



**DRAFT PROPOSED AMENDMENTS TO THE
TELECOMMUNICATIONS (ACCESS TO FACILITIES) REGULATIONS
2006**

Maintenance History		
Date	Change details	Version
September 2014	Proposed Amendments	0.1

1. Introduction

In 2006, the Telecommunications (Access to Facilities) Regulations 2006 were made by the Minister pursuant to Section 78(1) of the Telecommunications Act. The conditions of these Regulations sought to establish rules whereby telecommunications network or broadcasting concessionaires shall provide access to their facilities in order to:

- ensure fair and non-discriminatory access among concessionaires to facilitate the orderly development of the sector;
- facilitate the provision of a wide range of telecommunications services for both public and private use;
- support the telecommunications policy of the Government of the Republic of Trinidad and Tobago;
- ensure the effective liberalization of the telecommunications sector and the introduction of competition; and
- facilitate the provision of a wide range of telecommunications services for both public and private use

1.1 Relevant legislation

The relevant Sections of the Telecommunications Act Chap. 47:31 (the Act) which were taken into consideration in the framing of the proposed amendments to the Access to Facilities Regulations are:

Section 26 of the Act which states:

“(1) Subject to the provisions of this section, it shall be a further condition of a concession for a public telecommunications network and broadcasting service that the concessionaire be required to provide other concessionaires with access to the facilities that it owns or controls, such access not to be unreasonably withheld.

(2) Access to facilities shall be negotiated between concessionaires on a non-discriminatory and equitable basis and, at the request of either party, the Authority may assist in negotiating a settlement between such parties.

(3) A concessionaire may deny access only where it demonstrates that there is insufficient capacity in the facility, taking into account its reasonably anticipated requirements and its obligations pursuant to section 27, or, for reasons of safety, security, reliability or difficulty of a technical or engineering nature.

(4) The Authority may regulate the rates, terms and conditions for access to any facility, such rates, terms and conditions to be just and reasonable and it may adopt procedures necessary and appropriate to facilitate, by such means as the Authority deems appropriate, the determination of complaints concerning such rates, terms and conditions.

(5) For the purposes of this section, access to facilities does not include interconnection.”

1.2 Objectives

The primary objective of the proposed amendments is to strengthen the regulatory framework to encourage the sharing of facilities among operators which is vital in fostering competition and optimizing investments. It seeks to further develop and transform the sector by:

- Creating a regulatory framework to enable facility sharing and support new entrants to the market;
- Limiting duplication and gearing investment toward underserved areas; and
- Increasing broadband penetration.

1.3 Review Cycle

This document will be modified as deemed necessary by the Authority, subject to the approval of the Minister and Parliament, in order to adapt to the needs of the telecommunications industry and to meet changing circumstances. When need for modification is identified, the Authority will announce its intention to review the document and any interested party or entity in the telecommunications sector or any appropriate industry forum may suggest changes to the document.

Questions or concerns regarding the maintenance of this document may be directed to the Authority via email at legal@tatt.org.tt or info@tatt.org.tt

1.4 The Consultation Process

The Authority will seek the views and opinions of the general public and other stakeholders regarding the proposals made in this document, in accordance with the Authority's *Procedures for Consultations in the Telecommunications Sector of Trinidad and Tobago*.

This draft will be made available for public comments for a period of four (4) weeks, as prescribed in the above procedures.

Following consultation the draft proposed Telecommunications (Access to Facilities) (Amendment) Regulations will be submitted to the Minister for approval, and promulgation through negative resolution of Parliament in accordance with section 78 of the Act.

1.5 Other Relevant Documentation

These Regulations are prescribed alongside other policies, plans and regulations prepared by the Authority including the following:-

- Policy on the Authorization of Telecommunications Networks and Services and Broadcasting Services in Trinidad and Tobago
- Interconnection and Access Policy
- Telecommunications (Interconnection) Regulations 2006

- Quality of Service Policy
- Consumer Rights and Obligations
- Telecommunications (Fees) Regulations 2006

2. Rationale for Modification

In light of the above, the Authority is proposing to amend the Telecommunications (Access to Facilities) Regulations 2006 as a means of strengthening the framework to ensure that the objectives of the current Regulations are effectively achieved. As such, the modifications seek to:

- Ensure that there is transparency in the formulation of access agreements;
- Create a platform for effective collocation;
- Set parameters to ensure that access agreements are concluded in a timely and non-discriminatory manner;
- Strengthen the framework associated with Reference Access Offers; and
- Strengthen the provisions in the Regulations as it relates to the requirement to supply information for access.

It should be noted that the Telecommunications Act is currently being amended to ensure compliance with the Economic Partnership Agreement (EPA), now in force by Act No. 9 of 2013. Concurrently, the Authority has published a revised Authorisation Framework which seeks to bring our current authorisation process into compliance with the EPA. As such, the term “concessionaire” in the Access to Facilities Regulations is now replaced by “authorised provider”.

An overview of the proposed amendments, clause by clause is provided below, followed by the proposed revised Regulations for ready consideration of interested parties.

2.1 Overview of proposed amendments to the Regulations

The following is an overview of proposed amendments to the Telecommunications (Access to Facilities) Regulations.

