

MEASAT ACCESS REFERENCE DOCUMENT

This Access Reference Document (“MEASAT ARD”):

is made by

**MEASAT SATELLITE SYSTEMS SDN BHD (No. 247846-X)
(formerly known as Binariang Satellite System Sdn. Bhd.),
MEASAT Teleport and Broadcast Centre,
63000 Cyberjaya, Malaysia**

Takes effect from 1 October 2005

Revised on 30 April 2009 with revisions that takes effect from 30 April 2009

**In relation to these
Access Service (s)**

1. Network Co-Location Service.

**is
available
at**

www.measat.com or the address indicated above.

Chapter 1 – Background, Structure and Scope

1.1 Background

1.1.1 The Malaysian Communications and Multimedia Commission (“**Commission**”) has issued a Commission Determination on the Mandatory Standard on Access, Determination No 2 of 2005 which came into operation on 1 July 2005 and was subsequently amended by the Variation to Commission Determination of the Mandatory Standard on Access (Determination No.2 of 2005) Determination No. 2 of 2009 (both Determinations of which are collectively referred to as “**MSA Determination**”).

1.1.2 Pursuant to the Disclosure Obligations in Section 5.3 of the MSA Determination, MEASAT is required to:

- (a) prepare and maintain an Access Reference Document;
- (b) make the Access Reference Document available on request in paper form or on a publicly accessible website;
- (c) follow prescribed procedures after acceptance of the Access Reference Document; and
- (d) follow prescribed procedures for amendment of the Access Reference Document.

1.1.3 This Access Reference Document is prepared pursuant to the MSA Determination and is hereby referred to as the “**MEASAT ARD**”.

1.2 Structure of MEASAT ARD

1.2.1 The Main Text of the MEASAT ARD comprise of:-

- (i) Chapters (e.g. Chapter 1);
- (ii) Sections (e.g. Section 1.1 being the first section of Chapter 1); and
- (iii) Schedule to the Main Text (e.g. Schedule A of the Main Text).

1.3 Scope of MEASAT ARD

1.3.1 Access is subject to agreement

This MEASAT ARD sets out the general terms and conditions on which MEASAT as an Access Provider will provide Access Service(s) to an Access Seeker.

This MEASAT ARD is not an offer to enter into a legally binding agreement. It is merely a reference document that indicates the general terms and conditions on which MEASAT is prepared to provide Access Service(s) to the Access Seeker. If the Access Seeker wishes to obtain Access Service(s) from MEASAT, the Access Seeker and MEASAT must enter into an access agreement (“**Access Agreement**”).

1.3.2 Changes to MEASAT ARD

1.3.2.1 This MEASAT ARD may change from time to time, at MEASAT's sole discretion.

1.3.2.2 MEASAT shall, within ten (10) Business Days of making any amendment to its ARD, provide a copy of the amendments or an amended copy of the MEASAT ARD to the Access Seeker who is being provided with access to Access Service(s).

1.3.2.3 For purposes of clarification, the terms and conditions of this ARD are only applicable to the Access Service(s) specified in this ARD. If the Access Seeker requests for use of any network facilities and/or provision of network services outside of the scope of this ARD, the terms and conditions for the use or provision of such network facilities and/or network services shall remain outside the scope of this ARD.

1.3.3 Notice of Withdrawal, Replacement and Variation of MEASAT ARD

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

1.3.3.2 MEASAT shall comply with Sections 6.4.2 and 6.4.3 of the MSA Determination where it is given written notice pursuant to Section 1.3.3.1.

1.3.3.3 In addition to Section 1.3.3.2 above, MEASAT may give the Access Seekers to whom it is supplying Access Service(s) under this ARD a notice of a variation or replacement of this ARD to effect such variations that are necessary or appropriate in the event of:-

- (a) the occurrence of a Legislative Event that materially affects the rights or obligations of MEASAT under this ARD; or
- (b) the occurrence of a Regulatory Event that relates to MEASAT; or
- (c) a review by the Commission of the MSA Determination pursuant to Section 6.5 of the MSA Determination.

