



## ACCESS REFERENCE DOCUMENT

(491931-M)

**Cordoda Corporation Sdn. Bhd.**  
*(a subsidiary of Patimas Computers Berhad)*

Patimas Technology Centre  
Technology Park Malaysia  
Bukit Jalil  
57000 Kuala Lumpur  
Tel: 03-8994 1628  
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## **1.0 INTRODUCTION**

- 1.1 This Access Reference Document (“ARD”) is prepared pursuant to the Ministerial Direction to determine a Mandatory Standard on Access, Direction No. 2 of 2003 and in exercise of the powers conferred by Sections 55, 56, 104 (2) and 106 of the Communications and Multimedia Act 1998 [Act 588]. The Determination is cited as the Commission Determination on Mandatory Standard on Access, Determination No. 2 of 2005 (“MSA”).
- 1.2 This ARD specifies the procedures and process to be followed by an Access Seeker who intends to acquire Facilities and/or Services from Cordoda Corporations Sdn. Bhd. (Company No. 491931-M) (“Cordoda”).
- 1.3 The ARD is divided into the following sections:
- 1.0 INTRODUCTION**
  - 2.0 SCOPE OF ARD**
  - 3.0 DISCLOSURE OBLIGATIONS**
  - 4.0 PROCEDURES FOR ACCEPTANCE AND NEGOTIATION OBLIGATIONS**
  - 5.0 FORECASTING OBLIGATIONS**
  - 6.0 ORDERING AND PROVISIONING OBLIGATIONS**
  - 7.0 NETWORK FACILITIES ACCESS AND CO-LOCATION OBLIGATIONS**
  - 8.0 BILLING AND SETTLEMENT OBLIGATIONS**
  - 9.0 OPERATIONS AND MAINTENANCE OBLIGATIONS**
  - 10.0 TERM, SUSPENSION AND TERMINATION OBLIGATIONS**
  - 11.0 LEGAL BOILERPLATE OBLIGATIONS; and**
  - ANNEX A – DISPUTE RESOLUTION PROCEDURES**
  - ANNEX B - ACCESS LIST**
  - ANNEX C – CONFIDENTIALITY AGREEMENT**
  - ANNEX D – CUSTOMER ORDER FORM**
  - ANNEX E – DEFINITIONS**
- 1.4 This ARD and Cordoda’s standard access agreement may be subject to amendments from time to time. Where an amendment is made to the ARD, Cordoda shall comply with the obligations set out in Section 3.4 of this ARD.
- 1.5 For the purposes of this ARD, an amendment shall mean an addition, deletion, or substitution to the provisions of the ARD other than an addition, deletion or substitution, which is undertaken to correct a typographical error or which is specifically mentioned in the ARD not to amount to an amendment of the ARD.

- 1.6 All notices, forms, requests which are required to be sent by the provisions set out herein, shall be marked "ARD" and sent to the following:

Cordoda Corporation Sdn. Bhd.  
Patimas Technology Centre,  
Technology Park Malaysia  
Bukit Jalil  
5700 Kuala Lumpur  
Malaysia.

A change of address shall not be construed as an amendment to the ARD.

- 1.7 The terminology used in this ARD has the meanings to them in **Annex E – Definitions**. All other words and phrases used in this ARD shall, unless the context otherwise requires, have the same meaning as in the MSA.

## **2 SCOPE OF THE ARD**

### **2.1 Applicability to Licensees**

2.1.1 This ARD applies to Access Seekers who are licensed under the Act as:

- (a) network facilities providers;
- (b) network service providers;
- (c) applications service providers; and
- (d) content applications service providers.

2.1.2 The ARD shall apply only in respect of the wholesale relationship between Operators in relation to access to, Facilities and Services included in the Access List.

### 3 DISCLOSURE OBLIGATIONS

- 3.1 Cordoda shall, subject to the provisions of this Standard and the terms and conditions of any confidentiality agreement entered into pursuant to subsection 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.
- 3.2 Cordoda shall prepare and maintain an ARD in relation to Facilities or Services on the Access List Determination which that Cordoda provides to itself or third parties and which:
- (a) contains terms and conditions which are consistent with the rights and obligations set out in this ARD; and
  - (b) does not include terms and conditions which are inconsistent with the rights and obligations set out in this ARD.
- 3.3 Without limiting its obligations under the Act, Cordoda 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 3 on the basis that the Access Seeker wishes to negotiate an agreement, whether the access sought is based on an ARD or otherwise.

For clarification, prior to provision of an ARD to an Access Seeker, Cordoda may request the Access Seeker to enter into a confidentiality agreement in accordance with subsection 3.6.

- 3.4 **Amendment:** If Cordoda amends an ARD, Cordoda must, 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 Cordoda'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.

For clarification:

- i. nothing in this subsection 3.4 prevents an Access Seeker from initiating a dispute in relation to an amendment to an ARD made by Cordoda under this subsection.
- ii. where the terms and conditions of an Access Agreement are not based on an ARD, an amendment to an ARD will not alter the terms of that Access Agreement;
- iii. without prejudice to an Access Seeker's right to dispute a change to an ARD, where an Access Agreement is based on an ARD, an amendment to an ARD will be deemed to alter the relevant terms and conditions of that Access Agreement. However, if the Access Seeker disputes the change to the ARD, no amendments to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favour of Cordoda.

3.5 **Information Disclosure:** Cordoda must provide the following information to an Access Seeker within ten (10) Business Days of receipt of a written request from that Access Seeker, to the extent that it is not provided in Cordoda's ARD:

- (a) Cordoda's description of each of the Facilities and Services that may be supplied by Cordoda, such description to be consistent with the description (if applicable) of the Facilities and Services on the register of Facilities and Services included in the Access List Determination (as maintained by the Commission pursuant to section 148 of the Act);
- (b) the application forms required to be completed by the Access Seeker to apply for access to Facilities and Services including the fast track application under subsection 5.19;
- (c) subject to subsection 3.6, a confidentiality agreement required to be executed by the Access Seeker;
- (d) Cordoda's current access charges for access to Facilities and Services, including individual and wholesale offerings;

- (e) details of the basis on which Cordoda's current access charges are determined;
- (f) all relevant technical information relating to the Facilities or Services which may be the subject of the Access Request, including but not limited to any physical and logical interfaces of its Network necessary to allow the development and deployment of communications services, value-added services and communications equipment that can interconnect to, and interoperate with, Cordoda's Network;
- (g) details of Cordoda's provisioning cycles and any impact such cycles may have upon an Access Request by the Access Seeker (e.g. capacity constraints);
- (h) details of Cordoda's quality of service targets and achievements in respect of the Facilities and/or Services which may be the subject of the Access Request;
- (i) any security requirements, insurance requirements and creditworthiness information required by Cordoda under subsections 3.7, 3.8 and 3.9;
- (j) Cordoda's reasons for failing to supply any of the information referred to in paragraphs (a) to (i) of this subsection 3.5.

Prior to the provision of information under this subsection 3.5, Cordoda may request the Access Seeker to enter into a confidentiality agreement in accordance with subsection 3.6.

3.6 **Confidentiality Agreement:** Cordoda's confidentiality agreement to be provided to an Access Seeker on request under subsection 3.5:

- (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.

3.7 **Security requirements:** Cordoda shall ensure that the amount and type of any security requirements to be imposed on an Access Seeker in Cordoda'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 by Cordoda 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 by Cordoda.

3.8 **Insurance requirements:** Cordoda shall ensure that any insurance that it requires an Access Seeker to have in place extends 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.

3.9 **Creditworthiness information:** Cordoda may only request creditworthiness information from an Access Seeker:

(a) if Cordoda 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 Cordoda 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 Cordoda over a ninety (90) day period.

