

ACCESS REFERENCE DOCUMENT

Y-Max Networks Sdn Bhd

(formerly known as Bizsurf SDN BHD)

(Company No: 356540-U)

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21st Floor Menara Merais,
1, Jalan 19/3,
46300 Petaling Jaya,
Selangor, Malaysia

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A. INTRODUCTION

A.1 *Background*

This is the Access Reference Document (“ARD”) of Y-Max Networks Services Sdn Bhd (hereinafter referred as “Y-Max Networks”).

This ARD is prepared pursuant to the Determination on the Mandatory Standard on Access (Determination No. 2 of 2005), and as amended by the Determination No. 2 of 2009 – Variation to Determination on Access List (Determination No.1 of 2009) issued by the Malaysian Commissions and Multimedia Commission in accordance with the Commission and Multimedia Act 1998.

Y-Max Networks, a licensee under the Communications and Multimedia Act 1998 (“CMA”), has been licensed to provide Facilities and Services as set out in Part 1 Section 1, of this ARD. In accordance to Section 5.3.2 of the MSA Determination, Y-Max Networks is required to prepare and maintain an ARD in relation to Facilities or Services on the Access List which Y-Max Networks 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 *Access Obligations*

This ARD sets out the terms and conditions on which Y-Max Networks would be prepared to provide Facilities or Services to an Access Seeker. It should not be taken as an offer to enter into a legally binding agreement. The provision of access to the Facilities or Services of Y-Max Networks is subject to the execution of an Access Agreement with Y-Max Networks.

Access Seekers must be a network facilities provider, a network service provider, an applications service provider, or a content applications service provider who is a licensee under the MCMCA. The network services or network facilities that is being requested must be appropriate to the network facilities, network services, applications services or content applications services that the Access Seekers are authorised to provide under their individual or class license.

The content of this ARD may change from time to time. Access Seekers should ensure that they have the most current version of the ARD.

B. OVERVIEW

B.1 Scope of ARD

The terms and conditions of Y-Max Networks's ARD are only applicable to the network facilities or the network services on the Access List.

Any term or phrase used in this ARD shall, unless expressly defined or if the context otherwise requires, have the same meaning as in the CMA, regulations made under it or in the determinations issued by the Malaysian Communications and Multimedia Commission ("MCMC"). Unless the context otherwise requires, words in the singular include the plural and vice versa.

The terms and conditions in this ARD are applicable only to those network facilities or network services that Y-Max Networks is currently providing or has agreed to provide to the Access Seekers.

B.2 Facilities and Services provided under Y-Max Networks's ARD

The terms and condition of this ARD shall apply to the following network facilities and network services:

- (a) Internet Interconnection Service;

B.3 Structure of ARD

This ARD is made up of 2 parts.

Part 1 is made up of the following procedures of which Access Seekers are required to abide should they wish to request for network services or network facilities from Y-Max Networks:

- Section 1 – Service List
- Section 2 – Application Process for Access Request
- Section 3 – Response to Access Request
- Section 4 – Terms and Conditions
- Section 5 – Confidentiality Agreement

Part 2 is made up of the following Schedules:

- Schedule 1 – Billing and Settlement
- Schedule 2 – Relationship Management
- Schedule 3 – Dispute Resolution Procedure

Schedule 4 – Forecasting
Schedule 5 – Ordering and Provisioning Obligations
Schedule 6 – Technical and Implementation
Schedule 7 – Operations and Maintenance
Annex 1: Fault Rectification Response Times
Annex 2: Confidentiality Agreement
Annex 3: Pricing

C. DEFINITIONS AND INTERPRETATIONS

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

“Access Dispute” is any disagreement or difference relating to, arising out of or in connection with the Access Agreement;

“Access List” means the list of Facilities or Services determined by the Commission under Chapter 3 of Part VI of the Act. The latest Access List is Commission Determination on Access List, Determination No. 1 of 2009.

“Access Provider” or “AP” means:

- (a) network facilities provider who owns or provides network facilities listed in the Access List; or
- (b) network services provider who provides network services listed in the Access List; and
- (c) who is licensee as defined in the Act and includes a holder of a registered licence under Section 278 of the Act.

“Access Seeker” or “AS” means an Operator who is a network facilities provider, network services provider, an application service provider or content applications service provider who is a licensee as define in the Act and who makes a written request for access for any of the Access Services.

“Access Service(s)” means the facilities and/or services that are set out in the Access List that are provided by the Access Provider to the Access Seeker pursuant to a Request for Access.

“Access Request” means a request for Access made by the Access Seeker pursuant

to Part 1 Section 2 of this ARD.

“**Act**” means the Communications and Multimedia Act 1998 (as may be amended from time to time);

“**ARD**” means Access Reference Document.

“**Billing Dispute**” means the dispute of an invoice prepared by the Access Provider to an Access Seeker which dispute is made in good faith and with reasons.

“**Billing Dispute Notification Period**” means a period of fourteen (14) days from the date of receipt of the invoice.

“**Billing Period**” means the period over which the supply of access to network services or network facilities is measured for the purposes of billing as contemplated in the provisions of the MSA which shall not be more than thirty (30) days and in accordance to the relevant calendar month unless otherwise agreed between the Parties.

“**BGR**” or “**Border Gateway Router**” means a router designed for the inter-connection of two autonomous systems.

“**Business Day**” means a day other than a Saturday and Sunday or a day which is lawfully observed as a national public holiday on the same day around Malaysia, when the banks are open for business in the Federal Territory of Kuala Lumpur.

“**Call Communications**” means communications involving (in whole or in part) a number or IP address used in the operation of each Operator’s network including message communications.

“**Charges**” means the sums payable by the Access Seeker to Y-Max Networks for the provision of network facilities or services listed in the Access List.

“**Commission**” or “**MCMC**” or “**SKKM**” means the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Act 1998.

“**Common Antenna System**” means a system of Facilities comprising antennas and cabling to the antennas inside a building, which is owned or operated by one or more Mobile Network Operators in association with in-building coverage the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Act.

“**Customer**” means in relation to an Operator, a person having a contractual relationship with the Operator for the provision of Communications Services.

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

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

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

“Fixed Network” means network facilities and/or other network services comprising the Public Switched Telephone Network and/or networks based on Internet Protocols for the provision of communications by guided electromagnetic energy or by point-to-point unguided electromagnetic energy.

“Forecast” means a forecast made by the Access Seeker referred to in the provisions of the MSA.

“Gateway” means a designated digital trunk switch, which provides operational inter-working between the Operators’ network and provides an agreed interface between the signaling, switching, transmission and operations system of each Operator and supports one or more POIs

“Interconnect Capacity” means a Facility or Service which is measured in 2 Mbit/s or other agreed units between a Gateway and a POI which enables the physical connection between the networks of the Operators for the purposes of providing one or more Access Services or the Interconnect Link as defined herein below.

“Interconnection Link” means a physical link connecting the networks of the Access Seeker and Access Provider.

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

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

“MCMCA” means Malaysian Commissions and Multimedia Commission Act 1998.

“MSA” means the Commission Determination on the Mandatory Standard on Access,

Direction No. 2 of 2005.

“Network” means network facilities and or 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 and in relation to an Operator, means so much of the network as is owned or operated by the Operator.

“Network Capacity” means equipment and facilities required to be installed at Y-Max Networks’s Network for use in the provision of one or more Access Services.

“Parties” means the Access Seeker and the Access Provider and the word “Party” shall refer to either the Access Seeker or the Access Provider as the context requires.

“Point of Interconnection” or **“POI”** means a point at or between Soft Switch(es) which demarcates the Network of an Access Provider and the network of the Access Seeker and is a point at which communication is transferred between the interconnecting networks.

“Point of Interface” has the same meaning as Point of Interconnection.

“Point of Presence” or **“POP”** means a point at which an Access Seeker has established itself for the purpose of obtaining access to network facilities or network services and is the point at which communication is transferred between the Access Seeker and the Access Provider.

“Operator(s)” means the Access Provider or the Access Seeker or both as the context requires.

“Services” means network services and/or other services which facilitate the provision of network services or applications services including content application services.

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PART 1 -SECTION 1

1.1 *Service List*

The network services or network facilities that Y-Max Networks provides to itself or third parties are:

1.1.1 Internet Interconnection Service

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

1.1.2 Domestic Connectivity

Internet Interconnection Service is limited to establishing connectivity between routers of two service providers in Malaysia and shall not include international connectivity.

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PART 1 – SECTION 2

1.2 Application Procedures for Access Request

1.2.1 Introduction

An Access Seeker shall request Y-Max Networks to supply the Facilities and / or Services listed in the Access List by serving an Access Request in writing to Y-Max Networks.

1.2.2 The Access Request shall contain:-

- (a) the name and contact details of the Access Seeker
- (b) the type of access required i.e. the Facilities or Services in respect of which access is sought
- (c) the service date(s) the Access Seeker reasonably requires
- (d) the relevant technical information relating to the interface Standards of the Access Seeker
- (e) relevant information relating to the Access Seeker's Network and the functionality of its Services, to the extent that the Access Seeker is aware that such information may affect the Access Provider's Network
- (f) forecasts of the capacity the Access Seeker will reasonably requires for a period of five (5) years set out for the first year in quarters and for the subsequent years, annually;
- (g) the quality of service the Access Seeker requires
- (h) whether the Access Seeker wishes to accept the ARD or to apply for additional Facilities or Services or to negotiate an Access Agreement
- (i) in the event that the Access Seeker requests to negotiate an Access Agreement, the Access Seeker must provide the following information:
 - (i) the names of personnel the Access Seeker nominates to represent the Access Seeker in the negotiations and, in respect of each of those personnel his or her contact details, his or her job title and details of his or her availability for the access negotiations;
 - (ii) the identity of the negotiating team leader, and the Access Seeker shall

ensure that the negotiating team leader shall have authority to make binding representations on behalf of the Access Seeker in relation to matters arising from the negotiations (subject to final approval from the Board of Directors, if required by the Access Seeker);

(iii) the information (if any) the Access Seeker reasonably requires the Access Provider to provide for the purposes of the negotiations,

(j) creditworthiness information set out in Section 5.3.10(b) of the MSA;

(k) such other information as the Access Provider may reasonably request.

1.2.3 In addition, the following documents must be included together with the Access Request:

(a) a copy of the licence issued under the CMA certified by the company secretary or evidence (certified by the company secretary) that the Access Seeker has been registered with, or been provided a license by, the Commission;

(b) a copy of the following documents certified by the company secretary:

(i) certificate of incorporation

(ii) certificate of change of name (if applicable)

(iii) the latest annual returns, Form 24 (Return of Allotment of Shares), Form 44 (Notice of Situation of Registered Office and of Office Hours and Particulars of Changes) and Form 49 (Return giving Particulars in Register of Directors, Managers and Secretaries and Changes of Particulars)

(iv) Memorandum and Articles of Association

(v) board of directors' resolution authorizing the execution of the confidentiality agreement

(vi) full names, designations and national identity card numbers of the persons authorised to sign the confidentiality agreement.

