

## SCHEDULE 6.6 – SERVICE DESCRIPTION

### SP-ACCESS SERVICE

#### 1. SCOPE AND STRUCTURE

1.1 The Strategic Partner Access to Passive Infrastructure Process (SP-Access Service) hereby refers to a process following the Decision by the Authority to grant access over the Access Provider's Facilities to facilitate the provision of services to a designated Strategic Partner in the Kingdom of Bahrain.

1.2 The Access Seeker must adhere to the conditions of this Service Description with regard to a request made under the SP-Access to the extent to which it involves Passive Infrastructure (i.e., Fibre Cable pair to be provided on a rental basis for the use of the designated Strategic Partner).

However, an Access Seeker, who is a holder of any telecommunications licence (whether Individual Telecommunications Licence or a Class Licence), shall be entitled to request use of Site Space and/ or Power under this Service Description, without this being for the provision of services to a designated Strategic Partner in the Kingdom of Bahrain.

1.3 The Access Provider shall implement an SP-Access Service only when it has received written confirmation of the Authority's approval to proceed Fibre Cable pair to be provided on a rental basis for the use of the designated Strategic Partner. For avoidance of doubts, the Authority's approval is not required for use of Site Space and/ or Power under this Service Description.

1.4 Both Access Provider and Access Seeker acknowledge and agree that the Authority's approval referred to in clause 1.3. above) is dependent on approvals from third parties including other Governmental department and, therefore, while the Authority will endeavour to provide such approval within 30 days of the Access Provider submitting the final implementation plan to the Authority as set out in this Schedule 6.6.

1.5 The Service

(a) The Strategic Partner Access Service to Passive Infrastructure (**SP-Access**) is service connecting a Strategic Partner Point of Presence and an Access Seeker Point of Presence through the Access Provider's Passive Infrastructure.

(b) Subject to clause 1.3 above, the SP-Access Service to Passive Infrastructure is available to any Access Seeker that has received a written, specific and verifiable request from a Strategic Partner for the provision of access to the Access Provider's Facilities in the manner set out in 3(b) below.

(c) Site Space and/ or Power can be used by any Access Seeker without this being for the provision of services to a designated Strategic Partner in the Kingdom of Bahrain.

#### 2. DEFINITIONS

**SP-Access or SP Access Service** means the Strategic Partner Access Service involving use on a rental basis of a Fibre Pair and/ or Site Space/Power to be provided by the Access Provider to the Access Seeker.

**SP-Access Service Commencement Date** means the date of successful implementation and notified handover of the SP-Access Service by the Access Provider to the Access Seeker on the Access Delivery Date, which shall take place immediately following completion of testing as set out in the Reference Offer.

**Facility** means Passive Infrastructure, Site Space and/ or Power (whereas the Site Space and Power are described below in this Service Schedule).

**Installation** means the installation of an individual SP-Access Service as described in paragraph 1 of this Service Description.

**Installation Charges** means the Charges referred to as Make Ready and relevant installation Charges set out under the SP-ACCESS section of Schedule 3 - (Pricing) of the Reference Offer.

**Minimum Service Period** means a minimum period of twenty-four (24) or sixty (60) calendar months for which the SP-Access Service will be provided, such period commencing from the SP-Access Service Commencement Date.

**Passive Infrastructure** means a Fibre Pair.

**Renewed Minimum Service Period** means an applicable minimum period of one (1) month for which the SP-Access Service shall be provided, such period commencing from the expiry of a Service Period.

**Strategic Partner** means an entity designated by the Government of the Kingdom of Bahrain and confirmed by the Telecommunications Regulatory Authority as being a strategic partner of the Kingdom of Bahrain.

**Service Period** means the Minimum Service Period or Renewed Minimum Service Period.

### **3. LODGEMENT OF SP-ACCESS APPLICATION**

(a) The SP-Access shall be for the sole purpose of serving a Strategic Partner (as defined by the Authority) on an exceptional basis.

(b) SP-Access Application, The Access Seeker must submit its SP-Access Application to both the Access Provider and the Authority. In addition to the information above, the Access Seeker must provide with its SP-Access Application substantiated evidence from the End User of the End User's request to the Access Seeker, that forms the basis for the Access Seeker's SP-Access Application. The Authority will acknowledge receipt of the Access Seeker's SP-Access Application to both the Access Provider and the Access Seeker within two (2) Working Days. Acknowledgement by the Authority of the Access Seeker's SP-Access Application shall result in the below timeframes for the Access Provider's processing of the Access Seeker's SP-Access Application being suspended. Unless the Authority notifies the Access Provider and Access Seeker that the Access Provider should not continue with processing the Access Seeker's SP-Access Application, the below timeframes shall recommence on the expiry of a period of five (5) Working Days from the date of the Authority's acknowledgment of receipt.

### **4. QUEUING POLICY**

(a) The Access Provider must develop and disclose to the Access Seeker a queuing policy for SP-Access Applications for the supply of access to a Facility within twenty-one (21) days of the date of the first request for a supply of access to a Facility from the Access Seeker or any other

Licensed Operator.

(b) The queuing policy must be consistent with the following principles:

(i) the queuing policy of the Access Provider must be non-discriminatory between Access Seekers;

(ii) the queuing policy also must apply on a non-discriminating basis to the provisioning of accepted SP-Access Applications and the Access Provider's own internal confirmed Facilities orders and/or those confirmed for other Licensed Operators.