## 4 NEGOTIATION OBLIGATIONS

- 4.1 **Timing:** If an Operator wishes to negotiate an Access Agreement with another Operator:
- (a) both parties shall use their best endeavors 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.
- 4.2 **Good faith:** An Operator shall co-operate, 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.
- 4.3 **Confidentiality:** An Operator must protect from disclosure any Confidential Information provided by another Operator in the course of negotiating an Access Agreement and during the term of an Access Agreement in accordance with a confidentiality agreement prepared under subsection 3.6.
- 4.4 **Intellectual Property:** An Operator shall only use such Intellectual Property and information provided by another Operator for the purposes of providing access to the requested network services or network facilities. An Operator must not use such Intellectual Property or information for the development or marketing of other communication services or equipment by that Operator, its affiliates or third parties.
- 4.5 **Provision of application:** Cordoda may require an Access Seeker to provide an Access Request to Cordoda if:

- (a) there is no agreement in force between Cordoda and the Access Seeker 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.

4.6 **Access Request:** An Access Request 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 Cordoda to provide for the purposes of the negotiations. The type of information which may be requested by the Access Seeker is described in, but not limited to, subsection 3.5;
- (e) two (2) copies of a confidentiality agreement properly executed by the Access Seeker in the form prescribed by Cordoda in accordance with subsection 3.6;
- (f) Forecasts of the capacity the Access Seeker will reasonably require, having regard to Cordoda's disclosed provisioning cycle (as described in paragraph 3.5(g)),
- (g) relevant technical information relating to the interface Standards of the Access Seeker;
- (h) 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 Cordoda's Network;
- (i) creditworthiness information in accordance with Cordoda's requirements, as set out in subsection 3.9;

- (j) security in accordance with Cordoda's security requirements, as set out in subsection 3.7;
  - (k) insurance information in accordance with Cordoda's insurance requirements, as set out in subsection 3.8; and
  - (l) such other information as Cordoda may reasonably request.
- 4.7 **Obligations upon receipt:** Cordoda 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 an ARD from the Cordoda, the Cordoda is willing to provide access in accordance with an ARD; or
  - (b) if paragraph 4.7(a) above does not apply, Cordoda is willing to proceed to negotiate the Access Request; or
  - (c) Cordoda rejects the Access Request in accordance with subsection 4.10; or
  - (d) Cordoda requires specified additional information to make a decision on the Access Request in accordance with paragraph 4.7(a) or paragraph 4.7(b), and once that information is received from the Access Seeker, Cordoda shall reconsider the Access Request in accordance with this subsection.
- 4.8 **ARD Response:** If Cordoda responds that access will be provided in accordance with an ARD (as described in paragraph 4.7(a)), Cordoda must, within ten (10) Business Days of such response, provide an ARD executed by the Cordoda to the Access Seeker.
- 4.9 **Negotiation response:** If Cordoda is willing to proceed with negotiation of the Access Request (as described in paragraph 4.7(b)), Cordoda must set out in such response:
- (a) a date and time, not later than fifteen (15) Business Days from the date of the Access Seeker's response, at which Cordoda'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 4.6(h)) that has also been properly executed by Cordoda.

4.10 **Refusal response:** If Cordoda decides to refuse the Access Request, Cordoda must provide the Access Seeker with a written response, setting out:

- (a) the grounds in subsection 4.11 on which Cordoda is relying; and
- (b) the basis of Cordoda's 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 representatives of Cordoda 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 Cordoda to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in 4.11(d), Cordoda must identify when additional capacity is likely to be available.

4.11 **Grounds for refusal:** Without limiting any other grounds that may be relied upon under the Act, Cordoda shall not refuse an Access Request, except on the grounds that:

- (a) Cordoda does not currently supply or provide access to the relevant Facilities or Services to itself or to any third parties, except where the Access Seeker compensates Cordoda 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 4.6 of this Standard;
- (c) it is not technically feasible to provide access to the Facilities or Services requested by the Access Seeker;
- (d) subject to this Standard, Cordoda has insufficient capacity to provide the requested network services or network facilities;

- (e) Cordoda 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;  
or
- (g) there are reasonable grounds for the Cordoda to refuse access in the national interest.

4.12 **Dispute resolution:** If following the meeting between the parties required to be held pursuant to paragraph 4.10(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 Cordoda's rejection of the Access Request, either Party may request resolution of the dispute in accordance with the Dispute Resolution Procedures.

4.13 **Initial meeting:** Unless otherwise agreed between the Operators, each Operator shall ensure that its representatives meet on the date notified pursuant to paragraph 4.9(a) 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 by each Operator;

(d) identify what technical investigations, if any, need to be made and by whom such investigations should be made.

4.14 **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.

4.15 **Good faith:** An Cordoda 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:
  - i. information about the Cordoda's Network that the Access Seeker reasonably requires to identify the Network elements to which it requires access; and
  - ii. information about the basis of the Determination of charges.

4.16 **Non-permitted Information:** Notwithstanding anything else in this Standard, an Cordoda shall not oblige an Access Seeker to provide any of the following information to Cordoda (whether as a condition of the provision of further information or as a condition 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 Cordoda'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 3.9; or
- (g) details of any other supply arrangements or Access Agreement s 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.

4.17 **Technical infeasibility:** For the purposes of paragraph 4.11(c), Cordoda shall not reject an Access Request on the grounds of technical infeasibility unless Cordoda establishes 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, by Cordoda except that space or site concerns may be taken into account in circumstances where there is no possibility of expanding the space available on the relevant site;
- (b) any requirement for Cordoda 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 Cordoda asserts that meeting the Access Request would have an adverse impact on Network reliability, Cordoda must provide evidence that provision of the requested Facilities or Services would result in a specific and significant adverse impact on Network reliability; and
- (d) Cordoda must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this clause) improvements that would allow Cordoda to meet the Access Request (in whole or part and including for an interim period until any primary difficulties can be resolved).

4.18 **Capacity constraints:** Cordoda may only refuse an Access Request on the ground set out in paragraph 4.11(d) where Cordoda 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 by Cordoda 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, Cordoda must promptly inform the Access Seeker and, if required by the Access Seeker, re-consider the Access Request in accordance with this subsection 4; and
- (c) in the case of both paragraphs 4.18(a) and 4.18(b), Cordoda is unable to expand capacity within the period Forecast by the Access Seeker on the Access Seeker's Access Request.

- 4.19 **Fast-track application and agreement:** Notwithstanding and as an alternative process to that set out in subsections 4.1 to 4.18, Cordoda will make available a fast-track application and agreement process for Access Seekers based on the following principles:
- (a) the Access Seeker is duly licensed to provide the Facilities or Services listed in the Annex B - Access List for which access is sought.
  - (b) the access requirements of the Access Seeker do not in Cordoda's opinion, have a material impact on Cordoda's current level of network resources; and;
- 4.20 Where an Access Seeker who is eligible for the fast track application process wishes to utilize the fast track application process, the Access Seeker shall:
- (a) in respect of any requirement to provide security, shall be limited to the provision by the Access Seeker of a standard security amount which shall be no more than RM50,000;
  - (b) pay a non-refundable processing fee to be determined by Cordoda for undertaking the necessary administrative work to process the fast track application; and
  - (c) provide Cordoda with two copies of the signed Confidentiality Agreement
- 4.21 Cordoda may only reject the Access Seeker's fast-track application for reasons set out in subsection 5.4.11(a), (e) or (f);
- 4.22 Where Cordoda accepts the Access Seeker's fast track application, Cordoda:
- (a) may impose a one-off resource charge for allocation of manpower and other resources and
  - (b) shall within ten (10) Business Days of receipt of the fast track application, provide an ARD executed by Cordoda to the Access Seeker.
- 4.23 Cordoda will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Facility or Service until a Security Sum has been provided in accordance with Sections 4.20 (a);

