

TM NET SDN BHD'S ACCESS REFERENCE DOCUMENT

A. INTRODUCTION

A.1 Legislative Background

- A.1.1 i. 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.
- ii. The Commission Determination on the Mandatory Standard on Access Pricing, (Determination No. 1 of 2012) came into force on 1st January 2013 and is amended by the Variation to Commission Determination on the Mandatory Standard on Access Pricing, (Determination No. 4 of 2015) which will come into effect from 1st January 2016.
- iii. The Commission had issued the Commission Determination on Access List, (Determination No. 2 of 2015) ("Access List Determination") which came into force on 1st September 2015.
- A.1.2 Pursuant to section 5.3.2 of the MSA Determination, TM Net Sdn Bhd ("TM Net") is pleased to prepare and maintain an Access Reference Document ("TM Net's ARD") in relation to network services on the Access List Determination which TM Net 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.

A.2 Standard Access Obligations

TM Net'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 Communications and Multimedia Act 1998; and
- (b) the principles of non-discrimination stipulated under sections 4.1.5 and 4.1.6 of the MSA Determination.

B. OVERVIEW OF TM Net's ARD

B.1 Scope of TM Net's ARD

The terms and conditions of TM Net's ARD are only applicable to the network services included in the Access List Determination.

B.2 Services provided under TM Net's ARD

TM Net's ARD contains terms and conditions for the following service:

- (a) End-to-End Transmission service

B.3 Structure of TM Net's ARD

B.3.1 TM Net's ARD comprises:

- (a) The Main Body; and
- (b) Schedules.

B.3.2 Main Body of TM Net's ARD

The Main Body of TM Net's ARD is set out as follows:

- (a) Chapter 1 which sets out the introduction, background and scope of TM Net's ARD;
- (b) Chapter 2 which sets out the interpretation and definition of the terms used in TM Net's ARD;
- (c) Chapter 3 which sets out the principles of access;
- (d) Chapter 4 which sets out the access request procedures;
- (e) Chapter 5 which sets out the obligations in relation to provision of information;
- (f) Chapter 6 which sets out the contact details of TM Net;
- (g) Annexure 1 which sets out the list of network services provided under TM Net's ARD; and
- (h) Annexure 2 which sets out the processing fees.

B.3.3 Schedules

There are two Schedules to TM Net's ARD:

- (a) Schedule A which sets out the service description for the network services provided; and
- (b) Schedule B which sets out the charges and charging principles for each of the network services provided.

C. AVAILABILITY OF TM NET'S ARD

An Access Seeker who is interested in entering into an Access Agreement with TM Net pursuant to TM Net's ARD may request for a full copy of TM Net's ARD. A copy of TM Net's ARD will be made available to the interested party upon signing of a Confidentiality Agreement with TM Net.

D. FURTHER INFORMATION

For further information, please contact: Position:

Chief Executive Officer
TM Net Sdn Bhd
Level 41, Menara TM,
Jalan Pantai Baharu,
50672 Kuala Lumpur
Facsimile: 03 2241 1484
Email Address: jeremykung@tm.com.my



ACCESS REFERENCE DOCUMENT (ARD)

