
Schedule A : Forecast, Ordering and Provisioning

**Schedule A
Forecast, Ordering and Provisioning****1. Forecast Obligations****1.1 General Principal**

1.1.1 The Access Seeker shall provide Forecast on the services it seeks to access as part of its Access Request in relation to the following: -

- (a) Capacity requirement
- (b) Period of requirement
- (c) Network area or operational area

1.2 Confirmation of Forecast

1.2.1 In the event Access Provider incurs significant costs to ensure that access can be provided in accordance with the Forecast, then Access Provider shall have the right to request the Access Seeker to confirm the relevant Forecast. Upon confirmation, the forecast is deemed to be an Order and Clause 2, Ordering and Provisioning below shall apply.

1.3 Forecast Request

1.3.1 An Access Provider may request an Access Seeker to provide, with a sufficient level of detail to enable Access Provider to carry out Network planning, the following information (forecast information): -

- (a) The capacity of Facilities or Services which the Access Seeker seeks
- (b) The total period of time covered by each Forecast shall be 12 months
- (c) The intervals or units of time to be used in making the Forecast, which shall be no longer than (3) months unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services
- (d) The Network area or operational area of the Forecast in relation to Access Provider's Network topology
- (e) Such other information that Access Provider reasonably requires in order to provide access to Facilities or Services requested by the Access Seeker.

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1.4 Response to Forecast

1.4.1 Access Provider may acknowledge and notify the Access Seeker: -

- (a) Within five (5) Business Days of receiving the Forecast if Access Provider considers that the Forecast does not comply with a Forecast Request; specifying in that notice the additional information which the Access Seeker is to provide; and
- (b) Within fifteen (15) Business Days of receiving a Forecast which complies with the Forecast Request, that the Forecast is accepted.

1.5 Time of Rejection

1.5.1 Access Provider may notify the Access Seeker of any rejection within fifteen (15) Business Days of receipt of the relevant Forecast.

1.5.2 Such notice of rejection must specify the grounds of rejection and an offer to meet within five (5) business days of the notice of rejection to discuss the reasons for rejection and alternative methods of compliance.

1.6 Negotiating an Agreed Forecast

1.6.1 If a Forecast is rejected, Access Provider must:-

- (a) give reasons why it is unable to meet the Forecast;
- (b) indicate the level that Access Provider can meet, and
- (c) offer to meet with the Access Seeker within 5 Business Days of the rejection notice to discuss the reasons for the rejection and alternatives open to the Access Seeker.

1.6.2 The Access Seeker may reconsider its Forecasts following a rejection notice. Within 21 Business Days of receipt of the notice, the Access Seeker must either;

- (a) confirm its rejected Forecast and explain why the Forecast is reasonable; or
- (b) submit a new Forecast that meets Access Provider's concerns, failing which the Forecast are deemed to be rejected by Access Provider.

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1.6.3 If the Access Seeker confirms its Forecast within 21 Business Days, Access Provider will reconsider the Forecast and respond in the manner specified in sub clause 1.4 (“Response to Forecast”) and this sub clause 1.6

1.7 Grounds for Rejecting a Forecast

1.7.1 Access Provider may reject a Forecast if:-

(a) The Access Provider reasonably believes that the Forecast is inaccurate having regard to:-

- (i) the total current usage of the relevant Facilities or Services;
- (ii) the current growth rate of the Access Seeker’s usage of the Facilities or Services; and
- (iii) the current growth rate of the total usage of the relevant Facilities or Services; or

(b) the Forecast exceeds the level of demand that Access Provider can reasonably provide on its existing capacity levels, having regard to its own Forecasts and the Forecasts of other Operators.

1.8 Over Forecasting

1.8.1 If the level of Orders made by the Access Seeker are below the Agreed Forecast over the relevant Forecast period, Access Provider may require the Access Seeker to contribute to the costs and expenses incurred by Access Provider due to its acceptance of the Agreed Forecast.