(iii) subject to paragraph (i) above, the Access Provider must seek to maximise the efficiency of its queuing policy.

(c) The Access Provider must, within five (5) Working Days of receipt of a SP-Access Application notify the Access Seeker of its receipt and its place in the queue.

(d) The Access Seeker may prescribe the order in which simultaneous applications by it with the Access Provider should be treated in a queue.

## 5. ASSESSMENT OF SP-ACCESS APPLICATION

(a) The Access Provider must notify the Access Seeker:

(i) within **(5) five Working Days** of receiving the SP-Access Application, if it requires more information in relation to the SP-Access Application, in which case the time period under paragraph (c) below can be extended by the number of Working Days it takes for the Access Seeker to provide the information;

(ii) within **(10) ten Working Days** of receiving the SP-Access Application, if it requires a modification to the SP-Access Application, in which case the Access Provider must provide at that time its proposed modifications.

(b) If the Access Provider requests modifications to the SP-Access Application in accordance with paragraph (a)(ii) above, the Access Seeker must, within (5) five Working Days of receipt of that request, give consideration to those modifications and accept the modifications or notify the Access Provider that it does not agree with the proposed modifications. If the Access Seeker does not agree with the proposed modifications, the Access Seeker may withdraw its SP-Access Application or request a meeting with the Access Provider within (10) ten Working Days of the notification to the Access Provider that it does not agree with the proposed modifications. Following this meeting, if the parties cannot agree on modifications, then the matter will be resolved under the Dispute Resolution Procedures.

The Access Provider will provide to the Authority a copy of all documentation collected by the Access Provider from the Access Seeker up to this stage in the process.

(c) Subject to any extension of this timeframe under paragraphs 5(a) or (b), the Access Provider must notify the Access Seeker, within the time period specified in paragraph 5(d) from receipt of the SP-Access Application, whether:

(i) it accepts the SP-Access Application and whether it wishes to carry out a Field Study under paragraph 7 prior to granting the Access Seeker the right to issue a Service Request in respect of the Facility under paragraph 8; or

(ii) it will reject the SP-Access Application, in which case a Service Request cannot be issued in respect of the Facility by the Access Seeker and access to the Facility will not be granted to the Access Seeker.

The Access Provider must conduct a Field Study under paragraph 5(c)(i).

(d) The time period specified is thirty (30) Working Days or such other time as is agreed.

(e) Failure to give notice under paragraph (c) will be deemed to be a proposed rejection of the SP-Access Application by the Access Provider. If the Access Seeker continues to require access, the Access Seeker must request the Access Provider to confirm the deemed proposed rejection within five (5) Working Days from the date of the deemed proposed rejection, and, if so requested, the Access Provider must accept or confirm that it proposes to reject the SP-Access Application within a further (5) five Working Days. The timeframe in paragraph 5(b) will be extended by the period it takes the Access Provider to confirm its proposed rejection in accordance with this paragraph.

Where the Access Provider proposes not to accept an Access Seeker's SP-Access Application, the Access Provider shall first communicate this to the Authority. The timeline for issuing a rejection shall be suspended for a period of (5) five Working Days to enable the Authority to provide its comments regarding the proposed rejection.

## **6. REJECTION OF A SP-ACCESS APPLICATION**

(a) A SP-Access Application may be rejected for the following reasons:

(i) the provision of SP Access Service would prevent the Access Provider from fulfilling its legal obligations, including national interest, law and order or defence obligations;

(ii) a purpose for which access to the Facility is sought is not the purpose of installing, operating and maintaining Equipment used or designed for use in connection with the supply of services in accordance with the terms of the Access Seeker's Telecommunications Licence;

(iii) the Access Seeker has not given the Access Provider reasonable notice in respect of when the Access Seeker wishes to obtain access to the Facility;

(iv) access to the Facility is not technically feasible;

(v) the Access Provider is not legally required to provide Access Services;

(vi) the Access Provider determines in its unfettered discretion that the Equipment which the Access Seeker proposes to install at the Facility does not meet the Access Provider's required technical standards and quality;

(vii) Currently Planned Requirements in relation to the Facility prevents the Access Provider from providing access to the Facility; or

(viii) the SP-Access Application relates to a Facility where an existing user has commenced preparatory conduct (**Preparatory Conduct**), and the provision of access to the Access Seeker would prevent the existing user's intended use of the Facility (**Intended Use**) and for the purposes of this paragraph, the existing user has commenced Preparatory Conduct where it has commenced provisioning or providing capacity in or on the Facility for an Intended Use, including by:

- A. entering into a contract with a customer in relation to the Intended Use of the Facility, including for a particular event or purpose;
- B. obtaining landlord, local or state government approval where such approval is necessary for the Intended Use of the Facility;
- C. applying to the Authority for a frequency licence in respect of the operation of particular Equipment where such a licence is necessary for the Intended Use of the Facility;
- D. entering into a contract for the installation of Equipment, or requesting tenders in respect of such a contract, or commencing ordering and/or installing Equipment for the Intended Use of the Facility; or where the existing user is a Licensed Operator, obtaining the Access Provider's written acceptance of its SP-Access Application for its Intended Use.