VERSION 1.0

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CHAPTER 1 – INTRODUCTION, BACKGROUND AND SCOPE

1.1 Preliminary

- 1.1.1 i. This Access Reference Document is made by TM Net Sdn Bhd (Company No: 451011-M), ("**TM NET**") a company incorporated under the laws of Malaysia and having its registered office at Level 51, Menara TM, Jalan Pantai Baharu, 50672 Kuala Lumpur on 31 January 2016 pursuant to section 5.3.2 of 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**").
- ii. The Commission Determination on the Mandatory Standard on Access Pricing, (Determination No. 1 of 2012) came into force on 1st January 2013 and is amended by the Variation to Commission Determination on the Mandatory Standard on Access Pricing, (Determination No. 4 of 2015) which will come into effect from 1st January 2016.
- iii. The Commission had issued the Commission Determination on Access List, (Determination No. 2 of 2015) ("Access List Determination") which came into force on 1st September 2015.
- 1.1.2 This Access Reference Document is hereby referred to as TM Net's ARD.
- 1.1.3 TM Net's ARD is structured as follows:
- (a) Main Text of which there are:
- (i) Chapters (e.g. Chapter 1);
- (ii) Sections (e.g. Section 1.1 being the first section of Chapter 1); and
- (iii) Annexure to the Main Text (e.g. Annexure 1 of the Main Text); and
- (b) Schedules of which there are:
- (i) Parts (e.g. Part I of Schedule A);
- (ii) Paragraphs (e.g. Paragraph 1.1 of Part I of Schedule A);
- (iii) Appendix to a Schedule (e.g. Appendix 1 to Part I of Schedule A); and
- (iv) Item (e.g. Item 1 of Appendix 1 to Part I of Schedule A).

1.2 Scope of TM Net's ARD

- 1.2.1 TM Net is a licensed (individual) network services provider under the Act. Pursuant to these licences, TM Net may offer network services in Malaysia.
- 1.2.2 Pursuant to section 5.3.2 of the MSA Determination, TM Net is obliged to prepare and maintain an access reference document in relation to network services listed in the Access List Determination which TM Net provides to itself or third parties.

1.3 Effective Date of TM Net's ARD**1.3.1 Commencement and Duration of TM Net's ARD**

1.3.1.1 TM Net's ARD comes into force and takes effect immediately from the date the document is published in TM Net's website and continues until the earlier occurrence of any of the following:

- (a) Review; or
- (b) the withdrawal of TM Net's ARD in accordance with the terms of TM Net's ARD.

1.3.1.2 TM Net's ARD has no effect on contractual arrangements for the supply of Services by TM Net to an Access Seeker prior to the Commencement Date unless and until such contractual arrangement is subsequently renegotiated and agreed between the Operators.

1.3.2 Amendment to TM Net's ARD

1.3.2.1 TM Net shall, within ten (10) Business Days of making any amendment to TM Net's ARD, provide a copy of the amendments, or an amended copy of TM Net's ARD to:

- (a) the Access Seeker who is being provided with Services; and
- (b) the Access Seeker who has requested TM Net's ARD within the period of ninety (90) days prior to the making of such amendments, unless the Access Seeker has already indicated that it does not wish to proceed with the Access Request.

1.3.3 Notice of Withdrawal, Replacement and Variation of TM Net's ARD

1.3.3.1 If the Commission revokes, varies or replaces the Access List Determination relating to the Services pursuant to section 56 of the Act, TM Net may, by giving written notice to all Access Seekers to whom it is supplying Services, withdraw or replace TM Net's ARD with effect from a date no earlier than the effective date of the Commission's revocation.

1.3.3.2 TM Net shall comply with sections 6.4.2 and 6.4.3 of the MSA Determination where it withdraws or varies TM Net's ARD pursuant to **Section 1.3.3.1**.

1.3.3.3 In addition to **Section 1.3.3.2** above, TM Net may give the Access Seekers to whom it is supplying Services a notice of a variation or replacement of TM Net's ARD to effect such variations that are necessary or appropriate in the event of:

- (a) the occurrence of a Legislative Event that materially affects the rights or obligations of TM Net under TM Net's ARD; or
- (b) the occurrence of a Regulatory Event that relates to TM Net; or
- (c) a review by the Commission of the MSA Determination pursuant to section 6.5 of the MSA Determination.

1.3.3.4 Notwithstanding **Sections 1.3.3.1, 1.3.3.2 and 1.3.3.3** above, TM Net may subject to **Section 1.3.2** above, replace TM Net's ARD at any time.

1.3.4 Availability

1.3.4.1 Subject to **Section 1.3.4.2**, TM Net's ARD shall be made available to an Access Seeker:

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

1.3.4.2 Prior to the provision of TM Net's ARD to the Access Seeker, the Access Seeker shall be required to enter into a Confidentiality Agreement with TM Net.