(c) to copies of a confidentiality agreement to be executed by the Parties.

1.2.4 In the event that Y-Max Networks does not receive all the information specified hereinabove, Y-Max Networks may reject the Access Request submitted by the Access Seeker, which rejection shall be without prejudice to the Access Seeker re-submitting with the information requested.

PART 1 – SECTION 3

1.3 Response to Access Request

1.3.1 Within seven (7) business days of receipt of the Access Request, Y-Max Networks shall respond to the Access Seeker by either:

- (a) accepting the Access Seeker's Access Request, and issuing the Acceptance of Access Request; or
- (b) requesting for further information, and issuing the Request for Further Information Response; or
- (c) agreeing to your request to negotiate, and issuing the Negotiation Response; or
- (d) rejecting your Access Request, and issuing the Rejection of Access Request.

1.3.2 Acceptance to Access Request

Upon acceptance of the Access Seekers' Access Request, Y-Max Networks shall, within seven (7) business days from the receipt of the Access Request, issue and provide the following information:

- (a) Y-Max Networks's description of each of the Facilities and Services that may be supplied by Y-Max Networks;
- (b) the application forms required to be completed by the Access Seeker to apply for access to Facilities and Services;
- (c) Y-Max Networks's current access charges for access to Facilities and Services, including individual and/or wholesale offerings;
- (d) all relevant technical information relating to the Facilities or Services which may be the subject of the Access Request, including but not limited to any physical and logical interfaces of its network necessary to allow the development and deployment of communications services, value-added services and communications equipment that can interconnect to, and interoperate with, Y-Max Networks's network;
- (e) any security requirements, insurance requirements and creditworthiness information required by the Access Provider under subsections 5.3.8, 5.3.9 and 5.3.10 of the MSA.

1.3.3 If Y-Max Networks is unable to provide any of the information listed in 1.3.2 above within the stipulated time period, the time period shall be extended by a further seven (7) business days. Following thereon, the Access Seeker may choose whether to proceed with the application. If the Access Seeker chooses not to proceed with the application, the Access Seeker will inform Y-Max Networks accordingly in writing.

1.3.4 If the Access Seeker choose not to proceed with the application, the information so provided by the Access Seeker shall be subject to the confidentiality obligations and the Access Seeker and Y-Max Networks shall not in anyway (whether directly or indirectly) utilise any such information.

1.3.5 If after perusing and considering the documentation and information provided by Y-Max Networks, the Access Seeker wishes to proceed with the Access Request, the Access Seeker must within a period of seven (7) business days of receipt of the said documentation provide Y-Max Networks with written confirmation that the Access Seeker either wish to proceed with the Access Request on the terms provided or, whether the Access Seeker wish to negotiate on specific terms.

1.3.6 Request for Further Information Response

(a) Y-Max Networks may request the Access Seeker to provide further information pursuant to the Access Request by issuing a request in writing.

(b) Upon receipt of the request, the Access Seeker is required within seven (7) business days to provide the further information to Y-Max Networks.

(c) If Y-Max Networks is of the 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 seven (7) business days from the date Y-Max Networks has received the further information from the Access Seeker.

(d) Y-Max Networks may make more than one request for additional information from the Access Seeker. Each request shall be subject to the above terms and conditions.

(e) If the Access Seeker do not provide the further information in response to a request made by Y-Max Networks, then it shall be deemed that the Access Seeker has revoked its Access Request. Such revocation shall be without prejudice to the Access Seeker submitting a fresh Access Request.

1.3.7 Agreement to Negotiate

If the Access Seeker has submitted an Access Request which contains a request to negotiate the terms and conditions of the Access Agreement, then Y-Max

Networks shall:

- (a) use its best endeavours to conclude the Access Agreement within one hundred and twenty (120) days of the written request to commence negotiations;
- (b) provide the Access Seeker with the information set out in 1.3.2 above;
- (c) require the Access Seeker to provide all relevant information which Y-Max Networks may reasonably need to commence negotiations.

1.3.8 Rejection of Access Request

- (a) If Y-Max Networks rejects the Access Request made by the Access Seeker, Y-Max Networks will, within seven (7) business days from the receipt of the Access Request, issue a rejection notice in writing to the Access Seeker stating the reasons and basis for the rejection.
- (b) In the rejection notice, Y-Max Networks shall specify a date, time and venue, not later than seven (7) business days from the date of the rejection, at which the representatives of Y-Max Networks will be available to meet with the representatives of the Access Seeker to discuss the rejection notice.
- (c) If the Access Seeker do not attend the specified venue, and on the date and time stated, then such failure shall be deemed to be acceptance of the basis of rejection of the Access Request.
- (d) If the Access Seeker attends, and the rejection of the Access Request is not resolved (whether at that meeting or any subsequently agreed meeting), then either party may initiate the Dispute Resolution Procedures as set out in the provisions of the MSA.
- (e) Pending the final determination of the dispute, Y-Max Networks shall not be obliged to provide access to the Access Seeker.

1.3.9 Right of Rejection

Y-Max Networks may reject the Access Request on any of the following grounds:

- (a) the information provided by the Access Seeker is incomplete;
- (b) it is not technically feasible to provide access to the Facilities or Services requested by the Access Seeker;
- (c) Y-Max Networks has insufficient capacity to provide the requested Facilities or Services
- (d) Y-Max Networks reasonably believes that the Access Seeker may fail to make

timely payments for the requested Facilities or Services;

- (e) Y-Max Networks reasonably believes that the Access Seeker may fail, to a material extent, to comply with the terms and conditions set out in this ARD for the relevant Facilities or Services;
- (f) Y-Max Networks reasonably believes that the safety of its network will be compromised by the grant of the access requested;
- (g) Y-Max Networks reasonably believes that the provision of access to the Access Seeker will be in furtherance of an activity which is illegal under Malaysian law; or
- (h) the terms and conditions requested by the Access Seeker for such access are in the opinion of Y-Max Networks unreasonable

1.3.10 Should the Access Seeker wish to make an Access Request for additional service or facility, the Access Seeker is required to submit a new Access Request in accordance with the above provisions.

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PART 1 – SECTION 4

1.4 Terms and Conditions

1.4.1 Costs and Expenses

Each Operator shall bear its own costs and expenses in relation to the preparation, negotiation and execution of an access agreement to which they are parties.

1.4.2 Applicable laws

The Access Agreement shall be governed by the laws of Malaysia and the Operators shall comply with all applicable directions issued by the Commission or other relevant authorities.

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PART 1 – SECTION 5

1.5 *Confidentiality Agreement*

Access Seekers should execute and return the Confidentiality Agreement set out in Annex 1 to this ARD.

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PART 2 – SCHEDULE 1

2.1 *Billing and Settlement*

2.1.1 Deposit and Charges

- (a) The Access Seeker shall pay Y-Max Networks the Charges for the Facilities or Services provided by Y-Max Networks.
- (b) The Access Seeker shall, in addition to the charges stipulated in the Access Agreement, pay Y-Max Networks such amounts as are levied for the provision of or making available other elements comprised in the network of Y-Max Networks or benefit of which is enjoyed by the Access Seeker but is not computed into the Access Agreement, and the amount of any taxes, duties and levies by government agencies.
- (c) Prior to the execution of the Access Agreement, the Access Seeker shall provide to Y-Max Networks security in the form of either an irrevocable unconditional bank guarantee or a cash deposit on such terms and conditions as may be reasonably acceptable to Y-Max Networks. The amount of the security deposit shall be ascertained by Y-Max Networks and shall in any event not exceed the estimate value of the charges for the facilities and services to be provided over a ninety (90) day period.

2.1.2 Billing

- (a) Y-Max Networks will issue invoices (in writing and/or electronic form), in Ringgit Malaysia to the Access Seeker within fourteen (14) business days from the expiry of each Billing Period. These invoices shall be for amounts due to Y-Max Networks in respect of the supply of Facilities or Services during the Billing Period less any rebates payable by Y-Max Networks to the Access Seeker under the Access Agreement.
- (b) Y-Max Networks will issue invoices in monthly billing cycles, unless otherwise agreed in writing between Y-Max Networks and the Access Seeker, and each invoices shall be supported by such information reasonably necessary to allow the Access Seeker to verify the invoice.

2.1.3. Billing Errors

- (a) If the Access Seeker discovers an error in an invoice, the Access Seeker must notify Y-Max Networks within a period of fourteen (14) days from the date of receipt of the invoice. Y-Max Networks will make the necessary adjustment to correct that error in the next monthly invoice.

2.1.4 Payment

- (a) The Access Seeker shall pay the invoice by the Due Date.
- (b) Payment may be made either by cheque, banker's draft, cashiers order or electronic fund transfer directly to an account nominated by Y-Max Networks.
- (c) Where the Access Seeker has paid an amount and subsequently notifies Y-Max Networks within the Billing Dispute Notification Period that the Access Seeker disputes an invoice issued by Y-Max Networks, Y-Max Networks is not obliged to refund any or the entire amount until the Billing Dispute is resolved in respect of that amount.
- (d) All invoices shall be stated in Ringgit Malaysia and payment from the Access Seeker must be made in Ringgit Malaysia and payment from the Access Seeker must be made in Ringgit Malaysia.

2.1.5 Billing Dispute Notification

- (a) If the Access Seeker disputes any invoice, the Access Seeker shall provide sufficient and complete information to Y-Max Networks relating to such dispute including:
 - (i) the amount disputed
 - (ii) the nature of the dispute, supported with necessary documents
 - (iii) details of the invoice and stating the Access Seeker's account number with Y-Max Networks, the invoice reference number, the invoice date, and the amount
 - (iv) such other information requested by Y-Max Networks as Y-Max Networks deems necessary to facilitate the resolution of the dispute.
- (b) Invoice may be disputed by the Access Seeker if the Access Seeker has reasonable grounds to believe that an error has arisen from one of the following circumstances:
 - (i) Y-Max Networks's billing system is, or has been, defective or inaccurate in respect of the recording of the Facilities or Services
 - (ii) there is, or has been, a discrepancy between the invoice in dispute and the records generated by the Access Seeker's billing system; or
 - (iii) there is, or has been, a fraud perpetrated by Y-Max

Networks; or

(iv) Y-Max Networks has made some other error in respect of the recording of the

Facilities or Services or calculation of the Charges; or

(v) such other reason or circumstance specified by the Access Seeker giving reasonable details for Y-Max Networks to investigate whether an error has occurred.

(c) If the Access Seeker intends to dispute an invoice, the Access Seeker must do so within the Billing Dispute Notification Period, which is fourteen (14) days of receipt of the disputed invoice from Y-Max Networks, stating the reasons for the dispute and providing documentary proof of the same.

