



**Telecommunications Services  
of Trinidad and Tobago Limited**

**POLE SHARING AGREEMENT**

**BETWEEN**

**TELECOMMUNICATIONS SERVICES OF  
TRINIDAD AND TOBAGO LIMITED**

**AND**

**DIGICEL (TRINIDAD & TOBAGO) LIMITED**

**REPUBLIC OF TRINIDAD AND TOBAGO**

**THIS AGREEMENT** is made this 18<sup>th</sup> day of April 2023 but is effective from the 1<sup>st</sup> day of May 2018 between:

1. **TELECOMMUNICATIONS SERVICES OF TRINIDAD AND TOBAGO LIMITED** a limited liability company incorporated under the Laws of the Republic of Trinidad and Tobago whose registered office is situated at #1 Edward Street, Port of Spain in the Island of Trinidad (“TSTT”) of the One Part; and
2. **DIGICEL (TRINIDAD & TOBAGO) LIMITED** a limited liability company incorporated under the Laws of the Republic of Trinidad and Tobago whose registered office is situated at Third Floor, ANSA Centre, 11C Maraval Road, Port of Spain in the Island of Trinidad (“the Access Seeker”) of the Other Part.

TSTT and the Access Seeker may also be referred to herein individually as “Party” and collectively as “Parties”.

**WHEREAS:**

- A. TSTT is the owner of certain utility poles within Trinidad and Tobago.
- B. The Access Seeker is in occupation of and is utilizing [REDACTED] of TSTT’s poles solely for the purpose of operating its Fibre Optic Network.
- C. The Parties are now desirous of formalizing the terms and conditions of an agreement, as herein contained.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

1. **GRANT OF ACCESS**

TSTT hereby grants to the Access Seeker access and authority to use for the purpose and upon the terms and conditions set out herein and such terms and conditions as may be set out in Schedule hereto, TSTT’s poles now erected or hereafter to be erected by TSTT in Trinidad and Tobago.

## 2. DEFINITIONS

Unless the context otherwise requires the following terms whenever used in this Agreement shall have the following meanings:

- 2.1 “**Agreement**” means this agreement together with any appendices attached hereto, which appendices shall be incorporated into and form part of this Agreement.
- 2.2 “**Apparatus**” means any fittings or assembly of devices including bundled Cables (not to exceed 3.5 inches in diameter) and/or Wires along with their respective fittings and insulators, attached via brackets to TSTT’s poles (as agreed by TSTT) used by the Access Seeker or by TSTT solely for the purpose of connecting cables to TSTT’s poles.
- 2.3 “**Billing Statement**” means the bill which is issued to the Access Seeker by TSTT indicating the monthly charges for the rental of space on TSTT’s poles.
- 2.4 “**Cable**” means any device consisting of one or more metallic or non-metallic strands or fibres used for conveying electric power or electric magnetic signals, radio frequency signals or optical signals from one point to another.
- 2.5 “**Due Date**” means the thirtieth day after the date on the Billing Statement.
- 2.6 “**Fittings**” means devices used to secure or support other equipment or apparatus on a pole.
- 2.7 “**Insulator**” means a device or covering which prevents the passage of an electric current.
- 2.8 “**Material Breach**” means a breach which is serious in the wide sense of having a serious effect on the benefit which the innocent party would otherwise derive from performance of the contract in accordance with its terms – including but not limited to breach by the Access Seeker of the provisions of Article 6 herein.
- 2.9 “**Personnel**” means persons employed by the Parties hereto, their agents and/or contractors.
- 2.10 “**TATT**” means the Telecommunications Authority of Trinidad and Tobago
- 2.11 “**Term**” means the period of time stated in Article 3.
- 2.12 “**T&TEC**” means Trinidad and Tobago Electricity Commission

- 2.13 “Wire” means metal drawn into a thin strand, which may consist of several strands and may be covered or uncovered.
- 2.14 “Working Day” means Monday to Friday between the hours of 8:00 a.m. to 4:00 p.m. and excludes Saturdays, Sundays and public holidays in Trinidad and Tobago.
- 2.14 Headings are for the purpose of convenience only and shall neither be deemed to be part of nor be taken into consideration in the interpretation or construction of this Agreement.
- 2.15 Words importing the singular include the plural and vice versa where the context requires.

3. **COMMENCEMENT AND DURATION**

This Agreement shall commence on the 1<sup>st</sup> May 2018 (“Effective Date”) and shall continue until April 30<sup>th</sup> 2025 unless terminated earlier pursuant to Article 15 hereof.

4. **PURPOSE AND LIMITATION OF ACCESS**

- 4.1 TSTT hereby grants to Access Seeker a non-exclusive license to use TSTT’s poles and the access hereby granted is limited to the use of TSTT’s poles by Access Seeker for the sole purpose of attaching its Apparatus in order to carry out its operations under the concession granted to the Access Seeker by TAITT pursuant to the Telecommunications Act of Trinidad and Tobago or any amendment thereto, the Telecommunications (Access to Facilities) Regulations 2006 (as amended) and subject to the Access Seeker obtaining such other approvals as may be required from time to time to comply with the Laws of Trinidad and Tobago. The Access Seeker is expressly prohibited from attaching or installing signs, notices, advertisements and the like on TSTT’s poles.
- 4.2 It is recognized and agreed between the Parties that this Agreement is intended to constitute the grant of access only and does not confer any tenancy or other estate, right or interest upon the Access Seeker. The ownership of the poles is retained by TSTT subject however to the rights and privileges hereby granted to the Access Seeker and subject to the other provisions of this Agreement.

