person in relation to this RAO or the Access Agreement; or
 - (b) do or carry out any acts in furtherance of a gift, letter to give, offer, payment, promise to pay or authorisation referred to in Section 33.2(a).

33.3 A party (Defaulting Party) that becomes aware of a failure to comply with Section 33.1 and Section 33.2 must immediately notify the other party (Non-Defaulting Party), in which case, the Non-Defaulting Party will be entitled to immediately terminate the Access Agreement by providing written notice to the Defaulting Party and shall not be liable for any loss or damage or other costs or expenses of any kind whatsoever that the Defaulting Party may suffer as a result of such termination.

34 Disputes

Each party must comply with the Dispute Resolution Procedures in the event a Dispute arises.

35 Notice

35.1 Form of Notice

A notice, demand, consent or other communication to a party under this RAO or the Access Agreement (but excluding notices to the Commission) ("**Notice**") must be:

- (a) in writing and in English;
- (b) signed by the sending party or a person duly authorised by the sending party; and
- (c) addressed and delivered to that party in accordance with the details nominated in the Access Agreement (or any alternative details nominated to the sending party by Notice).

35.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.
- (c) However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By pre-paid post to the nominated address	At 9.00am (addressee's time) on the second Business Day after the date of posting.
By email to the nominated email address	When the email (including any attachment) is transmitted to the recipient party or a person acting on its behalf (unless the sender receives a delivery failure notification indication that the email has not been delivered to the addressee).

35.3 Notice must not be given by electronic communication

A Notice must not be given by any electronic means of communication (other than email as permitted in Section 35.2).

36 General terms

36.1 Assignment and novation

Neither party may assign or novate its rights and obligations under this RAO or the Access Agreement without the other party's prior written consent (such consent not to be unreasonably withheld or delayed).

36.2 Duty, costs and expenses in entering into the Access Agreement

Each party shall bear its own costs and expenses (including legal fees) in relation to the preparation, negotiation and execution of the Access Agreement to which they are parties. All Duty payable on or in connection with the Access Agreement and any instrument executed under the Access Agreement (if any) shall be borne by the Access Seeker.

36.3 Invalidity and enforceability

- (a) If any provision of this RAO or the Access Agreement is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Section 36.3(a) does not apply where enforcement of the provision of this RAO or the Access Agreement in accordance with section 36.3(a) would materially affect the nature or effect of the parties' obligations under this RAO or the Access Agreement.

36.4 Entire RAO

This RAO states all the express terms upon which SDEC is willing to offer and the Access Seeker willing to accept in respect of the provision of the Facilities and/or Services to the Access Seeker. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

36.5 No reliance

Neither party has relied on any statement by the other party not expressly included in this RAO or the Access Agreement.

36.6 Access Agreement binds successors

Each party acknowledges and agrees that the Access Agreement, and each of the obligations imposed on it under the Access Agreement, are binding upon its successors and assigns.

36.7 Waiver

No party to the Access Agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

The meanings of the terms used in this section 36.7 are set out below.

Term	Meaning
conduct	includes delay in the exercise of a right.
right	any right arising under or in connection with this RAO or the Access Agreement and includes the right to rely on this section.
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

36.8 **Further action to be taken at each party's own expense**

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this RAO and the Access Agreement and the transactions contemplated by it.

36.9 **Exercise of rights**

- (a) Unless expressly required by the terms of this RAO or the Access Agreement, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this RAO or the Access Agreement.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with the Access Agreement. Any conditions must be complied with by the party relying on the consent, approval or waiver.

36.10 **Relationship of the parties**

- (a) Nothing in this RAO or the Access Agreement shall be deemed to constitute either party as a partner, an agent or legal representative of the other party, or to create any fiduciary relationship between the parties.
- (b) No party shall have any authority, except as provided for in this RAO, the Access Agreement or as otherwise authorised in writing by the other party, to make any statements, representations or commitments or to take any action which is binding on the other party.