(d) The Parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this Section. If the Parties are unable to resolve the Billing Dispute, then such Billing Dispute between the Access Seeker and Y-Max Networks will be resolved in accordance with Billing Dispute Resolution Procedure as set out in Schedule 3 herein.

2.1.6 Late Payment Interest

(a) Y-Max Networks shall be entitled to charge the Access Seeker late payment interest on all amounts outstanding with respect to any overdue invoice, at the rate of one per centum (1%) per month calculated daily from the Due Date until the date of full payment.

(b) Late payment interest which is chargeable by Y-Max Networks shall be added to the next Invoice.

2.1.7 Right of Set-Off

(a) The Access Seeker shall not deduct or set-off any amounts stated in any invoice against any amounts which Y-Max Networks may owe the Access Seeker or which may be due from Y-Max Networks to the Access Seeker except where Y-Max Networks has consented in writing or Y-Max Networks is in liquidation

(b) If the Access Seeker sets off or deducts any amounts from any invoice, without prior consent from Y-Max Networks, Y-Max Networks may then suspend indefinitely or with the Commission's consent, terminate the provision of access until the Access Seeker pays the amount withheld.

PART 2 - SCHEDULE 2

2.2 Relationship Management

This Schedule sets out the rights and responsibilities of the Access Seeker and Y-Max Networks in facilitating efficiency of the Access Agreement.

2.2.1 Access Management

The administration, management and implementation of the provisioning, utilisation, operation and maintenance of the access granted and obtained via any Access Agreement shall be by:

- (a) one (1) senior management personnel and one (1) substitute representative (“Y-Max Networks Representative”) appointed by Y-Max Networks.
- (b) one (1) senior management personnel and one (1) substitute representative (“Access Manager”) appointed by the Access Seeker.
- (c) an interconnect steering group;

2.2.2 The functions, duties and responsibilities of the Y-Max Networks Representative includes:

- (a) to act as Y-Max Networks’s primary contact for the Access Seeker in dealing with Y-Max Networks in respect of matters arising out of or in connection with the Access Agreement. Y-Max Networks may replace the appointed Y-Max Networks Representative at any time and shall inform the Access Seeker accordingly.
- (b) having the power and authority to make decisions with respect to actions to be taken by Y-Max Networks in the ordinary course of its day-to-day management of the obligations of Y-Max Networks with respect to the operation under the Access Agreement.
- (c) being the conduit through whom all notices, communications, approvals, confirmations, certifications, and consents must be sent in respect of all aspects of the Access Agreement, except as may be notified in writing by Y-Max Networks from time to time.

2.2.3 The functions, duties and responsibilities of the Access Manager includes:

- (a) to be the primary contact for Y-Max Networks in dealing with the Access Seeker for all matters under the Access Agreement

- (b) having overall responsibility for managing and coordinating the delivery performance and discharge of the obligations of the Access Seeker obligations to Y-Max Networks
- (c) meeting regularly with the Y-Max Networks Representative
- (d) having the power and authority to make binding decisions with respect to actions to be taken by the Access Seeker in the ordinary course of day-to-day management of its access arrangements in accordance with the Access Agreement.

Unless otherwise agreed, the Access Seeker's Access Manager shall address all notices relating to the Access Agreement to the Y-Max Networks Representative. The Access Manager may be replaced at any time and the Access Seeker shall inform Y-Max Networks and the Y-Max Networks Representative in writing prior to effecting any such replacement.

2.2.4 Interconnect Steering Group

- (a) Y-Max Networks and the Access Seeker will inform each other of the names of two (2) members (other than the Y-Max Networks Representative and the Access Seeker's Access Manager) who will serve on the Interconnect Steering Group. ("ISG")
- (b) The ISG will be responsible for:
 - (i) overseeing the performance of Y-Max Networks's and the Access Seeker's obligations under the Access Agreement and its compliance with the MSA and any other relevant instrument or law
 - (ii) addressing any and all issues escalated to it by any of the Parties generally.
 - (iii) setting an appropriate set of periodic meetings to be held and the procedures to be followed for such meetings, including the preparation of agenda and minutes
 - (iv) the procedure for resolving any issue escalated to the ISG, including the taking of evidence (if any), hearing submissions from the Parties and publishing its decisions.
- (c) Y-Max Networks and the Access Seeker may from time to time by mutual agreement add to or omit from the above list of responsibilities or change its two (2) representatives upon written notice to the other Party.

(d) Each Party will bear the costs of its representatives' participation in the ISG meetings. The ISG will keep minutes of the decisions reached at each meeting and the Parties will comply with such agreed decisions. Decisions of the ISG shall be limited to matters of a technical and operational nature and shall not operate so as to amend nor extend nor imply into the terms and conditions of this Access Agreement nor interpret legal concepts except where otherwise specifically provided in the Access Agreement. No decision shall be made unless agreed to by at least one (1) representative of Y-Max Networks and one (1) representative of the Access Seeker who are members of the ISG.

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PART 2 – SCHEDULE 3

2.3 Dispute Resolution Procedure

This Schedule sets out the procedure which applies in respect of disputes between the Access Seeker and Y-Max Networks arising out of, or in connection with the supply of Facilities or Services to which the Access Agreement applies.

2.3.1 The structure of the Dispute Resolution Procedure is as follows:

- (a) resolution of any general dispute will first be attempted through an inter-party working group negotiations.
- (b) in the event the dispute is not resolved by the inter-party working group in accordance with the terms of reference, then either Party may refer the dispute to the Interconnect Steering Group. (ISG)
- (c) if the ISG does not resolve the dispute or in accordance with the procedures prescribed by this Schedule, both Parties may seek resolution:
 - (i) refer any technical dispute to a mutually acceptable technical expert; or
 - (ii) refer the Access Dispute to the Commission pursuant to Section 151 of the Act for final arbitration.
- (d) Where a Access Dispute is referred to the Commission pursuant to Section 151 of the Act, the Commission will decide the Access Dispute if it is satisfied that the:
 - (i) parties cannot reach agreement, or will not reach an agreement in a reasonable time;
 - (ii) notification of the Access Dispute is not trivial, frivolous or vexatious; and
 - (iii) resolution of the Access Dispute would promote the national policy objectives for the communications and multimedia industry stated in Section 3 of the Act.

2.3.2 Until expiry of these Dispute Resolution Procedures, an Operator may not commence court proceedings relating to that Access Dispute. Nothing in this Section will be construed as ousting the jurisdiction of any court.

2.3.3 During a dispute and any dispute resolution process invoked in accordance with this Schedule, Y-Max Networks and the Access Seeker must continue to fulfil

- their respective obligations under the Access Agreement unless the fulfilment of those obligations will affect the outcome of the Access Dispute.
- 2.3.4 A Party is prohibited from using all information obtained as a result of the dispute resolution process for any purpose other than to resolve the Access Dispute.
- 2.3.5 An arbitrator appointed under this Dispute Resolution Procedure (including a technical expert or the Commission) may decide not to determine the dispute if the arbitrator considers the Access Dispute trivial, frivolous or vexatious, or if there is insufficient evidence to determine the Access Dispute. In such a case, the arbitrator will, within five (5) business days of receiving the reference to arbitration inform the Parties in writing, of his decision. The Parties will thereafter be entitled to pursue their Access Dispute by litigation.
- 2.3.6 Where the arbitrator decides to determine the Access Dispute, the costs of the arbitration will be shared equally between the Parties unless the arbitrator decides otherwise.
- 2.3.7 If the Parties cannot resolve the general dispute within the inter-party working group within the stipulated time, or after the expiry of any extension of time agreed on, either Party may give ten (10) business days written notice (“Notice Period”) to the other Party stating its intention to escalate the issue and outlining the details of the issue (“Outstanding Issue”).
- 2.3.8 If the Outstanding Issue is not resolved prior to the expiry of the Notice Period, then either Party may notify the other Party in writing that it wishes to refer the issue to the Interconnect Steering Group or ISG (“Referral Notice”).
- 2.3.9 If any general dispute is referred to the ISG, the ISG will meet within ten (10) business days of the receipt by the other Party of a Referral Notice. If the ISG fails to meet within the stipulated time of ten (10) business days, either Party may refer the dispute to a technical expert or to the Commission, for arbitration.
- 2.3.10 If the ISG have not resolved any general dispute within twenty (20) business days after it first meeting to review the dispute (unless mutually extended by the Parties), either Party may refer the dispute to a technical expert or to the Commission for final arbitration.
- 2.3.11 The Technical Expert:
- (a) will be an expert appointed by agreement of the Parties or, if the Parties cannot agree within ten (10) business days, by the Chairman of the Commission
 - (b) will have the appropriate qualifications and experience to arbitrate the general dispute, including knowledge of the communications and multimedia industry; and

- (c) must not be an officer, director, consultant or employee of a competitor of Y-Max Networks or of the Access Seeker .
- 2.3.12 If a general dispute is referred to a technical expert, the following dispute resolution procedure will apply and be utilised by the technical expert:
- (a) each Party will deliver written submissions setting out their positions together with supporting evidence to the technical expert and each other within fifteen (15) business days from the date of appointment of the technical expert; and
 - (b) each Party may respond to the other Party's submission in writing within fifteen (15) business days from the date of receipt of the other Party's written submission.
- 2.3.13 At the request of either Party and subject to the Parties agreeing or the technical expert deciding within five (5) business days of the receipt of the last written submission, that the arbitration by the technical expert be by documents only, the technical expert shall convene a hearing (where both Parties may attend and witnesses produced) within fifteen (15) business days of the delivery of the last written submission.
- 2.3.14 Should a hearing by technical expert is held pursuant to this Section, each Party will have the opportunity to make an oral submission. This process will be conducted in private.
- 2.3.15 The procedure for hearing technical disputes will be determined by the technical expert (including number and duration of oral submissions by the Parties).
- 2.3.16 The technical expert will not have the power to appoint any other experts.
- 2.3.17 The technical expert must deliver his decision within fifteen (15) business days of the hearing or after receipt of the last written submission where the arbitration is by documents only.
- 2.3.18 The award of the technical expert will be final and binding on the Parties (in the absence of manifest error or fact or law).
- 2.3.19 If the Parties are unable to resolve an Billing Dispute within thirty (30) days (or such longer period as the Parties may agree), from the date on which the Billing Dispute Notice is received, either Party may seek the consent of the other Party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension.
- 2.3.20 Each of the Parties will appoint a representative who will be authorized to bind the Parties and settle a Billing Dispute. The representatives will meet as often as they deem necessary to resolve the Billing Dispute and will decide among

themselves the manner, procedure and format for discussions to resolve the Billing Dispute.