5. **FINANCIAL PROVISIONS**

- 5.1 For the Period 1<sup>st</sup> May 2018 – 30<sup>th</sup> April 2021 (“Period 1”)

(i) The Parties agree that Access Seeker occupies [REDACTED] poles at monthly rental rate of [REDACTED] per pole.

(ii) [REDACTED]  
[REDACTED]  
[REDACTED]

(iii) [REDACTED] of [REDACTED]  
[REDACTED]

**5.2 For the Period 1<sup>st</sup> May 2021 – 30<sup>th</sup> April 2025 (“Period 2”)**

(i) The rental rate per pole for Period 2 shall be [REDACTED] per pole.

(ii) [REDACTED]  
[REDACTED]  
[REDACTED]

(iii) [REDACTED]  
[REDACTED]

(iv) Subject to the provisions of Article 5.2 (iii) above, Access Seeker shall pay the rental rate for each pole monthly in advance.

**5.3** [REDACTED]  
[REDACTED]

**5.4 Billing Statement**

(i) TSTT shall render to the Access Seeker a Billing Statement on or before the 5<sup>th</sup> day of each month.

(ii) TSTT shall provide such particulars regarding the computation of the amounts referred to in any Billing Statement rendered by TSTT to the Access Seeker as the Access Seeker may reasonably require.

(iii) Billing Statements in respect of the access shall be deemed to be sufficiently served if delivered or addressed either electronically or by prepaid post to the Access Seeker at the address for service in Article 17 hereof.

**5.5 Payments**

All payments to be made to TSTT by the Access Seeker pursuant to any Billing Statements shall be made on or before the Due Date.

**5.6 Overdue Accounts**

If the Access Seeker fails to make any payment which is due under this Agreement to TSTT, then interest shall accrue and be payable by the Access Seeker on such unpaid amounts, at a rate of [REDACTED] per month from the expiration of the Due Date, until such amount inclusive of the accrued interest is received by TSTT.

**5.7 Disputed Billing Statements**

(a) If a dispute arises between TSTT and the Access Seeker as to the amount shown on the Billing Statement, the Access Seeker shall give written notice to TSTT, pursuant to Article 17 hereof, of the amount in dispute within 5 business days after receipt of such Billing Statement and the Access Seeker shall pay to TSTT the undisputed portion of the Billing Statement by the Due Date. A dispute over an amount shall not relieve the Access Seeker from fulfilling any of its obligations under this Agreement.

(b) If the dispute has not been resolved, the Parties shall seek to resolve the dispute pursuant to Article 16 hereof.

**5.8 Payment of Taxes**

The Access Seeker shall be responsible for the payment of Value Added Tax (VAT) and any other governmental or municipal taxes payable to the Government of Trinidad and Tobago in respect of amounts invoiced pursuant to this Agreement.

**5.9 Payments to any Authority**

5.9.1 If at any time, due to Access Seeker's occupation of any of TSTT's poles, TSTT is required to make any payments to any authority whether governmental, local or municipal for or in respect of any poles, erected by it the Access Seeker shall be required to and shall pay in respect of the poles used by the Access Seeker the sum resulting from the apportioned costs being equally divided among TSTT and the authorized users of its poles in addition to the monthly rentals hereinbefore provided.

5.9.2 Where TSTT is notified by any authority of any requirement for it to make any payments pursuant to Sub Clause 5.9.1 above, TSTT will provide Access Seeker with any documentation received from the relevant authority relating to TSTT's obligation to make such payments.

5.10 **Use of the Poles**

The use of each pole shall be deemed to have commenced on the first day of the month in which any Apparatus was affixed to the pole and if such attachment was made on or after the 15<sup>th</sup> day of that month, it shall be deemed to have been attached on the 1<sup>st</sup> day of the following month that the Access Seeker shall have actually made the attachment to such poles. If it is subsequently brought to TSTT's attention that such attachment took place prior to the date recorded, TSTT shall be entitled to bill the Access Seeker retroactively from the date of the attachment.

6. **ACCESS SEEKER'S OBLIGATIONS**

- 6.1 The Access Seeker shall promptly and properly pay the monthly access fee in accordance with Articles 5.2 (i) and 5.2 (iv) above.
- 6.2 The Access Seeker shall use the poles only for the purposes of installing, operating and maintaining the Apparatus of the Access Seeker. The Access Seeker shall ensure that its Apparatus each bear a special visual indicator such as a colour code so that such Apparatus will be easily identifiable from the ground as those of the Access Seeker. The Access Seeker shall seek approval from TSTT prior to implementing and/or changing its visual indicator to ensure that it is unique to the Access Seeker.
- 6.3 Before attaching any Apparatus to any of TSTT's poles or in any way whatsoever working on or in close proximity to TSTT's poles, the Access Seeker must first obtain TSTT's approval and shall notify TSTT in writing of such intention, giving details and specifications of the Apparatus to be attached or other work to be done. TSTT shall within 10 working days from the receipt of such notification give its consent in writing, such consent not to be unreasonably withheld. The Access Seeker shall in like manner notify TSTT in writing of its intention to discontinue the use of the said poles or any of them. All work carried out by the Access Seeker shall be in accordance with the relevant procedures as set out in TSTT's Outside Plant Construction Manual hereto annexed as **Appendix B**.
- 6.4 Where the Access Seeker is running Wires and/or Cables from TSTT's pole to premises to which TSTT's wires have already been attached, the Access Seeker shall arrange its lead-in wires so that they be at least 3 feet or 0.914 m from T&TEC's wires at the point of contact with the premises and a distance of 4.3 m from the 12kV High Voltage main lines.
- 6.5 The Access Seeker's Wires and/or Cables shall be carried on Insulators and/or Fixings compliant with Society of Cable Telecommunications Engineers standards and or modern pure fibre standard and/or recommended best practice approved by TSTT and

shall be so fixed as to be completely and effectively insulated from TSTT's wires to ensure that there is no interference with the efficient operation of TSTT's service.