1.3.3.4 Notwithstanding Sections 1.3.3.1, 1.3.3.2 and 1.3.3.3 above, MEASAT may, subject to Section 1.3.2 above, replace or vary this ARD at any time.

1.3.4 Availability

The MEASAT ARD shall be made available to an Access Seeker:

- (a) on written request to the person specified in Chapter 6 of this MEASAT ARD; and
- (b) on a publicly accessible website at www.measat.com

Chapter 2 Interpretation

The following words have these meanings in this MEASAT ARD unless the contrary intention appears:-

"Act" means the *Communications and Multimedia Act 1998*.

"Access Agreement" means an agreement:-

- (a) entered into between MEASAT and the Access Seeker pursuant to this MEASAT ARD; or
- (b) which is commercially negotiated between MEASAT and the Access Seeker, whereby MEASAT provides the requested Access Service(s) to the Access Seeker in accordance with the terms therein contained and registered with the Commission in accordance with Section 150 of the Act.

"Access List" means the Commission Determination on Access List, Determination No.1 of 2005 which came into operation on 1 July 2005 and subsequently amended by the Variation to Commission Determination on Access List (Determination No.1 of 2005) Determination No.1 of 2009, which sets out a list of Access Service(s) determined by the Commission under section 146 of the Act.

"Access Procedures" means MEASAT's access procedures that are in force at the time of the Access Seeker request for the Access Service.

"Access Provider" means:-

- (a) a network facilities provider who owns, provides or operates network facilities listed in the Access List ; or
- (b) a network services provider who provides network services listed in the Access List;

who is a Licensee as defined in the Act.

For the purpose of clarification, in this MEASAT ARD the Access Provider is "MEASAT".

"Access Seeker" means a party who:-

- (a) is a network facilities provider, network services provider, applications service provider or content applications service provider and who is a Licensee as defined in the Act; and
- (b) submits to MEASAT an Access Request.

“Access Service(s)” means the use of network facilities and/or provision of network services as specified in this MEASAT ARD preface that are provided by MEASAT to the Access Seeker pursuant to an Access Request.

“ARD” or **“MEASAT ARD”** is used interchangeably, and means the MEASAT Access Reference Document herein.

"Bank Guarantee" means a guarantee executed in favor of MEASAT, on behalf of the Access Seeker, by a bank approved by MEASAT and in a format acceptable to MEASAT.

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

"Charges" means the sums payable by the Access Seeker to MEASAT for provision of Access Service(s).

"Commission" means the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998.

"Determination" means any lawful determination made by the Commission, pursuant to Chapter 2 of Part V of the Act.

"Direction" means any lawful direction made by the Commission pursuant to Chapter 1 of Part V of the Act.

"Facilities" means those facilities and/or other equipment belonging to the Access Seeker and located at the premises of MEASAT.

“Force Majeure” means an event or circumstance beyond the reasonable control of a Party which affects the Party’s ability to perform its obligations under the Access Agreement.

"Invoice" means the invoice for amounts due in respect of the supply of the Access Service(s) during the term provided under the Access Agreement.

"License" means an individual or class license granted by the Minister pursuant to the Act.

"Legislative Event" means:-

- (a) the enactment, amendment, replacement or repeal of the Act; or
- (b) the enactment, amendment, replacement or repeal of the rules promulgated pursuant to sections 104 and 105 of the Act in respect of mandatory standards; or

- (c) the registration, determination, promulgation, issue, amendment or replacement of any industry code with which MEASAT is required or obliged to comply; or
- (d) the making of a Determination, Direction or finding by the Commission, the Minister or a court of law that all or any part of this ARD contravenes any provision of any law, except to the extent that the making of such Determination, Direction or finding constitutes a Regulatory Event.

“MSA Determination” shall have the meaning assigned to it in Section 1.1.1 of Chapter 1.

"Minister" means the Minister responsible for administering the Act.

“Network Co-location Service” means an Access Service which comprises:

- (a) physical co-location;
- (b) virtual co-location; or
- (c) In-span Interconnection,

and which is necessary for the provision of an Access Service.

“Parties” or “Party” means MEASAT and/or the Access Seeker(s).