- 2.3.21 Upon the resolution of a Billing Dispute to the satisfaction of the Parties, the payment or repayment of any sum pursuant to that resolution must be made within fourteen (14) days from the date of resolution.
- 2.3.22 Nothing in this Schedule shall prevent either Party from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- 2.3.23 A joint investigation of invoice discrepancies may be requested by a Party after having conducted a comprehensive internal investigation, including an examination of its own billing system. Terms of the joint investigation, must be agreed on prior to the joint investigation including:
- (a) the scope of the joint investigation;
 - (b) how the joint investigation will be conducted; and
 - (c) the date by which the joint investigation must be concluded.
- 2.3.24 Enquiries relating to billing, collection and settlement arrangements shall be directed to the Billing Representatives nominated by each Party. Either Party may at any time nominate a substitute Billing Representative provided that ten (10) business days notification is given.
- 2.3.25 If the Parties are unable to resolve the Billing Dispute within thirty (30) days or any extended period agreed upon, or if they are unable to agree on any such extension, either Party may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the MCMCA.

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PART 2 - SCHEDULE 4

2.4 *Forecasting*

- 2.4.1 The Access Seeker is required to make and provide a Forecast Information of Facility and/or Service it is seeking from Y-Max Networks. The Access Seeker shall provide Y-Max Networks:
- (a) with an initial forecast for the maximum period of one (1) year;
 - (b) on a quarterly basis for the next twelve (12) months reasonably accurate forecasts of its requirements for the Facility and/or Service required from Y-Max Networks.
 - (c) the Facility including the Interconnect Capacity and Service for which access is required;
 - (d) location where access is required;
 - (e) specific time table when each of the Service or Facility is required;
 - (f) any other forecast information as may be reasonably necessary for Y-Max Networks to carry out network planning.
- 2.4.2 The Access Seeker shall provide the Forecast Information to Y-Max Networks within (30) business days from the date of receipt of the request. Y-Max Networks may at its discretion agree to an extension of the time.
- 2.4.3 Y-Max Networks shall treat all information provided by the Access Seeker to Y-Max Networks pursuant to the Access Agreement as confidential.
- 2.4.4 The Access Seeker shall update its forecast on a quarterly basis, so as to enable Y-Max Networks to carry out efficient network planning and management to meet current and future requirements and the performance of its obligations under the Access Agreement.
- 2.4.5 If Y-Max Networks considers that the information supplied by the Access Seeker pursuant to Section 2.4.1 of this Schedule is insufficient, Y-Max Networks will notify the Access Seeker within ten (10) business days of receipt of the information and specify what additional information Y-Max Networks requires.
- 2.4.6 Y-Max Networks may send a rejection notice to the Access Seeker within fifteen (15) business days of receipt of a forecast from the Access Seeker. The rejection notice will specify the reasons for rejection together with an offer by

- Y-Max Networks to meet with the Access Seeker within five (5) business days of the rejection notice, to discuss the rejection and alternative methods by which the Access Seeker may comply with the Forecast Request.
- 2.4.7 Upon the rejection of the Forecast Information by Y-Max Networks, the Access Seeker may within twenty one (21) business days from the receipt of the rejection notice by the Access Seeker, either:
- (a) confirm that its rejected forecast is reasonable and submit an explanation justifying it to Y-Max Networks; or
 - (b) submit a new forecast to Y-Max Networks.
- 2.4.8 If an Access Seeker submits an amended forecast, Y-Max Networks shall reconsider the same and the provisions set out in this Sections 2.4.2 to 2.4.5 of this Schedule shall apply as if such amended forecast were a fresh forecast.
- 2.4.9 Y-Max Networks shall determine whether or not the Access Seeker has over-forecasted its requirements on an annual basis by comparing the forecast amount and orders made for that year and the Minimum Usage. Should the Access Seeker's forecasted requirements exceed the Orders for that year or fail to meet the Minimum Usage, then there shall be deemed to be an over-forecast.
- 2.4.10 In the event of any over-forecast by the Access Seeker, then the Access Seeker shall pay to Y-Max Networks all costs and expenses in meeting such forecast, which were reasonably and necessarily incurred by Y-Max Networks.
- 2.4.11 Any failure, neglect or refusal by the Access Seeker to comply with its obligations set out in this Schedule shall entitle Y-Max Networks to continue to provide access to the Access Seeker at the previous year's usage or level but such provision (if any) shall be without prejudice to Y-Max Networks's right to reduce such provision. Y-Max Networks shall not be responsible for any Loss including Consequential Loss suffered or incurred by the Access Seeker.

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PART 2 – SCHEDULE 5

2.5 Ordering and Provisioning Obligations

- 2.5.1 The Access Seeker shall provide Y-Max Networks with an Order for each Facility and/or Service it requires from Y-Max Networks. The Order shall contain the following information:
- a) the Services to which access is requested;
 - (b) the proposed time for delivery of access;
 - (c) the location for delivery which shall be selected by the Access Seeker from Y-Max Networks's published points of interface;
 - (d) the specifications, technical data, functionality and interoperability of the Equipment which the Access Seeker will be using in connection with the Order, including information on whether type approval has been obtained for the Equipment;
 - (e) details of the Access Seeker's requirements;
 - (f) the required POI and non-POI capacity; and
 - (g) any other information as the Access Seeker may reasonably believe Y-Max Networks would require in order for Y-Max Networks to plan for the provision of access to the requested Services.
- 2.5.2 Y-Max Networks shall treat all Order information provided by the Access Seeker as confidential.
- 2.5.3 If Y-Max Networks requests additional information, the Access Seeker shall within fourteen (14) business days provide the requested information. Insufficient or incomplete information provided by the Access Seeker will entitle Y-Max Networks to either reject the Order or to remove the Order from the queue until such time as the information is requested is received. Delay in the provision of the requested information will result in the Order being placed in the queue on the date the additional information requested by Y-Max Networks is provided by the Access Seeker and if the information so provided is sufficient and complete.
- 2.5.4 Y-Max Networks will notify the Access Seeker whether it accepts or rejects an Order placed by the Access Seeker, within:

- (a) fourteen (14) business days from the date of receipt of the Order; or
- (b) if Y-Max Networks intends to carry out a Service Qualification, thirty (30) days from the date of receipt of the Order,

2.5.5 Y-Max Networks may reject an Order on any of the following grounds:

- (a) the specific request is not technically feasible; or
- (b) Y-Max Networks has insufficient capacity to provide the requested Services; or
- (c) the Order exceeds the Agreed Forecasts provided by the Access Seeker; or
- (d) the Access Seeker has not obtained the necessary related agreements from Y-Max Networks; or
- (e) Y-Max Networks is of the reasonable view that the Access Seeker would materially fail to comply with the Access Agreement; or
- (f) Y-Max Networks has reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Services; or
- (i) to protect the integrity of Y-Max Networks' network; and/or the safety of individuals working on or using services supplied by Y-Max Networks' network; or
- (g) the Access Seeker has not provided all the information that the Access Seeker required or requested; or
- (h) the Facility and/or Service to which access is requested is not on the Access List; or
- (i) Y-Max Networks does not currently supply or provide access to the requested Facility or Service to itself or any Third Party; or
- (j) the Order cannot be fulfilled on or by the Requested Delivery Date.

2.5.6 If the Order is rejected, then Y-Max Networks shall issue a notice of rejection which shall contain the following information:

- (a) the ground(s) of rejection;
- (b) the time period by which Y-Max Networks will accept a modified Order; (c) the nature of such acceptable modifications to the Order

- 2.5.7 The Access Seeker may within five (5) Business Days of receipt of the Notice of Rejection, request in writing to meet Y-Max Networks to discuss the reasons for rejection and alternative methods of compliance.
- 2.5.8 If the Access Seeker disagrees with the grounds for rejection, the Access Seeker may initiate the dispute resolution process specified in the Dispute Resolution in Schedule 3.
- 2.5.9 If the Order is accepted, then Y-Max Networks shall issue a notice of acceptance specifying:
- (a) the delivery date for the Facility and/or Service; and
 - (b) the actual or an estimate of the charges payable to Y-Max Networks by the Access Seeker, for the fulfillment of the Order.
- 2.5.10 The Access Seeker shall within the period of fourteen (14) business days from the date of notice of acceptance, confirm in writing its agreement to proceed with such Order.
- 2.5.11 Pursuant to the receipt of any Order from the Access Seeker, Y-Max Networks shall be entitled to conduct Service Qualifications on the relevant portion of its network. Y-Max Networks will give a written notice to the Access Seeker within ten (10) business days of receipt of the Order or receipt of complete and accurate additional information pursuant to Section 2.5.3 above that it intends to conduct such Service Qualification.
- 2.5.12 Y-Max Networks will inform the Access Seeker of the result of the Service Qualification within three (3) business days of the completion of such Service Qualification.
- 2.5.13 In the event there is a delay in fulfilling the accepted Order, Y-Max Networks will as soon as reasonably practicable, notify the Access Seeker of the reasons for delay and the revised date of delivery.
- 2.5.14 Y-Max Networks will offer all reasonable assistance and co-operation to the Access Seeker in relation to the testing and provisioning of the Order. Y-Max Networks shall be entitled to charge the Access Seeker fee for such assistance and co-operation.
- 2.5.15 If Y-Max Networks reasonably believes that the total capacity required would exceed the capacity which Y-Max Networks can provide, then Y-Max Networks will notify the Access Seeker of such constrained capacity. In such an event, Y-Max Networks will allocate the available capacity to the Access Seeker on a fair and reasonable, non discriminatory and best efforts basis.

PART 2 – SCHEDULE 6

2.6 Technical and Implementation

This Schedule deals with the procedures for the establishment of Interconnection between the network of Y-Max Networks and the network of the Access Seeker.

- 2.6.1 The Access Seeker shall notify Y-Max Networks the type of interconnection that it requires and the location that it proposes to interconnect its network with the network of Y-Max Networks. Such notification shall be given to Y-Max Networks at the time of making a Forecast or placing an Order.
- 2.6.2 For optimum service performance the Access Seeker must implement the appropriate interconnect configuration as determined by Y-Max Networks.
- 2.6.3 Y-Max Networks may consider a request in writing by the Access Seeker to interconnect at a point other than the Point of Interface provided. Y-Max Networks may at its absolute discretion provide access at such unspecified Point of Interface to the Access Seeker. For the avoidance of doubt, this Section does not impose an obligation on Y-Max Networks to interconnect at a non-specified Point of Interface location.
- 2.6.4 Y-Max Networks shall not be required to commence work on the installation of Facilities to support the Point of Interface until the Parties have reached agreement on the correct interconnect configuration.
- 2.6.5 Should the Access Seeker nominate a third party Point of Interface for the purposes of Interconnection between the Access Seeker and Y-Max Networks, it shall first notify Y-Max Networks of such nomination giving sufficient details to Y-Max Networks to enable Y-Max Networks to decide if it accepts or rejects such nomination.
- 2.6.6 If Y-Max Networks accepts such nomination, Y-Max Networks shall notify the Access Seeker and notwithstanding such acceptance by Y-Max Networks, the Access Seeker shall remain responsible at all times for all costs of interconnection, provisioning, maintenance and access. The Access Seeker shall indemnify and keep Y-Max Networks indemnified for the duration of the term of the Access Agreement, against all and any claims, demands, expenses, losses and costs which Y-Max Networks may incur or be exposed to, arising from interconnection at the third party's Point of Interface.
- 2.6.7 If Y-Max Networks rejects such nomination, Y-Max Networks shall notify the Access Seeker of its decision and shall provide reasons for its rejection.
- 2.6.8 Each Party is responsible for the provisioning and maintenance of Facilities

(including Network Facilities which form part of the Interconnection Link and the transmission equipment) on its side of the POI.