- 6.6 The Wires and/or Cables shall be attached by brackets to the pole on the field or property side of the poles and shall not be less than the height of 6.0m over roads or 5.0m above property other than roads or 5.0m in positions inaccessible to vehicular traffic.
- 6.7 If the specifications outlined in Article 6.6 above cannot be met because of inadequate clearances provided by or on the relevant pole, then the Access Seeker shall inform TSTT accordingly. TSTT shall where reasonably practicable take the necessary steps to make the appropriate adjustments on the relevant pole to ensure that the specifications set out above at Article 6.6 are maintained, and the costs incurred for the benefit of the Access Seeker shall be for the Access Seeker's account.
- 6.8 The Access Seeker shall not be permitted to drill holes in the concrete and metal poles.
- 6.9 The Access Seeker shall ensure that the required heights as provided in Article 6.6 are maintained and shall take steps to eliminate, avoid or mitigate sagging of the Wires to the minimum industry standard of no more than 300mm from the installation height.
- 6.10 The Access Seeker shall ensure that if using the strand and lashing method of conventional construction that contains conductive materials, that the Telcordia SR1421 Standard for bonding and grounding of plant is applied to achieve resistance of less than 25  $\Omega$  at the ground. The standard requires that #6 gauge ground wire and 5/8 inch thick ground rods are placed at depths of over 8 feet and at intervals of 300m, at ends of plant, and at riser poles.
- 6.11 Wherever the Access Seeker installs Apparatus on TSTT's poles, the Access Seeker shall carry out such structural reinforcements of the poles as may be required by TSTT in accordance with TSTT's standards to ensure that the poles can support the additional load.
- 6.12 The Access Seeker undertakes that it will ensure that when work is being carried out on any poles that its Personnel as well as its vehicles are appropriately identified and/or marked.
- 6.13 The Access Seeker shall ensure that systems are in place to ensure that any work conducted by the Access Seeker's Personnel on TSTT's poles is compliant with safe work practice in accordance with the Occupational Safety and Health Act Chap. 88:08 and any other relevant legislation that maybe in force from time to time.



- 6.14 Where TSTT notifies Access Seeker that TSTT wishes to make constructional alterations to any of its poles or to vary or alter the type or location of any Apparatus thereon, Access Seeker shall at its own expense in every respect move or alter the position of its Apparatus on such poles as directed by TSTT in accordance with the timeframes stipulated at clause 7.9 below as applicable.
- 6.15 Access Seeker shall not be obligated to alter the position of any Apparatus in contravention of any governmental, municipal or other local authority regulations relating to such Apparatus for the time being in force.
- 6.16 Access Seeker shall not be liable for any costs associated with the movement of any Apparatus belonging to any other user of a pole.
- 6.17 Where Access Seeker has received notice from TSTT to move or alter the position of any of Access Seeker's Apparatus on any of TSTT's poles and Access Seeker fails to comply with TSTT's request within the timeframe stipulated in Article 7.9 (a) or (b) below as applicable, and TSTT retains a Contractor to move, alter or remove Access Seeker's Apparatus, Access Seeker shall be liable to pay without dispute to TSTT the cost charged by any Contractor retained by TSTT to move or alter Access Seeker's Wires, Cables, Fittings and/or Apparatus together with TSTT's administrative fee which shall not exceed 10 percent of the fees payable to the Contractor.
- 6.18 The Access Seeker shall take all necessary precautions to ensure that it does not cause any damage to any Apparatus owned by other authorized users which may be attached to or suspended between poles. The Access Seeker shall be responsible for and shall make good to TSTT all loss and/or damage caused by the Access Seeker to the other authorized users' Apparatus and shall indemnify TSTT from and against all actions, proceedings, claims and/or demands including all costs, charges and expenses of and incidental to any such actions, proceedings, claims and/or demands in respect of or on account or as a result of any loss caused by the Access Seeker and which is suffered by any other authorized user of the said poles.
- 6.19 The Access Seeker shall ensure that the Cable(s) and all signals transmitted or amplified therein shall not cause interference to or have any deleterious effect on TSTT's customers or the service of any other authorized users of TSTT's poles. In the event of being notified of such interference the Access Seeker shall, as soon as is commercially practicable, but in any event no later than within 5 working days correct the problems or remove the offending Cable if such Cable or signals transmitted or amplified are found to be the cause of the interference to or have a deleterious effect on TSTT's customers or the service of any other authorized users of TSTT's poles.

