

Access Reference Document

Fiber At Home City Network Sdn. Bhd.

Version 1.0

Pursuant to the Commission Determination on the Mandatory Standard on Access List (Determination No.1 of 2005), Variation to Commission Determination on Access List (Determination No.1 of 2009), Mandatory Standard on Access (Determination No.2 of 2005), Variation to Commission Determination on the Mandatory Standard on Access (Determination No.2 of 2009) and Commission Determination on the Mandatory Standard on Access Pricing (Determination No.1 of 2012) issued by the Malaysian Communications and Multimedia Commission in accordance with sections 55 and 104(2) of the Communications and Multimedia Act 1998 (Act 588), Fiber At Home City Network Sdn. Bhd. is hereby publish this Access Reference Document for all Access Seekers' reference and request for access.

INTRODUCTION

1. This Access Reference Document (“**ARD**”) specifies the procedures and process to be followed by an Access Seeker who intends to acquire a Product from Fiber At Home City Network Sdn. Bhd. (Company No. 736932-U) (“**FHCN**”).

2. The ARD is divided into the following parts:

Section A	Background and Scope of the ARD
Section B	Interpretation and Definitions
Section C	Principles of Access and Interconnection
Section D	Access Request Process and Procedures
Section E	Obligations for Provision of Information
Section F	Billing Obligations
Section G	General Obligations
Section H	Technical and Operational Obligations
Section I	Access Service(s)

3. This ARD may be subject to amendments from time to time.

4. Where an amendment is made to the ARD, FHCN shall within ten (10) Business Days supply an amended copy of the ARD to all Access Seekers who have submitted to FHCN an Access Request and which Access Request is still pending process by FHCN. The amendment to the ARD shall be effective after the expiry of the Initial Period if no notice of dispute is issued to and received by FHCN within the said period.

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.

6. If the Commission revokes, varies or replaces the Access List in accordance with Section 56 of the Act, FHCN may, by giving written notice to all Access Seekers to whom it is supplying Access Service(s), withdraw or replace the ARD with effect from a date no earlier than the effective date of the Commission’s revocation, variation or replacement.

7. In the event any notice of dispute is received, FHCN shall notify all Access Seekers of the effective date of the amendment.

8. 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:

Fiber At Home City Network Sdn. Bhd.
No. 2D, Jalan BLM 1/11,
Laguna Merbok Business Park,
0800 Sungai Petani, Kedah,
Malaysia.

Attention: Head of Regulatory Affairs

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

9. The terminology used in this ARD has the meaning ascribed to them in **Section B**. All other words and phrases used in this ARD shall, unless the context otherwise requires, have the same meaning as in the MSA.

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SECTION A: BACKGROUND AND SCOPE OF ARD

1. Introduction

- 1.1 This ARD only applies to Products that are consistent with the terms of the Access List.

2. Applicability To Licensees

- 2.1 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.
- 2.2 FHCN's ARD contains the terms and conditions for the following Services and/or Facilities:
- (a) Transmission Services
 - (b) L3 HSBB Network Services

3. Non-Applicability of the ARD

- 3.1 This ARD does not apply to Facilities and/or Services which are not specified in the Access List.

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SECTION B: INTERPRETATION AND DEFINITIONS

This **Section B** 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 B**.

Access Agreement	means the bilateral agreement to be executed between FHCN and the Access Seeker which sets out the terms and conditions that govern the grant by FHCN of access to FHCN's Facilities and/or Services.
Access List	means the list of Facilities and Services determined from time to time by the Commission pursuant to Chapter 3 of Part VI of the Act and the current Commission determination is Malaysian Communications and Multimedia Commission Determination on Access List, (Determination No. 1 of 2005) As Varied By Variation To Commission Determination on Access List (Determination No. 1 of 2005), Determination No. 1 of 2009) which came into operation on 2 February 2009, which sets out a list of Access Service(s) determined by the Commission under section 146 of the Act.
Access Seeker	means an Operator who makes written request for access to Facilities and/or Services of FHCN or is being provided with Facilities and/or Services by FHCN.
Act	means the Communications and Multimedia Act 1998 (Act 588).
Applications Services	bears the meaning ascribed to it under the Act.
ARD	means the Access Reference Document issued by FHCN.
Bank Guarantee	means a guarantee executed in favour of FHCN, on behalf of the Access Seeker, by a bank approved by FHCN and in a format acceptable to FHCN.
Business Day	means any day other than a Saturday, Sunday or public holiday (whether gazetted or not) which is lawfully observed as a national public holiday and on which commercial banks are open for usual banking business in Kuala Lumpur and Selangor
Commission	means the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act (Act 589) and also known as the Suruhanjaya Komunikasi dan Multimedia Malaysia.

