

Draft For Consultation 7 Oct 2003

In exercise of the powers conferred by Section 26(1) of the Telecommunications Act (Chapter 323), the Info-communications Development Authority of Singapore hereby issues the following Code:

TELECOMMUNICATIONS ACT (CHAPTER 323)

CODE OF PRACTICE FOR COMPETITION IN THE PROVISION OF TELECOMMUNICATION SERVICES (2004)

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1. INTRODUCTION

1.1 Goals of this Code

This Code is intended to:

- (a) promote the efficiency and competitiveness of the information and communications industry in Singapore;
- (b) ensure that telecommunication services are reasonably accessible to all people in Singapore, and are supplied as efficiently and economically as practicable and at performance standards that reasonably meet the social, industrial and commercial needs of Singapore;
- (c) promote and maintain fair and efficient market conduct and effective competition between persons engaged in commercial activities connected with telecommunication technology in Singapore;
- (d) promote the effective participation of all sectors of the Singapore information and communications industry (in markets whether in Singapore or elsewhere);
- (e) encourage, facilitate and promote industry self-regulation in the information and communications industry in Singapore; and
- (f) encourage, facilitate and promote investment in and the establishment, development and expansion of the information and communications industry in Singapore.

1.2 Legal Authority to Promulgate this Code

IDA, in the exercise of its functions under Section 6 of the Info-communications Development Authority of Singapore Act (Chapter 137A) (“IDA Act”), issues this Code pursuant to its authority under Section 26 (1) of the Telecommunications Act (Chapter 323) (“Telecommunications Act”), and Section 7 (1) and Second Schedule of the IDA Act.

1.3 Legal Effect of this Code

- (a) Every entity to which IDA grants a licence under Section 5 of the Telecommunications Act (“Licensee”) is required, pursuant to Section 26 (4) of the Telecommunications Act, to comply with the applicable provisions contained in this Code. In addition, any non-

licensed entity that seeks to engage in a transaction that results in a Consolidation must comply with the applicable provisions in Section 10.

- (b) The obligations contained in this Code are in addition to those contained in the Telecommunications Act, other statutes, regulations, directions, licences or codes of practice. To the extent that any provision of this Code is inconsistent with the terms of the Telecommunications Act, other statutes, regulations, directions or the terms of any licence, the provisions of those statutes, regulations, directions or licences shall prevail. To the extent that this Code is inconsistent with the provision of any prior codes of practice issued by IDA or its predecessor, the Telecommunication Authority of Singapore, the terms of this Code will prevail. If any provision of this Code is held to be unlawful, all other provisions will remain in full force and effect.

1.4 Application of this Code to Specific Categories of Licensees

The following chart indicates the applicability of various provisions of this Code to different categories of Licensees:

CATEGORY OF LICENSEE	Dominant Licensees	Non-Dominant Facilities-based Licensees	Services-based Licensees that use Switching or Routing Equipment to Provide Telecommunication Services to the Public	Services-based Licensees that do not use Switching or Routing Equipment to Provide Telecommunication Services to the Public	Telecommunication Equipment Dealer Licensees
DOMINANT/ NON-DOMINANT CLASSIFICATION (SECTION 2)	All Provisions	All Provisions	All Provisions	Not Applicable	Not Applicable
CONSUMER PROTECTION RULES (SECTION 3)	All Provisions	All Provisions	All Provisions	All Provisions	Not Applicable
TARIFF REGIME (SECTION 4)	All Provisions	Not Applicable	Not Applicable	Not Applicable	Not Applicable
INTERCONNECTION AND SHARING (SECTIONS 5-7)	All Provisions	All Provisions (except Sub-sections 6.3 through 6.3.8)	Section 5 (except Sub-sections 5.4.2, 5.4.3, 5.7.5 and 5.7.6) and Section 6 (except Sub-sections 6.3 through 6.3.8) only	Not Applicable	Not Applicable
COMPETITION (SECTIONS 8-9)	All Provisions	Sub-sections 8.1.1, 8.1.2, 8.3 through 8.4.2.3, and Section 9 only	Sub-sections 8.1.1, 8.1.2, 8.3 through 8.4.2.3, and Section 9 only	Sub-sections 8.1.1, 8.1.2, 8.3 through 8.4.2.3, and Section 9 only	Sub-sections 8.1.1, 8.1.2, 8.3 through 8.4.2.3, and Section 9 only
CONSOLIDATION (SECTION 10)	[Intentionally Left Blank]	[Intentionally Left Blank]	[Intentionally Left Blank]	[Intentionally Left Blank]	[Intentionally Left Blank]
ADMINISTRATIVE PROCEDURES (SECTION 11)	All Provisions	All Provisions	All Provisions	All Provisions	All Provisions

1.5 Regulatory Principles

The following regulatory principles provide the foundation for this Code, and will guide IDA's implementation of its provisions:

1.5.1 Reliance on Market Forces

Market forces are generally far more effective than regulation in promoting consumer welfare. Competitive markets are most likely to provide consumers with a wide choice of services at just and reasonable prices. Therefore, to the extent that markets or market segments are competitive, IDA will place primary reliance on private negotiations and industry self-regulation, subject to minimum requirements designed to protect consumers and prevent anti-competitive conduct.

1.5.2 Promotion of Effective and Sustainable Competition

Recognising the effectiveness of market forces in promoting consumer welfare, IDA will take resolute measures to promote and maintain effective and sustainable competition. Such measures will include:

- (a) removing or minimising any artificial forms of impediments to market entry and exit;
- (b) curtailing any concentration of Significant Market Power that has the effect of unreasonably restricting competition;
- (c) eliminating anti-competitive behaviour by industry participants;
- (d) ensuring that industry participants and consumers have easy access to information on market conditions; and
- (e) ensuring that there is inter-operability and, where necessary, reasonable access to networks to prevent impediments to effective competition and market growth.

1.5.3 Promotion of Facilities-based Competition

IDA believes that effective and sustainable competition will be best achieved through facilities-based competition. However, where there are technological, market or other impediments that would hamper competing licensees' ability to build facilities, IDA will seek to strike a balance between providing the economic incentives to build facilities and permitting services-based competition to take place for the benefit of consumers.

1.5.4 Proportionate Regulation

To the extent that a given market is not yet competitive, significant *ex ante* regulatory intervention is likely to remain necessary. Where this is the case, IDA will seek to impose regulatory requirements that are carefully crafted to achieve clearly articulated results. Such requirements will be no broader than necessary to achieve IDA's stated goals.

1.5.5 Technological Neutrality

IDA's regulatory requirements will reflect the phenomenon of convergence, which is eroding historic differences among platforms such as wireline, cable, wireless and satellite. Regulatory requirements will be based on sound economic principles and, to the extent feasible, will be technology-neutral. As the phenomenon of convergence is in its early stages, with different platforms subject to differing degrees of competition, the objective application of these principles may result initially in the imposition of different regulatory obligations on providers that use different platforms.

1.5.6 Transparent and Reasoned Decision Making

IDA will apply the provisions of this Code in a transparent manner. IDA will provide an opportunity for public comment in connection with material issues. Except to the extent that information submitted to IDA is confidential, proprietary, commercially sensitive or raises law enforcement or national security concerns, comments will be made available to the public. In arriving at its decisions, IDA will give full consideration to the comments received. IDA will generally make available to the public its decisions adopted pursuant to this Code, and will clearly explain the basis for its actions. IDA will generally also make public any enforcement action taken pursuant to this Code. Where feasible and appropriate, IDA will make available its decisions on its website (www.ida.gov.sg).

1.5.7 Avoidance of Unnecessary Delay

Recognising the need for Licensees to respond rapidly to changing market forces, IDA will strive to make all decisions pursuant to this Code within the timeframes specified herein and, in any case, as quickly as reasonably possible.

1.5.8 Non-discrimination

IDA's decisions will be non-discriminatory. IDA will treat similarly situated Licensees on an equivalent basis. Where appropriate, IDA's

decisions will reflect relevant differences between Licensees or categories of Licensees.

1.5.9 Consultation With Other Regulatory Authorities

IDA, where feasible and appropriate, will consult with other regulatory authorities in Singapore in order to facilitate the development of a consistent regulatory policy that promotes fair and effective competition and serves the public interest.

1.6 Modification and Elimination of Provisions

IDA will modify and, where appropriate, eliminate the provisions of this Code to reflect changing market conditions. There are 3 ways in which the Code may be modified.

1.6.1 Regulatory Review

At least once every 3 years, IDA will review this Code. As part of the triennial review process, IDA will provide an opportunity for public comment. IDA will eliminate or modify provisions that it determines, based on experience and the growth and development of competition, are no longer necessary. IDA also will make any other changes necessary to achieve the goals of this Code.

1.6.2 Petitions for Elimination or Modification of Provisions of this Code

Licensees may petition IDA to eliminate or modify any provision of this Code. The Licensee must specify the provisions of this Code that it seeks to have eliminated or modified and must provide a clear statement of the reasons why the Licensee believes that such action is justified. The Licensee may propose alternative approaches that, if adopted, would achieve IDA's regulatory objectives in a less burdensome manner.

1.6.3 Right to Modify

IDA may modify this Code on its own initiative at any time.

1.7 Reservations of Authority

IDA reserves, without limitation, the following rights:

1.7.1 Right to Grant Exemptions

Where good cause is shown, IDA may grant exemptions from specific provisions of this Code. Such exemptions may be applied to individual

Licensees or to specified categories of Licensees. An exemption may be permanent, temporary (either for a fixed period or effective until the occurrence of a specific event) or on a one-time basis. Where appropriate, IDA may grant exemptions subject to compliance with specified conditions.

1.7.2 Right to Waive or Suspend Code Provisions Where Necessary in the Public Interest

IDA may waive or suspend any provision of this Code that imposes an obligation on IDA in any situation in which such action is necessary in the public interest.

1.8 Rule of Construction

This Code is written in “plain English”. IDA will interpret this Code in a manner that is consistent with the ordinary meaning of the terms used. In case of any ambiguity, IDA will interpret this Code in the manner most consistent with the regulatory principles specified in Sub-sections 1.5 through 1.5.9 of this Code.

1.9 Definitions

This Sub-section defines specialised terms that are used in more than one Section of this Code. Specialised terms that are used in only one Section of this Code are defined at the start of the relevant Section. As used in this Code:

- (a) An “Affiliate” of a Licensee or a party means an entity:
 - (i) that has an attributable interest in any Licensee or a party of 5 percent or more (parent);
 - (ii) in which a Licensee or a party has an attributable interest of 5 percent or more (subsidiary); or
 - (iii) in which any parent of the Licensee or a party has an attributable interest of 5 percent or more (sibling).

In determining a relevant party’s attributable interest, IDA will use the “sum-the-percentages” methodology. This methodology will be applied successively at each level of the “ownership chain”. For example, if the relevant party has legal or beneficial ownership of 100 percent of the voting shares of Entity A, and Entity A has legal or beneficial ownership of 50 percent of the voting shares of Entity B, and Entity B has legal or beneficial ownership of 50

percent of the voting shares of Entity C, then the relevant party will be deemed to have a 25 percent attributable interest in Entity C. In this case, Entity C will be deemed to be an “Affiliate” of the relevant party.

Correspondingly, where a party is said to be “affiliated” with another party, the first party is an “Affiliate” of the second party.

- (b) “Conciliation” means conciliation in accordance with the IDA conciliation procedures specified in Sub-section 11.2 of this Code;
- (c) “Customer” means either an End User or another Licensee that purchases a Licensee’s telecommunication service;
- (d) “Dispute Resolution Procedure” means the IDA dispute resolution procedures specified in Sub-section 11.3 of this Code;
- (e) “Dominant Licensee” means a Licensee that IDA has classified as dominant pursuant to Sub-section 2.2.1 of this Code;
- (f) “Effective Date” means the date this revised edition of the Code comes into effect;
- (g) “End User” means business or residential subscribers of any telecommunication service in Singapore;
- (h) “End User Service Agreement” means an agreement under which a Licensee provides telecommunication services to an End User;
- (i) “Facilities-based Licensee” means a Licensee to which IDA has granted a Licence to provide Facilities-based Operations under Section 5 of the Telecommunications Act;
- (j) “Interconnection Agreement” means a written agreement between Licensees governing interconnection and related arrangements;
- (k) “Interconnection Related Services” means those services specified in Sub-section 6.3.3(a) of this Code;
- (l) “Mandated Wholesale Services” means those services specified by IDA in Appendix 2 of this Code;
- (m) “Minimum Interconnection Duties” means the duties as specified in Sub-sections 5.4 through 5.4.8 of this Code;

- (n) “Reference Interconnection Offer” (“RIO”) means the offer the Dominant Licensee is required to make pursuant to Sub-section 6.2.1 of this Code;
- (o) “Services-based Licensee” means a Licensee to which IDA has granted a Licence to provide Services-based Operations under Section 5 of the Telecommunications Act; and
- (p) “Significant Market Power” means the ability to unilaterally restrict output, raise prices, reduce quality or otherwise act, to a significant extent, independently of competitive market forces.

1.10 Effective Date of this Code

This revised edition of the Code will come into effect 14 days after the date on which it is published in the *Government Gazette* (“Effective Date”).

1.11 Short Title

This Code may be referred to as the “Telecom Competition Code (2004)”.

2. CLASSIFICATION OF LICENSEES

2.1 Introduction

2.1.1 Application

This Section applies only to Facilities-based Licensees and Services-based Licensees that use switching or routing equipment to provide telecommunication services to the public. In this Section, the term “Licensee” refers to Facilities-based Licensees and Services-based Licensees that use switching or routing equipment to provide telecommunication services to the public.

2.1.2 Over-view

This Code distinguishes between Licensees that are subject to competitive market forces and Licensees whose conduct are not constrained adequately by competitive market forces. Most Licensees are subject to competitive market forces. Therefore, IDA will impose minimum regulatory “rules of the road”, coupled with the *ex post* enforcement of general prohibitions on anti-competitive conduct, on these Licensees. By contrast, where a Licensee’s conduct is not constrained by competitive market forces, IDA will require it to comply with more stringent regulatory requirements.

2.2 Initial Classification of Licensees

- (a) At the time when IDA grants a licence, IDA will classify a Licensee as either a:
 - (i) Non-dominant Licensee; or
 - (ii) Dominant Licensee.
- (b) The classification will be applied on a “licensed entity” basis. Thus, absent an exemption, a Licensee classified as dominant will be subject to Dominant Licensee obligations for all facilities that it operates, and for all services that it provides, pursuant to its licence.
- (c) In any case in which IDA classifies a Licensee as a Dominant Licensee, IDA will issue a notice in the *Government Gazette*.

2.2.1 Dominant Licensees

A Licensee will be classified as dominant if:

- (a) it is licensed to operate facilities used for the provision of telecommunication services in Singapore that are sufficiently costly or difficult to replicate that requiring new entrants to do so would create a significant barrier to rapid and successful entry into the telecommunication market in Singapore by an efficient competitor; or
- (b) it has the ability to exercise Significant Market Power in the provision of telecommunication services in Singapore.

2.2.2 Non-dominant Licensees

Non-dominant Licensees are subject to competitive market forces. In the absence of evidence to the contrary, IDA will presume that all Licensees are non-dominant.

2.3 Reclassification of Licensees

- (a) IDA will reclassify a Dominant Licensee as non-dominant if IDA concludes, based on relevant evidence, that the Licensee no longer satisfies the conditions for dominant classification specified in Sub-section 2.2.1(a) and 2.2.1(b) of this Code. IDA will reclassify a Non-dominant Licensee as dominant if IDA concludes, based on relevant evidence, that the Licensee satisfies the conditions for dominant classification specified in either Sub-section 2.2.1(a) or 2.2.1(b) of this Code.
- (b) Reclassification can occur in any of the following ways:
 - (i) At the time when IDA renews a Licensee's licence, IDA will make an assessment as to whether the Licensee should be reclassified.
 - (ii) Where appropriate, IDA may initiate a proceeding to reclassify a Licensee. In such cases, IDA will request the Licensee to provide information that will assist IDA in determining whether or not the Licensee meets the conditions specified in Sub-section 2.2.1(a) and/or 2.2.1(b) of this Code. IDA will seek public comments.
 - (iii) A Licensee or other interested party may petition IDA to have a Licensee reclassified. A party seeking to have a Licensee reclassified must provide information demonstrating whether or not the Licensee meets the conditions specified in Sub-section 2.2.1(a) and/or 2.2.1(b)

of this Code. Before acting on a petition for reclassification, IDA will seek public comments.

- (c) IDA will issue a notice in the *Government Gazette* in any case in which it reclassifies a Non-dominant Licensee as dominant or a Dominant Licensee as non-dominant.

2.4 Asset Transfers

A Dominant Licensee may not avoid the obligations specified in this Code by transferring ownership or operational control to another entity of facilities that IDA has licensed the Dominant Licensee to use to provide telecommunication services in Singapore.

2.5 Exemption from Application of Special Dominant Licensee Provisions

Dominant Licensees are subject to a number of special provisions. IDA recognises, however, that as competition develops, it may no longer be necessary to apply each of these provisions to every facility operated or service provided by the Dominant Licensee. IDA therefore will consider requests from Dominant Licensees to exempt them from specific provisions. Where IDA grants a Dominant Licensee an exemption, IDA will publish the exemption on its website.

2.5.1 Request for Exemption

A Dominant Licensee that seeks exemption from any special provisions applicable to such Dominant Licensees must submit an application to IDA that identifies the specific provisions (with Sub-section numbers) of this Code from which the Dominant Licensee seeks exemption. The Dominant Licensee must demonstrate that the continued application of the provision to a specific facility or service is not necessary to protect End Users or promote and preserve effective competition amongst Licensees. The Dominant Licensee must provide verifiable data to support its request.

2.5.2 IDA Review

IDA generally will provide an opportunity for public comment before granting any request for exemption from any special provision applicable to Dominant Licensees. IDA will seek to issue an order granting or denying such requests within 120 days of receiving the request. Where appropriate, IDA may extend the time by which IDA will issue its decision. Where IDA does so, it will provide written notice to the Dominant Licensee before the end of the 120-day period.