"Regulatory Event" means:

- (a) the declaration, modification, variation or revocation of the MSA Determination; or
- (b) the giving of a lawful Direction to MEASAT by the Commission relating to this ARD; or
- (c) the giving of a lawful Direction to MEASAT by the Minister relating to this ARD.

"Satellite" means the communication satellites owned and operated by MEASAT;

"Security Sum" means security in the form of a Bank Guarantee provided or to be provided by the Access Seeker to MEASAT for the supply of Access Service(s) which is more particularly described in Section 4.3.

"Standard Access Obligations" has the meaning prescribed in Section 149 of the Act.

“Successfully Operating Satellite” means when all the C-band and Ku-band transponders on the Satellite are Successfully Operating Transponders;

"Successfully Operating Transponder" means a transponder on the Satellite that meets or exceeds the performance parameters described in the technical memorandum applicable for that Satellite.

2.1 In this MEASAT ARD except where the contrary intention appears;

- (a) the singular includes the plural and vice versa; and
- (b) a document includes all amendments or supplements to that document, or replacements or novations of it; and
- (c) a reference to a statute, ordinance, regulation, code or other law and other Instruments under it, shall include any statute, ordinance, regulation, code and other law consolidating, amending, re-enacting or replacing of any of them from time to time relating thereto or in connection therewith; and
- (d) a reference to a person includes a firm, body corporate, unincorporated association or an authority; and
- (e) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; and
- (f) if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the next Business Day and any reference to acts that have to be done or to be done by or on or before a particular day or Business Day means by or on or before the close of business at 5.00pm on that particular day or Business Day; and
- (g) a reference to a related body corporate of the Access Seeker has the same meaning as in the Companies Act 1965; and
- (h) headings are included for convenience and do not affect the interpretation of this MEASAT ARD.

Chapter 3 Principles of Access and Interconnection

3.1 Services

- 3.1.1 This MEASAT ARD applies only to the Access Service(s) listed in the preface.
- 3.1.2 The service descriptions of the Access Service(s) are set out in Schedule A of the MEASAT ARD.
- 3.1.3 The charges and charging principles for the Access Service(s) will be set out in the Access Agreement.

3.2 Eligibility for Access to Access Service(s)

- 3.2.1 MEASAT may, at its discretion and in a manner consistent with the License(s) granted (and the license rights accorded therein) by the Minister to the Access Seeker, determine on a case by case basis whether to provide the Access Seeker with access to the Access Service(s) set out in this MEASAT ARD.

- 3.2.2 For the purposes of clarification, consistent with Government Policy and Determinations by the Commission (and its predecessor), an Access Seeker may only request for access to any or all of the network facilities or network services listed in the Access List which are set out in this MEASAT ARD where the Access Seeker has been granted (i) a network facilities provider License; and/or (ii) a network services provider License; and/or (iii) an applications services provider License; and/or (iv) a content applications service provider License, and such Licenses are not limited or restricted from those detailed in the Act, as amended in any way:
- (a) by reference to the type of network facilities, network services and/or applications services that can be provided; and
 - (b) by geographical limitations to only a specific area and/or areas in Malaysia to which the Access Seeker can provide such network facilities, network services and/or applications services.
- 3.2.3 An Access Seeker may not request for access to Access Service(s) where the requested Access Service(s) are to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.
- 3.2.4 Consistent with Government policy and Determinations by the Commission's (and its predecessor), where MEASAT provides the Access Seeker with access to the Access Service(s) pursuant to Section 3.2.1, the charges for the requested Access Service(s) shall be negotiated between the Parties.

3.3 Standard Access Obligations

- 3.3.1 MEASAT shall, subject to Section 3.2, if requested to do so by an Access Seeker, supply the Access Service(s) to the Access Seeker on reasonable terms and conditions.
- 3.3.2 Section 149 of the Act specifies the terms and conditions upon which MEASAT must comply with the Standard Access Obligations. Section 149(2) provides that the access provided by MEASAT shall be:
- (a) of at least the same or more favorable technical standard and quality as the technical standard and quality on MEASAT's network facilities or network services; and
 - (b) on an equitable and non-discriminatory basis.
- 3.3.3 Customer Principles
- 3.3.3.1 MEASAT shall observe and comply with the customer relationship principles set out in section 4.3 of the MSA Determination.