Content Applications Services	bears the meaning ascribed to it under the Act.
Customer	means in relation to a Party, a person having a contractual relationship with the said Party for the provision of Applications Services including Content Applications Services by means of that Party's facilities and/or services.
Facilities	means facilities which facilitates the provision of network services or application services, including content application services and "Facility" shall be construed accordingly.
Instrument	means a direction or determination or declaration made by the Minister or the Commission pursuant to the Act.
Licence	means an Individual Licence or a Class Licence granted by the Minister pursuant to the Act.
MSA	means the Malaysian Communications and Multimedia Commission Determination On Mandatory Standard On Access, Determination No. 2 of 2005 As Varied By Variation To The Commission Determination On Mandatory Standard On Access, (Determination No. 2 of 2005) Determination No. 2 of 2009.
Network Facilities	bears the meaning as ascribed in the Act.
Network Services	bears the meaning as ascribed in the Act.
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 FHCN and the Access Seeker.
Party	means FHCN or the Access Seeker as the context requires and "Parties" means both FHCN and the Access Seeker.
Product	means each of the separate provision by FHCN of access to its Facilities and/or Services and "Products" shall be construed accordingly.
Security Sum	means security in the form of a Bank Guarantee provided or to be provided by the Access Seeker to FHCN for the supply of Access Service(s).
Services	means the provision by FHCN of access to Facilities and/or services and "Service" shall be construed accordingly.

Third Party

means a party who or which is not a party to the Access Agreement.

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SECTION C: PRINCIPLES OF ACCESS AND INTERCONNECTION

1. Legislative Background

- 1.1 Pursuant to the issuance of the Malaysian Communications and Multimedia Commission Determination on Access List, (Determination No. 1 of 2005) as varied by the Variation to Commission Determination on Access List (Determination No. 1 of 2005), (Determination No. 1 of 2009) (“Access List Determination”); and
- 1.2 Following the issuance of the Ministerial Direction to Determine a Mandatory Standard on Access, Direction No.2 of 2003, the Malaysian Communications and Multimedia Commission issued the Commission Determination on the Mandatory Standard on Access Determination No.2 of 2005 as amended by the Variation to the Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2009 ("MSA Determination")) which came into effect on 2nd February 2009; and
- 1.3 Following the issuance of the Commission Determination on the Mandatory Standard on Access Pricing, Determination No. 1 of 2012 which come into effect starting from 1st January 2013, and
- 1.4 Pursuant to section 5.3.2 of the MSA Determination, FHCN is pleased to prepare and maintain an Access Reference Document ("ARD") in relation to Facilities and/or Services on the Access List Determination which FHCN provides to itself or third parties and which:
 - a) contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and
 - b) does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination.

2. Standard Access Obligations

- 2.1 FHCN’s ARD is consistent with:
 - a) the standard access obligations stipulated under Section 4.1.1 of the MSA Determination and section 149 of the Act ; and
 - b) the principles of non-discrimination stipulated under Sections 4.1.5 and 4.1.6 of the MSA Determination.

SECTION D: ACCESS REQUEST PROCESS AND PROCEDURES

1. Introduction

- 1.1 An Access Seeker must comply with the following process if it wishes to obtain access to Facilities and/or Services on the Access List from FHCN.
- 1.2 These provisions apply in the following circumstances:
 - (a) Where there is no current access agreement between FHCN and the Access Seeker; or
 - (b) If there is a valid and subsisting access agreement between FHCN and the Access Seeker and, either
 - (i) such access agreement will expire within 4 months from the date when the Access Seeker makes a request; or
 - (ii) the requested Facility and/or Service is outside the scope of such access agreement.

2. Access Request Process

- 2.1 An Access Seeker that wishes to obtain access to any Facility and/or Service from FHCN, must submit an Access Request to FHCN. The Access Request shall 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 FHCN to provide for the purposes of the negotiations;
 - (e) two (2) copies of a confidentiality agreement properly executed by the Access Seeker in the form prescribed by FHCN.
 - (f) Forecasts of the capacity the Access Seeker will reasonably require, having regard to FHCN's provisioning cycle;
 - (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 FHCN's Network;
 - (i) Creditworthiness information in accordance with FHCN's requirements;
 - (j) Security Sum in accordance with FHCN's requirements;

- (k) Insurance information in accordance with FHCN's requirement; and
- (l) such other information as FHCN may reasonably request.

2.2 Within ten (10) Business Days of receipt of the Access Request from the Access Seekers, FHCN shall respond to the Access Seeker by either:

- (a) accepting the Access Request based on the terms and conditions in this ARD; or
- (b) accepting the Access Request and to negotiate the Access Agreement; or
- (c) requesting for further information from the Access Seeker; or
- (d) rejecting the Access Request.