- 6.20 The Access Seeker shall notify TSTT at least 14 days prior to its constructing and/or reconstructing any Cable(s). Such notification shall include the Access Seeker's standard maps and/or drawings. The Access Seeker and TSTT shall agree on all alternative locations of the Access Seeker's amplifiers and distribution boxes if the proposed locations are likely to impede TSTT's and/or other authorized users' access to their respective Apparatus.
- 6.21 Subject to Articles 8 and 9 The Access Seeker shall be responsible for and shall make good to TSTT all loss and/or damage occasioned to TSTT's poles and/or Apparatus by the Access Seeker or its Personnel and the Access Seeker shall at all times indemnify TSTT from and against all actions proceedings claims and/or demands in respect or on account or as a result of the Apparatus of the Access Seeker being attached to the poles of TSTT and from and against all costs charges and expenses of and incidental to any such actions proceedings claims and/or demands.
- 6.22 The Access Seeker shall be responsible for and shall make good to TSTT all loss and/or damage to the poles and/or Apparatus of TSTT resulting from damage done by third parties to the poles and/or Apparatus of TSTT where such damage done by the third party is caused by reason of the negligence of the Access Seeker in properly maintaining its Apparatus attached to TSTT's poles pursuant to this Agreement.
- 6.23 The Access Seeker shall always maintain during the term of this Agreement all necessary approvals from all relevant government agencies required to comply with the Laws of Trinidad and Tobago.
- 6.24 Subject to Article 9.19 above, where the addition of Access Seeker's cables to any of TSTT's poles, continues to cause interference and causes TSTT and/or other authorized users of TSTT's poles to alter their transmission and/or distribution system to accommodate the Access Seeker's Cables, the Access Seeker shall be liable to pay and indemnify TSTT for itself and in respect of other authorized users against any cost incurred through such alteration to the transmission and/or distribution system of TSTT and other authorized users.
- 6.25 Prior to the undertaking of any construction and/or major maintenance work programme on any Cable(s) the Access Seeker shall submit its proposal in writing to TSTT for its approval of the work programme to be undertaken. TSTT shall within 14 working days but not to exceed 28 working days from the receipt of such work programme proposal give its approval to Access Seeker in writing, such approval not to be unreasonably withheld.
- 6.26 The Access Seeker shall provide TSTT with detailed progress reports (in the format of the progress report template hereto attached as **Appendix A**) of any construction work

programmes and/or major maintenance work programmes being undertaken. Access Seeker shall thereafter provide TSTT with a detailed report with particulars of each Apparatus inclusive but not limited to the date of each attachment together with its location according to street and pole locations within 14 days of the completion of the works referred to at Article 6.24 herein.

- 6.27 Concurrent with the signing of this Agreement, the Access Seeker shall submit to TSTT the following:
- 6.27.1 Access Seeker's HSE Policy.
  - 6.27.2 Evidence of completion of requisite training of the Access Seeker's Personnel to work on TSTT's utility poles. The Access Seeker shall submit to TSTT details of its training programmes for its Personnel. TSTT reserves the right to request additional training as it may deem necessary. All training shall be conducted at the Access Seeker's expense.
  - 6.27.3 The Access Seeker's Emergency Response Policy.
- 6.28 The Access Seeker shall take every reasonable precaution to ensure that all persons employed by it to perform works on TSTT's poles shall be efficient, sober and honest, and in particular shall not be under the influence of prohibited drugs or substances and/or alcohol.
- 6.29 The Access Seeker shall submit to TSTT a list of personnel who are required to work on TSTT's poles and any subsequent amendments thereof. The Access Seeker shall ensure that all persons working on TSTT's poles must wear identification cards (ID) with the following information:
- 6.29.1 Employee's Name
  - 6.29.2 Access Seeker's Logo
- 6.30 The Access Seeker shall ensure that anyone carrying out work on TSTT's poles is safety-oriented and trained (as per Article 6.27.2 above) in the following areas:
- 6.30.1 Hazard awareness
  - 6.30.2 Job planning and tailboard conference, Job Hazard Analysis (JHA)
  - 6.30.3 Use of protective clothing
- 6.31 The Access Seeker shall also ensure that the following safety practices are adhered to:
- 6.31.1 Personal Protective Equipment (PPE) including helmets, boots, gloves, harnesses and linesmen's belts are worn at all times while working on TSTT's poles.
  - 6.31.2 Fiberglass ladders or aerial trucks shall be used when working on TSTT's poles. For the avoidance of doubt, the use of metal ladders is prohibited.

- 6.31.3 A JHA worksheet must be completed by the Access Seeker's personnel prior to the start of any job.
- 6.31.4 Proper signs and cones must be installed prior to the start of the job.
- 6.31.5 (a) Testing of poles, guys and associated equipment to ensure that there is no voltage and that work can be safely executed.  
(b) Testing of poles to ensure that they are structurally sound before ascending
- 6.31.6 Where a pole is found to be structurally unsound pursuant to Article 6.31.5 (b) above, Access Seeker shall promptly report the defect to TSTT in accordance with the Article 6.33 below.
- 6.31.7 TSTT's representative may conduct an audit of the Access Seeker's processes and personnel where Access Seeker is carrying out works on any of TSTT's poles at any time and Access Seeker's personnel is required to give their full co-operation to TSTT's representative at all times.
- 6.31.8 TSTT reserves the right to stop any work being conducted by the Access Seeker on any of its poles should Access Seeker fail to comply with the provisions of this Article 6.31. Should this occur, the Access Seeker shall be notified in writing by TSTT of any breaches complained of. The Access Seeker shall be permitted to resume its work on the poles of TSTT once such breach has been regularized to TSTT's satisfaction.
- 6.32 The Access Seeker is required to provide TSTT with the following categories of 24 hour contacts:
- (a) a Service Operation Centre Number; and
  - (b) Mobile and email Contact with a Senior Operations Officer
- 6.33 The Access Seeker shall as soon as practicable but no later than three (3) hours after an occurrence, report any major accidents, injuries or dangerous occurrences which may occur while work is being carried out on TSTT's poles to TSTT's Network Surveillance Centre at 625-3000. A full written report of major accidents, injuries or dangerous occurrences must be submitted by the Access Seeker to TSTT within forty-48 hours of occurrence.
- 6.34 TSTT reserves the right to request the immediate removal (permanent or temporary) of any of the Access Seeker's Personnel working on any of TSTT's poles if such Personnel are found in breach of any obligations or requirements of the Access Seeker pursuant to this Agreement or any statutory requirements, rules and regulations or who are found to be negligent in the performance of their duties pursuant to this Agreement.