2.6 Evidence to be Considered

A party seeking to demonstrate that a Licensee should, or should not, be classified as a Dominant Licensee, and a Dominant Licensee seeking exemption from any special provision applicable to Dominant Licensees should submit the following evidence:

2.6.1 Ability of Competitors to Replicate Facilities

A party seeking to demonstrate whether or not a Licensee meets the conditions specified in Sub-section 2.2.1(a), and a Dominant Licensee seeking to be exempted from the application of any special provision applicable to Dominant Licensees in connection with a specific facility, should submit verifiable data regarding:

- (a) the facilities that the Licensee has deployed to provide telecommunication services in Singapore;
- (b) the cost to a new entrant to deploy facilities that perform a comparable function;
- (c) the extent to which such facilities are commercially available;
- (d) the extent to which there are technical, economic or regulatory obstacles to the competitive deployment of such facilities; and
- (e) the extent to which competitive deployment has occurred and is likely to occur within the foreseeable future.

2.6.2 Ability of Licensee to Exercise Significant Market Power

A party seeking to demonstrate whether or not a Licensee meets the conditions specified in Sub-section 2.2.1(b) of this Code, and a Dominant Licensee seeking an exemption from any special provision applicable to Dominant Licensees in connection with a specific service, should submit verifiable data regarding the Licensee's ability to exercise Significant Market Power. This should generally include:

- (a) the relevant market(s) for the telecommunication services that the Licensee provides;
- (b) the participants in the market;
- (c) the Licensee's market share;
- (d) the level of concentration in the market;

- (e) the barriers to entry into the market;
- (f) the likelihood of timely and sufficient increases in output (either through new entry or the provision of additional services by current market participants) in response to a significant and non-transitory price increase by the Licensee; and
- (g) the likelihood that End Users would respond to a significant and non-transitory price increase by switching to a competing service provider.

3. DUTY OF LICENSEES TO THEIR END USERS

3.1 Introduction

3.1.1 Application

- (a) All provisions in this Section apply to Facilities-based and Services-based Licensees. In this Section, the term:
 - (i) “Licensee” refers to Facilities-based and Services-based Licensees; and
 - (ii) “Dominant Licensee” refers to Licensees that IDA has classified as dominant.
- (b) This Section governs the relationship between Licensees and their End Users. This Section does not govern the relationship between a Licensee that purchases telecommunication services from another Licensee to provide telecommunication services to third parties. Nothing in this Section is intended to limit any right that an End User may have under any applicable legislation.

3.1.2 Over-view

The growth of competition provides End Users with increased choice amongst telecommunication service providers. To the extent that Licensees are subject to effective competition, market forces, augmented by the minimal requirements and prohibitions contained in this Section, will generally be sufficient to ensure that Licensees provide telecommunication services to End Users on just, reasonable and non-discriminatory terms.

3.2 General Duties of All Licensees

All Licensees must comply with the following consumer protection provisions:

3.2.1 Duty to Comply with IDA’s Quality of Service Standards

Licensees must comply with any applicable minimum quality of service standards issued by IDA. However, a Licensee and an End User may agree to a lower quality of service standard. In such cases, the Licensee must clearly inform the End User of the service level that it will provide and the fact that it does not comply with IDA’s minimum quality of service standards.

3.2.2 Duty to Disclose Prices, Terms and Conditions

Licensees must disclose, in advance, the prices, terms and conditions on which they provide telecommunication services to End Users. A Dominant Licensee must disclose this information by publishing, in a form available to the public, any tariff for End User telecommunication services approved by IDA. (The provisions governing the tariffing process are contained in Section 4 of this Code.) A Non-dominant Licensee must disclose this information by publishing, in a form available to the public, the prices, terms and conditions for its standard telecommunication services. The information must be published in a manner that is readily available, current and easy-to-understand.

3.2.3 Prohibition on Disproportionate Early Termination Charges

Licensees may enter into agreements under which they provide an End User with a discount or special considerations in return for the End User's agreement to commit to a minimum service period or a minimum revenue commitment. Such agreements may contain provisions providing for termination liability in the event that the End User ends the agreement prior to the agreed upon termination date. However, the amount of any early termination liability must be reasonably proportionate to the extent of the discount or special considerations that the Licensee has provided and the duration of the period during which the End User took service.

3.2.4 Restrictions on Service Suspension or Termination

No Licensee may suspend or terminate an End User Service Agreement except in the following specified circumstances:

3.2.4.1 Service Suspension or Termination On Notice

In any case in which an End User has breached any of the terms and conditions in the End User Service Agreement, the Licensee may suspend or terminate the End User Service Agreement if:

- (a) the Licensee has provided the End User with advance notice and a reasonable opportunity to remedy the breach; and
- (b) the End User has failed to do so.

3.2.4.2 Service Suspension or Termination With Immediate Effect

A Licensee may immediately suspend or terminate an End User Service Agreement in the following circumstances:

- (a) the End User is likely to create imminent physical harm (such as interruption, disruption or congestion) to the Licensee's network or defraud the Licensee;
- (b) in the opinion of any relevant regulatory authority or law enforcement body, it is not in the public interest to continue providing the service to the End User for any reason whatsoever;
- (c) where the End User is an individual, the End User dies; or
- (d) where the End User is a corporation, proceedings are taken for the winding up of the End User.

3.2.4.3 Service Suspension Without Immediate Termination

The Licensee may immediately suspend (but must not terminate) the End User Service Agreement and require the End User, within a reasonable period, to provide a reasonable security deposit or other adequate assurances that the End User will pay for the services provided, in the following circumstances:

- (a) where the End User is an individual, the End User is declared a bankrupt; or
- (b) where the End User is a corporation, the End User enters into any compromise or arrangement with its creditors or a receiver is validly appointed over the whole or part of the undertaking of the End User or the End User becomes insolvent or ceases to carry on any business.

If the End User fails to provide such reasonable security deposit or other adequate assurances within a reasonable period, the Licensee may terminate the End User Service Agreement.

3.2.4.4 Service Termination Due to a Licensee's Discontinuance of Operations or Specific Services

A Licensee that intends to discontinue operation, or discontinues a specific telecommunication service, must give reasonable advance notice to all affected End Users. In such cases, the Licensee must take all reasonable measures to avoid any service interruption to its End Users, including complying with any requirement specified by IDA. Where feasible, this may include giving End Users the option to transition service to another Licensee specified by the terminating Licensee or to another Licensee specified by the End Users. In any case in which an End User has made an advanced payment for services provided by a Licensee, and the

Licensee subsequently decides to discontinue operation, or discontinue a specific telecommunication service, the Licensee must allocate a proportionate share of the advanced payment for refund to the End User.

3.2.4.5 Service Suspension or Termination for Other Reasons

- (a) A Licensee that wants to suspend or terminate an End User Service Agreement for any other reason must comply with the following procedures:
 - (i) A Dominant Licensee must obtain IDA's written approval before adopting any provision (other than those specified in Sub-sections 3.2.4.1 through 3.2.4.4 of this Code) that would allow it to suspend or terminate an End User Service Agreement.
 - (ii) A Non-dominant Licensee must notify IDA, within 7 days, if it adopts any provisions (other than those specified in Sub-sections 3.2.4.1 through 3.2.4.4 of this Code) that would allow it to suspend or terminate an End User Service Agreement. IDA reserves the right to direct the Licensee to remove any unreasonable suspension or termination provision.
- (b) IDA will not permit any Licensee to suspend or terminate an End User Service Agreement on the ground that the End User is using the service to engage in illegal or improper activities. Instead, in such a situation, the Licensee should inform the relevant authority and act in conformity with that authority's directions or guidelines.

3.2.5 Prohibition on "Slamming"

No Licensee may switch an End User from one Licensee's telecommunication service to another Licensee's telecommunication service without the prior consent of the End User. No Licensee may collect or retain any payments from an End User for any telecommunication service that the End User did not request in advance. In such cases, the Licensee must also bear any cost necessary to switch the End User back to the End User's original telecommunication service provider.

3.2.6 Duty to Prevent Unauthorised Use of End User Service Information

Licensees must prevent the unauthorised use of End User Service Information ("EUSI").

3.2.6.1 Definition of EUSI

EUSI consists of all information that a Licensee obtains as a result of an End User's use of a telecommunication service provided by the Licensee. This includes, but is not limited to, information regarding:

- (a) the End User's usage patterns (including number of calls, times of calls, duration of calls and parties called);
- (b) the services used by the End User;
- (c) the End User's telephone number and network configuration;
- (d) the End User's location information; and
- (e) the End User's billing name, address and credit history.

3.2.6.2 Prohibition on Unauthorised Use

- (a) A Licensee must adopt appropriate procedures to ensure that, unless the End User has provided prior consent, the Licensee will not use EUSI for any purpose other than:
 - (i) planning, provisioning and billing for any telecommunication service provided by the Licensee;
 - (ii) managing bad debt and preventing fraud related to the provision of telecommunication services;
 - (iii) facilitating interconnection and inter-operability between Licensees for the provision of telecommunication services; and/or
 - (iv) providing assistance to law enforcement or other government agencies.
- (b) The Licensee must further ensure that, unless the End User has provided consent, the Licensee will not provide EUSI to any third party (including its Affiliates) for the purposes of developing and marketing any goods and services.

3.2.6.3 Joint Marketing

Nothing in this Code prohibits a Licensee from allowing other companies to include promotional or other material in any mass mailing that the Licensee makes to all or a selected portion of its End Users, provided that:

- (a) the Licensee does not disclose the EUSI of any End User that has not provided consent; and
- (b) a Dominant Licensee that allows any Affiliate to include promotional or other material in any mass mailing must make this opportunity available to competing Licensees on non-discriminatory prices, terms and conditions.

3.2.7 Service Quality Information Disclosure Requirements

- (a) Licensees must make publicly available, in a format that can be understood easily by End Users a report indicating the number and type of complaints that the Licensee has received from its End Users and a statement as to whether or not the Licensee has met all applicable IDA quality of service standards.
- (b) The Licensee must update this information at least once each year. The Licensee may satisfy the obligation to make this information publicly available by posting the information on its website.

3.3 Mandatory Contractual Provisions

Licensees must include the provisions specified in Sub-section 3.3.1 through 3.3.7 of this Code in their End User Service Agreements. An End User may bring a private legal action against a Licensee to enforce these contractual obligations pursuant to its End User Service Agreement with that Licensee. In addition, IDA will treat a Licensee's intentional, reckless, or repeated failure to fulfil these obligations as a contravention of this Code.

3.3.1 Billing Period

The End User Service Agreement must specify the billing period in which the Licensee will send out invoices. Where the End User Service Agreement does not specify a recurrent period, the End User Service Agreement will be construed to provide that the Licensee will send the invoices monthly. The End User Service Agreement also must commit the Licensee to provide clear and accurate invoices.

3.3.2 Prices, Terms and Conditions on Which Service Will be Provided

The End User Service Agreement must clearly and comprehensively specify the prices, terms and conditions on which the Licensee will provide its service. Where the Licensee is a Dominant Licensee, the End User Service Agreement may make reference to any applicable filed tariffs. The End User Service Agreement must further provide that the

End User will not be bound by any price, term and condition that varies from those specified in the End User Service Agreement, unless:

- (a) the End User provides prior written approval; or
- (b) the End User Service Agreement clearly states that the Licensee may revise the prices, terms and conditions by providing reasonable advance notice to the End User.

3.3.3 No Charges for Unsolicited Telecommunication Services

The End User Service Agreement must provide that the End User will not be required to pay for any telecommunication service that the End User has not ordered.

3.3.4 Procedures to Contest Charges

The End User Service Agreement must clearly indicate the procedures by which an End User can dispute any charge for telecommunication services that the End User reasonably believes to be incorrect. This includes situations in which the End User reasonably believes that the charge was improperly calculated as well as situations in which the End User reasonably believes that the Licensee has not provided the service that it has agreed to provide. These procedures must, at a minimum, include the following:

- (a) The Licensee may require that:
 - (i) in the event of a dispute, the End User must pay any undisputed charge specified on the invoice, but need not pay any reasonably disputed amounts pending the resolution of the dispute;
 - (ii) if the End User intends to withhold payment, the End User must inform the Licensee of any disputed charge prior to the date on which the payment becomes due; and
 - (iii) if the End User ultimately is found liable for the payment, the End User must pay the amount due, reasonable compensation for the Licensee's arbitration, litigation and collection expenses, plus interest. The rate of interest must be set at a commercially reasonable amount, which must be specified in the End User Service Agreement.

- (b) The Licensee must provide that:
 - (i) an End User that pays an invoice and subsequently chooses to contest the invoice will have 1 year (starting from the date on which the payment became due) to do so;
 - (ii) an End User that purchases a pre-paid service who chooses to contest any charge will have 1 year (starting from the date on which the charge was incurred) to do so; and
 - (iii) the Licensee will conduct a complete and objective review of the End User's complaint, and will provide a written response, within 30 days of receiving notification that the End User is contesting a charge.

3.3.5 Private Dispute Resolution

The End User Service Agreement must provide that, if the parties are unable to resolve any dispute, they may:

- (a) refer the matter to the Small Claims Tribunal, if the matter is within that body's jurisdiction;
- (b) jointly submit the dispute to arbitration; or
- (c) submit the dispute to any court of competent jurisdiction.

3.3.6 Suspension or Termination of Service by Licensee

The End User Service Agreement must specify prominently:

- (a) any basis (including those specified in Sub-sections 3.2.4.1 through 3.2.4.4 of this Code) on which the Licensee reserves the right to suspend or terminate the End User Service Agreement; and
- (b) the procedures by which the Licensee will provide the End User with advance notice of any proposed suspension or termination, the basis for the action and the means by which the End User can avoid such suspension or termination.

3.3.7 Use of End User Service Information

The End User Service Agreement must contain procedures regarding the Licensee's use of the End User's EUSI. In particular:

- (a) The End User Service Agreement must provide that, unless the End User has provided authorisation, the Licensee will use the EUSI only for the purposes specified in Sub-section 3.2.6.2 of this Code.
- (b) The End User Service Agreement must specify:
 - (i) the means by which an End User can grant the Licensee consent to use its EUSI for purposes other than those specified in Sub-section 3.2.6.2 of this Code;
 - (ii) the additional purposes for which, if granted consent, the Licensee may use the EUSI; and
 - (iii) the means by which an End User can subsequently withdraw consent to use its EUSI for purposes other than those specified in Sub-section 3.2.6.2 of this Code. Any such procedures must be clear and minimally burdensome. The Licensee must not impose any fee on an End User as a result of the End User's withdrawal of consent.

4. DUTY OF DOMINANT LICENSEES TO PROVIDE TELECOMMUNICATION SERVICES ON JUST, REASONABLE AND NON-DISCRIMINATORY TERMS

4.1 Introduction

4.1.1 Application

All provisions in this Section apply to Dominant Licensees.

4.1.2 Over-view

To the extent that Licensees are not subject to competitive market forces, regulatory intervention is necessary to ensure that such Licensees provide services, both to End Users and to other Licensees, on just, reasonable and non-discriminatory prices, terms and conditions. This Section sets out the requirements with which Dominant Licensees must comply. This Section also establishes a tariff filing, review and publication regime designed to ensure compliance.

4.2 Duties of Dominant Licensees

4.2.1 Duties Applicable to the Provision of All Telecommunication Services

The following duties are applicable to the provision of all telecommunication services by a Dominant Licensee:

4.2.1.1 Duty to Provide Service at Just and Reasonable Prices, Terms and Conditions

A Dominant Licensee must provide telecommunication services to Customers at prices, terms and conditions that are just and reasonable.

4.2.1.2 Duty to Provide Service on a Non-discriminatory Basis

- (a) A Dominant Licensee must provide telecommunication services required to be tariffed pursuant to Sub-section 4.4.1 of this Code ("Tariffed Telecommunication Services") to Customers at prices, terms and conditions that are not discriminatory. This requires that, except where otherwise permitted or required by IDA, differences in the prices, terms and conditions for comparable services provided to different Customers must be based on objective differences, such as but not limited to variations in the cost of the service provided, variations in the quantity or quality of service provided or variations in the duration of the service agreement period.

- (b) A Dominant Licensee must not discriminate in favour of itself, an Affiliate, or any other related entity in the provision of Tariffed Telecommunication Services. In particular, the Dominant Licensee must provide these services to such entities pursuant to the prices, terms and conditions contained in its tariffs.

4.2.1.3 Duty to Provide Unbundled Telecommunication Services

A Dominant Licensee must provide Tariffed Telecommunication Services on an unbundled basis. Specifically, the Dominant Licensee must not require a Customer that wants to purchase a specific Tariffed Telecommunication Service to also purchase any other telecommunication service or non-telecommunication service or equipment, as a condition for purchasing that telecommunication service. However, the Dominant Licensee may offer Customers the option of purchasing a package that contains multiple telecommunication and non-telecommunication services or equipment.

4.2.2 Specific Duties Applicable to the Provision of End User Telecommunication Services

The following duties are applicable to the provision of End User telecommunication services by a Dominant Licensee:

4.2.2.1 Duty to Provide Service on Reasonable Request

A Dominant Licensee must provide telecommunication service to any End User upon reasonable request.

4.2.2.2 Duty to Allow Resale of End User Telecommunication Services

- (a) A Dominant Licensee must allow any Licensee to purchase any Tariffed Telecommunication Service that the Dominant Licensee makes available to End Users pursuant to a tariff, on the same prices, terms and conditions that the Dominant Licensee makes such service available to End Users. The Dominant Licensee may not prevent the Licensee from reselling the service to other Licensees or End Users, and using the service as an input for its provision of telecommunication services to other Licensees or End Users. A Dominant Licensee may comply with this obligation by filing tariffs for End User telecommunication services that do not expressly restrict resale and use as an input (or eliminating any restrictions on resale and use as an input contained in its existing End User tariffs). Where an effective tariff for an End User telecommunication service restricts resale or use as an input, upon request by a Licensee, the Dominant Licensee must file a tariff that allows the Licensee to purchase the service on the same (or, at the

request of the Licensee seeking to acquire the service, on substantially equivalent) prices, terms and conditions as End Users for the purpose of resale or use as an input.

- (b) A Dominant Licensee must not require a Licensee that uses its Tariffed Telecommunication Services as an input into other services to disclose that it is using the Dominant Licensee's telecommunication services.

4.2.2.3 Duty to Allow Sales Agency

If a Dominant Licensee provides a commission or fee to any other Licensee (whether or not affiliated with the Dominant Licensee) that resells any of the Dominant Licensee's End User Tariffed Telecommunication Services, the Dominant Licensee must, upon request, provide the same opportunity to any other Licensee on the same prices, terms and conditions.