3. Acceptance

3.1 If the Access Request made by the Access Seeker accepts the terms and conditions of this ARD and the access agreement as the basis for the access to the Facilities and/or Services offered to be provided by FHCN, then FHCN shall issue copies of the Access Agreement which the Access Seeker shall execute and return to FHCN within ten (10) Business Days with the Security Sum and copies of insurance arrangements specified by FHCN.

3.2 If:

- (a) the Access Seeker had submitted an Access Request which contains a request to negotiate the terms and conditions of the access agreement, and
- (b) FHCN is willing to proceed to negotiate the Access Request and the terms and conditions of the access agreement;

then FHCN shall do the following:

- (i) issue the draft Access Agreement; and
- (ii) specify a date and time no later than fifteen (15) Business Days from the date of the Access Request at which the Access Seeker's representative can meet with the representative of FHCN to negotiate the terms and conditions of the Access Agreement; and
- (iii) require the Access Seeker to provide such additional information as may be reasonable in the circumstances.

4. Request for Further Information

- 4.1 FHCN may request the Access Seeker to provide further information on the Access Request.
- 4.2 The Access Seeker shall within ten (10) Business Days provide further information to FHCN as requested pursuant to Clause 4.1.
- 4.3 If in FHCN's opinion the information provided is sufficient for it to make a decision as to whether to accept or reject the Access Request, it shall reconsider the Access Request and inform the Access Seeker of its decision within ten (10) Business Days.
- 4.4 For the avoidance of doubt, FHCN may make more than one request for additional information from the Access Seeker in order for FHCN to make a decision as to whether to accept or reject the Access Request. Each request shall be subject to the provisions in Clause 4.2 and 4.3.
- 4.5 If the Access Seeker does not provide further information in response to a request made by FHCN, then the Access Seeker shall be deemed to have revoked the Access Request.

5. Access Request Rejection

- 5.1 If FHCN rejects an Access Request, FHCN shall inform the Access Seeker and indicating the date its representatives are available to meet the Access Seeker. The Access Seeker may attend and meet with the representatives of FHCN on the date and time and at the venue specified which date shall not be later than seven (7) Business Days from the date of Access Request rejection notice.
- 5.2 If the Access Seeker fails or neglects to attend the specified meeting without providing acceptable reasons in writing at least one day prior to the date of the meeting, then such failure shall be deemed to be acceptance of the rejection of the Access Request.
- 5.3 If the Access Seeker does attend, and the rejection of the Access Request is not resolved (whether at that meeting or any subsequently agreed meeting), then either FHCN or the Access Seeker may initiate the Dispute Resolution Procedures set out in the MSA.
- 5.4 Pending the final determination of the dispute, FHCN shall not be obliged to provide access to the Access Seeker.

6. Right to Reject

- 6.1 FHCN may reject an Access Request made by an Access Seeker upon any of the following grounds:

- (a) the Access Request is not made in good faith; or
- (b) the information provided by the Access Seeker is incomplete or false; or
- (c) it is not technically feasible to provide access to the Facilities and/or Services requested; or
- (d) FHCN has insufficient capacity or space to provide the requested Facilities and/or Services; or
- (e) FHCN reasonably believes that the Access Seeker may fail to make timely payments for the requested Facilities and/or Services; or
- (f) FHCN reasonably believes that the Access Seeker may fail, to a material extent, to comply with the terms and conditions of access of the relevant Facilities and/or Services; or
- (g) does not currently supply or provide access to the requested Facilities and/or Services to itself or to any third party; or
- (h) FHCN reasonably believes that the safety of its network will be compromised by the grant of the access requested; or
- (i) FHCN reasonably believes that access is being sought for a purpose in contravention of any laws; or
- (j) FHCN reasonably believes that the provision of access to the Access Seeker will be contrary to the objectives of the Act; or
- (k) access is being sought to Facilities and/or Services which are not on the Access List; or
- (l) on the basis of national interest.

6.2 Notification of Rejection to the Access Seeker

If FHCN rejects the Access Request, FHCN shall within ten (10) Business Days of receiving the Access Request:

- (a) notify the Access Seeker in writing of FHCN rejection;
- (b) provide reasons for rejection under Clause 6.1 to the Access Seeker;
- (c) provide the basis for FHCN rejection of the Access Request; and
- (d) indicate a date and time, not later seven (7) Business Days from the date of this notice of rejection, at which representatives of FHCN will be available to meet with representatives of the Access Seeker to discuss the rejection of the Access Request.

7. Right to Withdraw Access Request

- 7.1 No later than the 5th Business Day following the date of the Access Request, the Access Seeker may withdraw the Access Request at no cost. The Access Seeker must inform FHCN in writing of its decision before the expiry of the 5th Business Day.
- 7.2 FHCN shall not be obliged to nor under any liability to fulfill an Access Request that is withdrawn.