CHAPTER 2 - INTERPRETATION

2.1 The following words have these meanings in this TM Net's ARD unless the contrary intention appears:-

"Act" means the Communications and Multimedia Act 1998;

"Access Agreement Template" or "AAT" means a model access agreement entered into and made pursuant to an Access Request made in accordance with **Sections 4.1 to 4.8**;

"Access Agreement" means:

- (a) a Model Access Agreement; or
- (b) an agreement which is commercially negotiated between the Operators based on the AAT,

whereby TM Net provides requested Services in accordance with the terms therein contained and registered with the Commission in accordance with section 150 of the Act;

"Access List Determination" means Commission Determination on Access List, (Determination No. 2 of 2015) which came into operation on 1st September 2015;

"ARD Term" means the period of three (3) years commencing from the date set out in **Section 1.1.1** or such other period as may be specified by TM Net from time to time;

"Access Request" means a request made by the Access Seeker to TM Net for access to Services, and containing the information in **Section 4.1.3**;

"Access Seeker" means an Operator who:

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

"Access Service" in relation to Services means a service for the carriage of agreed Communications;

"Bank Guarantee" means an irrevocable guarantee, in a form acceptable to TM Net, executed in favour of TM Net by a licensed bank in Malaysia approved by TM Net pursuant to **Section 4.3** on behalf of the Access Seeker;

"Billing Period" means one (1) calendar month period over which the supply of Services is measured for the purposes of billing, unless otherwise agreed between the Operators;

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

"Charges" means the sums payable by the Access Seeker to TM Net for accessing and/or being provided the Services;

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

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

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

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

“Confidentiality Agreement” means a confidential agreement entered into between the Operators in accordance with section 5.3.7 of the MSA Determination;

“Creditworthiness Information” means the information required by TM Net to assess the creditworthiness of the Access Seeker which are more particularly described in **Section 4.2** of TM Net's ARD and such other information as may be required from time to time;

“Customer” means in relation to an Operator, an end-user having a contractual relationship with the Operator for the provision of Communications Services unless otherwise expressly provided in TM Net's ARD;

“Determination” means any lawful determination made by the Commission and/or the Minister, pursuant to the Act;

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

“Due Date” means, in respect of an Invoice, thirty (30) days from the date of receipt of an Invoice;

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

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

“Fast Track Access Agreement” or **“FTAA”** means a model access agreement entered into pursuant to a fast track application process made in accordance with **Section 4.9**;

“Fast Track Application Service” means a Service that is subjected to the fast track application process which is more particularly set out in **Section 4.9.1**;

“Fast Track Security Sum” means the security sum:

- (a) in the form of a Bank Guarantee, deposited with TM Net in accordance with **Section 4.9** and **Chapter 6** for the Fast Track Application Service; and
- (b) which amounts to Ringgit Malaysia Fifty Thousand (RM50,000) only for each Service for which access is sought unless otherwise provided in **Chapter 6**;

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

“Insurance Information” means the insurance information required by TM Net pursuant to **Section 4.4**;

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

“Legislative Event” means:

- (a) the enactment, amendment, replacement or repeal of the Act;
- (b) the enactment, amendment, replacement or repeal of the rules promulgated pursuant to sections 104 and 105 of the Act in respect of mandatory standards;
- (c) the registration, determination, promulgation, issue, amendment or replacement of any industry code with which TM Net is required or obliged to comply; and/or
- (d) the making of a determination, direction or finding by the Commission, the Minister or a court of law that all or any part of TM Net's ARD contravenes any provision of any law, except to the extent that the making of such determination, direction or finding constitutes a Regulatory Event;

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

“Manuals” means the technical and implementation manual, the operations and maintenance manual and other manuals which the Operators establish pursuant to the Access Agreement;

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

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

“Model Access Agreement” means the:

- (a) Access Agreement Template or AAT; or
- (b) Fast Track Access Agreement or FTAA; and

which contains the terms and conditions based on TM Net's ARD;

"Network" means network services comprising a system, or a series of systems within Malaysia, that carries or is capable of carrying communications by means of guided or unguided electromagnetic energy or both;

