



# Access Reference Document (ARD)

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## Introduction

1. This Access Reference Document (ARD) is prepared pursuant to the Malaysian Communications and Multimedia Commission Determination on Access List (Determination No. 1 of 2005 as amended by the Variation to Commission Determination on Access List [Determination No. 1 of 2009]) and Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005 as amended by the Variation to the Commission Determination on the Mandatory Standard on Access [Determination No. 2 of 2009]).
2. This Access Reference Document (ARD) is prepared by Clear-Comm Sdn. Bhd. (411704-A) a company incorporated under the laws of Malaysia and having its principal place of business at 15 A-B-C, Jalan Anggerik Vanilla P31/P, Kota Kemuning, 40460 Shah Alam, Selangor D. E., Malaysia.
3. Clear-Comm Sdn Bhd (Clear-Comm) is a licensed service provider under the Communications and Multimedia Act 1998 (Act), having Network Facilities Provider (NFP) Individual License, Network Services Provider (NSP) Individual License and also Application Service Provider (ASP) Class License.
4. This ARD is not an offer to enter into a legally binding agreement. This ARD sets out the minimum terms and conditions on which Clear-Comm is prepared to provide Access Service to an Access Seeker. If the Access Seeker wishes to obtain Access Service from Clear-Comm, the Access Seeker is subjected to negotiate and enter into an access agreement with Clear-Comm. The terms and conditions of the Access Agreement may differ from this ARD but shall include the minimum terms and conditions stated in the Standard.
5. Clear-Comm may amend an ARD according to any Variation of the Standard, and will, within ten (10) Business Days of those amendments being made, provide a copy of the amendments, or an amended copy of the relevant ARD, to:
  - (a) all Access Seekers who are being provided with access to Facilities and Services under Clear-Comm's ARD; and
  - (b) all Access Seekers who have requested an ARD within the period ninety (90) days prior to the making of such amendments, unless an Access Seeker has already indicated that it does not wish to proceed with an Access Request.
6. If the Commission revokes, varies or replaces the Access List in accordance with section 56 of the Act, Clear-Comm may, by giving written notice to all Access Seekers to whom it is supplying Access Service, withdraw or replace this ARD with effect from a date no earlier than the effective date of the Commission's revocation, variation or replacement.
7. This ARD will be published at our website [www.clearcomm.com.my](http://www.clearcomm.com.my). Upon receiving written request from Access Seeker, Clear-Comm will provide a copy of the ARD via email / post.

8. For further information, enquiry or clarification related to this ARD, you may contact Clear-Comm at the following :

Clear-Comm Sdn. Bhd. (411704-A)  
15 A-B-C, Jalan Anggerik Vanilla P31/P, Kota Kemuning,  
40460 Shah Alam, Selangor D. E., Malaysia.  
Tel : 03-5124 6868 Fax : 03-5124 6863

## SECTION 1 : INTERPRETATION

Any term used in this ARD shall, unless expressly defined or if the context otherwise requires, have the same meaning as in the Act or the regulations made under it. Unless the context otherwise requires:

- (a) the singular includes the plural and vice versa; and
- (b) a reference to a section or clause is a reference to a section or clause of the Standard and a reference to a paragraph is a reference to a paragraph of the Standard; and
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, reenactments or replacements of any of them; and
- (d) the word person includes a firm, body corporate, unincorporated association or an authority; and
- (e) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by notation), and assigns; and
- (f) all monetary amounts are expressed in Ringgit Malaysia; and
- (g) if the day on which the payment of money or the performance of an obligation falls due is not a Business Day, the due date or performance date shall be deemed to be the next Business Day; and
- (h) a reference to a third person is a reference to a person who is not the Access Provider or the Access Seeker; and

A definition in the Act shall prevail over a definition in this ARD to the extent of any inconsistency.

“Access Provider” means :

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

“Access Seeker” means a network facilities provider, 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 Facilities and/or Services;

“Access Agreement” means an agreement entered into between Operators whereby the Access Provider provides access to an Access Seeker in accordance with the terms contained in such agreement and which shall be registered with the Commission in accordance with the Act;

“Access List” means the list of Facilities and Services determined by the Commission under Chapter 3 of Part VI of the Act.

“Access Reference Document” or “ARD” means a document of terms and conditions, as described in subsection 5.3.2 of the Standard;

“Access Request” means a request for access made by an Access Seeker under subsection 5.4 of the Standard and containing the information contained in subsection 5.4.6 of the Standard;

“Access Service Provider” means the Operator to whose Network a line is directly connected and over which Services are supplied, and a person who is an Access Service Provider may also be a Gaining Service Provider or a Releasing Service Provider.

“BGR” or “Border Gateway Router” means a router designed for the interconnection of two autonomous systems;

“Billing Period” means the period over which the supply of access to network services or Facilities is measured for the purposes of billing as contemplated in subsection 5.9.3, which shall be no more than thirty-one (31) days and in accordance with the relevant calendar month, unless otherwise agreed between the parties;

“Business Day” means a day other than a Saturday and Sunday or in states where Friday is observed as the weekly holiday, Thursday and Friday or a day which is lawfully observed as a national public holiday on the same day around Malaysia;

“Confidentiality Agreement” means the Non-Disclosure Agreement (NDA) as per the Annexure B.

“Confidential Information” means 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 relevant Operator (as the case may be) but does not include:

- (a) information which is or becomes part of the public domain (other than through any breach of an Access Agreement); or
- (b) information rightfully received by another person from a third person without a duty of confidentiality being owed by the other person to the third person, except where the other person 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 first mentioned person; or
- (c) information which has been independently developed by another person;
- (d) information required by law or the business rules of any stock exchange to be disclosed, provided that:
  - i. the receiving Party, gives twenty-four (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 Operator (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;

“Customer” means in relation to an Operator, a person having a contractual relationship with that Operator for the provision of communications by means of that Operator’s Facilities and/or Services;

“Customer Access Module” means a device that provides a connection (including ring tone and ring current) to customer equipment. Examples include a customer line module of a local switch, remote terminals of a digital line carrier system, a digital subscriber line access multiplexer, a node in a fibre to the node network, and an optical line terminating equipment in a fibre to the premises network;

“Facilities” means network facilities and/or other facilities which facilitate the provision of network services or applications services, including content applications services;

“Disclosure obligations” means those obligations set out in subsection 5.3 of the Standard;

“Dispute Resolution” or “Dispute Resolution Procedures” means the procedures outlined in Annexure A of the Standard;

“Effective Date” means the date on which the Standard comes into effect as specified in Paragraph 2 of this Determination;

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

“Facilities” means network facilities and/or other facilities which facilitates the provision of network services or applications services including content applications services as listed in the Access List Determination;

“Force Majeure” means an event or circumstance beyond the reasonable control of an Operator which affects the Operator’s ability to perform its obligations under the Standard or under an Access Agreement;

“Interconnection Service” means Facilities or Services (including the physical connection between separate networks) to facilitate Any-to-Any Connectivity provided by an Access Provider to an Access Seeker which involves or facilitates the carriage of communications between an end user connected to the network of the Access Provider and a Point of Interconnection;

“Interconnection Link” means a physical link connecting the networks of two Operators;

“Intellectual Property” means 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;

“Invoice” means the invoice for amounts due in respect of the supply of network services or Facilities during a Billing Period as contemplated in subsection 5.14.1 of the Standard;

“IP” or “Internet Protocols” means network-layer (Layer 2) protocol, as defined by the Internet Engineering Task Force, that contains addressing information and some control information that enables packets to be routed;

“MCMCA” means the Malaysian Communications and Multimedia Commission Act 1998, [Act 589];

“MyIX” means the Malaysia Internet Exchange;

“Negotiation obligations” means those obligations set out in subsection 5.4 of the Standard;

“Network” means 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;

“Operator” means a network facilities provider, a network service provider, an applications service provider or a content application service provider (as the context requires) who is an Access Provider or an Access Seeker (as the context requires);

“Order” means the Order which an Access Seeker must give to an Access Provider to obtain access to network services or network facilities, as described in subsection 5.7.2 of the Standard;

“Party” means the Access Seeker or Access Provider, as the context requires;

“POI” or “Point of Interconnection” means any technically feasible point which demarcates the network of an Access Provider and the network of an Access Seeker (collectively referred to as the ‘Interconnecting Networks’) and is the point at which communication is transferred between the Interconnecting Networks. An example of a POI is MyIX; and

“POP” or “Point of Presence” means a point at which an Access Seeker has established itself for the purpose of obtaining access to Facilities and/or Services;

“Rejection Notice” means the notice of rejection made by an Access Provider in response to an Access Seeker’s Forecast as described in subsection 5.6.11 of the Standard;

“Services” means network services and/or other services which facilitate the provision of network services or applications services, including content applications services as listed in the Access List Determination;

“Standard” means this Mandatory Standard on Access (MSA);

## SECTION 2 : LIST OF ACCESS SERVICES

This ARD applies to the following Access Service:

### Internet Interconnect Service

The Internet Interconnection Service is a Facility and/or Service for the carriage of data in digital form between one or more POI at a BGR of an Access Provider's network and the IP addresses directly connected to the Access Provider's network.

Where relevant, the requirements (as per the Standard) set out below shall be applicable to the provision of the Internet Interconnect Service provided by Clear-Comm :

- 2.1 Domestic connectivity: The Internet Interconnection Service is a network service which is intended to establish connectivity between routers of two service providers networks in Malaysia. It is not intended that international connectivity is required to be provided as part of the service.
- 2.2 Route advertising: Clear-Comm must advertise all available IP addresses and its customers through its network facilities. Clear-Comm must also confirm all advertised routes on request by an Access Seeker except routes where Clear-Comm's customers have specifically requested otherwise.
- 2.3 Route plans: Clear-Comm must publish its routing plan and make available such routing plan (and any amendments thereto) to an Access Seeker on request.
- 2.4 Redundancy: Clear-Comm shall establish alternative routing paths in the case of a failure on a particular link or route.
- 2.5 Exclusion: An Access Seeker acknowledges and agrees that:
  - (a) The service is made up of many interconnected networks and that Clear-Comm makes no warranties regarding the reliability and performance of these networks;
  - (b) Clear-Comm has no control whatsoever over the content, accuracy, quality or integrity of the information, data or programs accessed or transmitted via its Network or for loss of messages, information, data or images resulting from delays, non-deliveries or service interruptions;
  - (c) Clear-Comm does not accept any responsibility or liability for any illegal entry to the data, information or computer network including but not limited to "worms" or "viruses" or such other breach of the Access Seeker's or the Access Seeker's Customer computer security or privacy.
- 2.6 The Internet Interconnect Service for MyIX will be interconnected at the available POI within the MyIX Network at no cost between all ISPs in Malaysia. Each ISP will have to bear their own leased line cost to interconnect at the POI and the subscription fees of the required bandwidth shall be made payable to the Persatuan Pengendali Internet Selangor & Wilayah Persekutuan (MyIX).

## 2.7 SECTION 3: GENERAL PRINCIPLES

### 3.1 Principles of Access to Facilities and Services on the Access List

This ARD only applies to the service provided by Clear-Comm as described in Section 1.

#### 3.1.1 In accordance with the Act and subject to exemptions determined by the Minister, Clear-Comm shall provide access on reasonable terms and conditions to the Facilities and Services listed in the Access List to any other:

- (a) network facilities provider;
- (b) network services provider;
- (c) applications services provider; or
- (d) content applications services provider, who makes a written request to the relevant Access Provider for access.