4.3 Voluntary Wholesale Services

Unless directed to do so by IDA, a Dominant Licensee is not required to offer any telecommunication service on a wholesale basis. If the Dominant Licensee chooses to do so, however, the Dominant Licensee:

- (a) must offer, unless otherwise approved by IDA, the wholesale telecommunication service at "retail-minus" prices;
- (b) must allow any Licensee to purchase the wholesale telecommunication service;
- (c) must not restrict the ability of another Licensee to use the wholesale telecommunication service as an input into another service; and
- (d) must not require the Licensee to disclose that it is using the Dominant Licensee's wholesale telecommunication service as an input.

4.4 Tariffing

4.4.1 Services for Which A Dominant Licensee Must File Tariffs

A Dominant Licensee must file a tariff with IDA and obtain IDA's written approval prior to offering (or modifying the terms on which it offers) any of the following telecommunication services:

- (a) End User telecommunication services, including standardised services designed for residential customers, standardised services designed for business customers, services designed for specific customers (“Customised Tariff”) and promotional services;
- (b) Resale telecommunication services offered pursuant to Sub-section 4.2.2.2 of this Code;
- (c) Wholesale telecommunication services that the Dominant Licensee offers on a voluntary basis pursuant to Sub-section 4.3 of this Code; and
- (d) Any other telecommunication service that IDA directs the Dominant Licensee to offer pursuant to tariff.

4.4.2 Tariff Filing and Review

IDA will use the following process to review a Dominant Licensee’s tariff filing:

4.4.2.1 Information to be Included

Any tariff filed by a Dominant Licensee must:

- (a) contain a clear statement of the prices, terms and conditions on which the Dominant Licensee offers to provide a telecommunication service;
- (b) list any discounts or special considerations that the Dominant Licensee will offer and the requirements that must be satisfied (such as minimum volume or term requirements) to obtain those discounts;
- (c) indicate the minimum period of time, if any, during which the Dominant Licensee will not increase the filed rates;
- (d) be self-contained and must include charges for any telecommunication service or equipment not generally subject to tariff regulation when offered as part of a package; and
- (e) be accompanied by a memorandum that describes the proposed offering or modification and provides sufficient information to demonstrate that the proposed offering or modification satisfies the relevant criteria specified in Sub-section 4.4.3.1 of this Code.

4.4.3 IDA Tariff Review Process

4.4.3.1 Review Criteria

In assessing whether a proposed tariff is just and reasonable, IDA will apply the following criteria:

- (a) In the case of a tariff for an End User telecommunication service, IDA will assess whether the proposed prices, terms and conditions are either excessive or inadequate. To assess whether the proposed prices are excessive, IDA will determine whether the prices are competitive with those in a “basket” of jurisdictions, including neighbouring countries, newly industrialised countries, and major financial markets. To determine whether the proposed prices are inadequate, IDA will assess whether the proposed prices are either above marginal cost, or not less than those offered by Licensees that provide a comparable service. IDA will also seek to determine whether the proposed prices, terms and conditions are not discriminatory by comparing the proposed prices, terms and conditions to those that the Dominant Licensee offers in other tariffs for comparable telecommunication services. In cases in which IDA determines that a telecommunication service has a widespread public impact, IDA may also consider other relevant factors.
- (b) In the case of a resale tariff for an End User telecommunication service, IDA will seek to determine whether the Dominant Licensee is offering the service on the same (or, where the tariff is filed to meet the request of a Licensee seeking to acquire the service, on substantially equivalent) terms as the Dominant Licensee’s corresponding tariff for that End User telecommunication service.
- (c) In the case of a tariff for a voluntary wholesale telecommunication service, IDA will seek to determine whether the proposed price is based on a “retail-minus” methodology. To do so, IDA will consider the price of the corresponding End User telecommunication service offered by the Dominant Licensee as well as any relevant evidence as to the costs that the Dominant Licensee has avoided (such as retail marketing and “customer care”) as a result of providing the service on a wholesale basis.

4.4.3.2 Review Procedures

In general, within 7 working days, IDA will either accept or reject the tariff. This period is shortened to 5 working days for joint promotional offerings or 3 working days for stand-alone promotions. A working day

means Monday through Friday, except public holidays. If IDA rejects the filing, it will provide a statement of the basis for its rejection. Where IDA determines that it would be appropriate, however, it may take any of the following actions:

- (a) extend the review period;
- (b) seek additional information from the Dominant Licensee (including inspecting the accounts and other documents of the Dominant Licensee);
- (c) conduct an audit on the Dominant Licensee;
- (d) seek public comments;
- (e) allow the tariff to go into effect on an interim basis, subject to retroactive adjustment if IDA concludes that any price, term or condition in the tariff contravenes this Code; and/or
- (f) allow the tariff to go into effect, subject to the Dominant Licensee's acceptance of specific conditions that IDA may impose.

4.5 Duty to Publish Effective Tariffs

The Dominant Licensee must disclose, by publishing in a form available to the public, any tariff for any telecommunication service approved by IDA. The information must at the minimum include prices (including any discount structures), service suspension and termination (including any early termination charges), and service availability and eligibility requirements.

4.6 Duty to Provide Service Consistent With Effective Tariffs

- (a) Dominant Licensees must provide telecommunication services on the prices, terms and conditions specified in the applicable effective tariffs.
- (b) In any case in which IDA allows a tariff to become effective, and a Dominant Licensee subsequently enters into an agreement on terms that differ from those in its effective tariff, IDA may:
 - (i) take enforcement action against the Dominant Licensee pursuant to Section 11 of this Code;
 - (ii) direct the Dominant Licensee to amend its agreement to comply with the prices, terms and conditions in its effective tariff; and/or

- (iii) direct the Dominant Licensee to file a new tariff embodying the terms of the agreement.
- (c) In any case in which a Dominant Licensee enters into an agreement based on the terms of an effective tariff, and IDA subsequently allows (or directs) the Dominant Licensee to modify the terms of the tariff, the Dominant Licensee must amend the agreement to be consistent with the modified tariff.

4.7 Review of Effective Tariffs

Once IDA allows a tariff to go into effect, IDA will presume that the prices, terms and conditions are just, reasonable and non-discriminatory. IDA may review the tariff periodically to determine whether the prices, terms and conditions remain just, reasonable and non-discriminatory, and may direct the Dominant Licensee to make appropriate modifications. In addition, any person that believes that the prices, terms and conditions on which a Dominant Licensee is providing Tariffed Telecommunication Services are unjust, unreasonable or discriminatory may petition IDA to review these provisions. The petitioner must provide the basis for its belief. IDA may also take enforcement action if it concludes that an effective tariff or the Dominant Licensee's implementation of the tariff contravenes any other provision of this Code.

5. REQUIRED COOPERATION AMONGST LICENSEES TO PROMOTE COMPETITION

5.1 Introduction

5.1.1 Application

- (a) All provisions in this Section apply to Facilities-based Licensees. All provisions in this Section except Sub-sections 5.4.2, 5.4.3, 5.7.5 and 5.7.6 apply to Services-based Licensees that use switching or routing equipment to provide telecommunication services to the public.
- (b) In this Section, the term:
 - (i) “Licensee” refers to Facilities-based Licensees and Services-based Licensees that use switching or routing equipment to provide telecommunication services to the public; and
 - (ii) “Dominant Licensee” refers to a Facilities-based Licensee that IDA has classified as dominant.

5.1.2 Over-view

In order to ensure the deployment of an integrated “network of networks” that provides seamless any-to-any communications throughout Singapore, Licensees are required to co-operate with each other in the manner specified in this Section.

5.2 Duty to Interconnect With Other Licensees

Licensees have a duty to interconnect with other Licensees. Interconnection may be either direct or indirect. IDA generally will not involve itself in interconnection negotiations between Non-dominant Licensees. Every Interconnection Agreement must be in writing.

5.3 Duty to Submit to IDA All Interconnection Agreements

- (a) Licensees must submit to IDA a copy of all Interconnection Agreements into which they enter.
 - (i) Where one of the parties is a Dominant Licensee, the Licensees must provide that their Interconnection Agreement will not be effective until approved by IDA.

- (ii) Where neither party is a Dominant Licensee, the Licensees may provide that their Interconnection Agreement will be effective upon submission to IDA. If the Licensees include such a provision, they must further provide that the Interconnection Agreement will remain effective unless IDA informs the Licensees in writing, within 21 days of the date of submission, that it rejects the Interconnection Agreement. If the Licensees do not want to include the above provisions, they must provide that their Interconnection Agreement will not be effective until approved by IDA.
- (b) IDA will not publicly disclose Interconnection Agreements between Non-dominant Licensees.

5.4 Minimum Interconnection Duties

- (a) Where neither party is a Dominant Licensee, IDA will not reject any Interconnection Agreement that fulfils the following Minimum Interconnection Duties (additional requirements applicable to Interconnection Agreements involving a Dominant Licensee are contained in Section 6 of this Code).
- (b) In any case in which IDA rejects an Interconnection Agreement, it will direct the Licensees to make the necessary changes. Where one of the Licensees is a Dominant Licensee, the Licensees must make the required changes, unless both Licensees agree to withdraw the Interconnection Agreement. Where neither of the Licensees is a Dominant Licensee, the Licensees must make the required changes, unless either Licensee determines that it wants to withdraw the Interconnection Agreement.

5.4.1 Duty to Establish Compensation Agreements for the Origination, Transit and Termination of Telecommunication Traffic

The Interconnection Agreement must establish compensation arrangements governing the origination, transit and/or termination of telecommunication traffic. The Licensees may enter into any mutually acceptable compensation arrangement.

5.4.2 Duty to Provide Non-discriminatory Interconnection Quality

Where the Interconnection Agreement obligates a Facilities-based Licensee to provide direct interconnection to another Licensee, unless the Licensees expressly agree otherwise, the Interconnection Agreement must provide that the Facilities-based Licensee will provide sufficient points of

interconnection and take other measures to ensure that, on a service-by-service basis, the services that the Facilities-based Licensee provides to other Licensees pursuant to any Interconnection Agreement are at least equivalent in quality to the quality that the Facilities-based Licensee provides to itself, its Affiliates or to any other Licensee.

5.4.3 Duty to Prevent Technical Harm to the Network

Where the Interconnection Agreement obligates a Facilities-based Licensee to directly interconnect with another Licensee, the Interconnection Agreement must provide that the interconnecting Licensee will take reasonable measures to ensure that the interconnection does not cause physical or technical harm to the other Licensee's network.

5.4.4 Duty to Provide Billing Information

The Interconnection Agreement must provide that the Licensees will provide each other with information within their possession that is necessary to allow them to provide accurate and timely billing to each other and to any other Licensee.

5.4.5 Duty to Preserve Confidential Information Provided by Other Licensees

The Interconnection Agreement must provide that each Licensee will:

- (a) protect from disclosure any confidential or proprietary information provided by the other Licensee in the course of negotiating or implementing an Interconnection Agreement;
- (b) use such information only for the provision of the specific Interconnection Related Services requested by the other Licensee; and
- (c) adopt appropriate procedures to ensure that the information is not used for the development or marketing of other telecommunication services or equipment by the Licensee, its Affiliates or third parties.

5.4.6 Duty to Obtain IDA Approval for Suspension or Termination

- (a) The Interconnection Agreement must include a statement of the bases, if any, for which unilateral suspension or termination will be permitted. This can include situations where:

- (i) one party has materially breached the agreement including, but not limited to, repeated failure to make required payments;
 - (ii) one party has become insolvent;
 - (iii) continued operation of the agreement would be unlawful;
or
 - (iv) continued operation of the agreement would pose an imminent threat to life or property.
- (b) The Interconnection Agreement also must provide that any unilateral suspension or termination, unless by operation of law, will only become effective when, and to the extent that, it is approved by IDA.

5.4.7 Duty to Amend

The Interconnection Agreement must provide that the Licensees will amend the Interconnection Agreement to incorporate any additional or modified Minimum Interconnection Duty that IDA adopts during the term of the Interconnection Agreement.

5.4.8 Duty to Comply with Singapore Law

The Interconnection Agreement must provide that it will be governed by the laws of the Republic of Singapore.

5.5 Enforcement of Interconnection Agreements

Once an Interconnection Agreement becomes effective, IDA generally will not involve itself in the day-to-day implementation of the Interconnection Agreement.

5.5.1 Duty to Co-operate

Licensees have a duty to co-operate, in good faith and in a commercially reasonable manner, in implementing the terms of their Interconnection Agreements, avoiding unnecessary disputes and resolving disputes promptly and fairly.

5.5.2 Private Enforcement

Interconnection Agreements are private contracts between the Licensees. IDA will not resolve disputes arising out of Interconnection Agreements

between Non-dominant Licensees. If the Non-dominant Licensees are unable to resolve any dispute regarding the implementation of their Interconnection Agreement, they may agree to binding arbitration or may seek relief from a court of competent jurisdiction. However, to the extent that the dispute turns on an interpretation of the Telecommunications Act, any subsidiary legislation made under it, any decision of IDA, or any provision of this Code, the Non-dominant Licensees may ask IDA to provide an interpretation.

5.6 Modification, Suspension or Termination of Interconnection Agreements

Whilst Interconnection Agreements will generally remain effective throughout their specified term, IDA recognises that there may be situations in which the parties will agree to modify, suspend or terminate such Interconnection Agreements.

5.6.1 Modification, Suspension or Termination by Mutual Agreement

The following provisions govern the modification, suspension or termination of Interconnection Agreements by mutual agreement:

5.6.1.1 Modification by Mutual Agreement

- (a) An Interconnection Agreement may be modified at any time by mutual agreement of the Licensees.
 - (i) Where one of the parties is a Dominant Licensee, the Licensees must provide that the modification will not be effective unless approved by IDA.
 - (ii) Where neither party is a Dominant Licensee, the Licensees may provide that the modification will be effective upon submission to IDA. If the Licensees include such a provision, they must further provide that the modification will remain effective unless IDA informs the Licensees within 21 days from the date of submission that the Interconnection Agreement, as modified, no longer complies with the Minimum Interconnection Duties specified in Sub-sections 5.4 through 5.4.8 of this Code. If the Licensees do not want to include the above provisions, they must provide that the modification will not be effective unless approved by IDA.
- (b) In any case in which IDA rejects a modification, it will direct the Licensees to make the necessary changes. Where one of the

Licensees is a Dominant Licensee, the Licensees must make the required changes, unless both Licensees agree to withdraw the modification. Where neither of the Licensees is a Dominant Licensee, the Licensees must make the required changes, unless either Licensee determines that it wants to withdraw the modification.

5.6.1.2 Suspension or Termination by Mutual Agreement

An Interconnection Agreement may be suspended or terminated any time by the mutual agreement of the Licensees. Upon any such suspension or termination, the Licensees must immediately notify IDA in writing and provide the reasons for the suspension or termination.

5.6.2 Unilateral Suspension or Termination of Interconnection Agreements

Except where imminent threats to life or property or compliance with other legal or regulatory obligations require immediate action, prior to unilaterally suspending or terminating an Interconnection Agreement, the Licensee that seeks to take such action must seek IDA's prior written approval of the action it proposes to take and the reason why it believes such action is appropriate. Upon reviewing such proposal, IDA will provide the other Licensee with an opportunity to submit its view regarding the proposed suspension or termination of the Interconnection Agreement. IDA will issue its decision, within 45 days of the initial notification, granting or denying, in whole or in part, the request. Any unilateral suspension or termination will only become effective when, and to the extent that, it is approved by IDA.

5.7 Other Duties

Even in the absence of an Interconnection Agreement, all Licensees have the following duties:

5.7.1 Duty to Disclose Interfaces

A Licensee must make publicly available, in a clear format and in sufficient detail, any physical and logical interfaces of its network necessary to allow the development and deployment of telecommunication services, value-added services and telecommunication equipment that can interconnect to, and interoperate with, that Licensee's network. A Licensee must also make publicly available, not less than 6 months prior to deployment, any changes in logical or physical interfaces that could materially affect existing interconnection arrangements. A Licensee must not disclose this information to any Affiliate, whether licensed or not,

prior to the time that the Licensee makes this information available to the public.

5.7.2 Duty to Comply With Mandatory Technical Standards

IDA recognises the potential benefits of adoption of technical standards. IDA will consult with the telecommunication industry to determine when such technical standards should be made mandatory. Licensees must comply, within a reasonable period, with any applicable mandatory technical standard adopted by IDA or, in the absence of such technical standards, with the technical standards adopted by the International Telecommunication Union (“ITU”). In the absence of an IDA or ITU technical standard, Licensees may provide any service or deploy any equipment that complies with a technical standard adopted by an official standards setting body, or that complies with an established industry specification or has been deployed by another Licensee without resulting in operational or other harm.

5.7.3 Duty to Facilitate Change of Service Providers

Licensees must take any reasonable action necessary to allow an End User that chooses to obtain service from a different Licensee to do so with minimum difficulty. This includes the duty, where technically feasible, to allow the End User to retain the same telephone number or network address and to continue to receive service using the same local loop.

5.7.4 Duty to Assist in the Provision of Integrated Printed Directories and Directory Enquiry Service

A Licensee that provides voice telephony service over a wireline network must exchange the name, address and telephone number of its End Users with other wireline Licensees for the purpose of providing an integrated printed directory and directory enquiry service. Licensees must update this information periodically. Licensees receiving this information may use it solely for the purpose of providing printed directory or directory enquiry services. In particular, Licensees receiving this information may not use this information for marketing or other competitive purposes.

5.7.5 Duty to Reject Discriminatory Preferences Regarding Support Facilities

A Facilities-based Licensee that is affiliated, directly or indirectly, with a non-licensed entity that controls towers, ducts, conduits or similar support facilities may not request or accept access to those facilities and any related services on prices, terms and conditions that are not available to all Facilities-based Licensees.

5.7.6 Duty to Reject Discriminatory Preferences Regarding Space and Support at End User Premises

A Facilities-based Licensee may not request or accept any special preference from a building owner or manager regarding the provision of space or support facilities for the Facilities-based Licensee's network equipment, where such preference would as a practical matter preclude additional Facilities-based Licensees from providing competing telecommunication services to the building occupants. In addition, a Facilities-based Licensee that places in the common space of a building, equipment used to provide telecommunication services must, upon request from another Facilities-based Licensee that wants to place its equipment in the same space, take reasonable measures to allow the Facilities-based Licensee to share the available space, when necessary to allow the competitive provision of telecommunication services. This may include reconfiguring its equipment in a manner that optimises the use of the common space.