1.8.2 An Access Provider may seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an Access Seeker if the Forecast is not met by the Access Seeker provided:-

- (a) such costs and expenses were reasonably and necessarily incurred by the Access Provider; and
- (b) the Access Provider has reasonably sought to mitigate its loss over a six month period;

1.8.3 The Access Provider shall be entitled to recover 75% of such costs or expenses which could not be mitigated under sub-clause 1.8.2 (b) above.

1.9 Meeting Agreed Forecast

The Access Provider must use reasonable efforts to meet Orders that are within the Agreed Forecast but it is not bound to do so.

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1.10 Use Forecast Information

- (a) Forecast information provided by the Access Seeker is Confidentiality Information belonging to the Access Seeker and may be used only:-
 - (i) by Access Provider's relevant departmental group for the purpose of provisioning an Order; and
 - (ii) for network planning or engineering purposes.
- (b) Forecasts information may be provided to other groups within Access Provider only if the information:-
 - (i) is aggregated with Access Provider's own Forecasts and those provided by other Operators; and
 - (ii) does not identify the Access Seeker in any manner.

2. Ordering and Provisioning Obligations

2.1 Ordering Contact and Information

2.1.1 The Access Seeker must submit all Orders to Access Provider at the following address:

Business Development Department,
Lot 100, Block K, Lorong Plaza Permai 2
Alamesra, Sulaman-Coastal Highway
88400 Kota Kinabalu
Sabah

2.1.2 The Order must be in the form specified by Access Provider and must contain the following information:-

- (a) Facilities or Services requested;
- (b) The location of the points of delivery of the Facilities or Service requested ("Delivery Points");
- (c) A requested time for fulfilment of the Order ("Requested Delivery Date");
- (d) Information on the Access Seeker's Equipment to be used in connection with the Order; and
- (e) Such other information that Access Provider reasonably requires to provision the Order.

2.1.3 Access Seeker may use the Service Order Form in the format shown in Annexure IV for the purposes of ordering Services

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2.2 Acknowledgement of Receipt

2.2.1 Within 2 Business Days of receipt of an Order, Access Provider must:-

- (a) if the Order is complete – confirm receipt of the Order by specifying the day and time the Order was received (“Order Date”); or
- (b) if the Order is incomplete – return the Order to the Access Seeker and specify the information reasonably required by Access Provider to clarify or complete the Order.

2.2.2 If the Access Seeker resubmits a completed Order within 14 Business Days of the Order having been returned by Access Provider, the Order Date is the day the Order is resubmitted by the Access Seeker.

2.2.3 If the Access Seeker resubmits a completed Order more than 14 Business Days of the Order having been returned by Access Provider, the Order is deemed to be a fresh Order.

2.3 Use of Ordering Information

2.3.1 Ordering Information provided by the Access Seeker is confidentiality information belonging to the Access Seeker and may be used only by those persons within Access Provider whose role is:

- (a) within Access Provider's group for the purpose of provisioning an Order; and
- (b) for network planning and engineering purposes.

2.4 Further Information

2.4.1 Access Provider may, at any time after the Order Date, request further information about the Order as is reasonably necessary to clarify an order. The Access Seeker will be given fourteen (14) business days or more to respond to Access Provider's request for further information and may, acting reasonably:

- (a) Treat the Order as suspended until the information requested is received; and
- (b) Remove the Order from Access Provider's queue and insert the Order at a later position in the queue when the information requested is received.

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2.5 Respond to an Order

2.5.1 Access Provider shall indicate whether it accepts or rejects an Order within:

- (a) fourteen (14) Business Days of the Order Date; or
- (b) if a Service Qualification as described in sub-clause 2.7 below is performed in respect of that Order - 14 Business Days of the Order Date plus the period for completing the Service Qualification.

2.5.2 Access Provider may reject an Order where:

- (a) it is not technically feasible to provide access to the Services requested by the Access Seeker;
- (b) Access Provider has insufficient capacity to provide the requested Services;
- (c) the Order is in excess of agreed Forecast levels;
- (d) the Order duplicated an Order awaiting fulfillment;
- (e) the Access Seeker has not obtained from Access Provider the necessary related agreements;
- (f) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions of this Access Agreement, including:
- (g) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Services, to protect:
 - (i) the integrity of a Network; or
 - (ii) the safety of the individuals working on, or using Facilities or Services supplied by means of a network or Equipment.