PART I:

1. **Regulation 1** is amended to reflect the current year of the amended regulations.
2. **Regulation 2**, has been amended to include the definition of “authorised provider” which now replaces the term “concessionaire” and “Reference Access Offer” or “RAO”. Throughout the regulations, the term “concessionaire” has been replaced by “authorised provider”. Additionally, “collocation” is correctly identified as “co-location”.

PART II:

3. **Regulation 3 (d)** was inserted to extend the obligation of authorised providers to ensure that access is provided on a first come first served basis. **Regulation 3(e)** was inserted to provide for the authorised providers to publish and maintain a RAO.
4. **Regulation 4(i)**, “building space and land space” are added to facilities to which access should be provided.
5. **Regulation 4A and Regulation 4B** have been inserted to allow for the designation of a facility as an essential facility.
6. **Regulation 5** was amended to include a new sub-regulation (5) 3 to allow the Authority to define some reasonable timeframe within which the authorised provider shall endeavour to be in compliance with Regulation 5(1). This is necessary to ensure that authorised providers ultimately fulfil their obligation of providing access in a

non-discriminatory manner, not only in relation to other parties, but also in relation to its own subsidiaries or related business units.

7. *Regulation 7 (g)* has been amended to include security arrangements and conditions.

8. *Regulation 8*–

- i. *Regulation 8 (8)* is being included to facilitate the access seeker's conduct of a site visit before a formal request is made pursuant to regulation 9.
- ii. *Regulation 8(9)* specifies the time frame within which the access provider shall accede to the above mentioned request. This regulation is required as the Authority is of the opinion that setting timeframes for authorised providers will assist in the timely conclusion of access agreements.

PART III:

9. *Regulation 9* is amended to specify that the request is copied to the Authority by the access seeker at the time of the request.

10. *Regulations 15 (1) and (2)* have been deleted. Negotiations take place between providers and since the Authority may intervene in the event that a dispute arises and further, so as to avoid any perceived conflict of interest by the presence of the Authority in the negotiations - albeit merely as an observer - to any dispute resolution process which may subsequently occur; the Authority proposes deletion of this regulation.

11. New *Regulation 17A* has been inserted to refer any dispute between negotiating parties to the dispute resolution procedures under Part VII of these Regulations.

PART IIIA:

Reference Access Offer:

12. New *Regulation 17 B* has been inserted to set out the requirements for an authorised provider to publish and maintain a RAO.
13. New *Regulation 17C* sets out the contents required of the RAO.
14. New *Regulation 17D* sets out the timelines for the submission of the RAO to the Authority for its approval and further allows for any changes to be effected to the RAO prior to the grant of approval, upon request of the Authority.
15. New *Regulation 17E* addresses the publication requirement of the RAO by the authorised provider and further ensures that any agreement concluded is consistent with the RAO as published.
16. New *Regulation 17F* sets out the timelines for compliance with a decision of a dispute resolution process by amendment of the RAO.

PART IV Commercial Arrangements:

17. *Regulation 18 (1)* is modified and sub-regulation *(1A)* is inserted to clarify the distinction between the costing methodology and the cost model, and to reaffirm the priority of the former in the determination of the approach to establishing and setting access rates. As such, the proposed construction seeks to clarify that once the costing methodology is established, where there is no model established by the Authority, authorised providers are still obliged to determine access rates in accordance with that established costing methodology. Where the costing model has been established by the Authority, authorised providers may use such model as a means of implementing the methodology.

PART VII Dispute Resolution:

18. **Regulation 28** has been amended to include a continuing offence in line with that prescribed by sections 65 and 71 of the Act.

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<p>FirstSchedule</p>	<p>“local access loop” means the facilities which connect the customer terminal equipment to the first switching or routing point in a network;</p> <p>“Non-disclosure Agreement” means an agreement substantially in the form set out in the First Schedule;</p> <p>“Reference Access Offer” or “RAO” means a reference access offer which sets out the terms and conditions upon which an access provider proposes to provide access to its facilities.</p> <p>(2) For the purpose of these Regulations, access includes co – location.</p>
	<p style="text-align: center;">PART II OBLIGATION OF AUTHORISED PROVIDERS</p>
<p>General obligation to provide access to facilities</p>	<p>3. A holder of an authorisation for the provision of a public telecommunications network or broadcasting service shall—</p> <ul style="list-style-type: none"> (a) upon written request, provide access to its facilities and such access shall not be unreasonably withheld; (b) negotiate in good faith on matters concerning access to facilities; and (c) neither withdraw nor impair access once already granted, except— <ul style="list-style-type: none"> (i) where authorized by the Authority; or (ii) in accordance with— <ul style="list-style-type: none"> A. a dispute resolution process under section 82 of the Act; or B. an Order made by a court. (d) provide access to each requested facility on a first come first served basis; and (e) upon request and in accordance with Regulation 17A, prepare, publish and maintain a Reference Access Offer for access to its facilities.
<p>Access to be Provided</p>	<p>4. Without prejudice to the generality of the foregoing, an authorised provider shall provide access to the following facilities including where applicable, their functional equivalents:</p> <ul style="list-style-type: none"> (a) local access loop; (b) line side facilities including the connection between an access loop termination at the main distribution frame and the switch line card or such points which are functionally equivalent; (c) trunk-side facilities, including the trunk-side cross connect panel and a switch trunk card or such points which are functionally equivalent;