Chapter 4 Access Request Procedures

4.1 **Application for Access Services**

4.1.1 An Access Seeker may request MEASAT to supply Access Service(s) to it by serving an Access Request on MEASAT.

4.1.2 The purpose of such Access Request is to provide MEASAT with sufficient information to assess the Access Seeker's request for the supply of the Access Service(s).

4.1.3 The Access Request must:

- (a) contain the name and contact details of the Access Seeker;
- (b) specify the Access Service(s) in respect of which access is sought;
- (c) indicate whether the Access Seeker wishes to either accept the terms of this MEASAT ARD and its Standard Access Obligations or negotiate an Access Agreement on different terms and conditions from that in this MEASAT ARD and Standard Access Obligations;
- (d) specify the ready for service date(s) for the Access Service(s) that is being sought by the Access Seeker;
- (e) contain the names of personnel(s) whom the Access Seeker nominates to represent the Access Seeker in access negotiations with MEASAT and in respect of each of those personnel:
 - (i) his or her contact details; and
 - (ii) his or her job title;
- (f) state the identity of the negotiating team leader whom shall have the authority to make binding representations on behalf of the Access Seeker in relation to matters arising from the access negotiations (subject to final approval from the Access Seeker's Chief Executive Officer or Board of Directors, if required by the Access Seeker);
- (g) contain two (2) copies of a confidentiality agreement properly executed by the Access Seeker in the form prescribed by MEASAT and made available for download at www.measat.com.;
- (h) where applicable, specify forecasts of the capacity which the Access Seeker reasonably requires;
- (i) provide the relevant information relating to the Access Seeker's Network and the functionality of its services, to the extent that the Access Seeker is aware that such information may affect MEASAT' Network;
- (j) contain confirmation that the Access Seeker is not currently being supplied with the requested Access Service(s) or if so, the reasons for the additional request for the said Access Service(s);

- (k) specify the type of Licenses held by the Access Seeker and a copy of the License where a copy had not been previously provided;
- (l) contain Creditworthiness Information as set out in Section 4.2;
- (m) contain relevant technical information relating to the interface standards of the Access Seeker; and
- (n) contain Insurance Information as set out in Section 4.4.

4.2 Creditworthiness Information

4.2.1 The Creditworthiness Information that is required to accompany an Access Request includes:

- (a) a letter, signed by an executive director of the Access Seeker stating that the Access Seeker is not insolvent and is not under any external administration or under similar form of administration under any laws applicable to it in any jurisdiction; and
- (b) a copy of the Access Seeker's most recently audited balance sheet and audited profit and loss statement.

4.3 Security Sum

4.3.1 MEASAT shall ensure that the amount and type of security requirements imposed on the Access Seeker in MEASAT's security policy, commensurate with:

- (a) the estimate of the value of access to Access Service(s) to be provided to the Access Seeker by MEASAT over a ninety (90) day period ("Minimum Value");
- (b) the creditworthiness of the Access Seeker (including prior payment records of the Access Seeker); and
- (c) the security previously reasonably required by MEASAT (if any).

4.3.2 The Access Seeker must provide the Security Sum to MEASAT in the form of a Bank Guarantee or cash as shall be determine by MEASAT.

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

4.4 Insurance Information

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

- (a) Worker's Compensation and/or Social Security Insurance and/or Employer's liability Insurance and/or other insurance within statutory limits as required by the laws of Malaysia to provide for payment to its employees employed or in connection with the work covered by the Access Agreement that may be entered into and/or their dependants; and
- (b) Comprehensive General Liability Insurance or Public Liability Insurance of an amount which is not less than Ringgit Malaysia One Million (RM1,000,000) only for any one claim arising out of an accident or occurrence in connection with the Access Agreement that may be entered into resulting in bodily injury and/or personal injury including death and property damage which shall arise out of or in consequence of any acts of omissions of the Access Seeker. Such policy shall include contractual liability.