8. Applicability for Additional Services

- 8.1 Notwithstanding that the Access Seeker may have entered into an Access Agreement with FHCN, the Access Seeker shall for each additional facility or service of a type which it requires access to in addition or in substitution to the access already provided under an Access Agreement, submit an Access Request in accordance with the provisions set out above.

9. Processing and Other Charges

- 9.1 FHCN may charge the Access Seeker a non-refundable processing fee for undertaking administrative work to process the Access Request.
- 9.2 In the event additional and/or non-routine work ie non-administrative work or site visits or site surveys or technical surveys or technical evaluation work or testing etc, is required in order to process the Access Request, FHCN will charge a separate fee for undertaking such additional work.
- 9.4 The Access Seeker shall always remain liable to pay the fees for processing the Access Request and the undertaking by FHCN of the additional and/or non-routine work, notwithstanding the Access Request may have been rejected by FHCN or withdrawn by Access Seeker.

10. Commencement of Negotiation

- 10.1 If an Access Seeker has received a notice from FHCN to proceed with negotiation of the Access Agreement, the Access Seeker must within ten (10) Business Days of receipt of such notice submit to FHCN a list of its comments identifying the affected clauses the proposed amendments, the priority of importance and the rationale for such change. The Access Seeker shall also specify in such submission, the date when it proposes to commence negotiations.
- 10.2 If the Access Seeker shall have failed, neglected and/or refused to do so, then the Access Seeker shall have been deemed to have withdrawn its Access Request.

11. Duration of Negotiations

11.1 All negotiations shall be concluded within 120 days from the date FHCN receives a written request to commence negotiations.

11.2 If negotiations are not completed within 120 days:

- (a) 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 under the MSA shall take effect; or
- (b) either Party may initiate the dispute resolution procedures.

12. Initial Meeting

12.1 The designated representatives of FHCN and Access Seeker shall meet on the date and time at the venue specified by FHCN, and shall:

- (a) agree a timetable for the negotiations, including milestones and dates for subsequent meetings;
- (b) agree the negotiating procedures, including:
 - (i) the calling and chairing meetings;
 - (ii) the party responsible 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 parties; 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 Party; and
- (d) identify what technical investigations, if any, need to be made and by whom such investigations should be made.

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SECTION E: OBLIGATIONS FOR PROVISION OF INFORMATION

- 1.1 The obligations of each Operator provide information to the Other Operator are subject to MSA Determination and the requirements of confidentiality in the confidentiality agreement signed by the Operators.
- 1.2 An operator must provide the other Operator on a timely basis with all agreed information reasonably required to determine rates and chargers to be billed by each Operator to the Other Operator or by each Operator to its Customers.
- 1.3 To the extent permitted by Malaysia laws and any relevant guidelines or Customer service standards in force pursuant to the Operator's respective Licence conditions, the Operator will exchange information and otherwise cooperate in relation to the prevention and investigation of fraudulent use or misuse of the Operator's respective Communications Services and theft of the Operator's provided terminal equipment.
- 1.4 Information provided under the ARD may only be used for the purpose for which it was given. Personal information about a Customer's credit worthiness, credit standing, credit history or credit capacity with, Malaysia Law.
- 1.5 Information required to be provided under the ARD need not be provided if the recipient Operator has not established security measures that are adequate to protect the confidentiality of the information. If the recipient Operator does not observe such security measures or any of the information is used by it for any purpose other than purpose for which it was given, the providing Operator may deny the recipient Operator further access to the information for the period during which the non-observance or non-conforming use. The Operators will cooperate to resolve the providing Operator's reasonable concerns so that information exchange can be resumed as soon as possible.
- 1.6 The Operators acknowledge that when information (including for the purposes of this clause any updated information) required to be provided under this Paragraph is held on a database, the Operator entitled to receive the information will not be entitled to obtain direct access to the database. The precise method by which the information is to be made available will be determined by the ISG having regard to the reasonable cost, convenience and security concerns of the Operators.
- 1.7
 - (a) Subject to the Act and any subordinate legislation, nothing in the Access Agreement may be construed as requiring an Operator at any time to disclose to the other Operator information which is at the date when the Access Agreement comes into force, the subject of a confidentiality obligation owed to the third person unless the third person consents to such disclosure. Where the consent of a third person is required, the Operator holding the information must use its reasonable endeavours to obtain the consent of that third person.
 - (b) After the Access Agreement comes into force an Operator must use its best endeavours not to enter into any contract which would prevent it from

making relevant information available to the other Operator unless the contract includes a term which permits the contracting Operator to make the information available if directed to do so by the Commission.