#### 3.1.2 Reasonableness: Clear-Comm may refuse a request if:

- (a) supply of the relevant listed Facilities or Services would not be reasonable (see subsection 3.1.3); or
- (b) supply of the relevant listed network facilities or network services would be reasonable, but the terms and conditions requested by the Access Seeker are not reasonable (see subsection 3.1.4).

#### 3.1.3 Unreasonable request: Although not prescribed by the Act, a request for access to a listed Facilities or Services may not be reasonable if one or more of the criteria in subsection 5.4.8 are satisfied.

#### 3.1.4 Unreasonable terms: 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.

#### 3.1.5 Non-discrimination: As required by subsection 149(2) of the Act, Clear-Comm must provide access to those Facilities or Services specified in the Access List, and such access must be:

- (a) of at least the same or equally favourable technical Standard and quality on Clear-Comm's Facilities or Services ; and
- (b) on an equitable and a non-discriminatory basis.

### 3.2 Access Service Obligation

#### 3.2.1 Clear-Comm shall, supply the Access Service, subject to Section 4.1, to an Access Seeker on a reasonable terms and conditions if requested to do so by An Access Seeker.

#### 3.2.2 Clear-Comm 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 Clear-Comm's ARD, Clear-Comm is willing to provide access in accordance with an ARD; or
- (b) if paragraph 3.2.2(a) above does not apply, Clear-Comm is willing to proceed to negotiate the Access Request; or

- (c) Clear-Comm rejects the Access Request in accordance with subsection 5.4.7;  
or
  - (d) Clear-Comm requires specified additional information to make a decision on the Access Request in accordance with paragraph 3.2.2(a) or paragraph 3.2.2(b), and once that information is received from the Access Seeker, Clear-Comm shall reconsider the Access Request in accordance with this subsection.
- 3.2.3 Clear-Comm shall provide the service on an equitable and non-discriminatory basis. Clear-Comm shall also observe and comply with the Customer Principles as set out below :
- (a) A Customer will be regarded as Clear-Comm Customer when the Customer utilises a Service provided by Clear-Comm.
  - (b) The same person may be a Customer of more than one Operator:
    - i. in respect of the same or different Services provided by different Operators; or
    - ii. because the Customer is directly connected to one Operator's network facilities but utilises Services provided by another Operator.
  - (c) The supply by Clear-Comm to another Operator, which the latter Operator then utilises in providing Services to its Customers, does not mean that those Customers are also Customers of Clear-Comm.
  - (d) For the avoidance of doubt, the Operators acknowledge that each Operator will be responsible for billing its own Customers, unless express agreement to the contrary is made by Clear-Comm and the Access Seeker. An agreement to the contrary may include, without limitation:
    - i. Clear-Comm provides billing on behalf of the Access Seeker; or
    - ii. Clear-Comm provides billing to the Customer of the Access Seeker and making a separate payment to the Access Seeker.

## SECTION 4 : REQUEST FOR ACCESS

### 4.1 Application for Access Service

4.1.1 An Access Seeker may request for Access Service from Clear-Comm in writing and must contain the following information:

- (a) the name and contact details of the Access Seeker;
- (b) the Facilities or Services in respect of which access is sought;
- (c) whether the Access Seeker wishes to accept the ARD or to negotiate an Access Agreement;
- (d) the information (if any) the Access Seeker reasonably requires to provide for the purposes of the negotiations.
- (e) two (2) copies of a confidentiality agreement properly executed by the Access Seeker in the form prescribed in accordance with subsection 5.3.6;
- (f) relevant technical information relating to the interface Standards of the Access Seeker;
- (g) 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 Clear-Comm's Network;
- (h) creditworthiness information in accordance with the requirements, as set out in subsection 5.3.9;
- (i) security in accordance with the security requirements, as set out in subsection 5.3.7;
- (j) insurance information in accordance with the insurance requirements, as set out in subsection 5.3.8; and
- (k) such other information that may reasonably request by Clear-Comm.

4.1.2 Clear-Comm may at its discretion determine on a case by case basis whether to provide the Access Seeker with access to the Access Service set out in this ARD.

## SECTION 5 : DISCLOSURE, NEGOTIATION AND OBLIGATIONS

### 5.1 Scope of Disclosure, Negotiation and Obligation

5.1.1 This section 5 sets out the obligations on where Clear-Comm is required to provide Facilities and/or Services on the Access List under section 149 of the Act.

### 5.2 APPLICABLE OBLIGATIONS

(a) Disclosure Obligations (outlined in subsection 5.3)

(b) Negotiation Obligations (outlined in subsection 5.4)

(c) Content Obligations (outlined in subsections 5.5 to 5.13), which include:

- i. General obligations
- ii. Forecasting obligations;
- iii. Ordering and provisioning obligations;
- iv. Point of Interface procedures;
- v. Billing and settlement obligations
- vi. Operations and maintenance obligations;
- vii. Technical obligations;
- viii. Term, suspension and termination obligations;
- ix. Legal boilerplate obligations.

### 5.3 DISCLOSURE OBLIGATIONS

5.3.1 General duty: Clear-Comm shall, subject to the provisions of this Standard and the terms and conditions of any confidentiality agreement entered into pursuant to subsection 5.3.6, provide, in response to a request in good faith from any other Operator, any information which is reasonably necessary for the negotiation, conclusion and implementation of the provision of access as contemplated in this Standard and in the Act. Clear-Comm may not enter into any contract which would prevent it from making information available to other Operators unless such contract permits Clear-Comm to do so if directed by the Commission.

5.3.2 ARD: Clear-Comm shall prepare and maintain an ARD in relation to Facilities or Services on the Access List Determination which provides to itself or third parties and which:

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

5.3.3 Freedom to negotiate: Without limiting its obligations under the Act, Clear-Comm shall not:

- (a) refuse to negotiate an agreement with an Access Seeker, whether the access sought is based on an Access Reference Document or otherwise; or
- (b) refuse to provide information required under this subsection 5.3 on the basis that the Access Seeker wishes to negotiate an agreement, whether the access sought is based on an ARD or otherwise.

- 5.3.4 Availability: Clear-Comm will ensure that the ARD prepared:
- (a) be in writing (which includes legible electronic format);
  - (b) contain all information required to be included under this subsection 5.3;
  - (c) be accurate;
  - (d) be modular, so that details about the terms and conditions, including the rates, for each of the Facilities and Services are available individually and separately under an ARD;
  - (e) be consistent with:
    - i. the Act;
    - ii. this Standard; and
    - iii. any applicable decision or Determination of the Commission; and
  - (f) be made available to an Access Seeker on request in paper form at Clear-Comm's principal place of business and on a publicly accessible website.
- 5.3.5 Information Disclosure: Clear-Comm will provide any additional information deemed relevant to the Access Server requested to an Access Seeker within ten (10) Business Days of receipt of a written request, should the information not provided for in the ARD. Prior to the provision of information under this subsection 5.3.5, Clear-Comm may request the Access Seeker to enter into a confidentiality agreement in accordance with subsection 5.3.6.
- 5.3.6 Confidentiality Agreement: A confidentiality agreement will be provided by Clear-Comm to an Access Seeker on request, or both:
- (a) shall be reciprocal;
  - (b) shall be no broader than necessary to protect the legitimate commercial interests of the Party disclosing the Confidential Information (the disclosing Party);
  - (c) shall include provisions prohibiting the Party receiving the Confidential Information (the receiving Party) from disclosing information to third parties or using information other than as necessary for the purposes of assessing a request for access;
  - (d) shall not prevent the disclosure of Confidential Information or other information to the Commission by the receiving Party.
- 5.3.7 Security requirements: Clear-Comm shall ensure that the amount and type of any security requirements to be imposed on an Access Seeker in Clear-Comm's security policy is commensurate with:
- (a) an estimate of the value of the access to Facilities and Services to be provided to the Access Seeker over a ninety (90) day period;
  - (b) the creditworthiness of the Access Seeker (including prior record of payment by the Access Seeker); and
  - (c) security previously reasonably required.
- 5.3.8 Insurance requirements: Clear-Comm may requires an Access Seeker to have an insurance in place to the extend that no further than the reasonable insurable interest that the circumstances require and shall not be permitted to require:
- (a) insurance beyond that necessary for worker's compensation, social security, employer's liability insurance and insurance within statutory limits as required by the laws of Malaysia in respect of its employees employed in connection with the work covered by the Access Agreement that may be entered into;

(b) comprehensive general liability insurance in excess of Ringgit Malaysia 20 million for any one claim or series of claims arising out of an accident or occurrence in connection with the Access Agreement that may be entered into.

5.3.9 Creditworthiness information: Clear-Comm may request creditworthiness information from an Access Seeker:

(a) if Clear-Comm reasonably believes that the Access Seeker may not be able to meet any liabilities that may arise under an Access Agreement with the Access Seeker;

(b) if the creditworthiness information sought is limited to information which is publicly available (on the basis that may request the Access Seeker to warrant that such information is accurate); and

(c) to the extent commensurate with an estimate of the value of the access to the Facilities and Services to be provided to the Access Seeker by Clear-Comm over a ninety (90) day period.

#### 5.4 NEGOTIATION OBLIGATIONS

5.4.1 Timing: If an Access Seeker wishes to negotiate an Access Agreement with Clear-Comm:

(a) both parties shall use their best endeavours to conclude the Access Agreement within a hundred and twenty (120) days of a written request to commence negotiations; and

(b) if negotiations are not completed within the hundred and twenty (120) days:

- i. the parties may jointly apply to the Commission for an extension of time to negotiate 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
- ii. either Party may initiate the Dispute Resolution Procedures.

5.4.2 Good faith: An Access Seeker shall co-operate with Clear-Comm, in good faith and in a commercially reasonable manner, in negotiating and implementing the terms of its Access Agreements. This includes avoiding unnecessary disputes and resolving disputes promptly and fairly.

5.4.3 Confidentiality: Either parties, an Access Seeker or Clear-Comm must be protected from disclosure of any Confidential Information provided by one another in the course of negotiating an Access Agreement and during the term of an Access Agreement in accordance with a confidentiality agreement.

5.4.4 Intellectual Property: Clear-Comm shall only use such Intellectual Property and information provided by an Access Seeker for the purposes of providing access to the requested network services or network facilities. Such Intellectual Property or information shall not be used for the development or marketing of other communication services or equipment by its affiliates or third parties.