2.5.3 If the Order is accepted, Access Provider must specify:

- (a) an indicative date when the Services requested in the Order will be ready to be provided ("Indicative Fulfillment Date"), subject to the Order being confirmed by the Access Seeker and any Indicative Fulfillment Date as confirmed by the Access Seeker shall be the Agreed Ready For Service Date;
- (b) an estimate of the Charges for fulfilling the Order;
- (c) such information as is reasonably necessary for the Access Seeker to benefit from access to the Service; and
- (d) a validity period of 90 days after acceptance for the Access Seeker to confirm the Order.

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- 2.5.4 The Indicative Fulfillment Date must be:
- (a) the Requested Delivery Date; or
 - (b) if that date cannot be met, a date that is within:
 - (i) eight (8) months of the Order being confirmed – for Orders involving the provision of new facilities and infrastructure to fulfil the Order; or
 - (ii) sixty (60) days of the Order being confirmed – for Orders involving augmentation of capacity on existing facilities and infrastructure to fulfil the Order.

- 2.5.5 If the Order is rejected, Access Provider will notify the Access Seeker in writing:
- (a) specifying the grounds on which the Order is rejected at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection; and to make its own reassessment of the Order; and
 - (b) offer to meet the Access Seeker within five (5) Business Days of notice of the rejection to discuss the reasons for the rejection and alternatives available to the Access Seeker.

2.6 Accept and Fulfilling Orders

2.6.1 Access Provider will use reasonable efforts to accept and fulfill Orders from the Access Seeker for Services that comply with a Forecast accepted by Access Provider pursuant to sub-clause 1.4 (Response to Forecast).

2.6.2 Access Provider will use reasonable efforts to accept and fulfill Orders that are in excess of agreed Forecast levels where:

- (a) there is available capacity after meeting the Forecast requirements of other Operators or Access Provider's own Forecast requirements; or
- (b) Access Provider can readily increase or upgrade existing capacity.

2.6.3 If there is available capacity or capacity can be increased or upgraded readily, Access Provider will allocate that capacity on a non-discriminatory basis to meet:

- (a) its own requirements; and
- (b) Forecast requirements of Access Seeker including those of other Operators.

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2.6.4 Having regard to its obligations under Assessment of Access Request in Chapter 4 of CT Sabah's ARD, Access Provider is not required to fulfil Orders that are in excess of agreed Forecast Levels where this would materially degrade the quality of Services provided by Access Provider to other Operators and to itself.

2.7 Service Qualifications

2.7.1 Access Provider may conduct Service Qualifications if:

- (a) Access Provider reasonably require information from such Service Qualifications which is not readily available; and
- (b) Access Provider notifies the Access Seeker that such Service Qualifications are necessary within five (5) Business Days of receiving the Order Date, or, if further information has been requested under subsection 2.4 within five (5) Business Days of the expiry of the period for further information, together with the reasons for such Service Qualifications. For clarification, an Access Seeker may also seek the consent of Access Provider to perform a Service Qualification itself, and such consent shall not be unreasonably withheld.

2.7.2 Completion of Service Qualifications

Access Provider shall:

- (a) Complete any Service Qualification in respect of an Order within twenty-one (21) Business Days of the commencement of the Service Qualification;
- (b) Inform the Access Seeker of the result of any Service Qualification within two (2) Business Days of the completion of such Service Qualification.

2.7.3 Withdrawal of Order following Service Qualifications

Access Provider shall permit an Access Seeker to withdraw its Order without penalty within fourteen (14) days after receiving the result of a Service Qualification under subsection 2.7.2

2.8 Cancellation and Variation of Orders

2.8.1 If an Order is cancelled or varied by Access Seeker, Access Provider may ask the Access Seeker to pay any costs reasonably incurred by Access Provider in respect of the Order.