- 1.8 All communication information, call and other relevant information in relation to Call Communication must be kept by both Operators for a period as may be agreed by the Operators pursuant to the Confidentiality Agreement for the purposes of verification and audit.

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SECTION F: BILLING AND SETTLEMENT OBLIGATIONS

- 1.1 Where relevant, the billing and settlement obligations set out in Section 5.14 of the MSA Determination shall be applicable.
- 1.2 The Access Seeker shall pay FHCN the Charges for the relevant Facilities and/or Services supplied by FHCN to the Access Seeker, as specified in the Access Agreement.
- 1.3 The Operators shall bear and pay all taxes as required by Malaysian law that result from the implementation of the Access Agreement.
- 1.4 All payments must:
 - (a) be paid on the Due Date unless otherwise agreed in writing by both Operators;
 - (b) be paid by electronic transfer to FHCN or exceptionally, by cheque to the nominated account(s) of FHCN if agreed by FHCN; and
 - (c) must be accompanied by such information as is reasonably required by FHCN to properly allocate payments received.
- 1.5 For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts of any Invoices to FHCN's right to suspend, disconnect, or terminate the relevant network facilities or network services due to non-payment of any sums due or payable to FHCN.
- 1.6 (a) FHCN shall be entitled to revise the Security Sum in any of the following event:-
 - (i) at each subsequent anniversary from the Commencement Date;
 - (ii) where, in the opinion of FHCN, the Security Sum is less than the actual Minimum Value calculated at the end of the most recent ninety (90) days period;
 - (iii) upon the provisioning of new or additional network facilities or network services to the Access Seeker; or
 - (iv) where there is material change in circumstances in relation to the Access Seeker's creditworthiness. For clarification, a material change in circumstances includes, but is not limited to, a failure by the Access Seeker to pay on the Due Dates 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 the amounts in the invoices are disputed in good faith, this will not constitute a material change in circumstances for purposes of this Clause 1.6 (a) (iv).
- (b) Where the Security Sum is revised pursuant to Clause 1.6 (a) above, the Access Seeker shall within ten (10) Business Days from the written request of FHCN, deposit the new Security Sum with FHCN.

- (c) Where the Access Seeker deposits monies in lieu of a Bank Guarantee, such monies shall be deposited in a separate interest bearing account (“said accounts”) and any interest secured thereon be held by FHCN in addition to the Security Sum. FHCN shall forward to the Access Seeker a statement of the said accounts annually.
- 1.7
 - (a) In the event FHCN elects to suspend or terminate the provisioning of relevant Access Service(s) to the Access Seeker, FHCN shall have the right to use the Security Sum (together with any interest thereon) to set off any outstanding sum due and payable to FHCN by the Access Seeker.
 - (b) Subject to Clause 1.7 (a) above, upon termination of the Access Agreement, the Security Sum deposited with FHCN or parts thereof, together with interest thereon, (if any) shall be returned and/or refunded to the Access Seeker.
- 1.8 Where there is a Billing Dispute, the Operators shall comply with the dispute resolution procedures in Annexure A of the MSA Determination.

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SECTION G: GENERAL OBLIGATIONS

Notices

1.1 Any communications in respect of FHCN's ARD should be made in writing to :

Attention : Head of Regulatory Affairs

Address : No. 2D,
Jalan BLM 1/11,
Laguna Merbok Business Park,
0800 Sungai Petani, Kedah
Malaysia.

Telephone : 04-428 1002

Facsimile : 04-448 7889

Termination and Suspension Obligations

2.1 Termination circumstances

Subject to Clause 2.4, FHCN may terminate an Access Agreement or part thereof if any of the circumstances referral to in Clause 2.1 (a), 2.1 (b) or 2.1 (c) below apply and FHCN has notified the Access Seeker of its intention to terminate the Access Agreement:-

- (a) The Access Seeker has materially breached the Access Agreement and FHCN has notified the Access Seeker that it will terminate the said Agreement in no less than thirty (30) days if the Access Seeker has not remedy its breach by the end of that period; or
- (b) The Access Seeker is subject to a winding up Order; or
- (c) A Force Majeure has continued for a period of more than 90 days.

FHCN shall forward to the Commission copy of the notice of termination at the same time as providing the notice of termination to the Access Seeker.

2.2 Changes in law

Where the continued operation of the Access Agreement or access to any Access Service(s) provided by FHCN is or will be unlawful (as a result of a legislative change), the Access Seeker and FHCN shall meet within five (5) Business Days of becoming aware of the relevant change in law to review whether access to the relevant Access Service(s) may provided by FHCN on different terms and conditions, FHCN may terminate the provision of access to the relevant Access Service(s).

