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**ATTACHMENT B**

**AGREEMENT FOR THE  
PROVISION OF  
MOBILE TO MOBILE  
TERMINATING ACCESS SERVICE**

**HUTCHISON 3G AUSTRALIA PTY LIMITED  
(ACN 096 304 620)**

**[INSERT NAME OF ACCESS SEEKER]**

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**THIS AGREEMENT** is signed the            day of 2005

**BETWEEN HUTCHISON 3G AUSTRALIA PTY LIMITED** ACN 096 304 620 of Building A, 207 Pacific Highway, St Leonards, NSW (**H3GA**)

**AND [INSERT NAME] [INSERT ACN] of [INSERT ADDRESS] (*Access Seeker*).**

**THE PARTIES AGREE**

**1. Definitions and interpretation**

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**1.1 Definitions**

In this Agreement, the following words have these meanings unless the contrary intention appears:

**ACCC** refers to the Australian Competition and Consumer Commission.

**ACMA** refers to the Australian Communications and Media Authority.

**Act** means the *Telecommunications Act 1997* (Cth).

**Aggregate Amount** has the same meaning given to that term in clause 12.13(a).

**Billing and Settlement Procedures** means the Billing and Settlement Procedures agreed between the Parties and set out in Schedule 3.

**Billing Dispute** means any communicated difference between the Parties regarding the payment of any of the Fees and Charges.

**Breach Notice** has the same meaning given to that term in clause 13.7.

**Business Day** means a day that is not a Saturday, a Sunday or a day which is lawfully observed as a public holiday in New South Wales.

**Carriage Service** has the same meaning as in section 7 of the Act and includes a proposed Carriage Service.

**Carriage Service Provider** has the same meaning as in section 87 of the Act.

**Carrier** has the same meaning as in section 7 of the Act.

**Carrier Licence** has the same meaning as in section 7 of Act.

**Claim** means any action, claim, suit or demand.

**CLI or Calling Line Identification** means:

- (a) the information generated by the Network capability which identifies and forwards through from one Party's Network to the other Party's Network the calling Number; or
- (b) any other form of caller identification such as a calling card number.

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**Code** means the TAF Telecommunications Access Code as at the date of this Agreement.

**Commencement Date** means the date of this Agreement, or such other date agreed between the Parties in writing.

**Communication** has the same meaning as given to that term by section 7 of the Act and, where the context permits, includes an attempt to establish a communication of the general type defined in the Act (**Communication Attempt**).

**Communication Information** comprises the information to be provided by H3GA to the Access Seeker in accordance with the regulations made from time to time under section 152AR(6) and (7) of the TPA (if applicable) and the billing information identified in Schedule 8 in the form described in Schedule 8.

**Confidential Information** means all information, know-how, ideas, concepts, technology, manufacturing processes, industrial, marketing and commercial knowledge of a confidential nature including the terms of this Agreement (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of H3GA or the Access Seeker (as the case may be), but does not include:

- (a) information which is or becomes part of the public domain (other than through any breach of this Agreement or any other duty of confidentiality);
- (b) information rightfully received by a Party from a third person without the duty of confidentiality being owed by the Party to the third person, except where the Party has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the first mentioned Party; or
- (c) information which has been independently developed by a Party.

**Consequential Loss** includes but is not limited to:

- (a) loss of revenue;
- (b) loss of profit;
- (c) loss of anticipated savings or business;
- (d) loss of data (other than data required to be provided under this Agreement) or goodwill; and
- (e) costs and expenses associated with or incidental to any of the above.

**Content Services** has the same meaning given to that term in section 15 of the Act.

**Designated Communication** means a Communication using the Service.

**Dispute Resolution Procedures** means the procedures for the resolution of disputes between the Parties as detailed in Schedule 6.

**Eligible Service** has the same meaning as given to that term by section 152AL(1) of the TPA.

**Equipment** includes but is not limited to:

- (a) antennas, microwave dishes and satellite dishes;

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- (b) associated transmission equipment, power plant (including standby power), and air conditioning plant;
  - (c) associated feeders, waveguides and waveguide pressuring equipment;
  - (d) related cabling;
  - (e) prefabricated modules, risers or other structures housing any of (a) to (d);
  - (f) cable gantries; and
  - (g) such other equipment as may be specified from time to time and agreed to by the Parties.
  - (h) facilities has the same meaning as given to that term in section 7 of the Act.

**Exchange** means the exchange of a Party to which a customer is directly connected over that Party's Network facilities.

**Fees and Charges** mean the Fees and Charges for the supply of the Service under this Agreement.

**Force Majeure** means any cause which is not reasonably within the control of the Party affected including, but not limited to, acts of God, industrial disputes of any kind (except to the extent that such dispute involves the Party's own employees), war declared or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion or meteor, governmental restraint, expropriation or prohibition (including a competition notice issued to a Party under section 151AL of the TPA), unavailability or delay in availability of software, Equipment or transport, inability or delay in granting or obtaining governmental approvals (other than in respect of external financing), consents, permits, licences or authorities, where, in respect of all such events, the cause is not reasonably within the control of the Party affected.

**Gateway Exchange** means an exchange which:

- (a) provides operational interworking between the Parties' respective switched Networks;
- (b) provides an agreed interface between the signalling, switching, transmission and operations systems of each Party;
- (c) is defined by a unique name or code; and
- (d) supports, or is capable of supporting one or more POIs.

**Information Support** means the information provided by one Party to the other Party under clause 6.

**Intellectual Property or IP** means all rights conferred under statute, common law and equity in and in relation to trade marks, trade names, logos and get up, inventions, patents, designs, copyright, circuit layouts, Confidential Information, know-how and trade secrets and all rights and interests in them or licences to use any of them.

**Interconnect Capacity** means the capacity measured in 2 Mbit/s or other agreed units between a Gateway Exchange and a POI for use in the provision of the Service.

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**Interconnect Conditioning** means the conditioning, equipping and installation of facilities at H3GA's Gateway Exchange to enable the provision of the Services.

**Interconnect Dial Plan** means the ACIF G549 Guideline – 'Interconnection Implementation Plan' or any replacement for that guideline.

**Interconnect ISUP** means the ACIF G500 specification – 'Signalling System No.7 – Interconnection ISUP' or any replacement for that guideline.

**Interconnect Support** means the maintenance and operation of Interconnect Capacity, Network Capacity and the Equipment and facilities in H3GA's Network (including, but not limited to, its Gateway Exchange) to support the provision of Interconnection and the provision of space at a POI.

**Interconnection** means a service for the provision of Interconnect Conditioning, Interconnect Capacity, Network Conditioning and Network Capacity to enable the provision of the Service by H3GA to the Access Seeker in order that the Access Seeker can provide Carriage Services and/or Content Services.

**Listed Carriage Service** has the same meaning as given to that term by section 16 of the Act.

**Minister** means the Minister administering Part XIB and Part XIC of the TPA or the Minister administering the Act as the context requires.

**Network** has the same meaning as "Telecommunications Network" in Division 2 Part 2 of the Act.

**Network Capacity** means additional Equipment and facilities required to be installed in H3GA's Network for use in the provision of the Service to the Access Seeker, but does not include Interconnect Capacity.

**Network Conditioning** means the conditioning, equipping and installation of facilities in H3GA's Network to enable the provision of the Service, but does not include Interconnect Conditioning.

**Network Management** means Network traffic management, signalling system management, co-ordination of service restoration, management of switching capacity and management of planned outages.

**Network Unit** has the same meaning as given to that term in Division 2 Part 2 of the Act.

**Number** means a telephone number including a telephone number activated by the Network when a dialled number is redirected to another number.

**O&M Manual** means the Operations and Maintenance Manual developed by H3GA.

**Operation and Maintenance Procedures** means the Operation and Maintenance Procedures detailed in Schedule 5.

**Operations and Maintenance Support** means the establishment and operation of operations practices, systems and procedures by H3GA reasonably required for the provision of Interconnection and the Service.

**OPM** means the Ordering and Provisioning Manual developed by H3GA.

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**Ordering and Provisioning Procedures** means the Ordering and Provisioning Procedures detailed in Schedule 4.

**Party** means H3GA or the Access Seeker and **Parties** mean both H3GA and the Access Seeker.

**Party's Equipment** means Equipment owned or leased by either Party.

**POI** or **Point of Interconnection** means an agreed location which:

- (a) is a physical point of demarcation between the Networks nominated by H3GA and the Access Seeker; and
- (b) is associated (but not necessarily co-located) with one or more Gateway Exchanges nominated by H3GA and the Access Seeker.

**POI Space Access Procedures** means the POI Space Access Procedures specified in Schedule 7.

**Pre-Request Right** has the same meaning as given to that term by section 152AR(12) of the TPA.

**Protected Contractual Right** has the same meaning as given to that term by section 152AR(12) of the TPA.

**Privacy Act** means the Privacy Act 1988 (Cth) as amended from time to time and any applicable State law relating to the protection of a customer's privacy.

**PMTS** means a public mobile telecommunications service within the meaning of section 32 of the *Telecommunications Act 1997* (Cth).

**Quality of Service Standards** means the agreed standards in respect of Declared Services set out in the Technical and Operations Manual.

**Related Body Corporate** has the same meaning given to that term in section 4A of the TPA.

**Service** has the meaning given in the Attachment A of the Undertaking.

**Services** means the Service and the Interconnection.

**Service Provider** has the same meaning as given to that term by Section 86 of the Act.

**Service Provider Rule** has the same meaning as given to that term by Section 98 of the Act.

**Suspension Notice** means a notice given under clause 13.2.

**Technical and Operations Manual** means the documentation formulated by H3GA detailing the technical specifications and procedures relating to the supply of the Service and the Interconnection, set out in the O&M Manual and the OPM.

**TAF** means the Australian Communications Forum Inc. declared to be the Telecommunications Access Forum by the Commission for the purposes of Section 152AI of the TPA.

**TPA** means the *Trade Practices Act 1974* (Cth).

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**Undertaking** means the ordinary access undertaking submitted by H3GA to the ACCC under s152BS of the TPA in respect of the Service.

## 1.2 Interpretation

In this Agreement unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) a reference to an agreement, this Agreement or another instrument includes any variation or replacement of either of them;
- (d) a reference to a schedule or annexure is a reference to a schedule or annexure to this Agreement and a reference to this Agreement includes all schedules and annexures;
- (e) a reference to a clause is a reference to a clause of this Agreement and a reference to a paragraph is a reference to a paragraph of this Agreement;
- (f) a reference to a statute, ordinance, Code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) the word person includes a firm, a company, a body corporate, partnership, trust, joint venture or association (whether incorporated or unincorporated) or an authority;
- (h) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and permitted assigns;
- (i) all dollar amounts are expressed in Australian dollars;
- (j) if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the next Business Day;
- (k) a reference to a third person is a reference to a person who is not a party to this Agreement;
- (l) headings are included for convenience and do not affect the interpretation of these terms and conditions.
- (m) period of time:
  - (i) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; or
  - (ii) which commences on a given day or the day of an act or event is to be calculated inclusive of that day;
- (n) a reference to a Party's Equipment includes Equipment that it owns, operates or controls; and
- (o) any event which is to occur on or by a stipulated day which is not a Business Day may occur on the next Business Day.



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### **1.3 Precedence**

The Agreement comprises the following documents:

- (a) Attachment A of the Undertaking;
- (b) Attachment B of the Undertaking (the **Supply Terms**); and
- (c) the Schedules.

In the event of there being any conflict or inconsistency between any of the documents listed above, unless expressly stated otherwise, the inconsistency must be resolved in accordance with the following in descending order of precedence:

- (a) Attachment A, which shall prevail over every other document;
- (b) the Supply Terms; and
- (c) any Schedules.

## **2. Scope of Agreement**

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### **2.1 No benefit to third parties**

For the avoidance of doubt, this Agreement is intended to apply only to the provision of the Service by H3GA to the Access Seeker and may not be construed as conferring benefits on third persons.

### **2.2 Non-discrimination principles**

In supplying the Service, H3GA must treat the Access Seeker on a non-discriminatory basis, including but not limited to, if requested by the Access Seeker:

- (a) taking all reasonable steps to ensure that the technical and operational quality and timing of the Service supplied to the Access Seeker is equivalent to that which H3GA provides to itself;
- (b) taking all reasonable steps to ensure that the Access Seeker receives, in relation to the Service supplied to the Access Seeker, fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which H3GA provides to itself; and
- (c) taking all reasonable steps to ensure that if a standard is in force under section 384 of the Act that the Interconnection complies with the standard.