## 5 FORECASTING OBLIGATIONS

- 5.1 **General:** Subject to subsections 5.2 and 5.3, Cordoda 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.
- 5.2 **Confirmation of Forecast:** If Cordoda, acting reasonably will incur significant costs to ensure that access can be provided in accordance with a Forecast, Cordoda 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 6 will apply.
- 5.3 **Alternative procedure:** Cordoda and an Access Seeker may agree to an alternative Forecasting and Ordering procedure other than that set out in this subsection 5. If agreement is reached about such matters, Cordoda and Access Seeker will be bound by the terms of that alternative procedure and not this subsection 5.
- 5.4 **Non-binding:** Subject to subsection 5.2, Cordoda shall not require an Access Seeker:
- (a) to provide Forecasts that are legally binding on the Access Seeker, subject to subsection 5.14; or
  - (b) to provide information in its Forecast that identifies or would allow identification of Customers.
- 5.5 **Forecast request:** Cordoda may request an Access Seeker to provide, with a sufficient level of detail to enable Cordoda 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 Cordoda'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 Cordoda 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
- (f) such other information that Cordoda reasonably requires in order to provide access to Facilities or Services requested by the Access Seeker.

5.6 **Forecast Provision:** Cordoda 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 Cordoda notifies the Access Seeker in writing that it withdraws the relevant Forecast Request.

5.7 **Use of Forecast Information:** Forecast Information provided by the Access Seeker shall be treated by an Cordoda as the Confidential Information of the Access Seeker and shall only be used by the Cordoda whose role is within either:

- (a) the Cordoda's wholesale or interconnection group; or
- (b) that part of the Network engineering group of the Cordoda responsible for interconnection for the purpose of responding to and planning for the Forecast. The Cordoda must maintain records that indicate which persons are provided with access to Forecast information.

5.8 **Distribution of Forecast Information:** Cordoda may only distribute Forecast Information of an Access Seeker outside the groups of people referred to in subsection 5.7 if:

- (a) the Forecast Information of the Access Seeker is aggregated with Forecasts provided by other Operators and the Cordoda'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.

5.9 **Time for acceptance:** The Cordoda must notify the Access Seeker:

- (a) within five (5) Business Days of receiving the Forecast if the Cordoda 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.

5.10 **Reasons for rejection:** Cordoda may only reject a Forecast where Cordoda 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 4.19, the amount of capacity in the Facilities or Services that the Cordoda currently has available and can reasonably provision over the Forecast period, which must be at least equivalent than that which the Cordoda can reasonably provision for itself.

5.11 **Time for rejection:** The Cordoda 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 the Cordoda rejects the Forecast in accordance with subsection 5.10, 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 the Cordoda and Access Seeker if the offer is accepted by the Access Seeker (**Rejection Notice**).

5.12 **Reconsideration by Access Seeker:** The Cordoda 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 the Cordoda's concerns.

5.13 **Reconsideration by Cordoda:** The Cordoda shall reconsider any amended Forecast provided pursuant to subsection 5.10 and subsections 5.9 to 5.11 shall re-apply.

5.14 **Recovery for over-Forecasting:** Cordoda 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 Cordoda;
- (b) Cordoda reasonably seeks to mitigate its loss over a six month period (including through its own usage); and
- (c) Cordoda only recovers from the Access Seeker 75% of such costs and expenses which could not be mitigated under paragraph 5.14(b) above.

5.15 **Meeting Forecasts:** Subject to subsections 5.9 to 5.11, Cordoda 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 5.2, it will be binding on the Access Seeker.

## 6 ORDERING AND PROVISIONING OBLIGATIONS

- 6.1 **Contact Point:** Cordoda shall designate a person to whom Orders for access to Facilities and Services are to be delivered and shall notify the Access Seeker of the designated person from time to time.
- 6.2 **Order content:** Prior to access being provided, Cordoda may require an Access Seeker to provide it with an Order, which outlines the Access Seeker's access requirements. Cordoda 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 Cordoda reasonably requires in Order for it to plan for the provision of access to the Facilities or Services as requested by the Access Seeker.
- 6.3 **Use of ordering information:** Ordering information provided by the Access Seeker shall be treated by Cordoda as the Confidential Information of the Access Seeker and shall only be used by those persons within Cordoda whose role is within:
- (a) Cordoda's wholesale or interconnection group; and
  - (b) that part of the Network engineering group of Cordoda responsible for interconnection, for the purpose of responding to and provisioning for the Order.
- 6.4 **Treatment of Orders and Service Qualifications:** Cordoda 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.

6.5 **Acknowledgment of receipt:** Cordoda 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.

6.6 **Notice of Receipt:** Cordoda 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 Cordoda 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 , Cordoda shall inform the Access Seeker of the available capacity and timeframe for the fulfillment of the Order.

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

6.8 **Service Qualifications:** Cordoda shall only conduct Service Qualifications if:

- (a) Cordoda reasonably requires information from such Service Qualifications which is not readily available; and
- (b) Cordoda 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 6.7, within five (5) Business Days of the expiry of the period in subsection 6.7, together with the reasons for such Service Qualifications.

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

6.9 **Completion of Service Qualifications:** Cordoda shall:

- (a) complete any Service Qualification in respect of an Order within twenty-one (21) Business Days of the commencement of the Service Qualification;

- (b) inform the Access Seeker of the result of any Service Qualification within two (2) Business Days of the completion of such Service Qualification.
- 6.10 **Withdrawal of Order following Service Qualifications:** Cordoda shall permit an Access Seeker to withdraw its Order without penalty within fourteen (14) days after receiving the result of a Service Qualification under subsection 6.9.
- 6.11 **Acceptance obligation:** Cordoda must use its reasonable efforts to accept and fulfill Orders from the Access Seeker for Services and Facilities.
- 6.12 **Time for acceptance/rejection:** Cordoda must notify the Access Seeker within fourteen (14) days of receiving an Order that the Order is accepted or rejected, save where Cordoda undertakes a Service Qualification as contemplated in subsection 6.8, in which case the time periods in subsection 6.9 are to be added to this fourteen (14) days period. If Cordoda notifies the Access Seeker that an Order is rejected, Cordoda must advise the Access Seeker if it would be able to accept the Order in a modified form.
- 6.13 **Notice of acceptance:** Cordoda'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 Cordoda, must be no later than the indicative delivery timeframes set out in subsection 6.14;
  - (b) the charges applicable to the fulfillment 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.
- 6.14 **Indicative delivery times:** For the purposes of paragraph 6.13(a), the following are the indicative delivery timeframes for the following aspects of a Facilities or Services:

Order Type	Indicative delivery timeframe
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
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- (a) The indicative delivery timeframes specified in this subsection 6.14 shall commence from the date the Access Seeker confirms an Order in accordance with subsection 6.15
- (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 Cordoda.

6.15 **Access Seeker confirmation:** Cordoda shall permit an Access Seeker to confirm its agreement to proceed with the Order within the validity period of Cordoda's acceptance of such Order (as described in paragraph 6.13(d)). Upon such confirmation, Cordoda shall fulfill the Order in accordance with the notice of acceptance provided under subsection 6.13.

6.16 **Estimated charges:** If the notice of acceptance provided by Cordoda under subsection 6.13 contains estimates of charges (e.g. based on time and materials):

- (a) Cordoda 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) Cordoda 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 Cordoda under subsection 6.16(a).
- (c) where the actual cost incurred by Cordoda exceeds an estimate or revised estimate for a specific scope of work provided by Cordoda 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 Cordoda for the actual cost incurred.
- (d) Cordoda shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate, such confirmation to be provided by the Access Seeker within fourteen (14) days from the notice given by Cordoda under subsection 6.6(a).