2.6.9 The Parties shall not connect any terminal equipment that may result in changes in the characteristics and functionalities of other terminal equipment of both Parties.

2.6.10 A POI may be implemented by way of an In-Span Interconnection whereby the POI lies at some point along the physical cable linking the two parties' Networks. Each party is responsible for the transmission Equipment at its end of the cable, and the cable from its building to the POI. In the case of microwave "In-Span Interconnection", the POI lies between the terminal Equipment of the two parties.

2.6.11 With an In-Span Interconnection:

- (a) the Interconnect Link must be provided using fibre optic cable circuits except where as agreed (due to location, timing or other reasons) microwave circuits may be used;
- (b) microwave circuits may be used as a permanent feature;
- (c) The links must be shared by the parties;
- (d) The in-span fibre and/or microwave connection will be at a point mutually agreed and the number of nodes to be served by this POI capacity;
- (e) The Access Seeker's microwave equipment must be compatible to Y-Max Networks's equipment.

2.6.12 If the Access Seeker wishes to establish a new POI, the Access Seeker must:

- (a) notify Y-Max Networks three (3) months in advance; and
- (b) submit a confirmed Order to Y-Max Networks.

2.6.13 The Access Seeker must provide to Y-Max Networks information required by Y-Max Networks for planning for Interconnect Capacity at a new POI when or before submitting an Order, including the following information:

- (a) a Forecast of Interconnect Capacity for five (5) years from the time an Order is placed;
- (b) the number of routes and nodes that will be served by the interconnect capacity provided at the proposed POI;
- (c) leased circuits requirements (if any);

- (d) method of provisioning; and
 - (e) the availability of the equipment capacities at the nodes that have been agreed with the Access Provider, or in the case of POP, the associated equipment.
- 2.6.14 The five (5)-year Forecast for the Interconnect Capacity at the agreed new POI must be agreed by both parties.
- 2.6.15 If the Access Seeker requires additional interconnect transmission facilities at an existing POI, the Access Seeker must submit an Order to Y-Max Networks.
- 2.6.16 The Access Seeker must provide the following information when or before submitting an Order:
- (a) existing interconnect transmission facilities;
 - (b) the utilisation of each available interconnect transmission media;
 - (c) the amount of leased line (E1s) leased by the Access Seeker(if any);
 - (d) a Forecast for five (5) years from the time an Order is placed.
- 2.6.17 Y-Max Networks will accept and fulfil Orders for additional interconnect transmission facilities at a POI provided the following conditions are met:
- (a) the utilisation of the existing interconnect transmission facilities is more than ninety per centum (90%); and
 - (b) the actual demand for circuits exceeds the Forecasted circuits.
- 2.6.18 The Interconnect Capacity must provide a minimum of three (3)years provisioning period for planning purpose.
- 2.6.19 If the Access Seeker obtains physical co-location at a Point of Interface from Y-Max Networks the Access Seeker shall be, for the purposes of the MSA, a deemed access provider to other Operators, and Y-Max Networks shall be considered as the principal access provider.
- 2.6.20 In case where the Access Seeker is a deemed access provider, the Access Seeker shall notify Y-Max Networks of the identity of all other Operators with whom it has reached co-location agreements within two (2) business days of reaching such agreements, and shall ensure that such other Operators comply with the relevant co-location obligations contained in subsection 5.13 of the MSA and the provisions of this Schedule. Access by such other Operators shall be on terms similar to the Access Seeker.

- 2.6.21 Interconnect Testing will be carried out by the Parties for the purpose of ensuring that the Access Seeker's network can inter-work efficiently with the network of Y-Max Networks and that the Interconnection will not adversely affect the provision of Applications Services and Content Applications Services and other existing services provided by Y-Max Networks to its Customers.
- 2.6.22 Interconnection to the network of Y-Max Networks will be implemented only after satisfactory completion of the interconnect testing and the results of the interconnect testing are satisfactory to Y-Max Networks.
- 2.6.23 Prior to the conduct of interconnect testing, the Access Seeker shall fully test its network to ensure that it conforms to the interface specification as specified by Y-Max Networks. Any defects in hardware or software of the Access Seeker's network must be corrected before the commencement of interconnect testing.
- 2.6.24 The Parties shall act in good faith and make reasonable endeavours to complete the interconnect testing no later than two (2) weeks from the date of the original testing.
- 2.6.25 In the event that in the course of conducting the interconnect testing any test conducted shall fail the Access Seeker shall do all things necessary to rectify the deficiencies so that the relevant test is successfully completed and the results are satisfactory to Y-Max Networks.
- 2.6.26 The Access Seeker agrees to pay Y-Max Networks for the costs and expenses incurred in the provision of resources and personnel for the interconnect testing.
- 2.6.27 All call communications made during the interconnect testing may be chargeable to the Access Seeker.
- 2.6.28 Any postponement or cancellation of any scheduled interconnect testing shall be at the discretion of Y-Max Networks.
- 2.6.29 A certificate signed by a duly authorized officer of Y-Max Networks of the charges payable by the Access Seeker shall be final and conclusive and binding on the Access Seeker.
- 2.6.30 The following changes would be considered as a Network Change:
- (a) Changes to any technical specification of the Interconnection interface ("Interface Change");
 - (b) Changes to any technical specification or characteristic of the Facilities and/or Services ("Service Change");
 - (c) Changes to any technical specification or characteristic of the altering Party's network which will or might affect the other Party's network ("Network Change");
 - (d) Changes to the operational support systems used for Interconnection purposes (includes billing, ordering and provisioning ("OSS Change"));

(e) Any enhancements by the altering Party to the features, functions or capabilities on the Facilities or Services which the other Party has access, and which enhancement the altering Party proposes to make available either:

(i) to itself; or

(ii) to any other Operator (“Functionality Change”),

(all of the above described changes shall collectively be referred to as the “Relevant Changes”).

2.6.31 If either Y-Max Networks or the Access Seeker (as “the altering Party”) proposes to make a Relevant Change to its network, services and procedures, the altering Party will issue to Y-Max Networks or the Access Seeker (as the case may be) (as the “recipient party”) a notice stating the nature, effect, technical details and potential impact on the recipient party’s network (“Change Notice”). Upon receipt of the Change Notice, the recipient party shall immediately identify and begin planning the necessary consequential changes that it has to implement to make its network, services or procedures compatible with the altering Party’s network.

2.6.32 The altering Party will, no later than ten (10) business days from the Change Notice, make its technical representatives available to the recipient party to discuss the Relevant Changes, and the necessary consequential changes that the recipient party has to implement to make the recipient party’s network, services or procedures compatible with the altering Party’s network.

2.6.33 The notifying party will co-operate and meet with the recipient party and provide additional information reasonably requested by the recipient party so as to minimise any adverse impact of the Relevant Changes. The obligation of the recipient party to minimise any adverse impact of the Relevant Changes extends to the recipient party developing at its costs and expense solutions whether software or hardware, purchase software or hardware or adapt or modify or alter its Facilities. The recipient party shall discharge its obligations within a reasonable time and account shall not be taken of the time needed to secure any internal approvals or securing funding. The notifying party shall take reasonable account of concerns raised and proposals made by the recipient party to minimise any adverse impact of the Relevant Changes on the recipient party’s network and revise the Change Notice accordingly.

2.6.34 The altering Party will co-operate with the recipient party in relation to the development of procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Parties’ respective networks. The altering Party will jointly with the recipient party carry out such tests as developed above at least twenty (20) business days prior to the altering Party implementing the Relevant Changes.

2.6.35 Each party shall bear its own costs of the tests.

2.6.36 In the event Y-Max Networks is desirous of decommissioning a Point of Interface, either:

- (1) as a result of a third party landlord's notice under a tenancy or lease agreement; or
- (2) for any commercial or technical reason; or
- (3) in compliance with any law or Government Agency directive or instrument or court order;

Y-Max Networks shall give a notice ("Decommissioning Notice") to the Access Seeker.

2.6.37 Y-Max Networks will offer reasonable co-operation to the Access Seeker to work out a timetable for the decommissioning of a relevant Point of Interface, network facility or network service.

2.6.38 Where Y-Max Networks gives a Decommissioning Notice with respect to the decommissioning of a Point of Interface, Y-Max Networks will use all reasonable efforts to provide the Access Seeker, a functionally equivalent Interconnection at an alternative Point of Interface, on terms and conditions (other than Charges) that are similar to that applicable to the Point of Interface that has been decommissioned. The Access Seeker shall use its best efforts to obtain interconnection from another Operator.

2.6.39 Where Y-Max Networks gives a Decommissioning Notice to the Access Seeker that it will decommission a network facility or network service, Y-Max Networks will use all reasonable efforts to provide the Access Seeker access to an alternative network facility or network service on terms and conditions (other than Charges) that are similar to that applicable to the network facility or network service that has been decommissioned. Nothing contained herein shall be construed as an undertaking or obligation on the part of Y-Max Networks to provide alternative network facility or network service to the Access Seeker.

2.6.40 The Parties hereby agree that :-

- (a) The Access Seeker shall within thirty (30) days of the completion of the decommissioning and re-installation at the substitute Point of Interface, submit to Y-Max Networks details of the Access Seeker's reasonable costs;
- (b) in the event Y-Max Networks considers that the submission is insufficient for Y-Max Networks to verify the reasonable costs, Y-Max Networks may request the Access Seeker to provide further information, whereupon the Access Seeker shall within thirty (30) days submit the further information required or provide an explanation as to its unavailability;

- (c) upon receipt of all requisite information from the Access Seeker, Y-Max Networks shall within thirty (30) days, evaluate and determine if the costs incurred is reasonable and necessary;
- (d) if Y-Max Networks determines that the costs incurred are reasonable and necessary, Y-Max Networks shall notify the Access Seeker in writing of its decision and shall deduct the amount from the next Invoice. If the Invoice amount is insufficient to extinguish such deduction, then Y-Max Networks will pay the Access Seeker the undeducted portion within thirty (30) days from the date of the Invoice;
- (e) if after the period set out in this Section, Y-Max Networks disagrees with the computation by the Access Seeker or disagrees that the costs claimed are reasonable and necessary, then Y-Max Networks shall notify the Access Seeker of its disagreement and state its reasons. Upon such notification, a dispute is deemed to have arisen, which shall be resolved in accordance with the dispute resolution procedure set out herein.