### **2.3 Limit on non-discrimination principles**

- (a) The non-discrimination principles referred to in clause 2.2 are intended to promote the long term interests of end users of Carriage Services and of services supplied by means of Carriage Services, in accordance with section 152AB of the TPA.
- (b) The non-discrimination principles in clause 2.2 are intended to be implemented in a way which will promote competition in markets for Listed Carriage Services having regard to (amongst other things) the extent to which relevant things will remove obstacles to end-users of Listed Carriage Services gaining access to the Listed

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Carriage Services and to achieve the other objectives contained in section 152AB(2) of the TPA.

- (c) The non-discrimination principles contained in clause 2.2 must not limit an Access Seeker's ability to request Services of a superior or inferior quality than H3GA provides to itself, provided always that H3GA will not be required to accept such a request.

## **2.4 Customer relationship**

For the avoidance of doubt, the Parties acknowledge that each Party will be responsible for billing its own customers.

## **2.5 Representation and warranties**

- (a) Each Party represents and warrants that:
- (i) it has the power to enter into and observe its obligations under this Agreement; and
  - (ii) it has in full force and effect the authorisations necessary to enter into this Agreement, observe obligations under it and allow it to be enforced; and
  - (iii) its obligations under this Agreement are valid and binding.
- (b) Each Party will indemnify the other Party on demand for any liability, loss, damage or cost or expense (including legal fees on a full indemnity basis) incurred or suffered by that other Party which arises out of or in connection with any breach of the representations given by the first Party in clause 2.5.

## **3. Service and Interconnection**

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### **3.1 Provision of Services**

H3GA agrees to provide and the Access Seeker agrees to acquire the Service and Interconnection in accordance with this Agreement.

### **3.2 Maintenance of facilities**

Each Party is responsible to provide, install, test, make operational and maintain all facilities on its side of the POI used in the provision or acquisition of the Service unless otherwise agreed.

### **3.3 Interconnect Capacity and Network Capacity**

To the extent technically feasible and if the Access Seeker requests, H3GA must use Interconnect Capacity and Network Capacity provided in connection with another Declared Service for use in connection with the Service at no additional charge to the Access Seeker for the capacity so used unless additional costs are incurred by H3GA in such usage in which case the Access Seeker must pay those costs.

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### **3.4 Interconnect and related operations support**

Incidental to the provision of Interconnection, H3GA will provide related Interconnect Support and related Operations and Maintenance Support in accordance with the Operations and Maintenance Procedures on its side of the POI.

## **4. Service**

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### **4.1 Services to be supplied**

H3GA will provide the Service to the Access Seeker in accordance with this Agreement.

### **4.2 Carriage of Designated Communications**

Each Party must ensure that the carriage of Designated Communications by it conforms to the Quality of Service Standards set out in the Technical and Operations Manual for the carriage in respect of which the Party has control.

### **4.3 Use, modification and substitution of facilities**

Subject to clause 4.2, the schedules and any further practices and procedures agreed by the Parties, nothing in this Agreement may be construed as precluding H3GA from using, modifying or substituting such of its facilities for other of its facilities as reasonably required to provide the Service, provided that H3GA complies with the applicable Quality of Service Standards and technical specifications for Interconnection set out in the Technical and Operations Manual.

### **4.4 Quality of service**

In respect of the Services, H3GA is responsible for the quality of service provided between the POI to the Network termination point applicable to the called or calling Number (as the case may be).

### **4.5 Provision of Communication Information**

H3GA must provide the Access Seeker with the Communication Information in respect of each Designated Communication.

## **5. Calling Line Identification**

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### **5.1 Provision of Calling Line Identification**

Subject to clause 5.2, the Access Seeker must provide H3GA with CLI in respect of Communications for which the Service is supplied, provided that:

- (a) the Exchange to which the calling party's line is connected can generate CLI; and
- (b) CLI is forwarded to it from another Network with which its Network is interconnected.

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## **5.2 CLI to be provided for limited purposes**

Unless otherwise agreed between the Parties, the Access Seeker is only required to provide CLI under clause 5.1 if it is necessary to do so for the purposes of H3GA:

- (a) billing a customer;
- (b) routing a Communication;
- (c) verifying the location of a calling party;
- (d) validating that the calling party is entitled to use the Service;
- (e) performing lawful inbound call centre Number display applications to improve the quality of service provided by those call centres;
- (f) using CLI in a manner required or permitted by law;
- (g) supplying CLI services to its customers; or
- (h) such other purposes if agreed by H3GA with the Access Seeker (such agreement not to be unreasonably withheld).

## **5.3 Limited disclosure of CLI**

H3GA may use CLI disclosed to it under clause 5.1 only for the purposes described in clause 5.2.

## **5.4 Barring CLI**

The Parties will co-operate in the barring of CLI where required under law, by ACMA direction or as otherwise agreed between the Parties.

# **6. Information Support**

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## **6.1 Provision of information subject to confidentiality obligations**

The obligations of a Party to provide information to another Party are as set out in this Agreement and are subject to the requirements of confidentiality imposed by clauses 6.2 and clause 11.

## **6.2 Exchange of information**

To the extent permitted by Part 13 of the Act which deals with protecting Communications and the Privacy Act and other relevant laws, and in accordance with procedures established by those laws and any relevant guidelines or customer service standards or codes in force pursuant to Part 6 of the Act and in accordance with clause 11, the Parties will exchange information and otherwise co-operate in relation to:

- (a) the prevention and investigation of fraudulent use or misuse of the Parties' respective Eligible Services and the theft of terminal Equipment and mobile terminal Equipment provided by a Party; and
- (b) the prevention and minimisation of incidents of Network or telecommunications fraud.

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### **6.3 Use of information**

Information provided under this Agreement may only be used for the purpose for which it was given. Personal information about a customer's credit worthiness, credit standing, credit history or credit capacity may only be used for the purposes permitted by, and in compliance with, the Act and the Privacy Act.

### **6.4 Information subject to the Privacy Act**

Where information required to be provided under this Agreement is subject to the Privacy Act, a Party is not required to provide that information unless the receiving Party has established measures for the collection, storage, use and disclosure of the information adequate to meet the requirements of the Privacy Act. In particular:

- (a) the receiving Party must have the express consent of the customer to whom the information relates or is otherwise by law authorised to receive such information;
- (b) the receiving Party will not disclose the information to a third person without the specific consent of the customer to whom the information relates or otherwise in accordance with the Privacy Act; and
- (c) the receiving Party will permit the customer to whom the information relates to have access to that information and the receiving Party will correct any errors or omissions in the information identified by the customer.

### **6.5 Inaccurate information**

Where information is provided and either Party subsequently discovers that any part of the information is incorrect or inaccurate, that Party must, as soon as practicable, notify the other of the inaccuracy.

### **6.6 Access to databases**

The Parties acknowledge that when information required to be provided under this Agreement is held on a database, the Party entitled to receive the information will not be entitled to obtain direct access to the database. Any information required to be provided will be provided in a manner independent of the source database but in a form and in a timely manner as nearly as practicably equivalent to the source database. The precise method by which information is to be made available will be determined by the Parties having regard to the reasonable cost, convenience and security concerns of the Parties. Such reasonable charges calculated by reference to the reasonable costs of the information provider will be paid by the receiving Party.

### **6.7 Information confidential to a third person**

- (a) Subject to the law and any subordinate legislation, nothing in this Agreement may be construed as requiring a Party at any time to disclose to another Party information which is, at the date when this Agreement comes into force, the subject of a confidentiality obligation owed to a third person unless the third person consents to such disclosure. Where the consent of a third person is required, the Party holding the information must use its reasonable endeavours to obtain the consent of that third person.

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- (b) After this Agreement comes into force a Party must not enter into a contract which would prevent it from making information available to the other Party as required under this Agreement unless the contract includes a term which permits the contracting Party to make the information available if directed to do so by ACMA or the ACCC.

## **7. Fees, Charges and GST**

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### **7.1 Fees and Charges**

The Access Seeker must pay H3GA the Usage Charge for the Service as set out in Attachment A and in accordance with the Billing and Settlement Procedures.

### **7.2 Reimbursement**

Notwithstanding any other provision of this Agreement, any amount payable for a supply made under or in connection with this Agreement (other than the Fees and Charges), which is calculated by reference to a cost, expense or amount paid or incurred by a Party to this Agreement, will be reduced by any amount equal to any input tax credits to which that Party is entitled to in respect of any acquisition relating to that cost, expense or amount.

### **7.3 GST payable**

If GST becomes payable by a Party to this Agreement (**supplier**) in relation to any supply that it makes under or in connection with this Agreement, the Parties agree that:

- (a) any consideration provided for that supply under or in connection with this Agreement other than under this clause 7.3 (as reduced in accordance with clause 7.2 where applicable) or any value deemed for GST purposes in relation to that supply (**agreed amount**) is exclusive of GST;
- (b) an additional amount will be payable by the Party providing consideration for that supply (**recipient**), equal to the amount of GST payable by the supplier in relation to that supply and the additional amount shall be payable at the same time any part of the agreed amount is first required to be provided for that supply; and
- (c) the supplier will provide a tax invoice to the recipient in respect of that supply, no later than the time at which the additional amount in respect of that supply is payable pursuant to paragraph (b) above.

To the extent, if any, that any consideration for a supply is specified in this Agreement to be inclusive of GST, that consideration shall be excluded from the agreed amount for the purposes of this clause 7.3.

### **7.4 Variation**

If, following the payment of an additional amount pursuant to clause 7.3 in relation to a supply made by the supplier, the GST payable by the supplier in respect of a supply under or in connection with this Agreement varies from any consideration provided by the recipient to the supplier on account of GST on that supply, such that:

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- (a) the supplier is required to pay an amount (or further amount) of GST in respect of that supply; or
  - (b) the supplier receives a refund or credit of the whole or any part of the GST paid by the supplier in relation to that supply,

the supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the recipient (as appropriate). Any additional amount payable pursuant to clause 7.3 shall be adjusted to take account of a variation made pursuant to this clause.

#### **7.5 Penalties**

If the supplier incurs any penalty, fine, interest, fee or other charge under the GST law directly as a result of any failure by the recipient in relation to that supply to comply with any obligation or provision of this Agreement, the recipient will indemnify or reimburse on demand the supplier for the amount of that penalty, fine, interest, fee or other charge under the GST law.

#### **7.6 Definitions**

GST, GST law and other terms used in this clause 7 (and in any other provisions of this Agreement where expressions under the GST law are used) have the meanings ascribed to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time) or any replacement or other relevant legislation and regulations, except GST law also includes any applicable rulings. Any reference to GST payable by a Party includes any GST payable by the representative member of any GST group of which that Party is a member and, if applicable, any GST payable by a local agent of a non-resident. Any reference to a Party to this Agreement includes a reference to any Party individually, or any group of Parties, treated as an entity individually or collectively for GST purposes.

#### **7.7 Security to be provided**

The Access Seeker must provide (at the Access Seeker's cost) to H3GA and maintain for the term of this Agreement a bank guarantee in such an amount as determined by H3GA in respect of amounts owing by the Access Seeker to H3GA under this Agreement.

#### **7.8 Information regarding creditworthiness**

H3GA may reasonably from time to time require information concerning the ongoing creditworthiness of the Access Seeker, and the Access Seeker must promptly supply that information. Depending upon that information, H3GA may, subject to clause 7.9, reasonably alter the security required of the Access Seeker, and the Access Seeker shall promptly provide that altered security.

#### **7.9 Amount of security**

As a statement of general principle the amount of any security required must be calculated by reference to the value of the Service likely to be provided to the Access Seeker under this Agreement over a reasonable period, being not less than 3 months.

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## **8. Network protection and related Network matters**

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### **8.1 Responsibility for safe operation of Network**

Each Party is responsible for the safe operation of its Network and must take all reasonable and necessary steps to ensure that its Network, its Network operations and implementation of this Agreement:

- (a) does not endanger the safety or health of the officers, employees, contractors, agents or customers of the other Party;
- (b) does not damage, interfere with or cause any deterioration in the operation of the other Party's Network; and
- (c) does not interfere with the operation of the other Party's facilities or Network or the facilities or Network of any other person except to the minimum extent necessary to effect performance of its obligation or the exercise of its rights under this Agreement.

### **8.2 Non-interference with Eligible Services**

The Access Seeker must not interfere with the use of the Eligible Services provided by H3GA, but this clause will not be taken as excusing a Party from the performance of any of its obligations under this Agreement.