6.17 **Reasons for rejection:** Cordoda may only reject an Order from an Access Seeker where:

- (a) subject to subsection 6.19, it is not technically feasible to provide access to the Facilities or Services requested by the Access Seeker;
- (b) Cordoda has insufficient capacity to provide the requested Facilities or Services;
- (c) subject to subsection 6.19, 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 Cordoda (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.

6.18 **Notice of rejection:** Cordoda's notice of rejection to the Access Seeker must:

- (a) set out the grounds on which Cordoda 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.

6.19 **Order in excess of Forecast:** Notwithstanding paragraph 6.17(b), Cordoda must use its reasonable efforts to provide sufficient capacity to enable Cordoda to accept and fulfill Orders from an Access Seeker for Facilities or Services or both which are in excess of the relevant Forecast. Cordoda 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 Cordoda could readily upgrade existing capacity. Cordoda 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. Cordoda 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.

6.20 **Required extra capacity:** Cordoda may require an Access Seeker to procure such additional capacity on the Access Seeker's side of the Network as Cordoda, 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, Cordoda must notify the Access Seeker in writing, and the Access Seeker and Cordoda must meet (no later than 5 Business Days after receipt of the notice from Cordoda) to attempt to identify alternative sources of capacity. If the matter cannot be resolved within 10 Business Days of the date of that meeting, Cordoda may bar or block calls to the Access Seeker's Network to the extent necessary to minimize congestion within Cordoda's Network.

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

6.22 **Delivery dates:** Cordoda shall deliver the ordered access to Facilities or Services by the date specified in the notice of acceptance (as provided under subsection 6.13).

- 6.23 **Early delivery dates:** If Cordoda, 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.
- 6.24 **Delayed delivery dates:** Cordoda 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 Cordoda becomes aware of the possible delay;
  - (b) permit the Access Seeker notified under paragraph 6.24(a) above to cancel the Order without penalty if the delay is longer than fourteen (14) days; and (c) provide the Access Seeker with a remedy in accordance with subsection 6.33.
- 6.25 **Cancellation and variation of Orders:** Cordoda shall allow an Access Seeker to cancel or vary an Order at any time.
- 6.26 **Cancellation penalty:** Except where this Standard provides that cancellation is to be at no penalty, Cordoda shall only charge an Access Seeker which has cancelled or varied an Order no more than the costs necessarily incurred by Cordoda in relation to the cancelled or varied Order, reduced by the level at which those costs have been or would have been (had Cordoda used its best endeavors to do so), mitigated over a six (6) month period after the date of cancellation or variation.
- 6.27 **Testing and provisioning:** Cordoda 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 Cordoda treats itself.
- 6.28 **Resource charge:** Cordoda may charge the Access Seeker a one-off fee, to be determined by reference to the costs incurred by Cordoda 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.
- 6.29 **Queuing policy:** Cordoda 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 Cordoda treats its own Orders for similar Services; and
  - (c) shall seek to maximise the efficiency of its Ordering and provisioning process.
- 6.30 **Acceptance on queue:** Cordoda shall promptly notify an Access Seeker, at the time of providing an acknowledgment of receipt of the Order under subsection 6.5, of their acceptance on Cordoda's queue.
- 6.31 **Constrained capacity:** If Cordoda 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) Cordoda, for its own purposes
  - (d) would, in aggregate, exceed the capacity which Cordoda will be in a position to be able to provide, Cordoda 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 Cordoda's Capacity Allocation Policy.
- 6.32 **Capacity Allocation Policy:** If Cordoda claims or is likely to claim that it has insufficient capacity to meet an Access Seeker's Forecasts or Orders, Cordoda 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 Cordoda 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 Cordoda, its related bodies corporate and other Operator or Operators;

- (c) shall:
- i. be fair and reasonable;
  - ii. be consistent, so far as practicable, with the Cordoda'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 Cordoda'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.

6.33 **Late delivery:** If Cordoda fails to meet any timeframe in subsection 6.14 with respect to the delivery of access to Facilities or Services pursuant to an Order made in accordance with subsection 5, except where such failure has been caused solely by the Access Seeker's delay, Cordoda shall, without limitation to any other rights the Access Seeker may have under subsection 5 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 Cordoda's delay.

## 7 NETWORK FACILITIES ACCESS AND CO-LOCATION OBLIGATIONS

- 7.1 **Scope:** This sub-section applies where co-location or access is to be provided to or at network facilities under this Access Reference Document.
- 7.2 **Inspection:** Cordoda shall allow nominated employers or contractors of a potential Access Seeker to physically inspect network facilities at Cordoda during normal business hours provided that:
- a) the Access Seeker has provided no less than five (5) Business Days notice of its request to perform a physical inspection and details of its nominees; and
  - b) the nominations made by the Access Seeker are reasonable having regard to the position of each person and the number of persons nominated.
- 7.3 **Physical Access:** Cordoda shall allow an Access Seeker, its employees and contractors to physically access Cordoda's network facilities and have physical control over the Access Seeker's Equipment located at such network facilities, twenty-four (24) hours a day, seven (7) days a week.
- Access Seeker's employees and contractors shall at all times, be vigilant, read, understand and comply with Cordoda's facilities rules and regulation that are visible in and around the facilities.
- 7.4 **Escorts:** Cordoda shall solely determine if it is necessary to have an escort present when Access Seeker's employee or contractors wishes to enter into Cordoda's property, Cordoda shall:
- a) Make such escort service available at all times during ordinary business hours;
  - b) Have such escort service on call (with no longer than a thirty (30) minute response time to attend at Cordoda's property)
  - c) Bear the costs of such service.
- 7.5 **Absence of escort:** For the purpose of subsection 7.4, if an escort does not arrive at the Access Seeker's property within 30 minutes of the scheduled commencement of the visit the Access Seeker, the Access Seeker's staff may proceed to enter Cordoda's property without an escort.

- 7.6 **Site register:** Access Seeker must establish and maintain a register of all persons who visits Cordoda's property, which must be made available for inspection by Cordoda, upon request.
- 7.7 **Reservation of space:** Cordoda shall not reserve space other than for our own current needs, and future needs reasonably projected over 2 years and the needs of other Access Seekers who are currently occupying or have ordered space from that Cordoda
- 7.8 **Allocation of space:** Cordoda shall allocate space at location where co-location is to be permitted, available and permissible in a non-discriminatory way and will treat all other Access Seeker equally.
- 7.9 **Minimum space:** Cordoda shall allocate space at each location where co-location is to be permitted in a non-discriminatory way and will treat other Access Seeker's as it treats itself.
- 7.10 **Reconfiguration:** If there are space constraints at a particular location, Cordoda shall take reasonable steps to optimise its usage of the space, including but not limited to the following:
- a) Upgrading of Facilities to create more space
  - b) Request Access Seeker to transfer the Equipment to an alternative location
  - c) Request Access Seeker to optimise the use of occupied space
- 7.11 **Advice to the Commission:** Cordoda shall notify the Commission every twelve (12) months of its space requirements over a three (3) year period from the date of notification, together with a reconciliation of its reservation over the previous twelve (12) months with its actual space needs.
- 7.12 **Preparatory work by the Access Seeker:** If preparatory work is necessary for the purposes of allowing the Access Seeker to obtain access to or co-locate at or on Cordoda's network facilities, such Cordoda shall permit the Access Seeker's employees or contractors to perform such preparatory work if the Access Seeker satisfies Cordoda's Fit-Out Policies and Hardware Movement policies.