## **7. TSTT's RIGHTS AND OBLIGATIONS**

- 7.1 TSTT shall allow the Access Seeker to use its poles on the terms and conditions herein.
- 7.2 TSTT shall independently audit the Access Seeker's Apparatus from time to time and in addition to TSTT's independent audits, the Parties shall conduct a joint audit of the number of poles and Apparatus in use by Access Seeker at least once per year.
- 7.3 If TSTT detects on any of its poles any Apparatus attached by the Access Seeker in contravention of Article 6.3 above, such attachments shall be deemed to be made six months prior to the date of detection and TSTT shall issue a retroactive Billing Statement to the Access Seeker for the 6-month period for each pole where unauthorized attachments of Apparatus were identified.
- 7.4 Article 7.3 above notwithstanding, should TSTT be in possession of evidence to show that any of Access Seeker's Apparatus were placed on any of TSTT's poles for a period exceeding six months before detection, TSTT reserves the right to issue a retroactive Billing Statement for the actual period of installation of the Apparatus as supported by the evidence in TSTT's possession.
- 7.5 Where TSTT detects any unauthorized Apparatus belonging to Access Seeker on any of its poles, TSTT shall notify the Access Seeker of its discovery and Access Seeker shall have 14 working days from the date of the notice to disprove TSTT's findings. Where the Access Seeker fails to disprove TSTT's findings, TSTT shall bill Access Seeker in accordance with Articles 7.3 or 7.4 as applicable.
- 7.6 TSTT shall acknowledge in writing receipt of the notice, details and specification for work to be carried out on its poles, as submitted by the Access Seeker pursuant to Articles 6.24 and 6.3 herein within 14 working days of receipt of same from the Access Seeker. TSTT may provide a response to the Access Seeker in writing within 21 working days but no more than 28 working days from the date of acknowledgment of the receipt of such work programme.
- 7.7 TSTT warrants that it will take all reasonable measures to prevent damage to or the destruction of the Access Seeker's Apparatus attached to TSTT's poles by TSTT's Personnel. However, in the event of any damage to the Access Seeker's Apparatus attached to TSTT's poles resulting from the acts or omission of TSTT's Personnel or resulting from the breach by TSTT of the terms of this Agreement, the Access Seeker shall notify TSTT immediately upon the discovery of such damage indicating its intention to claim the cost of the damage. The Access Seeker will undertake all necessary repairs/replacements of its Apparatus at its own cost and claim from TSTT the demonstrated cost of such repairs/replacements, such cost to be paid by TSTT to the Access Seeker within 30 days of the date of the Access Seeker's invoice.

7.8 Notwithstanding anything herein contained and to the contrary it shall be lawful for TSTT to call upon the Access Seeker to remove or alter any Apparatus attached by the Access Seeker pursuant to the provisions of this Agreement which would interfere with or render TSTT's performance of its responsibilities impossible. TSTT shall provide the Access Seeker with 21 days written notice of its requirement for the Apparatus of the Access Seeker to be removed or altered.

7.9 TSTT may at any time make constructional alterations to any of its poles or vary or alter the type or location of such Apparatus thereon as follows:

(a) upon giving Access Seeker 5 working days' notice in writing of alterations to be carried out on 10 poles or less.

(b) upon TSTT and Access Seeker agreeing a schedule for alterations to be carried out within a timeframe not to exceed 14 working days for alterations to more than 10 and up to 70 poles.

to enable Access Seeker to move and/or alter the Access Seeker's Apparatus as required. The number of poles to be structurally altered shall not exceed seventy (70) per month.

7.10 In the event that TSTT is required to remove and/or alter the position of the Apparatus of the Access Seeker, TSTT shall under no circumstance be liable for disruption in services provided by the Access Seeker or any direct, indirect, incidental, special, punitive or consequential damages included but not limited to loss profits, loss of use and loss of business opportunity related to such removal and/or alteration.

7.11 TSTT shall ensure as far as possible that wiring, cables and signals transmitted or amplified therein shall not cause undue interference to or have any deleterious effect on the Access Seeker's service to its customers. In the event of any such interference TSTT shall endeavor to correct the problem within 5 days after the receipt of such notification.

7.12 TSTT shall maintain its poles in a safe and serviceable condition and shall replace, reinforce or repair such poles as becomes necessary.

7.13 When replacing its used poles, including poles carrying terminals of aerial cable, underground connection, or transformer equipment, TSTT warrants that the new pole shall as far as practicable be set in the same location which the replaced pole occupied unless special conditions make it necessary or desirable to set it in a different location.

8. **INSURANCE AND INDEMNITY**

- 8.1 The Parties shall obtain and maintain insurance in respect of liability due to damage to property or injury or death of persons.
- 8.2 The Parties shall indemnify each other and hold each other harmless against all losses, claims or expenses (including reasonable attorneys' fees on a full indemnity basis), liabilities or damages incurred by any of the Parties based on or arising in any manner out of or in connection with any breach of or non-observance of the terms of this Agreement.