5.4.5 Provision of application: Clear-Comm may require an Access Seeker to provide an Access Request if:

- (a) there is no agreement in force between that governing access to the Facilities or Services to which the Access Seeker seeks access; or
  - (b) there is such agreement, but:
    - i. the current term of that agreement will expire or terminate within the next four (4) months; or
    - ii. the requested network service or Facilities are outside the scope of that agreement.
- 5.4.6 Negotiation response: Should further negotiation of the Access Request (as described in paragraph 3.2.2(b)) is required by Clear-Comm, a response with the following must be set out:
- (a) a date and time, not later than fifteen (15) Business Days from the date of the Access Seeker's response, at which Clear-Comm's representatives will be available for the initial meeting with representatives of the Access Seeker; and
  - (b) one copy of the executed confidentiality agreement returned by the Access Seeker (in accordance with paragraph 4.1.1(g)) that has also been properly executed by the Clear-Comm.
- 5.4.7 Refusal response: Should Clear-Comm decides to refuse the Access Request, the Access Seeker will be provided with a written response, setting out:
- (a) the grounds in subsection 5.4.8 on which Clear-Comm is relying; and
  - (b) the basis of the decision with sufficient particulars to enable the Access Seeker to make its own assessment about the applicability of the specified grounds of rejection; and
  - (c) a date and time, not later than seven (7) Business Days from the date of the Rejection Notice, at which Clear-Comm representatives will be available to meet with representatives of the Access Seeker for the purpose of discussing the rejection of the Access Request. At this meeting, the Access Seeker may request for its reasons for refusal, and if access has been refused on the basis of the grounds in 5.9.11(d), when would the additional capacity is likely to be available.
- 5.4.8 Grounds for refusal: Without limiting any other grounds that may be relied upon under the Act, Clear-Comm shall not refuse an Access Request, except on the grounds that:
- (a) any facilities or services currently not supply or available to itself or to any third parties, except where the Access Seeker compensates Clear-Comm for the original supply of access to Facilities or Services to the Access Seeker;
  - (b) the Access Seeker has not provided all of the information required to be provided in accordance with subsection 4.1.1;
  - (c) it is not technically feasible to provide access to the Facilities or Services requested by the Access Seeker;
  - (d) Clear-Comm has insufficient capacity or space to provide the requested Services or Facilities; and
  - (e) Clear-Comm has reasonable grounds to believe that the Access Seeker may fail to make timely payment for the requested Facilities or Services;
  - (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 Services;

- (fa) in respect of Full Access Service, Line Sharing Service and Sub-loop Service, save in cases where an Access Agreement has been entered into between Clear-Comm and an Access Seeker, the evidence shows that those premises will be served by a HSBB Network Service (with or without QoS) within 3 years from the date of the request; or
  - (g) there are reasonable grounds for Clear-Comm to refuse access in the national interest.
- 5.4.9 Dispute resolution: If following the meeting between the parties required to be held pursuant to paragraph 5.4.7(c), the parties have been unable to resolve their differences about the validity of the Access Request and the Access Seeker continues to disagree with the rejection of the Access Request by Clear-Comm, either Party may request resolution of the dispute in accordance with the Dispute Resolution Procedures.
- 5.4.10 Initial meeting: Unless otherwise agreed between Clear-Comm and the Access seeker, both parties shall ensure that its representatives meet on the date notified pursuant to paragraph 5.4.6(d) and that such representatives:
- (a) agree a timetable for the negotiations, including milestones and dates for subsequent meetings;
  - (b) agree on negotiating procedures, including:
    - i. calling and chairing meetings;
    - ii. responsibility for keeping minutes of meetings;
    - iii. clearly defined pathways and timetables for escalation within each Party of matters not agreed in meetings;
    - iv. procedures for consulting and including in the negotiating process relevant experts from the staff of each of the Operators; and
    - v. procedures for preparing and exchanging position papers;
  - (c) review the information requested and provided to date and identify information yet to be provided;
  - (d) identify what technical investigations, if any, need to be made and by whom such investigations should be made.
- 5.4.11 Additional matters: If an Access Seeker wishes to apply for access to Facilities or Services that are not covered by an existing Access Agreement, then the application and negotiation provisions set out above may apply to any application for such additional Facilities or Services.
- 5.4.12 Good faith: Clear-Comm shall not:
- (a) refuse to negotiate terms of access not related to price for the reason that the price of access has not been agreed;
  - (b) refuse to negotiate access to Facilities or Services because the Access Seeker has not agreed to acquire access to other Facilities or Services;
  - (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 an 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 it would not otherwise have reached;
- (h) intentionally obstruct or delay negotiations or any dispute resolution process;
- (i) fail to nominate representatives who have sufficient authority and sufficient availability to progress negotiations in a timely and efficient manner; or
- (j) fail to provide information that is necessary to conclude an Access Agreement including, without limitation to the information about the basis of the Determination of charges.

5.4.13 Non-permitted Information: Notwithstanding anything else in this Standard, an Access Seeker is not obligated to provide any of the following information (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;
- (b) details of the functionality of the Access Seeker's proposed service, except to the extent that such functionality may affect the Access Provider'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 in respect of particular Points of Interface;
- (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 subsection 5.3.9; or
- (g) details of any other supply arrangements or Access 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 Access.

5.4.14 Technical infeasibility: For the purposes of paragraph 5.4.8(c), Clear-Comm may reject an Access Request on the grounds of technical infeasibility should Clear-Comm establish that there are substantial technical or operational concerns preventing the fulfillment of the Access Request. The following shall be taken into account in determining whether access is technically feasible:

- (a) economic, accounting, billing, space or site concerns shall be disregarded, 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 to modify its facilities or Equipment in order to meet the Access Request will not, of itself, mean that the access is not technically feasible;
- (c) if Clear-Comm asserts that meeting the Access Request would have an adverse impact on Network reliability, with the evidence provided that provision of the requested Facilities or Services would result in a specific and significant adverse impact on Network reliability; and

- (d) Clear-Comm must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this clause) improvements that would to meet the Access Request (in whole or part and including for an interim period until any primary difficulties can be resolved).

5.4.15 Capacity constraints: An Access Request may be rejected by Clear-Comm on the ground set out in paragraph 5.4.8(d) where Clear-Comm notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because the requisite capacity is:

- (a) already carrying traffic to capacity or near full capacity; or
- (b) already reserved for future use or another Access Seeker, where such future use shall commence not later than six (6) months from the date of the Access Request. If the reserved capacity is not subsequently used by the reserving Party within seven (7) months from the date of the Access Request, the Access Provider must promptly inform the Access Seeker and, if required by the Access Seeker, re-consider the Access Request in accordance with this subsection 5.4; and
- (c) in the case of both paragraphs 5.4.15(a) and 5.4.15(b), Clear-Comm is unable to expand capacity within the period Forecast by the Access Seeker on the Access Seeker's Access Request.

## 5.5 GENERAL OBLIGATIONS

5.5.1 General: Clear-Comm must:

- (a) include in ARD obligations which are consistent with these Content Obligations; and
- (b) not include in ARD obligations which are inconsistent with these Content Obligations.

5.5.2 Compliance with Content Obligations: In addition to incorporating obligations into its ARD, each Operator shall comply with the obligations set out in this subsection 5.5 and the following subsections 5.6 to 5.13.

## 5.6 FORECASTING OBLIGATIONS

5.6.1 General: Subject to subsections 5.6.2 and 5.6.3, Clear-Comm may require, as a condition of providing access to a Facilities or Services (requested by the Access Seeker), that the Access Seeker provide Forecasts in good faith over a certain period of supply of access to Facilities or Services (as the case may be) in accordance with this subsection 5.6.

5.6.2 Confirmation of Forecast: If Clear-Comm, acting reasonably will incur significant costs to ensure that access can be provided in accordance with a Forecast, Clear-Comm 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 Standard, and subsection 5.7 will apply.

- 5.6.3 Alternative procedure: Clear-Comm and an Access Seeker may agree to an alternative Forecasting and Ordering procedure other than that set out in this subsection 5.6. If agreement is reached about such matters, Clear-Comm and Access Seeker will be bound by the terms of that alternative procedure and not this subsection 5.6.
- 5.6.4 Non-binding: Subject to subsection 5.6.2, Clear-Comm shall not require an Access Seeker:
- (a) to provide Forecasts that are legally binding on the Access Seeker, subject to subsection 5.6.14; or
  - (b) to provide information in its Forecast that identifies or would allow identification of Customers.
- 5.6.5 Forecast request: Clear-Comm may request an Access Seeker to provide, with a sufficient level of detail to enable Clear-Comm to carry out Network planning, the following information (forecast information):
- (a) the Facilities or Services or both in respect of which Forecasts are required;
  - (b) the total period of time covered by each Forecast, which period:
    - i. shall be determined having regard to Clear-Comm'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 or Services; and
    - ii. shall be no longer than one year, unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services ;
  - (c) the intervals or units of time to be used in making the Forecast, which shall be no longer than three (3) months unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services ;
  - (d) the Network area or operational area to which Forecasts shall relate, which area shall correspond to that which Clear-Comm uses for its own Network planning;
  - (e) the frequency with which a Forecast must be updated or further Forecast made, which shall not be more frequently than every three (3) months unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services ; and
  - (b) such other information that Clear-Comm reasonably requires in order to provide access to Facilities or Services requested by the Access Seeker.
- 5.6.6 Forecast Provision: Clear-Comm may only require an Access Seeker to provide Forecasts in accordance with a Forecast Request:
- (a) no sooner than four (4) weeks after receipt of a Forecast Request; and
  - (b) until such time as Clear-Comm notifies the Access Seeker in writing that it withdraws the relevant Forecast Request.
- 5.6.7 Use of Forecast Information: Forecast Information provided by the Access Seeker shall be treated by Clear-Comm as the Confidential Information of the Access Seeker and shall only be used within either:
- (a) the Clear-Comm's wholesale or interconnection group; or

- (b) that part of the Network engineering group of Clear-Comm responsible for interconnection for the purpose of responding to and planning for the Forecast. Clear-Comm must maintain records that indicate which persons are provided with access to Forecast information.
- 5.6.8 Distribution of Forecast Information: Clear-Comm may only distribute Forecast Information of an Access Seeker outside the groups of people referred to in subsection 5.6.7 if:
- (a) the Forecast Information of the Access Seeker is aggregated with Forecasts provided by other Operators and Clear-Comm'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 in any manner.
- 5.6.9 Time for acceptance: Clear-Comm will notify the Access Seeker:
- (a) within five (5) Business Days of receiving the Forecast if Clear-Comm considers that the Forecast does not comply with a Forecast Request, specifying in that notice the additional information which the Access Seeker is to provide; and
  - (b) within fifteen (15) Business Days of receiving a Forecast which complies with the Forecast Request, that the Forecast is accepted.
- 5.6.10 Reasons for rejection: Clear-Comm may only reject a Forecast where reasonably believes that the Forecast is inaccurate, having regard to:
- (a) total current usage of the Facilities or Services;
  - (b) the current rate of growth of the Access Seeker's usage of the Facilities or Services;
  - (c) the current rate of growth of total usage of the Facilities or Services; and
  - (d) subject to subsection 5.4.15, the amount of capacity in the Facilities or Services that Clear-Comm currently has available and can reasonably provision over the Forecast period, which must be at least equivalent than that which Clear-Comm can reasonably provision for itself.
- 5.6.11 Time for rejection: Clear-Comm must give notice of any rejection to the Access Seeker:
- (a) within fifteen (15) Business Days of receipt of the relevant Forecast; and
  - (b) Such notice of rejection must specify:
    - i. the grounds on which Clear-Comm rejects the Forecast in accordance with subsection 5.6.10, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Forecast; and
    - ii. an offer to meet within five (5) Business Days of the notice of rejection of the Forecast to discuss the reasons for rejection and alternative methods of compliance. The meeting shall take place between Clear-Comm and Access Seeker if the offer is accepted by the Access Seeker (Rejection Notice).
- 5.6.12 Reconsideration by Access Seeker: Clear-Comm must allow an 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 regards the Forecast as being reasonable; or

- (b) to submit a new Forecast which the Access Seeker regards as meeting Clear-Comm's concerns.
- 5.6.13 Reconsideration by Access Provider: Clear-Comm shall reconsider any amended Forecast provided pursuant to subsection 5.6.10 and subsections 5.6.9 to 5.6.11 shall re-apply.
- 5.6.14 Recovery for over-Forecasting: Clear-Comm shall not seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an Access Seeker if the Forecast is not met by the Access Seeker unless:
- (a) such costs and expenses were reasonably and necessarily incurred by Clear-Comm;
  - (b) Clear-Comm reasonably seeks to mitigate its loss over a six month period (including through its own usage); and
  - (c) Clear-Comm only recovers from the Access Seeker 75% of such costs and expenses which could not be mitigated under paragraph 5.6.14(b) above.
- 5.6.15 Meeting Forecasts: Subject to subsections 5.6.9 to 5.6.11, Clear-Comm must carry out network planning in order to enable the Forecast Requested to be met. If an Access Seeker has confirmed a forecast under subsection 5.6.2, it will be binding on the Access Seeker.