"Operator" means TM Net or the Access Seeker and **"Operators"** means TM Net and the Access Seeker collectively;

"Regulatory Event" means:

- (a) the declaration, modification, variation or revocation of the MSA Determination;
- (b) the giving of a lawful direction to TM Net by the Commission relating to TM Net's ARD; and/or
- (c) the giving of a lawful direction to TM Net by the Minister relating to TM Net's ARD;

"Review" means any review of the Ministerial Direction, SKMM Determination on MSA, MSAP and Access List;

"RM" means Ringgit Malaysia which shall be the monetary currency used in TM Net's ARD unless otherwise provided;

"Security Sum" means the security sum:

- (a) in the form of a Bank Guarantee, deposited with TM in accordance with **Section 4.3** and **Chapter 6** for the supply of Services; and
- (b) which is equivalent to the Minimum Value unless otherwise provided in **Chapter 6**;

"Services" means network services and/or other services which facilitate the provision of network services, including content applications services which are listed in the Access List Determination and offered in TM Net's ARD;

"Standard Access Obligations" has the meaning prescribed in section 149 of the Act;

"TM NET" means TM Net Sdn Bhd;

2.2 In TM Net's ARD except where the contrary intention appears;

- (a) the singular includes the plural and vice versa; and
- (b) a document includes all amendments or supplements to that document, or replacements or novations of it; and
- (c) a reference to a statute, ordinance, regulations, code or other law and other instruments under it, shall include any statute, ordinance, regulation, code and other law consolidating, amending, re-enacting or replacing of any of them from time to time relating thereto or in connection therewith; and

- (d) a reference to a person includes a firm, body corporate, unincorporated association or an authority; and
- (e) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; and
- (f) if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the next Business Day and any reference to acts that have to be done or to be done by or on or before a particular day or Business Day means by or on or before the close of business at 5.00 pm on that particular day or Business Day; and
- (g) a reference to a related body corporate of an Operator has the same meaning as in the Companies Act 1965; and
- (h) a reference to a third person is a reference to a person who is not a party to TM Net's ARD; and
- (i) no rule of construction and/or interpretation applies to the disadvantage and/or detriment of the Operator having control and/or responsibility for the preparation of TM Net's ARD; and
- (k) headings are included for convenience and do not affect the interpretation of TM Net's ARD.

CHAPTER 3 – PRINCIPLES OF ACCESS

3.1 Services

- 3.1.1 Subject to **Section 1.3.6**, TM Net's ARD applies only to the Services.
- 3.1.2 The service description for the Service is set out in **Schedule A**.
- 3.1.3 The charges and charging principles for the Service is set out in **Schedule B**.

3.2 Eligibility for Access to Services

- 3.2.1 TM Net may at its discretion and in a manner consistent with the Licence(s) granted (and the licence rights accorded therein) by the Minister to the Access Seeker, determine on a case by case basis whether to provide the Access Seeker with access to the Services.
- 3.2.2 Consistent with Government policy and Determinations by the Commission (and its predecessor), an Access Seeker may only request for access to the Services where the Access Seeker has been granted an individual network services provider licence, unless otherwise agreed by TM Net, and such individual licences are not limited or restricted from those detailed in the Communications and Multimedia (Licensing) Regulations 2000, as amended in any way:
 - (a) by reference to the type of network services that can be provided; and
 - (b) by geographical limitations to only a specific area and/or areas in Malaysia to which the Access Seeker can provide such network services.
- 3.2.3 An Access Seeker may not request for access to the Service where the requested Service is to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.
- 3.2.4 Consistent with Government policy and Determinations by the Commissions (and its predecessor), where TM Net provides the Access Seeker with access to the Service pursuant to **Section 3.2.1**, the charges for the requested Service shall be negotiated between the Operators subject to any mandatory standard on access pricing determined by the Commission.