9. **LIABILITY FOR DAMAGES AND LIMITATION OF LIABILITY**

- 9.1 The Parties must exercise reasonable precautions to avoid damage to each other's Apparatus and other third-party Apparatus.
- 9.2 If any loss or damage is suffered by any person as a result of or in relation to the use of TSTT's poles:
- 9.2.1 each Party shall be liable for all loss, damage or injury to person caused by its negligence or the negligence of its servants, contractors, and/or agents and employees; and
- 9.2.2 each Party shall be liable for all loss or injury to its own employees, agents or contractors that is caused by the negligence of its own employee, agent or contractor or that are due to causes which cannot be traced to the negligence of the other Party.
- 9.3 All claims for loss or damages suffered by any person, other than a Party to this Agreement and the owners of third-party Apparatus, arising hereunder that are asserted against or affect the Parties and which are due to causes which cannot be traced to the negligence of a specific Party are to be dealt with by the Parties on the following basis:
- 9.3.1 Any Party who receives notice of a claim whether in the form of court document or by correspondence shall immediately notify the other Party of such service.
- 9.3.2 Each Party to this Agreement is entitled to be separately represented at its own costs and expenses and neither Party is authorized to settle, compromise or in any way represent the interests of the other Party without its written consent.

- 9.3.3 In any case where the claimant is willing to settle any such claim upon terms acceptable to one Party but not the other, the Party to which the settlement is acceptable may, at its election, pay to the other Party ½ of the amount of the proposed settlement and thereupon the other Party shall be bound to protect and indemnify the Party making such payment from all further liability and expense on account of such claim; however, if the other Party is wholly or partly successful in any ensuing litigation of such claim, the amount paid by the first Party or a proportionate part, as the case may be, shall be refunded to the Party who accepted the settlement.
- 9.3.4 Any liability assumed by the Parties or to which the Parties may be adjudged to be subject by a Court of competent jurisdiction may, in addition to the amounts paid to the claimant, include all reasonable costs, legal expenses and disbursements.
- 9.4 Subject to Article 9.2.2, if any damage or injury is caused to any Apparatus or to the person or property of any third party by the Access Seeker or TSTT as a result of the negligence of the respective Party's agents, contractors or servants during the execution of any works, then the Party responsible for such damage shall pay all reasonable costs incurred by the injured party or parties in treating the injury or repairing and restoring the Apparatus and/or property.
- 9.5 If any damage is caused to the Access Seeker's Apparatus, and property by TSTT or TSTT's employees, agents, contractors or servants, then TSTT shall reimburse the Access Seeker for all reasonable costs incurred by the Access Seeker to repair and restore the damaged Apparatus and property; but only if within 7 days after becoming aware of the damage that such damage was occasioned by TSTT, the Access Seeker provides sufficient proof (in TSTT's discretion) to TSTT including a written report of the damage sustained together with dated photographs of the damage sustained. Where TSTT determines that it is responsible for any such damage, all such costs are to be offset from the access fee due hereunder except where there are outstanding costs owed by TSTT after the expiration of this Agreement, then TSTT shall reimburse the Access Seeker such costs within 30 days after receipt of the invoice for such costs.
- 9.6 Neither Party to this Agreement shall be liable for any loss or damage suffered by the other Party if and to the extent that such loss or damage is not attributable to the acts, omissions or negligence of such Party, its employees, agents, contractors or servants.
- 9.7 Neither Party to this Agreement shall be liable for any loss, cost, damages, fatal or personal injury or expense to the other, its employees, servants and/or agents occasioned by the actions of a third party or by Force Majeure provided that each Party



shall make every reasonable effort to mitigate the effect or remedy any defect in a timely manner.

- 9.8 The Parties expressly exclude liability for any indirect, incidental or consequential loss or damage including but not limited to loss of profits, business, revenue, goodwill or anticipated savings.
- 9.9 If either Party is to be held liable under this Agreement then that Party's liability hereunder shall not exceed the total fees payable to TSTT by Access Seeker for the Term of this Agreement.

10. **ASSIGNMENT**

The Access Seeker shall not sub-license, assign or part with the benefit of the right granted to use any poles for the purposes aforesaid without the previous written consent of TSTT such consent not to be unreasonably withheld or delayed.

11. **CORRECTIVE WORKS**

- 11.1 In the event that the Access Seeker has begun the removal or re-adjustment requested by TSTT in accordance with Article 6.14 and a force majeure event or other event occurs causing the Access Seeker to be unable to complete the work within the stipulated time, Access Seeker shall inform TSTT as soon as practicable after the occurrence and the Parties shall meet and discuss the matter and mutually agree a reasonable extension of time which TSTT shall grant for the completion of the work.
- 11.2 In case of damage to any poles caused otherwise than by the Access Seeker or Act of God which necessitates a pole being replaced, TSTT shall immediately notify Access Seeker's Service Operation Centre for Access Seeker to remove its Attachments from the pole to be replaced. Where the corrective action is deemed to be an emergency and Access Seeker is unable to remove its Apparatus in the timeframe required by TSTT, TSTT shall carry out the required corrective action in accordance with Article 11.3 below.
- 11.3 In the event of an emergency, where Access Seeker is notified that TSTT requires Access Seeker to transfer the Access Seeker's Apparatus from one of TSTT's poles to another and Access Seeker is unable to do so within the timeframe required by TSTT, TSTT reserves the right to transfer the Access Seeker's Apparatus as required and Access Seeker shall be liable to pay to TSTT the sum charged by any Contractor TSTT may retain for the removal/alteration of the Apparatus together with TSTT's administrative fee which shall not exceed [REDACTED] fees payable to the Contractor and which fees shall not be disputed.