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PART 2 - SCHEDULE 7

2.7 Operations and Maintenance

The Parties hereby agree that the management of the operations of their respective networks and the management and rectification of faults shall be dealt with in the manner as set out herein :

2.7.1 Y-Max Networks and the Access Seeker will each be responsible for the operations and maintenance of their own Facilities and Services.

2.7.2 Y-Max Networks and the Access Seeker will adopt and implement standards and procedures that will:

- (i) ensure that the operations of each of their networks is efficient;
- (ii) facilitate prompt identification and rectification of interconnect faults to minimise interruption of communication services to customers; and
- (iii) provide for adequate management of the operations and maintenance of Facilities and support systems

2.7.3 Each Party shall be responsible for managing the traffic from its own Gateway to the other Party's Gateway and in particular will implement network management measures for traffic control for abnormal traffic upsurge, network instability and other abnormal traffic behavior.

2.7.4 Both Parties shall carry out periodic interconnect link test at agreed intervals to ensure that the QoS levels are maintained.

2.7.5 Routine testing of interconnect circuits shall be kept to the minimal and be carried out outside the busy traffic hours (to be determined on a case by case basis).

2.7.6 Each Party undertakes to give written notice to the other Party as prescribed in the Access Agreement prior to any system upgrading of their Facilities affecting the interconnect circuits and which may lead to temporary failure.

2.7.7 Interconnect testing shall be carried out after the system upgrading is completed to ensure that no inter-working problem arises. The altering Party initiating the upgrading is thereafter required to provide a report on the outcome of the event to the other Party within fourteen (14) Business Days after completion of the work.

2.7.8 In the event that in carrying out a system upgrading, the interworking between

the networks of both Parties is adversely affected, the Altering Party shall immediately take and implement all necessary action to effectively overcome the problem so that the networks continue to inter-work efficiently.

- 2.7.9 Each Party shall retain the fault record for a period of one (1) year from the date of the fault report. The records shall contain details such as:
- (a) fault reference number;
 - (b) cause of fault;
 - (c) fault report date/time;
 - (d) restoration action; and
 - (e) the corresponding restoration date/time.
- 2.7.10 These records shall be used to determine the performance of the interconnection of the Facilities.
- 2.7.11 The Party leasing the third party Facilities shall be responsible to ensure that the third party Facilities are maintained in accordance with the terms of the Access Agreement.
- 2.7.12 The Party leasing the third party Facilities shall be responsible to ascertain that the standard and quality of the leased facilities conform to the specifications and standards as prescribed in the Access Agreement.
- 2.7.13 The Party ("Maintenance Operator") who intends to carry out planned maintenance which may affect the Access Seeker's Network on any part of its network shall be:
- (a) provide a minimum of seven (7) business days notice of the planned maintenance, where reasonably practical;
 - (b) use reasonable endeavours to minimise any disruption to the Communications crossing between the networks of Y-Max Networks and the Access Seeker; and
 - (c) where reasonably practicable, and if agreed between Y-Max Networks and the Access Seeker, Y-Max Networks will provide an alternative route or carriage of call communications on terms to be agreed.
- 2.7.14 If the Maintenance Operator needs to undertake emergency maintenance on any part of its network, the Maintenance Operator will, if it is able to :
- (a) provide at least one (1) business day notice of the planned maintenance, where reasonably practical;

- (b) use reasonable endeavours to minimise any disruption to the communications crossing between the networks of Y-Max Networks and the Access Seeker; and
 - (c) where reasonably practicable, and if agreed between Y-Max Networks and the Access Seeker, Y-Max Networks will provide an alternative route or carriage of the communications on terms to be agreed.
- 2.7.15 If both Parties agree, the Party which owns or occupies the premises where the POI is located may conduct maintenance of the other Party's equipment located at the POI on agreed terms and conditions.
- 2.7.16 Each Party shall be responsible for the operations and maintenance of their section of the in-span capacity, alongside with any network element under their jurisdiction and ownership.
- 2.7.17 Each Party must:
- (a) maintain its POI equipment located in POI sites in good working order;
 - (b) maintain the POI sites in a secure, tidy and safe condition;
 - (c) ensure that combustible material is not left in or around POI sites following maintenance or other operations.
- 2.7.18 Both Parties shall determine faults on their own equipment. Only genuine interconnect faults shall be reported to the other Party's Interconnect Fault Reporting Centre/Fault Reporting Centre.
- 2.7.19 If a fault is encountered by one Party, that Party must first establish the nature of the fault by carrying out a thorough test on its equipment and if such test proved that the fault is not residing in its own equipment, then that Party must promptly convey this fault report to the other Party for rectification.
- 2.7.20 If a fault occurs, affecting any communication which crosses or is to cross both Parties' network, the initial responsibility for identifying and reporting the fault to the other Party rests with the Party who first becomes aware of the fault condition.
- 2.7.21 If a Party identifies a fault occurring in its network at the POI which may have an adverse effect on the other Party's network, the Party must promptly inform the other Party:
- (a) the nature of the fault;
 - (b) the actions being taken by it to restore service; and

- (c) the expected time of restoration and the outcome of those actions.
- 2.7.22 Each Party will be responsible for processing reported faults using its own procedures and shall be obliged to offer full assistance for interconnection faults.
- 2.7.23 Both Parties shall use their best endeavours to meet once every two (2) months or at agreed intervals for the purpose of preventing the recurrences of such fault which adversely affect the traffic across the networks of the Parties. The information provided in such reports is confidential information and subject to the confidentiality obligation under the Access Agreement.
- 2.7.24 Any failure persisting for longer than seconds at any component included in the Interconnection and which is characterised by complete inability to perform all required functions of such component is considered as a failure of Interconnection.
- 2.7.25 All Interconnection faults must be reported to the respective Interconnect Fault Report Centre/Fault Reporting Centre.
- 2.7.26 If the fault occurs at the POI, each Party will use its reasonable endeavours to rectify the fault promptly and restore the service.
- 2.7.27 In case of physical faults, it is each Party's responsibility to check and verify that the fault does not reside within its own network prior to escalating the fault to the other Party.
- 2.7.28 If a major fault occurs in the network affecting the communications that cross between Y-Max Networks's and the Access Seeker's networks, initial identification of the fault will rest with the Party who first becomes aware of the fault. Once it is determined accurately where the fault lies, the affected Party in whose network the fault has occurred will promptly repair the said fault. It is the responsibility of each Party to immediately inform the other Party in writing of any major failures.
- 2.7.29 If a Party identifies a fault occurring in its network which may have an adverse effect on the other Party's network or equipment or affects the services provided to Customers, the Party identifying the fault shall promptly notify the other Party of the existence of the fault, and the remedial actions being taken by it.
- 2.7.30 In the event of interruption or failure of any of the Facilities, the Party which has control or owns the network facility will restore services as soon as is reasonably practicable giving the highest priority and service to faults that are service affecting and to recurring faults affecting any part of its network.
- 2.7.31 Difficult or reoccurring faults may need to be investigated by a joint engineering team with members from each Party. The formation of such joint engineering

team does not imply that employees from one Party have any rights of access to or inspection of the other Party's premises, equipment, documentation, etc.

- 2.7.32 Both Carriers will assist wherever possible in the identification and rectification of faults on an interconnect route.
- 2.7.33 Each Party is responsible for its own fault or problem management escalation procedure. Both Parties will have joint escalation procedures in respect of faults relating to traffic which cross or are to cross both Parties network and also for faults that occur at the POI. These processes will be aimed at achieving restoration times.
- 2.7.34 The fault restoration performance shall be reviewed each quarter or at mutually agreed intervals.
- 2.7.35 Both the Access Seeker and Y-Max Networks will establish and maintain, at their own costs, a fault reporting service that allows their Customers who are connected to their respective networks, to report such faults directly to their fault management systems.
- 2.7.36 Both Y-Max Networks and the Access Seeker will ensure that they advise their directly connected Customers to report all faults to the fault reporting service set up by the relevant operator, and will manage its fault reporting and identification on a non-discriminatory basis.
- 2.7.37 All communication to a Customer must be truthful and reflect the true nature and location of the fault.
- 2.7.38 If a Customer reports a fault to a Party to which it is not directly connected, that Party must promptly inform the other Party to which the Customer is directly connected of this reported fault in order to coordinate efficient and prompt repair regardless of the location of the fault.
- 2.7.39 Each Party to the Access Agreement agrees to respond and rectify faults in its network in accordance with the agreed response and rectification time frames set out in Annex A herein.
- 2.7.40 In undertaking service restoration in respect of interconnect traffic, must have regard to, without limitation, the following principles:
- (a) service restoration taking priority over equipment repair;
 - (b) automatically bringing in available standby capacity and/or undertaking network management actions to restore service;
 - (c) monitoring equipment and alarms and carrying out testing to determine the nature and location of the fault;

- (d) if the fault is identified, immediately rectifying the fault, if possible;
- (e) if the source of the fault cannot be quickly identified and cleared, the Party which has identified the fault shall notify the other Party of the problem and keep that other Party informed as agreed in the Access Agreement of the progress in relation to the identification and rectification of the fault;
- (f) if the source of the fault has been identified by a Party but immediate rectification is not feasible, the Party responsible for rectification shall immediately notify the other Party of the estimated fault rectification time (which will be based on the Party rectifying the fault using its best endeavours in the light of the nature of the fault and its effect on services); and
- (g) if a Party had rectified a fault on a temporary basis, the said Party must inform the other Party of this fact and provide the timeline for the permanent repair.

2.7.41 The owner of the equipment is responsible for providing spares.

2.7.42 All fault reports to Interconnect Fault Reporting Centre/Fault Reporting Centre shall be acted upon promptly. Such actions shall include the exchange of:

- (a) a unique fault reference number;
- (b) the date and time the fault was initially reported; and
- (c) the date and time the fault was informed to the other Party.

2.7.43 Network failures can have a considerable impact on the quality of service perceived by Customers. Both Parties shall prepare a common interconnection restoration plan and test and review this plan regularly.

2.7.44 In the case of a planned maintenance, the Party planning must inform the other Party, in writing, fourteen (14) business days the following information:

- (a) date and time;
- (b) type of activity;
- (c) expected duration;
- (d) fault impact categories (for example service affecting, service threatening or others);
- (e) contact telephone number and contact person.