3.3 Principles of Access

- 3.3.1 Subject to **Sections 3.2**, TM Net shall if requested to do so by an Access Seeker, supply a Service on reasonable terms and conditions.
- 3.3.2 In supplying a Service, TM Net must treat an Access Seeker on a non-discriminatory basis as required by the Standard Access Obligations in relation to the supply of a Service.
- 3.3.3 Principles of non-discrimination
 - 3.3.3.1 The access provided by TM Net to the Access Seeker shall be consistent with:
 - (a) section 149(2) of the Act; and

(b) the principles set out in sections 4.1.5 and 4.1.6 of the MSA Determination.

3.3.4 Customer Principles

3.3.4.1 TM Net shall observe and comply with the customer relationship principles set out in section 4.3 of the MSA Determination.

CHAPTER 4 – ACCESS REQUEST PROCEDURES

4.1 Application for Access to Services

- 4.1.1 Where an Access Seeker makes a request to TM Net to supply Service, the Access Seeker shall serve an Access Request on TM Net.
- 4.1.2 The purpose of such Access Request is to provide TM Net with sufficient information to assess the Access Seeker's request for the supply of Service under TM Net's ARD.
- 4.1.3 The Access Request must:
- (a) contain the name and contact details of the Access Seeker;
 - (b) specify the Service in respect of which access is sought;
 - (c) indicate whether the Access Seeker wishes to accept TM Net's ARD or negotiate an Access Agreement;
 - (d) contain the information (if any) as set out in section 5.3.6 of the MSA Determination that the Access Seeker reasonably requires TM Net to provide for the purposes of the access negotiations;
 - (e) contain two (2) copies of Confidentiality Agreement properly executed by the Access Seeker in the form prescribed by TM Net;
 - (f) specify forecasts of the capacity which the Access Seeker reasonably requires, having regard to TM Net's disclosed provisioning cycle and forecasting procedures;
 - (g) provide the relevant information relating to the Access Seeker's Network and the functionality of its Services, to the extent that the Access Seeker is aware that such information may affect TM Net's Network;
 - (h) contain confirmation that the Access Seeker is not currently being supplied with the requested Service;
 - (i) specify the type of communications licences held by the Access Seeker and a copy of the licence where a copy had not been previously provided;
 - (j) contain Creditworthiness Information as set out in **Section 4.2**;
 - (k) be accompanied by a Security Sum as set out in **Section 4.3**;
 - (l) contain Insurance Information as set out in **Section 4.4**;
 - (m) contain relevant technical information relating to the interface standards of the Access Seeker; and
 - (n) contain such other information that TM Net may reasonably request.

4.2 Creditworthiness Information

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

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

4.2.2 The Creditworthiness Information shall commensurate with an estimate of the value of the access to the Services to be provided by TM Net to the Access Seeker over a ninety (90) day period.

4.3 Security Sum

4.3.1 An Access Request shall be accompanied by a Security Sum. The security to be given by the Access Seeker shall be in the form of a Bank Guarantee.

4.3.2 TM Net is not obliged to consider entering into an Access Agreement with the Access Seeker pursuant to TM Net's ARD until the Access Seeker has amongst other things, provided (at the Access Seeker's costs) to TM Net such Security Sum on terms and conditions reasonably acceptable to TM Net.

4.4 Insurance Information

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

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

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

4.5 Processing of Access Request

4.5.1 Acknowledgement of Receipt of Access Request

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

- (a) subject to **Section 4.5.3**, request additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request; or
- (b) indicate whether it is willing to provide access to Service in accordance with TM Net's ARD.

Subject to the additional information being received by TM Net within twenty (20) Business days from the date of request, TM Net shall reconsider the Access Request in accordance with this **Section 4.5.1** upon receipt of such additional information.

4.5.2 Non-refundable resource charge

4.5.2.1 In accordance with section 5.7.28 of the MSA Determination, TM Net may charge an Access Seeker a one-off non-refundable resources charge (including processing fees and additional and non-routine processing fees) to be determined by reference to the costs incurred by TM Net for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Service for the purposes of interconnection.