### **8.3 Minimisation of disruption to Carriage Services**

The Parties will manage their Networks to minimise disruption to Carriage Services and, in the event of interruption or failure of any Carriage Service, will restore those Carriage Services as soon as is reasonably practical in accordance with the Operations and Maintenance Procedures. Each Party must take reasonable steps to manage, notify and correct faults arising in its Network which affect the provision of any Eligible Service:

- (a) as it would in the ordinary course for similar faults affecting the provision of Eligible Services by it; and
- (b) in accordance with the fault notification procedures and the principles of priority of repair of faults set out in the Operations and Maintenance Procedures or agreed between the Parties.

### **8.4 Back-up facilities**

Each Party has responsibility for its own service back-up facilities (ie, redundancy capabilities) sufficient to maintain service in accordance with any Quality of Service Standards.

### **8.5 Technical and Operations Manual**

H3GA must ensure that its facilities located at each POI conform to the Technical and Operations Manual by the relevant delivery date determined pursuant to this Agreement.



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## **8.6 Modification, change or substitution of technology**

H3GA has the right to modify, change or substitute technology underlying the Service to improve the functionality or performance of the service or H3GA's Network provided that such modifications do not have an adverse effect on the functionality or performance of the service supplied to the Access Seeker. For the avoidance of doubt:

- (a) such modifications may include replacement of elements of H3GA's existing Network infrastructure or systems with alternate technology; and
- (b) to the extent that the Access Seeker wishes to change a specification as a result of such modifications, it will do so in accordance with clause 9.3.

## **8.7 No guarantee of fault free or continuous service**

Unless expressly provided otherwise and subject to clause 8.6, nothing in this Agreement may be construed to preclude H3GA from using, modifying or substituting such of its Equipment for other of its Equipment as reasonably required to provide the Service. H3GA does not guarantee that the provision of the Service will be continuous or fault free.

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## **9. Network provision and operations liason**

### **9.1 Compliance with procedures**

The Parties will comply with:

- (a) the Operations and Maintenance Procedures;
- (b) the Billing and Settlement Procedures;
- (c) the Technical and Operations Manual agreed between the Parties;
- (d) the Ordering and Provisioning Procedures;
- (e) any POI Space Access Procedures;
- (f) the Dispute Resolution Procedures; and
- (g) such other matters as the Parties determine.

### **9.2 Compliance with standards and TAF technical manual**

Each Party must comply with:

- (a) all relevant mandatory technical standards made by the ACMA from time to time under section 384 of the Act to the extent that those standards are relevant to the supply of the Service; and
- (b) a voluntary standard of the SAA or any other body or association, where TAF adopts that technical standard and to the extent that that standard is relevant to the supply of the Service and is not inconsistent with the mandatory technical standards referred to in clause 9.2(a) and the TAF Telecommunications Access Code; and
- (c) the TAF technical manual (if any) to the extent relevant to the supply of the Service.

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### 9.3 Amendments to manuals

- (a) If H3GA proposes an amendment to the manual referred to in clause 9.1(c) or any of the procedures referred to in clause 9.1 (including, but not limited to, due to Network modification or upgrade) other than amendments which would have only a minor effect on the Access Seeker:
  - (i) H3GA must provide two months notice to the Access Seeker before any such amendment takes effect; and
  - (ii) H3GA must consult with and negotiate in good faith in relation to any reasonable concerns of the Access Seeker in relation to the proposed amendment.
- (b) If an Access Seeker seeks an amendment to a manual or procedures of H3GA referred to in clause 9.1, H3GA will:
  - (i) consider in good faith the amendment sought; and
  - (ii) negotiate in good faith with the Access Seeker in relation to any sought amendments.
- (c) If the Parties have failed to reach agreement in relation to an amendment proposed pursuant to clause 9.3(a) or 9.3(b) within 10 Business Days of it being proposed, the Party proposing the amendment may refer the matter for dispute resolution pursuant to the Dispute Resolution Procedures, in which case both Parties will comply with those procedures in relation to the proposed amendment.

## 10. Intellectual Property (“IP”) rights

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### 10.1 Definitions

In this clause, the following words have these meanings unless the contrary intention appears:

**Approved Purpose** means the sole purpose of using the Service in order to provide Carriage Services and/or Content Services.

**Declared IP** means any Intellectual Property the use of which is an integral but subsidiary part of the supply of a Carriage Service which uses the Service.

### 10.2 Licence to use declared IP

Each Party must, to the extent it is legally entitled to do so, license the other to use the declared IP for the approved purpose. If either Party is not legally entitled to license the declared IP, it must use reasonable endeavours to obtain such consents and licences as are necessary to provide the license provided that H3GA shall not be required to bear the cost of acquiring such consent and licences.

### 10.3 Fees and Charges inclusive

The Fees and Charges to be paid for the Service in accordance with this Agreement will include any charge for use of Declared IP, including any additional costs incurred by

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H3GA, or fees payable to other Parties directly attributable to the Access Seeker's use of the Declared IP.

#### **10.4 Vesting of IP rights**

All right, title and interest in and to any:

- (a) Intellectual Property (in relation to matters the subject of this Agreement) developed after the Commencement Date, subject to clause 10.4(b), vests in the Party who developed that Intellectual Property or for whom that Intellectual Property was developed by a third person; and
- (b) improvements to or adaptations, versions or modifications of Intellectual Property (in relation to matters the subject of this Agreement) vests in the Party who developed that Intellectual Property or on behalf of whom that Intellectual Property was developed.

#### **10.5 Jointly developed IP**

The Parties will negotiate arrangements (including in respect of title) concerning Intellectual Property jointly developed in the course of performing or otherwise in connection with this Agreement.

#### **10.6 Indemnity in respect of IP**

Each Party (*Indemnifying Party*) indemnifies the other Party (*Innocent Party*) against all liability or loss arising directly from, and all reasonable costs, charges and expenses incurred in connection with, any Claim alleging infringement by the Innocent Party of the rights in Australia of a third person arising from the use by the Innocent Party of Intellectual Property disclosed or licensed by the Indemnifying Party under this Agreement, except where such Intellectual Property has been modified or used other than in accordance with this Agreement.

#### **10.7 IP infringement**

If a Party becomes aware of any infringement or threatened infringement of any Intellectual Property disclosed to or licensed by the other Party under this Agreement, the first-mentioned Party must promptly notify the other Party identifying (if possible) the infringer and relevant details of the infringement or potential infringement.

#### **10.8 Conduct of defence to IP Claim by third party**

The Party providing the Intellectual Property must take the conduct of the defence of any Claim by a third party who is alleging an infringement and the Party to whom the Intellectual Property is licensed will, at the other Party's expense, provide the other Party with such assistance as reasonably required by the other Party for the purposes of conducting the defence.

#### **10.9 Obligations in respect of infringing IP**

If it is determined by an independent tribunal of fact or law or if it is agreed between the parties to a dispute, that Intellectual Property licensed or provided by a Party (*Infringing*

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**Party)** for the purposes of this Agreement has infringed any industrial or Intellectual Property rights of any person, the Infringing Party, at its option and its own expense may:

- (a) procure for the other Party a right to continue using the infringing Intellectual Property;
- (b) modify or replace the infringing Intellectual Property so that the infringement, defect or inadequacy is removed; or
- (c) if it is unreasonable having regard to the likely costs, likely consequences for the other Party and other relevant matters, for the Infringing Party to implement a solution set out in clauses 10.9(a) or (b), recall the infringing Intellectual Property on 5 Business Days notice.

#### **10.10 Alternative solutions to withdrawn IP**

The Parties recognise that where infringing Intellectual Property has been withdrawn by the Infringing Party under clause 10.9(c) and that infringing Intellectual Property was used:

- (a) in a service provided by the Infringing Party to the other Party ; or
- (b) by the Infringing Party in its own operations,

it is in the interests of the Parties that the situation be promptly resolved and the Parties agree to discuss alternative solutions and joint action which can be undertaken.

#### **10.11 Limited remedies and compensation**

Each Party acknowledges to the other that clauses 10.6 and 10.9 set out the only remedies and forms of compensation available to a Party in relation to or arising from an allegation, agreement or determination (or any act, matter or thing relating to or arising from such an allegation, agreement or determination) that Intellectual Property disclosed, licensed or provided by one Party to the other under or for the purposes of this Agreement has infringed or infringes any rights of another person.

#### **10.12 Restricted use of trademarks etc**

A Party must not use a trade mark belonging to the other Party or service mark or other symbol, distinctive colours or names reasonably associated with the other Party without the prior written consent of that other Party (which consent may be withheld as that other Party sees fit).

### **11. Confidentiality**

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#### **11.1 Confidentiality obligation**

Subject to clause 11.4 and any statutory duties, each Party must keep confidential all Confidential Information of the other Party which:

- (a) is disclosed, communicated or delivered to it by a Party pursuant to this Agreement; or
- (b) comes to its knowledge or into its possession in connection with this Agreement,

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and must not:

- (c) use or copy such Confidential Information except for the purposes of this Agreement or as required by the ACMA or the ACCC; or
  - (d) disclose or communicate, cause to be disclosed or communicated or otherwise make available such Confidential Information to any third person,
- except as authorised under this Agreement.

## **11.2 Network information**

- (a) For the sake of clarification, information generated within H3GA's Network as a result of or in connection with the provision of the Service by H3GA to the Access Seeker is the Confidential Information of the Access Seeker.
- (b) Subject to clause 11.4, Confidential Information of an Access Seeker referred to in paragraph (a):
  - (i) must only be used by H3GA to undertake planning, maintenance or reconfiguration of its Network, for the purposes of this Agreement or billing or as required by the ACMA or the ACCC; and
  - (ii) must only be disclosed to personnel directly involved in planning, maintenance or reconfiguration of H3GA's Network or billing.

## **11.3 Protection of Confidential Information**

Each Party must establish and observe procedures adequate to protect the Confidential Information of another Party which will be consistent with any auditable Code of Practice adopted by the TAF and, without limiting the generality of the foregoing, must ensure that each of its directors, officers, employees, agents and representatives to whom that Confidential Information is disclosed for the purposes of this Agreement is directed to keep the Confidential Information confidential.

## **11.4 Permitted Disclosure**

A Party (***Disclosing Party***) may disclose the Confidential Information of another Party:

- (a) to those of its related bodies corporate or its directors, officers, employees, agents and representatives to whom the Confidential Information is reasonably required to be disclosed for the purpose of this Agreement;
- (b) to the party's financiers and the financier's professional advisers to the extent required by the financiers in relation to the conduct of the Party's business with its financiers but only if the Disclosing Party has first obtained a confidentiality undertaking equivalent to the undertakings in this Agreement from the financiers and their professional advisers prior to any disclosure;
- (c) to any professional person acting for the Disclosing Party to the extent necessary to permit that person to protect or advise on the rights of the Disclosing Party or in respect of the obligations of the Disclosing Party under this Agreement;
- (d) in connection with legal proceedings in relation to this Agreement or, arbitration, expert determination and other dispute resolution mechanisms set out in this

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Agreement or for the purpose of seeking advice from a professional person in relation thereto;

- (e) as required by law or subordinate legislation, provided that where practicable the Disclosing Party has first notified the other Party that it is required to disclose the Confidential Information so that the other Party has an opportunity to protect the confidentiality of its Confidential Information;
- (f) with the consent of the other Party provided that if required by the other Party as a condition of giving its consent, the Disclosing Party must comply with clause 11.4(j);
- (g) in accordance with a lawful and binding directive issued by ACMA or ACCC or any Minister;
- (h) to ACMA or the ACCC for the purpose of registration of this Agreement or any amendment, modification or alteration of this Agreement;
- (i) if reasonably required to protect the safety of personnel or Equipment of the Disclosing Party; or
- (j) as required by the listing rules of any stock exchange where a Party's securities are listed or quoted.

#### **11.5 Conditional disclosure**

A Party may require, as a condition of giving its consent to the disclosure of the Confidential Information, that the Disclosing Party must, before disclosing Confidential Information to a third person:

- (a) impose an obligation upon the disclosee to use the disclosed Confidential Information solely for the purposes for which disclosure is made and to observe appropriate confidentiality requirements in relation to such information; or
- (b) obtain an acknowledgment from the disclosee that:
  - (i) the Confidential Information is and at all times remains proprietary to the other Party; and
  - (ii) that misuse or unauthorised disclosure of the Confidential Information will cause serious harm to the other Party.

This clause does not apply if the disclosure is made to a third party which is the Commonwealth, State or Territory Government or a statutory authority in compliance with a statutory requirement or other requirement lawfully imposed by statute or any government agency by which the Parties are regulated.