6. INTERCONNECTION WITH DOMINANT LICENSEES

6.1 Introduction

6.1.1 Application

All provisions in this Section apply to Dominant Facilities-based Licensees. All provisions in this Section except Sub-sections 6.3 through 6.3.8 apply to Non-dominant Facilities-based Licensees and Services-based Licensees that use switching or routing equipment to provide telecommunication services to the public. In this Section, the term:

- (a) “Licensee” refers to Facilities-based and Services-based Licensees that use switching or routing equipment to provide telecommunication services to the public; and
- (b) “Dominant Licensee” refers to Facilities-based Licensees that IDA has classified as dominant.

6.1.2 Over-view

IDA strongly encourages Licensees to enter into Interconnection Agreements through commercial negotiations. IDA recognises, however, that it cannot rely solely on market forces to ensure that Dominant Licensees enter into Interconnection Agreements. IDA, therefore, will take a more active role in ensuring the adoption of just, reasonable and non-discriminating Interconnection Agreements involving a Dominant Licensee.

6.2 Options for Entering into an Interconnection Agreement

A Dominant Licensee must provide Interconnection Related Services and Mandated Wholesale Services to other Licensees. A Licensee (“Requesting Licensee”) that seeks to obtain these services from a Dominant Licensee may do so by using any of the following 3 options:

6.2.1 Option 1: Interconnection Pursuant to an Approved Reference Interconnection Offer

A Requesting Licensee may obtain Interconnection Related Services and Mandated Wholesale Services from a Dominant Licensee on the terms specified in a Reference Interconnection Offer (“RIO”) developed by the Dominant Licensee and approved by IDA. The Dominant Licensee must offer the RIO for a period of 3 years. By separate notice in the *Government Gazette*, IDA will specify the commencement date for the 3-year period. Thereafter, prior to the expiry of the 3-year period, IDA may

by notice in the *Government Gazette* specify any further 3-year period for which the Dominant Licensee must offer the RIO to Requesting Licensees. The general requirements of the RIO are specified in Sub-sections 6.3.1 through 6.3.7 of this Code.

6.2.2 Option 2: Interconnection Pursuant to an Existing Interconnection Agreement

A Licensee may obtain Interconnection Related Services and Mandated Wholesale Services from a Dominant Licensee on the same prices, terms and conditions that the Dominant Licensee has agreed to with another similarly situated Licensee in any Interconnection Agreement. For the purposes of this Section, a Services-based Licensee and a Facilities-based Licensee will not be deemed to be similarly situated. The Interconnection Agreement between the Requesting Licensee and the Dominant Licensee will terminate on the day the agreement that the Requesting Licensee “opted-into” terminates.

6.2.3 Option 3: Interconnection Pursuant to an Individualised Interconnection Agreement

A Licensee may obtain Interconnection Related Services and Mandated Wholesale Services from a Dominant Licensee pursuant to the prices, terms and conditions of an Individualised Interconnection Agreement between the 2 parties. Such agreements may be arrived at through voluntary negotiations or via the dispute resolution process specified in Sub-sections 6.4.3 through 6.4.3.3 of this Code.

6.3 The Reference Interconnection Offer

The following provisions govern a Dominant Licensee’s RIO:

6.3.1 Duty to Develop a Reference Interconnection Offer

Within 60 days of being directed to do so by IDA, Dominant Licensees must submit a proposed RIO to IDA for approval.

6.3.2 RIO Must be Clear, Complete and Modular

- (a) The RIO must:
 - (i) contain a comprehensive and complete written statement of the prices, terms and conditions on which the Dominant Licensee is prepared to provide Interconnection Related Services and Mandated Wholesale Services to any Requesting Licensee;

- (ii) be clearly written and must be organised in a logical and consistent manner;
 - (iii) include a complete technical description of the Interconnection Related Services and Mandated Wholesale Services offered, the prices, terms and conditions for such services, the procedures that will be used to order and provision such services, and the timeframes that will apply;
 - (iv) be modular, allowing a Requesting Licensee to purchase only those Interconnection Related Services and Mandated Wholesale Services that it wants to obtain;
 - (v) be sufficiently detailed to enable a Requesting Licensee that is willing to accept its prices, terms and conditions to obtain Interconnection Related Services and Mandated Wholesale Services without having to engage in negotiations with the Dominant Licensee; and
 - (vi) comply with the specific requirements contained in Appendices 1 and 2 of this Code.
- (b) If a Requesting Licensee accepts the RIO, further discussions will be limited to implementing the accepted prices, terms and conditions. Such discussions should last no more than 30 days.

6.3.3 Services That Must be Offered under RIO

The RIO must specify the prices, terms and conditions on which the Dominant Licensee will provide:

- (a) the following Interconnection Related Services:
 - (i) Physical Interconnection (“PI”);
 - (ii) Origination, Transit and Termination (“O/T/T”);
 - (iii) Essential Support Facilities (“ESF”);
 - (iv) Unbundled Network Elements (“UNE”);
 - (v) Unbundled Network Services (“UNS”); and
- (b) Mandated Wholesale Services.

6.3.3.1 Physical Interconnection

The RIO must specify the prices, terms and conditions on which the Dominant Licensee will physically and logically link its network with the Requesting Licensee's network. This must include:

- (a) a list and description of the physical locations at which a Requesting Licensee may interconnect and the means by which interconnection may be achieved; and
- (b) a description of the physical and logical interfaces to the Dominant Licensee's network that are necessary to allow physical interconnection and access to UNE, UNS and ESF and the procedures to be used if the Dominant Licensee chooses to alter those interfaces.

6.3.3.2 Origination, Transit and Termination

The RIO must specify the prices, terms and conditions on which the Dominant Licensee will provide any Requesting Licensee with O/T/T services. In particular, the RIO must contain:

- (a) a list and description of all the O/T/T services to be provided; and
- (b) the prices, terms and conditions on which the Dominant Licensee and the Requesting Licensee will be compensated for such services.

6.3.3.3 Essential Support Facilities

The RIO must specify the prices, terms and conditions on which the Dominant Licensee will provide Facilities-based Requesting Licensees with access to ESF. In particular, the RIO must contain:

- (a) the prices, terms and conditions on which a Facilities-based Requesting Licensee can physically co-locate equipment within the Dominant Licensee's network, including:
 - (i) the locations at which physical co-location is available;
 - (ii) any reasonable restrictions or procedures that the Dominant Licensee intends to impose due to space, safety or security concerns;
 - (iii) the situations in which virtual (distant) co-location will be required; and

- (iv) the prices that the Dominant Licensee will charge for co-location space.
- (b) the prices, terms and conditions on which the Dominant Licensee will provide Facilities-based Requesting Licensees with access to:
 - (i) lead-in ducts, lead-in manholes and cable chambers;
 - (ii) space within cable risers in commercial and residential buildings; and
 - (iii) masts, poles, radio towers and tower sites.

6.3.3.4 Unbundled Network Elements and Unbundled Network Services

The RIO must contain the prices, terms and conditions on which the Dominant Licensee will offer to provide Facilities-based Requesting Licensees UNE, and will offer to provide Facilities-based and Services-based Licensees UNS, including:

- (a) a list and description of the UNE and UNS to be provided;
- (b) any modifications that the Dominant Licensee is prepared to make;
- (c) the extent to which the Dominant Licensee is prepared to combine individual elements; and
- (d) the prices that the Dominant Licensee will charge for UNE and UNS.

6.3.3.5 Mandated Wholesale Services

The RIO must specify the prices, terms and conditions on which the Dominant Licensee will offer to provide Facilities-based Requesting Licensees any Mandated Wholesale Service.

6.3.4 Substantive Requirements of RIO

The RIO must comply with the following substantive requirements:

6.3.4.1 Absolute Prohibition on Discrimination

A Dominant Licensee must offer to provide all Interconnection Related Services and Mandated Wholesale Services to Requesting Licensees on prices, terms and conditions that are no less favourable than the prices,

terms and conditions on which it provides comparable services to itself, its Affiliates or other Customers.

6.3.4.2 Additional Required Terms

In addition to the terms specified in Sub-sections 6.3.2 through 6.3.3.5 of this Code, the RIO must contain the following:

- (a) a description of the quality of service that the Dominant Licensee will provide – including the means by which quality of service will be measured, any short-comings corrected, and the manner in which the Requesting Licensee will be compensated for any adverse impact resulting from the Dominant Licensee’s material failure to meet the quality of service standards;
- (b) a description of any operational and technical requirements that the Requesting Licensee must comply with to avoid harm to the Dominant Licensee’s network;
- (c) a description of the means by which the Dominant Licensee will provide information (including call type, duration, and points of origination and termination) necessary to allow the Requesting Licensee to bill for telecommunication services that it provides to its End Users;
- (d) a statement of the terms on which the Dominant Licensee will protect confidential information provided by the Requesting Licensee, and the terms on which the Dominant Licensee requires the Requesting Licensee to protect its confidential information, in connection with any Interconnection Agreement – including a description of the standards to be used to determine whether information is confidential;
- (e) a description of the means by which the Dominant Licensee will work with the Requesting Licensee to enable its End Users to keep their current telephone numbers or network address if they switch to the telecommunication services provided by the Requesting Licensee;
- (f) a description of the means by which a Requesting Licensee can order currently available Interconnection Related Services on an unbundled basis – including the contact person, the expected number of days from order to provisioning, the means by which provisioning will be monitored (including quality of service testing procedures), the procedures for reporting operational and technical problems, the procedures and timeframes for correcting any such

problems and the means by which the Dominant Licensee will compensate the Requesting Licensee for any material adverse impact resulting from unreasonable delays;

- (g) the means by which the Requesting Licensee can request additional Interconnection Related Services not currently specified in the RIO – including the timeframe, procedures, processes and standards that the Dominant Licensee will use to assess such requests;
- (h) a list and description of any reasonable restriction or condition that the Dominant Licensee intends to impose on the terms of the offer contained in the RIO – including any situations in which capacity, technical or operational constraints will limit the ability of the Dominant Licensee to meet requests for Interconnection Related Services and any situation in which a Dominant Licensee will not offer (or will limit or condition an offer) of interconnection to a Licensee or class of Licensees;
- (i) a provision stating that the Licensees will refer disputes regarding interconnection arising from the implementation of the Interconnection Agreement to IDA for resolution and to seek IDA’s written approval before unilaterally suspending or terminating the Interconnection Agreement;
- (j) statements that:
 - (i) if the RIO is accepted, the Interconnection Agreement will constitute the entire agreement between the Licensees;
 - (ii) if any provision of the Interconnection Agreement is held to be unlawful or is required to be amended, that all other provisions of the agreement will survive;
 - (iii) any disputes between the Licensees will be governed by the laws of Singapore, including this Code;
 - (iv) the Dominant Licensee will not unreasonably withhold consent from a Licensee seeking to assign its rights and obligations to another Licensee; and
- (k) any other provision required to be included in an Interconnection Agreement to satisfy the Minimum Interconnection Duties specified in Sub-sections 5.4 through 5.4.8.

6.3.5 Pricing of Interconnection Related Services and Mandated Wholesale Services

The relevant pricing methodologies are described in Appendix 1 of this Code. In particular:

- (a) The prices that a Dominant Licensee offers for all Interconnection Related Services must be cost-based. The Dominant Licensee must use the pricing methodology specified by IDA, pursuant to Appendix 1 of this Code.
- (b) Unless otherwise directed by IDA, a Dominant Licensee must provide Mandated Wholesale Services at “retail-minus” prices.

6.3.6 Modification and Duration of RIO Agreement

The Dominant Licensee must provide that:

- (a) unless IDA authorises the Dominant Licensee to withdraw its RIO and terminate any Interconnection Agreement adopted pursuant to its RIO, any Interconnection Agreement arrived at by accepting the RIO shall be effective for such period as the Dominant Licensee is required to offer the RIO to Requesting Licensees under Sub-section 6.2.1 of this Code; and
- (b) the prices, terms and conditions contained in any Interconnection Agreement arrived at by accepting the RIO will be effective for the duration of the Interconnection Agreement unless either:
 - (i) the Dominant and Requesting Licensees agree to modify their Interconnection Agreement pursuant to Sub-section 5.6.1.1 of this Code; or
 - (ii) IDA directs the Dominant Licensee to modify any provision of its RIO, in which case the Licensees must amend the Interconnection Agreement to conform to the modifications in the RIO.

6.3.7 IDA Review of the Proposed RIO

- (a) IDA will review the proposed RIO to determine whether it satisfies the requirements specified in Sub-sections 6.3.2 through 6.3.6 of this Code, and serves the public interest. IDA will promptly seek public comments regarding the proposed RIO, which must be filed within 30 days from the date on which IDA seeks comments. If IDA does not act within 60 days from the date on which it received

the proposed RIO, the proposed RIO will be deemed approved unless, prior to the 45th day, IDA notifies the Dominant Licensee that it requires an additional 30 days for its review.

- (b) If IDA rejects any portion of the proposed RIO, it will provide the Dominant Licensee with a written explanation of the basis for the rejection and the modifications required to bring the proposed RIO into compliance with IDA's requirements. The Dominant Licensee will have 30 days from the date on which IDA provides notification to submit a revised proposed RIO that incorporates the modifications required by IDA. IDA will have 30 days from the date on which it receives the revised proposed RIO to approve the RIO or direct the Dominant Licensee to incorporate specific language.
- (c) A Dominant Licensee must notify IDA and obtain IDA's written approval before making any changes to its RIO.

6.3.8 Model Confidentiality Agreement

- (a) Within 15 days of being directed to do so by IDA, the Dominant Licensee must submit a Model Confidentiality Agreement to IDA for approval. The Model Confidentiality Agreement must contain provisions, which must be no broader than necessary to protect the Licensees' legitimate commercial interests, governing preservation of proprietary or commercially sensitive information disclosed by either Licensee during any negotiation related to the adoption of an Individualised Interconnection Agreement. This must include provisions barring either Licensee from disclosing confidential information to Affiliates or third parties, except to the extent necessary to adopt and implement the Individualised Interconnection Agreement under negotiation.
- (b) IDA will provide 10 days for public comment and, within 21 days from the submission of the proposed Model Confidentiality Agreement, will accept, reject or require modification to the proposed Model Confidentiality Agreement. The Dominant Licensee will have 7 days from the date IDA provides notification to submit a revised proposed Model Confidentiality Agreement that incorporates the modifications required by IDA. IDA will have 7 days from the date on which it receives the revised proposed Model Confidentiality Agreement to approve the Model Confidentiality Agreement or direct the Dominant Licensee to incorporate specific language.

- (c) A Dominant Licensee must notify IDA and obtain IDA’s written approval before making any changes to its Model Confidentiality Agreement.

6.4 Interconnection Pursuant to an Individualised Interconnection Agreement

A Requesting Licensee may seek to enter into an Individualised Interconnection Agreement with a Dominant Licensee through the parties’ voluntary negotiations, and if unable to do so, via the dispute resolution process specified in Sub-sections 6.4.3 through 6.4.3.3 of this Code.

6.4.1 The Negotiation Process

The following procedures govern the Licensees’ voluntary negotiations:

6.4.1.1 Request for Negotiation

The Requesting Licensee must submit to the Dominant Licensee a written request to negotiate an Individualised Interconnection Agreement (“Request”). The Request must specify the Interconnection Related Services and/or Mandated Wholesale Services requested, designate a contact person and propose a time and place for initial negotiations.

6.4.1.2 Notification to IDA

At the time it submits the Request to the Dominant Licensee, the Requesting Licensee must submit a copy of the Request to IDA.

6.4.1.3 Initiation of Negotiations

Unless the Licensees agree otherwise, they must begin negotiations within 7 days after the submission of the Request.

6.4.1.4 Confidentiality Agreement

The Licensees may enter into a confidentiality agreement governing the negotiation process. If they fail to agree to a confidentiality agreement within 15 days of the receipt of the Request, both Licensees must adopt the Model Confidentiality Agreement referred to in Sub-section 6.3.8 of this Code, if either Licensee requests to do so.

6.4.1.5 Duty to Negotiate in Good Faith

A Dominant Licensee and the Requesting Licensee each have a duty to negotiate in good faith. The Dominant Licensee must not refuse to

provide any Interconnection Related Service and/or Mandated Wholesale Service. However, the parties may agree that the Dominant Licensee will provide these services on prices, terms and conditions that differ from those in the Dominant Licensee's RIO.

6.4.1.6 Interim Interconnection Pursuant to the RIO

At the time it submits its Request, the Requesting Licensee may require the Dominant Licensee to provide interconnection pursuant to the prices, terms and conditions of the RIO, pending the outcome of the requested negotiations. The Licensees must negotiate appropriate arrangements governing the transition from the RIO to the prices, terms and conditions of their Individualised Interconnection Agreement.

6.4.1.7 IDA Conciliation

For the purposes of facilitating the parties' negotiation in reaching a voluntary Individualised Interconnection Agreement, the Licensees may request IDA to provide Conciliation, pursuant to Sub-section 11.2 of this Code.

6.4.2 Voluntary Agreements

The following provisions govern the adoption of an Individualised Interconnection Agreement by voluntary agreement:

6.4.2.1 Terms of Agreement

The Licensees are free to enter into an Individualised Interconnection Agreement on any mutually agreeable price, term and condition, provided that they satisfy the Minimum Interconnection Duties specified in Sub-sections 5.4 through 5.4.8 of this Code and do not unreasonably discriminate against any other Licensee.

6.4.2.2 IDA Review

- (a) The Individualised Interconnection Agreement must specify that it will be submitted to, and will not become effective until approved by, IDA. If IDA takes no action within 21 days after the agreement is submitted to it, the agreement will be deemed approved. IDA will only reject or modify a voluntary Individualised Interconnection Agreement if it determines that the agreement does not fulfil the Minimum Interconnection Duties specified in Sub-sections 5.4 through 5.4.8 of this Code or discriminates unreasonably against any other Licensee.

- (b) In any case in which IDA rejects an Interconnection Agreement, it will direct the Licensees to make the necessary changes. In such cases, the Licensees must make the required changes, unless both Licensees agree to withdraw the Interconnection Agreement.

6.4.3 Agreements Arrived at via Dispute Resolution

If the Dominant and Requesting Licensees fail to voluntarily reach agreement regarding the Individualised Interconnection Agreement within 90 days of the date on which the Requesting Licensee submitted its Request, either Licensee may request IDA to resolve the dispute pursuant to the Dispute Resolution Procedure specified in Sub-section 11.3 of this Code.