36.11 **Subcontracting**

- (a) SDEC may subcontract to any person (including any SDEC Group Member), the supply of all or part of any Facilities and/or Services or the performance of one or more of its other obligations under the Access Agreement in its discretion and without the prior written consent of the Access Seeker.
- (b) The Access Seeker may only subcontract its obligations under the Access Agreement with the prior written consent of SDEC.
- (c) If the Access Seeker subcontracts any of its obligations under the Access Agreement, subject to Section 36.11(b), the Access Seeker is not relieved of its obligations under the Access Agreement and will be liable for the acts or omissions of its sub-contractors.

36.12 **Counterparts**

The Access Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

36.13 **Applicable laws and jurisdiction**

- (a) This RAO and the Access Agreement will be governed by the laws of Malaysia and each party agrees to comply with all applicable directions issued by the Malaysian regulatory authorities.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Malaysia and courts of appeal from them in respect of any proceedings arising out of or in connection with this RAO. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

Schedule 1

Pricing

A - Infrastructure Sharing

1. The applicable Charges for Infrastructure Sharing shall be commercially negotiated and agreed between the Access Seeker and SDEC in accordance with the Access Agreement.
2. The table below sets out the indicative Fees for Infrastructure Sharing in respect of towers. The final pricing shall be subject to negotiations and mutual agreement between SDEC and the Access Seeker.

Table A: Indicative Tower Fees

Structure Height (Feet)	Monthly Charge (RM/Month)
100	3,750
150	5,170
200	7,150
250	7,600

3. Final Fees and other Infrastructure Sharing Services not listed in Table A shall be subject to negotiations and mutual agreement between SDEC and the Access Seeker.
4. For the purposes of clarification, all other Infrastructure Sharing Services not listed above are negotiated charges.
5. The final Infrastructure Sharing Fees may differ subject to the level, frequency and/or other requirements or services to be included, such as:
 - (a) site maintenance and housekeeping;
 - (b) tower maintenance;
 - (c) physical access to site;
 - (d) site security such as guards for manned station and fencing and pad lock for unmanned station;
 - (e) routine maintenance of access roads; and
 - (f) other costs such as tower permit and quit rent, site survey, equipment installation, provision of space for cabin, outdoor equipment and space required for cable gantry connecting to the tower and generator set, etc..

B - Transmission Service

1. The Fees for the Transmission Services are based on the Commission Determination on the Mandatory Standard on Access Pricing (Determination No.1 of 2023) ("**MSAP Determination**") and will remain applicable until a new MSAP Determination takes effect.
2. Notwithstanding the above, in the event the Access Seeker requires the provision of Transmission Services which require SDEC to incur heavy new investment, SDEC may charge a one (1) time capital contribution or review the rates.

Table A: Trunk Transmission Service

Ringgit Malaysia per month

2025

Within Peninsular Malaysia and within Sabah and Sarawak:

10 Mbps	15
100 Mbps	152
200 Mbps	305
500 Mbps	762
750 Mbps	1,143
1 Gbps	1,524
3 Gbps	4,572
5 Gbps	7,620
6 Gbps	9,145
7 Gbps	10,669
8 Gbps	12,193
9 Gbps	13,717
10 Gbps	15,241
Installation (non-recurring charge)	2,905

Table B: End-to-End Transmission Service

	Ringgit Malaysia per month
	2025
Within Peninsular Malaysia and within Sabah and Sarawak:	
1 Mbps	0
10 Mbps	598
100 Mbps	735
200 Mbps	888
500 Mbps	1,345
750 Mbps	1,726
1 Gbps	2,765
3 Gbps	5,813
5 Gbps	8,861
6 Gbps	10,385
7 Gbps	11,909
8 Gbps	13,433
9 Gbps	14,957
10 Gbps	16,482
Installation (non-recurring charge)	6,971