#### **11.6 Parties to co-operate**

Each Party must co-operate in any action taken by the other to:

- (a) protect the confidentiality of the other Party's Confidential Information; or
- (b) enforce its rights in relation to its Confidential Information, and

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to the extent to which a Party (the **First Party**) has requested the other Party to co-operate in accordance with this clause, the First Party indemnifies the other Party for its reasonable costs of complying with this clause.

#### **11.7 No warranty**

Confidential Information provided by one Party to another Party is provided for the benefit of that other Party only. Each Party acknowledges that no warranty is given by the Disclosing Party that the Confidential Information is or will be correct.

#### **11.8 Remedies**

Each Party acknowledges that a breach of this clause by one Party may cause another Party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, a Party may seek injunctive relief against such a breach or threatened breach of this clause 11.

### **12. Liability and indemnity**

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#### **12.1 General principle**

Save to the extent that another provision of this Agreement expressly provides for (or expressly excludes or limits) a remedy, a liability or a form of compensation in relation to an act, omission or event, this clause shall regulate the liability (whether arising in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach or any other cause) of a Party to the other under and in relation to this Agreement and in relation to any act, omission or event relating to or arising out of this Agreement.

#### **12.2 General exclusions**

Subject to clauses 10.6, 12.5, 12.7(c) and 12.14, a Party (**First Party**) shall not be liable to the other (**Second Party**) (whether in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach or any other cause) under or in relation to this Agreement or in relation to any act, omission or event relating to or arising out of this Agreement:

- (a) for or in respect of any Consequential Loss;
- (b) for or in relation to any act or omission of or any matter arising from or consequential upon any act or omission of any third person involved in the operation or maintenance of any facility used in connection with an international Carriage Service;
- (c) for or in relation to:
  - (i) any delay in the initial provision of, any failure to provide or any interruption in the provision of the Service;
  - (ii) any failure of the First Party's Network or any part thereof; or
  - (iii) any error or omission in relation to information transmitted through either Party's Network;

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- (d) for or in relation to:
    - (i) any act or omission of; or
    - (ii) any matter arising from or consequential upon any act or omission of, any customer of a Party or any third person not under the direct control of the First Party.

### **12.3 General remedies for general breaches**

Subject to clause 12.14, the aggregate of the liability of either Party to the other (whether in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach or any other cause) under or in relation to this Agreement or in relation to any act, omission or event relating to or arising out of this Agreement occurring:

- (a) in any 12 month period ending on the day prior to an anniversary of the Commencement Date, or
- (b) in a period of less than 12 months from the Commencement Date or an anniversary of the Commencement Date to the date of termination of this Agreement,

shall not in any circumstances exceed the Aggregate Amount.

### **12.4 Damage to property**

- (a) Subject to paragraph (b), if an act or omission of a Party (***Indemnifying Party***) or any of the Indemnifying Party's officers, employees, agents, representatives or contractors under, in relation to or arising out of this Agreement causes or results in damage to or loss of any Equipment, facility or other tangible property of the other Party (***Innocent Party***) or of a third person, the Indemnifying Party shall indemnify the Innocent Party against and hold the Innocent Party harmless from all costs, charges and expenses reasonably incurred in relation to making good the damage or loss (including, as appropriate, replacement or repair of any Equipment, facility or other tangible property).
- (b) If any damage to or loss of any Equipment, facility or other tangible property of the Innocent Party or of any third person is caused by or results from a negligent act or omission or an act or omission intended to cause damage or loss by, or by any of the officers, employees, agents, representatives or contractors of, the Indemnifying Party under, in relation to or arising out of this Agreement, the Indemnifying Party shall indemnify the Innocent Party against and hold the Innocent Party harmless from all liability, loss, damage, costs, charges and expenses arising from or relating to the damage or loss caused by or resulting from the act or omission.

### **12.5 Death and personal injury**

- (a) Clause 12.2 shall not apply to any liability of a Party (***Liabe Party***) arising directly from the death or personal injury of an officer, employee, agent, representative or contractor of the other Party caused by or resulting from any negligent or intentional act or omission of the Liabe Party or any of its officers, employees, agents, representatives or contractors.



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- (b) Save in the case of liability arising from a death or personal injury of the type to which clause 12.5(a) applies, a Party (***Indemnifying Party***) shall indemnify the other Party (***Innocent Party***) and hold the Innocent Party harmless from all Claims, actions, demands, liability, costs, charges and expenses arising from or relating to the death or personal injury of any officer, employee, agent, representative or contractor of the Indemnifying Party.
  - (c) Clause 12.2 shall not apply to clause 12.5(b).

#### **12.6 Third person indemnity**

- (a) A Party (***Indemnifying Party***) shall indemnify the other Party (***Innocent Party***) against and hold the Innocent Party harmless from all liability and loss arising directly from, and any reasonable cost, charge or expense incurred in connection with an action, Claim, suit or demand by a third person against the Innocent Party in respect of or arising out of any act or omission of the Indemnifying Party in the course of using the Service provided by the Innocent Party.

#### **12.7 Limitation of liability to customers and others**

- (a) Subject to clause 12.5 H3GA is not liable to the Access Seeker to the extent that the liability or loss incurred in connection with a Claim brought or made against the Access Seeker by a person to whom that Access Seeker has provided an Eligible Service in relation to:
  - (i) an act, omission or event relating to or arising out of this Agreement; or
  - (ii) the Service provided under this Agreement; or
  - (iii) any matter or thing ancillary to or related to an Eligible Service, where a contractual relationship exists (including a standard form of agreement) between the person and the Access Seeker under which that liability or loss could have been excluded or reduced by the Access Seeker (regardless of whether such liability or loss has been excluded or reduced).
- (b) A Party (***Indemnifying Party***) shall indemnify the other Party (***Innocent Party***) against and hold the Innocent Party harmless from all liability or loss arising from and any reasonable cost, charge or expense incurred in connection with any Claim brought against the Innocent Party (or its officers, employees, agents, representatives or contractors) in relation to:
  - (i) any act, omission or event relating to or arising out of this Agreement; or
  - (ii) the Service provided under this Agreement; or
  - (iii) any matter or thing ancillary to or related to an Eligible Service, to the extent that the liability or loss could have been excluded or reduced by the Indemnifying Party in its contract (including a standard form of agreement) with that person, regardless of whether such liability or loss was excluded or reduced.
- (c) The exclusions contained in clause 12.2 shall not apply to clause 12.7(b).

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- (d) Each Party shall at each other's request provide to the other Party a copy of those clauses relating to the exclusion or limitation of liability which appear in its standard form of agreement relating to the provision of the Service.

#### **12.8 Protection for employees etc.**

Each Party undertakes (and acknowledges that equitable remedies are an appropriate means of enforcing this undertaking) that if it brings any Claim against any officer, employee, agent, representative or contractor of the other Party in relation to any act, omission or event relating to or arising out of this Agreement, it will observe the provisions of this clause 12 as if that officer, employee, agent, representative or contractor were entitled to the benefit of this clause to the same extent as the other Party.

#### **12.9 Putting indemnified party in funds**

If any Claim is made by a third person against a Party (*Innocent Party*) which, if satisfied or paid by the Innocent Party, would result in liability of the other Party (*Indemnifying Party*) under this clause 12:

- (a) the Innocent Party must give written notice of the Claim to the Indemnifying Party as soon as practicable after the making of the Claim; and
- (b) Within 30 days after receipt of that notice, the Indemnifying Party must:
  - (i) cause the Innocent Party to be put in sufficient funds to satisfy or pay the Claim; or
  - (ii) give notice to the Innocent Party directing it to take such action (including legal proceedings) in respect of the Claim as is notified at the Indemnifying Party's expense; and
- (c) the Indemnifying Party must cause the Innocent Party to be put, and thereafter maintained, in sufficient funds in sufficient time to pay all reasonable costs and expenses of any action or settlement directed by the Indemnifying Party under this clause 12.9; and
- (d) the Innocent Party:
  - (i) must take such action as the Indemnifying Party directs, to avoid, dispute, defend, appeal, settle or compromise the Claim and any adjudication; and
  - (ii) must not deal with the Claim except as directed by the Indemnifying Party.

#### **12.10 No indemnity where negligent**

A Party is not obliged to indemnify any other Party under any of the indemnities set out in clauses 10.6, 12.4, 12.5(b), 12.6(a) to the extent that the liability, loss, damage, cost, charge or expense the subject of the indemnity Claim is the direct result of any breach of this Agreement or negligent act or omission by the Party claiming the indemnity.

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### 12.11 Exclusion of warranties

Except as expressly set out in this Agreement and subject to any law to the contrary which cannot be excluded, all representations, conditions and warranties (whether express or implied, statutory or otherwise) with respect to the Service provided under this Agreement are expressly negated and excluded.

### 12.12 Remedies for warranties implied by law

If H3GA breaches any condition or warranty implied by any applicable law which cannot lawfully be excluded, to the extent permitted by applicable law the liability of H3GA is limited, at its option, to:

- (a) in the case of the Service, the resupply of, or payment of the cost of resupplying, the Service; and
- (b) in the case of goods:
  - (i) the replacement of the goods or the supply of equivalent goods; or
  - (ii) the repair of the goods; or
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired, at the election of the Party.

### 12.13 Indexation of liability cap

- (a) For the purposes of clause 12.3, Aggregate Amount means \$A10 million as reviewed and adjusted pursuant to clauses 12.13(b) and 12.13(c).
- (b) The Aggregate Amount is to be reviewed and adjusted on each 1 January after the Commencement Date (**review date**) in accordance with the following formula:

$$A = \frac{B \times C}{D} \text{ Where:}$$

A is the Aggregate Amount to apply from and including the relevant review date;

B is the Aggregate Amount applying immediately before the relevant review date;

C is the consumer price index all groups index number for the weighted average of 8 capital cities last published before the relevant review date; and

D is the consumer price index all groups index number for the weighted average of 8 capital cities last published before the review date preceding the relevant review date, except that in the case of the first review date, D is the consumer price index all groups number on 1 January during the year of the Commencement Date.

- (c) If either:
  - (i) the consumer price index all groups weighted average for the 8 capital cities ceases to be published quarterly; or

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- (ii) the method of calculation of the consumer price index all groups weighted average for the 8 capital cities substantially alters, then the consumer price index all groups weighted average for the 8 capital cities is to be replaced by the nearest equivalent index and any necessary consequential amendments are to be made. That index and those amendments are to be determined as follows:
- (A) by agreement between the Parties; or
  - (B) if the Parties do not agree, by the Australian Statistician or their nominee, whose decision is binding and conclusive.

#### **12.14 Exclusion of obligation**

Clause 12.3 shall not apply to any obligations of the Access Seeker under this Agreement to pay charges, fees or costs to H3GA in respect of the Service provided by H3GA.

### **13. Commencement, duration and consequences of breach**

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#### **13.1 Term**

- (a) This Agreement takes effect on the Commencement Date and continues for such time as the Service is supplied in accordance with the terms and conditions set out in the Agreement and the Schedules unless terminated earlier in accordance with express provision or by law.
- (b) Following the expiry of the term of provision of the Service, the term of provision of the Service will be automatically extended until one Party terminates the provision of the Service by 30 days notice in writing to the other Party.

#### **13.2 Suspension**

If:

- (a) during any technical failure involving the Service caused by the Access Seeker or any representative or contractor of the Access Seeker;
  - (b) during an emergency where continued supply of the Service may pose a significant threat to safety of persons, hazard to valuable Equipment or a significant threat to Network security or likely to impede the activities of authorised persons responding to an emergency; or
  - (c) the Access Seeker fails to pay H3GA moneys owing under this Agreement excluding any amount which is subject to a Billing Dispute until the Billing Dispute is resolved in respect of that amount; or
  - (d) the Access Seeker's use of its facilities or H3GA's facilities is in contravention of any law; or
  - (e) the Access Seeker breaches a material obligation under this Agreement; or
  - (f) any of the events described in clause 13.7 occur in respect of the Access Seeker,
- (a **suspension event**) and:

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- (g) within 20 Business Days after H3GA becomes aware that the suspension event has occurred, and H3GA gives a Suspension Notice to the Access Seeker:
    - (i) citing this clause;
    - (ii) detailing the suspension event including specifying the particular service in respect of which the event has occurred;
    - (iii) requiring the receiving Party to institute remedial action (if any) in respect of the event; and
    - (iv) specifying the action which may follow due to a failure to comply with the notice; and
  - (h) the Access Seeker fails to institute remedial action as specified in the Suspension Notice within 20 Business Days after receiving the Suspension Notice (**remedy period**),

H3GA may, by notice given to the Access Seeker within 20 Business Days after the expiry of the remedy period:

- (i) refuse to provide the Access Seeker with the Service until the remedial action specified in the Suspension Notice is taken; and
- (j) suspend the provision of the Service until the remedial action specified in the Suspension Notice is taken.