4.5.2.2 The one-off non-refundable resource charge shall also be inclusive of a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request as TM Net is required to allocate manpower and resources for the same. Such non-refundable processing fee is only applicable to requested Service that can be offered and made available by TM Net. The non-refundable processing fees for the respective Service are set out in **Annexure 2**. Processing Fees for Service not currently specified in **Annexure 2** will be mutually agreed by the Operators from time to time. Notwithstanding the foregoing, in the event that additional and non-routine administrative work is required to process the Access Request where there is insufficient and/or erroneous information provided by the Access Seeker or where the Access Seeker varies or changes the information provided, TM Net shall be entitled to charge additional and non-routine processing fee for undertaking such additional and non-routine work as additional resources are required to do the same.

4.5.2.3 If the Access Seeker does not proceed with the Access Request accepted by TM Net, the processing fees will not be refunded to the Access Seeker. However, if the Access Seeker proceeds with the Access Request accepted by TM Net, processing fee only will be set-off against the Charges for the requested Service after acceptance of the Access Request by TM Net.

4.5.3 Request for information

TM Net shall comply with section 5.4.16 of the MSA Determination where it requests additional information from the Access Seeker pursuant to **Section 4.5.1(a)**.

4.6 Assessment of Access Request

4.6.1 Reasons for Refusal

Without limiting any other grounds that may be relied upon under the Act, TM Net may refuse to accept an Access Request for the supply of the Service and accordingly may refuse to supply that Service to the Access Seeker for any of the following reasons:

- (a) in TM Net's reasonable opinion, the Access Seeker's Access Request was not made in good faith and TM Net shall set out the basis on which the Access Request was not made in good faith;
- (b) in TM Net's reasonable opinion, the Access Request does not contain the information reasonably required by TM Net's ARD provided that TM Net has sought the information from the Access Seeker under **Section 4.5.1** of TM Net's ARD and has not received that information within twenty (20) Business Days of making such a request;
- (c) TM Net does not currently supply or provide access to the requested Service to itself or to any third parties, except where the Access Seeker compensates TM Net for the supply of access to such Service;
- (d) it is not technically feasible to provide access to the requested Service;
- (e) TM Net has insufficient capacity or space to provide the requested Service;
- (f) there are reasonable grounds in TM Net's opinion to believe that the Access Seeker would fail to make timely payment for the supply of the relevant Service;
- (g) there are reasonable grounds in TM Net's opinion to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Services;
- (h) there are reasonable grounds for TM Net to refuse access in the national interest; or
- (j) the access is being sought to services which are not in the Access List Determination.

4.6.2 Determination of technical infeasibility

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

4.6.3 Determination of capacity constraints

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

4.6.4 Assessment of the Access Seeker's ability to pay for supply of the Services

Examples of reasonable grounds for TM Net's belief as mentioned in **Section 4.6.1(f)** include evidence that the Access Seeker is not in the reasonable opinion of TM Net creditworthy.

4.6.5 Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of the Services

Examples of reasonable grounds for TM Net 's belief as mentioned in **Section 4.6.1(g)** include repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to Services have been provided (whether or not by TM Net).

4.6.6 Assessment of Creditworthiness

4.6.6.1 In determining the creditworthiness of the Access Seeker, TM Net may have regard to, but is not limited to the matters referred to in **Section 4.2**.

4.6.6.2 In determining the creditworthiness of the Access Seeker, TM Net shall not take into account amounts outstanding for Services previously provided by TM Net to the Access Seeker where, in accordance with the terms and conditions governing the provision of such Service, the Access Seeker is not required to pay such amounts to TM Net to the extent that there is a *bona fide* dispute in relation to the amounts outstanding by the Access Seeker to TM Net and the Access Seeker is relying on such terms and conditions as basis for its non-payment.

4.7 **Notification of Rejection to the Access Seeker**

4.7.1 Where TM Net rejects the Access Request, TM Net shall:

- (a) notify the Access Seeker in writing within ten (10) Business Days from receipt of the Access Request or additional information requested pursuant to **Section 4.5.1**, as the case may be;
- (b) provide reasons for rejection under **Section 4.6** to the Access Seeker;
- (c) provide the basis for TM Net's rejection of the Access Request; and
- (d) indicate a date and time, not later seven (7) Business Days from the date of the notice of rejection, at which representatives of TM Net will be available to meet with representatives of the Access Seeker to discuss the rejection of the Access Request. At this meeting, the Access Seeker may request TM Net to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in **Section 4.6.1(e)**, TM Net must identify when additional capacity is likely to be available.