6.4.3.1 Scope of the Dispute Resolution Procedure

Provided that they satisfy the Minimum Interconnection Duties specified in Sub-sections 5.4 through 5.4.8 of this Code, and do not unreasonably discriminate against any other Licensee, IDA will not re-open any issues on which the Licensees have reached agreement. Rather, the dispute resolution will be limited to those issues on which the Licensees are unable to reach agreement.

6.4.3.2 Standards to be Applied

Any decision resolving a dispute referred by the Licensees will require compliance with the Minimum Interconnection Duties specified in Sub-sections 5.4 through 5.4.8 of this Code. To the extent that an issue in dispute is addressed by the prices, terms and conditions of the Dominant Licensee's approved RIO, IDA will apply those provisions. To the extent that an issue in dispute is not addressed by the RIO, IDA retains full discretion to impose any solution that it deems appropriate (including solutions not advocated by either Licensee).

6.4.3.3 Implementation of Dispute Resolution Decision by Licensees

Within 15 days of the date on which IDA issues its decision, the Licensees must submit to IDA an Interconnection Agreement that complies with the decision. IDA will have 15 days to either approve the Interconnection Agreement or to direct the parties to amend the agreement by including provisions specified by IDA that fully implement its decision.

6.5 Publication of Interconnection Agreements

All Interconnection Agreements involving a Dominant Licensee will be published by IDA. However, IDA, on its own motion or at the request of

either of the Licensees, may withhold from publication any portion of an Interconnection Agreement if IDA determines that it contains proprietary or commercially sensitive information.

6.6 Enforcement of Agreements

In the event of a dispute arising out of any Interconnection Agreement with a Dominant Licensee:

- (a) both parties may request IDA to provide Conciliation, pursuant to Sub-section 11.2 of this Code; and
- (b) either party may request IDA to resolve the dispute pursuant to the Dispute Resolution Procedure specified in Sub-section 11.3 of this Code. If IDA declines to intervene, the Licensees may resolve the dispute in any mutually agreeable manner.

7. INFRASTRUCTURE SHARING

7.1 Introduction

7.1.1 Application

All provisions in this Section apply to Facilities-based Licensees. In this Section, the term “Licensee” refers to Facilities-based Licensees.

7.1.2 Over-view

In general, a Licensee is not required to “share” the use of any infrastructure that it controls with its competitors. Rather, each Licensee is expected to build or lease the use of the infrastructure that it requires. However, where IDA finds that specific infrastructure constitutes Critical Support Infrastructure as defined in Sub-section 7.3.1 of this Code, or where IDA concludes that it is in the public interest, IDA may mandate that a Licensee share the use of the infrastructure with other Licensees.

7.2 Definition of Sharing

Infrastructure sharing refers to an arrangement under which a Licensee that controls infrastructure used to support the provision of telecommunication services allows other Licensees to jointly use the same infrastructure, at cost-based prices, on non-discriminatory terms and conditions.

7.3 Standards by Which IDA Will Determine Whether to Require Sharing

IDA will use the following standards to determine whether any infrastructure must be shared:

7.3.1 Critical Support Infrastructure

IDA will require sharing of any infrastructure that it determines is Critical Support Infrastructure (“CSI”). IDA will not deem an infrastructure to be CSI based solely on evidence that allowing a Licensee that wants to share the infrastructure would reduce its costs, or allow it to provide telecommunication services more expediently. Rather, IDA will only deem the infrastructure to constitute CSI if it concludes that:

- (a) the infrastructure is required to provide telecommunication services;

- (b) an efficient new entrant would not be able to replicate the infrastructure within the foreseeable future, or obtain it from a third-party through a commercial transaction, at a cost that would allow market entry;
- (c) the Licensee that controls the infrastructure has sufficient current capacity to share with other Licensees;
- (d) the Licensee that controls the infrastructure has no legitimate justification for refusing to share the infrastructure with other Licensees; and
- (e) failure to share the infrastructure would unreasonably restrict competition in any telecommunication market in Singapore.

7.3.2 Public Interest

In certain cases, IDA may determine that the public interest requires that infrastructure to be shared. For example, the deployment of certain types of infrastructure by multiple Licensees could have significant adverse environmental impact. Therefore, even if such infrastructure does not constitute CSI, IDA in consultation with other government agencies, may require the sharing of such infrastructure where appropriate.

7.4 Procedures for Requesting Sharing

The following procedures govern requests by a Licensee (“Licensee Requesting Sharing”) to share infrastructure controlled by another Licensee:

7.4.1 Request to Licensee Controlling the Infrastructure

The Licensee Requesting Sharing must first submit to the Licensee that controls the infrastructure a written request to negotiate an agreement to share the infrastructure (“Sharing Agreement”). The Licensees may jointly request IDA to provide Conciliation, pursuant to Sub-section 11.2 of this Code.

7.4.2 Request to IDA to Designate Infrastructure as Infrastructure That Must be Shared

If the Licensees are unable to reach a voluntary Sharing Agreement within 60 days after the Licensee Requesting Sharing sends the request to the other Licensee, the Licensee Requesting Sharing may (but is not required to) submit a written request to IDA (“Sharing Request”). The Licensee Requesting Sharing must provide a clear explanation of the specific

infrastructure that it seeks to share, the means by which it proposes to share it, and the reasons why it believes it should be given a right to share the infrastructure at cost-based prices. The Licensee Requesting Sharing must provide the Licensee that controls the infrastructure with a copy of the Sharing Request at the same time that the Licensee Requesting Sharing provides the Sharing Request to IDA.

7.4.3 Response by Licensee

Unless IDA dismisses the Sharing Request on its own motion, the Licensee that controls the infrastructure will have 21 days from the date on which the Sharing Request is filed with IDA to submit to IDA a written reply. The Licensee must simultaneously provide a copy of the reply to the Licensee Requesting Sharing. The Licensee must respond to all points made by the Licensee Requesting Sharing, and must provide a full explanation as to the reasons why it does not believe it should be required to share the requested infrastructure at cost-based prices, or, if the Licensee acknowledges that it should be required to share the requested infrastructure at cost-based prices, a full explanation as to the reasons why it has been unable to reach an agreement regarding prices, terms and conditions of sharing.

7.4.4 Timing of IDA Decision

IDA may request either Licensee to submit additional information, pursuant to the information gathering and confidentiality provisions contained in Sub-sections 11.6 and 11.7 of this Code. IDA may also seek public comments. Within 60 days of receiving all necessary information, IDA will issue its decision as to whether the Licensee that controls the infrastructure is required to share it with the Licensee Requesting Sharing and any other Licensee. IDA will require the infrastructure to be shared if it concludes that the infrastructure constitutes CSI as defined by Sub-section 7.3.1 of this Code.

7.5 Designation by IDA of Infrastructure That Must be Shared

- (a) IDA, on its own initiative, may designate infrastructure as infrastructure that must be shared if IDA determines that:
 - (i) the infrastructure constitutes CSI as defined by Sub-section 7.3.1 of this Code; or
 - (ii) the public interest requires the infrastructure to be shared.

- (b) Prior to designating infrastructure as infrastructure that must be shared, IDA will generally seek public comments. IDA will provide notification as to the specific infrastructure (or categories of infrastructure) that must be shared, and the basis on which sharing is imposed.

7.5.1 Designation of Specific Infrastructure

The following types of infrastructure must be shared:

- (a) “leaky feeder” cable in train or road tunnels;
- (b) in–building cabling (where the occupant elects to take service from another service provider); and
- (c) lead–in ducts and associated manholes.

7.6 Implementation of Decision of IDA

The following procedures must be used to implement IDA’s decision or designation:

7.6.1 Voluntary Negotiations

Once IDA has decided or designated a specific infrastructure to be shared, the Licensee that controls such infrastructure must, when requested by any Licensee, negotiate a Sharing Agreement. The parties must negotiate in good faith.

7.6.2 Dispute Resolution Procedure

If the Licensees are unable to reach a mutually acceptable Sharing Agreement within 60 days after the date on which IDA issues its decision, the Licensee Requesting Sharing may request IDA to resolve the dispute in accordance with the Dispute Resolution Procedure specified in Sub-section 11.3 of this Code. Pending resolution of the dispute, IDA may require infrastructure sharing on an interim basis.

7.6.3 Compensation for Sharing

Where the Licensees are not able to reach agreement regarding compensation for infrastructure sharing, IDA will establish cost-based, non-discriminatory rates using the costing methodology described in Appendix 1, where appropriate.

8. UNFAIR METHODS OF COMPETITION

8.1 Introduction

8.1.1 Application

All provisions in this Section apply to Dominant Licensees. Sub-sections 8.1.1 through 8.1.2 and Sub-sections 8.3 through 8.4.2.3 apply to all Licensees. In this Section, the term “Licensee” refers to Facilities-based, Services-based and Telecommunication Equipment Dealer Licensees.

8.1.2 Over-view

Once a Licensee has complied with the applicable provisions contained in Sections 3 through 7 of this Code, IDA generally will not intervene in a Licensee’s day-to-day operations. However, Licensees must not act in a manner that can impede competition. Where this occurs, IDA (either on its own motion or at the request of a private party) may initiate an enforcement action, pursuant to the procedures set out in Section 11 of this Code. This Section provides standards that IDA will use to determine whether a Licensee has contravened this Code by acting anti-competitively.

8.2 Abuse of Dominant Position in the Singapore Market

A Dominant Licensee must not use its position in the telecommunication market in Singapore in a manner that unreasonably restricts, or is likely to unreasonably restrict, competition in any telecommunication market in Singapore. The following Sub-sections provide examples of practices that would constitute an abuse of dominant position:

8.2.1 Pricing Abuses

A Dominant Licensee must not price services in a manner that is likely to unreasonably restrict competition. In particular, a Dominant Licensee must not engage in the following types of anti-competitive pricing:

8.2.1.1 Predatory Pricing

A Dominant Licensee must not engage in predatory pricing. IDA will find that a Dominant Licensee has engaged in predatory pricing and, therefore, has abused its dominant position, if:

- (a) the Dominant Licensee is selling its service at a price that is less than marginal cost;

- (b) the Dominant Licensee’s pricing is likely to drive efficient rivals from the market or deter future efficient rivals from entering the market; and
- (c) entry barriers are so significant that, after driving rivals from the market or deterring entry, the Dominant Licensee could impose an increase in prices sufficient (in amount and duration) to enable the Dominant Licensee to recoup the full amount of the loss that it incurred during the period of price cutting.

8.2.1.2 Price Squeezes

A Dominant Licensee must not engage in price squeezing. IDA will find that a Dominant Licensee has engaged in a price squeeze and, therefore, has abused its dominant position, if the Dominant Licensee provides a telecommunication service or facility that a “down-stream” Licensee requires in order to provide a telecommunication service, at a price that is so high that the Dominant Licensee’s down-stream business or Affiliate could not profitably sell its product if it were required to pass on to its customers the full retail price of the service or facility.

8.2.1.3 Cross-subsidisation

A Dominant Licensee must not engage in cross-subsidisation. IDA will find that a Dominant Licensee has engaged in cross-subsidisation and, therefore, has abused its dominant position, if the Dominant Licensee uses revenues from the provision of a telecommunication service that is not subject to effective competition to cross-subsidise the price of any telecommunication service and equipment that is subject to effective competition where this would unreasonably restrict competition in any telecommunication market in Singapore. To prevent such abuses, the Dominant Licensee must comply with separate regulations and guidelines issued by IDA requiring accounting separation, the correct allocation of costs between competitive and non-competitive operations, and the use of arm’s length transactions between competitive and non-competitive operations.

8.2.2 Other Abuses

A Dominant Licensee is also precluded from abusing its position by means other than anti-competitive pricing. In particular, a Dominant Licensee must not engage in the following practices:

8.2.2.1 Discrimination

A Dominant Licensee must not engage in discrimination. IDA will find that a Dominant Licensee has engaged in discrimination and, therefore, has abused its dominant position, if the Dominant Licensee provides its Affiliate with access to infrastructure, systems, services, or information that, as a practical matter, are necessary to non-affiliated Licensees to provide telecommunication services, on prices, terms or conditions that are more favourable than the prices, terms and conditions on which the Dominant Licensee provides those infrastructure, systems, services or information to Licensees that are not Affiliates.

8.2.2.2 Predatory Network Alteration

A Dominant Licensee must not engage in predatory network alteration. IDA will find that a Dominant Licensee has engaged in predatory network alteration and, therefore, has abused its dominant position, if the Dominant Licensee alters the physical or logical interfaces of its network in a manner that imposes significant costs on interconnected Licensees, absent a legitimate business, operational or technical justification.

8.3 Anti-competitive Preferences

- (a) A Licensee that is affiliated with an entity that has Significant Market Power (whether in the provision of a telecommunication service or a non-telecommunication service), or that has Significant Market Power in a non-telecommunication market, is prohibited from using the market position of its Affiliate, or of its non-telecommunication business, in a manner that enables it to, or is likely to enable it to, unreasonably restrict competition in any telecommunication market in Singapore. Entities with Significant Market Power may include:
 - (i) Licensees;
 - (ii) Non-licensed entities within Singapore; and
 - (iii) Non-licensed entities located outside Singapore.
- (b) In particular, a Licensee must not engage in any of the following practices:
 - (i) A Licensee that uses an input, that is provided by an Affiliate that has Significant Market Power in the market for an input that other Licensees require in order to provide a telecommunication service, must not obtain the input at a

price that is so high that efficient competing non-affiliated Licensees could not profitably sell their end-product if they were required to purchase the input at the same price as the Licensee.

- (ii) A Licensee may not accept any cross-subsidisation from an Affiliate that has Significant Market Power, where this would enable the Licensee to engage in predatory pricing, as defined in Sub-section 8.2.1.1 of this Code.
- (iii) A Licensee that is affiliated with an entity that has Significant Market Power and that controls infrastructure, systems, services, or information that, as a practical matter, are necessary to provide telecommunication services, may not accept access to the infrastructure, systems, services, or information unless the Affiliate offers to the Licensee's competitors access to those infrastructure, systems, services, or information on non-discriminatory prices, terms and conditions.

8.4 Unfair Methods of Competition

8.4.1 General Prohibition

A Licensee must not engage in unfair methods of competition. An unfair method of competition is an improper practice by which a Licensee seeks to obtain a competitive advantage in the telecommunication market in Singapore, for reasons unrelated to the availability, price or quality of the service that a prospective or current Licensee offers or seeks to offer. The following Sub-sections provide examples of practices that would constitute unfair methods of competition:

8.4.2 Specific Prohibited Practices

The following practices are considered to be unreasonable restrictions on competition and are specifically prohibited:

8.4.2.1 Degradation of Service Availability or Quality

A Licensee must not take any action, or induce any other party to take any action, that has the effect of degrading the availability or quality of another Licensee's telecommunication service or equipment, or raising the other Licensee's costs, without a legitimate business, operational or technical justification.

8.4.2.2 Provision of False or Misleading Information to Competitors

Whilst Licensees are not required to disclose proprietary or commercially sensitive information to their competitors, a Licensee must not provide information to other Licensees that is false or misleading.

8.4.2.3 Improper Use of Information Regarding a Competing Licensee's Customers

A Licensee that receives information from another Licensee about the other Licensee's Customers in order to fulfil any duty under this Code must not use that information for any purpose other than the purpose for which it was provided. In particular, the Licensee must not use the information that it receives to market services to the other Licensee's Customers or otherwise interfere in the other Licensee's existing relationship with its Customers.

9. AGREEMENTS INVOLVING LICENSEES THAT UNREASONABLY RESTRICT COMPETITION

9.1 Introduction

9.1.1 Application

All provisions in this Section apply to Facilities-based Licensees, Services-based Licensees and Telecommunication Equipment Dealer Licensees. In this Section, the term “Licensee” refers to Facilities-based, Services-based and Telecommunication Equipment Dealer Licensees.

9.1.2 Over-view

IDA will not routinely review agreements entered into by Licensees (other than Interconnection Agreements). However, pursuant to the procedures in Section 11 of this Code, IDA may take enforcement action (on its own motion or pursuant to a request from a private party) against any Licensee that enters into an agreement with another Licensee or any non-licensed entity that has the effect of unreasonably restricting competition in the telecommunication service or equipment market in Singapore. Certain types of agreements are so clearly anti-competitive that IDA will determine that a Licensee that has entered into such an agreement has contravened the Code, regardless of the actual competitive effects of the agreement. IDA will assess whether other agreements contravene the Code based on their likely competitive effects. If IDA determines that an agreement contravenes the Code, it may:

- (a) direct the Licensee to revise the agreement to eliminate the contravening terms or terminate the agreement; and/or
- (b) take any other appropriate enforcement action.

9.2 Determining the Existence of an Agreement

For the purposes of this Section, an agreement can be established in any of 3 ways. First, an agreement can be established through direct evidence of an express agreement, such as a signed document. Second, an agreement can be established using circumstantial evidence that demonstrates the existence of an express agreement. Finally, an agreement may be tacit (*i.e.*, even in the absence of an actual agreement, Licensees may co-ordinate their production and pricing decisions in order to reduce aggregate output and raise market prices). IDA will not find a tacit agreement where Licensees have done nothing more than make similar output and pricing decisions, which could reflect an efficient response to changing market conditions. Rather, IDA will only find that there has

been a tacit agreement if the Licensees have employed “signalling devices,” such as the sharing of price and output information, and that these devices have facilitated co-ordinated behaviour.

For the purposes of this Section, an arrangement between a Licensee and an Affiliate over which it can exercise effective control (*i.e.* the ability to cause the Affiliate to take, or prevent the Affiliate from taking, a decision regarding the management and major operating decisions of the Licensee) does not constitute an agreement. Nor does this Section restrict the ability of a Licensee to enter into an arrangement with another entity in which the second entity acts as a *bona fide* agent of the Licensee.

9.3 Agreements Between Licensees Providing Competing Telecommunication Services and Equipment (Horizontal Agreements)

The following provisions are applicable to agreements between or amongst competing Licensees:

9.3.1 General Prohibition

Licensees are prohibited from entering into agreements with other Licensees providing competing telecommunication services or equipment that unreasonably restrict, or are likely to unreasonably restrict, competition in any telecommunication market in Singapore.

