Communications Regulatory Authority
State of Qatar
هيئة تنظيم الاتصالات
دولة قطر

Standard Access Offer (SAO) for Developers

Consultation regarding template Standard Access Offer for Developers

CRA Response Document

CRA2016/07/20

July 20, 2016

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Background

1. On June 28, 2015 the President of the Communications Regulatory Authority (**CRA**) issued the Passive Civil Infrastructure Access Regulation (**Access Regulation**) which mandates that all entities owning or controlling Passive Civil Infrastructure at developments over a minimum size (i.e. "Access Providers") grant access to Service Providers. The Access Regulation requires that Access Providers who receive requests from Service Providers for access to Passive Civil Infrastructure produce and maintain a Standard Access Offer. The Access Regulation specifies the minimum content of the Standard Access Offer.

2. On March 8, 2016 the CRA issued a template Standard Access Offer for Developers (**Template SAO**) for public consultation. The Template SAO was issued to address concerns by developers who are likely to be affected by the Access Regulation and who asked for assistance with a standard document. The closing date for submission of stakeholder feedback in relation to the consultation document was March 30, 2016.

3. On April 20, 2016, the CRA received written submissions in relation to the Template SAO from various developers and operators, including from Ooredoo, Vodafone, Hamad International Airport (**HIA**) and Lusail Real Estate Development Company (W.L.L.) (**Lusail**) (together, the **Stakeholders**). In addition, the CRA has had informal discussions with the Stakeholders since receiving their written submissions.

4. This Response Document provides the CRA's analysis of the Stakeholders' submissions and the CRA's decisions. More specifically, this Response Document sets out:

   (a) the CRA's general comments in relation to common themes arising from the Stakeholders' responses in **Part A (General Comments)**;

   (b) the CRA's comments on specific issues raised by the Stakeholders in **Part B (Specific Comments)**, noting that specific issues raised by multiple Stakeholders have been grouped together; and

   (c) a revised version of the Template SAO at **Attachment A**.

5. Unless otherwise stated, a capitalized term is used in this Response Document has the meaning given to that term in the Template SAO.

Consultation procedures

6. In keeping with open and transparent regulatory processes, all interested parties are invited to provide their views and comments on this Response Document and the revised Template SAO provided at Attachment A.

7. The CRA asks that, to the extent possible, submissions be supported by relevant evidence and clear justification. Any submissions received in response to this consultation will be carefully considered by the CRA. Nothing included in this Response Document is final or binding. However, CRA is under no obligation to adopt or implement any comments or proposals submitted.

8. Comments should be submitted by email to Pascal Dutru (pdutur@cra.gov.qa) before **August 15th, 2016 2 pm**. The subject reference in the email should be stated as "Standard Access Offer for Developers". Where possible, a clear reference should be made to the specific paragraph, clause, annex and/or schedule that is the subject of the comment. It is not necessary to provide a hard copy in addition to the soft copy sent by email.

Publication of comments

9. In the interests of transparency and public accountability, the CRA intends to publish the submissions to this consultation on its website at www.cra.gov.qa. All submissions will be processed and treated as non-confidential unless confidential treatment of parts of a response has been requested.

10. In order to claim confidentiality for information in submissions that stakeholders regard as business secrets or otherwise confidential, stakeholders must provide a non-confidential version of such documents in which the information considered confidential is blacked out. The “blacked out” portion/s should be contained in square brackets. From the non-confidential version it has to be clear where information has been deleted. To understand where redactions have been made, stakeholders must add indications such as “business secret”, “confidential” or “confidential information”.

11. A comprehensive justification must be provided for each and every part of the submission required to be treated as confidential. Furthermore, confidentiality cannot be claimed for the entire or whole sections of the document as it is normally possible to protect confidential information with limited redactions.

12. While the CRA will endeavour to respect the wishes of respondents, in all instances the decision to publish responses in full, in part or not at all remains at the sole discretion of the CRA. By making submissions to the CRA in this consultation, respondents will be deemed to have waived all copyright that may apply to intellectual property contained therein.