(b) If the Access Provider proposes to reject the SP-Access Application of the Access Seeker under paragraph 5(c), it must provide the Access Seeker with a written explanation of its reasons and, if requested by the Access Seeker, meet within (10) ten Working Days of receiving the application to discuss those reasons. The parties will use reasonable endeavours to develop a strategy for managing access to the Facility or an alternative Facility which addresses the reasonable concerns of each party but in the absence of agreement, the Access Provider may reject the SP-Access Application.

(c) Where an application has been rejected by the Access Provider for technical reasons under paragraph 6(a)(iv), the Access Seeker is entitled to resubmit an amended application at any time, and the proposal must be reconsidered in accordance with this Service Description.

## **7. CONDUCT OF FIELD STUDY**

(a) Where the Access Provider reasonably determines that a Field Study is necessary to determine whether the relevant Facility is available for access, the Access Provider must notify the Access Seeker of such determination at the time it notifies the Access Seeker of its acceptance of the SP-Access Application under paragraph 5(c) and that the granting of access in respect of the accepted SP-Access Application subject to the successful completion of that Field Study.

(b) Where the Access Provider elects to conduct a Field Study under paragraph 6(a), it must complete such Field Study within (30) thirty Working Days of notification of its intentions to the Access Seeker under paragraph 5(c) (**Field Study Timeframe**), and within the Field Study Timeframe, the Access Provider must inform the Access Seeker of the following:

(i) whether the Access Provider is offering the Access Seeker the right to issue a Service Request in respect of that Facility under paragraph 8;

(ii) confirmation of the results of any preliminary assessment of access or details and

explanation of any variation to the results of a preliminary assessment of access;

(iii) details of the Make Ready Work required (including who will be responsible for undertaking each part) and the time required to perform the Make Ready Work;

(iv) the estimated Access Charges, estimated Make Ready Work costs and other costs of obtaining access;

(v) the time required to deliver access, after a Service Request for access has been made by the Access Seeker;

(vi) the Facility's security classification for physical access purposes; and

(vii) other matters as determined by the Access Provider from time to time.

(c) If the Access Provider considers that it is unable to complete the Field Study within the Field Study Timeframe, the Access Provider must notify the Access Seeker that an extension of the Field Study Timeframe is necessary and the anticipated duration of that extension. Such notice is to be given prior to the expiry of the Field Study Timeframe (or the extension of the Field Study Timeframe, as the case may be).

(d) Where the Access Provider is required by law to provide Access Services, it shall estimate its Make Ready Work costs in accordance with a schedule of costs for time and materials set out in Schedule 3 – (Pricing) of the Reference Offer.

(e) Upon reasonable notice to the Access Provider, the Access Seeker shall have the right either to supply to the Access Provider its own materials of the same, or materially the same, type and quality as the Access Provider's materials detailed in the Field Study for use in any Make Ready Work or, where reasonably practicable, to carry out the whole or any part of the Make Ready Work itself as a sub-contractor to the Access Provider subject to fair and reasonable terms and conditions for the provision of that sub-contracted Make Ready Work.

The Access Provider must provide to the Authority a copy of all the materials collected through the processes outlined in paragraph 7(b) to (e) inclusive, for the Authority's review. The Authority will endeavor to provide a decision including any necessary approvals within one (1) month. The timelines for the Access Provider's processing a Service Request for the Access Seeker's SP-Access Application will be suspended until the Authority advises the parties of its decision. The Authority will endeavor to communicate its decision and/or any necessary approvals within one (1) month from receipt of the materials.

## **8. SERVICE REQUEST FOR ACCESS TO FACILITY**

(a) Where the Access Provider has notified the Access Seeker under paragraph 7(b) that it is offering the Access Seeker the right to issue a Service Request in respect of a Facility and if the Access Seeker wishes to lodge a Service Request for access to a Facility, it must do so within **(30) thirty Working Days** of being so advised by the Access Provider.

(b) A Service Request must be consistent with the Equipment, plant, work, costs and charge details specified in the Field Study. If the Access Provider determines that a Service Request, in whole or part, is inconsistent with the relevant Field Study, the Access Seeker must rectify any deficiencies within **(2) two Working Days** of being notified of such deficiencies by the Access Provider.

(c) The Service Request must be in writing and specify:

- (i) the term of access requested;
- (ii) any reasonable written instructions applicable to the installation of Equipment;
- (iii) a description of the Equipment to be installed by the Access Seeker and a description of the Facility; and
- (iv) the required delivery date and physical arrangements for access to the Facility and the Equipment to be installed by the Access Seeker.

(d) The Access Provider must give written acknowledgment of the receipt of that Service Request and provide a response within (10) ten Working Days of receipt. The response shall specify:

- (i) details of Make Ready Work;
- (ii) the applicable Charges;
- (iii) the description of the Facility to which access is sought and the Equipment to be installed by the Access Seeker;
- (iv) the date upon which access will be provided (**Advised Delivery Date**); and
- (v) any instructions applicable to the Equipment to be installed by the Access Seeker.

(e) If the Access Seeker cancels or varies a Service Request between the date of acceptance and the Advised Delivery Date, the Access Seeker must pay the amount of any loss suffered by the Access Provider. In this paragraph, "loss" means:

- (i) the costs which have been reasonably incurred by the Access Provider on the basis of the Service Request and which will not be otherwise reimbursed following the cancellation of the Service Request; and
- (ii) the costs of capital relating to the holding of Equipment or space on the Facility until use, disposal or reuse, and any costs reasonably incurred in arranging for such use, disposal or reuse.