### **13.3 Reconnection**

As soon as practicable after there no longer exists a reason for suspension, H3GA must, at a cost to the Access Seeker which is reasonable and directly attributable to the reconnection, reconnect the Access Seeker's facilities.

### **13.4 Suspension in excess of 30 Business Days**

If a Suspension Notice has been in force for more than 30 Business Days, H3GA may immediately terminate this Agreement or the Service by providing notice to the Access Seeker.

### **13.5 Suspension during an emergency**

During an emergency where continued supply of the Service may pose a significant threat to safety of persons, hazard to valuable Equipment or a significant threat to Network security, H3GA may refuse to provide or may suspend the provision of the Service until H3GA considers that the continued supply of the Service no longer poses a significant threat to the safety of persons, hazard to valuable Equipment or a significant threat to Network security. In such circumstances H3GA will endeavour, where practicable, to provide the Access Seeker with as much notice as possible of its intention to refuse to provide or to suspend provision of the Service such notice may be given by telephone to a person nominated by the Access Seeker from time to time.

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### 13.6 Temporary suspension for modification or maintenance

In the event that H3GA is required to perform modification or maintenance involving the Service, and H3GA determines in its absolute discretion that the modification or maintenance requires temporary suspension of the Service, H3GA will:

- (a) use its reasonable endeavours to re-route the Service so as to avoid the suspension; and
- (b) where it is not practicable to avoid the suspension, give the Access Seeker:
  - (i) 7 days notice of the suspension where the modification or maintenance is planned in advance; and
  - (ii) as much notice of the suspension as is reasonably practical where the modification or maintenance is unplanned,
- (c) so that the Access Seeker may endeavour to make temporary alternative arrangements for the Service.

### 13.7 Termination

- (a) If:
  - (i) the Access Seeker ceases to be a Carrier or Carriage Service Provider (as the case may be);
  - (ii) H3GA could refuse to supply the Service to the Access Seeker on any of the grounds specified in sections 152AR(4) and (9) of the TPA; or
  - (iii) the Access Seeker breaches a material obligation under this Agreement and:
    - (A) that breach materially impairs or is likely to materially impair the ability of H3GA to deliver Listed Carriage Services utilising the Service to its customers; and
    - (B) H3GA has given a Breach Notice within 20 Business Days of becoming aware of the breach; and
    - (C) the Access Seeker fails to institute remedial action as specified in the Breach Notice within 20 Business Days after receiving the Breach Notice (**remedy period**),

H3GA may terminate the supply of the Service under this Agreement by notice given to the Access Seeker within 20 Business Days after becoming aware of the cessation, ability to refuse or expiry of the remedy period specified in the Breach Notice.

- (b) In exercising its rights pursuant to clause 13.7(a)(ii) or 13.7(a)(iii), H3GA may only terminate the Agreement in respect of the Service if, in the reasonable opinion of H3GA, it is necessary to terminate the Service to ensure that the ability of H3GA to deliver Listed Carriage Services is not (and is not likely to be) materially impaired.

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### **13.8 Withdrawal of Service**

If H3GA is no longer providing the Service to itself or is proposing to no longer provide the Service to itself, H3GA may terminate this Agreement in respect of the Service by giving the Access Seeker notice of such termination, where the notice period will be no less than the longer of:

- (a) the period of time between the time of giving the notice and the time at which H3GA is proposing to no longer provide the Service to itself; and
- (b) 6 months,

provided always that if the notice period in paragraph (a) applies, the timing and provision of the notice is provided on an equivalent basis to that which H3GA provides to itself. During the notice period under this clause, the Access Seeker may identify and request the supply of an existing substitute service supplied by H3GA (including to itself) and H3GA will consider that request in good faith.

### **13.9 Suspension Notice and Breach Notice in respect of same breach**

H3GA cannot give both a Suspension Notice and Breach Notice under this clause in respect of:

- (a) the same breach of this Agreement, or
- (b) different breaches of this Agreement which relate to or arise from the same act, omission or event or related acts, omissions or events.

### **13.10 Additional rights of termination**

Either Party may terminate this Agreement on 5 Business Days notice if:

- (a) an order is made or an effective resolution is passed for winding up or dissolution without winding up (otherwise than for the purposes of a solvent reconstruction or amalgamation) of the other Party and the order or resolution remains in effect for a continuous period of 7 days;
- (b) a receiver, receiver and manager, official manager, administrator, provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the Undertaking and property of the other Party and the appointment remains in effect for a continuous period of 14 days;
- (c) a holder of an encumbrance takes possession of the whole or any substantial part of the Undertaking and property of the other Party;
- (d) the other Party is unable to pay its debts as they fall due;
- (e) a Force Majeure which substantially and adversely affects the ability of a Party to perform its obligations to the other Party, continues for a period of in excess of 6 months; or
- (f) the other Party ceases to carry on business for a period of more than 10 consecutive Business Days without the prior written consent of the notifying Party;
- (g) anything analogous or having a substantially similar effect to any of the events specified above occurs in relation to the other Party; or

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- (h) amendments to this Agreement as described in clause 14.10 are not agreed within 90 days after the commencement of the negotiations described in that clause.

### **13.11 Obligations on termination**

If, after the termination or expiry of this Agreement:

- (a) a Party (**Notifying Party**) gives the other Party notice requesting that Party to carry out necessary disconnection works and to return any Equipment or facilities of the Notifying Party or a third person installed by or for the Notifying Party; and
- (b) the other Party has failed to comply with the request,

subject to the approval (if required) of any lessor and subject to law, the Notifying Party may enter the premises of the other Party on reasonable notice for the purposes of carrying out any necessary disconnection works and repossessing any such Equipment and facilities. The other Party on whose premises such Equipment or facilities were installed is responsible for compensating the Notifying Party for any such Equipment or facility which is not delivered up in good condition (fair wear and tear excepted).

### **13.12 Costs of disconnection**

All reasonable costs of the disconnection described in clause 13.11 must be paid by:

- (a) in the case of disconnection due to clause 13.4, the Access Seeker;
- (b) in the case of disconnection due to clause 13.5, H3GA;
- (c) in the case of disconnection due to any of clause 13.10(a),(b),(c) or (d), the Party described therein as the other Party; and
- (d) in the case of disconnection due to clause 13.10(e), the Party affected by the Force Majeure.

### **13.13 No waiver of breaches**

Termination or expiry of this Agreement does not operate as a waiver of any breach by a Party of any of its provisions and is without prejudice to any rights, liabilities or obligations of any Party which have accrued up to the date of the termination or expiry, including a right of indemnity.

### **13.14 Survival**

Without limiting the operation of any legal presumption which would otherwise cause any provision of this Agreement to continue to apply after termination or expiry, in addition to clauses 13.12 and 13.13, the following provisions continue to apply after termination or expiry of this Agreement:

- (a) Schedule 3 (Billing and Settlement);
- (b) clause 11 (Confidentiality);
- (c) clause 12 (Liability and Indemnity);
- (d) clauses 14.6 and 14.7 (Relationship);
- (e) clause 14.12 (Assignment);and



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- (f) clause 14.14 (Waiver)

### **13.15 Refund of periodic payments**

Subject to clause 13.16 and without prejudice to the Parties' rights upon termination or expiry of this agreement, H3GA must refund to the Access Seeker a fair and equitable proportion of those sums paid to each other under this Agreement by the Access Seeker which are periodic in nature and have been paid for the Service for a period extending beyond the date on which this Agreement terminates or expires, provided there are no invoices outstanding from the Access Seeker to H3GA. In the event of a dispute in relation to the calculation or quantum of a fair and equitable proportion of the sums paid under this Agreement, either Party may refer the matter for dispute resolution in accordance with the Dispute Resolution Procedures.

### **13.16 Offset of refund**

The Access Seeker's refund may be set off against any sums which remain due and payable by the Access Seeker to H3GA under this Agreement.

## **14. Miscellaneous**

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### **14.1 Force Majeure**

- (a) If a Party is unable to perform any obligation (other than an obligation to pay money) under this Agreement by reason of Force Majeure and that Party:
- (i) gives the other Party to which the obligation is owed prompt notice of the Force Majeure with reasonably full particulars thereof and an estimate of the extent and duration of its inability to perform; and
  - (ii) uses all possible diligence to remove that Force Majeure as quickly as possible,
- that obligation is suspended insofar as it is affected by, and during the continuance of, the Force Majeure.
- (b) If the Force Majeure continues beyond 10 Business Days after the notice given under clause 14.1(a)(i), the Parties shall meet to discuss in good faith a mutually satisfactory resolution to the problem.
- (c) The requirement that a Force Majeure be removed with all possible diligence does not require the settlement of strikes, lockouts or other labour disputes or Claims or demands on unreasonable terms, or any particular action to be taken in relation to the issue of a competition notice. If a strike, lockout or other labour dispute or Claim or demand principally concerns any matter the subject of this Agreement, the Party affected must so notify and consult with the other Party.

### **14.2 Severability**

- (a) Subject to clause 14.2(b), if a provision of this Agreement is void, voidable by a Party, unenforceable or illegal, but would not be void, voidable, unenforceable or

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illegal if it were read down and it is capable of being read down, it is to be read down to that extent.

- (b) If a provision of this Agreement is not able to be read down or is still void, voidable, unenforceable or illegal after being read down under clause 14.2(a):
  - (i) if the provision would not be void, voidable, unenforceable or illegal if words were omitted, those words are hereby severed; and
  - (ii) in any other case, the whole provision is hereby severed, and the remainder of this Agreement has full force and effect.

#### **14.3 Governing law**

- (a) This Agreement and the transactions contemplated by it are governed by the law in force in New South Wales.
- (b) In the event of:
  - (i) a Party seeking a form of urgent interlocutory relief in respect of any matter arising under this Agreement; or
  - (ii) a Party seeking relief in respect of the other Party failing to comply with this Agreement;
  - (iii) a Party seeking relief in respect of a manifest error or mistake of law of an independent person appointed to mediate or arbitrate a dispute under this Agreement,

each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Federal Court of Australia for such relief.

#### **14.4 Parties to act in good faith**

Each Party agrees that it will act in good faith in relation to each other Party with respect to all matters relating to or contemplated by this Agreement.

#### **14.5 Costs**

The Parties agree to bear their own legal and other costs incurred in relation to the preparation, negotiation and execution of this Agreement and all documents contemplated by it (except where this Agreement or those other documents expressly provides to the contrary).

#### **14.6 Relationship of the parties**

The relationship of the Parties to this Agreement is one of independent contractors only. Nothing in this Agreement is to be construed as creating an agency, partnership, association, trust or joint venture between the Parties. Each Party is responsible only for its obligations as set out in this Agreement.

#### **14.7 Relationship with third persons**

- (a) Neither Party nor any of its employees, agents, representatives or contractors is to be deemed an employee, agent, contractor or representative of the other Party.

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- (b) Subject to this Agreement, neither Party has any authority to bind nor oblige nor incur any liability on behalf of the other Party and no such authority is to be implied.
  - (c) Neither paragraph 14.7(a) or 14.7(b) has the effect or implies:
    - (i) that a Party or any of its employees, agents, representatives or contractors is the employee agent contractor or representative of another Party, or
    - (ii) that a Party has the authority to bind or oblige or incur a liability on behalf of another Party.
  - (d) The Access Seeker may advise its customers that the Service is provided to the Access Seeker but the Access Seeker must not represent that H3GA participates in the provision of the Access Seeker's Eligible Services.

#### **14.8 Entire terms**

This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and replaces all prior representations and agreements in connection with that subject matter.