Table C: Wholesale Local Leased Circuit Service

	Ringgit Malaysia per month
	2025
Up to 1 Mbps	0
From 1 Mbps to 1 Gbps	291
From 1 Gbps to 10 Gbps	620
From 1 Gbps (using Dense Wavelength Division Multiplexing equipment)	675
Installation (non-recurring charge)	3,631

Dispute Resolution Procedures

1 Definitions

In the Dispute Resolution Procedures set out in this Schedule 2:

- (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(d) of this Schedule 2;
- (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(b) of this Schedule 2;
- (d) "**Billing Representative**" means a representative of the party appointed in accordance with the billing procedures set out in Section 6(o) of this Schedule 2;
- (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(a) of this Schedule 2;
- (g) "**Invoiced Party**" has the meaning given to it in Section 6(a) of this Schedule 2;
- (h) "**Invoicing Party**" has the meaning given to it in Section 6(a) of this Schedule 2;
- (i) "**Notice**" means the notice issued of intention to escalate the issue to the Interconnect Steering Group, as specified in Section 4(a) of this Schedule 2; and
- (j) "**Technical Expert**" has the meaning given to it in Section 5(c) of this Schedule 2.

2 Introduction

- (a) Subject to Section 2(b) of this Schedule 2, SDEC and the Access Seeker shall adopt and comply with these Dispute Resolution Procedures in relation to any dispute which may arise between the Access Seeker and SDEC in relation to or in connection with the supply of the Facilities and/or Services ("**Dispute**").
- (b) The following dispute resolution mechanisms are discussed in this section:
 - (1) interconnect steering group; and
 - (2) subject to specific resolution of disputes, being:
 - (A) technical disputes (which must follow the procedure set out in Section 6 of this Schedule 2 if they cannot be resolved through the application of the general dispute resolution provisions in Sections 3, 4 and 5 of this Schedule 2);
 - (B) Billing Disputes (as defined in Section 1 of this Schedule 2), which must follow the procedures set out in Section 7 of this Schedule 2; or
 - (C) 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 Schedule 2, must be referred to the Commission for resolution.
- (c) 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:

- (1) the parties will not reach agreement, or will not reach agreement in a reasonable time;
- (2) the notification of the Dispute is not trivial, frivolous or vexatious; and
- (3) the resolution of the Dispute would promote the objects in the Act.

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

- (d) For clarification, unless stated otherwise, all references to sections, subsections and paragraph in this Schedule 2 are references to sections, subsections and paragraphs of this Schedule 2.

3 General

- (a) A party 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.
- (b) 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.
- (c) During a Dispute and any dispute resolution process invoked in accordance with this Schedule 2, SDEC and the Access Seeker must continue to fulfil their obligations under the Access Agreement between them.
- (d) Subject to Section 3(e) of this Schedule 2, the parties to a Dispute shall exchange information of a type described in this RAO during the course of, and to facilitate, resolution of the Dispute.
- (e) 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.
- (f) A party must not use information obtained under Section 3(d) of this Schedule 2 or described in Section 3(e) above for any purpose other than to resolve the Dispute.
- (g) Subject to Chapter 7 of Part V of the Act (as applicable), an arbitrator of a Dispute (including a Technical Expert or the Commission, in accordance with this Schedule 2) 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.
- (h) 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(g) above of Schedule 2. 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

- (a) In the first instance the Access Seeker and SDEC should attempt to resolve the Dispute between themselves, either party may give a 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.

- (b) SDEC and the Access Seeker shall form the ISG within ten (10) Business Days, to fulfil the requirement of Section 4(a) of this Schedule 2. 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 SDEC.
- (c) The parties shall provide for:
 - (1) Subject areas to be dealt with by the ISG;
 - (2) Equal representation by the Access Seeker and SDEC;
 - (3) Chairmanship and administrative functions of the working group to be shared equally; and
 - (4) Formal notification procedures to the ISG.
- (d) SDEC 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.
- (e) In the event that the parties cannot resolve the Dispute between themselves within the time specified in Section 4(d) of this Schedule 2, or after any agreed time extension has expired, either party may notify the other party that it wishes to refer the issue to:
 - (1) To the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with Section 5 of this Schedule 2); or
 - (2) To the Commission for final arbitration.
- (f) 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(a) of this Schedule 2. 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:
 - (1) to the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with Section 5 of this Schedule 2); or
 - (2) to the Commission for final arbitration.