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

4.5 MEASAT's Reply to the Access Request

4.5.1 MEASAT shall within ten (10) Business Days of receipt of the Access Request, inform the Access Seeker in writing that it has received the Access Request and either:-

- (a) request for additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request. MEASAT shall comply with Section 5.4.16 of the MSA Determination when it requests for such additional information; or
- (b) indicate if it is willing to provide the Access Service(s) under Section 4.8 or if it is rejecting the Access Request in accordance with Section 4.7; or
- (c) if MEASAT is willing to provide the Access Service(s), MEASAT shall (together with its notice of acceptance) indicate the Security Sum and any non refundable processing fee payable by the Access Seeker prior to the execution of the Access Agreement.

4.5.2 If MEASAT requests for additional information under Section 4.5.1(a) and the Access Seeker provides the requested information to MEASAT's satisfaction, MEASAT shall, within ten (10) Business days of such response, provide the Access Seeker with a response under Section 4.5.1(b).

4.6 Rejection of an Access Request

4.6.1 Reasons for Refusal

MEASAT may refuse to accept an Access Request for supply of the Access Service(s) and accordingly may refuse to supply that Access Service(s) to the Access Seeker for any of the following reasons:

- (a) in MEASAT's reasonable opinion, the Access Request was not made in good faith;
- (b) in MEASAT's reasonable opinion, the Access Request does not contain the information reasonably required under this MEASAT ARD, provided that MEASAT has sought the information from the Access Seeker under Section 4.5.1(a) herein;
- (c) MEASAT does not currently supply or provide access to the requested network facilities or network services listed in the Access List to itself or to any third parties;
- (d) it is not technically feasible to provide the requested Access Service(s);
- (e) MEASAT has insufficient capacity to provide the requested Access Service(s);
- (f) there are reasonable grounds, in MEASAT's opinion, to believe that the Access Seeker would fail to make timely payment for the supply of the relevant Access Service(s); or
- (g) there are reasonable grounds, in MEASAT's opinion, to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Access Service(s).

4.6.2 Determination of technical infeasibility

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

4.6.3 Determination of capacity constraints

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

4.6.4 Assessment of the Access Seeker's ability to pay for the supply of Access Service(s)

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

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

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

4.6.5.2 In determining the creditworthiness of the Access Seeker, MEASAT may have regard to, but is not limited to the information referred to in Section 4.2.

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

4.7 Notification of Rejection to the Access Seeker

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

- (a) notify the Access Seeker in writing of MEASAT's rejection;
- (b) provide reasons for rejection under Section 4.6 to the Access Seeker;
- (c) provide the basis for MEASAT's rejection of the Access Request; and
- (d) indicate a date and time, not later seven (7) Business Days from the date of the notice of rejection, at which representatives of MEASAT will be available to meet with representatives of the Access Seeker to discuss the rejection of the Access Request.

4.7.2 If the Parties are unable to resolve their differences following the meeting held pursuant to Section 4.7.1(d), either Party may request resolution of the dispute in accordance with Dispute Resolution Procedures in Annexure A of the MSA Determination.

4.8 Acceptance of an Access Request

4.8.1 Where the Access Seeker has requested under Section 4.1.3 (c) **and** MEASAT agrees to provide the Access Service(s) to the Access Seeker in accordance with this MEASAT ARD, MEASAT shall within ten (10) Business Days of such response under Section 4.5.1(b), provide the Access Seeker with an Access Agreement (based on the Standard Access Obligations) that includes the Charges for execution by the Access Seeker.

4.8.2 With respect to Section 4.8.1, the Access Seeker shall, within ten (10) Business Days either, execute and return the Access Agreement to MEASAT or indicate in writing to MEASAT that it wishes to negotiate the Access Agreement on different terms and conditions.

4.9 Access Seeker elects to negotiate the Access Agreement

4.9.1 If the Access Seeker elects to negotiate the Access Agreement under Section 4.8.2, MEASAT must set a date and time not later than fifteen (15) Business Days from the date of the Access Seeker's response under Section 4.8.2 at

which MEASAT' representatives will be available for an initial meeting with the Access Seeker's representatives.