## **9. GRANTING OF ACCESS**

(a) If the Access Provider accepts a Service Request in respect of a Facility, the Access Provider must:

- (i) continue, where relevant, to hold the Facility Lease for the Facility and will be the sole lessee under the Facility Lease and the Access Seeker must not object to the continuation of any existing Facility Sub-Leases already granted in respect of the Facility; and
- (ii) grant to the Access Seeker a Facility Sub-Lease of an agreed part of the Facility to enable the Access Seeker to install, use and maintain its Equipment on the Facility;

(b) Unless the Access Seeker agrees otherwise, the term of the Facility Sub-Lease will be as specified in the Facility Sub-Lease.

(c) Where the Access Provider owns the existing Facility, the term of the Facility Lease will be as specified in the Facility Lease.

(d) In relation to the Access Provider accepting a Service Request in respect of a Radio-communications Site only, the Access Provider must continue to own any Towers on a Radiocommunications Site which is to be a Shared Facility.

(e) The parties will endeavour to ensure that a Facility Lease or Facility Sub-Lease is executed before any Make Ready Work commences. The Access Provider must prepare the draft Lease or Sub-Lease as the case may be. Where at the time of access to the Facility a formal Facility Lease or Facility Sub-Lease has not been executed, the Access Seeker will be deemed to be bound by the terms and obligations of the proposed Facility Lease or Facility Sub-Lease at the material time.

## **10. RULES FOR SYNCHRONISATION OF THE FACILITY SUB-LEASE TERMS WITH THE HEAD LEASE TERM**

The following rules will apply in synchronising the Facility Sub-Lease terms with the term of the head lease:

(a) each Facility Sub-Lease must expire one day before the head lease out of which it is granted;

(b) each Facility Sub-Lease must only be supported by one head lease term;

(c) the commencement date of the first Facility Sub-Lease term (which will be the earlier of the date of execution of the Facility Sub-Lease or the date of delivery of possession) will be the same date of the month as the date of the month that the supporting head lease commenced, irrespective of the day in the month that delivery of possession occurs under the Facility Sub-Lease;

(d) the initial Ongoing Access Fee of the Facility Sub-Lease commences from the commencement date stated in the Facility Sub-Lease and not the subsequent date of the delivery of possession; and

(e) if the Access Provider has entered into sequential head leases in respect of a site, or one head lease with sequential terms, the Access Seeker shall have the right to enter into sequential subleases or one sublease with sequential terms, each sublease to comply with paragraphs (a) to (d) above in respect of the relevant head lease. Nothing in this paragraph shall constrain the Access Provider's ability to terminate any head lease, or give notice to the Lessor that any head lease will not commence, or give notice to the Lessor that any further term of a head lease will not commence.

## **11. POWER**

(a) Unless otherwise agreed, and to the extent permitted by the relevant authority, the Access Seeker must make its own arrangements for electric power (**Power**) at its own cost, including, but not limited to, its own Power main, Power feed, Power meter or meters and associated Power infrastructure (**Power Supply**).



(b) In the event that the relevant authority under paragraph (a) is not prepared to provide the Access Seeker with a separate Power feed in respect of the Facility, the Access Provider will, where practicable, permit the Access Seeker to share the Power Supply in return for a reasonable increase in the Charges payable, calculated reasonably by the Access Provider at the time that the request to share the Power Supply is made, by reference to the cost at which the Access Provider is supplied the Power. The Access Seeker will pay all costs, expenses and charges incurred by reason of establishing the Power Supply as a shared Power Supply.

## **12. PERMITS AND APPROVALS**

### **12.1 Access Seeker's responsibility**

If it is necessary to obtain permits, approvals or licences required from any governmental, regulatory or public authority, agency or body (**Third Party Regulatory Approvals**) in relation to any Make Ready Work or the installation, repair, testing, operation, maintenance or removal of Equipment, the Access Seeker must use its reasonable endeavours to obtain the Third Party Regulatory Approvals, and will bear the cost of obtaining those Third Party Regulatory Approvals, unless the relevant law or government regulation requires that the Access Provider obtains it, in which case the Access Provider must use its reasonable endeavours to do so, but at the Access Seeker's expense.

### **12.2 Co-operation**

Each party will provide all co-operation that the other party reasonably requires to obtain any approvals under paragraph 12.1 and must do so in a timely fashion and in a manner consistent with its own operations. If any approvals cannot be obtained, the parties must not carry out the activity for which approval has been refused.

## **13. PERFORMANCE OF MAKE READY WORK**

(a) The Access Provider will:

- (i) take all reasonable steps to ensure that all Make Ready Work is carried out so far as practicable, within the construction timetable and cost estimates forming part of the Field Study; and
- (ii) notify the Access Seeker of any delays which it anticipates as soon as practicable after becoming aware that such delays may occur.

(b) If, after the commencement of Make Ready Work, the Access Provider determines that the actual cost of carrying out the Make Ready Work is likely to exceed, by more than 15%, the Make Ready Work costs specified in the response to the Service Request:

- (i) the Access Provider may immediately suspend all Make Ready Work and advise the Access Seeker accordingly;
- (ii) as soon as practicable, the Access Provider must provide a "**Work Variation Report**" to the Access Seeker setting out the nature and extent of additional Make Ready Work, revised Make Ready Work costs and any revised Advised Delivery Date; and
- (iii) upon receipt of a Work Variation Report, the Access Seeker must either request the Access Provider to carry out the Make Ready Work at the revised Make Ready Work

costs (and/or by the revised Advised Delivery Date) or inform the Access Provider that it does not wish to proceed with the Make Ready Work. In regard to the latter, the Access Seeker must pay Make Ready Work costs to the extent then incurred by the Access Provider.