5 Use of a Technical Expert

- (a) A Dispute will only be referred to a Technical Expert if the provisions of Section 4 of this Schedule 2 have been complied with.
- (b) Once a Dispute is referred to a Technical Expert, it may not be referred back to a working group or ISG.
- (c) The person to whom a technical dispute may be referred under this Section 5:
 - (1) will be an expert appointed by agreement of the parties or, if the parties cannot agree, by the Commission;
 - (2) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communications industry;
 - (3) need not be a Malaysian citizen or resident; and
 - (4) will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interest,

("Technical Expert").
- (d) 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.

- (e) When relying on the services of a Technical Expert, the following dispute resolution procedures will apply to the Technical Expert:
 - (1) 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
 - (2) 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. No further submissions in reply shall be made except with the Technical Expert's approval.
- (f) 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.
- (g) Should a Technical Expert hearing be held, each party will have the opportunity of making an oral submission in addition to the written submission submitted in Section 5(e) and 5(f) of this Schedule 2. This process will be conducted in private.
- (h) 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.
- (i) The Technical Expert will not have the power to appoint any other experts.
- (j) 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.
- (k) Every Dispute referred to a Technical Expert will be considered separately so that time limits for each Dispute are complied with.
- (l) The Technical Expert's decision will be binding on the parties (in the absence of manifest error of fact or law).
- (m) For the avoidance of doubt, a Dispute shall not be referred to the Commission once it has been referred to a Technical Expert. The Technical Expert shall be the one determining the Dispute.

6 Billing Dispute resolution

- (a) As outlined in the billing provisions of this RAO at Section 22, 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.
- (b) An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if:
 - (1) In the case of domestic calls and interconnection, the Invoiced Party notifies the Invoicing Party within thirty (30) Business Days after the date of receipt of such invoice;
 - (2) In the case of outgoing and incoming international calls and interconnection, the Invoiced Party notifies the Invoicing Party within six (6) months after the date of receipt of such Invoice; or
 - (3) 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(d) of this Schedule 2.

- (c) 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:
- (1) the Invoicing Party's Billing System is, or has been, defective or inaccurate in respect of the recording of the calls or capacity which are the subject of the Dispute;
 - (2) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Party's Billing System;
 - (3) there is, or has been, a fraud perpetrated by the Invoicing Party; or
 - (4) the Invoicing Party has made some other error in respect of the recording of the usage capacity or calculation of the charges which are the subject of the Billing Dispute.
- (d) A Billing Dispute Notice given under this Section 6 must specify:
- (1) the reasons for which the Invoice is disputed;
 - (2) the amount in dispute;
 - (3) details required to identify the relevant Invoice and charges in dispute including:
 - (A) the account number;
 - (B) the Invoice reference number;
 - (C) the Invoice date;
 - (D) the Invoice amount; and
 - (E) billing verification information; and
 - (4) evidence in the form of a report, indicating the relevant traffic data which is in dispute.
- (e) The Invoiced Party may withhold payment of amounts disputed in good faith in accordance with Section 22.3(d) of this 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 22.6 of this RAO on the amount payable.
- (f) 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 22.6 of this 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.
- (g) The parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this Section 6.
- (h) 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.
- (i) 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.
- (j) Once the negotiation period under section 6(h) of this Schedule 2 (including any extension agreed) and any suspension period under section 6(i) of this Schedule 2 have expired, the Billing

Dispute may be referred by the Invoiced Party to the procedure described in Section 6(k) of this Schedule 2 (Billing Dispute Escalation Procedure).