## 5.7 ORDERING AND PROVISIONING OBLIGATIONS

- 5.7.1 Contact point: Clear-Comm shall designate a person to whom Orders for access to Facilities and Services are to be delivered and shall notify the Access Seeker of the designated person from time to time.
- 5.7.2 Order content: Prior to access being provided, Clear-Comm may require an Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. Clear-Comm may request an Access Seeker to provide, at a level of detail (sufficient for planning provisioning), the following information in an Order for access to Facilities and Services:
- (a) the Facilities or Services or both to which access is requested;
  - (b) a requested time for delivery;
  - (c) the location of the points of delivery;
  - (d) Equipment of the Access Seeker to be used in connection with the Order; and
  - (e) such other information that Clear-Comm reasonably requires in Order for it to plan for the provision of access to the Facilities or Services as requested by the Access Seeker.
- 5.7.3 Use of ordering information: Ordering information provided by the Access Seeker shall be treated by Clear-Comm as the Confidential Information of the Access Seeker and shall only be used by those persons within Clear-Comm whose role is within:
- (a) Clear-Comm's wholesale or interconnection group; and
  - (b) that part of the Network engineering group of Clear-Comm responsible for interconnection, for the purpose of responding to and provisioning for the Order.

- 5.7.4 Treatment of Orders and Service Qualifications: Clear-Comm shall give the same priority to the handling of Orders from the Access Seeker and any Service Qualifications that may be required for that Access Seeker as it gives to its own Orders and Service Qualifications and any Orders and Service Qualifications that may be required for Customers who are similarly situated to the Access Seeker in all relevant respects.
- 5.7.5 Acknowledgment of receipt: Clear-Comm shall acknowledge receipt of the Order, in writing (or any other material or electronic form agreed by the parties), within two (2) Business Days of receipt of an Order from the Access Seeker.
- 5.7.6 Notice of Receipt: Clear-Comm must include in its Notice of Receipt the following information:
- (a) the time and date of receipt;
  - (b) a list of any additional information reasonably required by Clear-Comm from the Access Seeker to clarify the Order; and
  - (c) if the relevant Facilities or Services are below the capacity required to provide the relevant Facilities or Services, Clear-Comm shall inform the Access Seeker of the available capacity and timeframe for the fulfillment of the Order.
- 5.7.7 Further information: Clear-Comm shall allow the Access Seeker a period of up to fourteen (14) Business Days after a request for additional information to provide Clear-Comm with such additional reasonable information that is reasonably necessary to clarify an Order.
- 5.7.8 Service Qualifications: Clear-Comm shall only conduct Service Qualifications if:
- (a) Clear-Comm reasonably requires information from such Service Qualifications which is not readily available; and
  - (b) Clear-Comm notifies the Access Seeker that such Service Qualifications are necessary within five (5) Business Days of receiving the Access Seeker's Order, or, if further information has been requested under subsection 5.7.7, within five (5) Business Days of the expiry of the period in subsection 5.7.7, together with the reasons for such Service Qualifications.
- 5.7.9 Completion of Service Qualifications: Clear-Comm shall:
- (a) complete any Service Qualification in respect of an Order within twenty-one (21) Business Days of the commencement of the Service Qualification;
  - (b) inform the Access Seeker of the result of any Service Qualification within two (2) Business Days of the completion of such Service Qualification.
- 5.7.10 Withdrawal of Order following Service Qualifications: Clear-Comm shall permit an Access Seeker to withdraw its Order without penalty within fourteen (14) days after receiving the result of a Service Qualification under subsection 5.7.9.
- 5.7.11 Acceptance obligation: Clear-Comm must use its reasonable efforts to accept and fulfill Orders from the Access Seeker for Services and Facilities which comply with a Forecast accepted by Clear-Comm pursuant to subsection 5.6.

5.7.12 Time for acceptance/rejection: Clear-Comm must notify the Access Seeker within fourteen (14) days of receiving an Order that the Order is accepted or rejected, save where Clear-Comm undertakes a Service Qualification as contemplated in subsection 5.7.8, in which case the time periods in subsection 5.7.9 are to be added to this fourteen (14) days period. If Clear-Comm notifies the Access Seeker that an Order is rejected, Clear-Comm must advise the Access Seeker if it would be able to accept the Order in a modified form.

5.7.13 Notice of acceptance: Clear-Comm’s notice of acceptance to the Access Seeker must contain the following information:

- (a) the delivery date, which must be the date that is requested by the Access Seeker, or if that date cannot be met by Clear-Comm, must be no later than the indicative delivery timeframes set out in subsection 5.7.14;
- (b) the charges applicable to the fulfilment of the Order;
- (c) such information as is reasonably necessary for the Access Seeker to benefit from access to the network services or network facilities;
- (d) the validity period of the acceptance of the Order which shall be no less than ninety (90) days from the date of acceptance.

5.7.14 Indicative delivery times: For the purposes of paragraph 5.7.13(a), the following are the indicative delivery timeframes for the following aspects of a Facilities or Services:

Order type	Indicative delivery timeframes
All Orders involving the provision of new Facilities and infrastructure relevant to the Services that are the subject of the Order	8 Months
All Orders involving augmentation of capacity on existing Facilities and infrastructure relevant to the Services that are the subject of the Order	60 days

- (a) The indicative delivery timeframes specified in subsection 5.7.14 shall commence from the date the Access Seeker confirms an Order in accordance with subsection 5.7.15.
- (b) Where a delay in the delivery of an Order is caused by the Access Seeker, the delivery date specified in the confirmed Order or indicative delivery time set out above shall be extended for a further period as may be reasonably necessary by Clear-Comm.

5.7.15 Access Seeker confirmation: Clear-Comm shall permit an Access Seeker to confirm its agreement to proceed with the Order within the validity period of the acceptance of such Order (as described in paragraph 5.7.13(d)). Upon such confirmation, Clear-Comm shall fulfill the Order in accordance with the notice of acceptance provided under subsection 5.7.13.

- 5.7.16 Estimated charges: If the notice of acceptance provided by Clear-Comm under subsection 5.7.13 contains estimates of charges (e.g. based on time and materials):
- (a) Clear-Comm shall not exceed the estimate without providing the Access Seeker with written notice prior to exceeding the estimate that:
    - i. the estimate will likely be exceeded;
    - ii. an explanation of the reasons for exceeding the estimate; and
    - iii. a further estimate of the charges for the work necessary to fulfill the Order.
  - (b) Clear-Comm shall permit the Access Seeker to withdraw the Order without penalty if the revised estimate exceeds the original estimate by more than 10% of the original estimate within fourteen (14) days of the notice given by Clear-Comm under subsection 5.7.16(a).
  - (c) where the actual cost incurred by Clear-Comm exceeds an estimate or revised estimate for a specific scope of work provided by Clear-Comm due to:
    - i. information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker; and
    - ii. a change in the scope of work by the Access Seeker the Access Seeker shall be obliged to pay Clear-Comm for the actual cost incurred.
  - (d) Clear-Comm shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate, such confirmation to be provided by Clear-Comm within fourteen (14) days from the notice given by Clear-Comm under subsection 5.7.16(a).
- 5.7.17 Reasons for rejection: Clear-Comm may only reject an Order from an Access Seeker where:
- (a) subject to subsection 5.4.14, it is not technically feasible to provide access to the Facilities or Services requested by the Access Seeker;
  - (b) subject to subsection 5.4.15, Clear-Comm has insufficient capacity to provide the requested Facilities or Services;
  - (c) subject to subsection 5.7.19, the Order is in excess of agreed Forecast levels;
  - (d) the Order or variation request duplicates an Order awaiting fulfillment;
  - (e) the Access Seeker has not obtained necessary related agreements from Clear-Comm (e.g. Facilities access for a new Point of Interface);
  - (f) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions of the Access Agreement; or
  - (g) there are 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 a Network; or the safety of individuals working on, or using services supplied by means of, a Network or Equipment.
- 5.7.18 Notice of rejection: Clear-Comm's notice of rejection to the Access Seeker must:
- (a) set out the grounds on which Clear-Comm rejects the Order, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Order; and
  - (b) offer to meet, 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.

- 5.7.19 Order in excess of Forecast: Notwithstanding paragraph 5.7.17(b), Clear-Comm must use its reasonable efforts to provide sufficient capacity to enable Clear-Comm to accept and fulfill Orders from an Access Seeker for Facilities or Services or both which are in excess of the relevant Forecast. Clear-Comm is only required to do so if, after meeting the Forecast requirements of other Operators and of its own business units, there is available capacity or Clear-Comm could readily upgrade existing capacity. Clear-Comm shall allocate the available capacity on a nondiscriminatory basis to meet the over Forecast requirements of the Access Seeker, other Operators and its own business units. Clear-Comm is not required to supply Facilities or Services or both in excess of Forecast if, despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of Forecast Services provided to other Operators or its own business – or both.
- 5.7.20 Required extra capacity: Clear-Comm may require an Access Seeker to procure such additional capacity on the Access Seeker's side of the Network as Clear-Comm, in good faith and reasonably estimates, may be required by the Access Seeker to meet demand. Where the Access Seeker fails to so procure additional capacity and the demand exceeds the capacity on the Access Seeker's Network, Clear-Comm must notify the Access Seeker in writing, and the Access Seeker and Clear-Comm must meet (no later than 5 Business Days after receipt of the notice) to attempt to identify alternative sources of capacity. If the matter cannot be resolved within 10 Business Days of the date of that meeting, Clear-Comm may bar or block calls to the Access Seeker's Network to the extent necessary to minimise congestion within Clear-Comm's Network.
- 5.7.21 Other uses: Clear-Comm 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.
- 5.7.22 Delivery dates: Clear-Comm shall deliver the ordered access to Facilities or Services by the date specified in the notice of acceptance (as provided under subsection 5.7.13).
- 5.7.23 Early delivery dates: If Clear-Comm, in the normal course of business, is able to offer a delivery date earlier than the delivery date that would otherwise apply, it must advise the Access Seeker and, if requested by the Access Seeker, deliver access to the relevant Facilities or Services or both at the earlier delivery date.
- 5.7.24 Delayed delivery dates: Clear-Comm shall:
- (a) notify an Access Seeker of the delay to a delivery date and the revised delivery date, together with the reasons for the delay, as soon as practicable after Clear-Comm becomes aware of the possible delay;
  - (b) permit the Access Seeker notified under paragraph 5.7.24(a) above to cancel the Order without penalty if the delay is longer than fourteen (14) days; and
  - (c) provide the Access Seeker with a remedy in accordance with subsection 5.7.33.
- 5.7.25 Cancellation and variation of Orders: Clear-Comm shall allow an Access Seeker to cancel or vary an Order at any time.