2.3 Suspension circumstances

Subject to Section 2.4, FHCN may only suspend access to any Access Service(s) in the following circumstances:

- (a) The Access Seeker's Facilities materially adversely affect the normal operation of FHCN's Network or are a threat to any person's safety;
- (b) The Access Seeker's Facilities or the supply of Access Service(s) pose an imminent threat to life or property of FHCN, its employees or contractors;
- (c) The Access Seeker's Facilities cause material physical or technical harm to any Facilities of FHCN or any other person;
- (d) Where the Access Seeker has failed to pay Invoices in accordance with Section 5.14 of the MSA Determination;
- (e) Where force majeure applies; or
- (f) The Access Seeker breaches any laws, regulations, rules, or standards which has a material adverse effect on FHCN or the provision by FHCN of Access Service(s) under the Access Agreement.

For the purposes of this Clause 2.3, FHCN must provide Access Seeker five (5) Business Days notice in writing, including written reasons, prior to suspending access to any Access Services(s).

2.4 Approval

Prior to termination or suspending or seeking to materially vary an Access Agreement or access to any Access Service(s) provided under it, FHCN must inform the Commission in writing of the action it proposes to take and the reasons why such action is appropriate. FHCN shall not terminate, suspend or seek to materially vary the Access Agreement or access to any Access Service(s) until such time and on such conditions, as the Commission may specify.

2.5 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 Commission within five (5) Business Days of such adoption. In such circumstances, the terms and conditions of the Access Agreement will continue to be 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.

2.6 Post-termination fees

FHCN shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any Access Service(s) provided under it except:

- (a) Charges invoiced in arrears and not yet paid; or
- (b) Charges arising during an applicable minimum contractual period

2.7 Upfront charges refund

On termination of an Access Agreement or access to any Access Service(s) provided under it, FHCN shall refund to the Access Seeker all amounts paid in advance to the extent that the amount (or part of the amount calculated on pro-rata basis) relate to the period after the date of effect of such termination.

2.8 Deposits and guarantees

Notwithstanding the obligation in Clause 2.7, FHCN shall:

- (a) Within sixty (60) days of termination of the Access Agreement refund to the Access Seeker any deposit paid (without interest) provided all other amounts payable by the Access Seeker to FHCN have been paid; and
- (b) Immediately upon termination of the Access Agreement unconditionally waive any rights under the guarantees provided by the Access Seeker except in respect of amounts payable by the Access Seeker to FHCN as at the date of termination.

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SECTION H: TECHNICAL AND OPERATIONAL OBLIGATIONS

PART I - MANUALS

1. General

- 1.1 Part 1 of Section H is applicable only in relation to the provision of Facilities and/or Services listed in the FHCN ARD preface.
- 1.2 Where applicable, the Operators will:
 - (a) Use their reasonable endeavours to within four (4) weeks from the Commencement Date negotiate, agree and document as soon as reasonably practicable the new or modified provisions of the Technical and Implementation Manual and the Operations and Maintenance Manual and any other Manuals which the Operators deem necessary to establish pursuant to the Access Agreement;
 - (b) Comply with the operational procedures and methods set out in the Manuals; and
 - (c) Where such procedures and methods have not been agreed, negotiate operational procedures and methods, in relation to:
 - (1) the planning, ordering, provisioning and delivery of the relevant network facilities or network services;
 - (2) the management of the relevant network facilities or network services including:
 - (i) QOS indicators, reporting on performance in terms of those indicators and determining the appropriate action to be taken in the event that service quality falls below the agreed indicator levels;
 - (ii) Network operations in the event of Network failure, congestion and blockage and ensuring that the Operators' Network are adequately protected from harm;
 - (iii) Test procedures and other technical and operational matters relating to the provision of network facilities or network services by FHCN to the Access Seeker;
 - (iv) The handling of Customer operations; and
 - (v) Such other matter as FHCN determines.
- 1.3 Where relevant, the content obligations set out in Section 5.5 to Section 5.18 of the MSA Determination shall be applicable and shall be documented in the relevant Manuals.

PART II - FORECASTING

1. General
 - 1.1 Part II of Section H sets out forecasting procedures that are applicable only in relation to the provision of Facilities and/or Services listed in the FHCN ARD preface.
 - 1.2 Where relevant, the forecasting obligations set out in Section 5.6 of the MSA Determination shall be applicable.
2. Forecasting Requirements
 - 2.1 As a result of special network management requirements, the Access Seeker is required to provide a five (5) year rolling forecast.
 - 2.2 The Access Seeker shall meet the requirements of forecasting process that enables FHCN plan for the expected need Access Service(s) in order to fulfill the forecast.
 - 2.3 The Access Seeker shall provide forecast between particular destinations. The Access Seeker and FHCN will discuss in good faith on the planning and design of the relevant part of their respective networks.