- (k) The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this Section 6(k) by notifying the Invoicing Party's Billing Representative. 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 the Access Agreement. 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 within sixty (60) Business Days of the Billing Dispute Notice. 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.
- (l) 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.
- (m) 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 Schedule 2 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.
- (n) 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:
 - (1) the scope of the joint investigation;
 - (2) how the joint investigation will be conducted; and
 - (3) 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.
- (o) 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.
- (p) Either party may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- (q) 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.

Access Request Application Form

I) ACCESS SEEKER'S DETAILS

(a) Name of Company and Company Number:

(b) Registered Address:

(c) Telephone No:

(d) Licenses in possession:

(e) Type(s) of licensed Communications Services provided:

II) ACCESS SEEKER'S NOMINATED PERSONNEL DETAILS

(a) Name of Team Leader *:

(b) Designation :

(c) Telephone No:

(d) E-mail address:

(* Team Leader shall have the authority to make binding representations, concessions and accept proposals on behalf of the Access Seeker subject to the final approval being given by the Board of Directors of the Access Seeker)

III) TECHNICAL DETAILS

- (a) Forecast of Capacity required:
- (b) QoS required:
- (c) Technical Information on Interface Standards:
- (d) Network and functionality of Services:

IV) TYPES OF SERVICES

- (a) Services and expected Ready For Service Date:

V) CREDITWORTHINESS

- (a) Audited Accounts (provided that it predates no more than 3 months from this Access Request Form);
- (b) Letter of good standing from Licensed Financial Institution in Malaysia; and/or
- (c) Other documents.

VI) INSURANCE

The types of insurance currently maintained:

- (a) Types of insurance:
- (b) Names of insurer:
- (c) Reference Nos:
- (d) Interests insured:
- (e) Parties insured:
- (f) Amount insured:
- (g) Period of validity:

VII) SECURITY REQUIREMENTS

Types of security offered:

- (a) Cash:
- (b) Bond:
- (c) Bank Guarantee:

VIII) ACCEPTANCE OR REJECTION OF STANDARD RAO TERMS

Please select one:

- We accept provision of access by SDEC to the Facilities and Services described in Part D of the SDEC RAO in accordance with the terms and conditions in the RAO.

- We wish to negotiate an Access Agreement.

Dated this day of 20

Yours faithfully,

Name:

NRIC No.:

Designation:

Company stamp.

Schedule 4

Confidentiality Agreement

This Agreement is made on _____ (“**Effective Date**”) by and between:

PARTIES:

1. Sarawak Digital Economy Corporation Berhad (Company Registration No. 201801003190 (1265203-A)), a company incorporated in Malaysia and has its registered address at Tingkat 18, Wisma Bapa Malaysia, Petra Jaya, 93502 Kuching, Sarawak (“**SDEC**”)
2. _____ (Company Registration No. _____), a company incorporated in Malaysia and has its registered address at _____

 (“**Access Seeker**”)

SDEC and the Access Seeker shall for the purpose of this Agreement be referred to individually as a “**Party**” and collectively the “**Parties**” as the context may require.

1. PREAMBLE AND DEFINITIONS

- 1.1. SDEC and the Access Seeker intend to engage in discussions for the exchange of business and/or technical information relating to the Proposed Engagement (as hereinafter defined). Accordingly, it may be necessary for either Party and/or its representatives to disclose to the other Party, certain confidential and proprietary information.
- 1.2. In this Agreement, the following words will, unless the context otherwise requires, have the following meanings:

“Agreement” means this agreement as amended from time to time.

1.3. “Confidential Information” means all information of a confidential or proprietary nature in connection with the Proposed Engagement in whatever form that is or has been disclosed by or on behalf of one Party to the other Party whether or not marked as confidential which includes but is not limited to the discussions between SDEC and the Access Seeker, correspondence, minutes, contracts, tenders, technical drawings, schematics, samples, working/ testing instructions, products, services, sales, performances, plans, strategies, customers, financial or human resources, processes, management, contracts, project documentation, software, hardware, technical data, trade secrets, know-how, ideas and inventions (whether patentable or not), which is disclosed by or on behalf of one Party to the other in any manner, whether orally, visually or in tangible form (including, without limitation, hardcopy documents, devices and computer readable media). For the avoidance of doubt, Confidential Information also includes (a) all information that relates to a current, former or prospective customer; and (b) Personal data as defined under the Malaysian Personal Data Protection Act 2010 (or other applicable Privacy Law) that is in the possession of the disclosing or receiving Party.