#### **14.9 Notice Procedures for withdrawal or expiry of Access Undertaking**

- (a) If H3GA withdraws the Undertaking or the Undertaking expires, other than in the circumstances referred to in clauses 13.7(a) or 13.7(b) or 14.11(b), the terms and conditions of this Agreement will continue to operate as an agreement between H3GA and the Access Seeker until such time (unless otherwise agreed, including in respect of the retrospectivity of charges) as H3GA and the Access Seeker agree to an alternative arrangement. H3GA and the Access Seeker will use all reasonable endeavours to agree to such alternative arrangements within six months after the withdrawal or expiry of the Undertaking. The Dispute Resolution Procedures may be activated to resolve any dispute as to an alternative arrangement.
- (b) Prior to:
  - (i) lodging a variation to the Undertaking; or
  - (ii) withdrawing the Undertaking which, at the time of the withdrawal, is to be immediately replaced with another Access Undertaking,

H3GA must consult with the Access Seeker for no less than 30 days in relation to such variation or replacement of the Undertaking and discuss possible variations to this Agreement with the Access Seeker in good faith.

#### **14.10 Variation**

No amendments to this Agreement are effective unless in writing signed by both Parties, or required by a determination which takes effect under section 152DN of the TPA.

#### **14.11 Review**

If:

- (a) the Act or the TPA is amended or repealed; or

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- (b) a condition of a Party's Carrier Licence or a Service Provider Rule is amended or deleted or a new condition or rule is imposed; or
  - (c) a lawful directive is made by the ACCC (including a competition notice), the ACMA, or any Minister; or
  - (d) a government introduces a new tax,

and this materially affects the rights or obligations of either Party, the Parties agree to negotiate in good faith such amendments to this Agreement as are necessary or appropriate to ensure consistency between this Agreement and the Act, the TPA, any relevant licences under the Act, the Service Provider Rules, the directive or the stated objectives of the tax, as the case may be.

#### **14.12 Assignment**

- (a) Subject to clauses 14.11(b) and 14.11(c), neither Party may assign or transfer any of its rights or obligations under this Agreement without the prior consent of the other.
- (b) Either Party may assign or transfer its rights and obligations under this Agreement to a Related Body Corporate provided that the proposed assignee or transferee:
  - (i) is a Carrier or Carriage Service Provider of substance having assets, revenues and credit ratings acceptable to the other Party acting reasonably; and
  - (ii) has a place of business in Australia; and
  - (iii) has executed a deed of assumption assuming the rights, obligations and liabilities of the first Party in a form acceptable to the second Party acting reasonably.
- (c) Either Party (the **First Party**) may novate its rights and obligations under this Agreement to a person (the **Assignee**) if:
  - (i) the Assignee holds a Carrier Licence;
  - (ii) the Assignee is of financial standing which is at least as good as the financial standing of the First Party as at the date of this Agreement;
  - (iii) the Assignee, the First Party and the other Party execute a deed of novation in a form reasonably satisfactory to the other Party; and
  - (iv) the Assignee provides a security in the same form and for the same amount as was provided by the First Party.

#### **14.13 Notices**

- (a) A notice, approval, consent, request or other Communication in connection with this Agreement:
  - (i) must be in writing; and
  - (ii) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of

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the addressee or sent by facsimile to the facsimile number of the addressee which is set out below or if the addressee notifies another address or facsimile number then to that address or facsimile number.

- (b) A notice, approval, consent, request or other Communication takes effect from the time it is received unless a later time is specified in it. A notice, approval, consent, request or other Communication is, in the absence of contrary evidence, taken to be received:
- (i) in the case of a posted letter, on the third (tenth, if posted to or from a place outside Australia) day after posting;
  - (ii) in the case of a facsimile , on the same day where it is transmitted within business hours on a Business Day or on the next Business Day if outside business hours, on production of a transmission report by the machine from which the facsimile was sent which indicated that the facsimile was sent in its entirety to the facsimile number of the recipient; and
  - (iii) in the case of a Communication left at the address of the addressee, at the time the Communication was left.

#### **14.14 Waiver**

A provision of or right under this Agreement may not be waived except in writing signed by the Parties.

#### **14.15 Date compliance**

- (a) For the purposes of this Agreement, date compliant means that neither performance nor functionality of any software or hardware in a Party's Network is adversely affected by dates and in particular any software or hardware in a Party's Network:
- (i) no value for any current date will cause any interruption in operation;
  - (ii) date-based functionality will behave consistently for all dates;
  - (iii) in all interfaces and data storage, the century in any date will be specified either explicitly or by unambiguous algorithms or inferencing rules; and
  - (iv) all relevant years (including without limitation 2008 and 2012) will be recognised as leap years;
- (b) Each Party certifies and warrants to the other that their Network (to the extent that it will affect the other Party) and the Interconnection between the Parties Networks (to the extent that it is under their control) will be date compliant before the Commencement Date.
- (c) Each Party agrees and acknowledges that being date compliant is a circumstance which is essential to the integrity of the other Party's Network. Either Party (**Disconnecting Party**) may, with notice, disconnect the other Party's (**Disconnected Party**) Network if it fails to comply with and maintain the warranty contained in clause 14.15(b). For the sake of clarification, the right to require

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disconnection will be the Disconnecting Party's sole remedy (whether in contract, tort, statute or otherwise) against the Disconnected Party for such failure.

- (d) The Disconnecting Party under clause 14.15(c) must reconnect the Disconnected Party's Network and recommence the supply of any disconnected services as soon as practicable after the Disconnected Party becomes date compliant.

**14.16 Duties, taxes, bank fees etc**

Notwithstanding any other provision in this Agreement, the Access Seeker is not liable to H3GA for financial institutions duty and debit tax on bank accounts held in H3GA's name.

**14.17 Publicity**

A Party must not make press or other public statements (which includes announcements and releases) relating to this Agreement, or any transactions to which this Agreement relates without the written approval of the other Party to the manner and content of that statement or release unless that statement, announcement or release is required by law or by a stock exchange. H3GA may make general announcements concerning the provision of the Service as a whole (for example how many access agreements have been entered into) but without disclosing the identity of the other Party or any Confidential Information.

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**EXECUTED** as an Agreement.

**Signed by**

**a duly authorised representative of [Insert Name of Access Seeker]**

in the presence of:

.....

Representative

.....

Name of Representative

.....

Witness

.....

Name of Witness

**Signed by**

**duly authorised representatives of Hutchison 3G Australia Pty Limited**

.....

Representative

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Name of Representative

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Witness

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Name of Witness

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# Schedules

## **SCHEDULE 1**

### **1. Introduction to schedules**

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#### **1.1 Scope of schedules**

Schedules 2 - 7 include technical and operational principles applicable to:

- specific technical issues;
- billing and settlements;
- ordering and provisioning;
- operations and maintenance;
- dispute resolution; and
- POI space access.

The technical and operational principles contained in these Schedules are relevant to the Service (except to the extent specifically excluded).



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## **SCHEDULE 2**

### **2. Technical standards: specific issues**

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#### **2.1 Physical interface specifications**

Each of H3GA and the Access Seeker must ensure that:

- (a) the electrical and physical interfaces with each others' Networks comply with all mandatory standards set by the appropriate regulatory authorities;
- (b) the electrical and physical interfaces with other Carrier's Networks comply with all voluntary standards adopted by the TAF in accordance with the Code and any TAF technical manual.

#### **2.2 Signalling system**

- 2.2.1 The signalling interface to support all Communications between Networks will be based on Interconnect ISUP.
- 2.2.2 Each of H3GA and the Access Seeker will provide, operate and maintain its own CCS7 signalling Network.
- 2.2.3 Each of H3GA and the Access Seeker must ensure that their signalling complies with Interconnect ISUP.
- 2.2.4 Subject to agreement as to confidentiality restrictions and the payment of relevant fees, each of H3GA and the Access Seeker will exchange all specification information necessary to implement the relevant interfaces and signalling systems between Networks.
- 2.2.5 Unless otherwise agreed, neither H3GA nor the Access Seeker may use the signalling resources of the other to transfer signalling messages between that Party's own exchanges or to an exchange outside Australia.
- 2.2.6 Each of H3GA and the Access Seeker will take reasonable care to prevent the transmission of any signalling messages across a POI which does not comply with signalling specifications set out in this paragraph 2.2.
- 2.2.7 Each of H3GA and the Access Seeker will take all reasonable action to prevent disruption to its Network resulting from signals outside the signalling specifications set out in this paragraph 2.2.

#### **2.3 Signalling issues for agreement**

For the sake of clarification, the following signalling related issues may be negotiated, agreed or specified in a voluntary technical standard:

- (a) services which require higher level protocols than those specified in this paragraph 2.3;

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- (b) provision of answer signals;
  - (c) CCS7 point Code assignment;
  - (d) signalling and call processing operations required for the exchange of CLI;
  - (e) the provision of answer supervision and signalling to indicate the use of echo control; and
  - (f) provision of uniform service tones.

## **2.4 Routing principles**

- 2.4.1 Unless otherwise agreed interconnect routes will be dimensioned on a “first and final choice - low loss” basis.
- 2.4.2 The Parties will avoid the use of analogue trunk routes and “digital - analogue - digital” routing to the extent practicable.
- 2.4.3 Except where otherwise agreed in an agreed Network Management strategy, interconnect traffic will be delivered to the agreed POI for the called or calling Number.
- 2.4.4 H3GA and the Access Seeker will use reasonable endeavours to minimise any post-dial delay on interconnect traffic between their Networks.
- 2.4.5 In order to protect the quality of calls to either Party's Network, the Parties undertake not to direct traffic to the other Party's Network via locations outside Australia.
- 2.4.6 Handover of interconnect traffic for the Service will be determined in accordance with the service description set out in clause 1.1 of Attachment A.
- 2.4.7 Routing of all interconnect traffic will be performed by H3GA in a non-discriminatory manner and H3GA will treat an Access Seeker's interconnect traffic, for routing purposes, on an equivalent basis to that which H3GA provides in respect of its own traffic.

## **2.5 Numbering**

- 2.5.1 H3GA and the Access Seeker acknowledge that the ACMA is responsible for the allocation of Numbers and the administration and development of the Numbering Plan.
- 2.5.2 Each of H3GA and the Access Seeker acknowledge that they must comply with the *Telecommunications Numbering Plan 1997*, as varied from time to time.

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## SCHEDULE 3

### 3. Billing and settlement procedures

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#### 3.1 Inter-party billing principles

- 3.1.1 H3GA shall provide an invoice, in writing or other material form agreed with the Access Seeker, to the Access Seeker for all amounts due in respect of the supply of the Service or Interconnection. The invoice must be accompanied by such information as is reasonably required by the Access Seeker allowing it to properly assess the amounts invoiced and must include the information set out in Schedule 8. An invoice will not be issued more than once each month and will apply monthly in arrears. Each Party will endeavour to issue invoices to the other within 28 days after the end of each billing month.
- 3.1.2 Subject to paragraph 3.1.10, all invoices are payable in full within 30 days of receipt.
- 3.1.3 All payments must be:
- (a) paid by cheque to H3GA or electronic transfer directly to the nominated account(s) of H3GA;
  - (b) subject to the notification of a dispute under clause 3.1.11 in relation to the invoice amount, paid without counter Claim and free and clear of any withholding or deduction except where a Party is insolvent and is being wound up, in which case s553C of the *Corporations Act 2001* will apply; and
  - (c) accompanied by such information as is reasonably required by H3GA allowing it to properly allocate payments received.
- 3.1.4 The Parties will use their reasonable endeavours to develop procedures for electronic transfer of funds for payments between them.
- 3.1.5 All invoices must be stated in Australian dollars.
- 3.1.6 If either the Access Seeker or H3GA discover an error in an invoice, it should notify the other as soon as practicable after discovering the error. The relevant Party will rectify any errors on its next invoice.
- 3.1.7 H3GA may invoice the Access Seeker for Fees and Charges previously omitted from an invoice or for charges to make-up for an under-stated charge on a previous invoice, provided no more than 6 months have elapsed since the initial invoice unless the Access Seeker consents to a longer period (such consent not to be unreasonably withheld) and provided that the Fees and Charges have been incurred under this Agreement and can be substantiated by H3GA to the Access Seeker. Without limiting the generality of the foregoing, it shall be reasonable to

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withhold consent where the Access Seeker is or would be unable to recover those Fees and Charges from its customers or service providers.

- 3.1.8 H3GA may charge interest on an undisputed overdue amount, which interest rate will not exceed by more than 2% above the then current overdraft rate of H3GA's principal bankers. Where interest in respect of any due and unpaid amount is due to H3GA under this clause, H3GA may add the amount of such interest to its next invoice.

In the event an Access Seeker disputes an invoice amount and is unsuccessful in its dispute, H3GA may charge interest as set out above from the Due Date of the invoice.

An interest Claim made in accordance with this clause must be paid within 30 days from the date of the Claim.