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PART III - ORDERING AND PROVISIONING

1. General

1.1 Part III of Section H sets out ordering and provisioning procedures that are applicable only in relation to the provision of Facilities and/or Services listed in the FHCN ARD preface.

1.2 Where relevant, the ordering and provisioning procedures obligations set out in Section 5.7 of the MSA Determination shall be applicable.

2. Ordering Procedures

2.1 Subject to paragraph 2.2 the Operators may place firm orders for Network Capacity and Interconnect Capacity (collectively “Capacity”) from time to time with the quantity indicated in the first year forecast.

2.2 The Access Seeker shall ensure that the order contains enough information to enable to access and fulfil the order.

2.3 When an order is placed, the Access Seeker should give a priority list, allowing for progressive delivery and setting out its preferred order of delivery.

2.4 Indicative delivery times: The following are the indicative delivery timeframes for the following aspects of a Facilities or Services:

Order Type	Indicate delivery timeframes
All orders involving the provision of new Facilities and infrastructure relevant to the Services that are the subject of the order	5 months
All Orders involving augmentation of capacity on existing Facilities and infrastructure relevant to the Services that are the subject of the order	60 days

(a) The indicative delivery timeframes shall commence from the date the Access Seeker confirms an Order in as per the Technical Implementation set out.

2.5 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 the Access Provider.

PART IV - NETWORK CONDITIONING

1. General
- 1.1 Part IV of Section H sets out networking conditioning procedures that are applicable only in relation to the provision of Facilities and/or Services listed in the FHCN ARD preface.
- 1.2 Where relevant, the networking conditioning procedures obligations set out in Section 5.8 of the MSA Determination shall be applicable.

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PART V - POINT OF INTERFACE PROCEDURES AND DECOMMISSIONING OBLIGATIONS

1. General
 - 1.1 Part V of Section H sets out point of interface procedures and decommissioning that are applicable only in relation to the provision of Facilities and/or Services listed in the FHCN ARD preface.
 - 1.2 Where relevant the point of interface procedures and decommissioning obligations set out in Section 5.9 and 5.10 of the MSA Determination shall be applicable.

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PART VI – NETWORK CHANGE

1. General
 - 1.1 Part VI of Section H sets out network change procedures that are applicable only in relation to the provision of Facilities and/or Services listed in the FHCN ARD preface.
 - 1.2 Where relevant, the network change procedures obligations set out in Section 5.11 of the MSA Determination shall be applicable.
2. Network Change Procedures
 - 2.1 Each Operator is responsible for the safety of its network and must take all reasonable and necessary steps to ensure that its Network:
 - (a) do not endanger the safety or health of the officers, employees, contractors, agents or Customers of the Other Operator; and
 - (b) do not damage, interfere with or cause any deterioration in the operation of the Other Operator's Network.
 - 2.2 An Operator must not modify, or take any action which would have the effect of modifying the operation of the Network of the other Operator or take any action with respect to the Other Operator's Network without the Other Operator's permission.

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PART VII – NETWORK FACILITIES ACCESS AND CO-LOCATION

1. General
 - 1.1 Part VII of Section H sets out the network facilities access and co-location procedures that are applicable only in relation to the provision of Facilities and/or Services listed in the FHCN ARD preface.
 - 1.2 Where relevant, the network facilities access and co-location obligations set out in Section 5.13 of the MSA Determination shall be applicable.
2. Facilities Access Procedures
 - 2.1 The Operators shall negotiate the terms and conditions on which Facilities Access and Co-Location will be provided in order to facilitate administration and certainty of planning.
 - 2.2 The Facilities Access and Co-Location will be for a fixed period and the period may vary depending on the type of Facilities Access provided.
 - 2.3 The terms of Facilities Access for different types of Facilities will be set having regard to such matters as inter alia:
 - (a) the reasonable life span of the Facilities on FHCN standard planning horizons;
 - (b) the reasonable life span of the Access Seeker's Facilities or equipment which it install within or attaches to or uses in conjunction with the Facilities to which is provided, or the Access Seeker's standard horizons; and
 - (c) the type of Facilities or equipment available to the Access Seeker.
 - 2.4 FHCN shall have reasonable physical access to the Access Seeker's Network and/ or premises requested by the Access Seeker for the purpose of installation, maintenance, operation, replacement and removal of equipment installed within, attached to, or site upon that Facility.
 - 2.5 Where Access Seeker relocates, rebuilds or replaces any premise and/or Facilities to which FHCN has access to during the fixed period of access, the Access Seeker will provide access to a replacement premise and/or Facilities on substantially similar terms.

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PART VIII – OPERATION AND MAINTENANCE

1. General

1.2 Part VIII of Section H sets out the operation and maintenance procedures that are applicable only in relation to the provision of Facilities and/or Services listed in the FHCN ARD preface.