“Parties” means the contracting parties to this Agreement and a “Party” means either of the Parties.

“Proposed Engagement” means assessing an Access Request and negotiating the terms of the Access Agreement as contemplated by the Reference Access Offer.

“Recipients” means, in relation to a Party, its directors, officers, employees and professional advisers who need to receive and consider the Confidential Information for the purposes of the Proposed Engagement.
- 1.4. Capitalised words used but not defined in this Agreement have the meaning given to them in the Reference Access Offer published by SDEC on its website.
- 1.5. References to a person include any company, limited liability partnership, partnership, business trust or unincorporated association (whether or not having a separate legal personality) and references to a company shall include any company, corporation or any body corporate, wherever incorporated.
- 1.6. Whenever the words “include”, “includes”, “including”, “in particular” or “such as” are used, they are deemed to be followed by the words “without limitation”.

- 1.7. References to one gender includes all genders and references to the singular include the plural and vice versa.

2. CONFIDENTIALITY OBLIGATIONS

- 2.1. Subject to Clause 3, each Party undertakes to the other Party that in respect of Confidential Information of the other Party, it will:
- (i) treat the Confidential Information as confidential;
 - (ii) not disclose, copy, reproduce, distribute or supply the Confidential Information to any person or third party (including, for the avoidance of doubt, subcontractors of the respective Party) other than its Recipients on a need-to-know basis to the extent necessary in performing their obligations in connection with the Proposed Engagement; and
 - (iii) not directly or indirectly use or permit or cause to be used the Confidential Information for any purpose other than in relation to the Proposed Engagement.
- 2.2. Subject to Clause 3, neither Party will disclose to any person: (i) the existence or content of this Agreement; (ii) the fact that negotiations are taking place between the Parties relating to the Proposed Engagement; or (iii) any content of the negotiations; except with the prior written consent of the other Party.
- 2.3. Each Party will not without the prior written consent of the other Party: (i) disclose the details of their relationship with the other Party; (ii) engage in any advertising, marketing or promotion that discloses the existence of this Agreement or the relationship between the Parties; or (iii) use names, brands, logos, service or trademarks of the other Party.
- 2.4. Each Party will not discuss the Proposed Engagement with, or provide access to any Confidential Information to, any persons or third parties (including to the other Party's employees, directors, officers, professional advisors or subcontractors) who have not been identified by the other Party in writing as participating in the Proposed Engagement.

3. EXCEPTIONS

- 3.1. Neither Party shall be liable for disclosure or use of any Confidential Information that it can demonstrate:
- (i) was disclosed with the prior written consent of the other Party;
 - (ii) is in the public domain other than as a result of being disclosed in breach of this Agreement;
 - (iii) was lawfully known to it or in its possession before the date of this Agreement and that Party was not under any obligation of confidence in respect of the Confidential Information at that time;
 - (iv) is developed independently by it without use or reliance on any Confidential Information disclosed by or on behalf of the disclosing Party; and
 - (v) was received from a source not connected with the other Party at a time when that source, so far as the receiving Party was reasonably aware, was not under any obligation of confidence in respect of the Confidential Information.
- 3.2. A Party may disclose Confidential Information if and to the extent that it is required to do so by law or by any court or regulatory agency or authority, provided that, to the extent that it is permitted to do so, the disclosing Party:
- (i) notifies the other Party as soon as possible upon becoming aware of any such requirements; and
 - (ii) co-operates with the other Party (at the other Party's reasonable expense) to avoid or limit the content and extent of disclosure and to gain assurances as to confidentiality from the body to whom the information is to be disclosed.
- 3.3. A Party and any of its Recipients receiving from the other Party any other information of a confidential nature which is not in relation to the Proposed Engagement ("**Non-Related Confidential Information**") for the

purposes of this clause) shall notify the other Party and shall not be liable for inadvertent disclosure of such Non-Related Confidential Information provided that:

- (i) it uses the same degree of care in safeguarding such Non-Related Confidential Information as it reasonably uses for its own confidential information;
- (ii) it will return or destroy such Non-Related Confidential Information as requested by the other Party; and
- (iii) upon discovery of such inadvertent disclosure or use, it will endeavour to prevent any further inadvertent disclosure or use.

3.4. Notwithstanding anything in this Agreement, SDEC may disclose the contents of this Agreement and related Confidential Information:

- (i) to its shareholder;
- (ii) the Commission;
- (iii) any state government agencies;
- (iv) the State Financial Secretary of Sarawak; and
- (v) to its third-party service providers provided that such service providers are subject to confidentiality obligations in favour of SDEC equivalent to those in this Agreement.

4. RETURNING CONFIDENTIAL INFORMATION

4.1. Subject to Clause 4.2 and immediately following the earlier of: (i) the end of either Party's involvement with the Proposed Engagement; or (ii) receipt of a written request from the disclosing Party, the receiving Party will:

- (i) at the election of the disclosing Party, return to the disclosing Party or destroy all documents and materials (including computer media) or such parts thereof that contain or reflect any Confidential Information together with any copies which are in the receiving Party's possession or control or are in the possession or control of any of its Recipients, provided that such information is in a form which is capable of delivery or destruction; and
- (ii) permanently erase all Confidential Information from any computer, word processor, mobile telecommunications device or similar device into which it was programmed or copied by or on behalf of that Party or by or on behalf of its Recipients.

4.2. Each Party may retain: (i) one copy of the Confidential Information for the purposes of and for so long as required by any law, court or regulatory agency or authority or its internal compliance procedures; and (ii) electronic files containing Confidential Information created pursuant to automatic archiving and back-up procedures.

4.3. Each Party acknowledges that neither the destruction, return nor deletion of any Confidential Information will release it from the obligations contained in this Agreement.

4.4. This Agreement shall not obligate either Party to enter into any other definitive agreement with each other in relation to the Proposed Engagement.

5. REPRESENTATIONS

5.1. Each Party will be responsible for making its own decisions in relation to the Confidential Information and acknowledges that neither the other Party nor any of its Recipients make any representation, warranty or undertaking, express or implied, as to the accuracy, reliability, completeness or reasonableness of the Confidential Information.

5.2. Each Party understands that the furnishing of the Confidential Information will not constitute an offer of any nature whatsoever by any Party or Recipient, nor form the basis of any representation in relation to any

contract. It is acknowledged by the Parties that this Agreement does not obligate either Party to enter into any further agreement or to proceed with or participate in any transaction or refrain from entering into any agreement or negotiations with any Party or constitute a commitment or any other obligation by either Party with respect to the Proposed Engagement or any related transaction.

6. INTELLECTUAL PROPERTY

- 6.1. A Party and its Recipient shall not remove any confidential/proprietary rights legend from materials disclosing or embodying Confidential Information. A disclosing Party retains all rights in its Confidential Information. No license or conveyance of intellectual property right or any other right is granted to a Party or its Recipients or implied by the disclosure of the Confidential Information to a Party or its Recipients. The Parties acknowledge that the Confidential Information (including any intellectual property rights) disclosed shall remain the property of the owner or to the disclosing Party and no warranty as to its accuracy is given by the disclosing Party to the other Party or its Recipients.