2.7.45 If the planned maintenance is not restored to full service within the expected duration, the additional maintenance time shall be regarded as an unplanned maintenance and the procedure for dealing with unplanned maintenance shall

apply.

- 2.7.46 Upon detection of a fault requiring emergency maintenance, the relevant Interconnect Fault Reporting Centre/Fault Reporting Centre shall be notified. At the time of notification the fault could have ceased to exist or could still be persisting.
- 2.7.47 In cases where the emergency fault has ceased to exist, the Interconnect Fault Reporting Centre/Fault Reporting Centre will note the occurrence, duration and details of the failure.
- 2.7.48 In the event that either Party reports a service fault, the reporting Party will be required to provide the following information for fault handling and record purposes:
- (a) circuit number;
 - (b) the time the fault occurred;
 - (c) full details of the fault;
 - (d) contact person, telephone number and the fault reference number of the Party reporting the fault;
 - (e) contact name and telephone number of the reporting Party's personnel for fault clearing operation and assistance if needed;
 - (f) agreement from the Customer to release the affected parts of the service for testing. If access to the circuit is withheld by the Customer, the Customer's employees or agent, this withholding period will not be included in the calculation of service availability.
- 2.7.49 Subject to the technical obligations set out in the ARD, each Party will adhere to the relevant guidelines and all applicable technical standards adopted or issued by the Commission from time to time.
- 2.7.50 The Parties shall if necessary agree to a technical and implementation manual in respect of the facilitation of the access to the required Facilities and/or Services. Such manual shall be agreed to within thirty (30) days from the date of execution of the Access Agreement, or such longer period as may be mutually agreed. If the Parties are unable to do so, then there shall be deemed to be a dispute arising between the Parties, and notwithstanding the conditionality of the Access Agreement, the provisions of the ARD shall apply.
- 2.7.51 The Parties agree that each of them is responsible for the safe operation of its side of the network boundary, and shall take all reasonable steps to ensure that its side of the network, its network operations, and the implementation of the Access Agreement:

- (a) will not endanger the safety or health of any person, both its own personnel and those of the other Party;
 - (b) will not cause physical or technical harm to the other Party's network, including causing damage, interfering with or causing deterioration in the operation of the other Party's network.
- 2.7.52 Both Parties shall ensure all work places are safe and they are in compliance with safety procedures appropriate to the activities being undertaken.
- 2.7.53 Due to the dangers of exposure to radiation from optical power sources, it is imperative that safety procedures be followed which ensures that personnel do not work on fibre optical systems unless the power sources to the laser has been turned off at both terminals.
- 2.7.54 Should a member or staff of either Party become ill or sustain injury while on or at the other Party's site, every priority must be offered to assist the individual to receive first aid.
- 2.7.55 Should any visitor or employee have an accident, full details must be reported to the other Party within one (1) business day.
- 2.7.56 Both Y-Max Networks and the Access Seeker shall take all necessary precautions against interference, and shall not knowingly, do anything or permit any third party to do anything in relation to its network and/or equipment which will:
- (a) cause radio interference to the other Party's network; and
 - (b) materially obstruct, interrupt or impede the continuous use or operation of the Facilities, Services or equipment
- 2.7.57 If either Y-Max Networks or the Access Seeker ("the Notifying Operator") notifies the other Party ("the Recipient Operator") that the Recipient Operator's Facilities, Services or equipment is causing interference to the Notifying Operator's Facilities, Services or equipment, then the Recipient Operator shall upon receipt of the aforesaid notice from the Notifying Operator, complete all rectification and repair works so that the interference ceases or do all things necessary to remove the interference.
- 2.7.58 If the Recipient Operator is unable to locate the source of the interference, the Recipient Operator shall notify the Operator and the Parties agree to meet within twenty-four (24) hours of such notice and inspect each others Facilities, Services or equipment to locate the source of the interference.
- 2.7.59 Each Party is responsible for monitoring alarms belonging to its own network.

- 2.7.60 Regular meetings are to be held to review the performance of the interconnection, the operational information exchanged between the Parties by the Interconnect Steering Group or ISG.
- 2.7.61 A Party leasing Facilities from a third party to install its equipment, shall be responsible to negotiate and obtain approval from the third party in order that the other Party is able to gain access to the third party premises for the purpose of operations and maintenance work.
- 2.7.62 A Party which intends to gain physical access to a POI site belonging to the other Party for installation or operations and maintenance work, must take necessary steps to comply with that Party's existing security procedure/ arrangement in practice at the site.
- 2.7.63 Each Party shall give seven (7) business days prior written notice to the other Party of its intention to access the other Party's POI site for the purpose of carrying out preventive maintenance on its Equipment, unless a fault exists which warrants immediate action.
- 2.7.64 If a Party detects a fault, defect or problem at the other Party's equipment located at the POI site, and this fault, defect or problem causes or might cause damage to its Facilities, the first mentioned party must:
- (a) promptly notify the other Party as soon as possible.
 - (b) take immediate appropriate protective action with respect to its equipment and subsequently notify the other Party.
- 2.7.65 If a Party reasonably determines that the other Party's POI equipment located at the POI site poses an immediate risk of personal injury or significant property damage, it may take interim measures necessary to prevent such injury or damage, pending attendance by the other Party to perform corrective work.
- 2.7.66 The instances necessitating call traces have been classified as emergency or engineering. Both Parties will use their best endeavours to trace calls at the time the call is in progress. On occasions where this is not possible, each Party will endeavour to perform a trace retrospectively using the CDR.
- 2.7.67 Each Party will have to make available a list of contact information consisting of the name, designation of the contact person, contact telephone and facsimile numbers.

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ANNEX 1 - Fault Rectification Response Times

The following Fault Rectification Response Times shall apply to both Parties:-

Priority Level	Fault Types (examples)	Response Time and Update Frequency	Restoration Time (calculated from time of report)
Level 1	<ol style="list-style-type: none"> 1. Major switch outage 2. Transmission bearer total outage 3. Route blocking > 50% 4. Major signalling problem 5. Major routing issues 	Every 1 hr	4 hrs
Level 2	<ol style="list-style-type: none"> 1. Minor switch outage 2. Minor routing issue 3. Minor signalling problems 4. Route blocking 10%-50% 	Every 4 hrs	24 hrs
Level 3	<ol style="list-style-type: none"> 1. Faults affecting single or small number of Customers 2. Route blocking <10% 	Every 24 hrs	72 hrs
Level 4	<ol style="list-style-type: none"> 1. Remote Congestion 2. External Technical Irregularities (ETI) 3. Other performance related issues 	Every 48 hrs	14 days

For the purposes of this Annex A, the following are the explanatory notes to the above table:

- (a) All faults reported shall be given a "Priority Level" as set out in the above table for response, reporting frequency and restoration purposes and Y-Max Networks and the Access Seeker shall cooperate fully with one another to achieve the given time targets based on the severity of the fault reported.
- (b) "Response Time" refers to the time for either Y-Max Networks the Access Seeker ("the Faulty Party") whose network or service is faulty to respond to and appropriately attend to the fault. Response times are to be measured

from either the time the fault is notified by the other Party to the Faulty Party or from the time when the Faulty Party first becomes aware of the fault, whichever is the earlier.

- (c) "Restoration Time" refers to the time taken by the Faulty Party to restore a faulty service and is determined by the period between the reporting of a fault to the respective Interconnect Fault Reporting Centre/ Network Management Centre of that Faulty Party and the restoration of the faulty service.
- (d) Where the fault is due to a major external plant failure for example cable dug up or aerial collapse, a longer period of time should be allowed for restoration

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ANNEX 2 - Confidentiality Agreement

The terms and conditions of the Confidentiality Agreement are set out below, please copy and paste the terms into a new document and sign two copies of the same and return the Confidentiality Agreement to Y-Max Networks:

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made this day of 2009 (“Effective Date”)

Between:

- (1) **Y-Max Networks Sdn Bhd** (Company No. 793634-V), a private company with limited liability incorporated under the laws of Malaysia and having its registered office at 21st Floor, Menara Merais, No.1, Jalan 19/3, Petaling Jaya, 46300 Selangor Darul Ehsan (“**Party A**”).

And

- (2) [**Name of Access Seeker**] (Company No. []), a [*type of company eg private company with limited liability*] incorporated under the laws of Malaysia and having its registered office at [] and its business office at [] (“**Party B**”).

WHEREAS:

- A. Party A is licensed and authorised under the Communications and Multimedia Act 1998 (Act 588) (“**CMA**”) to own and provide network facilities and provide network services.

written request for access to network facilities or network services listed in the Access List

- “Confidential Information” : all information, labelled as ‘Confidential’, ‘Commercial In Confidence’ or with other similar phrases or words, in any and all mediums (whether oral, written or otherwise), including without limitation, data, technology, know-how, inventions, discoveries, designs, processes, formulations, models, equipment, algorithms, software programs, interfaces, documents, specifications, information concerning research and development work, and/or trade and business secrets, current, planned or proposed products, marketing and business plans, forecasts, projections and analyses, financial information and prices, customer information, site information and Intellectual Property
- “Affiliate” : with respect to either Party, any company which is now or during the term of this Agreement, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such company. For these purposes, "control" of any company shall mean the ownership of, or the power to direct the voting of, more than fifty percent (50%) of the common stock or other equity interests having ordinary voting power for the election of directors (or persons performing comparable functions) of such company
- “Disclosing Party” : the Party and its Affiliates disclosing the Confidential Information or from whom the Confidential Information originates
- “Effective Date” : the date of this Agreement
- “Intellectual Property” : includes patents, trade marks, service marks, rights in designs, trade names, copyrights and topography rights,

whether or not any of them are registered, and including applications for registration of any of them, and rights under licences and consents in relation to any of them and all forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world

“Party” : Party A or Party B (as the case may be) and Parties shall mean Party A and Party B collectively

“Project” : as defined in Recital F above

“Receiving Party” : the Party and its Affiliates to whom the Confidential Information is disclosed or given

“Representatives” : with respect to either Party, any employee, director or officer, or consultant and/or advisor who is either employed under a contract of employment, or is engaged under a contract of service, by such Party

1.2 In this Agreement, unless the context otherwise requires:

- (a) Words importing the singular number shall include the plural and vice versa. Words importing the masculine shall include the feminine and neuter and vice versa.
- (b) Words importing persons shall include any individual, firm, company, corporation, joint venture, association or partnership (whether or not having separate legal personality).
- (c) Reference to clauses and recitals of this Agreement and references to sub-clauses are, unless otherwise stated, references to sub-clauses of the Clauses in which the reference appears.
- (d) The headings to the clauses are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.
- (e) All recitals form and shall be read and construed as an integral and essential part of this Agreement.

2. **NO LICENCE**

2.1 This Agreement does not confer or grant any Intellectual Property rights or license in the Confidential Information to the Receiving Party, either directly or by implication, or otherwise.