	<p>(d) trunk connect facilities, including the connection between trunk termination at a cross connect panel and a switch trunk card or such points which are functionally equivalent;</p> <p>(e) inter-office transmission facilities;</p> <p>(f) signalling networks including signalling links and signalling transfer points;</p> <p>(g) service control points;</p> <p>(h) ducts, poles and towers used for supporting or carrying telecommunication facilities; and</p> <p>(i) building space and land space.</p>
<p>The Authority may designate essential facilities</p>	<p>4A. (1) The Authority may designate any facility in Trinidad and Tobago as an essential facility where, in the reasonable opinion of the Authority, the following criteria are satisfied:</p> <ul style="list-style-type: none"> i. The facility is exclusively or predominantly provided in a market by a single or limited number of authorised providers; ii. The facility is required by other authorised providers in order to compete in that market; and, iii. The facility cannot practically be duplicated or substituted by the other authorised providers for technical or economic reasons. <p>(2) The Authority may regulate the provision of access to any facility which has been designated an essential facility in accordance with (1) above.</p>
	<p>4B (1) For the purposes of the designation of an essential facility:</p> <p>(a) “relevant market or markets” refers to the market or markets within which services are provided utilizing an essential facility;</p> <p>(b) “relevant service or services” refers to the service or services for which the essential facility is utilized.</p> <p>(2) The process for designation of an essential facility shall comprise, at a minimum, the following steps :</p> <ul style="list-style-type: none"> a) The Authority shall identify the facility, the authorised provider who owns or controls the facility, the relevant services, the relevant markets, and all authorised providers providing the relevant services. b) The Authority shall publish in the Gazette and one daily newspaper with circulation in Trinidad and Tobago, a notice advising that it is considering designating the facility as essential, the service or services for which the facility is utilised, the market or markets within which those services are

	<p>provided, and all authorised providers providing the relevant services.</p> <p>c) Any authorised provider providing the relevant services in the relevant market or markets may make representations to the Authority on any matter relevant to the designation of the facility as an essential facility (having regard to the criteria set out in Regulation 6) such representations to be made no later than twenty-eight days after the date of the notice published under sub-regulation 7(b).</p> <p>d) The Authority shall provide a copy of all representations made by authorised providers to the authorised provider which owns or controls the facility and shall afford such authorised provider a further period of not less than twenty-eight days to give further comments on such additional information, and shall take into account any comments received.</p> <p>e) The Authority shall publish the draft of its assessment on its website and invite interested parties to provide any comments on the decisions made therein. Such comments must be submitted to the Authority within twenty-one days of publication (or such longer timeframe indicated in the publication) and the Authority shall consider any comments received before producing its final assessment. The publication shall contain at a minimum, the following information:</p> <ul style="list-style-type: none"> i. The details of the facility; ii. The details of the authorised provider which owns or controls the facility; iii. A list of authorised providers providing the relevant services; iv. Its decision as to whether or not the facility is essential, giving reasons for its decision. <p>f) The final decision shall be published by the Authority in the Gazette, at least one daily newspaper in circulation in Trinidad and Tobago and on the website of the Authority, and any designation made therein shall take effect fourteen days after publication.</p>
<p>Non discrimination</p>	<p>5. (1) An authorised provider shall provide access under the same terms and conditions and of the same quality as it provides for its own networks and services, the networks and services of its subsidiaries and partners or the networks and services of any other authorised provider to which it provides access.</p> <p>(2) Where an authorised provider fails to comply with subregulation (1), it shall upon request from the Authority, prove to the satisfaction of the Authority that it is not technically feasible to replicate the level of quality of access or to</p>

	<p>provide access under the same terms and conditions as it provides for its own use.</p> <p>(3) Pursuant to (2) above, where an authorised provider proves to the satisfaction of the Authority that it is not technically feasible to comply, the Authority, in notifying the authorised provider of its satisfaction, shall specify a reasonable timeframe within which the authorised provider shall come into compliance with (1) above.</p>
<p>Evidence of Feasibility</p>	<p>6. (1) Previous successful access to a facility at a particular point on a network shall constitute evidence of technically feasible access at that point or at a similar point on the networks where similar facilities are used.</p> <p>(2) Adherence to the same interfaces at other points of the network shall constitute evidence of similar facilities.</p>
<p>Requirement to specify availability of co-location</p>	<p>7. An authorised provider shall specify, upon request from an access seeker, the availability of co-location within its facilities, including—</p> <ul style="list-style-type: none"> (a) information on the relevant sites; (b) co-location options at the relevant sites; (c) restrictions, if any, on equipment which can be collocated; (d) security standards and measures to be put in place by access seekers to guarantee security of the facilities; (e) principles governing allocation of co-location space to access seekers; (f) principles governing the rights of entry to co-location space by the staff of the access seeker; and (g) security arrangements and conditions.
<p>Requirement to supply information for access</p> <p>Second Schedule</p>	<p>8. (1) Subject to subregulation (4), an unauthorised provider shall supply to any other authorised provider upon request, such information about its network services as is required in relation to procuring access to the authorised provider's facilities.</p> <p>(2) Subject to subregulation (3), the information referred to in subregulation (1) shall be supplied within twenty-eight days of the request.</p> <p>(3) The authorised provider may request from the Authority, an extension in writing, not later than seven days before expiry, of the period referred to in subregulation (2).</p> <p>(4) The Authority may exempt certain particulars from the requirements of subregulation (1) on the grounds of confidentiality or competitive sensitivity, subject to the procedures set out in the Second Schedule.</p> <p>(5) The Authority may revoke an exemption granted under subregulation (4), at the request of an unauthorised provider where there has been a material change in the relevant circumstances, but in such case shall afford to both parties, a reasonable opportunity to make submissions to the Authority.</p> <p>(6) All information provided under this regulation shall be used for the</p>