7. GENERAL

- 7.1. Term. The obligations contained in this Agreement shall survive any termination of discussions between the Parties and shall continue for a period of two (2) years thereafter.
- 7.2. Entire Agreement. This Agreement together with any documents referred to in it constitutes the entire agreement (and supersedes any previous written or oral agreement) between the Parties relating to the subject matter of this Agreement.
- 7.3. Notices. Any notices or communications required or permitted to be given under this Agreement may be delivered by hand, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other Party first indicated above (or such other addressee as may be furnished by the Party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (i) in the case of personal delivery or electronic mail, on the date of such delivery, (ii) in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch and (iii) in the case of mailing, on the seventh business day following such mailing.
- 7.4. Variation. This Agreement may not be varied or amended unless such variation or amendment has been expressly agreed to in writing by the parties.
- 7.5. Severability. If any provision of this Agreement shall be held illegal, invalid or unenforceable, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired in any way.
- 7.6. Indemnity. Without prejudice to any other rights or remedies the disclosing Party may have in this Agreement or at law, the receiving Party hereby indemnifies disclosing Party against all losses, damages, costs and expenses, which disclosing Party and/or its related entities may incur or sustain by reason of any breach by receiving Party of the terms and conditions of this Agreement.
- 7.7. Waiver. A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.
- 7.8. Relief. The rights and remedies provided by this Agreement are cumulative and are not exclusive of any rights or remedies provided by law. Each Party acknowledges that a right to damages at law may be inadequate to protect the other Party against any breach by them or by their Recipients of this Agreement. Without prejudice to any other rights and remedies otherwise available, each Party agrees that the other Party may seek injunctive relief against any breach of this Agreement and the Party against whom such injunctive relief is sought agrees not to oppose the granting of injunctive relief in favour of the other Party on the grounds of failure to prove actual damage.
- 7.9. No implied relationship. Nothing contained or implied in this Agreement creates a joint venture or partnership between the Parties or makes one Party the agent of legal representative of the other Party for any purpose.

- 7.10. Bribery, Corruption, Fraudulent Acts and Inducement. Each Party agrees and undertakes that it and its Recipients:
- (i) shall comply with all ABAC Laws. For the purpose of this Agreement, "ABAC Laws" means laws and regulations relating to bribery and corruption including local laws such as the Malaysian Anti-Corruption Commission Act 2009, and foreign laws such as the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act 1977;
 - (ii) shall not, directly or indirectly give, make, offer or receive or agree to make or receive any payments, contributions, gifts, entertainment or other advantages for the purposes of obtaining or retaining business, of which a reasonable person would consider to be unethical, illegal or improper;
 - (iii) shall not, offer, promise or pay a public official, either directly or through a third party, for the corrupt purpose of influencing any act or decision of any public official, inducing any public official to act in violation of a lawful duty, or inducing any public official to influence any act or decision of any governmental authority, to retain or direct business to, or obtain an advantage for any person, whether or not for the purpose of this Proposed Engagement; and
 - (iv) shall comply with each Party's anti-corruption and antibribery policy and procedures as may be amended from time to time in the course of performing and/or carrying out its obligations under and/or in connection with this Agreement.
- 7.11. Costs and Expenses. Each Party is to bear its own costs and expenses (if any) incurred in performing its obligations under this Agreement. The stamping costs of this Agreement (where applicable) shall be shared equally between the Parties.
- 7.12. Governing Law. This Agreement is governed by the laws of Malaysia. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration administered by the Asian International Arbitration Centre ("**AIAC**") in accordance with the AIAC Fast Track Arbitration Rules. In this regard, the seat of arbitration shall be Kuala Lumpur, Malaysia; the tribunal shall consist of one (1) arbitrator; and the language of the arbitration shall be English. Any decision by the arbitral tribunal shall be final and binding on the Parties.

(The rest of this page is intentionally left blank)

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

SIGNED by)
)
for and on behalf of)
Sarawak Digital Economy Corporation Berhad)
(Company Registration No. 201801003190 (1265203-A)))
in the presence of:-)

SIGNED by)
)
for and on behalf of)
_____)
(Company Registration No. _____))
in the presence of:-)