- 5.7.26 Cancellation penalty: Except where this Standard provides that cancellation is to be at no penalty, Clear-Comm shall only charge an Access Seeker which has cancelled or varied an Order no more than the costs necessarily incurred in relation to the cancelled or varied Order, reduced by the level at which those costs have been or would have been (had Clear-Comm used its best endeavours to do so), mitigated over a six (6) month period after the date of cancellation or variation.
- 5.7.27 Testing and provisioning: Clear-Comm shall:
- (a) co-operate with the Access Seeker in relation to the testing and provisioning of ordered Facilities or Services or both; and
  - (b) treat an Access Seeker's testing and provisioning on an equivalent basis to that which Clear-Comm treats itself.
- 5.7.28 Resource charge: Clear-Comm may charge the Access Seeker a one-off fee, to be determined by reference to the costs incurred by Clear-Comm for allocation of manpower and other resources to enable the Access Seeker to test and provide a new Facilities or Services for purposes of interconnection.
- 5.7.29 Queuing policy: Clear-Comm shall establish and demonstrate and maintain a queuing policy system which:
- (a) shall be non-discriminatory;
  - (b) shall treat the Orders of Access Seeker s on an equivalent basis to that which Clear-Comm treats its own Orders for similar Services; and
  - (c) shall seek to maximise the efficiency of its Ordering and provisioning process.
- 5.7.30 Acceptance on queue: Clear-Comm shall promptly notify an Access Seeker, at the time of providing an acknowledgment of receipt of the Order under subsection 5.7.5, of their acceptance on Clear-Comm's queue.
- 5.7.31 Constrained capacity: If Clear-Comm reasonably believes that the capacity in any Facilities or Services required by:
- (a) the Access Seeker pursuant to the relevant Forecast;
  - (b) other Access Seekers, pursuant to their relevant Forecasts; and
  - (c) Clear-Comm, for its own purpose would, in aggregate, exceed the capacity which Clear-Comm will be in a position to be able to provide, Clear-Comm must:
    - i. notify the Access Seeker and other persons to whom relevant capacity is supplied; and
    - ii. allocate the available capacity between itself, the Access Seeker and other Access Seekers in accordance with Clear-Comm's Capacity Allocation Policy.
- 5.7.32 Capacity Allocation Policy: If Clear-Comm claims or is likely to claim that it has insufficient capacity to meet an Access Seeker's Forecasts or Orders, Clear-Comm shall maintain a Capacity Allocation Policy, which:
- (a) shall be disclosed, free of charge, to any other Operator on request;
  - (b) shall set out the principles in accordance with which Clear-Comm shall determine how to allocate capacity between itself (including its related bodies corporate) and other Operator or Operators, in circumstances where the amount of capacity available is less than the aggregate of capacity required by Clear-Comm, its related bodies corporate and other Operator or Operators;

- (c) shall:
- i. be fair and reasonable;
  - ii. be consistent, so far as practicable, with Clear-Comm's general duty of non-discrimination in accordance with subsection 149(2) of the Act;
  - iii. treat the requirements of the Access Seeker and third parties on an equivalent basis to Clear-Comm's own requirements; and
  - iv. allocate the available capacity in the relevant Facilities or Services or both in proportion to each Operator's Forecast requirements.

5.7.33 Late delivery: If Clear-Comm fails to meet any timeframe in subsection 5.7.14 with respect to the delivery of access to Facilities or Services pursuant to an Order made in accordance with subsection 5.7, except where such failure has been caused solely by the Access Seeker's delay, that Clear-Comm shall, without limitation to any other rights the Access Seeker may have under subsection 5.7 or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring charges payable for access to the Facilities or Services over a period equal to the period of the Clear-Comm's delay.

## 5.8 POINT OF INTERFACE PROCEDURES

5.8.1 Interconnection: Clear-Comm shall interconnect and keep its Network interconnected with the Network of another Operator in accordance with the terms of an Access Agreement with that Operator.

5.8.2 Point of Interface locations:

- (I) Subject to subsection 5.8.3, Clear-Comm shall publish on its website and keep updated a list of the general locations:
  - (a) at which physical co-location is available;
  - (b) in respect of which virtual co-location is available; and
  - (c) in respect of which in-span interconnection is available on and from the date of publication for the following 12 months.
- (II) Due to physical constraints, Clear-Comm should jointly agree as to which Access Seeker should be given the right to physically collocate at each POI. The Access Seeker that is granted co-location rights shall offer virtual co-location or in-span interconnection to other Access Seekers.

5.8.3 Virtual and in-span interconnection: Clear-Comm shall offer virtual collocation or in-span interconnection at all technically feasible points.

5.8.4 Lack of space: If there are space constraints at a particular location, Clear-Comm shall take reasonable steps to optimise its usage of the space, including through the upgrading of Facilities. If Clear-Comm has used its best efforts to accommodate all Access Seekers and it is not physically possible for any further Access Seekers to be accommodated, Clear-Comm shall be excused from providing physical interconnection at such location.

- 5.8.5 Access Seeker requested Point of Interface: Clear-Comm shall reasonably consider a request by an Access Seeker to interconnect at a point other than that specified under subsection 5.8.2. Clear-Comm shall promptly accept or reject a request by an Access Seeker under this subsection, and provide the Access Seeker with reasons if it rejects the Access Seeker's request.
- 5.8.6 Network responsibility: Clear-Comm is responsible for the provisioning and maintenance of Facilities (including those Facilities which form part of the Interconnect Links and the transmission equipment) on its side of the Point of Interface.
- 5.8.7 Third Party Point of Interface: Clear-Comm shall permit an Access Seeker to nominate a Point of Interface of a third Party for the purposes of interconnection and access between Clear-Comm 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.
- 5.8.8 Point of Interface factors: When determining which locations are to be listed under subsection 5.8.2, or when determining a request under subsection 5.8.6, Clear-Comm must have regard to the following:
- (a) Clear-Comm shall offer interconnection at any other technically feasible point;
  - (b) Clear-Comm may offer more than one form of interconnection in relation to a particular location (e.g. physical interconnection and virtual interconnection);
  - (c) Clear-Comm shall not reserve space other than for its own current needs, its future needs (calculated by use of a reasonably projected rate of growth over two (2) years) and the needs of other Access Seekers who are currently occupying or have Ordered additional space from Clear-Comm; and
  - (d) any possible re-arrangement of its Equipment configuration to eliminate space inefficiencies;
- 5.9 BILLING AND SETTLEMENT OBLIGATIONS
- 5.9.1 Invoices: Clear-Comm 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 thirty (30) days of the end of the Billing Period for amounts due in respect of the supply of Facilities or Services during such Billing Period.
- 5.9.2 Currency: Unless otherwise agreed, Clear-Comm shall state all Invoices in Ringgit Malaysia and payment shall be made by the Access Seeker in Ringgit Malaysia.
- 5.9.3 Billing cycle: Clear-Comm shall issue Invoices in monthly Billing Cycles, unless otherwise agreed with the Access Seeker.
- 5.9.4 Billing verification information: Clear-Comm shall provide, with each Invoice, such information as may be reasonably necessary for the Access Seeker to verify rates and charges contained in an Invoice.

- 5.9.5 Other Billing information: Clear-Comm must provide to any Operator with which it interconnects, information within its possession that is reasonably necessary to allow the other Operator to provide accurate and timely billing services to itself, its affiliates or other Operators.
- 5.9.6 Summarised Invoice and billing information: Clear-Comm shall provide the Access Seeker on written request with an aggregated summary of billings for access to the Facilities and Services provided to the Access Seeker, in monthly tranches.
- 5.9.7 Billing error: If Clear-Comm discovers an error in an Invoice, it must notify the Other Operator and must make necessary adjustments to correct that error in the next Invoice.
- 5.9.8 Time for payment: Subject to subsection 5.9.11, Clear-Comm shall allow an Access Seeker no less than thirty (30) days from the date of receipt of an Invoice for the Access Seeker to make the payment. This subsection 5.9.8 should not be construed as preventing Clear-Comm from granting a discount to an Access Seeker as an incentive to make early payments.
- 5.9.9 Method of payment: Clear-Comm shall allow an Access Seeker to pay an Invoice by bank cheque or electronic funds transfer directly to an account nominated by Clear-Comm.
- 5.9.10 No set-off: Unless otherwise agreed, Clear-Comm may not set-off Invoices, except where the Access Seeker is in liquidation or at least 3 Invoices have been issued and such Invoices have not been paid (excluding disputed amounts).
- 5.9.11 Withholding of disputed amounts: Clear-Comm shall allow an Access Seeker to withhold payment of any amount disputed in good faith by the Access Seeker if:
- (a) the Access Seeker notifies Clear-Comm within twenty one (21) days from the date of receipt of the Invoice of such dispute; and
  - (b) the Access Seeker's notification specifies the information referred to in subsection 5.9.13.
- 5.9.12 Billing Disputes: Clear-Comm shall allow an Access Seeker to dispute an Invoice if the Access Seeker notifies Clear-Comm within forty-five (45) days after the date of receipt of such invoice and in either case, the Access Seeker's notification specifies the information referred to in subsection 5.9.13.
- 5.9.13 Billing Dispute Notification: Clear-Comm may require an Access Seeker to provide the following information when disputing an Invoice:
- (a) the reasons for which the Invoiced Party disputes the Invoice;
  - (b) the amount in dispute; and
  - (c) details required to identify the relevant Invoice and charges in dispute including:
    - i. the account number;
    - ii. the Invoice reference number;
    - iii. the Invoice date;
    - iv. the Invoice amount; and
    - v. billing verification information.

(d) evidence in the form of the Invoiced Party's outgoing report, indicating the relevant traffic date which is in dispute.

5.9.14 **Billing Dispute Resolution:** Clear-Comm and an Access Seeker must comply with the Dispute Resolution Procedures applicable to Billing Disputes.

5.9.15 **Interest:** Subject to an Invoice being disputed by an Access Seeker in good faith in accordance with subsection 5.9.12, Clear-Comm may charge interest on any amount outstanding from an 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 Clear-Comm. The interest that may be charged by Clear-Comm shall be at the rate of 1% per annum above Malayan Banking Berhad Base Lending Rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than 60 days will bear interest at the rate of 2% per annum above Malayan Banking Berhad Base Lending Rate calculated from the due date until the date of receipt by Clear-Comm of full payment.

5.9.16 **Backbilling:** Unless otherwise agreed, Clear-Comm 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 Clear-Comm 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 Period in which the calls were made or other service provided.

5.9.17 **Provisional billing:** Where Clear-Comm is unable to issue an Invoice, it may issue an Invoice to an Access Seeker for a provisional amount, based on the last Invoice (provisional Invoice). In such circumstances, Clear-Comm may Invoice an Access Seeker for a provisional amount for a period of not more than three successive Billing Periods, provided the amount of the provisional Invoice is no more than the average of the most recent three Invoices. Where there have not been three (3) past Invoices for access to the relevant network facilities or network services, Clear-Comm may issue a provisional Invoice up to the full value of the amount based on the most recent Invoice. The provisional Invoice will be adjusted in the next Invoice or as soon as practicable but not later than sixty (60) days after the calendar month in which the charges were incurred or such other time period as may be agreed in writing.

## 5.10 OPERATIONS AND MAINTENANCE OBLIGATIONS

5.10.1 **Operations & maintenance responsibility:** Each Operator shall be responsible for the operations and maintenance of its own Facilities and Services.