9.3.2 Specific Prohibited Agreements

The following types of agreements are considered to be unreasonable restrictions of competition and are specifically prohibited:

9.3.2.1 Price Fixing/Output Restrictions

Competing Licensees must not enter into agreements to fix prices or restrict output, regardless of the levels to which the Licensees agree.

9.3.2.2 Bid Rigging

Licensees must not enter into agreements to co-ordinate separate bids for assets, resources or rights auctioned by IDA, or for any input into the Licensees’ services or for the provision by the Licensee of any telecommunication services or equipment, regardless of the price levels to which the Licensees agree.

9.3.2.3 Market and Customer Divisions

Licensees must not enter into agreements not to compete to provide telecommunication services or equipment to specific End Users or not to

compete in specific areas, regardless of the terms and conditions on which the Licensees agree.

9.3.2.4 Group Boycotts

Licensees must not agree to refuse to do business with a specific supplier, competitor or End User.

9.3.3 Agreements Necessary for Legitimate Collaborative Ventures

Nothing in Sub-sections 9.3.2.1 through 9.3.2.4 of this Code prohibits agreements amongst Licensees that are ancillary to efficiency-enhancing integration of economic activity, where such agreements are no broader than necessary to achieve the pro-competitive benefit. For example, if Licensees establish a joint purchasing or production venture designed to increase total output and lower prices, the permissibility of an agreement between the 2 Licensees regarding the prices to be paid or charged by the joint venture would be assessed, pursuant to Sub-sections 9.4 through 9.4.3 of this Code, based on its competitive effects. Similarly, if Licensees were to establish a market for trading bandwidth, an agreement between the Licensees to exclude competitors that did not agree to trade on certain standardised terms and conditions designed to allow for the efficient operation of the market would be assessed pursuant to Sub-sections 9.4 through 9.4.3 of this Code.

9.4 Agreements Between Licensees Providing Competing Telecommunication Services or Equipment That Will be Assessed Based on Competitive Effects

Unlike the types of agreements described in Sub-sections 9.3.2.1 through 9.3.2.4 of this Code, many agreements between competitors have the potential to increase competition. Such agreements include joint agreements to produce inputs used by multiple Licensees, to produce telecommunication services and equipment sold to End Users, to jointly market telecommunication services and equipment, to jointly purchase inputs or to engage in joint research and development activities. If such agreements are challenged in an enforcement proceeding, IDA will assess whether the agreements contravene this Code based on their effect on competition. Where there is evidence that the agreement has caused actual anti-competitive harm, IDA will find it to be in contravention of this Code. Where there is no evidence of actual market effect because the agreement is relatively recent, IDA will determine the permissibility of the agreement by seeking to assess its likely effect on the market. In conducting this assessment, IDA will consider the following factors:

9.4.1 Business Purpose of the Agreement

In reviewing an agreement, IDA will make a preliminary assessment of its likely competitive impact (*i.e.*, IDA will attempt to determine whether the agreement is likely to lead to reductions in output and increase prices of telecommunication services). If the agreement is between or amongst a small number of Non-dominant Licensees, and the business purpose of the agreement appears to be to increase output and reduce prices, IDA will generally conclude, without conducting any further analysis, that the agreement does not contravene this Code.

9.4.2 Likelihood of Competitive Harm

Where an agreement involves a more significant number of Non-dominant Licensees, or a Dominant Licensee, or where the agreement has the potential to result in higher prices or reductions in output of telecommunication services or equipment, IDA will conduct a more detailed assessment. In particular, IDA will consider the following factors:

- (a) whether (and, if so, to what extent) the Licensees retain the ability to act independently of the agreed-upon venture;
- (b) the duration of the agreement;
- (c) whether, in the event the Licensees acted anti-competitively, new entry into the market would be likely, sufficient and timely enough to deter or counter-act any competitive harm; and
- (d) any other factors that help predict the likely competitive effect of the agreement.

If, after assessing these factors, IDA concludes that the agreement poses no risk of competitive harm, IDA will conclude that the agreement does not contravene this Code.

9.4.3 Efficiencies

If IDA's review demonstrates that the agreement has the potential to result in a restriction of output or an increase in prices of telecommunication services and equipment, IDA will consider whether the agreement is necessary to achieve efficiencies. Such efficiencies could include reductions in the cost of developing, producing, marketing and delivering telecommunication services and equipment. If such efficiencies offset the potential anti-competitive effect, and could not reasonably be achieved through measures that reduce competition to a lesser extent, IDA will

conclude that the agreement does not contravene this Code. If such efficiencies do not offset the potential anti-competitive effects, or could reasonably be achieved through measures that reduce competition to a lesser extent, IDA will conclude that the agreement contravenes this Code.

9.5 Agreements Between Licensees and Entities That Are Not Direct Competitors (Non-horizontal Agreements)

The following provisions apply to agreements between a Licensee and other entities (whether or not licensed) that are not direct competitors of the Licensee:

9.5.1 General Prohibition

Licensees are prohibited from entering into agreements with entities that are not direct competitors (whether licensed or not), which unreasonably restrict, or are likely to unreasonably restrict, competition in any telecommunication market in Singapore.

9.5.2 Agreements That Will be Assessed Based on Competitive Effects

The permissibility of the following agreements will be based on their likely effect on competition:

9.5.2.1 Resale Price Maintenance

A Licensee must not agree with another Licensee as to the price that the second Licensee can charge End Users to which it resells the first Licensee's telecommunication service where this unreasonably restricts, or is likely to unreasonably restrict, competition in any telecommunication market in Singapore.

9.5.2.2 Vertical Market Allocation

A Licensee must not assign specific End Users to, or allocate specific markets amongst, Licensees that resell its services, where this unreasonably restricts, or is likely to unreasonably restrict, competition in any telecommunication market in Singapore.

9.5.2.3 Exclusive Dealing

A Licensee must not enter into an agreement in which it agrees to do business with any entity on an exclusive basis, where this unreasonably restricts, or is likely to unreasonably restrict, competition in any telecommunication market in Singapore.

10. CHANGES IN OWNERSHIP AND CONSOLIDATIONS

IDA has previously conducted a public consultation regarding the procedures applicable to Consolidations and other Acquisitions of Ownership Interests. IDA is not seeking further comments on these issues at this time.

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11. ADMINISTRATIVE PROCEDURES

11.1 Introduction

11.1.1 Application

All provisions of this Section apply to Facilities-based, Service-based and Telecommunication Equipment Dealer Licensees. In this Section, the term “Licensee” refers to Facilities-based, Services-based and Telecommunication Equipment Dealer Licensees.

11.1.2 Over-view

This Section describes the administrative procedures that IDA will use to implement this Code.

11.2 Conciliation

Licensees may jointly request IDA to provide conciliation to assist them in resolving any disputes arising out of the following events:

- (a) the negotiation of a voluntary Individualised Interconnection Agreement pursuant to Sub-section 6.4.1.7 of this Code;
- (b) the Licensees’ implementation of an Interconnection Agreement entered into with a Dominant Licensee pursuant to Sub-section 6.6 of this Code; and
- (c) a Licensee’s infrastructure Sharing Request pursuant to Sub-section 7.4.1 of this Code.

11.2.1 Procedures for Requesting Conciliation

Licensees requesting conciliation must submit to IDA a joint statement describing the disputed issues and the position of each party on the disputed issues.

11.2.2 Role of IDA in Conciliation

IDA will provide conciliation at its discretion. IDA’s role in any conciliation will be to assist the parties to reach a mutually acceptable solution that is consistent with this Code. IDA will not advocate any specific position or impose any solution on the parties.

11.3 Dispute Resolution Procedure

- (a) Upon request, IDA will resolve disputes between Licensees arising from the following events:
 - (i) failure to voluntarily reach an Individualised Interconnection Agreement with a Dominant Licensee; and
 - (ii) failure to voluntarily reach a Sharing Agreement for the sharing of infrastructure that IDA has directed or designated to be shared.
- (b) IDA may, at its discretion, resolve disputes between Licensees arising from the implementation of:
 - (i) an Interconnection Agreement entered into with a Dominant Licensee; and
 - (ii) a Sharing Agreement entered into via IDA's dispute resolution.
- (c) Except as otherwise specified, IDA will not intervene in other disputes relating to matters provided for in this Code. Instead, Licensees are required to resolve their disputes in accordance with the dispute resolution provisions of their respective agreements, or in the absence of any agreement, through good-faith commercial negotiations.
- (d) Unless IDA in its discretion determines otherwise, the procedures for requesting IDA to resolve disputes, the process for submitting petitions and responses to IDA by the parties in dispute and the standards that IDA will apply to resolve disputes, are specified in the Dispute Resolution Guidelines issued by IDA.

11.4 Enforcement Action for Contravention of this Code

Enforcement actions for contravention of this Code can be brought by IDA, either at the request of a private party pursuant to Sub-section 11.4.1 of this Code or on its own motion pursuant to Sub-section 11.4.2 of this Code. IDA has discretion to determine whether, and in what manner it will conduct any enforcement action.

11.4.1 Requests for Enforcement by a Private Party

Any Licensee or End User that has been injured, or is likely to be injured, as a direct result of the contravention of any provision of this Code by a Licensee may submit a written request asking IDA to take enforcement

action against that Licensee (“Request for Enforcement”).

11.4.1.1 Submission of Written Request for Enforcement Action

- (a) Any party that requests IDA to take enforcement action (“Party Requesting Enforcement”) must submit to IDA a Request for Enforcement. The Request for Enforcement must cite the specific provisions of this Code that the Party Requesting Enforcement claims the Licensee has contravened and must allege facts that, if proven to be true, would demonstrate a contravention. Each claim and each supporting allegation of fact must be contained in a separate paragraph. Whenever possible, the Party Requesting Enforcement should attach to the Request for Enforcement copies of all relevant documents necessary to prove the allegations of fact contained in the request. Where this is not possible, the Party Requesting Enforcement must provide a statement explaining why it cannot provide the supporting documentation. The Request for Enforcement must include a signed statement that:
 - (i) the Party Requesting Enforcement has used reasonable diligence in collecting the facts;
 - (ii) the facts alleged are true to the best of the Party Requesting Enforcement’s knowledge;
 - (iii) the Party Requesting Enforcement believes in good faith that the facts alleged, if proven, would constitute a contravention of the provisions of this Code as cited in the Request for Enforcement;
 - (iv) describes the manner in which the Party Requesting Enforcement has been injured, or is likely to be injured, as a direct result of the alleged contravention; and
 - (v) the Party Requesting Enforcement has made an effort in good faith to resolve the underlying dispute through direct negotiations with the Licensee against whom enforcement action is being sought.
- (b) IDA may require the Party Requesting Enforcement to provide IDA with a statutory declaration attesting to the facts that provide the basis for the Request for Enforcement within 7 days from the date of IDA’s written request.

11.4.1.2 IDA's Response to Enforcement Request

- (a) IDA will seek to revert to the Party Requesting Enforcement with its decision as to whether IDA accepts or declines the Request for Enforcement within 15 days from the date of IDA's receipt of the Request for Enforcement.
- (b) Where IDA determines that the Request for Enforcement raises novel or complex issues, IDA may by written notification to the Party Requesting Enforcement, extend the review period by up to 30 days. The situations wherein IDA may deem a Request for Enforcement to raise novel or complex issues include but are not limited to the following:
 - (i) a novel issue when disposition of the request requires IDA to consider an issue that IDA has not previously addressed, either under this Code or in a prior enforcement request; or
 - (ii) a complex issue when disposition of the request requires IDA to obtain significant factual information to resolve difficult legal, factual or policy issues that cannot be adequately resolved within the ordinary 15-day period.
- (c) IDA will decline the Request for Enforcement if:
 - (i) the Party Requesting Enforcement fails to show that it has been injured, or is likely to be injured, as a direct result of the alleged contravention of the provisions of this Code as cited in the Request for Enforcement;
 - (ii) the factual allegations are unsupported or clearly without merits;
 - (iii) the factual allegations contained in the Request for Enforcement, even if true, would not constitute a contravention of this Code;
 - (iv) IDA determines that the Request for Enforcement does not satisfy the requirements specified in Sub-section 11.4.1.1 of this Code; or
 - (v) IDA concludes that the exercise of its enforcement discretion would not be appropriate.

11.4.1.3 Deferment of Consideration for Request for Enforcement

In an appropriate case, IDA may defer its consideration of a Request for Enforcement.

11.4.1.4 Notification of Enforcement Action

If IDA accepts the Request for Enforcement, IDA will issue a written notification to the Licensee in relation to which enforcement action is initiated (“Responding Licensee”). A copy of the written notification will be made available to the Party Requesting Enforcement. The written notification will clearly indicate the specific provisions of this Code that the Responding Licensee has been alleged to contravene and reasonable details of the alleged facts constituting the contravention. IDA will also provide to the Responding Licensee a copy of the Request for Enforcement and all supporting documents submitted by the Party Requesting Enforcement, unless (and to the extent that) IDA has granted an application by the Party Requesting Enforcement for confidential treatment of information pursuant to Sub-section 11.7 of this Code.

11.4.1.5 Opportunity to Respond

Where IDA accepts the Request for Enforcement and issues a written notification to the Responding Licensee, the Responding Licensee will have 15 days from the date of IDA’s written notification to respond in writing to the written notification (“Response”). The Response must provide a clear statement, supported by documents, affidavits, or other relevant materials, providing the basis on which the Responding Licensee disputes the allegations of contravention. IDA will provide a copy of the Response to the Party Requesting Enforcement, unless (and to the extent that) IDA has granted an application by the Responding Licensee for treatment of confidential information pursuant to Sub-section 11.7 of this Code.

11.4.1.6 Opportunity For Further Reply

- (a) The Party Requesting Enforcement will have 15 days from the day on which IDA provides the Response, to submit its further written reply to the Response.
- (b) Where the Party Requesting Enforcement submits a further reply, the Responding Licensee will have 15 days from the day on which IDA provides the further reply, to submit a final written reply to IDA.

- (c) In both cases above, IDA will provide a copy of the party's reply to the other party, unless (and to the extent that) IDA has granted an application by the party submitting the reply for confidential treatment of information pursuant to Sub-section 11.7 of this Code.

11.4.1.7 Request for Extension of Time

Where a party demonstrates good cause, IDA may grant a further extension of time of up to 7 days for making its submissions. Any request for an extension of time must be made in writing to IDA at least 3 days before the expiration of the specified period for which the party must submit its response. IDA will seek to inform both the Responding Licensee and the Party Requesting Enforcement of its decision within 2 days of the date of receipt of the request for extension.

11.4.1.8 Request for Further Information

After reviewing the information submitted by the Party Requesting Enforcement and the Responding Licensee, IDA may request either or both parties to submit additional information at any time during the course of the enforcement proceeding pursuant to Sub-section 11.6 of this Code. IDA may provide a copy of the response to the other party unless (and to the extent that) IDA has granted an application by either party for confidential treatment of information pursuant to Sub-section 11.7 of this Code.

11.4.1.9 Withdrawal of Request for Enforcement

- (a) The Party Requesting Enforcement may, at any time, withdraw its Request for Enforcement. To withdraw its Request for Enforcement, the Party Requesting Enforcement must notify IDA in writing of its request for withdrawal and provide reasons for its request (copied to the Responding Licensee).
- (b) The party's decision to withdraw its Request for Enforcement does not preclude IDA, where appropriate, from taking enforcement action on its own initiative. In such a case, while IDA will initiate a separate enforcement proceeding pursuant to Sub-section 11.4.2 of this Code, IDA may continue to rely on the submissions made by the parties in the previous aborted enforcement proceeding.

11.4.1.10 Issuance of IDA's Decision

IDA will seek to issue its decision within 60 days of receiving all necessary information. Where appropriate, IDA may, by written notice to the parties before the expiry of the 60-day period, extend the time by

which IDA will issue its decision.

11.4.2 Enforcement Action Initiated by IDA

IDA may commence enforcement action on its own initiative against a Licensee that it believes has contravened this Code. IDA will use the following procedures in any enforcement action initiated by IDA:

11.4.2.1 Notification to Licensee of Enforcement Action

IDA will provide a written notification to the Licensee that IDA is initiating enforcement action against that Licensee. The notification will clearly indicate the specific provisions of this Code that IDA believes the Licensee has contravened, and will describe in reasonable detail the basis for IDA's belief.

11.4.2.2 Opportunity to Respond

The Licensee will have 15 days to respond in writing to IDA's notification. IDA may extend this period in appropriate cases. The Licensee's response must provide a clear statement, supported by documents, affidavits, or other relevant materials, providing the basis on which the Licensee disputes IDA's allegations.

11.4.2.3 Request for Additional Information

After reviewing the response submitted by the Licensee, IDA may request the Licensee to provide additional information pursuant to Sub-section 11.6 of this Code.

11.4.2.4 Issuance of IDA's Decision

IDA will carefully consider the matters set out in the responses submitted by the Licensee before issuing its decision. IDA will seek to issue its decision within 60 days of receiving all necessary information required by IDA. Where appropriate, IDA may, by written notice to the Licensee before the expiry of the 60-day period, extend the time by which IDA will issue its decision.

11.4.3 Interim Direction to Cease and Desist

At any time during an enforcement proceeding pursuant to Sub-section 11.4.1 or 11.4.2 of this Code, IDA may issue an interim direction to the Licensee to cease and desist from any specified conduct. In determining whether to issue such an interim direction, IDA will consider whether:

- (a) there is prima facie evidence that the Licensee has contravened the provision of this Code;
- (b) continuation of the Licensee's conduct is likely to cause serious harm to other Licensees, End Users or the general public;
- (c) the potential anti-competitive harm from allowing the Licensee to continue its conduct outweighs the burden on the Licensee of ceasing the conduct; or
- (d) issuance of the interim direction is in the public interest.

11.4.4 Enforcement Measures

In the event that IDA concludes that the Licensee has contravened any provision of this Code, IDA may take such enforcement measures as it considers appropriate, including the following enforcement actions:

11.4.4.1 Warnings

IDA may issue a warning to the Licensee. The warning will contain a statement of IDA's basis for concluding that the Licensee has acted in contravention of any provision of this Code, but will impose no further sanction.

11.4.4.2 Direction to Cease and Desist

Where appropriate, IDA will direct the Licensee to cease engaging in conduct that is, or if continued will constitute, a contravention of any provision of this Code.

11.4.4.3 Remedial Action

Where appropriate, IDA will direct the Licensee to take specific remedial action.