(c) The Access Provider will not incur any penalty or liability to the Access Seeker by reason of any suspension of Make Ready Work pursuant to this paragraph and the Advised Delivery Date will, to the extent required, be adjusted to take into account the additions to, or variations in, Make Ready Work.

(d) The parties agree that in addition to the Make Ready Work costs specified in the response to the Service Request, the Access Seeker will bear any additional Make Ready Work costs which do not exceed 15% of the estimated Make Ready Work costs.

#### **14. DELIVERY OF ACCESS**

(a) Prior to the delivery of access to the Facility, the Access Provider must perform all Make Ready Work which it has agreed to perform, and perform that work as soon as reasonably practicable.

(b) After it completes the Make Ready Work, the Access Provider must notify the Access Seeker of the Advised Delivery Date, which may be different to that specified in the response to the Service Request.

(c) The Access Provider is not obliged to deliver access on the Advised Delivery Date if Make Ready Work cannot be reasonably completed, due to unforeseen circumstances or circumstances beyond the Access Provider's control before that date, and notice has been given to the Access Seeker, in which case access will be delivered as soon as reasonably practicable after the Advised Delivery Date.

(d) The Access Provider may depart from the Field Study provided that the variation does not have a material impact on the Access Seeker's use of Equipment or cost. Where any such variations are likely to have a material impact on the Access Seeker's use of Equipment, the Access Provider must give prior notice to the Access Seeker in respect of such material impact.

(e) The Access Seeker must deliver to the Access Provider all plant and Equipment of the Access Seeker to be installed by the Access Provider in a timely manner which allows the Access Provider to comply with all timeframes in the Field Study.

(f) Subject to paragraph (g), the Access Seeker must install and test its Equipment in accordance with the work plan included in its SP-Access Application and within three (3) months of the completion of Make Ready Work. The Access Seeker will be responsible for the testing of its Equipment. The Access Provider, at the Access Seeker's cost, may provide any reasonable assistance required for such testing.

(g) The Access Seeker must contract with the Access Provider for the installation of equipment on any Facility which is a Tower on a time and materials basis.

#### **15. COMPLETION INSPECTION**

(a) Unless the parties otherwise agree, upon completion of installation work by the Access Seeker, there must be a joint on-site inspection between the Access Provider and Access

Seeker to ensure that Make Ready Work and installation work have been satisfactorily completed and to agree whether access and installed Equipment have been provided in accordance with the details of the approved SP-Access Application.

(b) The scope of the completion inspection is to be agreed by the parties.

(c) If the Make Ready Work and Equipment installation have not been satisfactorily completed, the parties must agree what remedial work is required and carry out that remedial work. Following completion of any remedial work, the parties must hold a further meeting to confirm the satisfactory completion of the Make Ready Work and Equipment installation. The remedial Make Ready Work (but not the Equipment installation) will only be performed by and/or at any cost to the Access Provider if such work is required because the Access Provider has not performed Make Ready Work specified in the Field Study.

## **16. MAINTENANCE, EQUIPMENT REPLACEMENT AND INTERFERENCE**

### **16.1 General principles**

(a) Each party is responsible for the maintenance and safe operation of its Equipment, provided that the Access Seeker must contract with the Access Provider for the Access Provider to perform all maintenance of any Equipment which is located on a Facility which is a Tower.

(b) The Access Provider is responsible for maintaining each Shared Facility in a safe and operable condition and must, within a reasonable time of a request by the Access Seeker that it do so, provide satisfactory evidence of certification of all reasonable or necessary maintenance and safety checks and inspections.

### **16.2 Facility and equipment protection**

Each party must take all reasonable and necessary steps to ensure that its Equipment does not:

(a) endanger the safety or health of the officers, employees, contractors or agents or customers of the other party; or

(b) damage, interfere with or cause any deterioration in the operation of the other party's Facility or Equipment.

### **16.3 Co-ordination of maintenance**

The parties recognise that maintenance of one party's Equipment in a Shared Facility may unavoidably require Outages to another party's Equipment. The parties intend that any maintenance work in such Shared Facility should be planned to cause minimum disruption to each party's services. To this end, the parties will comply with the procedures for coordinated scheduling of maintenance of their respective Equipment as set out in this paragraph.

### **16.4 Access windows**

The Access Provider will, following consultation with the Access Seeker, schedule Access Windows within which the parties will undertake their regularly scheduled work on the Equipment and, in the case of the Access Provider, the Shared Facility. Access Windows must be scheduled in accordance with the principle that they are to occur at a time when each party's Equipment is carrying the least traffic but also at a time when it is reasonably practical to perform

maintenance work and provide the required access. Any installation work required, or switch offs should be performed within the Access Windows. Unless otherwise agreed, the Access Seeker must negotiate any switch offs of any Equipment of a third party necessary as a result of the installation or maintenance of the Access Seeker's Equipment, with that third party.