- 3.1.9 Unless the Parties otherwise agree, there will be no setting-off (ie netting) of invoices except where a Party is insolvent and is being wound up, in which case s553C of the Corporations Act 2001 will apply. However, in order to minimise the administration and financial costs of the settlement process, the Parties will consider set-off procedures for inter-party invoices which may require the alignment of the Parties' respective invoice dates and other procedures to allow set-off to occur efficiently.

- 3.1.10 The Access Seeker may dispute an invoice provided that dispute is in good faith and the Access Seeker notifies H3GA within 6 months of the date of the invoice and in the notice details:

- (a) the reasons for dispute;
- (b) date of invoice;
- (c) period of disputed charges;
- (d) type of charges disputed;
- (e) dollar value of dispute;
- (f) method of calculating disputed amounts including invoice details and specific call records/minutes; and
- (g) help desk number (where applicable).

- 3.1.11 The Access Seeker may withhold payment of any amount in dispute provided the Access Seeker notifies H3GA of the dispute within 30 days of the date of the invoice, pays any undisputed amount on an invoice, irrespective of whether other amounts on that invoice are disputed on or before the Due Date and each of the other conditions of paragraph 3.1.10 is met by the Access Seeker.

- 3.1.12 The Parties will use their reasonable endeavours to resolve a dispute under this clause within 21 days of the receipt of the notice from the Access Seeker under paragraph 3.1.10. If the Parties are unable to resolve the dispute in this period, the Dispute Resolution Procedures will apply to any amount in dispute.

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3.1.13 Before any invoice is issued under this Agreement, the Parties will reach an agreed summary of charges. Each invoice will contain this agreed summary of charges together with an attached remittance advice.

### **3.2 Communication Information**

3.2.1 H3GA must provide Communication Information to the Access Seeker in connection with matters associated with, or incidental to, the supply of the Service:

- (a) at such times or intervals ascertained in accordance with any regulations made under sections 152AR(6) and (7) of the TPA, including any regulations made pursuant to these regulations (collectively **regulations**);
- (b) in a manner and form ascertained in accordance with the regulations; and
- (c) with such particularity ascertained in accordance with the regulations.

3.2.2 H3GA must provide the Access Seeker with Communication Information in a manner and form, at such times or intervals, and with such particularity as set out in Schedule 8.

3.2.3 H3GA must provide the Access Seeker on a timely basis with all information reasonably required by the Access Seeker to verify rates and charges to be billed by H3GA to the Access Seeker. The Parties will determine what types of information for this purpose are to be provided.

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## **SCHEDULE 4**

### **4. Ordering and provisioning procedures**

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#### **4.1 Forecasting procedures – general**

4.1.1 H3GA may require the Access Seeker to provide forecasts, in writing, in respect of the Service:

- (a) for specified, non-overlapping time periods;
- (b) for particular areas, locations or types of Equipment; and
- (c) at particular times, but no more often than quarterly.

4.1.2 An Access Seeker must provide forecasts to H3GA in good faith.

4.1.3 H3GA may reject a forecast submitted by an Access Seeker on the basis that:

- (a) the forecast is unreasonable; or
- (b) the work which H3GA would be required to carry out based on that forecast is not reasonably achievable within the delivery periods contemplated in the forecast,

provided that H3GA and the Access Seeker shall negotiate in good faith and provide each other with sufficient information to enable H3GA's objections to be overcome.

4.1.4 Any forecast is non-binding.

#### **4.2 Points of Interconnect**

4.2.1 If requested by the Access Seeker, H3GA will provide sufficient information to the Access Seeker valid for 12 months regarding potential points of Interconnection for the Service, to enable the Access Seeker to select an appropriate point or appropriate points of Interconnection between Network with H3GA's Network.

4.2.2 The Access Seeker may request a Point of Interconnect with H3GA's Network at a location other than one specified by H3GA in accordance with paragraph (a). Subject to section 152AY of the TPA, H3GA will, to the extent technically and operationally feasible, permit the location of a Point of Interconnect at that location. The Access Seeker acknowledges that there may be additional costs associated with locating a Point of Interconnect at that point and agrees to meet those costs.

#### **4.3 Ordering procedures - general**

H3GA's OPM will contain provisions consistent with the following principles:

- (a) Ordering procedures may be specified by H3GA for the Service, capacity or other matters and reasonably sufficient information will be specified in an order to enable H3GA to accept or reject the order.

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- (b) The relevant ordering procedures will specify a time period within which an order will be accepted or rejected.
  - (c) The potential and reasonable reasons for rejection by H3GA of an order (including those set out in sections 152AR(4) and (9) of the TPA) will be specified.
  - (d) H3GA must, in a rejection of an order, specify a reason for such rejection.

#### **4.4 Ordering - Queuing policy**

H3GA will follow a queuing policy for orders of the Services. The queuing policy will be consistent with the principles in this paragraph:

- (a) Subject to paragraph (b):
  - (i) the queuing policy of H3GA must be non-discriminatory; and
  - (ii) H3GA must treat an Access Seeker's orders on an equivalent basis to that which H3GA treats its own orders for the Service; and
  - (iii) subject to paragraph (i) and (ii) above, H3GA must seek to maximise the efficiency of its queuing policy.
- (b) The queuing policy of H3GA should take into account:
  - (i) the reasonably anticipated requirements of other Access Seekers and of H3GA in respect of the Service;
  - (ii) the actual requirements of other persons in respect of the relevant service under any relevant Pre-Request Right; and
  - (iii) any relevant Protected Contractual Right.
- (c) The queuing policy may apply to:
  - (i) the review of orders before being accepted or rejected;
  - (ii) the fulfilment of accepted orders; and
  - (iii) any other matter to which H3GA applies a queuing system to ordering within its own systems.
- (d) H3GA must promptly notify an Access Seeker of:
  - (i) its acceptance on a queue;
  - (ii) the estimated delivery date of the Service;
  - (iii) an indication of the likely time that the significant work in fulfilment of this Access Seeker's order will be commenced by H3GA.
- (e) An Access Seeker must not transfer or otherwise trade its place in the queue with another Access Seeker.
- (f) The queuing policy will provide that an Access Seeker may prescribe the order in which orders placed simultaneously by it with H3GA should be treated in a queue.

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- (g) H3GA will co-operate with and provide information to the Access Seeker at the Access Seeker's reasonable request in relation to the fulfilment of the Access Seeker's order.

#### 4.5 Ordering - policies for the allocation of constrained capacity

In addition to the queuing policy referred to in paragraph 4.4, H3GA may have a policy for the allocation of constrained capacity in respect of a particular Network Unit or Network units. The constrained capacity policy will be consistent with the principles in this paragraph.

- (a) The constrained capacity policy of H3GA will be applied to H3GA's own operations.
- (b) Subject to paragraph (c), the constrained capacity policy of H3GA must be non-discriminatory and H3GA must treat an Access Seeker on an equivalent basis to that which H3GA treats itself for the same or functionally equivalent Service.
- (c) The constrained capacity policy of H3GA will take into account:
  - (i) the reasonably anticipated requirements of other Access Seekers (including the Access Seeker) and of H3GA in respect of the Service;
  - (ii) any relevant pre-request right; and
  - (iii) any relevant protected-contractual right.
- (d) The constrained capacity policy of H3GA will provide for the following:
  - (i) relevant Access Seekers (including the Access Seeker) to be notified of constrained capacity over a particular Network Unit or Network Units and the amount of capacity available having regard to current usage and reasonably anticipated requirements of H3GA and those Access Seekers;
  - (ii) relevant Access Seekers (including the Access Seeker) to disclose to H3GA and to each other their reasonably anticipated requirements; and
  - (iii) H3GA to allocate capacity in accordance with specified principles having regard to the objects of Part XIC of the TPA and the reasonableness requirements contained in section 152AH of the TPA.

#### 4.6 Decommissioning of POIs

- 4.6.1 Either H3GA or the Access Seeker (**Requesting Party**) may request the decommissioning of a POI from time to time and must consult and negotiate with the other Party in relation to such decommissioning provided always that H3GA may on no less than 2 years notice to the Access Seeker decommission a POI.



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- 4.6.2 Unless otherwise agreed by H3GA and the Access Seeker either before or after the date of this Agreement, the other Party should not, to the extent practicable, be financially disadvantaged, for a period of 3 years from the date of the notice under paragraph 4.6.1 by the decommissioning of a POI as requested by the Requesting Party and the Requesting Party, if it is H3GA, will recognise this principle by providing Interconnection and the Service at charges on a per-unit basis during that period which does not disadvantage the Access Seeker.
- 4.6.3 The Requesting Party will compensate the other Party for the direct costs associated with any re-arrangement within the other Party's Network which is necessary to accommodate the decommissioning of the POI.

#### **4.7 Testing and provisioning procedures**

- 4.7.1 Testing and provisioning procedures set out in the Ordering and Provisioning Procedures must treat an Access Seeker on an equivalent basis to H3GA.
- 4.7.2 If H3GA, in the normal course of business, is able to offer a delivery date to an Access Seeker which is earlier than the otherwise applicable delivery date, it must advise the Access Seeker for acceptance.
- 4.7.3 H3GA must notify an Access Seeker of the delay to a delivery date as soon as practicable after H3GA becomes aware of the possible delay.
- 4.7.4 H3GA and the Access Seeker will co-operate with each other in relation to testing of the supply of the Service or Interconnection to enable the supply of the Service including the exchange of information and on-site testing as reasonably required.

#### **4.8 Provisioning Network Conditioning**

- 4.8.1 Network Conditioning must be commenced and provided by H3GA on an equivalent basis to that which H3GA requests and performs Network Conditioning for itself for the Service or Interconnection.
- 4.8.2 Subject to paragraphs 4.8.3 and 4.8.4, H3GA must commence and implement Network Conditioning within its Network as requested by an Access Seeker within the timeframes referred to in paragraph 4.9, such time to commence immediately following agreement by H3GA and the Access Seeker in relation to:
- (a) geographical coverage;
  - (b) Number information (ie. length and Code allocation);
  - (c) origins from or destinations to which access is required;
  - (d) Network routes (including which Party is responsible for provision of the Interconnection links);
  - (e) handover arrangements and relevant POIs;
  - (f) inter-Carrier prefix (as per ACIF Interconnection Implementation Plan);
  - (g) signalling arrangements;

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- (h) Network Conditioning charges; and
  - (i) the structure of the charging for the Service and the Communication Information required to be exchanged between H3GA and the Access Seeker, to the extent that those matters are likely to impact upon the Network Conditioning.

#### **4.9 Codes and Number Ranges**

- 4.9.1 H3GA will, where reasonably practicable to do so, activate a Code or Number range in its Network within 30 days of being requested to do so by the Access Seeker, to whom the Code or Number range has been allocated.
- 4.9.2 In determining whether it is reasonably practicable to activate a Code or Number range within the 30 day period referred to in paragraph 4.9.1, the Parties will consider, without limitation, technical factors, customer disruption and whether the Code or Number range has been previously allocated and is in use.
- 4.9.3 If it is not reasonably practicable for H3GA to activate a Number within the 30 day period referred to in paragraph 4.9.1, H3GA will take all reasonable steps to activate the Code or Number range as soon as practicable thereafter and, in any event, within 6 months of the request by the Access Seeker in paragraph 4.9.1, or such longer time agreed by the Parties (such agreement not to be unreasonably withheld) including, without limitation, having regard to the application of H3GA's queuing policy referred to in paragraph 4.4.
- 4.9.4 Testing procedures for the verification that a Number range has been made available for use within a Party's Network are to be agreed by H3GA and the Access Seeker.
- 4.9.5 H3GA will not impose a charge for Network modification work relating to making a Number range available for use where the Service with the same Network Conditioning requirements is already provided by H3GA to the Access Seeker.
- 4.9.6 The Access Seeker must notify H3GA sufficiently in advance of a change in the use of an allocated Code or Number range that may have any impact on the carriage of Communications to enable H3GA to effect changes within its Network and facilities (including but not limited to its billing system).

#### **4.10 Provisioning Billing Systems**

H3GA and the Access Seeker will use their reasonable endeavours to agree on inter Carrier billing system specifications and other inter Carrier billing related matters in order to avoid or to reduce any delay to the commencement of supply of the Service once Network Conditioning has been completed.

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## **SCHEDULE 5**

### **5. Operations and maintenance procedures**

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#### **5.1 General principles**

- 5.1.1 H3GA and the Access Seeker will undertake operations and maintenance in their respective Networks as are reasonably necessary to facilitate any-to-any connectivity.
- 5.1.2 Each of H3GA and the Access Seeker is responsible for the maintenance and operations of its own Network.