1.2 Where relevant the operation and maintenance obligations set out in Section 5.15 of the MSA Determination shall be applicable.

2. Operational and Maintenance Standard

2.1 The Operators shall take reasonable steps to comply with agreed operations and maintenance standards.

2.2 In the absence of an agreement on the operations and maintenance standards, the operators may, upon mutual agreement, use ITU-T standards.

2.4 Each Operator shall be responsible for the operations and maintenance of its own network facilities and network services.

3. Maintenance Procedures and Practices

3.1 Each Operator shall on its own establish the recommended maintenance procedures for maintaining and servicing its own network facilities and network services.

4. Fault Management

4.1 The Operators will co-operate to each other to meet the terms of their respective Licences and to fulfill their obligations under the Agreement.

4.2 The Operators will manage their Networks to minimize disruption to services and in the event of interruption or failure of any service, will restore those services as soon as is reasonably practical.

4.3 Each Operator must manage, notify and correct faults arising in its Network which affect the Facilities and/or Services:

- (a) as it would in the ordinary course for similar faults affecting the provision of Services by it;
- (b) in accordance with the fault notification procedures and the principles of priority of repair of faults documented in the relevant Manual; and
- (c) in accordance with any service quality standards determined by the Commission.

PART IX - CHURN OBLIGATIONS

1. General
- 1.1 Part IX of Section H sets out the churn procedures that may be applicable as set out in Section 5.18 Churn Obligations of MSA Determination.

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PART X - OTHER TECHNICAL MATTERS

1. General
 - 1.1 Part X of Section H sets out the other technical matters and procedures that are applicable only in relation to the provision of Facilities and/or Services listed in the FHCN ARD preface.
 - 1.2 Where relevant, the technical obligations set out in Section 5.16 of the MSA Determination shall be applicable.

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SECTION I: ACCESS SERVICE(S)

SCHEDULE A: LIST OF FACILITIES AND/OR SERVICES

TRANSMISSION SERVICES

1. General
 - 1.1 This Schedule sets out the terms and conditions which are applicable to the Transmission Service.
 2. General Terms and Conditions
 - 2.1 Transmission Service is a Facility and/or Service for the carriage of communications between any two technically feasible network transmission points (other than Customer transmission points) via network interfaces and at such transmission rates as may be agreed between FHCN and the Access Seeker.
 - 2.2 Where the Access Seeker leases Transmission Service from FHCN, FHCN equipment can be co-located in the Access Seeker's premises in accordance with Section 5.13 of the MSA Determination.
 - 2.3 The Access Seeker shall provide FHCN reasonable access to its premises when FHCN reasonably requires it for the purpose of installing, maintaining, modifying or removing equipment related to the provision of Transmission Service by FHCN.
 - 2.4 The minimum period for which the Access Seeker may lease Transmission Service is one (1) year.
3. Provisioning of Transmission Service
 - 3.1 All commercial terms and conditions applicable to the provision of Transmission Service and the operational and technical requirements shall be specified in the Access Agreement.

LAYER 3 HSBB NETWORK SERVICES

1. General
 - 1.1 This Schedule sets out the terms and conditions which are applicable to the Transmission Service.
 2. General Terms and Conditions
 - 2.1 The Layer 3 HSBB Network Service is an access and transmission Facility and/or Service for the provision of Layer 3 connectivity for the carriage of

certain communications, being data in digital form and conforming to Internet Protocols, between customer equipment at an End User's premises and a POI at the Access Seeker.

- 2.2 Where the Access Seeker leases Layer 3 HSBB Network Service from FHCN, Access Seeker should interconnect with FHCN at a common FHCN identified POI point.
- 2.3 Pursuant to clause 2.2, in the case of Access Seeker requested for interconnect to be done on their preferred location, Access Seeker should request Transmission Service from FHCN and Access Seeker shall provide FHCN reasonable access to its premises when FHCN reasonably requires it for the purpose of installing, maintaining, modifying or removing equipment related to the provision of Transmission Service by FHCN.
- 2.4 The minimum period for which the Access Seeker may lease Layer 3 HSBB Network Service is three (3) year.

3. Provisioning of Layer 3 HSBB Network Service

- 3.1 All commercial terms and conditions applicable to the provision of Layer 3 HSBB Network Service and the operational and technical requirements shall be specified in the Access Agreement.

SCHEDULE B: SERVICE RATES

The regulated facilities and services rates which FHCN will offer to the Access Seeker will be based on the Commission Determination on the Mandatory Standard on Access Pricing – Determination No. 1 of 2012 as per the link below:

<http://www.skmm.gov.my/skmmgovmy/media/General/pdf/Access-List-2015.pdf>.

While, the unregulated facilities and services rates which FHCN will offer to the access seeker will be provided to the access seeker upon written request to FHCN.

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