As Cordoda Fit-Out Policies and Hardware Movement Policies may change from time to time, it is advised that Access Seeker obtain a latest copy of the policies by sending the request to [helpdesk@cordoda.com](mailto:helpdesk@cordoda.com)

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

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

- i. the estimate will likely be exceeded; and
- ii. a further estimate of the charges for the work necessary to complete the preparatory work;

(b) Cordoda shall permit the Access Seeker to withdraw the request for preparatory work without penalty if the revised estimate exceeds the original estimate by more than 10% of the original estimate.

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

(a) notify the relevant Access Seeker of the delay to a delivery date, together with the reasons for the delay, as soon as practicable after the Cordoda becomes aware of the possible delay;

(b) permit the Access Seeker notified under paragraph 7.14(a) to cancel the preparatory work without penalty if the delay is longer than fourteen (14) days; and

(c) compensate the Access Seeker for the costs it has incurred as a result of delay, subject to the Access Seeker using reasonable endeavors to mitigate those costs.

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

(a) access to roads;

(b) access to land;

- (c) power, including the provision of back up power;
  - (d) environmental services (including but not limited to heat, light, ventilation and air-conditioning, fire protection);
  - (e) security, taking care to ensure that its agents, representatives or subcontractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft; and
  - (f) site maintenance.
- 7.16 **Security caging:** The use of cages or similar structures to physically segregate co-located Equipment or Equipment to be located at or on network facilities of the Access Seeker shall be an optional item.
- 7.17 **Equipment allowance:** Cordoda shall permit an Access Seeker to locate Equipment on or at the Cordoda's network facilities which is necessary for the purposes of obtaining the benefit of access to the network services and network facilities provided in accordance with this Standard, including but not limited to multi-functional Equipment which may also be used for purposes other than those that is specified here.
- 7.18 **Marking:** All Operators or Access Seeker shall mark or label their Equipment in such a manner that they can be easily identified as the Equipment of the Operator.
- 7.19 **Maintenance:** Cordoda shall permit, and do all things reasonably necessary to allow an Access Seeker to maintain its Equipment at or on the network facilities to which access has been granted. This may include, for example, the provision of physical access.
- For the purposes of this subsection, an Access Seeker shall be permitted to maintain its Equipment at or on the network facilities if the Cordoda allows external contractors or other third parties to maintain similar Equipment on the network facilities.
- 7.20 **Extensions:** Cordoda shall reasonably permit the Access Seeker, at the Access Seeker's cost, to extend network facilities of the Cordoda as may reasonably be required to meet the Access Seeker's requirements in the circumstances and to the extent technically feasible.
- 7.21 **Costs:** Cordoda shall apportion, in accordance with fair and equitable principles, the utility and ancillary cost charged to Access Seeker.

7.22 **Conditional Supply:** Cordoda shall not require an Access Seeker to acquire other facilities or services from the Cordoda as a condition of providing access to Facilities or Services.

For example, Cordoda shall not make access to network facilities conditional on the acquisition of network services (such as transmission services) or any other service (e.g. a maintenance service).

## 8 BILLING AND SETTLEMENT OBLIGATIONS

- 8.1 **Invoices:** Cordoda shall use its best endeavours to issue to the Access Seeker an Invoice in writing within thirty (30) days of the end of the Billing Period or the beginning of the billing period (as mutually agreed with the Access Seeker) for amounts due in respect of the supply of Facilities or Services during such Billing Period.
- 8.2 **Currency:** Unless otherwise agreed, Cordoda shall state all Invoices in Ringgit Malaysia and payment shall be made by the Access Seeker in Ringgit Malaysia.
- 8.3 **Billing cycle:** Cordoda shall issue Invoices in monthly Billing Cycles, unless otherwise agreed with the Access Seeker.
- 8.4 **Billing verification information:** Cordoda 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.
- 8.5 **Other Billing information:** Operator will provide to any Operator with which it interconnects, information within its possession that is reasonably necessary to allow the Operator to provide accurate and timely billing services to itself, its affiliates or other Operators.
- 8.6 **Summarised Invoice and billing information:** Cordoda shall provide the Access Seeker at the latter's request, with an aggregated summary of billings for access to the network facilities and network services provided to the Access Seeker, in monthly tranches.
- 8.7 **Billing error:** If Access Seeker discovers an error in an Invoice, it must notify the Cordoda. Cordoda will make the necessary adjustments to correct that error in the next Invoice.
- 8.8 **Time for payment:** Subject to subsection 8.11, Cordoda shall allow an Access Seeker thirty (30) days from the date of receipt of an Invoice or any other period as may be mutually agreed with the Access Seeker for the Access Seeker to make the payment. This subsection 8.8 should not be construed as preventing Cordoda from granting a discount to an Access Seeker as an incentive to make early payments.
- 8.9 **Method of payment:** Cordoda shall allow an Access Seeker to pay an Invoice by bank cheque or electronic funds transfer directly to an account nominated by the Cordoda.

- 8.10 **No set-off:** Unless otherwise agreed, Cordoda 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).
- 8.11 **Withholding of disputed amounts:** Cordoda 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 Cordoda 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 8.12.
- 8.12 **Billing Dispute Notification:** Cordoda 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 Invoice reference number;
    - ii. the Invoice date;
    - iii. the Invoice amount; and
    - iv. billing information.
- 8.13 **Billing Dispute Resolution:** Cordoda and an Access Seeker must comply with the Dispute Resolution Procedures applicable to Billing Disputes.
- 8.14 **Interest:** Subject to an Invoice being disputed by an Access Seeker in good faith in accordance with subsection 8.12, Cordoda 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 Cordoda. Unless otherwise agreed, the interest that may be charged by Cordoda 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. Unless otherwise agreed, 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 Cordoda of full payment. For clarification, Cordoda shall not charge interest on an amount, which is disputed by an Access Seeker in good faith.

- 8.15 **Back-billing:** Unless otherwise agreed, Cordoda 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 Cordoda 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 service is provided.

## 9 OPERATIONS AND MAINTENANCE OBLIGATIONS

- 9.1 **Operations & maintenance responsibility:** Cordoda shall be responsible for the operations and maintenance of its own Facilities and Services.
- 9.2 **Fault reporting systems:** Cordoda 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.
- 9.3 **Customer notification:** Cordoda will advise all of its directly connected Customers to report all faults to the fault reporting service described in subsection 9.2.
- 9.4 **Non-discriminatory fault reporting and identification:** Cordoda shall perform fault reporting and identification on a non-discriminatory basis.
- 9.5 **Cross-referrals:** If a Customer reports a fault to Cordoda:
- (a) when the Customer is directly connected to another Operator; or
  - (b) which clearly relates to a Network or support system of another Operator, Cordoda shall promptly inform the other Operator of the reported fault, or refer that Customer to the other Operator's fault reporting service.
- 9.6 **Network Fault responsibility:** Cordoda shall be responsible for rectifying and restoring services of the network which Cordoda operates and in accordance with all the obligations stated under this Operation and Maintenance Obligation Section.
- 9.7 **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.
- 9.8 **Faults affecting other Networks or Equipment:** If Cordoda 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, Cordoda shall promptly inform the other Operator of:
- (a) the existence of the fault;

- (b) the actions being taken by the first mentioned Operator to restore service and to further identify and rectify the fault; and
- (c) the outcome of those actions.

9.9 **Bear own costs:** Cordoda shall be responsible for establishing and maintaining a fault reporting service at its own cost irrespective of the location of the fault.

9.10 **Fault priority:** Cordoda 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.

9.11 **Fault Rectification:** Cordoda shall rectify faults on a non-discriminatory basis.