- 4.9.2 The Parties shall comply with the requirements in Sections 5.4.2, 5.4.3 and 5.4.15 of the MSA Determination in concluding an Access Agreement.
- 4.9.3 The Parties must use their best endeavors to conclude the Access Agreement within 120 days of the Access Seeker's Access Request. The negotiation procedures set out in Section 5.4.9 to 5.4.18 in the MSA Determination shall be used as reference. If negotiations are not completed within the 120 day period:
- (a) the Parties may jointly apply to the Commission for further time to negotiate - if the further time is not granted, the Parties are deemed to be in dispute and the Dispute Resolution Procedures in the MSA Determination will take effect; or
 - (b) either Party may initiate the Dispute Resolution Procedures in the MSA Determination.
- 4.9.4 MEASAT will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to accept the requested Access Service(s) until:
- (a) a Security Sum has been provided in accordance with Sections 4.3 and Section 4.5.1(c) ; and
 - (b) an Access Agreement has been executed between the Parties.

Chapter 5 Provision of Information

- 5.1 The obligations of each Party to provide information to the other Party are subject to the MSA Determination and the requirements of confidentiality in the confidentiality agreement signed by the Parties.

Chapter 6 Billing and Settlement

- 6.1 Where relevant, the billing and settlement obligations set out in Section 5.14 of the MSA Determination shall be applicable.
- 6.2 The Access Seeker shall pay to MEASAT the Charges for the relevant Access Service(s) supplied by MEAST to the Access Seeker as specified in the Access Agreement.
- 6.3 For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts to MEASAT as they become due and payable, nor does it constitute a waiver of MEASAT's right to suspend or terminate the Access Service(s) due to non-payment of any sums due or payable to MEASAT.

- 6.4 MEASAT shall be entitled to deduct or withhold such taxes, duties, levies or such other sums imposed by such governmental authorities from any sum due to the Access Seeker in the event that MEASAT is required by law to pay the same for and on behalf of the Access Seeker.
- 6.5 (a) In the event MEASAT suspends or terminate the Access Service to the Access Seeker, MEASAT shall have the right to use the Security Sum to set off any outstanding sum due and payable to MEASAT by the Access Seeker.
 (b) Subject to sub-Section (a) above, upon termination of the Access Agreement, the Security Deposit with MEASAT or parties thereof shall be returned and/r refunded to the Access Seeker.

Chapter 7. Notices

- 7.1 Any communications in respect of this MEASAT ARD should be made in writing to:

MEASAT SATELLITE SYSTEMS SDN BHD
 MEASAT Teleport and Broadcast Centre
 63000 Cyberjaya
 MALAYSIA

Attention: Senior Director, Sales and Marketing
 Telephone: (603) 8213 2188
 Facsimile: (603) 8213 2120

Chapter 8 Term of the Access Agreement

- 8.1 The Parties shall, unless otherwise required by the Access Seeker, enter into an Access Agreement for a term of no less than three (3) years from the execution date of the said Access Agreement.
- 8.2 Unless otherwise agreed and subject to MEASAT not being able to provide the Access Service(s) as a result of Force Majeure, MEASAT shall only require an Access Seeker to accept the Access Service(s) under an Access Agreement for a minimum period as follows:

ACCESS SERVICES	MINIMUM TERM
1. Network Co-Location Service	36 months

Chapter 9 Termination and Suspension Obligations

9.1 Termination circumstances

- 9.1.1 Subject to Section 8.4, MEASAT may terminate an Access Agreement or part thereof if any of the circumstances referred to in (a), (b) or (c) below apply and

MEASAT has notified the Access Seeker of its intention to terminate the Access Agreement:-

- (a) the Access Seeker has committed a material breach of the terms and conditions of the Access Agreement and MEASAT has notified the Access Seeker that it will terminate the said Agreement in no less than thirty (30) days if the Access Seeker fails to remedy its breach by the end of such period; or
- (b) the Access Seeker fails to make payment of the Charges within seven (7) days from the relevant due date of Invoice; or
- (c) the Access Seeker is subject to a winding up order; or
- (d) a Force Majeure event has continued for a period of more than 90 days.