12. **LIQUIDATED DAMAGES**

12.1 Where Access Seeker has been notified by TSTT to remove or adjust its Apparatus on a pole in accordance with Article 6.14 above, and Access Seeker fails to do so in accordance with the time frame stipulated at Article 7.9 (a) or (b) above as applicable, Article 6.17 notwithstanding, Access Seeker shall be liable to pay TSTT liquidated damages as follows:

(a) Commencing on the third day after the expiration of the timeframe stipulated at Article 7.9 (a) or (b) above as applicable in the circumstances, the sum of [REDACTED] per pole per day for each day that the breach continues for up to 60 days. For the avoidance of doubt the sum payable per pole as liquidated damages pursuant to this Article shall not exceed [REDACTED]; and

(b) Where TSTT grants any extension of time under Article 12.2 below, commencing 7 days after the expiration date of such extension the sum of [REDACTED] per pole per day shall apply for each day that the breach continues for up to 60 days. For the avoidance of doubt the sum payable per pole as liquidated damages pursuant to this Article shall not exceed [REDACTED]

12.2 Liquidated damages shall cease to be applied from the date that TSTT receives written notification from the Access Seeker that its Apparatus has been removed. Where TSTT receives no such notification from Access Seeker, liquidated damages shall cease to apply on the expiration of the 60-day period as stipulated in 12.1 (a) and (b) respectively.

12.3 TSTT reserves the right to deduct any liquidated damages due and owing by Access Seeker from any sum rendered for the monthly Access Fee.

12.4 Where Access Seeker has been notified by TSTT to remove or adjust its Apparatus on a pole in accordance with Article 6.14 above and within the timeframes stipulated in Article 7.9 (a) and (b) above as applicable, and Access Seeker fails to comply with TSTT's request within 65 days of such notice where Article 7.9 (a) applies or within 74 days of such notice where Article 7.9 (b) applies, the provisions of Article 6.17 above shall apply. For the avoidance of doubt, any liquidated damages incurred by Access Seeker must be paid to TSTT notwithstanding the application of the provisions of Article 6.17 above.

13. **FORCE MAJEURE**

Neither Party shall be responsible for failure to discharge its obligations hereunder if such failure is due to *Force Majeure*. *Force Majeure* shall mean and include but not be limited to acts of God, epidemics, pandemics, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, landslides, earthquakes, lightning, storms,

floods, washouts, arrests and restraints of governments, civil disturbances, explosions, breakage or accident to machinery, operating equipment or electric lines which may affect the performance of the obligations under this Agreement which are not within the control of TSTT or the Access Seeker, as the case may be, and which by the exercise of due diligence TSTT or the Access Seeker as the case may be shall have been unable to prevent or overcome.

14. **MODIFICATION**

Modification of the terms and conditions of this Agreement may only be made by written agreement between the Parties. Each Party shall give due consideration to any proposals for modification made by the other Party but no failure to agree or any action pursuant to this Article shall give rise to a dispute subject to arbitration in accordance with Article 16 hereof.

15. **TERMINATION**

15.1 If during the Term of this Agreement any of the following circumstances arise:

- (i) The fees payable pursuant to this Agreement are 30 days in arrears whether being formally demanded or not;
- (ii) The Access Seeker has for a period of 30 days after receipt of written notification of the breach by it of any term or condition herein contained, failed to remedy such breach;
- (iii) The Access Seeker executes any assignment for the benefit of or make any composition or arrangement with its creditors; or
- (iv) The Access Seeker goes into receivership and the duly appointed receiver does not give notice to TSTT within 1 month of the date of his appointment of his desire to carry on the business of the Access Seeker

TSTT reserves the right to initiate proceedings to withdraw Access Seeker's access in accordance with Section 3 (c) of Part II of the Telecommunications (Access to Facilities) Regulations 2006 (as amended).

15.2 The Access Seeker may terminate this Agreement at any time by giving TSTT 30 days' written notice of its intention to do so.

15.3 Where this Agreement is terminated pursuant to Article 15.2 above, the Access Seeker shall remove (or cause to be removed) its Apparatus from TSTT's poles within 6 months from the date of termination of this Agreement

- 15.4 If Access Seeker fails to remove its Apparatus from TSTT's poles in accordance with Article 15.3 above, TSTT may effect such removal the cost of which will be for the account of the Access Seeker. For the avoidance of doubt, all Attachments removed by TSTT will be discarded on removal.
- 15.5 In the event of this Agreement being determined whether by notice, breach or otherwise Access Seeker shall immediately pay to TSTT all amounts due under Article 5.1 hereof and any other sums due under the terms of this Agreement.
- 15.6 Access Seeker may terminate this Agreement if TSTT is in default of its obligations under this Agreement and such default continues unresolved for a period of 30 days after TSTT has been served with due notice in writing by the Access Seeker of such default. Access Seeker shall also have the right to pursue all rights it may have against TSTT now or hereafter under the law, subject to the express limitations contained in this Agreement, including, without limitation, the right to seek injunctive relief to prevent TSTT from continuing to default on its obligations under this Agreement.
- 15.7 All covenants, representations, warranties and obligations made in this Agreement shall continue in full force and shall survive termination of this Agreement until Access Seeker removes all its Apparatus from all of TSTT's poles occupied by Access Seeker.

16. **SETTLEMENT OF DISPUTES**

- 16.1 Any question, dispute or difference which may at any time arise between the Access Seeker and TSTT respecting access shall be governed by Part VII of the Telecommunications (Access to Facilities) Regulations 2006 and shall be referred to the Authority in accordance with the dispute resolution process established by the Authority under the Telecommunications Act 2001 or any subsequent amendment to or reenactment thereof.
- 16.2 In the event of any dispute between the Parties in relation to or arising out of this Agreement not relating to access, ("the Dispute") either Party shall serve notice in writing on the other giving particulars of the Dispute and requesting a meeting to attempt to reach an amicable resolution of the Dispute. The Parties agree to negotiate in good faith for the resolution of the Dispute.
- 16.2 If the Parties cannot resolve a Dispute within 30 days, or such a period as the Parties may subsequently agree, then the Dispute shall be referred to a mutually agreed upon mediator who shall be accredited by the Mediation Board of Trinidad and Tobago. Such referral shall not prejudice this Agreement.