	<p>purpose of facilitating access only, and shall not be disclosed to any third party without the prior written permission of the authorised provider who provided the information.</p> <p>(7) An unauthorised provider who receives information under this regulation shall, prior to receipt of the information, execute a Nondisclosure Agreement for the benefit of the authorised provider who provided the information.</p> <p>(8) Prior to making a formal request pursuant to regulation 9, the access seeker may request a site visit(s).</p> <p>(9) Upon request for site visit, the access provider shall ensure that such site visit be conducted within fourteen days of the request, but in any event no longer than twenty eight days of the request. Where there are subsequent requests, the access provider shall ensure that all visits be conducted within forty - two days of the initial request made.</p>
	<p style="text-align: center;">PART III NEGOTIATING ACCESS REQUESTS AGREEMENTS</p>
<p>Access Request</p>	<p>9. (1) An unauthorised provider may make an access request at any time.</p> <p>(2) For the purpose of processing an access request, the access providers shall—</p> <ul style="list-style-type: none"> (a) provide the Authority with a designated contact or contacts; and (b) make sufficient provision to ensure that the access request is dealt with in a reasonable time. <p>(3) An access request shall be forwarded to the designated contact except that where no contact has been provided, the request may be forwarded to the registered address of the access provider.</p> <p>(4) An access request shall, unless otherwise agreed between the access provider and the access seeker, include—</p> <ul style="list-style-type: none"> (a) the reference number of the access seeker’s concession (or proof of a submitted application for a concession); (b) the facility or facilities to which access is required; (c) details of the access required; (d) the date by which access is required; (e) the period for which access is required; (f) details of any equipment to be installed at the facility, together with details of the security, safety, environmental, and spatial

	<p>requirements of such equipment;</p> <p>(g) the extent to which access is required by the access seeker's personnel to the facility to install, maintain or use the equipment to be installed;</p> <p>(h) any other requirement which the Authority may from time to time, prescribe;</p> <p>provided that an access request which contains items (a) through (h) above shall be considered to be a complete request and shall be processed in accordance within the timeframe set out in regulation 11.</p> <p>(5) An access request shall be copied to the Authority by the access seeker at the time of the request.</p> <p>(6) The access provider shall acknowledge receipt of the access request within seven days of its receipt of the request.</p> <p>(7) The access provider may upon its receipt of the access request, request any further information that it may reasonably require, in order to process the access request.</p> <p>(8) A request made under subregulation (7) shall be copied to the Authority and complied with by the access seeker within seven days of receipt of the request.</p> <p>(9) Where the request made under subregulation (7) is not satisfied in accordance with subregulation (8), the period specified in regulation 11 respecting the negotiation of the access agreement shall be increased by a period corresponding to the delay in the provision of the information.</p>
<p>Access request Pending approval of Concession application</p>	<p>10. (1) Nothing in this regulation shall be construed as preventing any person who has applied to the Authority for an authorisation under section 21 of the Act, from making an access request.</p> <p>(2) The effecting of access in accordance with a request made pursuant to these Regulations shall be conditional upon the grant of an authorisation to the applicant.</p> <p>(3) The access seeker shall provide to the access provider at the time of the access request, such security as the access provider may reasonably require indemnifying the access provider from any loss that he may suffer in the event that the application for an authorisation is unsuccessful.</p>
<p>Time for conclusion of access agreement</p>	<p>11. (1) An authorised provider shall use all reasonable endeavours to conclude an access agreement within forty-two days of its receipt of a complete access request, unless such period has been expressly extended by the Authority in writing or, where the request is made under regulation 10, the request shall be deemed to have been received by the access provider on the date of grant of the</p>

	<p>authorisation.</p> <p>(2) Failure by an unauthorised provider to comply with subregulation (1) shall constitute a dispute referable to the Authority under regulation 25.</p>
Content of Access agreement	12. Every access agreement shall include prices for access to facilities as well as the technical, operational, billing and planning conditions for access.
Access agreements available	<p>13. (1) The terms and conditions for access contained in the most recent access agreement under which an unauthorised provider is the access provider shall be made available to any other authorised provider requesting access.</p> <p>(2) Each access agreement shall provide for amendment or modification to permit incorporation of the terms and conditions referred to in subregulation (1) and such amendment or modification shall be effected within fourteen days of a request from an access seeker.</p> <p>(3) Failure by an unauthorised provider to comply with subregulation (2), shall constitute a dispute referable to the Authority under regulation 25.</p> <p>(4) For the purposes of this regulation, “access agreement” includes amendments and modifications to such agreement.</p>
Access charges reciprocal	14. Access charges for equivalent access in equivalent circumstances shall be reciprocal between authorised providers .
Attendance by Authority at meetings	<p>15. (1) Every access provider and access seeker shall notify the Authority in a timely manner of every meeting scheduled for the purpose of negotiating access.</p> <p>(2) The Authority may, upon the giving of twenty four hours prior written notice to the relevant concessionaires, attend any meeting referred to in subregulation (1) in the capacity of observer only.</p>
Submission of access agreements	<p>16. (1) Every access agreement or modification thereto shall be submitted to the Authority within fourteen days of signature by the parties.</p> <p>(2) The Authority may, within twenty-one days of the submission of an access agreement or modification thereto, serve notice on the parties to the agreement requiring the access provider’s compliance with regulation 18.</p> <p>(3) Compliance referred to in subregulation (2) shall be effected by the access provider within fourteen days of service of notice from the Authority and a modified agreement shall be resubmitted to the Authority for its consideration.</p>
Publication of access agreement	17. Every access agreement shall be published by the Authority on the website of the Authority within fourteen days of its acceptance by the Authority.
Disputes	17A(1) Where a dispute arises between negotiating parties, it shall be referred to the dispute resolution procedures under PART VII of these regulations.