5.10.2 **Fault reporting systems:** Each Operator shall establish and maintain a fault reporting service that allows Customers who are directly connected to the Network of that Operator and to whom that Operator supplies services (inter alia), to report faults relating to any Network or support system.

5.10.3 **Customer notification:** Each Operator will advise all of its directly connected Customers to report all faults to the fault reporting service described in subsection 5.10.2.

- 5.10.4 Non-discriminatory fault reporting and identification: An Operator shall perform fault reporting and identification on a non-discriminatory basis.
- 5.10.5 Cross-referrals: If a Customer reports a fault to an Operator:
- (a) when the Customer is directly connected to another Operator; or
  - (b) which clearly relates to a Network or support system of another Operator that Operator must promptly inform the other Operator of the reported fault, or refer that Customer to the other Operator's fault reporting service.
- 5.10.6 Network fault responsibility: The Operator in whose Network the fault occurs is responsible for rectifying it and restoring services.
- 5.10.7 Transmission service faults: The Operator that supplies transmission services is responsible for maintaining and repairing that transmission service, notwithstanding that the transmission service may be used in another Operator's Network.
- 5.10.8 Major inter-working faults: If a major fault occurs which affects a communication that crosses or is to cross both Operator's Networks, initial responsibility for identifying the fault rests with the Operator who first becomes aware of the fault.
- 5.10.9 Faults affecting other Networks or Equipment: If an Operator identifies a fault occurring in its Network or with its network facilities which may have an adverse effect on the other Operator's Network, network facilities, network services or Equipment, the first-mentioned Operator must promptly inform the other Operator of:
- (a) the existence of the fault;
  - (b) the actions being taken by the first mentioned Operator to restore service and to further identify and rectify the fault; and
  - (c) the outcome of those actions.
- 5.10.10 Bear own costs: Each Operator is responsible for establishing and maintaining a fault reporting service at its own cost irrespective of the location of the fault.
- 5.10.11 Fault priority: Each Operator shall give priority to faults which have:
- (a) the highest service loss impact in terms of the number of Customers affected;
  - or
  - (b) those which have been reported on previous occasions and have reoccurred.
- 5.10.12 Fault rectification: Each Operator shall rectify faults on a non-discriminatory basis.
- 5.10.13 Target times: Each Operator shall respond to and rectify faults of a type listed in the following table in accordance with the relevant response and rectification time frames:

Priority Level	Fault Types (examples)	Response Time	Restoration Time
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Level 1	1. Major switch outage	Within 1 Hour	4 Hour
	2. Transmission bearer total outage		
	3. Route blocking > 30%		
	4. Major signalling problem		
	5. Major routing issues		
	6. Fraudulent calls		
Level 2	1. Minor switch outage	Within 4 Hours	24 Hours
	2. Minor routing issue		
	3. Minor signalling problems		
	4. Route blocking 10%-30%		
	5. Cross line & silent calls		
Level 3	1. Faults affecting single or small number of customers	Within 24 Hours	72 Hours
	2. Route blocking <10%		
Level 4	1. Remote Congestion	Within 48 Hours	14 Days
	2. External Technical Irregularities (ETI)		
	3. Other performance related issues		

Explanatory Notes to subsection 5.10.13:

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

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

- (a) provide at least ten (10) Business Days notice of the planned maintenance;
- (b) use its reasonable endeavours to minimise any disruption to the carriage of communications which cross or are to cross both Operators’ Networks, and which are caused by the maintenance or rerouting; and
- (c) where practicable and agreed by the Operators, provide alternative routing or carriage at no additional cost to the Access Seeker.

5.10.15 Planned maintenance windows: An Operator shall undertake planned maintenance within windows of time agreed with other Operators, and where

the windows of time for such planned maintenance have the least effect on end-users.

- 5.10.16 Emergency maintenance: If an Operator (Maintenance Operator) needs to undertake emergency maintenance which may affect the other Operator's Network, the Maintenance Operator must, if it is able to:
- (a) provide at least 24 hours notice of the planned maintenance;
  - (b) use its reasonable endeavours to minimise any disruption to the carriage of communications which cross or are to cross both Operator's Networks, and which are caused by the maintenance or rerouting; and
  - (c) where practicable and agreed by the Operators, provide alternative routing or carriage at no additional cost to the other Operator.
- 5.10.17 Complaints Handling: The Operators must report all interconnection outages that relate to Facilities and/or Services to the respective Fault Reporting Centre.
- 5.10.18 Routine Testing: The Operators shall conduct interconnection service tests at agreed half yearly intervals to ensure the maintenance of interconnection services at agreed services levels in accordance with standards as agreed by both parties or such other standards as may be determined by the Commission,.

## 5.11 TECHNICAL OBLIGATIONS

- 5.11.1 Compliance: Operators shall adhere to the relevant guidelines issued by the Commission from time to time to the extent that they have not been expressly revoked or are not inconsistent with any technical obligations set out in this Standard.
- 5.11.2 Prevention of technical harm: An Operator must take reasonable measures to ensure that the interconnection does not cause physical or technical harm to the other Operator's Network.
- 5.11.3 Technical Standards: An Operator must comply with any applicable technical Standard adopted by the Commission under Chapter 3 of Part VII of the Act.
- 5.11.4 No Interference: An Operator must not do anything, or knowingly permit any third person to do anything, in relation to a network facilities, network services or Equipment which:
- (a) causes interference; or
  - (b) materially obstructs, interrupts or impedes the continuous use or operation of, the network facilities, network services or Equipment of another Operator.
- 5.11.5 Notice of interference and rectification: If an Operator (Notifying Operator) notifies another Operator that the other Operator's network facilities, network services or Equipment is causing interference to the Notifying Operator's network facilities, network services or Equipment:
- (a) the other Operator shall rectify the situation so that no interference is caused within twenty four (24) hours of receiving notice from the Notifying Operator; or
  - (b) if the other Operator is not able to locate the source of the interference within twenty four (24) hours under paragraph 5.11.5(a), the other Operator shall

promptly notify the Notifying Operator, and both Operators shall meet within twenty four (24) hours of such notice and jointly examine each other's network facilities, network services or Equipment to locate the source of the interference.

## 5.12 TERM, SUSPENSION AND TERMINATION OBLIGATIONS

5.12.1 Term: An Operator shall unless otherwise required by the Access Seeker, enter into Access Agreements with a term of no less than three (3) years from the date of execution of the Access Agreement.

5.12.2 Term of supply: Unless otherwise agreed, and subject to Clear-Comm not being able to provide access as a result of Force Majeure, Clear-Comm shall only require an Access Seeker to acquire access to individual Facilities and Services under an Access Agreement for a minimum period as follows:

Facilities / Services	Minimum term
Access Services (e.g. originating and terminating access)	No minimum term
Transmission services	12 months
Network facilities access	3 years

5.12.3 Termination circumstances: Subject to paragraph 5.12.6, Clear-Comm may only terminate an Access Agreement if any of the circumstances referred to in paragraphs 5.12.3(a), 5.12.3(b) or 5.12.3(c) apply and Clear-Comm has notified the Access Seeker that it will terminate where:

- (a) the Access Seeker has materially breached the agreement and Clear-Comm has notified the Access Seeker that it will terminate in no less than thirty (30) days if the Access Seeker has not remedied its breach by the end of that period; or
- (b) the Access Seeker has become subject to a winding up Order; or
- (c) a Force Majeure has continued for a period of more than 90 days. Clear-Comm 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.

5.12.4 Change in law: Where continued operation of the Access Agreement or access to any Facilities or Services provided under is or will be unlawful (as a result of a legislative change), the Access Seeker and Clear-Comm must meet within five (5) Business Days of becoming aware of the Relevant Change in law to review whether access to the relevant Facilities or Services may be provided by Clear-Comm on different terms and conditions (which are acceptable to the Access Seeker). If the Parties cannot agree to the provision of access on different terms and conditions, Clear-Comm may terminate the provision of access to the relevant Facilities or Services.

5.12.5 Suspension: Subject to paragraph 5.12.6, Clear-Comm may only suspend access to any Facilities or Services in the following circumstances:

- (a) the Access Seeker's Facilities materially adversely affect the normal operation of Clear-Comm's Network, or are a material threat to any person's safety;

- (b) the Access Seeker's Facilities or the supply of Services pose an imminent threat to life or property of the Clear-Comm, its employees or contractors;
- (c) the Access Seeker's Facilities cause material physical or technical harm to any Facilities of Clear-Comm or any other person;
- (d) where the Access Seeker has failed to pay Invoices in accordance with subsection 5.9;
- (e) where Force Majeure applies; or
- (f) the Access Seeker breaches any laws, regulations, rules or standards which has a material adverse effect on Clear-Comm or the provision by Clear-Comm of Facilities and/or Services under this Agreement.

For the purposes of this subsection 5.12.5, Clear-Comm must provide the Access Seeker five (5) Business Days Notice in writing, including written reasons, prior to suspending access to any Facilities or Services.

- 5.12.6 Approval: Prior to terminating or suspending or seeking to materially vary an Access Agreement or access to any Facilities or Services provided under it, Clear-Comm must inform the Commission in writing of the action Clear-Comm proposes to take and the reasons why such action is appropriate. Clear-Comm not terminate or suspend or seek to materially vary the Access Agreement or access to any Facilities or Services provided under it until such time, and on such conditions, as the Commission may specify.
- 5.12.7 Undertakings: If the parties to an Access Agreement adopt the terms and conditions specified in an undertaking that has been registered with the Commission in accordance with the Act, the parties must notify the Commission within five (5) Business Days of such adoption. In such circumstances, the terms and conditions of the Access Agreement will continue in force for the remainder of the term of that Access Agreement, even if the access undertaking is withdrawn or expires prior to the expiry of that term.
- 5.12.8 Post-termination fees: Clear-Comm shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any Facilities or Services provided under it except:
- (a) charges invoiced in arrears and not yet paid; or
  - (b) charges arising during an applicable minimum contractual period (as described in subsection 5.12.2).
- 5.12.9 Upfront charges refund: On termination of an Access Agreement or access to any Facilities or Services provided under it, Clear-Comm 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.
- 5.12.10 Deposits and guarantees: Notwithstanding the obligation in subsection 5.12.9, Clear-Comm shall:
- (a) within sixty (60) days of termination of the Access Agreement refund to the Access Seeker any deposit paid provided all other amounts payable by the Access Seeker to Clear-Comm have been paid; and
  - (b) immediately upon termination of the Access Agreement unconditionally waive any rights under any guarantees provided by the Access Seeker except

in respect of amounts payable by the Access Seeker to Clear-Comm as at the date of termination.