9.12 **Target Times:** Cordoda shall respond to and rectify faults as listed below:

Priority Level	Fault Types (examples)	Response Time	Restoration Time
Level 1	1. Major switch outage 2. Major routing issues 3. Fraudulent calls	Within 1 hr	4 hrs
Level 2	1. Minor switch outage 2. Minor routing issue	Within 4 hrs	24 hrs
Level 3	1. Fault affecting single or small number of Customers	Within 24 hrs	72 hrs
Level 4	1. Remote congestion 2. External Technical Irregularities (ETI) 3. Other performance related issues.	Within 48 hrs	14 days

9.13 **Planned Maintenance (10 business days):** If Cordoda intends to undertake planned maintenance which may affect an Access Seeker's Network, Cordoda shall:

- (a) provide at least ten (10) Business Days notice of the planned maintenance;

- (b) use its reasonable endeavours to minimize 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.
- 9.14 **Planned Maintenance Window:** Cordoda 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.
- 9.15 **Emergency Maintenance:** If Cordoda 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 minimize 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.
- 9.16 **Hours of fault reporting and rectification:** Cordoda shall maintain a twenty-four (24) hours a day, seven (7) days a week fault reporting and rectification service.
- 9.17 **Complaints Handling:** Cordoda shall report all interconnection outages that relate to Facilities and/or Services to the respective Fault Reporting Centre.
- 9.18 **Routing Testing:** Where applicable, Cordoda 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.

## 10 TERM, SUSPENSION AND TERMINATION OBLIGATIONS

10.1 **Term:** Unless otherwise agreed, Access Agreements shall carry a term of no less than three (3) years from the date of execution of the Access Agreement.

10.2 **Term of supply:** Unless otherwise agreed, and subject to Cordoda not being able to provide access as a result of Force Majeure, Cordoda 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
Network facilities	12 months

10.3 **Termination circumstances:** Subject to paragraph 10.6, Cordoda may only terminate an Access Agreement if any of the circumstances referred to in paragraphs 10.3 (a), 10.3(b) or 10.3 (c) apply and Cordoda has notified the Access Seeker that it will terminate where:

- (a) the Access Seeker has materially breached the agreement and the Cordoda 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) unless otherwise agreed, a Force Majeure has continued for a period of more than 90 days. Cordoda 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.

10.4 **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), Cordoda shall meet with the Access Seeker 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 Cordoda 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, Cordoda may terminate the provision of access to the relevant Facilities or Services.

10.5 **Suspension:** Subject to paragraph 10.6, Cordoda 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 the Cordoda'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 Cordoda, its employees or contractors;
- (c) the Access Seeker's Facilities cause material physical or technical harm to any Facilities of Cordoda or any other person;
- (d) where the Access Seeker has failed to pay Invoices in accordance with subsection 8;
- (e) where Force Majeure applies; or
- (f) the Access Seeker breaches any laws, regulations, rules or standards which has a material adverse effect on Cordoda or the provision by Cordoda of Facilities and/or Services under the Agreement.

For the purposes of this subsection 10.5, Cordoda must provide the Access Seeker five (5) Business Days Notice in writing, including written reasons, prior to suspending access to any Facilities or Services.

- 10.6 **Approval:** Prior to terminating or suspending or seeking to materially vary an Access Agreement or access to any Facilities or Services provided under it, Cordoda will inform the Commission in writing of the action it proposes to take and the reasons why such action is appropriate. Cordoda shall 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.
- 10.7 **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.
- 10.8 **Post-termination fees:** Cordoda 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 10.2).

10.9 **Upfront charges refund:** On termination of an Access Agreement or access to any Facilities or Services provided under it, Cordoda 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.

10.10 **Deposits and guarantees:** Notwithstanding the obligation in subsection 10.9, Cordoda 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 Cordoda 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 Cordoda as at the date of termination.

## 11 LEGAL BOILERPLATE OBLIGATIONS

- 11.1 **Obligation to supply:** Cordoda shall have obligation to supply access to the Facilities or Services in accordance with this Standard. Such obligation shall not be conditional upon the use of reasonable or best endeavours. Cordoda shall ensure that it shall not enter into any arrangement, which will prevent, hinder or restrict the fulfilment of Cordoda's obligation under this Standard.
- 11.2 **Mutual compensation:** Cordoda will establish mutually acceptable compensation arrangements with the other Operators (including bill-and-keep arrangements).
- 11.3 **Interconnect Steering Group:** Cordoda 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.
- 11.4 **Dispute Resolution:** Cordoda must comply with the Dispute Resolution Procedures
- 11.5 **Complete charges:** Cordoda 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 Cordoda shall do such work in accordance with a quotation agreed with the Access Seeker as set out in this ARD.
- 11.6 **Intellectual Property:** Cordoda 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.
- 11.7 **Security review:** Cordoda may only review the security provided to it by another Operator in accordance with subsection 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 11.7.

- 11.8 **Additional security:** If subsection 11.7 applies, Cordoda may only request additional or substitute security from the other Operator in a manner consistent with that which would apply if the other Operator was making a new Access Request under subsection 3.
- 11.9 **Assignment:** Cordoda's right to assign its rights under an Access Agreement prepared by it shall be reciprocal with the other Operator's rights of assignment.
- 11.10 **Review:** Cordoda 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 Cordoda's licence or the other Operator's license is amended or deleted or a new condition is imposed.
- 11.11 **Costs and expenses:** Cordoda and the other Operator shall each bear its own costs and expenses in relation to the preparation, negotiation and execution of an Access Agreement to which they are parties.
- 11.12 **Applicable laws:** Cordoda 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 Cordoda will comply with all applicable directions issued by the Malaysian regulatory authorities.
- 11.13 **Reciprocity:** Cordoda must offer to acquire access to Facilities and Services on the same terms that it provides access to those Facilities and Services.

## ANNEX A – DISPUTE RESOLUTION PROCEDURES

### A.1 Introduction

A.1.1 Cordoda 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 Cordoda in relation to or in connection with the supply of Facilities or Services to which this ARD applies (**Access Dispute**).

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

A.1.2.1 inter-Party working groups;

A.1.2.2 interconnect steering group; and

A.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 A.3 and A.4 of this Annexure);
- (b) Billing Disputes, which must follow the procedures set out in section A.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 A.2, A.3 and A.4 of this Annexure, must be referred to the Commission for resolution.

A.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.

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

A.1.4 For clarification, unless stated otherwise, all references to sections, subsections and paragraphs in this Annexure are references to sections, subsections and paragraphs of this Annexure.

## **A.2 General**

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

A.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.

A.2.3 During a dispute and any Dispute Resolution process invoked in accordance with this Annexure, Cordoda and Access Seeker must continue to fulfill their obligations under the Access Agreement between them.

A.2.4 Subject to subsection A.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.

A.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 3.6 of this ARD.

- A.2.6 A Party must not use information obtained under subsection A.2.4 or described in subsection A.2.5 above for any purpose other than to resolve the dispute.
- A.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.
- A.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 A.2.7. If an arbitrator decides not to determine the dispute, the Party that initiated the dispute must pay the other Party's costs.

### **A.3 Inter-Party working group**

- A.3.1 In the first instance the Access Seeker and Cordoda should attempt to resolve the Access Dispute between themselves.
- A.3.2 Cordoda and Access Seeker shall establish a working group, or working groups, to fulfill the requirements of subsection A.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 Cordoda's Wholesale or Interconnection Group.
- A.3.3 Cordoda shall provide for:
  - (a) subject areas dealt with by each working group;
  - (b) equal representation by the Access Seeker and Cordoda;
  - (c) chairmanship and administrative functions of the working group to be shared equally; and
  - (d) formal notification procedures to the working group.
- A.3.4 Cordoda and the Access Seeker shall use reasonable endeavors 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.

#### **A.4 Interconnect steering group**

A.4.1 In the event that the parties cannot resolve the dispute between themselves within the time specified in subsection A.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**).

A.4.2 In the event that a dispute is referred to an ISG under clause A.4.1, the Parties shall promptly form a committee comprising the ISG with an equal number of appropriate representatives from each Party.