3. **NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

3.1 The Receiving Party agrees that it will not copy and/or use the Confidential Information except in relation to discussions for evaluation of the Project and/or finalisation of the details relating to the Project. The Receiving Party agrees not to reverse engineer, de-compile or disassemble any Confidential Information nor disclose the Confidential Information to any other person within or outside the Receiving Party's organisation. The Receiving Party agrees that it shall hold all Confidential Information in confidence and shall take all reasonable steps to safeguard the Confidential Information as it would take to protect its own valuable proprietary and confidential information. The Receiving Party agrees to promptly notify the Disclosing Party upon discovery of any unauthorised use or disclosure of the Confidential Information caused by the Receiving Party and its Representatives and take reasonable steps to regain possession of the Confidential Information and prevent such further unauthorized actions or other breach of this Agreement.

3.2 The Receiving Party agrees to limit the disclosure of the Confidential Information to its Representatives who have a "need to know" of such Confidential Information, and who shall have, prior to such disclosure, agreed to keep such information confidential and comply with the requirements of this Agreement. Where the disclosure by the Receiving Party is to third party consultants and/or advisors, the Receiving Party shall procure that such third parties enter into an agreement similar to this Agreement. The Receiving Party shall in any event be responsible or liable for any disclosure of Confidential Information or breach of the requirements of this Agreement by any of its Representatives save where the Receiving Party is able to show that it has taken all reasonable and prudent measures to require its Representatives to comply with the Receiving Party's obligations under this Agreement. Save and except as aforementioned, the Receiving Party shall not disclose or otherwise provide any Confidential Information to any third party without the prior written consent of the Disclosing Party.

3.3 Notwithstanding any provision herein, each Party shall determine in its sole discretion what Confidential Information it shall disclose to the other Party, and nothing contained herein shall oblige any Party to disclose any Confidential Information requested by the other Party.

- 3.4 Confidential Information that is disclosed solely orally must be identified as confidential at the time of disclosure and confirmed by the Disclosing Party in writing to the Receiving Party within 30 days after such disclosure. Such confirmation must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labelled or marked as confidential or its equivalent. An omission to confirm the information disclosed orally as Confidential Information does not avoid the obligation of the Receiving Party to maintain and keep the information confidential.

4. **EXCLUSION**

- 4.1 For the purpose of this Agreement, Confidential Information shall not include any information which:

- (a) is already in or becomes part of the public domain through no fault of or breach of this Agreement by the Receiving Party or its Representatives;
- (b) is disclosed to the Receiving Party by a third party who is not, to the reasonable knowledge of the Receiving Party, in breach of an obligation of confidentiality and which can be communicated without restriction;
- (c) is already known or independently developed by the Receiving Party without use of the Confidential Information or breach of any obligation of confidentiality, provided that the Receiving Party can demonstrate the same by written records;
- (d) is required to be disclosed by applicable law or by order of a court of competent jurisdiction or by any regulation, rule, order or requirement of any governmental or regulatory authority or securities exchange, Provided That the Receiving Party shall (if and to the extent permitted by law and to the extent reasonably practicable) advise the Disclosing Party prior to such disclosure so that the Disclosing Party has an opportunity to review and comment on the proposed disclosure and if it wishes to do so (at its own cost), seek to defend, limit or protect against such disclosure, and the Receiving Party will disclose only that portion of the Confidential Information which is required to be disclosed. Nothing in this Clause will in any way prevent or unreasonably delay the obligation of the Receiving Party to comply with the said disclosure requirements; or
- (e) disclosure is authorized in writing by the Disclosing Party.

5. **RETURN OF MATERIALS**

5.1 Upon the termination or expiry of this Agreement or at the written request of the Disclosing Party, the Receiving Party shall within ten (10) days of receipt of the Disclosing Party's written request, return to the Disclosing Party and delete from all computer files, all Confidential Information and copies thereof, and cause its Representatives to do the same. However, the Receiving Party may retain one (1) archival copy of the Confidential Information that it may use **only** in case of a dispute concerning this Agreement notwithstanding the termination or expiry of this Agreement.

6. **NO REPRESENTATION AND WARRANTY**

6.1 The Disclosing Party represents that it has the right to make the disclosures made under this Agreement. The Confidential Information disclosed under this Agreement is delivered "as is" and the Disclosing Party makes no representation of any kind with respect to the accuracy or completeness of such Confidential Information or its suitability for any particular use.

6.2 Nothing in this Agreement shall preclude a Party from making, using, marketing, licensing or selling any independently developed technology, product or material, whether similar or related to the Confidential Information disclosed under this Agreement, provided the Party has not done so in breach of this Agreement.

6.3 No warranty whatsoever is hereby made by the Disclosing Party as to the completeness, exactitude or fitness for any particular purpose of the Confidential Information or any use of results based on the Confidential information and on the non-infringement of industrial or Intellectual Property rights of third parties of and by the Confidential Information supplied under this Agreement.

7. **TERM AND TERMINATION**

7.1 Subject to the provision of any agreements to be executed between the Parties in respect of the Project, this Agreement shall come into force on the Effective Date and remain operative until the expiry of this Agreement one (1) year from the Effective Date or until the termination of this Agreement by 30 days' written notice from either Party to the other, whichever is the earlier. Notwithstanding the Effective Date, Parties agree that the terms and conditions of this Agreement shall equally apply to any Confidential Information related to the Project that is received by a Receiving Party prior to the Effective Date.

7.2 Notwithstanding anything to the contrary, the Receiving Party's confidentiality obligations with regard to Confidential Information disclosed before the termination or expiry of this Agreement shall survive for a period of two (2) years from the earlier of the termination or expiry of this Agreement.

8. **GOVERNING LAW / SETTLEMENT OF DISPUTES**

8.1 This Agreement shall be governed by, and construed in accordance with, the laws of Malaysia. Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts of Malaysia.

9. **REMEDIES**

9.1 Since unauthorized disclosure or use of Confidential Information will diminish the value of the proprietary interests in such Confidential Information, the Receiving Party acknowledges that damages may not be a sufficient or adequate remedy and accordingly, if the Receiving Party (or its Representatives) breaches any of its obligations under this Agreement, the Disclosing Party will be entitled, in addition to its other remedies at law, to seek equitable relief to protect its interests therein, including but not limited to specific performance or injunctive relief from any court of any competent jurisdiction.

10. **NOTICES**

10.1 Any notices under this Agreement shall be in writing and shall be addressed as provided in Clause 10.2 and if so addressed shall be considered as validly served as follows:

- (a) if sent by personal delivery, upon delivery at the address of the relevant Party;
- (b) if sent by prepaid mail, three (3) working days (excluding Saturday, Sunday and public holidays) after despatch; or
- (c) if sent by facsimile, at the time of despatch of the facsimile provided that the sender's transmission report shows that the entire transmission have been received by the recipient without error, provided that any facsimile sent and received after 5.00 p.m. shall be considered as validly served on the immediate following working day.

10.2 The relevant addressee, address and facsimile number of each Party for the purpose of this Agreement, subject to Clause 10.3, are:

Party A

Address : **Y-Max Networks Sdn Bhd,**
21st Floor, Menara Merais,
No.1, Jalan 19/3,
Petaling Jaya
46300 Selangor Darul Ehsan

Attention : Chief Executive Officer

Facsimile No. : +603 76200366

Copy to: Head
Legal and Regulatory Affairs Department
YTL Communications Sdn Bhd
8th Floor, One Oriental Place
No. 1 Jalan Hang Lekiu
50100 Kuala Lumpur
Fax no: +603 2027 8828

Party B

Address : []
[]
[]
[]

[]

Attention : [Name]
[Designation]

Facsimile No. : + []

- 10.3 Either Party may notify the other in writing of a change to its name, relevant address, addressee or facsimile number for the purpose of this Clause 10 provided that such notification shall only be effective on:-
- (a) the date specified in the notification as the date on which the change is to take effect; or
 - (b) if no date is specified or the date specified is less than seven (7) days after the date on which notice is given, the date falling seven (7) days after notice of any such change has been given.

11. **MISCELLANEOUS**

- 11.1 The relationship of the Parties is that of independent contractors. This Agreement does not evidence or create an agency, partnership, joint venture or similar relationship between the Parties. Neither Party hereby acquires any licences or rights to use in advertising, publicity or other marketing or manufacturing activities any Confidential Information, name, trade name, trademark, service mark or other designation of the other Party.
- 11.2 This Agreement is not an agreement by either Party to enter into any business relationship with the other Party and/or any third party(s). No Party shall be under obligation or commitment to enter into any further agreement with the other Party and/or any third party(s) by reason of the execution of this Agreement or the disclosure, evaluation or inspection of Confidential Information. Any agreement for such business relationship shall be at the discretion of the Parties and shall be evidenced by separate written agreement(s) executed by the Parties.
- 11.3 Either Party may negotiate or discuss or enter into any transaction with any third party in respect of the matters contemplated under this Agreement.

- 11.4 In the event of the invalidity of any provision of this Agreement, the Parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, and further agree to substitute for such invalid provision a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- 11.5 Neither Party may assign, transfer or in any other way dispose of all or any of its rights, interests, powers, benefits and/or obligations under this Agreement without the prior written consent of the other Party.
- 11.6 Any failure by either Party to enforce strict performance by the other Party of any provision herein shall not constitute a waiver of the right to subsequently enforce such provision or any other provision of this Agreement. No single or partial exercise of any right or remedy shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy available.
- 11.7 Each Party shall bear its own solicitor's costs and costs of preparing, negotiating and executing this Agreement. The stamp duty shall be borne by Party B.
- 11.8 This Agreement constitutes the entire agreement between the Parties in relation to its subject matter, and supersedes all prior written and oral communications and agreements relating with respect to such subject matter. This Agreement may only be modified by a written agreement signed by persons duly authorized to sign agreements on behalf of the Parties.
- 11.9 This Agreement shall bind each Party and its successor(s)-in-title and permitted assigns.
- 11.10 A person who is not a Party has no right to enforce any term of this Agreement.
- 11.11 *The* Receiving Party will not transfer, directly or indirectly, any product, technical data or software furnished hereunder or the direct product of such technical data or software to any country for which an export license or other governmental approval applicable to the Receiving Party is required without first obtaining such license or approval.

IN WITNESS WHEREOF each Party has executed this Agreement as of the date first above written

Signed for and on behalf of)

Y-MAX NETWORKS SDN BHD)

by)

.....

in the presence of:-

Name:

Title:

.....

Name:

Title:

Signed for and on behalf of)

[NAME OF ACCESS SEEKER])

by)

.....

in the presence of:-

Name:

Title:

.....

Name:

Title:

ANNEX 3 - Pricing

The prices for the Access Service offered by Y-Max Networks is set out below:

(1) Internet Interconnection Services

Price per Mbps per month is RM []