### 5.13 LEGAL BOILERPLATE OBLIGATIONS

- 5.13.1 **Obligation to supply:** Each Operator shall have an absolute obligation to supply access to the Facilities or Services in accordance with this Standard. Such obligation shall not be conditional upon the use of that Operator's reasonable or best endeavours. Each Operator shall ensure that it shall not enter into any arrangement which will prevent, hinder or restrict the fulfillment of the Operator's obligation under this Standard.
- 5.13.2 **Mutual compensation:** An Operator must establish mutually acceptable compensation arrangements with the other Operator (including bill-and-keep arrangements).
- 5.13.3 **Interconnect Steering Group:** Each Operator must appoint a representative to an Interconnect Steering Group (and such other working groups as may be agreed upon) to manage the smooth and timely implementation of the terms and conditions of Access Agreements.
- 5.13.4 **Dispute Resolution:** An Operator must comply with the Dispute Resolution Procedures.
- 5.13.5 **Complete charges:** Each Operator shall specify all charges in an Access Agreement and shall not attempt to recover any other costs, expenses or charges which are not specified in the Access Agreement except where such work is to be done on a time and materials basis in which case the Access Provider shall do such work in accordance with a quotation agreed with the Access Seeker as set out in the Standard.
- 5.13.6 **Intellectual Property:** Each Operator shall licence to the other Operator under an Access Agreement on a royalty-free basis, all Intellectual Property rights necessary for the ongoing operation of the Access Agreement and the interoperability of the Operators' Networks, subject to any relevant third party licences. The term of the licence must be consistent with the term of the relevant Access Agreement.
- 5.13.7 **Security review:** An Operator may only review the security provided to it by another Operator in accordance with subsection 5.3.7 during the term of an Access Agreement if there has been a material change in circumstances in relation to the other Operator's creditworthiness. For clarification, a material change in circumstances includes, but is not limited to, failure to pay on the due date specified in at least three (3) Invoices rendered in the preceding six (6) months, so long as those amounts have not been disputed in good faith. If amounts contained in Invoices are disputed in good faith, this will not constitute a material change in circumstances for the purposes of this subsection 5.13.7.

- 5.13.8 Additional security: If subsection 5.13.7 applies, an Operator may only request additional or substitute security from another Operator in a manner consistent with that which would apply if the other Operator was making a new Access Request under subsection 5.3.
- 5.13.9 Assignment: An Operator's right to assign its rights under an Access Agreement prepared by it shall be reciprocal with the other Operator's rights of assignment.
- 5.13.10 Review: An Operator shall specify in an Access Agreement prepared by it that such Access Agreement shall be reviewed:
- (a) if the Minister issues a direction or determination relating to its subject matter;
  - (b) if the Commission issues a direction or determination relating to its subject matter;
  - (c) if the Act or this Standard is amended in relation to its subject matter;
  - (d) by agreement of each of the parties; or
  - (e) if a condition of the Operator's licence is amended or deleted or a new condition is imposed in relation to its subject matter.
- 5.13.11 Costs and expenses: Each Operator shall bear its own costs and expenses in relation to the preparation, negotiation and execution of an Access Agreement to which they are parties.
- 5.13.12 Applicable laws: An Operator shall include a provision in all Access Agreements prepared by it which provides that the Agreement will be governed by the laws of Malaysia and that Operator will comply with all applicable directions issued by the Malaysian regulatory authorities.
- 5.13.13 Reciprocity: Clear-Comm must offer to acquire access to Facilities and Services on the same terms that it provides access to those Facilities and Services.

## ANNEXURE A: DISPUTE RESOLUTION PROCEDURES

### 1. Introduction

1.1 Subject to subsection 1.2.3, Clear-Comm and an Access Seeker shall adopt and comply with this Dispute Resolution Procedure in relation to any dispute which may arise between an Access Seeker and Clear-Comm in relation to or in connection with the supply of Facilities or Services to which the Standard applies (Access Dispute).

1.2 The following Dispute Resolution mechanisms are discussed in this section:

1.2.1 inter-Party working groups;

1.2.2 interconnect steering group; and

1.2.3 subject to specific resolution of disputes, being:

(a) technical disputes (which must follow the procedure set out in section 5 of this Annexure if they cannot be resolved through the application of the general dispute resolution provisions in sections 3 and 4 of this Annexure);

(b) Billing Disputes (as defined in subsection 6.18), which must follow the procedures set out in section 6 of this Annexure; or

(c) any other types of disputes, which, if cannot be resolved through the application of the general dispute resolution provisions in sections 2, 3 and 4 of this Annexure, must be referred to the Commission for resolution.

1.3 A dispute between Parties regarding any matter dealt with under this Standard shall first be attempted to be resolved by negotiation between the Parties. If the Parties to the disputes cannot or otherwise fail to reach an agreement, the Parties shall always be entitled to seek resolution of the dispute by the Commission in accordance with section 151 of the Act, and the Commission will decide the dispute if it is satisfied that:

(a) the parties will not reach agreement, or will not reach agreement in a reasonable time;

(b) the notification of the dispute is not trivial, frivolous or vexatious; and

(c) the resolution of the dispute would promote the objects in the Act. Clear-Comm shall not prevent the Access Seeker from notifying a dispute to the Commission in accordance with the Act.

### 2. General

2.1 Until expiry of these Dispute Resolution Procedures, an Operator may not commence court proceedings relating to that dispute, other than an application for urgent interlocutory relief. Nothing in this subsection shall be construed as ousting the jurisdiction of any court.

- 2.2 An Operator shall ensure that its representatives acting in relation to a dispute are of sufficient seniority and have authority to settle an access dispute on behalf of the Operator. At the commencement of the Dispute Resolution Procedure, each Operator must notify the other Operator of the scope of the authority of each of their representatives. If in the course of the Dispute Resolution Procedure it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to a representative, an Operator may require that those matters be referred to more senior officers of that Operator who have authority to settle those matters.
- 2.3 During a dispute and any Dispute Resolution process invoked in accordance with this Annexure, Clear-Comm and Access Seeker must continue to fulfill their obligations under the Access Agreement between them.
- 2.4 Subject to subsection 2.5, the parties to a dispute shall exchange information of a type described in this Standard during the course of, and to facilitate, resolution of such a dispute.
- 2.5 Confidential Information of a Party which is disclosed, and any other oral or written submissions made by a Party or a Party's representatives during the course of any Dispute Resolution process will be subject to the confidentiality restrictions in relevant confidentiality provisions contained in the Confidentiality Agreement prepared in accordance with subsection 5.3.7 of the Mandatory Standard on Access (the Standard).
- 2.6 A Party must not use information obtained under subsection 2.4 or described in subsection 2.5 above for any purpose other than to resolve the dispute.
- 2.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of a dispute (including a Technical Expert or the Commission, in accordance with this Annexure) may decide not to determine the dispute if the arbitrator considers that the dispute is trivial, frivolous or vexatious, or if there is insufficient evidence before the arbitrator to determine the dispute.
- 2.8 The costs of the arbitration are to be shared equally between the parties, unless the arbitrator of the dispute has decided not to determine the dispute in accordance with subsection 2.7. If an arbitrator decides not to determine the dispute, the Party that initiated the dispute must pay the other Party's costs.
3. Inter-Party working group
  - 3.1 In the first instance the Access Seeker and Clear-Comm should attempt to resolve the Access Dispute between themselves.
  - 3.2 Clear-Comm and Access Seeker shall establish a working group, or working groups, to fulfill the requirements of subsection 3.1. The working group shall be comprised of representatives of the Parties, and be headed by a person who holds a position at least equivalent to the head of the Access Provider's Wholesale or Interconnection Group.

- 3.3 Clear-Comm shall provide for:
- (a) subject areas dealt with by each working group;
  - (b) equal representation by the Access Seeker and Clear-Comm;
  - (c) chairmanship and administrative functions of the working group to be shared equally; and
  - (d) formal notification procedures to the working group.
- 3.4 Clear-Comm and the Access Seeker shall use reasonable endeavours to attempt to settle an access dispute in the working group context for a period of no longer than forty five (45) days, subject always to a Party's right to seek urgent interlocutory relief.
4. Interconnect steering group
- 4.1 In the event that the parties cannot resolve the dispute between themselves within the time specified in subsection 3.4, or after any time extension has expired, either Party may give ten (10) Business Days written notice (Notice Period) to the other Party stating its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice Period, then either Party may notify the other Party (Receiving Party) that it wishes to refer the issue to the Interconnect Steering Group (ISG).
- 4.2 In the event that a dispute is referred to an ISG under clause 4.1, the Parties shall promptly form a committee comprising the ISG with an equal number of appropriate representatives from each Party.
- 4.3 The ISG to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Party of a notice under clause 4.1. If the ISG fails to meet or has not been formed within 10 Business Days of the receipt by the Reviewing Party of a notice of a dispute, either Party may refer the dispute to a Technical Expert (in accordance with clause 5) or to the Commission for arbitration.
- 4.4 If the ISG has not resolved a dispute within twenty (20) Business Days after it first meets to review that dispute under clause 4.3, either Party may:
- (a) refer any technical dispute to a Technical Expert in accordance with section 5 of this Annexure; or
  - (b) refer the dispute to the Commission for final arbitration.
5. Use of a Technical Expert
- 5.1 A dispute will only be referred to a Technical Expert if the provisions of section 4 have been complied with.
- 5.2 Once a dispute is referred to a Technical Expert, it may not be referred back to a Working Group or ISG.
- 5.3 The Technical Expert:
- (a) will be an expert appointed by agreement of the Parties or, if the parties cannot agree, by the Commission;

- (b) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communications industry;
  - (c) need not be a Malaysian citizen or resident; and
  - (d) will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interest.
- 5.4 If the Parties fail to appoint a Technical Expert within ten (10) Business Days of notice of the need to refer a dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.
- 5.5 When relying on the services of a Technical Expert, the following procedure will apply to the dispute resolution procedure of the Technical Expert:
- (a) the Parties will present written submissions to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and
  - (b) each Party may respond to the other Party's submission in writing within fifteen (15) Business Days from the date of the other Party's submission.
- 5.6 At the request of either Party and subject to the Parties agreeing or the Technical Expert deciding within five (5) Business Days of the last written submission that the use of the Technical Expert be by documents only, a Technical Expert hearing will be held within fifteen (15) Business Days of the last written submission.
- 5.7 Should a Technical Expert dispute resolution procedure hearing be held, each Party will have the opportunity of making an oral submission. This process will be conducted in private.
- 5.8 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Parties) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.
- 5.9 The Technical Expert will not have the power to appoint any other experts.
- 5.10 The Technical Expert will deliver his award within fifteen (15) Business Days of the hearing or of the last written submission where the arbitration is by documents only.
- 5.11 Every dispute referred to a Technical Expert will be considered separately so that time limits for each dispute are complied with.
- 5.12 The Technical Expert's decision will be binding on the Parties (in the absence of manifest error of fact or law).
6. Billing Dispute resolution
- 6.1 As outlined in the billing provisions of the Standard at subsection 5.9, a Party (the Invoicing Party) shall provide to the other Party (the 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 services during such Billing Period.