	<p>PART IIIA</p> <p>REFERENCE ACCESS OFFER</p>
Requirement to provide a Reference Access to Facilities Offer	<p>17B.(1) Upon a request by the Authority, an authorised provider operating a public telecommunications network shall prepare, publish and maintain a RAO substantially in the indicative form published by the Authority on its website or in such other manner as the Authority may determine.</p> <p>(2) The basis for a request by the Authority shall be—</p> <ul style="list-style-type: none"> (a) the extent to which the authorised provider will be required by other authorised providers to provide access to its facilities; (b) the authorised provider’s control over essential facilities; and (c) the extent to which the authorised provider has failed to promptly negotiate access to facilities, or has unjustifiably denied access to its facilities in the past.
Contents of a RAO	<p>17C. A RAO shall contain the following information—</p> <ul style="list-style-type: none"> (a) that the location, address, and technical and operational parameters of the relevant facility will be made available pursuant to regulations 7 and 8 to the access seeker upon its request; (b) the elements of the provision of access service and any adjunct elements associated with the provision of access; (c) rates or pricing formulae for each facility that the access provider is required to offer pursuant to the Act, the regulations, or standards and guidelines established by the Authority from time to time; (d) other commercial terms and conditions applicable to the offering of the elements of the access service.
Submission of RAO	<p>17D (1) An authorised provider who prepares a RAO under regulation 17A shall do so within sixty days of notice by the Authority to do so and annually thereafter and shall submit its reference access offer to the Authority for approval.</p> <p>(2) The Authority may, with reasons, require the access provider to effect changes to the reference access offer prior to the Authority’s grant of approval and the access provider shall effect the necessary changes and resubmit the reference access offer to the Authority for approval within twenty-one days of receipt of the Authority’s request.</p>
Requirement to effect changes to the Reference Access Offer	
Publication of RAO	<p>17E. (1) Within fourteen days of receipt of approval by the Authority an</p>

	<p>access provider shall publish its reference access offer by –</p> <ul style="list-style-type: none"> a) posting on its website; and b) making printed and electronic copies available to any authorised provider or applicant for a concession, upon request. <p>(2) An access provider and an access seeker shall ensure that any access agreement concluded between them is consistent with the reference access offer.</p>
Amendment of RAO	<p>17F. Where a decision arising from a dispute resolution process modifies the terms and conditions upon which access to facilities shall be offered, an access provider shall within twenty-one days’ notice from the Authority, amend its reference access offer to comply with the decision and submit the amended reference access offer to the Authority for approval.</p>
	<p>PART IV COMMERCIAL ARRANGEMENTS</p>
Basis of access charges	<p>18. (1) An unauthorised provider shall set access rates based on its costs determined in accordance with:</p> <ul style="list-style-type: none"> (i) such costing models or formulae as determined by the Authority; (ii) an established costing methodology as determined and implemented by the Authority from time to time. <p>(2) Where the relevant data for the establishment of the costing methodologies, models or formulae are unavailable within a reasonable time, the authorised provider may set access rates in accordance with the established costing methodology with reference to such costing benchmarks, as determined by the Authority, that comport with internationally accepted standards for such benchmarks.</p> <p>(3) An unauthorised provider shall within twenty-eight days of a written request from the Authority, unless this period is expressly extended by the Authority in writing, supply to the Authority such data as the Authority may require, for the purpose of determining that its access rates are in accordance with this regulation.</p>
	<p>PART V IMPLEMENTATION OF ACCESS AGREEMENTS</p>
Access agreement to stipulate time for access	<p>19. (1) Every access agreement shall stipulate a period not exceeding twenty-eight days within which access shall be effected except with the prior approval of the Authority in writing.</p> <p>(2) Notwithstanding subregulation (1), the Authority may upon written application of an unauthorised provider extend the period referred to in</p>