### **16.5 Unscheduled maintenance**

The parties will comply with the procedures in paragraph 16.6(a) in respect of the performance of any unscheduled maintenance by a party outside an Access Window. As a general principle, if the parties agree that maintenance work can be reasonably delayed until the next Access Window, then it should be delayed.

### **16.6 Emergency procedures**

(a) For the purposes of the Access Provider undertaking Emergency Work in relation to a Shared Facility, if the Equipment of the Access Seeker has to be turned off or turned down or the Access Provider requires assistance in relation to the Access Seeker's Equipment, the Access Provider will notify the Access Seeker and the Access Seeker will dispatch personnel on an emergency basis to the Shared Facility in accordance with the same procedures and timeframes as the Access Seeker would respond to an emergency relating to its own Equipment at that Shared Facility.

(b) If the Access Provider becomes aware of a fault, defect or problem with the Access Seeker's Equipment or other facilities located in a Shared Facility which causes, or there is a reasonable risk that it might cause, damage to the Shared Facility or to either party's Equipment, the Access Provider:

(i) must notify the other party as soon as practicable; and

(ii) where there is an immediate risk of personal injury or significant property damage (including to the other party's or third party's Equipment), may take interim measures reasonably necessary in relation to the other party's Equipment to prevent such injury or damage, pending the attendance by the other party's personnel to perform the required corrective work.

## 16.7 Relocation

(a) Once the location of the Access Seeker's Equipment on a Shared Facility has been determined, and any part of it is installed, the Access Provider may only with the consent of the Access Seeker (such consent not to be unreasonably withheld), require that it be relocated elsewhere upon that Facility.

(b) The Access Seeker is not required to consent to the relocation of its Equipment unless:

(i) the Access Provider pays the reasonable cost of such relocation; and

(ii) the proposed new location of the Access Seeker's Equipment does not result in a material reduction of amenity (including technical, operational and maintenance capability) in the use of that Equipment.

## 16.8 Replacement of equipment

(a) On giving **ten (10) Working Days'** prior written notice to the Access Provider, the Access Seeker may replace Equipment currently located in a Shared Facility with similar or new design Equipment or other facilities if all of the conditions in paragraph 16.8 (b)(i) to (v) are satisfied, unless the parties have agreed otherwise in a SP-Access Application.

(b) The Access Provider agrees (such agreement not to be unreasonably withheld) that any replacement Equipment will not result in or cause:

(i) significant difficulties of a technical or engineering nature;

(ii) significant interference with the delivery of telecommunications services supplied by the parties or other Licensed Operators;

(iii) significant additional space requirements;

(iv) significant interference with any Equipment of the parties or third parties located at or in the Shared Facility such that the performance level of the Equipment or Facility falls below the Access Provider's standards in the case of the Access Provider's Equipment or below accepted industry standards in the case of all other Equipment; or

(v) a significant threat to the health or safety of persons who operate, or work on, or are near, the Shared Facility.

(c) The replacement work must take place within an Access Window or some other time agreed to by the parties and all third parties which share that Facility.

(d) The Access Seeker must contract with the Access Provider for the replacement of Equipment at any Facility which is a Tower.

## 16.9 Additional equipment

The Access Seeker may only install Additional Equipment in a Shared Facility by submitting and gaining approval of a SP-Access Application in accordance with this Service Description.

#### 16.10 Interference

(a) Neither party must do anything, or knowingly permit any third party to do anything, in a Shared Facility which causes interference which materially obstructs, interrupts or impedes the continuous use or operation of the Equipment of the parties installed in the Facility, or a third party's Equipment.

(b) In the event of one party advising the other of any interference allegedly caused by a breach by that party of paragraph (a), subject to paragraphs (d) and (e), that party must expeditiously remedy such a breach.

(c) In addition to the obligations under paragraph (b), if the advice of any interference is given within one week of:

(i) the other party installing new or additional Equipment; or

(ii) the other party commissioning new or additional Equipment, then that other party must remedy that breach as soon as possible and, in any event, within (24) twenty-four hours.

(d) If, within forty-eight (48) hours after receiving notification of the interference, a party is not able to reasonably demonstrate that the interference is not being caused by that party's use of the Shared Facility, the parties will appoint an independent expert (and, in the absence of such agreement, an expert appointed by the president of the Bahrain branch of the Institute of Electrical Engineers or if that is not possible, another independent engineering association in the Gulf region nominated by the Access Provider) to determine the cause of the interference and, if caused by either party, how the interference is to be eliminated. The independent expert must make that determination within seventy-two (72) hours of being appointed unless otherwise agreed. The parties agree to provide the independent expert with all information within their control and relevant to the interference.

(e) Subject to paragraph (g), if the determination of the independent expert is that the Access Seeker is causing the interference and that to eliminate such interference requires removing, relocating or modifying the Access Seeker's Equipment, the Access Seeker must do so within 48 hours of the independent expert notifying the parties of its determination and the Access Seeker must bear all costs of this work.

(f) Subject to paragraph (g), if the determination of the independent expert is that the Access Provider's Equipment is causing the interference, the Access Provider will use all reasonable endeavours to eliminate such interference and where the Access Provider is unable to eliminate such interference, the Access Provider may require the Access Seeker to remove, relocate or modify the Access Seeker's Equipment and the Access Provider will bear all reasonable costs of the Access Seeker in complying with any such requirement.