- 6.2 An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if:
- (a) in the case of domestic calls and interconnection, the Invoiced Party notifies the Invoicing Party within forty-five (45) days after the date of receipt of such Invoice;
  - (b) 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; and
  - (c) in case of any other Facilities and Services, the Access Seeker notifies the Access Provider within forty-five (45) days after the date of receipt of such invoice.
- 6.3 A Billing Dispute may only arise where the Invoiced Party has reasonable grounds to believe that an error has arisen from one of the following circumstances:
- (a) the Invoicing Party's Billing System is, or has been, defective or inaccurate in respect of the recording of the calls which are the subject of the dispute;
  - (b) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Party's Billing System;
  - (c) there is, or has been, a fraud perpetrated by the Invoicing Party; or
  - (d) the Invoicing Party has made some other error in respect of the recording of the calls or calculation of the Charges which are the subject of the Billing Dispute.
- 6.4 A Billing Dispute Notice given under this section 6 must specify:
- (a) the reasons for which the Invoiced Party disputes the Invoice;
  - (b) the amount in dispute;
  - (c) details required to identify the relevant Invoice and charges in dispute including:
    - i. the account number;
    - ii. the Invoice reference number;
    - iii. the Invoice date;
    - iv. the Invoice amount; and
    - v. billing verification information.
  - (d) evidence in the form of the Invoiced Party's outgoing report, indicating the relevant traffic data which is in dispute
- 6.5 The Invoiced Party may withhold payment of amounts disputed in good faith in accordance with subsection 5.9.11 of the Standard. If the dispute is resolved against the Invoiced Party, that Party shall be required to pay interest at the rate specified in subsection 5.9.15 of the Standard on the amount payable; and
- 6.6 Where the Invoiced Party has paid an amount and subsequently notifies the Invoicing Party of a Billing Dispute in relation to that amount within the Billing Dispute Notification Period, the Invoicing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount. Once the Billing Dispute is resolved, if the Invoicing Party is obliged to refund an amount to the Invoiced Party, interest will be payable on the refunded amount at the rate specified in subsection 5.9.15 of the Standard. In such circumstances, interest will be payable from the date the Invoiced Party paid the disputed amount to the date of the refund by the Invoicing Party.

- 6.7 The Parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this section 6.
- 6.8 If the Parties are unable to resolve any Billing Dispute within thirty (30) days (or such other period as the Parties may agree) from the date on which the Billing Dispute Notice is received, either Party may seek the consent of the other Party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other Party is, however, under no obligation to agree to such extension.
- 6.9 To the extent that a Billing Dispute notified under this section involves a Billing Dispute with an international correspondent of the Invoicing Party, the Dispute Resolution Procedures shall be suspended for a reasonable period of time pending resolution of the dispute with that international correspondent. As a general rule, the period of suspension will not exceed one-hundred and twenty days (120). However, the Parties recognise that some Billing Disputes with international correspondents may take longer to resolve, in which case the Invoicing Party must promptly inform the Invoiced Party of the likely period required for resolution.
- 6.10 Once the Negotiation Period and any extension granted under subsection 6.9 has expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in subsection 6.11 (Billing Dispute Escalation Procedure).
- 6.11 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this subsection 6.11 by notifying the Invoicing Party's Billing Representative. Each of the Parties shall then appoint a designated representative that has authority to settle the Billing Dispute, and that is at a higher level of management than the persons with direct responsibility for administration of this Standard. The designated representatives shall meet as often as they reasonably deem necessary in Order to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one Party to the other Party shall be honoured.
- 6.12 Once any Billing Dispute has been resolved to the Parties' satisfaction, any sum to be paid or repaid shall be paid by the relevant Party within 14 days from the date of resolution of the Billing Dispute.
- 6.13 Although it is the good faith intention of the Parties to use the above Billing Dispute Resolution Procedures to the fullest extent to try to solve Billing Disputes, nothing in this Annexure shall prevent either Party from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- 6.14 A Party may request a joint investigation of Invoice discrepancies after that Party has conducted comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the Parties must agree the terms of the joint investigation, including:
- (a) the scope of the joint investigation;
  - (b) how the joint investigation will be conducted; and

(c) the date by which the joint investigation must be concluded.

The joint investigation may include the generation of test calls to the other Party's Network.

- 6.15 Enquiries relating to billing, collecting and settlement arrangements or in relation to Network and operation issues may be directed to the Billing Representatives nominated by each Party.
- 6.16 Either Party may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- 6.17 If the Parties are unable to resolve any Billing Dispute within thirty (30) Days from any extended date as might be agreed upon under subsection 6.8, or if they are unable to agree any such extension, either Party may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the Act.
- 6.18 In this section 6:
- (a) "Billing Dispute" means the dispute of an Invoice prepared by a Party to the other Party which is made in good faith;
  - (b) "Billing Dispute Notice" means the written notification made by a Party to the other Party in relation to a Billing Dispute in accordance with subsection 6.2;
  - (c) "Billing Dispute Notification Period" means the period after the date of an Invoice described in subsection 6.2;
  - (d) "Billing Representative" means a representative of the Party appointed in accordance with the billing procedures set out in subsection 6.15; and
  - (e) "Billing System" means a system to issue Invoices relating to charges payable by each Party under the relevant Access Agreement.

## Annexure B : Non-Disclosure Agreement (NDA)

## AGREEMENT ON NON-DISCLOSURE OF CONFIDENTIAL INFORMATION

This agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 between Clear-Comm Sdn. Bhd., a corporation duly incorporated pursuant to the laws of Malaysia, with its business office at 15 A-B-C, Jalan Anggerik Vanilla P31/P, Kota Kemuning, 40460 Shah Alam, Selangor Darul Ehsan, Malaysia (hereinafter referred to as the “Clear-Comm”) of the first party, and \_\_\_\_\_, a corporation duly incorporated pursuant to the laws of Malaysia with a business office at \_\_\_\_\_ (hereinafter referred to as “XXXXX”) of the second party.

## WHEREAS

To facilitate possible future business arrangements and to explore joint opportunities relating to such mutually agreed business arrangements, the Parties intend to exchange certain confidential information on a confidential basis. The Parties hereto agree that any such disclosure and receipt of confidential information shall be subject to the following terms and conditions:

1. Definitions.

- 1.1 “Information” means any technical information, operational plans and details, marketing and research information, tender specifications, names and details of parties invited to tender for any projects requiring the products or services of either party, intellectual property owned by either party, agreements with third parties for such projects, and business communications or data, in any form, including, but not limited to, oral, written, graphic or electromagnetic forms that relate to the design, manufacture, test, installation, operation, distribution or sale of Internet Protocol Network components including any relevant equipment necessary for any projects that both parties have agreed to participate, whether in a tender exercise by one party to the exclusion of the other party or by one party with another third party.

FOR THE PURPOSE OF THIS DEFINITION, ANY INFORMATION PROVIDED BY DISCLOSING PARTY SHALL NOT BE DUPLICATED OR DISTRIBUTED IN HARD OR SOFT-COPY FORM AND RETAINED IN ANY TYPE OF STORAGE MEDIA UPON NOTIFICATION BY THE DISCLOSING PARTY TO THE RECEIVING PARTY.

## 1.2 Confidential Information

“Confidential Information”- means the Information disclosed under this Agreement, for which the Disclosing Party desires to protect against unrestricted disclosure or competitive use, and which is designated as such in the manner provided by this Agreement.

All Information disclosed by one Party to the other that is to be protected as Confidential Information shall be marked as hereunder provided:

- (a) Shall be conspicuously identified as “Confidential” at the time of its disclosure and or communication, if such Information is in writing or other tangible form; or
- (b) Shall be identified as confidential at the time of its disclosure or communication, if such Information is conveyed orally, by observation, or otherwise, and shall be reduced to writing or other tangible form and delivered by the Disclosing Party to the Receiving Party marked consistent with Paragraph 1.2(a).

1.3 The Effective Date shall be xxxxx 2009

2. Termination.

This Agreement shall automatically terminate two (2) years from the Effective Date, unless sooner terminated in writing by a Party or extended by mutual exchange of correspondences, except that the obligations of confidentiality and non-use with respect to the Confidential Information disclosed to the Receiving Party prior to such termination shall survive such termination until the end of the period set forth in Paragraph 4 below. Upon the termination of this Agreement, or at the written request of the Disclosing Party, all Confidential Information and any copies thereof, shall be returned to the Disclosing Party or destroyed.

3. Period of Confidentiality.

Confidential Information shall be treated and safeguarded by the Receiving Party for five (5) years from the date of disclosure (“Period of Confidentiality”) with the same degree of care as the care with which it treats its own confidential information. The Receiving Party warrants that it applies reasonable safeguards against the unauthorized disclosure of its own confidential information.

4. Duties of Receiving Party.

The Receiving Party agrees that:

- (a) It shall use the Confidential Information disclosed by the Disclosing Party solely for evaluating the mutual interests of the Parties in entering into a business arrangement involving the subject matter of the Confidential Information;

- (b) It will not duplicate the Confidential Information without the written approval from the Disclosing Party, which shall not be unreasonably withheld;
- (c) It will not use the Confidential Information for any purpose not contemplated by this Agreement, and;
- (d) It will not distribute, disclose, or disseminate the Confidential Information to anyone except its employees or consultants who are involved in the aforesaid evaluation, who have a need to know such Confidential Information and who have agreed to abide by the obligations of this Agreement.

5. Exclusions.

The obligations of confidentiality shall not apply to Information that:

- (a) Is or becomes publicly known without breach of this Agreement by the Receiving Party, its employees, or consultants;
- (b) Is already in the possession of the Receiving Party without restriction as evidenced by appropriate documentation;
- (c) Is lawfully disclosed to the Receiving Party by a third party without an obligation of confidentiality upon the Receiving Party;
- (d) Is developed independently by employees or agents of the Receiving Party without benefit of the Information;
- (e) Is released from the obligations of confidentiality in writing by the Disclosing Party;
- (f) Is made available by the Disclosing Party to a third party without written restrictions on its disclosure; or
- (g) Is required to be disclosed by order of a government agency or a court of competent jurisdiction, provided that the Receiving Party shall give timely notice to the Disclosing Party such that the Disclosing Party can oppose such disclosure at the sole expense of the Disclosing Party.

6. Warranty/No Warranty.

The Disclosing Party warrants that it owns and has the unrestricted right to disclose the Confidential Information to the Receiving Party and that no third party confidential information is included in the disclosed information.

The Disclosing Party shall not be liable for any errors or omissions in the Confidential Information or for the use of the Confidential Information.

THE DISCLOSING PARTY SHALL NOT BE LIABLE FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING OUT OF THIS AGREEMENT AND THE CONFIDENTIAL INFORMATION DISCLOSED HEREUNDER, EVEN IF ADVISED OF THEIR POSSIBILITY.

No warranty, express or implied, is given by either party to the correctness and usefulness of any advice or proposal given by one party to the other party arising out of the discussion concerning any projects and the use of such Confidential Information. All advices and proposals given are for reference and discussion only and shall not be binding on the party giving that advice and proposal.

7. No Assignment.

Neither party shall assign or transfer any of its rights and obligations in this Agreement without prior written consent of the other party.

8. No Obligation to enter Subsequent Agreement.

This Agreement shall not be construed by either party in any manner to be an obligation to enter into a subsequent agreement of any kind.

9. No License.

Unless otherwise expressly provided herein, neither Party grants a license to the other hereunder any patent, trademark, copyright, trade secret, or any other intellectual property right.

10. Rights of Parties.

- (a) The Parties are and shall continue to be free to investigate, discuss and conclude agreements with other parties for the acquisition, sale or development of technology and product lines that are similar to or competitive with those of the other Party. Nothing in this Agreement shall be construed to restrict the right of the Parties to pursue and effectuate such business arrangements.
- (b) Each Party acknowledges that this Agreement and any meetings and communications of the Parties relating to the subject matter shall not:
  - (i) Constitute or imply an offer, request, or contract with the other to engage in any research, development or other work; or

(ii) Constitute or imply an offer, request, or contract with the other involving a buyer-seller relationship, joint venture, and teaming or partnership relationship between the Parties.

11. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the disclosure of Confidential Information and supersedes any prior or contemporaneous oral or written representations or understandings with respect thereto. Any amendment to this Agreement must be in writing and signed by authorized representatives of each Party.

12. Governing Law.

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

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

FOR: Clear-Comm Sdn. Bhd.

FOR: COMPANY NAME

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_