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2.9 Allocation of Constrained Capacity

2.9.1 Capacity on Access Provider's Network is constrained if the capacity that is immediately available to meet the relevant Service ("Available Capacity") is less than the total capacity required ("Required Capacity") to meet:

- (a) the Access Seeker's Agreed Forecast and those of other Operators;
- (b) Access Provider's own Forecast; and
- (c) any redundant capacity ("Redundant Capacity") that is reasonable for Access Provider to reserve in respect of the relevant Service.

2.9.2 The Access Provider must maintain a policy for allocating constrained capacity ("Capacity Allocation Policy"). This policy must:

- (a) be fair and reasonable;
- (b) be consistent with Access Provider's duty of non-discrimination;
- (c) treat the Access Seeker's requirements on an equivalent basis to that which Access Provider treats itself for the same Service; and
- (d) allocate the Available Capacity less the Redundant Capacity (if any) in proportion to each operator's Forecast (including Access Provider's own Forecast).

2.9.3 If Access Provider anticipates that it may not be able to meet the Access Seeker's Forecast (whether agreed or not) because of constrained capacity, Access Provider must:

- (a) notify the Access Seeker that capacity is constrained;
- (b) give the Access Seeker a copy of Access Provider's Capacity Allocation Policy in relation to the Service required by the Access Seeker; and;
- (c) allocate the Available Capacity between itself, the Access Seeker and other Operators in accordance with the Capacity Allocation Policy.

2.10 Delivery of Service

2.10.1 The Access Provider shall deliver the ordered Service to Access Seeker by the Agreed Ready For service Date (as provided under subsection 2.5.3).

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2.10.2 If the Access Provider, in the normal course of business, is able to offer a delivery date earlier than the delivery date that would otherwise apply, it shall advise the Access Seeker and, if requested by the Access Seeker, deliver access to the relevant Facilities or Services or both at the earlier delivery date. Rental charges shall commence on the earlier delivery date.

2.10.3 If Access Seeker defers an Agreed Ready For Service Date, Access Seeker shall be liable to any cost incurred by Access Provider in relation thereto.

2.10.4 If Access Seeker is not able to use the Facilities or Services on the Agreed Ready For Service Date not due to Access Provider's fault, the Facilities or Services are deemed provided and Access Seeker shall be subject to the rental charges commencing from the Agreed Ready For Service Date.

2.10.5 An Access Provider shall :

- (a) notify an Access Seeker of the delay to a delivery date and the revised delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;
- (b) permit the Access Seeker notified under sub-clause 2.10.3 (a) above to cancel the Order without penalty if the delay is longer than fourteen (14) days; and
- (c) provide the Access Seeker with a remedy in accordance with subsection 2.13.

2.11 Testing and Commissioning

An Access Provider shall:

- (a) co-operate with the Access Seeker in relation to the testing and provisioning of ordered Facilities or Services or both; and
- (b) treat an Access Seeker's testing and provisioning on an equivalent basis to that which the Access Provider treats itself.

2.12 Resource Charge

An Access Provider may charge the Access Seeker a one-off fee, to be determined by reference to the costs incurred by the Access Provider for allocation of manpower and other resources to enable the Access Seeker to test and provide new Facilities or Services for purpose of interconnection.

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2.13 Late Delivery

Subject to subsection 2.13.1 below, if an Access Provider fails to meet any timeframe in subsection 2.10.1 with respect to the delivery of access to Facilities or Services pursuant to an Order made in accordance with this Access Agreement Access Provider shall, without limitation to any other rights the Access Seeker may have in this Access Agreement or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring rental charges payable for the Facilities or Services prorated daily for the number of days delayed subject to a maximum sum of 1 month's rental.

2.13.1 Access Provider shall not be liable for failures or delays in meeting the Agreed Ready For Service Date or any timeframe of delivery for Services due to any of the following reasons:

- a. the Service being modified or altered in any way at Access Seeker's request;
- b. an act of God, an act of any government, an act of any third party which is beyond the Access Provider's control or any other circumstance commonly known as "force majeure";
- c. incomplete order information provided by the Access Seeker to Access Provider; or
- d. any act or omission of Access Seeker which causes or contributes to the delay or failure to meeting the delivery date.

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