(g) The Access Provider will, at the expense of the Access Seeker, accept a surrender or a variation of the Facility Lease or Facility Sub-Lease if such surrender or variation is reasonably required as a result of the determination of the independent expert and the Access Provider will pay the Access Seeker a pro rata refund to cover unused amounts paid in advance to the Access Provider less any amount in respect of any loss suffered by the Access Provider from such

surrender or variation of the Facility Lease or Facility Sub-Lease. In this paragraph, “loss” means:

(i) the costs which have been reasonably incurred by the Access Provider which will not be otherwise reimbursed following the surrender or a variation of the Facility Lease or Facility Sub-Lease; and

(ii) the costs of capital relating to the holding of Equipment or space on the Facility until use, disposal or reuse, and any costs reasonably incurred in arranging for such use, disposal or reuse.

The parties agree that any charges imposed by the Access Provider under this paragraph represent a genuine pre-estimate of the loss the Access Provider will suffer and are not a penalty.

### **16.11 Third party equipment**

(a) Subject to paragraph (b), the Access Provider may agree to a third party installing Equipment in a Shared Facility, provided that the third party’s Equipment does not interfere in a material way with any of the Access Seeker’s Equipment. The Access Provider must otherwise consult with the Access Seeker.

(b) The Access Provider may without notice to the Access Provider agree to any governmental, regulatory or public authority, agency or body installing any equipment of any kind in a Shared Facility for the provision of emergency services, national defence or any other public service and the Access Provider shall not in any way be liable to the Access Seeker for any interference which such equipment may cause to the Access Seeker’s Equipment and the Access Seeker must do all things necessary to ensure that the Access Seeker’s Equipment do not in any way interfere with such equipment.

(c) The Access Seeker will not be responsible for the costs of installing third party Equipment, or installation and maintenance of the third party Equipment.

(d) The Access Provider will use all reasonable endeavours to make it a condition of giving permission to a third party to install its Equipment in the Shared Facility, that the third party agrees to comply with terms consistent with paragraph 16.10 in relation to the third party’s use of the Shared Facility and further to include suitable indemnities by the third party against damage to persons or property affording protection for liability or loss to all persons who share the Facility. The Access Provider will notify the Access Seeker if unable to obtain the third party’s agreement to such terms.

(e) If the Equipment of a third party needs to be moved, powered down or turned off in order for the Access Seeker to install or maintain its Equipment, the Access Seeker will be responsible for liaising with that third party and the Access Provider will provide the Access Seeker with the details of the third party. The Access Seeker must reimburse or pay all costs paid or payable by the Access Provider in relation to the movement, power down or turn off of the third party’s Equipment in these circumstances.

## **17. INSURANCE**

(a) The Access Provider may in writing require the Access Seeker to maintain higher insurance coverage than that required under Clause 16.15 of the Supply Terms where the Access Provider

reasonably believes that such higher insurance coverage is necessary given the level and nature of the Access Seeker's access to the Access Provider's Facilities. Where the Access Provider requires the Access Seeker to maintain higher insurance coverage under this paragraph, the Access Seeker must comply with any such requirements within thirty (30) Working Days of being so notified by the Access Provider.

(b) On request by the Access Provider, the Access Seeker must immediately produce evidence that it has complied and is continuing to comply with its obligations under paragraph 18(a).

## **18. SUSPENSION AND TERMINATION**

### **18.1 Suspension**

The parties agree that the rights of suspension and termination under Clauses 12 and 13 (respectively) of the Supply Terms in respect of a Service under this Service Description shall apply.

### **18.2 Completion of suspension**

The Access Provider must provide the Access Seeker with access to the relevant Facility as soon as practicable after there no longer exists a reason for suspension and must do so at a reasonable cost to the Access Seeker.

## **19. TERMINATION BY THE ACCESS PROVIDER**

(a) If the Access Provider:

(i) intends to decommission the Facility and terminate the provision of access to that Facility; and

(ii) the Access Seeker wishes to continue to use the Facility, then the Access Provider must:

A. release the Access Seeker from the Facility Sub-Lease and upon vacation of the Facility by the Access Provider, any obligations under this Service Description in respect of that Facility;

B. where there is more than one Access Seeker sharing the Facility, permit the Access Seeker that was the first Licensed Operator to share the Facility (and if shared initially by more than one Access Seeker, by agreement between the Access Seekers) to take an assignment of or novate the Facility Lease from the Access Provider;

C. indemnify the Access Seeker against any claims by the Lessor or any other person in respect of the Access Provider's use of the Facility; and

D. make reasonable endeavours to incorporate this paragraph 19 into any negotiations with the Lessor regarding the execution or the renegotiation of the Facility Lease.

(b) The Access Seeker, where it takes an assignment or novation of the Facility Lease, indemnifies the Access Provider against any claims, damages, expenses or liabilities in respect of the Facility arising after the date of the assignment or novation.

## **20. TERMINATION BY ACCESS SEEKER**



If the Access Seeker decides to cease using a Shared Facility and the Access Provider wishes to continue using the Facility, the Access Seeker indemnifies the Access Provider against any claims by the Lessor or any other person in respect of the Access Seeker's use of the Facility, or the termination of the Facility Lease or Facility Sub-Lease.