11.4.4.4 Financial Penalties

- (a) IDA may impose financial penalties of up to S\$1 million per contravention on a Licensee that contravenes any provision of this Code.
- (b) In imposing financial penalties, IDA will consider any aggravating factors. These factors include:
 - (i) whether the contravention was serious;

- (ii) whether the contravention continued for an extended period;
 - (iii) whether the contravention resulted in harm to third parties;
 - (iv) whether the Licensee acted knowingly, recklessly or in a grossly negligent manner;
 - (v) whether the Licensee has a previous history of contraventions; and
 - (vi) whether the Licensee made any effort to conceal the contravention.
- (c) In imposing financial penalties, IDA will also consider any mitigating factors. These factors include:
- (i) whether the contravention was minor;
 - (ii) whether the adverse consequences to third parties from the contravention were minor;
 - (iii) whether the Licensee took prompt action to correct the contravention;
 - (iv) whether the contravention was accidental; and
 - (v) whether the Licensee voluntarily disclosed the contravention to IDA and co-operated with IDA in its investigation.

11.4.5 Suspension or Cancellation of the Licence under the Telecommunications Act

In serious cases in which IDA is satisfied that a Licensee has contravened, and is likely to again contravene, any provision of this Code, IDA may, instead of taking any of the enforcement action specified in Sub-section 11.4.4 of this Code, cancel or suspend the relevant licence under Section 8 of the Telecommunications Act.

11.4.6 Timeliness of Enforcement Action

- (a) Any enforcement action, whether taken by IDA on its own motion or pursuant to a request for enforcement, must be initiated within the following time limits:

- (i) In any case in which a party files a Request for Enforcement pursuant to Sub-section 11.4.1 of this Code, the party must do so within 2 years after the date of the occurrence of the action that constitutes the alleged contravention of this Code.
 - (ii) In any case in which IDA initiates enforcement action on its own motion, IDA will issue the written notification provided for in Sub-section 11.4.2.1 of this Code within 2 years after the date of the occurrence of the action that constitutes the alleged contravention of this Code.
- (b) In determining the period for taking the enforcement action:
- (i) Where the alleged contravention could not reasonably have been discovered at the time it was committed, the earlier of the date on which the conduct was, or reasonably should have been, discovered will constitute the date on which the alleged contravention occurred.
 - (ii) Where a Licensee engages in an on-going course of conduct that allegedly contravenes this Code, the date of the most recent action taken as part of that course of conduct will constitute the date on which the alleged contravention occurred. For example, where conduct undertaken pursuant to an agreement is continuing, IDA may bring an enforcement action while the conduct is continuing or at the latest, within 2 years from the date on which the Licensee ceases its conduct under the Agreement.

11.5 Binding Effect of Initial Submissions

- (a) Any party to an enforcement or dispute resolution proceeding under this Code must in its initial submission to IDA:
 - (i) in relation to a Request for Enforcement under Sub-section 11.4.1 of this Code, make all relevant allegations of contravention;
 - (ii) in relation to a Response to a Request for Enforcement under Sub-section 11.4.1.5 of this Code or a response under Sub-section 11.4.2.2 of this Code, raise all relevant grounds to dispute the allegations of contravention; and

- (iii) in relation to a petition for dispute resolution and a response to a petition for dispute resolution under Subsection 11.3 of this Code and the Dispute Resolution Guidelines, raise all relevant issues in dispute and submit all relevant information to substantiate the party's position taken on the issues in dispute.
- (b) IDA will reject the relevant portion of any subsequent submission made by the party in the course of the relevant proceeding that:
 - (i) in relation to an enforcement proceeding, makes any new allegation of contravention not previously disclosed in the Request for Enforcement or raises any new ground to dispute the allegations of contravention not previously disclosed in the response;
 - (ii) in relation to a dispute resolution proceeding, raises any new issue in dispute not previously disclosed in the petition for dispute resolution or response to the petition for dispute resolution;
 - (iii) contains information that could have been submitted in its initial submission; or
 - (iv) takes any position that is inconsistent with its initial submission.

11.6 Request for Information

- (a) In carrying out its duties and functions under this Code, IDA, by notice in writing, may require a Licensee or other party specified in this Code to produce specified documents or to provide specified information. IDA may also request a party to participate in an interview or require a party to allow IDA to physically inspect its accounts, documents, records, facilities and operations.
- (b) All information submitted to IDA by any Licensee or other party pursuant to the provisions of this Code must, to the best of that Licensee's or party's ability and knowledge, be accurate, complete and responsive.

11.6.1 Effect of Failure to Submit Required Information

- (a) In any proceeding under this Code, if a party fails or refuses to submit information required by this Code, or requested by IDA, within the timeframe specified, IDA will base its decision on the

information provided by any other party to the proceeding (if any) and on the best information available to IDA from whatever source derived.

- (b) The failure of a party requesting IDA to take a particular action to respond, accurately and completely, to IDA's information request within a reasonable period of time may provide a basis for IDA to refuse to take the action requested.
- (c) Any failure by a Licensee to comply with IDA's information requests, and the destruction, disposal, falsification or concealment of requested documents constitute a contravention of this Code for which IDA can take enforcement action pursuant to Sub-section 11.4.4 of this Code.

11.7 Confidential Treatment of Information

A party submitting information to IDA, whether voluntarily, or pursuant to the requirements of this Code or a request from IDA, may request that the information submitted be treated as confidential. The party requesting confidential treatment must identify the specific document, or portion thereof, or other information for which confidential treatment is sought. IDA generally will not accept requests to treat all information submitted as confidential. Parties should take reasonable measures to minimise the amount of information for which they request confidential treatment.

11.7.1 Standards Governing Grant of Confidential Treatment

- (a) IDA will grant a request for confidential treatment if the Requesting Party demonstrates, with reasonable specificity, that the information for which it requests confidential treatment contains commercially sensitive information (including information that is subject to a pre-existing non-disclosure agreement with a third party), or that disclosure would otherwise have a material adverse impact.
- (b) IDA considers information to be commercially sensitive if:
 - (i) it is not otherwise available to the public; or
 - (ii) there is a reasonable possibility that disclosure would cause harm to the party or otherwise provide a commercial benefit to the party's competitors.

For example, information that describes the disclosing party's business procedures, practices, plans or its assessment of market

conditions or similar matters may be commercially sensitive.

11.7.2 Notification of Denial of Confidential Treatment

- (a) If IDA rejects a request for confidential treatment, IDA will provide the party that submitted the information with the reason for its decision. Within 7 days from the date of IDA's rejection of the request for confidential treatment of information, the Requesting Party may either:
 - (i) request IDA in writing to return the information, in which case unless the information is otherwise generally available to the public, IDA will not consider this information in relation to the proceeding; or
 - (ii) withdraw in writing its request for confidential treatment of information, in which case IDA may consider, and where appropriate, disclose the information provided.
- (b) If the Requesting Party fails to do either of the above within the specified period, IDA will deem the Requesting Party to have withdrawn its request for confidential treatment of information, in which case IDA may consider, and where appropriate disclose, the information provided.
- (c) IDA's decision not to grant confidential treatment does not excuse a party from complying fully with any obligation that it may have to provide complete and accurate information to IDA.

11.8 Consultation with Other Interested Parties

In addition to obtaining information directly from the parties to a proceeding under this Code, where appropriate, IDA may conduct a public consultation to provide interested parties with an opportunity to comment on any proceeding. In those cases in which IDA does not conduct a public consultation, IDA may nonetheless request comments from individuals or entities, where appropriate. IDA does not assume any obligation to consider any unsolicited comments.

11.9 Review of IDA's Decisions

The following procedures govern the review of IDA's decisions:

11.9.1 Right to Review

- (a) Within 14 days of the day on which IDA renders its decision or issues a direction pursuant to this Code, any party that it adversely affects may either:
 - (i) request IDA to reconsider its decision or direction (“Reconsideration Request”); or
 - (ii) appeal to the Minister (“Appeal”).
- (b) No Reconsideration Request or Appeal submitted after the deadline specified in Sub-section 11.9.1 (a) will be considered.
- (c) No party may simultaneously file a Reconsideration Request and an Appeal of the same decision or direction.

11.9.2 Issues That May be Raised for Reconsideration

Parties are expected to present all relevant facts, and all relevant arguments, before IDA renders a decision or issues a direction. A party may not present any new facts, or raise any new arguments, for the first time in a Reconsideration Request if the party:

- (a) could have presented the fact, or raised the argument before IDA rendered its decision or issued its direction; and
- (b) cannot demonstrate that it had good cause for failing to do so.

11.9.3 Multiple Petitions for Review

The following rules apply to the filing of Reconsideration Requests and Appeals, during the time period specified in Sub-section 11.9.1(a) of this Code:

- (a) if one or more parties files a Reconsideration Request, but no party makes an Appeal to the Minister, IDA will consider the Reconsideration Request(s);
- (b) if no party files a Reconsideration Request, but one or more parties makes an appeal to the Minister, the Minister will consider the Appeal(s); and
- (c) if one or more parties files a Reconsideration Request, and one or more other parties appeals the same decision or direction to the Minister, the Minister may decide to abstain from hearing or acting

on the Appeal. In such case, the party that filed the Appeal may appeal IDA's decision on the Reconsideration Request ("Decision on Reconsideration") pursuant to the provisions of Sub-section 11.9.4 of this Code.

11.9.4 Appeal of IDA Decision on Reconsideration

A party may not ask IDA to reconsider a Decision on Reconsideration. However, within 7 days of the day on which IDA issues a Decision on Reconsideration, any aggrieved party may appeal the Decision on Reconsideration to the Minister.

11.9.5 Compliance Pending Review

Unless IDA directs otherwise, a Licensee must comply with IDA's decision or direction until such time, if ever, as IDA or the Minister reverses or modifies the decision or direction.

11.9.6 Suspension Pending Reconsideration or Appeal

A party that seeks to have IDA suspend the effectiveness of a decision or direction pending Reconsideration or Appeal must file a request for suspension with IDA on or before the last day on which the party may file its Reconsideration Request or Appeal. The party filing the request for suspension must demonstrate why the potential harm to the party outweighs the benefits of allowing the decision or direction to go into effect.

12. TRANSITIONAL PROVISIONS

12.1 Savings and Transitional Provisions

The following rules govern the implementation of the provisions of this Code. For the purposes of this Section, “Code (2000)” means the Code of Practice for Competition in the Provision of Telecommunication Services issued on 15 September 2000.

12.2 Savings Provisions

Except as otherwise expressly provided in this Code, and so far as it is not inconsistent with the provisions of this Code, any action, approval, designation, direction, exemption and notification taken, granted, issued, made, published or approved by IDA in relation to any matter under the Code (2000), will continue in effect and will be deemed to have been taken, granted, issued, made, published or approved by IDA under the corresponding provisions of this Code.

12.3 General Transitional Rules

12.3.1 Status of Pre-Code Agreements

Any agreement for the purpose of physically connecting telecommunication networks, exchanging telecommunication traffic and/or providing related services entered into prior to the effective date of the Code (2000) (“Pre-Code Agreement”) will remain in force. To the extent that any Pre-Code Agreement provides that the parties will modify the Pre-Code Agreement if IDA adopts a new code, issues a direction or takes any action that alters the rights and obligations of the Licensees regarding the matters addressed by the Pre-Code Agreement, IDA intends the adoption of this Code and the issuance of the accompanying direction to Licensees to comply with this Code, constitutes the requisite action.

12.3.2 Contraventions before the Effective Date of this Code

- (a) Subject to Sub-section 12.3.3 of this Code, a Licensee will not be found to be in contravention of any provisions of this Code in respect of any agreement entered into, or act or conduct that occurred, before the Effective Date of this Code. Rather, the Licensee shall remain liable for any contravention under the Code (2000) in respect of such agreement, act or conduct, as if the Code (2000) had not been superseded. Any such enforcement action is subject to the time limitation set out in Sub-section 10.2.1 of the Code (2000).

- (b) However, where the enforcement action is commenced after the Effective Date of this Code, the procedures set out in Sub-sections 11.4 through 11.9 (except Sub-section 11.4.6) of this Code shall apply to the enforcement action.

12.3.3 Application of this Code to Continuing Agreement, Act and Conduct

Subject to Sub-section 12.3.1, any agreement entered into or act or conduct that occurred prior to the Effective Date of this Code but which continues after the Effective Date of this Code, will be governed by the terms of this Code from the Effective Date of this Code. IDA will not take enforcement action against a Licensee under both the Code (2000) and this Code for the same contravening agreement, act or conduct.

12.3.4 Uncompleted Proceedings under the Code (2000)

Any proceeding commenced before the Effective Date of this Code may be continued and completed, and any right of appeal in relation to that proceeding may be exercised and the appeal heard and determined under the provisions of the Code (2000), as if the Code (2000) had not been superseded.

12.4 Specific Transitional Rules

12.4.1 Exemptions From Special Provisions Applicable to Dominant Licensees

Any exemption from a special provision applicable to Dominant Licensees granted by IDA to any Dominant Licensee pursuant to Code (2000) will be deemed to constitute an exemption from any corresponding provision in this Code. For the avoidance of doubt, IDA will publish, on its website, a list specifying the special provisions of this Code from which any Dominant Licensee is exempted.

12.4.2 Conforming of Restrictions under End User Service Agreements

Where a Licensee's End User Service Agreements contain terms and conditions that give effect to Section 3 of the Code (2000), such licensees must modify these End User Service Agreements so that they are consistent with the terms of Sub-sections 3.3 through 3.3.7 of this Code within 90 days of the Effective Date of this Code.

12.4.3 Tariff Obligations

12.4.3.1 Existing Effective Tariffs

All existing effective tariffs filed by any Dominant Licensee will remain in effect until such time as the Dominant Licensee modifies or withdraws the tariff, or IDA directs the Dominant Licensee to modify or withdraw the tariff.

12.4.3.2 Obligation to Tariff Existing Services

Where a Dominant Licensee provides an existing service for which it has not filed a tariff, but the Dominant Licensee is required to file a tariff under this Code, the Dominant Licensee must file a tariff for that service in accordance with the procedures contained in Sub-section 4.4 of this Code within 90 days of the Effective Date of this Code, and comply with the tariff regime contained in Sub-sections 4.4 through 4.6 of this Code. For the avoidance of doubt, nothing in this Sub-section shall be construed as a waiver of IDA's right to take enforcement action against any Licensee for any breach of its obligation to file a tariff for any service for which it is under an obligation to file such tariff.

12.4.3.3 Obligation to Publish Tariffs

Within 90 days of the Effective Date of this Code, a Dominant Licensee must publish all existing tariffs that are in effect. Where IDA has directed the Dominant Licensee to review a tariff, the Dominant Licensee shall publish the tariff at such time as specified by IDA upon completion of the tariff review.

12.4.4 Interconnection Agreements

Subject to Sub-section 12.3.1, all Interconnection Agreements entered into between Non-dominant Licensees before the Effective Date of this Code, shall conform to Sub-sections 5.4 through 5.4.8 of this Code within 180 days from the Effective Date of this Code.

12.4.5 RIO and RIO-based Agreements

In relation to a Dominant Licensee's RIO that has been approved by IDA based on the requirements of the Code (2000), within 30 days from the Effective Date of this Code, the Dominant Licensee must submit to IDA for approval the proposed modifications to its RIO to conform with the requirements of this Code. Upon approval by IDA, as required by Sub-section 6.3.6(b)(ii) of this Code, the modifications made to the Dominant Licensee's RIO must be incorporated into every Interconnection

Agreement entered into with the Dominant Licensee by accepting its RIO. For this purpose, where necessary, IDA may issue directions to the parties of these agreements to specify transitional provisions for the purpose of effecting any modification to their agreements to conform with the requirements of this Code.

APPENDIX 1

PRINCIPLES GOVERNING THE PRICING OF INTERCONNECTION RELATED SERVICES

1. INTRODUCTION

This Appendix specifies the principles that a Dominant Licensee must use to develop the prices for Interconnection Related Services contained in its RIO.

2. CHARGING STANDARDS

2.1 Cost Bases

2.1.1 Unless otherwise directed by IDA, a Dominant Licensee must use a Forward Looking Economic Cost (“FLEC”) methodology to determine the costs of Interconnection Related Services.

2.1.2 FLEC are the prospective costs a Licensee would incur in producing a service using best-in-use technology and product practices. When calculating forward-looking economic costs, costs are valued at current prices.

2.1.3 IDA may require Dominant Licensees to use other pricing methodologies, where appropriate.

2.2 Cost Standards

2.2.1 In any case in which IDA requires a Dominant Licensee to use a FLEC methodology to establish the cost of an Interconnection Related Service, the Dominant Licensee must use long run average incremental cost (“LRAIC”) for the computation of the price of that Interconnection Related Service.

2.2.2 LRAIC consists of all variable costs and those fixed costs that are directly attributable to the incremental change in the Interconnection Related Services and the share of indirect costs that are discernibly caused by the provision of those services.

2.3 Structure of Charges

2.3.1 In establishing Interconnection Related Services charges, a Dominant Licensee must ensure that the structure of charges mirrors the cost behaviour of Interconnection Related Services provision, where material.

This means that costs that behave differently must remain segregated in the charging structure and must be recovered differently.

- 2.3.2 Responsibility for Interconnection Related Services charges must be based on the principle of cost-causality. A Licensee will be responsible for the costs that the other Licensee incurs in order to provide Interconnection Related Services to it.

3. RESPONSIBILITY FOR BEARING CHARGES

3.1 Physical Interconnection, Unbundled Network Elements, and Essential Support Facilities

- 3.1.1 A Dominant Licensee must comply with the following principles governing responsibilities for the bearing of charges in providing PI, UNE and ESF in its RIO. A Dominant Licensee must offer to pay the initial costs of establishing a Point of Access (“POA”). The Dominant Licensee may recover the costs incurred in establishing a POA through the prices that it charges Requesting Licensees to which it provides ESF and UNE. The Dominant Licensee may require Requesting Licensees to compensate it for the costs incurred in establishing and maintaining POAs, or in using facilities, based on relative use. The Dominant Licensee must allocate the costs based on the expected number of users and the duration of use. The Dominant Licensee must allocate costs equally for non-traffic-sensitive facilities. For traffic-sensitive facilities, the Dominant Licensee must allocate costs based on the number of connections, actual usage and capacity requested.