#### **5.2 Fault reporting and identification**

- 5.2.1 Fault reporting and identification procedures must be non-discriminatory, including (but not limited to) the response time targets.
- 5.2.2 As a general principle, priority will be given to faults that have the highest service loss impact in terms of the number of customers affected.
- 5.2.3 Initial responsibility for identifying a fault rests with the person who first becomes aware of the fault.
- 5.2.4 If an end user reports a fault in respect of an Eligible Service provided to the end-user by H3GA, H3GA and the Access Seeker must comply with the relevant ACIF procedures in relation to fault reporting and rectification, as defined from time to time.

#### **5.3 Network protection**

- 5.3.1 Each of H3GA and the Access Seeker is responsible for the safe operation of its Network and must take all reasonable and necessary steps to ensure that its Network and its Network operations:
  - (a) does not endanger the safety or health of the officers, employees, contractors, or agents or customers of the other Party; and
  - (b) does not damage, interfere with or cause any deterioration in the operation of the other Party's Network.
- 5.3.2 The Access Seeker or H3GA must not interfere with the use of the Carriage Services provided by a third party.

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## SCHEDULE 6

### 6. Dispute resolution procedures

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#### 6.1 Interpretation

6.1.1 This clause 6.1 is intended to be consistent with Schedule 3 of the Code.

6.1.2 “clause” in this Schedule 6 is a reference to a clause in this Schedule 6 unless otherwise stated.

#### 6.2 No limitation on other recourse

Nothing in this Agreement will preclude or limit, or be construed as precluding or limiting, the rights of the Parties to:

- (a) at any time have recourse to the ACCC under the arbitration provisions set out in Division 8 of Part XIC of the TPA;
- (b) at any time to make a court application for urgent interlocutory relief; or
- (c) other than to seek urgent interlocutory relief commence court proceedings provided that the Parties have pursued the alternative dispute resolution mechanisms set out in this Schedule 6 for a period of at least 45 days.

#### 6.3 Inter-party dispute resolution

Subject to clause 6.2, before resorting to any external dispute resolution mechanisms the Parties shall:

6.3.1 in respect of Billing Disputes and disputes concerning billing information:

- (a) use reasonable endeavours to attempt to resolve the dispute through an inter-party working group formed in accordance with clause 6.4; and
- (b) in the event that the dispute is not resolved by the inter-party working group under clause 6.3.1(a) within 20 Business Days of the dispute arising (**expert date**), refer the dispute to an expert committee in accordance with clause 6.5;

6.3.2 in respect of technical and commercial disputes:

- (a) use reasonable endeavours to attempt to resolve the dispute through an inter-party working group formed in accordance with clause 6.4;
- (b) in the event that the dispute is not resolved by the inter-party working group under clause 6.3.2(a) within 20 Business Days of the dispute arising (**mediation date**), then either Party may refer the dispute to mediation in accordance with clause 6.6; and
- (c) in the event that the dispute is not resolved through mediation under clause 6.3.2(b) within 45 business date of the mediation date (**arbitration date**),

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then the Parties may, by mutual agreement, refer the dispute to voluntary arbitration in accordance with clause 6.7.

#### **6.4 Inter party working group**

For the purpose of clause 6.3, an inter-party working group will:

- (a) have jurisdiction in relation to either:
  - (i) Billing Disputes and disputes concerning billing information;
  - (ii) technical disputes; or
  - (iii) commercial disputes,

depending on the nature of the dispute; and

- (b) comprise two nominated representatives from each Party (a total of 4 persons), such nominees to have a detailed working knowledge of the dispute and a sufficient level of authority to resolve the dispute on behalf of the Party whom they represent.

The Parties may agree to appoint one of the nominated representatives as chairman of the working group. The administrative functions of, and the costs associated with, the working group, are to be shared equally between the Parties.

A decision of an inter-party working group must be by an unanimous vote.

#### **6.5 Reference to expert committee**

If a dispute is referred to an expert committee under clause 6.3.1(a):

- (a) the Parties must agree the terms of reference of the expert committee within 5 Business Days of the expert date. If the Parties fail to agree the terms of reference within this time, each Party may submit its own terms of reference to the independent expert appointed under this clause 6.5;
- (b) the expert committee will comprise one nominated representative of each Party, and an independent person with expertise in the area of Billing Disputes and disputes concerning Communication Information in the telecommunications industry;
- (c) the independent expert will be agreed between the Parties, or failing agreement within 5 Business Days of the expert date, will be appointed by the Australian Commercial Dispute Centre;
- (d) each member of the expert committee will be entitled to one vote and any decision of the expert committee will be by a majority vote;
- (e) the expert committee must reach a decision in relation to the dispute within 15 Business Days of the date of the expert's appointment;
- (f) the expert committee must give reasons for its decision to the Parties within 5 Business Days of reaching a decision;
- (g) a decision of the expert committee will, subject to clause 6.2, be binding on the Parties except in the event of a manifest error or a mistake of law; and

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- (h) in relation to costs and expenses:
    - (i) each Party will bear their own professional and expert costs incurred in connection with the performance of the expert committee's functions;
    - (ii) the costs of the independent expert appointed to the expert committee will be shared equally by the Parties unless the independent expert determines a Party has engaged in vexatious or unconscionable behaviour in which case the independent expert may require the full costs of the independent expert to be borne by that Party; and
    - (iii) all other reasonable extraneous costs and disbursements incurred by the Parties in relation to the expert committee are to be shared equally.

## **6.6 Mediation**

If a dispute is referred to mediation under clause 6.3.2(b):

- (a) the Parties must agree the terms of reference of the mediation within 5 Business Days of the mediation date. If the Parties fail to agree the terms of reference, each Party may submit its own terms of reference to the mediator appointed under this clause 6.6;
- (b) the mediator will be agreed between the Parties, or failing agreement within 5 Business Days of the mediation date, will be appointed by the Australian Commercial Dispute Centre;
- (c) the mediator must have relevant expertise having regard to the subject matter of the dispute;
- (d) the Parties must within 10 Business Days of the mediation date notify each other of the representatives who will be involved in the mediation;
- (e) the Parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (f) in relation to costs and expenses:
  - (i) each Party will bear their own professional and expert costs incurred in connection with the mediation;
  - (ii) the costs of the mediator will be shared equally by the Parties unless the mediator determines a Party has engaged in vexatious or unconscionable behaviour in which the mediator may require the full costs of the mediation to be borne by that Party; and
  - (iii) all other reasonable extraneous costs and disbursements incurred by the Parties in relation to the mediation are to be shared equally.

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## 6.7 Voluntary arbitration

If a dispute is referred to voluntary arbitration pursuant to clause 6.3(b)(iii):

- (a) the Parties must agree the terms of reference of the voluntary arbitration within 5 Business Days of the arbitration date. If the Parties fail to agree the terms of reference, each Party may submit its own terms of reference to the Arbitrator appointed under this clause 6.7;
- (b) the Arbitrator will be agreed between the Parties, or failing agreement within 5 Business Days of the arbitration date, will be appointed by the Australian Commercial Dispute Centre;
- (c) the Arbitrator must have relevant expertise having regard to the subject matter of the dispute;
- (d) the Arbitrator must reach a decision in relation to the dispute within 30 Business Days of the date of the Arbitrator's appointment;
- (e) the Arbitrator must give reasons for his/her decision to the Parties within 5 Business Days of reaching a decision;
- (f) a decision of the Arbitrator will, subject to clause 6.2, be binding on the Parties except in the event of a manifest error or a mistake of law; and
- (g) in relation to costs and expenses:
  - (i) each Party will bear their own professional and expert costs incurred in connection with the voluntary arbitration;
  - (ii) the costs of the Arbitrator will be shared equally by the Parties unless the Arbitrator determines a Party has engaged in vexatious or unconscionable behaviour in which case the Arbitrator may require the full costs of the Arbitration to be borne by that Party; and
  - (iii) all other reasonable extraneous costs and disbursements incurred by the Parties in relation to the voluntary arbitration will be shared equally.

## 6.8 Disclosure of Information

6.8.1 Subject to subclause 6.8.2, the Parties must, when engaging in a dispute resolution process under clauses 6.3.1(a), 6.3.2(a), or 6.3.2(b), promptly exchange all information relevant to the dispute for the purpose of facilitating a resolution to that dispute.

6.8.2 Information of a Party which is disclosed during the course of any dispute resolution process under this Schedule 6 (**First Process**) must be kept confidential in accordance with clause 12 of this Agreement and may only be used for the purpose of resolving the dispute to which that information relates. The Parties must not introduce into a subsequent dispute resolution process under this Schedule 6 or judicial proceedings:

- (i) the fact that the First Process has taken place;

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- (ii) any views expressed or suggestions made by a Party relating to a possible settlement of the dispute during the First Process;
  - (iii) admissions made by the Parties during the First Process;
  - (iv) proposals or views of a mediator, Arbitrator or independent expert as the case may be; or
  - (v) the fact that a Party had or had not indicated a willingness to accept any proposal for settlement.

#### **6.9 Initiation of a dispute**

For the purpose of this Schedule 6, a dispute arises when one Party notifies the other Party of the dispute.

#### **6.10 Continuance of obligations**

Both Parties must continue to comply with their respective obligations under this Agreement during the pendency of a dispute, any alternative dispute resolution processes undertaken in accordance with this Schedule 6 or any Court proceedings (unless otherwise ordered by a Court).



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## SCHEDULE 7

### 7. Access to POI space

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- 7.1 Subject to the Ordering and Provisioning Procedures and paragraph 7.2 of this Schedule 7, the Party who owns or occupies the premises at which the POI is located will, as a general principle and subject to space constraints, provide the other Party or its authorised representative with access to a physical space at the premises reasonably required to enable the Interconnection of the Parties' respective Networks and facilities for the purpose of the first mentioned Party supplying the Service to the other Party in order that the other Party can provide Carriage Services and/or Content Services.
- 7.2 For the sake of clarification, this Agreement does not limit a Party's rights under the Act which arise in relation to:
- (a) access to supplementary facilities which are dealt with in Part 3 of Schedule 1 to the Act; or
  - (b) access to:
    - (i) telecommunication transmission towers;
    - (ii) the sites of telecommunications transmission towers; and
    - (iii) eligible underground facilities,
- which are dealt with in Part 5 of Schedule 1 to the Act.

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## SCHEDULE 8

### 8. Communication information

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#### 8.1 Billing information

H3GA will provide the Access Seeker with billing information each month for the preceding calendar month, this information will be sent to the nominated contact at H3GA as specified in paragraph 8.4 within the first 5 Business Days of the month.

#### 8.2 Interconnect invoice

The invoice must be a GST compliant tax invoice and will contain the following information:

- (a) Access Seeker's company name, ABN, contact name and billing address;
- (b) Invoice date, invoice number, account number, Due Date;
- (c) Invoice period, interconnect charge (GST applies), interconnect charge (GST free); and
- (d) Total interconnect charges, GST amount, total due.

#### 8.3 Interconnect charge summary

The interconnect charge summary will contain a summary of interconnect call charges and include the following information :

***Header***

- (a) File creation date.

***Details (for each monthly billing period)***

- (a) Reporting period (ie first date of calendar month covered by the interconnect charge summary);
- (b) Call commencement period (ie date of call in local time);
- (c) Call description (ie Digital mobile service, Local service, Local rate service, Toll free service);
- (d) Time (not applicable for interconnect charge summary);
- (e) Tier (ie distance band - not applicable for mobile, local rate service or toll free service, not applicable for local service as charges are not distance dependant);
- (f) Status (ie successful or unsuccessful);
- (g) Charge type (ie Flagfall Intra CCA, Flagfall Local Rate, Conversation Mobile, Conversation Intra CCA, Conversation 13/1300);
- (h) Charge event (ie count);
- (i) Duration (minute); and

- 
- (j) Usage Charge.

**Footer**

- (a) Record count;  
(b) Total charge event;  
(c) Total duration; and  
(d) Total usage charges.

The interconnect charge summary data should be provided to the contact shown in paragraph 8.4 in an electronic form (format to be agreed between the contacts) at the same time as the Interconnect Invoice.

**8.4 Interconnect invoice/Charge summary contact details**

<b>Name of Access Seeker</b>	[Insert name of Access Seeker]	Hutchison 3G Australia Pty Limited
<b>Invoice contact address</b>		CM Wu
<b>Invoice Address</b>		Interconnect Accountant PO Box 388 St Leonards NSW 1590
<b>Access Seeker A/C No.</b>		