4.7.2 Where the Operators are unable to resolve their differences following the meeting held pursuant to **Section 4.7.1(d)**, either Operator may request resolution of the dispute.

4.8 Acceptance of Access Request

4.8.1 In the event where TM Net agrees to provide access to Service to the Access Seeker in accordance with TM Net's ARD, TM Net shall within ten (10) Business Days of such respond under **Section 4.5.1(b)**, provide the Access Seeker with two copies of the executed Model Access Agreement, for execution by the Access Seeker.

4.8.2 Where the Access Seeker wish to negotiate an Access Agreement, the Operators shall comply with the requirements in sections 5.4.2, 5.4.4, 5.4.9 and 5.4.15 of the MSA Determination in negotiating and concluding an Access Agreement.

4.8.3 TM Net will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Service until:

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

4.9 Fast Track Application Process

4.9.1 (a) The fast track application process set out in this **Section 4.9** shall be applicable to the following Service only:

- (i) End-to-end Transmission Service;
- (b) Where an Access Seeker requests for the Service that is not listed in **Section 4.9.1** above in addition to a Fast Track Application Service, the fast track application process shall not be applicable and the Access Seeker shall be required to put in an Access Request for the requested Services in accordance with **Sections 4.1** to **4.8**.

4.9.2 An Access Seeker is only eligible for the fast track application process if it fulfils the following criteria:

- (a) the Access Seeker is duly licensed to provide the Services for which access is sought;
- (b) the access requirements of the Access Seeker do not in TM Net's opinion, have a material impact on TM Net's current level of network resources; and
- (c) the Access Seeker is willing to accept the terms and conditions for the requested Service as stipulated in the Model Access Agreement without negotiation.

4.9.3 Subject to **Section 4.9.1**, where an Access Seeker who is eligible for the fast track application process wishes to utilise the fast track application process, the Access Seeker shall:

- (a) forward to TM Net a duly completed fast track application form which shall contain the following information:
 - (i) the name and contact details of the Access Seeker; and
 - (ii) the Service in respect of which access is sought;
- (b) deposit a Fast Track Security Sum;
- (c) pay a non-refundable processing fee as set out in **Annexure 2** to TM Net for undertaking the necessary administrative work to process the fast track application; and
- (d) lodge with TM Net two copies of the signed Model Access Agreement with suggested amendments to the technical matters (if any).

- 4.9.4 TM Net may reject the Access Seeker's fast track application for the reasons set out in **Sections 4.6.1(c), (f) and (g)**.
- 4.9.5 Where TM Net accepts the Access Seeker's fast track application, TM Net:
- (a) may impose a one-off resource charge for allocation of manpower and other resources in accordance with Section **4.5.2**; and
 - (b) shall, within ten (10) Business Days of receipt of the fast track application, execute the Model Access Agreement.
- 4.9.6 TM Net will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Service until
- (a) a Fast Track Security Sum has been provided in accordance with **Section 4.9.3**; and
 - (b) a Model Access Agreement has been executed between the Operators and the Model Access Agreement is registered with the Commission in accordance with section 150 of the Act.
- 4.9.7 If the Access Seeker wishes to obtain the Fast Track Application Services but is not agreeable to the terms and conditions of the Model Access Agreement, TM Net is not obliged to process the fast track application further and the Access Seeker shall be required to put in a new Access Request in accordance with **Sections 4.1 to 4.8**.