	subregulation (1).
Effecting access	20. (1) Anauthorised provider shall use all reasonable endeavours to effect access within twenty-eight days of concluding the relevant access agreement, or such longer period as may be approved by the Authority in accordance with regulation.
No deprivation of access	21. An access provider shall not deprive an access seeker of any benefit granted under their access agreement except in accordance with the access agreement or with the prior written consent of the Authority.
Costs of modification recoverable	22. Where access requires modification of the facilities of an access provider, the reasonably incurred costs of such modification shall be recoverable from the access seeker, such costs to be determined in the manner prescribed by the Authority.
	<p>PART VI</p> <p>DENIAL OF ACCESS REQUESTS</p>
Grounds for denial of access	<p>23. (1) Anauthorised provider shall not deny a request for access at a particular location except for insufficient capacity, or for reasons of safety, security, reliability or difficulty of a technical or engineering nature.</p> <p>(2) Every authorised provider who denies a request for access shall notify the access seeker and the Authority within fourteen days of receipt of the access request.</p> <p>(3) Upon written request by the Authority, the access provider shall provide justification for the denial, to the Authority in writing within seven days of receipt of the request.</p> <p>(4) The Authority may—</p> <ul style="list-style-type: none"> (a) request of the access provider, the production of any records or documents and copies thereof; and (b) with the agreement of the access provider, enter the premises of the access provider and inspect any or all relevant facilities, to determine the reasonableness of any denial of access. <p>(5) Where the Authority deems that the access has been unreasonably withheld, the Authority may instruct the access provider in writing to make arrangements for access within a time specified by the Authority.</p> <p>(6) An instruction pursuant to subregulation (5)—</p> <ul style="list-style-type: none"> (a) shall include such interim terms and conditions for access as the Authority may consider appropriate and be applicable until an access agreement is concluded between the parties; (b) may request an authorised provider to modify its facilities to provide or facilitate access. <p>(7) In acting under subregulation (6), the Authority shall take into account</p>

	<p>any relevant factors which may include but are not limited to the extent to which the access requested impacts on the networks or services of the access seeker, the availability and cost of alternatives, and the cost of any required modifications.</p> <p>(8) The reasonably incurred costs of a modification shall be—</p> <p>(a) recoverable from the access seeker; and</p> <p>(b) determined in accordance with such methodology as the Authority may establish.</p>
	<p>PART VII DISPUTE RESOLUTION</p>
Request for consultation and guidance	24. Where a dispute arises with respect to any matter respecting access, the matter may, on the agreement of both parties, be referred to the Authority for consultation and guidance prior to either party submitting the matter to the Authority as a dispute.
Referral of dispute in accordance with dispute resolution procedures	25. Save as provided in regulation 24, every dispute regarding access shall be submitted to the Authority for resolution in accordance with the dispute resolution process established by the Authority under section 82 of the Act.
Interim arrangements	<p>26. (1) The Authority may, in relation to any dispute referred to under these Regulations, direct that the parties implement such interim arrangement for access as the Authority considers appropriate having regard to the nature of the dispute.</p> <p>(2) An interim arrangement may speak to prices and include any other term or condition for access whether or not the Authority considers submissions made by the parties subject to such times for submissions as the Authority shall establish.</p> <p>(3) An interim arrangement shall be instituted by the parties within a period determined by the Authority and shall remain in force until such time as the dispute has been resolved.</p>
Effective date of interim arrangement	<p>27. The final resolution of a dispute in respect of which an interim arrangement was implemented shall—</p> <p>(a) be effective on the date on which the interim arrangement was effected; and</p> <p>(b) include provisions for compensation to any party that has suffered any loss and damage as a result of the arrangement.</p>
Penalty for breach of regulations	28. An authorised provider who contravenes any provision of these Regulations commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and in the case of a continuing offence to a further fine of ten thousand dollars for each day that the offence continues after conviction.
	<p>FIRST SCHEDULE NON-DISCLOSURE AGREEMENT</p>

Regulations 2 and 8(7)

THIS AGREEMENT is made this..... day of.....

Between

[INSERT NAME OF THE **AUTHORISED PROVIDER SEEKING ACCESS**] a company incorporated under the laws of [INSERT PLACE OF INCORPORATION] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS] (“Access Seeker”)

And

[INSERT NAME OF THE **AUTHORISED PROVIDER PROVIDING ACCESS**], a company incorporated under the laws of [INSERT PLACE OF INCORPORATION] whose registered office is at [INSERT REGISTERED OFFICE ADDRESS] (“Access Provider”)

Each a “Party” and collectively the “Parties”.

WHEREAS the Parties are discussing certain matters in relation to the provision of services by **Access Provider** to **Access Seeker** and by **Access Seeker** to **Access Provider** which may require each Party to disclose certain proprietary, secret or confidential information to the other Party; and

Whereas the Party disclosing information shall hereinafter be referred to as the “Disclosing Party” and the Party receiving such information shall hereinafter be referred to as the “Receiving Party”.

Now, therefore in consideration of the premise and the mutual covenants contained in this Agreement, the Parties hereto agree as follows:

1. DEFINITIONS

“Confidential Information” as referred to in this Agreement means the business, commercial, economic, financial, operational, technical and planning information and data disclosed to the Receiving Party by the Disclosing Party during the discussions whether in written, oral or in machine-readable or representational form including this Agreement, communicated to the Receiving Party, acquired by the Receiving Party from the Disclosing Party, prepared by the Receiving Party from or in connection with any of the above information or which contain or are based in whole or in part upon such information to the extent it includes or is derived from such information. (For the avoidance of doubt, this Agreement apply to all such information whether disclosed or prepared before or after the date of this Agreement);

“the Discussions” means any discussions relating to the Business Purpose or constituting advice in respect of it;

“the Business Purpose” means the objective and/or intention of agreeing suitable terms for the provision of services **Access Provider** to **Access Seeker** and by **Access Seeker** to **Access Provider** including but not limited to agreement of terms for an **Access to Facilities or Interconnection** agreement.