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

9.1.2 MEASAT shall have the right, at its sole discretion and by giving written notice to the Access Seeker, to terminate this Agreement in the event:-

- (a) the Satellite is declared a constructive total loss or a total loss under its in-orbit insurance policy or such other insurance policy; or
- (b) the Satellite fails to operate as a Successfully Operating Satellite.

9.2 **Change in law**

Where the continued operation of the Access Agreement or access to any Access Service(s) provided by MEASAT is or will be unlawful (as a result of a Legislative Event or a Regulatory Event), the Access Seeker and MEASAT shall meet within five (5) Business Days of becoming aware of the relevant change in law to review whether the relevant Access Service(s) may be provided by MEASAT on different terms and conditions (which are acceptable to the Access Seeker). If the Parties cannot agree to the provision of access on different terms and conditions, MEASAT may terminate the provision of the relevant Access Service(s).

9.3 **Suspension circumstances**

Subject to Section 9.4, MEASAT may only suspend access to any Access Service(s) in the following circumstances:

- (a) the Access Seeker's Facilities materially and/or adversely affect the normal operation of MEASAT's network facilities and/or network services, or are a material threat to any person's safety;
- (b) the Access Seeker's Facilities or the provision of Access Service(s) pose an imminent threat to life or property of MEASAT, its employees and/or contractors;

- (c) the Access Seeker's Facilities cause or is ascertained to cause material physical or technical harm to any of the facilities of MEASAT or any other person;
- (d) where the Access Seeker has failed to pay Invoices in accordance with Section 5.14 of the MSA Determination;
- (e) where Force Majeure applies; or
- (f) the Access Seeker breaches any laws, regulations, rules or standards which has a material adverse effect on MEASAT or the provision by MEASAT of Access Service(s) under the Access Agreement.

For the purposes of this Section 9.3, MEASAT must provide the Access Seeker five (5) Business Days notice in writing, including written reasons, prior to suspending access to any Access Service(s).

9.4 Approval

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

9.5 Undertakings

If the Parties to an Access Agreement adopt the terms and conditions specified in an undertaking that has been registered with the Commission in accordance with the Act, the Parties must notify the Commission within five (5) Business Days of such adoption. In such circumstances, the terms and conditions of the Access Agreement will continue to be in force for the remainder of the term of that Access Agreement, even if the access undertaking is withdrawn or expires prior to the expiry of that term.

9.6 Post-termination fees

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

- (a) Charges invoiced in arrears and not yet paid; or
- (b) Charges arising during an applicable minimum contractual period as described in Section 8.2 above.

9.7 Upfront charges refund

On termination of an Access Agreement or access to any Access Service(s) provided under it, MEASAT shall refund to the Access Seeker all amounts paid in advance to the extent that the amount or part of the amount calculated on a pro-rata basis relate to the period after the date of effect of such termination. For the avoidance of doubt, the foregoing amounts refund is after deduction of any sums which MEASAT may recover under section 9.6 above.

9.8 Deposits and guarantees

Notwithstanding the obligation in Section 9.7 MEASAT shall:

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

**SCHEDULE A
ACCESS SERVICE DESCRIPTION
NETWORK CO-LOCATION SERVICE**

1. General

- 1.1 This Part sets out the terms and conditions which are applicable to Network Co-location Service.

2. General Terms And Conditions

- 2.1 MEASAT will provide agreed Network Co-location Service subject to the Access Seeker's compliance with MEASAT's standard site specification, technical standard specification, installation, maintenance and operation procedure.
- 2.2 Access Seeker shall comply with relevant Access Procedures in force and applicable to MEASAT's facility at the MEASAT Teleport and Broadcast Centre. Where relevant, the network facilities access and co-location procedures set out in Section 5.13 of the MSA Determination shall be applicable.
- 2.3 The minimum period in which the Access Seeker may request for Network Co-location Service is three (3) years.
- 2.4 Where there is a conflict of any provision contained in the MEASAT ARD and the Access Agreement executed by the Parties, the terms and conditions of the Access Agreement shall prevail.

3. Costs

- 3.1 The Access Seeker shall pay Charges to MEASAT for Network Co-Location Service provided by MEASAT, as agreed and set out in the Access Agreement.