CHAPTER 5 - PROVISION OF INFORMATION

- 5.1 The obligations of each Operator to provide information to the other Operator are subject to the MSA Determination and the requirements of confidentiality imposed by TM Net's ARD.
- 5.2 An Operator must provide the other Operator on a timely basis with all agreed information reasonably required to determine rates and charges to be billed by each Operator to the other Operator or by each Operator to its Customers.
- 5.3 To the extent permitted by Malaysian law and any relevant guidelines or customer service standards in force pursuant to the Operator's respective Licence conditions, the Operators 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 the theft of the Operator's provided terminal equipment.
- 5.4 Information provided under TM Net's ARD may only be used for the purpose for which it was given. Personal information about a Customer's credit worthiness, credit standing, and credit history or credit capacity may only be used for the purposes permitted by, and in compliance with, Malaysian law.
- 5.5 If the information is used by an Operator for any purpose other than the 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 continues on notice specifying 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.
- 5.7 (a) Subject to the Act and any subordinate legislation, nothing in TM Net's ARD may be construed as requiring an Operator at any time to disclose to the other Operator information which is at the date when TM Net's ARD comes into force, the subject of a confidentiality obligation owed to a 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 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.

CHAPTER 6: NOTICES

6.1 Any communications in respect of TM Net's ARD should be made in writing to:

Chief Executive Officer
TM Net Sdn Bhd
Level 41, Menara TM,
Jalan Pantai Baharu,
50672 Kuala Lumpur
Facsimile: 03 2241 1484
Email Address: jeremykung@tm.com.my

ANNEXURE 1

TM NET SERVICE

Network Services	Part in Schedules A and B
End-to-End Transmission Service	Part I

ANNEXURE 2**TABLE 1: PROCESSING FEE**

Type of Services	Type of Access Request	Fast Track Processing Fee
End-to-End Transmission Service	a) Establishment of new route/bearer b) Circuit migration exercises c) Provisioning of additional circuits	Pricing is subject to commercial negotiation between operators; if applicable.

TABLE 2: PROCESSING FEE FOR FAST TRACK ACCESS REQUEST

Type of Services	Type of Access Request	Fast Track Processing Fee
End-to-End Transmission Service	a) Establishment of new bearer b) Circuit migration exercises c) Provisioning of additional circuits	Pricing is subject to commercial negotiation between operators; if applicable.

SCHEDULE A : SERVICE DESCRIPTION**PART I – END-TO-END TRANSMISSION SERVICE****1. General**

- 1.1 **Part I of Schedule A** sets out the terms and conditions which are applicable to End-to-End Transmission Service.

2. Product Description**2.1 End-to-End Transmission Service**

- (a) is a Service for the carriage of communications between any two technically feasible TM Net's network transmission points (other than Interconnect Link Services) via network interfaces that may use any agreed technology between TM Net and Access Seeker subject to the terms and conditions of the Access Agreement.
- (b) End-to-End Transmission Service comprises of:
 - (i) a port and tail segment between TM Net's service node and the Access Seeker's premise at both ends where applicable;
 - (ii) a trunk segment to connect both tail segments.
- (c) The demarcation point for End-to-End Transmission Service shall be at the Access Seeker's premise at both ends.

3. Commercial and Technical Obligations

- 3.1 All commercial terms and conditions applicable to provision by TM Net of End-to-End Transmission Service and the operational and technical requirements shall be specified in the Access Agreement.

SCHEDULE B : CHARGES AND CHARGING PRINCIPLES**PART I – END-TO-END TRANSMISSION SERVICE****1. General**

- 1.1 **Part I of Schedule B** sets out the charges and charging principles which would be applicable to End-to-End Transmission Service.

2. Charges and Charging Principles

- 2.1 The Charging principles for TM Net's End-to-End Transmission Service shall comprise:
- a. Two tails segments
 - b. Two ports
 - c. One trunk segment
- 2.2 With respect to End-to-End Transmission Service, the Charges for trunk, port and tail segments will be on commercial basis.

3. Payment Terms

- 3.1 The payment term for End-to-End Transmission Service is as follows:
- a) for the first year, one (1) year in advance; and
 - b) for subsequent years, quarterly in advance.
- 3.2 The contract period for the lease agreement shall commence from the date of commissioning of the respective End-to-end Transmission Service circuit.

APPENDIX 1 of Part I

Table A: Rental Charges

Pricing is subject to commercial negotiation between operators; if applicable.