2. DISCLOSURE OF INFORMATION

The Parties acknowledge that the Confidential Information is a valuable asset belonging to the Disclosing Party. Except as expressly provided for in this Agreement, the Parties agree that they will not during or after the term of this Agreement disclose the Confidential Information of the other Party to any person, firm, corporation, association or any other entity for any reason or purpose whatsoever without the prior written consent of the Disclosing Party. Notwithstanding the above, the Parties agree the Confidential Information may be disclosed to their agents, professional advisers and associated companies (associated companies means a subsidiary or holding company of a Party or another subsidiary of such a holding company) strictly for the Business Purpose provided that such agents, professional advisers and companies have a need to know such information, and agree to comply with the obligations as contained herein. The Receiving Party shall procure that such persons comply with the undertakings and terms of this Agreement as if such persons were made direct parties to it and do not disclose the Confidential Information

further. The Parties further agree that they shall not utilise, employ, exploit or in any other manner whatsoever use the Confidential Information disclosed by the other Party for any purpose other than the Business Purpose without the prior express written consent of the Disclosing Party, including, but not limited to, for purposes of competing in any way with the other party or any of its subsidiaries or affiliates.

3. TITLE

All Confidential Information is acknowledged by the Receiving Party to be the property of the Disclosing Party and the disclosure of the Confidential Information shall not be deemed to confer any rights to that Confidential Information on the Receiving Party.

4. RESTRICTIONS ON DISCLOSURE AND USE OF THE CONFIDENTIAL INFORMATION

The Receiving Party will restrict the possession, knowledge and use of Confidential Information to the officers, employees, agents, and professional advisers of the Receiving Party who have a need to know Confidential Information for the Business Purpose. The Receiving Party will not use the Confidential Information other than for the Business Purpose. Nothing in this Agreement shall transfer to the Receiving Party any right or interest whatsoever in any intellectual property belonging to the Disclosing Party.

5. STANDARD OF CARE

The Parties agree that they shall protect the Confidential Information of the other Party using not less than the same standard of care that each party applies to its own proprietary, secret or Confidential Information and that the Confidential Information shall be stored and handled in such a way as to prevent unauthorised disclosure. Further, in the standard of care applied, proper account will be taken, where applicable, of the fact that the Confidential Information relates in any way to a company which is publicly traded.

6. RETURN OF CONFIDENTIAL INFORMATION

The Disclosing Party may request in writing at any time that any Confidential Information disclosed pursuant to the terms of this Agreement and any copies thereof be returned, or in the case of machine-readable or electronic information be permanently erased, with a written statement to the effect that upon such return the Receiving Party has not knowingly retained in its possession or under its control, either directly or indirectly, any Confidential Information or copies thereof and the Receiving Party shall comply with any such request within seven days of receipt of such request.

7. EXCLUDED INFORMATION

The obligations pursuant to this Agreement shall not apply to any information that—

- (a) is in the possession of the Receiving Party prior to receipt from the Disclosing Party;
- (b) is or becomes publicly known, otherwise than as a consequence of a breach of this Agreement;
- (c) is developed independently by the Receiving Party;
- (d) is disclosed by the Receiving Party to the Telecommunications Authority of Trinidad and Tobago;
- (e) is disclosed by the Receiving Party to satisfy a legal demand by a competent court of law or governmental body (“Government Authorities”) having jurisdiction over the parties, or valid legal requirements of any applicable stock exchange, provided however that in these circumstances the Receiving Party shall advise the Disclosing Party prior to disclosure so that the Disclosing Party has an opportunity to defend, limit or protect against such production or disclosure; provided further that the Receiving Party will disclose only that portion of the Confidential Information which is legally required to be disclosed and the Receiving Party will exercise its reasonable efforts to obtain a protective order or other reliable assurance from such Government Authorities or stock exchange that confidential treatment will be accorded to any Confidential Information required to be disclosed;
- (f) is disclosed to a third party pursuant to written authorization from the Disclosing Party;
- (g) is received from a third party without similar restrictions and without breach of this Agreement.

8. INDEPENDENT DEVELOPMENT

The Disclosing Party acknowledges that the Receiving Party may currently or in the future be

developing information internally, or receiving information from other parties that is similar to the Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or agreement that the Receiving Party will not develop or have developed for its products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information, provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development.

9. TERM

This Agreement is intended to cover Confidential Information disclosed or received by either Party prior or subsequent to the date of this Agreement. Unless otherwise earlier terminated, this Agreement shall remain in effect for five years from the date provided, however, that each Party's obligations with respect to the other Party's Confidential Information disclosed or received prior to termination or expiration will survive for ten additional years following the expiration or termination of this Agreement.

10. PUBLIC ANNOUNCEMENTS

The Parties shall maintain in strict confidence and not disclose publicly or to any third party, the substance of any discussions or negotiations between them, the terms of any proposed arrangements or agreements, or any other information relating thereto unless it has first consulted the other Party and obtained its written consent. The Parties agree that each shall not, and shall not permit any of its affiliates, subsidiaries, persons, or other entities or their professional advisers to make any public announcements about the substance of any discussions regarding such arrangements or agreements and any other business and operating plans being discussed or negotiated, whether in the form of press release or otherwise, without first consulting with the other Party and obtaining its written consent.

11. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other that it is a corporation duly organised and validly existing in the jurisdiction of its incorporation. Each Party represents that it has full corporate power and authority to enter into this Agreement and to do all things necessary for the performance of this Agreement.