A.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 A.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 A.5) or to the Commission for arbitration.

A.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 A.4.3, either Party may:

(a) refer any technical dispute to a Technical Expert in accordance with section A.5 of this Annexure; or

(b) refer the dispute to the Commission for final arbitration.

#### **A.5 Use of a Technical Expert**

A.5.1 A dispute will only be referred to a Technical Expert if the provisions of section A.4 have been complied with.

A.5.2 Once a dispute is referred to a Technical Expert, it may not be referred back to a Working Group or ISG.

A.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.

A.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.

A.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.

A.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.

A.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.

A.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.

A.5.9 The Technical Expert will not have the power to appoint any other experts.

A.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.

A.5.11 Every dispute referred to a Technical Expert will be considered separately so that time limits for each dispute are complied with.

A.5.12 The Technical Expert's decision will be binding on the Parties (in the absence of manifest error of fact or law).

## **A.6 Billing Dispute resolution**

A.6.1 As outlined in the billing provisions at subsection 8, 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.

A.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 Cordoda within forty-five (45) days after the date of receipt of such invoice.

A.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.

A.6.4 A Billing Dispute Notice given under this section A.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

A.6.5 The Invoiced Party may withhold payment of amounts disputed in good faith. If the dispute is resolved against the Invoiced Party, that Party shall be required to pay interest at the rate specified in subsection 8.13 on the amount payable.

A.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 in accordance with clause 8.14 of this ARD. 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.

- A.6.7 The Parties agree to use their reasonable endeavors to promptly resolve any Billing Dispute notified under this section 6.
- A.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.
- A.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 recognize 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.
- A.6.10 Once the Negotiation Period and any extension granted under subsection A.6.9 has expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in subsection A.6.11 (**Billing Dispute Escalation Procedure**).
- A.6.11 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this subsection A.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.

A.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.

A.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.

A.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.

A.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.

A.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.

A.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 A.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.

A.6.18 In this section A.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 A.6.2;
- (c) **“Billing Dispute Notification Period”** means the period after the date of an Invoice described in subsection A.6.2;
- (d) **“Billing Representative”** means a representative of the Party appointed in accordance with the billing procedures set out in subsection A.6.15; and
- (e) **“Billing System”** means a system to issue Invoices relating to charges payable by each Party under the relevant Access Agreement.

## **ANNEX B – ACCESS LIST**

The purpose of this list is to set out those services offered by Cordoda to all potential Access Seekers.

### **B.1 Domestic Network Transmission Service**

- (a) A Domestic Network Transmission Service is a Facility and/or Service for the carriage of communications between transmission points (not being Customer transmission points) via network interfaces at such transmission rates as may be agreed between Cordoda and the Access Seeker on a permanent basis.
- (b) The Domestic Network Transmission Service transmission points are:
  - v. the Invoice reference number;
  - vi. any technically feasible network transmission points;
  - vii. submarine cable and satellite links between a transmission point in Sabah and Sarawak, and transmission point in Peninsular Malaysia.
- (c) The functionalities of the Domestic Network Transmission Service include:
  - i. switching (whether packet or circuit);
  - ii. signalling required to support the technology or to provide a service;
  - iii. termination at either end by a port, router, network termination unit, switch or earth station;
  - iv. a digital protocol.
- (d) Network interfaces referred to in paragraph (a) above include elements such as copper wire, microwave, laser, fibre optic, satellite or other wireless technologies.
- (e) An Access Seeker for the Domestic Network Transmission Service includes (but is not limited to) a network facilities provider or network services provider which is only authorised to provide limited (e.g. in the last mile) network facilities or network services, but wishes to acquire the Domestic Network Transmission Service in order to connect its limited network facilities or network services.

## **B.2 Network Co-Location Service**

- (a) The Network Co-Location Service is a Facility and/or Service which comprises:
- i. physical co-location, which refers to the provision of space at an Cordoda's premises to enable the Access Seeker to install and maintain it's own equipment necessary for the provision of the Access Seeker's services through the Facilities and/or Services of any Operator. Physical co-location includes physical space, power, environmental services (such as heat, light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access Seeker;
  - ii. virtual co-location, which refers to the provision of facilities or services at Cordoda's premises to enable the acquisition by the Access Seeker of Facilities and Services on the Access List, where equipment is owned and maintained by Cordoda; or
  - iii. in-span interconnection, which is the provision of a POI at an agreed point on a physical cable linking Cordoda's network facilities to an Access Seeker's network facilities.
- (b) Network premises at which co-location is to be provided includes switching sites, submarine cable landing centres, earth stations, exchange buildings, other Customer Access Modules (including roadside cabinets) and such other network facilities locations associated with the provision of a Facility or Service on the Access List, and includes co-location provided at any location where main distribution frame is housed.

## **ANNEX C – CONFIDENTIALITY AGREEMENT**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ between :

(*Name of Access Seeker*), a company incorporated in (*Country*), with its business office at (*address*) (hereinafter referred to as “Access Seeker”) of the one part; and

Cordoda Corporation Sdn. Bhd. (No. 491931-M), a company incorporated under the laws of Malaysia, with its place of business at Patimas Technology Centre, Technology Park Malaysia, Bukit Jalil, 57000 Kuala Lumpur (hereinafter referred to as “Cordoda”) of the other part.

### **WHEREAS :**

1. Access Seeker and Cordoda intend to negotiate the Access Agreement, and in the course of discussions, will be disclosing certain commercially valuable, proprietary and confidential business, financial, technical and other information to each other.
2. Both parties agree to hold such proprietary and confidential information in the strictest confidence upon the terms and conditions hereinafter appearing.
3. Pursuant to the Malaysian Communications and Multimedia Commission (“Commission”) determination on the Commission Determination on Mandatory Standard on Access, Determination No. 2 of 2005 (“Standard”), the Parties herein govern their relationship inter se on the confidentiality and disclosure of an Access Agreement in accordance with the Access Reference Document (“ARD”)

**NOW IT IS HEREBY** agreed by the parties as follows:

1. “Confidential Information” is defined as any and all information of any kind, whether in written or electronic format, oral or otherwise, and whether or not labeled as “Confidential”, including without limitation, information relating to the business, financial condition, marketing strategies, know-how, suppliers, customers, operations, pricing, technical information, contract terms and conditions and all information of any kind relating to either party, their respective shareholders and/or related or associated companies which are disclosed, submitted or howsoever made available by or on behalf of one party to the other or to their employees, officers, advisors or agents (hereinafter collectively referred to as “Personnel”) for the purpose of or in connection with the Project, whether before or after the date of this Agreement.
2. Both parties agree and undertake :

- (a) to hold the Confidential Information of the other party in the strictest confidence and to not at any time disclose or use or permit to be disclosed or used any of the Confidential Information or its knowledge of the existence of the Confidential Information for any purpose other than for the purpose of the Project; and
  - (b) not to disclose or divulge the Confidential Information of the other party to any person whatsoever without the prior written consent of the other party except to those persons more particularly identified in paragraph 3(a) below.
- 3. Both parties hereby covenant and agree to do all of the following:
  - (a) to restrict the dissemination, circulation and supply of the Confidential Information of the other party or any part thereof to its Personnel who are directly involved with the Project and only to the extent necessary for each of them to perform their duties.
  - (b) to use their respective best endeavours to ensure and procure that none of their Personnel will do any act, matter or thing which, if done by that party, would constitute a breach of the obligations of that party under the terms of this Agreement.
  - (c) to take all reasonable action to prevent unauthorised disclosure or use of the Confidential Information of the other party.
  - (d) inform their Personnel who may have access to the Confidential Information that such information should be kept in the strictest confidence.
- 4. The confidentiality obligations herein shall not apply, however, to any part of the Confidential Information which:-
  - (a) prior to the date hereof, is in the public domain or hereafter comes into the public domain other than as a result of a breach of this Agreement;
  - (b) is explicitly approved for release by written authorisation of the party disclosing the Confidential Information (hereinafter referred to as "Disclosing Party");
  - (c) was known to the party receiving the Confidential Information (hereinafter referred to as "Receiving Party") at the time of disclosure as shown by written records in existence at the time of disclosure;
  - (d) was lawfully obtained by the Receiving Party without breach of this Agreement and otherwise not in violation of the Disclosing Party's rights; or