- 16.3 If the Parties are unable to resolve any question, dispute or difference in the manner described in Article 16.1 and 16.2 above, the Dispute may be referred to the determination of a single arbitrator in case the Parties can agree upon one or otherwise to two arbitrators, one to be appointed by each Party and such arbitration shall be in accordance with the provisions of the Arbitration Act Chapter 5:01 of the Laws of the Republic of Trinidad and Tobago or any statutory modification or re-enactment thereof for the time being in force. The Parties agree that the decision of the arbitrator(s) shall be final and binding.
- 16.3 All costs associated with Articles 16.2 and 16.3 shall be shared equally between the Parties.
- 16.4 If the Parties are unable to resolve their dispute or difference by arbitration, either Party may refer the matter to the Courts.
- 16.5 Nothing in this Article 16 will prevent either Party from initiating legal proceedings or applying for or obtaining emergency interlocutory relief.

## 17. NOTICES

Notices hereunder shall be in writing and shall be given by either Party to the other either by fax if a confirmation of successful delivery is available, or by hand delivery, or by mailing by prepaid registered mail addressed as specified herein or via electronic mail to the specified address or to such other address as may be substituted by written notice by either Party to the other:

### TSTT:

Telecommunications Services of Trinidad & Tobago Limited  
TSTT House  
#1 Edward Street  
Port of Spain  
Attention: [REDACTED]  
Email address: [REDACTED]

With a copy to:

[REDACTED]  
[REDACTED]  
Email address: [REDACTED]  
carrier.requests@tstt.co.tt

The Access Seeker:

Digicel (Trinidad & Tobago) Limited  
ANSA Centre  
11C Maraval Road  
Port of Spain  
Trinidad  
Attention: [REDACTED]  
Email address: [REDACTED]

With a copy to:

[REDACTED]  
Tel -1 [REDACTED]  
Email address: [REDACTED]

18. **POLE QUERIES**

All queries and notices to TSTT from the Access Seeker or to the Access Seeker from TSTT regarding:

- (a) Apparatus attached to poles;
- (b) modifications to TSTT's poles in order to adhere to statutory requirements; and
- (c) corrective works

shall be sent to the Parties' email address as stated in Article 17 above.

19. **RENEWAL**

19.1 If the Access Seeker is desirous of renewing the Agreement herein granted for a further term from the expiration of the Term hereby granted the Access Seeker must give notice in writing of such desire to TSTT 6 months before expiration of the Term hereby granted.

19.2 Once Access Seeker shall have paid the access fees hereby reserved and performed and observed the several conditions herein contained and on its part to be performed and observed up to the determination of the term hereby created then TSTT must grant such further Access to the Access Seeker for a further term of two years from the expiration of this present Term at a new access fee to be determined by TSTT and agreed to in writing by the Access Seeker before the new access fee takes effect.

19.3 If the Parties fail to agree to the new access fee within 3 months of the commencement of the further Term then the provisions of clause 16 shall apply.

20. **GOVERNING LAW**

The validity, construction and performance of this Agreement and the legal relations between the Parties to this Agreement shall be governed by and construed in accordance with the laws of Trinidad and Tobago and the Parties shall submit themselves to the exclusive jurisdiction of the courts of Trinidad and Tobago.

21. **NON-WAIVER**

No waiver by either Party of any failure or failures on the part of the other to perform any of the terms, conditions and stipulations of this Agreement shall in any circumstances be construed as a waiver of any other failures or of any future or continuing failure or failures whether similar or dissimilar thereto.

22. **CONFIDENTIALITY**

Each Party shall ensure that all information received or obtained as a result of entering into or performing this Agreement which relates to the negotiation, provisions or performance of this Agreement or the other Party or any aspect of such other Party's business or operations, is treated as strictly confidential and is not disclosed, save and except as provided for in Regulations 15 and 16 of the Telecommunications (Access to Facilities) Regulations, 2006 or any subsequent amendment to or reenactment thereof.

23. **COUNTERPARTS**

This Agreement may be executed in counterparts with the same effect as if both parties signed the same document. The counterparts shall be construed together and shall constitute one and the same original Agreement. A signature on this Agreement by one party communicated to the other by electronic transmission, such as PDF, e-mail or facsimile, will constitute execution of this Agreement.

24. **FULL AGREEMENT**

This Agreement constitutes the full agreement between the Parties hereto and no other statements, oral or written made prior to or at the time of the execution of this Agreement shall vary or modify the written terms hereof, and no amendment or modification of or release from any provision herein contained shall be valid or effectual unless same shall be in writing and signed by both Parties specifically stating it is an amendment of this Agreement.

[Signature Page Follows]





**APPENDIX A**  
**PROGRESS REPORT TEMPLATE**

Access Seeker: \_\_\_\_\_

Date: \_\_\_\_\_

Page: \_\_ of \_\_

LN	Town/Village	Street Name	GPS Coordinates		Attachment Qty.	Position on Pole	Planned Attachment Date	Date Attached	Comments
			Latitude	Longitude					
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									

ACCESS SEEKER \_\_\_\_\_

NAME OF OFFICER \_\_\_\_\_

POSITION \_\_\_\_\_

OCCUPIER: NAME OF OFFICER \_\_\_\_\_

POSITION \_\_\_\_\_

DATE \_\_\_\_\_

APPENDIX B  
TSTT'S OUTSIDE PLANT CONSTRUCTION MANUAL