12. ADDITIONAL ACTION

Each Party to this Agreement shall execute and deliver such other documents and do such other acts and things as may be necessary or desirable to carry out the terms, provisions and purposes of this Agreement.

13. AMENDMENTS

No amendment, interpretation or waiver of any of the provisions of this Agreement shall be effective unless made in writing and signed by the Parties to this Agreement.

14. ENFORCEMENT

No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege. The Parties agree that the Disclosing Party would be irreparably injured by a breach of this Agreement by the Receiving Party and that the Disclosing Party shall be entitled to equitable relief, including by way of injunction and specific performance in the event of any breach of this Agreement. Such remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

15. HEADINGS

The headings of paragraphs are used for convenience only and shall not affect the meaning or construction of the contents of this Agreement.

16. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements between the Parties, whether written or oral, with respect to the subject matter of this Agreement.

17. GOVERNING LAW

This Agreement and the relationships of the Parties in connection with the subject matter of this Agreement shall be governed by and constructed in accordance with the laws of Trinidad and Tobago and the Parties agree that any dispute hereunder shall be referred to the Telecommunications Authority of Trinidad and Tobago in accordance with the provisions of the Telecommunications Act, 2001.

18. NOTICES

Any notice or other communication required to be given or sent hereunder shall be in writing and shall be delivered personally, sent by prepaid certified or registered post (airmail if overseas) with written receipt requested or sent by international courier to the Party concerned at its address given below in this Agreement or such other address as the Party concerned shall have notified in accordance with this clause to the other Party with a copy sent by facsimile at the number below or such other number as notified from time to time in accordance with this clause. Any such notice shall be deemed to be served and received—

(a) if left at any such address, at the time when it is so left;

(b) if sent by post, on the seventh day following the day of posting;

(c) if sent by international courier, on the fourth day following the day of placing it with the relevant courier service.

The initial addresses and facsimile numbers of the Parties hereto for the purposes of this Agreement are as follows:

Access Seeker: [INSERT ACCESS SEEKER'S ADDRESS]

Access Provider: [INSERT ACCESS PROVIDER'S ADDRESS]

19. COUNTERPARTS

This Agreement may be executed in counterparts, all of which shall constitute one agreement, and each such counterpart shall be deemed to have been made, executed and delivered on the date set out at the head of this Agreement, without regard to the dates or times when such counterparts may actually have been made, executed or delivered.

20. SEVERABILITY

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement. If any provision is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, that provision shall be divisible from this Agreement and shall be deemed to be deleted from it and the validity of the remaining provisions shall not be affected and the Agreement shall be carried out as nearly as possible according to its original terms and intent. If such deletion materially affects the interpretation of this Agreement, the parties shall use their best endeavours to negotiate in good faith with a view to agreeing a substitute provision as closely as possible reflecting the commercial intention of the parties.

21. EXPLORATORY DISCUSSION NOT BINDING

The Parties agree that this Agreement, continuing discussions, future exchange of Confidential Information and non-confidential information, past or future correspondence (including without limitation, correspondence indicating interest or intent) and other communications between the Parties shall not commit either Party to continue discussions or negotiate or be legally binding as an informal agreement or agreement to agree to a potential business relationship. The only way the Parties shall be bound to a business relationship, if at all, shall be by a mutually satisfactory definitive written agreement signed by the Parties. Any research and development, prototyping, or other action or expense which either Party takes or incurs in anticipation that a business relationship will be consummated shall be entirely at the acting Party's risk and expenses and shall not impose any liability on any other party.

22. SUCCESSORS AND ASSIGNS

References in this Agreement to either Party shall include any successors or assigns of that Party.

23. LIMITED RELATIONSHIP

This Agreement will not create a joint venture, partnership or other formal business relationship or entity of any kind or an obligation to form any such relationship or entity. Each Party will act as an

	<p>independent contractor and not as an agent of the other Party for any purpose and neither will have the authority to bind the other.</p> <p>24. CUMULATIVE OBLIGATIONS Each Party's obligations hereunder are in addition to and not exclusive of any and all of its other obligations and duties to the other Party.</p> <p>In Witness Whereof the Parties have caused their duly authorized representatives to execute this Agreement as of the date set out at the head of this Agreement.</p> <p>For and on behalf of Access Seeker By: _____ Name: _____ Title: _____</p> <p>For and on behalf of Access Provider By: _____ Name: _____ Title: _____</p>
	<p style="text-align: center;">SECOND SCHEDULE</p> <p style="text-align: center;">PROCEDURE TO BE FOLLOWED IN SEEKING EXEMPTION OF CERTAIN INFORMATION ON THE GROUNDS OF CONFIDENTIALITY OR COMPETITIVE SENSITIVITY UNDER REGULATION 8(4)</p> <p>1. Anauthorised provider seeking to have information exempted shall make a written request to the Authority, copied to the authorised provider requesting the information, not later than seven days before the expiration of the period for supplying the information.</p> <p>2. The authorised provider requesting the information may make representations to the Authority on the request for exemption, such representations to be provided to the Authority within seven days of receipt of the request for exemption.</p> <p>3. The Authority shall notify both interested authorised providers of its determination within twenty-one days of the request. The Authority may include in its determinations such reasonable conditions for the disclosure as it considers appropriate, including the manner of provision of the information, and the time for such provision.</p> <p>4. The Authority shall be entitled to grant an exemption in relation to the whole or part only of the request made.</p>