- (e) is required by law or by order of a court of competent jurisdiction or by any rule, direction or regulation of any regulatory or governmental authority to be disclosed.
- 5. Subject to the provisions in clause 4 and notwithstanding termination of this Agreement, the obligations of confidentiality contained herein shall continue in effect for a period of one (1) year from the date of disclosure.
- 6. The Parties acknowledge and agree that all Confidential Information disclosed by or on behalf of the Disclosing Party shall remain the property of the Disclosing Party. Upon request by the Disclosing Party and at the Disclosing Party' direction, the Receiving Party shall forthwith :
  - (a) return all documents and other materials containing such Confidential Information together with all copies and reproductions thereof; or
  - (b) destroy all documents and other materials containing such Confidential Information together with all copies and reproductions thereof and the Receiving Party shall confirm such destruction to the Disclosing Party in writing.
- 7. No license, whether express or implied, in the Confidential Information is granted by either party to the other to use the Confidential Information other than in the manner and to the extent authorized by this Agreement.
- 8.
  - (a) Both parties acknowledge that they are aware and fully understand that in the event of any breach of this Agreement by the Receiving Party or their Personnel, then the Disclosing Party could suffer substantial loss and damage which monetary damages cannot adequately remedy.
  - (b) The Receiving Party acknowledges that the Disclosing Party shall be entitled to specific performance, injunctive and other equitable relief in enforcing the obligations in this Agreement in addition to all other remedies available in law.
- 9. This Agreement is governed by and interpreted in accordance with the laws of Malaysia and each party hereby agrees to submit to the exclusive jurisdiction of the Courts of Malaysia.
- 10. No delay by either party in exercising any right, power or remedy under this Agreement shall operate as a waiver or acquiescence thereof nor shall it restrict or affect the party's right or powers under this Agreement. No waiver of any term or condition to this Agreement shall be effective unless made in writing.
- 11. Any amendments to this Agreement shall only be effective if agreed in writing and signed by both parties.

12. This Agreement shall be binding on the heirs, permitted assigns and successors in title of the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the date and year first above written.

For and on behalf of Access Seeker )  
 )  
in the presence of:- )  
 ) .....

For and on behalf of Cordoda Corporation Sdn. Bhd )  
 )  
in the presence of:- )  
 ) .....



**Service Connection Date**

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Customer's P/O Date:  
Requested Delivery Date:

Lead Time:  
Testing Duration:      From:      To:  
(if the order type is  
trial/testing)

**Required Service Description** *(please tick)*

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Service Description	One-time Installation (RM/USD)	One-time Professional Fees (RM/USD)	Annual Recurring Charges (RM/USD)
<input type="checkbox"/> Multi-service WAN access (refer to attachment for details)			
<input type="checkbox"/> Internet services			
<input type="checkbox"/> Servers hosting			
<input type="checkbox"/> Others (specify here):			
<input type="checkbox"/> 5% Government service tax			

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**Payment Terms** *(please tick)*

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One-time charge      % upon PO      % upon commissioning  
 Recurring charges      % upon PO  
Billing frequency       Monthly in advance       Quarterly in advance       Yearly in advance

**Remarks**

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**3. Declaration**

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By submitting the customer order form, I/We request for the services to be given to me. I/We declare that the above information is true and complete. I/We confirm that I/We have read the TERMS AND CONDITIONS stipulated by Cordoda Corporation Sdn Bhd and agree to be bound by them. Please note that a representative from Cordoda Corporation Sdn Bhd will be contacting you to make the necessary arrangement for payment and installation of your equipment.

Customer Authorized Signature & Company  
Stamp  
Name:  
Designation:  
Date (day/month/year):

Cordoda Authorized Signature & Company  
Stamp  
Name:  
Designation:  
Date (day/month/year):

4. For Office Use Only

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Order taken via       Direct       BP       Others (specify here)

Sales ID:      .....      BP:      BP Contact Person:

## ANNEX E - DEFINITIONS

This section contains the meanings to words, phrases and expressions used in this ARD. Notwithstanding the foregoing, where a word or phrase or expression used in the ARD is given a specific meaning in or by the context of the ARD, such word, phrase or expression shall bear such meaning notwithstanding the contents of this section.

Access Agreement	means an agreement entered into between Operators whereby the Cordoda 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 List Determination	means the Commission Determination on Access List Determination No. 1 of 2005.
Access Reference Document or ARD	means a document of terms and conditions, as described in subsection 3.2;
Cordoda	(a) network service provider who provides network services listed in the Access List Determination; and  (b) who is a licensee as defined in the Act;
Access Request	means a request for access made by an Access Seeker under subsection 4 of this ARD and containing the information contained in subsection 4.6 of this ARD;
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 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.
Access to Network Elements or ANE	means Full Access Service, Line Sharing Service, Bit-streaming Services and Sub-loop Service;
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 8.3, 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;
Capacity Allocation Policy	has the meaning in the subsection 6.32 of this ARD;
Carrier Selection Code or CSC	means the short code which enables a Customer to choose the Operator whose service will be used by that Customer for an effective national or international call;
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: <ul style="list-style-type: none"> <li>(a) information which is or becomes part of the public domain (other than through any breach of an Access Agreement); or</li> <li>(b) information rightfully received by another</li> </ul>

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;
Disclosure obligations	means those obligations set out in subsection 3 of this ARD;
Dispute Resolution or Dispute Resolution Procedures	means the procedures outlined in Annexure A of this ARD;
DSL	means Digital Subscriber Line;
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;
Fixed Network	means network facilities and/or network services comprising the public switched telephone network and/or networks based on Internet Protocols for the provision of communications by guided electromagnetic energy or by point-to point unguided electromagnetic energy;
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;
Forecast	means a forecast made by the Access Seeker referred to in subsection 5 of this ARD;
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 licenses 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 8.1 of this ARD;
MCMCA	means the Malaysian Communications and Multimedia Commission Act 1998, [Act 589];
Negotiation obligations	means those obligations set out in subsection 4 of this ARD;
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;

Network Change	means a change to an Operator's Network which requires a change to be made to the other Party's Network to allow the continuance of the end – to - end conveyance of calls across a Point of Interface;
Notice of Receipt	means the acknowledgment of receipt of the Order from an Access Seeker, as described in subsections 6.5 and 6.6 of this ARD;
Order	means the Order which an Access Seeker must give to Cordoda to obtain access to network services or network facilities, as described in subsection 6.2 of this ARD;
Operator	means a network facilities provider, a network services provider, an applications service provider or a content application service provider (as the context requires) and includes both Cordoda and the Access Seeker.
Party	means the Access Seeker or Cordoda, as the context requires;
Point of Interface	means a point at or between network facilities which demarcates the Network of an Cordoda and the Network of an Access Seeker and is the point at which a communication is transferred between those network facilities and includes POI and POP;
Rejection Notice	means the notice of rejection made by an Cordoda in response to an Access Seeker's Forecast as described in subsection 5.11 of this ARD;
Service Qualifications	mean a desk and field study that may be conducted under subsection 6 of this ARD, and includes the testing of a line to ascertain whether it could be

used in response to an Access Request;

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;