## **21. CONSEQUENCES OF EXPIRY OR TERMINATION**

(a) Where a Facility Lease or Facility Sub-Lease has expired or terminated early including as a result of termination of the SP-Access Service, the Access Seeker must:

- (i) immediately remove the Access Seeker's Equipment from the relevant Facility, except where the Facility is a Tower in which case the Access Seeker must contract with the Access Provider to remove the Access Seeker's Equipment;
- (ii) reinstate the Facility to the same standard, style and condition as existed prior to the installation of the Access Seeker's Equipment; and
- (iii) do such other acts, matters and things as the parties may agree, and the Access Provider must allow the Access Seeker to enter onto the land on which the Facility is located in order to do so.

(b) If the Access Seeker fails to comply with paragraph 21(a) within twenty (20) Working Days of such termination, the Access Provider may enter the Facility on reasonable notice for the purposes of carrying out any necessary disconnection works.

(c) All reasonable costs of the disconnection described in paragraph 21(b) must be paid by:

- (i) in the case of expiry of the relevant Facility Lease or Facility Sub-Lease, the Access Seeker;
- (ii) in the case of disconnection due to termination of the SP-Access Service, the party other than the party who terminates the SP-Access Service; and
- (iii) in the case of disconnection due to a Force Majeure Event under Clause 15 of the Supply Terms, the party affected by the Force Majeure Event.

## **22. LIABILITY AND INDEMNITY**

(a) This paragraph 22 applies in relation to access to Facilities under this Service Description and applies notwithstanding any inconsistency with Clause 16 of the Supply Terms.

(b) The Access Provider shall not be liable to the Access Seeker (whether in contract, in tort, under statute or in any other way and whether due to negligence, willful or deliberate breach or any other cause) under, or for matters arising in relation to, this Service Description, a Facility Lease or Facility Sub-Lease for or in respect of:

- (i) any consequential, special or indirect liability, loss, damage, cost, charge or expense;
- (ii) any act or omission or matter relating to any third party, other than a properly authorised contractor (Approved Contractor) of the Access Provider acting within the scope of its authority involved in the operation or maintenance of a Shared Facility; or

(iii) any delay in the initial provision or failure to provide access or for anything not under the direct control of the Access Provider.

(c) The Access Seeker shall indemnify the Access Provider against any claim or cause of action (whether in contract, in tort, under statute or in any other way and whether due to negligence, willful or deliberate breach or any other cause) of a third party against the Access Provider for or in respect of all direct, consequential, indirect or special liability, loss, damage, cost, charge or expense incurred or suffered as a result of or in relation to the Access Seeker's access to Facilities under this Service Description, a Facility Lease or Facility Sub-Lease.

(d) Subject to paragraphs (b) and (c), each party (**Indemnifying Party**) unconditionally and irrevocably indemnifies the other (**Innocent Party**) against all claims, actions, damages, losses, liabilities, costs, charges, expenses, outgoings or payment which the Innocent Party pays, suffers or incurs, or is liable for in connection with:

(i) any breach of this Service Description, a Facility Lease or a Facility Sub-Lease by the Indemnifying Party; or

(ii) damage to or loss of any Equipment, Facility or other property of the Innocent Party or a third party or injury to a person caused by an act or omission (negligent or otherwise) of the Indemnifying Party.

#### **EARLY TERMINATION BY THE ACCESS SEEKER**

a) Where the Minimum Service Period has not expired, the Access Seeker shall be entitled to terminate the SP Access Service on at least one (1) month's written notice to the Access Provider and shall be liable to pay liquidated damages as calculated by the following formula:

$$LD = MRC \times (N-M)$$

where:

LD = liquidated damages to be paid.

MRC = Monthly Recurring Charge for the SP Access Service.

M = number of months between the Actual RFS Date and the removal order date rounded-up to the next full month.

N = the number of months as per the applicable Minimum Service Period (i.e., twenty-four (24) or sixty (60) calendar months).

b) The Access Seeker shall not be liable to pay liquidated damages where the Access Seeker terminates the SP Access Service as a result of and/or arising out of a material breach of the Reference Offer by the Access Provider.

c) The Access Seeker expressly acknowledges that liquidated damages as calculated above form a reasonable pre-estimate of the loss which the Access Provider would suffer as a result of early termination by the Access Seeker. Such liquidated damages shall be the Access Provider's sole and exclusive damages or monetary remedy for such early termination.

- d) Following the expiry of any Minimum Service Period the SP Access Service shall be automatically renewed for successive Renewed Minimum Service Periods unless and until terminated by the Access Seeker. During the Renewed Minimum Service Period, the Access Seeker may terminate the SP Access Service subject to providing the Access Provider with a written termination notice of at least one (1) month prior to the expiry of the Renewed Minimum Service Period. In the event that the Renewed Minimum Service Period expires, and the Access Seeker does not provide any written termination notice as above, the SP Access Service shall renew for a further Minimum Service Period.
- e) The Access Provider may upon providing three (3) months' written notice to the Access Seeker and subject to the approval of the Regulator, vary the SP Access Service or withdraw the SP Access Service relating to the terms and Annexes in this Service Description, by issuing a revised Service Description.
- f) Unless the Access Provider and Access Seeker agree otherwise at the time, any withdrawal or variation of the SP Access Service, or any amendment to the Charges payable for the SP Access Service in accordance with this Service Description and Schedule 3 – (Pricing) of the Reference Offer, shall also apply to existing SP Access Services provided under the Supply Terms, which shall continue in force in accordance with its terms and conditions until renewed or terminated in accordance with this Service Description or the Supply Terms.