3.2. Origination/Transit/Termination Services

- (a) Origination charges result from the costs of conveying the traffic generated by the originating Licensee’s End User to the terminating Licensee’s system, thereby enabling the originating Licensee’s End User to use a service offered by the terminating Licensee’s system or provided by a Services-based Licensee connected to the terminating Licensee’s system. The origination charge compensates the originating Licensee when the terminating Licensee, or the Services-based Licensee connected to the terminating Licensee, bills the End User directly. The origination charge then compensates the originating Licensee for the incremental cost of access.
- (b) Termination charges result from the costs of conveying the traffic generated by the originating Licensee’s End User to the terminating Licensee’s system, enabling the End User or Services-

based Licensee connected to the originating Licensee to establish 1-way or interactive communication.

- (c) A Dominant Licensee must comply with the following principles governing responsibilities for the bearing of charges in the provision of O/T/T services:
 - (i) Unless the parties agree otherwise, each Licensee is responsible for its own costs in setting up a Point of Interconnection (“POI”).
 - (ii) For fixed-to-fixed interconnection, origination and termination charges must be applied on a symmetrical basis.
 - (iii) Transit charges must be paid by the Licensee that originates the traffic, regardless of the payment flows between End Users and Licensees. A Dominant Licensee that acts as the transit Licensee need not be a party to the commercial negotiations between the interconnecting Licensees.
 - (iv) In accordance with IDA’s “mobile party pays” regime, a Dominant Licensee need not pay termination charges for fixed-to-mobile interconnection.

APPENDIX 2

INTERCONNECTION RELATED SERVICES AND MANDATED WHOLESALE SERVICES

1. INTRODUCTION

1.1 This Appendix describes the terms and conditions on which a Dominant Facilities-based Licensee must offer to provide certain key Interconnection Related Services* and Mandated Wholesale Services to Facilities-based Licensees and Services-based Licensees that use switching or routing equipment to provide telecommunication services to the public. The Dominant Facilities-based Licensee must include these terms in its RIO.

1.2 In this Appendix:

- (a) “Dominant Licensee” means a Facilities-based Licensee that IDA has classified as dominant;
- (b) “Licensee” means Facilities-based Licensees and Services-based Licensees that use switching or routing equipment to provide telecommunication services to the public;
- (c) “Services-based Licensee” means Services-based Licensees that use switching or routing equipment to provide telecommunication services to the public; and
- (d) “Requesting Licensee” means a Licensee that has requested Interconnection Related Services from a Dominant Licensee.

1.3 A Dominant Licensee must offer to provide all categories of Interconnection Related Services to Facilities-based Licensees, but need only offer to provide Services-based Licensees with access to O/T/T services and specified UNS. The Dominant Licensee must offer the same price, terms and conditions for such services to Facilities-based and Services-based Licensees. In addition, the Dominant Licensee must offer to allow Facilities-based Licensees to obtain Mandated Wholesale Services.

1.4 The terms and conditions specified in this Appendix will remain effective until modified or eliminated by IDA.

* This Appendix is based on the operation of traditional telephone networks. IDA may, in future, specify additional or different requirements applicable to Dominant Licensees that control cable systems or other infrastructure that can be used to provide telecommunication services.

- 1.5 As part of its triennial review of this Code, IDA will determine whether to:
- (a) continue to require Dominant Licensees to comply with the requirements specified in this Appendix;
 - (b) modify the requirements specified in this Appendix;
 - (c) require Dominant Licensees to offer to provide Interconnection Related Services and any Mandated Wholesale Service, but allow the Dominant Licensee to set the prices within specified price floors and/or ceilings;
 - (d) require Dominant Licensees to continue to offer to provide Interconnection Related Services and Mandated Wholesale Services, without specifying price floors or ceilings;
 - (e) modify or eliminate the requirement that Dominant Licensees provide Interconnection Related Services and Mandated Wholesale Services; or
 - (f) take any other appropriate action.
- 1.6 IDA reserves the right to review and modify or eliminate the interconnection requirements specified in this Appendix at any time.

2. PHYSICAL INTERCONNECTION

- 2.1 PI requires the provision and maintenance of transmission links between each Facilities-based Licensee's network for the purpose of exchanging traffic.
- 2.2 A Dominant Licensee must offer to allow the physical linking of facilities-based networks at any technically feasible point. At a minimum, a Dominant Licensee must offer to allow traffic exchange to occur at the following POI:
- Interconnect gateway switches; and
 - Local switches (line side and trunk side).
- 2.3 The interconnecting transmission links must connect at mutually agreed points and support applicable technical standards and transmission protocols. Unless Facilities-based Licensees agree otherwise, each Facilities-based Licensee is responsible for the provision and maintenance of the link on its "side" of the POI.

- 2.4 A Dominant Licensee need only offer Services-based Licensees virtual (distant) interconnection. In a virtual interconnection arrangement, the network nodes are not located at the same site. In this arrangement, the Services-based Licensee may obtain the interconnection link between the 2 nodes from either the Dominant Licensee or any other Facilities-based Licensees, with the costs of this link borne by the Services-based Licensee.
- 2.5 A Dominant Licensee must provide, and may require a Requesting Licensee to provide, reasonable capacity to meet forecast traffic flow.
- 2.6 Physical interconnection may also take place to provide access to UNE, UNS and ESF. A Dominant Licensee must offer to provide Facilities-based Licensees access to UNE and UNS at the following POA:
- Distribution frames (exchange MDF, building MDF, roadside cabinet);
 - Fibre distribution frames; and
 - Digital cross connect frames.
- 2.7 A Dominant Licensee must also offer to provide Facilities-based Licensees with access to ESF and UNE at the following POA (when controlled by the Dominant Licensee):
- Ducts/manholes;
 - Exchange cable chambers;
 - Exchange buildings housing tandem, local, interconnection and international switches and facilities;
 - Building equipment rooms; and
 - Roof spaces.
- 2.8 A Dominant Licensee must provide all relevant signalling plans, including the technical specifications, interconnection test plans and the corresponding test schedules, to any Requesting Licensee.

3. ORIGINATION/TRANSIT/TERMINATION

- 3.1 O/T/T services involve the switching, routing and transmission of telecommunication traffic between Licensees. O/T/T services allow traffic

originating from one Licensee's network to terminate or transit through another Licensee's network.

3.2 A Dominant Licensee must offer to provide O/T/T services to any Requesting Licensee. The Dominant Licensee need only offer to provide transit services between Licensees interconnected to the Dominant Licensee's interconnection gateway switch ("IGS"). The Dominant Licensee need not offer to route transit traffic between the IGS and a local switch. In the case of transit traffic, the Dominant Licensee may require the Licensee originating the call to pay the Dominant Licensee for the cost of transit, irrespective of the type of traffic and payment between the End User and the 2 Non-dominant Licensees that are using the transit service.

3.3 A Dominant Licensee must provide the following O/T/T services:

- Line side (local exchange) origination (3-digit and 4-digit access codes): Priced on a per call-minute basis;
- Line side (local exchange) termination (8-digit numbers): Priced on a per call-minute basis;
- Trunk side (local exchange) origination (3-digit and 4-digit access codes): Priced on a per call-minute basis;
- Trunk side (local exchange) termination (8-digit numbers): Priced on a per call-minute basis;
- IGS origination (3-digit and 4-digit access codes): Priced on a per call-minute basis;
- IGS termination (8-digit numbers): Priced on a per call-minute basis; and
- IGS transit: Priced on a per call-minute basis.

4. **ESSENTIAL SUPPORT FACILITIES**

4.1 ESF are passive support structures, for which no practical or viable alternatives exist, that enable the deployment of telecommunication infrastructure.

4.2 A Dominant Licensee must offer to provide Facilities-based Licensees the following ESF:

- Co-location;

- Lead-in ducts, lead-in manholes and cable chambers;
- Space within cable risers in commercial and residential buildings; and
- Masts, poles, radio towers and tower sites.

4.2.1 Co-Location

4.2.1.1 A Dominant Licensee must offer to allow Facilities-based Licensees to co-locate equipment for the purpose of PI and accessing UNE at any technically feasible location within the network. The RIO must specify the prices, terms and conditions on which the Dominant Licensee will allow co-location at the following facilities (when controlled by the Dominant Licensee):

- exchange buildings housing tandem, local, interconnection and international switches and facilities;
- telecommunication equipment rooms located in commercial buildings;
- telecommunication equipment rooms located in residential buildings;
- submarine cable landing stations/frontier stations;
- radio towers and tower sites; and
- roof spaces.

4.2.1.2 The Dominant Licensee must offer to provide equipment space, power, security and site maintenance at each co-location site.

4.2.1.3 A Dominant Licensee may decline to provide co-location space in any currently unused network location if it can demonstrate that, as a result of its reasonably projected growth, the Dominant Licensee will use that space, within 24 months from the date on which the request for co-location is made, to locate equipment used to provide its own telecommunication service.

4.2.1.4 In cases where a Dominant Licensee cannot offer physical co-location due to space limitations or any other legitimate reasons, the Dominant Licensee must take reasonable measures to find an alternative solution. An alternative solution may include options such as virtual co-location, conditioning additional equipment space, optimising the use of existing space or finding adjacent space. The Dominant Licensee is not required to

offer to construct additional buildings to accommodate co-location requests.

4.2.1.5 A Dominant Licensee must not restrict the type of equipment co-located so long as it is telecommunication equipment of a type customarily located in a telecommunication operator's exchange building or other network locations. However, this space cannot be used for the co-location of a specific End User's equipment (e.g., a PABX) or general purpose computing equipment that is not required for operation or management of the co-located equipment (e.g., a billing system). The equipment footprint space made available by the Dominant Licensee to each Facilities-based Licensee at each exchange building must be no less than 1 square metre and no more than 10 square metres, provided that where a Requesting Licensee reasonably requests for footprint space exceeding 10 square metres, the Dominant Licensee must grant the request unless the Dominant Licensee can demonstrate that the use of more than 10 square metres of footprint space will preclude other Facilities-based Licensees from placing permitted equipment in a given exchange building.

4.2.1.6 A Dominant Licensee must not require the use of co-location cages or equivalent structures or impose any unnecessary or excessive minimum space requirements. The Dominant Licensee must incur the cost of preparing co-location space, which it can recover through non-discriminatory, pro-rata prices to be paid by Facilities-based Requesting Licensees.

4.2.1.7 A Dominant Licensee must offer Facilities-based Requesting Licensees access to their co-located equipment on a 7 days a week, 24 hours a day basis. The Dominant Licensee can require reasonable security precautions. These can include escorted access, provided the escort is available 7 days a week, 24 hours a day. The Dominant Licensee must make escort available on the following basis:

- for service-affecting emergencies, within 1 hour of notification;
- for non-service affecting emergencies, within 4 hours of notification; and
- in all other cases, within 24 hours of notification.

4.2.2 Lead-in ducts, lead-in manholes and cable chambers

4.2.2.1 Lead-in ducts, lead-in manholes and cable chambers are ESF that house the copper, coaxial and fibre cables that connect to buildings.

4.2.2.2 A Dominant Licensee must offer to lease the lead-in ducts, lead-in

manholes and cable chambers to Facilities-based Requesting Licensees for the purpose of placing their own telecommunication transmission cables. The Dominant Licensee must maintain the lead-in ducts, lead-in manholes and cable chambers, and also be responsible for any right of way fees payable, where applicable.

4.2.3 Space within cable risers in commercial and residential buildings

4.2.3.1 A Dominant Licensee must offer to provide Facilities-based Licensees access to space within cable risers used to provide service to the building tenants. This must include access to any distribution frames, cabinets or network interface devices within the buildings where they are the properties of the Dominant Licensee. (The guidelines for building owners are set out in the Code of Practice for Info-communications Facilities in Buildings.) The Dominant Licensee must price these facilities using the methodology set out in Appendix 1.

4.2.4 Masts, poles, radio towers and tower sites

4.2.4.1 A Dominant Licensee must offer to provide Facilities-based Licensees access to masts, poles, radio towers and tower sites, used for the location of radio transmission or reception equipment and including space for baseband equipment.

5. UNBUNDLED NETWORK ELEMENTS

5.1 UNE are physical telecommunication plant and equipment and the associated service functionality that Facilities-based Requesting Licensees need to have access to in order to provide a competing telecommunication service. IDA will find that Facilities-based Requesting Licensees needs to have access to a UNE if the element:

- (a) is technically or operationally required to provide a competing service; and
- (b) cannot be replicated, or obtained from a source other than the Dominant Licensee, at commercially reasonable rates.

5.2 A Dominant Licensee may not place any restriction on the buyer of a UNE as to the End Users or Licensees to which any telecommunication service provided using the UNE may be offered. For example, a Licensee can purchase copper local loop and upgrade it to a Digital Subscriber Line (“DSL”) for resale to other Facilities-based or Services-based Licensees.

5.3 A Dominant Licensee must offer to lease to Facilities-based Licensees the following UNE:

- Local loops;
- Sub-loops;
- Line Sharing (loop spectrum); and
- Distribution Frame Access.

5.3.1 Local loops — including loop feeder, loop distribution, distribution point, and inside wiring (where applicable)*

- 5.3.1.1 The Dominant Licensee must provision the loops in a timely and non-discriminatory manner, and must take all feasible actions to provision loops that are suitable for digital signal transmission. The Dominant Licensee will retain responsibility for the maintenance and administration of the loops.
- 5.3.1.2 The Dominant Licensee must provide loops that are of the same quality and capable of supporting the same transmission characteristics as those it supplies to its own End Users. The Dominant Licensee must also provide maintenance and repair services on the unbundled loops that is equivalent to the service it would provide on loops serving its own End Users.
- 5.3.1.3 To maintain the integrity of the loop and associated equipment, a Dominant Licensee may retain responsibility for performing the necessary cross-connections and circuit-grooming activities required at the distribution frames to connect the Facilities-based Requesting Licensee’s equipment to each loop provided. However, the Dominant Licensee must not use this authority in a manner that restricts supply. If the Dominant Licensee performs these functions, it must recover the cost through the loop prices.
- 5.3.1.4 Where the Facilities-based Requesting Licensee plans to use the loop to provide a DSL type service, the loop performance should be typical of those used by the Dominant Licensee for its own DSL services. This requires the Dominant Licensee to “condition” a loop pair. Typically, this will require the Dominant Licensee to remove any impediments to DSL service (such as bridge taps and loading coils) and to choose a pair that is unlikely to suffer from interference caused by other DSL services. A Dominant Licensee does not have any obligation to guarantee loop performance beyond voice-grade standard. However, in so far as it uses loops for its own DSL services, a Dominant Licensee must supply loops to other Requesting Licensees for DSL that perform at a level equivalent to the loops the Dominant Licensee uses for its own DSL services. If the

*See the attached diagram on page 103.

Dominant Licensee chooses to guarantee its End Users loop performance above a voice-grade standard, loops provided to other Licensees must also meet this guarantee.

5.3.2 Sub-loops — including loop feeder, and loop distribution, distribution point and inside wiring (where applicable)

5.3.2.1 A Dominant Licensee must also offer to provide sub-loops and the associated distribution points available to Requesting Licensees on the same terms and conditions as loops.

5.3.3 Line Sharing (loop spectrum) — including loop feeder, loop distribution, distribution point and inside wiring (where applicable)

5.3.3.1 A Dominant Licensee must offer to provide Facilities-based Requesting Licensees line sharing (loop spectrum). The Dominant Licensee must provide a DSL capable loop (in the same manner as described in Sub-section 5.3.1.4 of Appendix 2 of this Code) and make co-location space available. The Dominant Licensee must offer to allow each Facilities-based Requesting Licensee to attach its own transmission equipment.

5.3.3.2 A Dominant Licensee must provide timely information to other Facilities-based Licensees to assist their deployment of DSL services. The information will be the same as that provided to its own operations in order to assess the capability of providing DSL on a loop.

5.3.3.3 Facilities-based Requesting Licensees must adhere to a spectrum management and deployment plan, which the Dominant Licensee must include in its RIO. The plan must be no more restrictive than necessary to minimise cross-talk and to ensure the integrity of the voice network.

5.3.4 Distribution Frame Access — exchange MDF, building MDF and roadside cabinets

5.3.4.1 A Dominant Licensee must offer to provide Facilities-based Requesting Licensees with access to its distribution frames in order to allow the Facilities-based Requesting Licensees to place the terminal blocks and cabling required to cross-connect the loop to the Facilities-based Requesting Licensee's equipment.

5.3.4.2 A Dominant Licensee must offer to provide Facilities-based Requesting Licensees with pins on the Dominant Licensee's distribution frames for the purposes of connecting their cables. The Dominant Licensee must develop a reasonable process for allocating pins to Facilities-based Requesting Licensees and for updating plant records. Where physical space is available, the Dominant Licensee must offer to construct

additional distribution frame capacity to meet requests for access. The Dominant Licensee must detail the process for allocating pins in its RIO.

6. UNBUNDLED NETWORK SERVICES

6.1 UNS are telecommunication network services that Requesting Licensees need to have cost-based access to in order to provide a competing telecommunication service. IDA will find that a Requesting Licensee needs to have access to a UNS if the service:

- (a) is technically or operationally required to provide a competing service; and
- (b) cannot be self-provisioned, or obtained from a source other than the Dominant Licensee, at commercially reasonable rates.

6.2 A Dominant Licensee must offer to provide Facilities-based and Services-based Requesting Licensees with the following UNS:

- Emergency Services

6.2.1 Emergency Services

6.2.1.1 A Dominant Licensee must offer to provide access to emergency services call centres and the ability to add local telephone location data to the emergency services database.

6.3 A Dominant Licensee must offer to provide Facilities-based Requesting Licensees with the following UNS:

- Connection services at submarine cable landing stations

6.3.1 Connection services at submarine cable landing stations

6.3.1.1 A Dominant Licensee must offer to provide services at its submarine cable landing stations in order for Facilities-based Requesting Licensees to connect and access capacity on any submarine cable system landing at those submarine cable landing stations.

7. MANDATED WHOLESALE SERVICES

7.1 A Dominant Licensee must offer to provide to Facilities-based Requesting Licensees Mandated Wholesale Services, which IDA may specify by notice in the *Government Gazette*.

7.2 Unless otherwise specified by IDA, the Dominant Licensee must offer to

provide Mandated Wholesale Services at “retail-minus” prices.

**TYPICAL ILLUSTRATION OF FEEDER, DISTRIBUTION,
DISTRIBUTION POINTS AND INSIDE WIRING**