13. For more clarification concerning the consultation process, please contact Pascal Dutru (pdutru@cra.gov.qa).

Part A – General Comments

14. The CRA has identified **three general themes** across the feedback received from Stakeholders. These themes are as follows:

    (a) **General theme 1** – the Template SAO as a whole may be too prescriptive not appropriate for use as a Standard Access Offer by all types of developers;

    (b) **General theme 2** – the CRA may not have appropriate powers in respect of developers (i.e. Access Providers) who are not Service Providers; and

    (c) **General theme 3** – it is unclear from the Template SAO what scope of access may be requested by Access Seekers in a single Access Request (i.e. whether a separate Access Request must be submitted in respect of each route, location and service).

15. We have addressed these general themes in the paragraphs below.

General theme 1 – the Template SAO is too prescriptive

16. Several Stakeholders provided feedback that the terms and conditions of the Template SAO are too prescriptive may not appropriate for use as a Standard Access Offer by all Access Providers. More specifically, those Stakeholders have suggested that the Template SAO does not take into account the differences between developers and developments, including the type of business operated by the developer, the infrastructure owned or operated by the developer, the developer's existing conditions of access and any existing processes, systems and resources in place to facilitate access, and control over management of Passive Civil Infrastructure.

17. Pursuant to regulation 5.2 of the Access Regulation, Access Providers are required to follow any templates issued by the CRA when developing their Standard Access Offers. The CRA has drafted the Template SAO to provide a standard set of conditions of access for various reasons that include the following:

    (a) for regulatory consistency and efficiency;

    (b) to speed up and streamline the process for developers to produce and maintain Standard Access Offers;

    (c) to assist and guide Access Providers for whom providing access to Passive Civil Infrastructure is not a core business function, by providing guidance on standard conditions of access to assist them to achieve a quick and fair result in commercial negotiations with Service Providers; and

    (d) contrasted to paragraph (c) above, to limit the ability of Access Providers to seek to impose conditions of access that are unfair or unreasonable.

18. However, we acknowledge that Access Providers should have more flexibility to develop Standard Access Offers that better suit their own specific requirements and constraints in relation to providing access to Passive Civil Infrastructure, provided the Standard Access Offer is consistent with the Access Regulation.

19. Various solutions were proposed by the Stakeholders to address this concern. These solutions are set out in more detail in Part B (Specific Comments) and can be summarized as follows:

    (a) **Option 1** – the Template SAO as a whole could be optional rather than mandatory, so that Access Providers who wish to develop their own Standard Access Offer can do so, provided it complies with the Regulatory Framework;

    (b) **Option 2** – the Main Terms and Conditions of the Template SAO remain mandatory, while the Annexes and Schedules to Template SAO are removed, allowing the Access Providers to develop their own operational and commercial provisions (at all times in compliance with the Regulatory Framework);

    (c) **Option 3** – the Main Terms and Conditions of the Template SAO remain mandatory, but Access Providers may amend the Annexes and Schedules

to suit their business requirements and conditions of access, provided the final Access Agreement is compliant with the Regulatory Framework; and

(d) **Option 4** – the Template SAO remains mandatory for Access Providers to adopt as a Standard Access Offer, but the terms are able to be commercially negotiated between the Access Provider and the Access Seeker, provided the final Access Agreement is compliant with the Regulatory Framework.

20. In relation to Option 4 described in paragraph 19(d) above, we note that the Access Regulation does not curtail the rights of Access Providers and Access Seekers to negotiate alternative positions in an Access Agreement, provided the final Access Agreement is otherwise compliant with the Regulatory Framework. Therefore the flexibility sought in Option 4 is already available to Access Providers and Access Seekers in the main, regardless of the outcome of this consultation.

21. **CRA response**

21.1 In light of the Stakeholders' feedback, the CRA proposes to adopt a modified version of Option 1 in paragraph 19(a) above. The Template SAO will become a guiding document to assist Access Providers as they develop their Standard Access Offers to understand standard practice, provided the Standard Access Offer complies with the Regulatory Framework. The Template SAO will include provisions that are marked as being:

- "***suggested clauses***", meaning that the content of the provision is standard practice, and therefore it is suggested that the Access Provider adopts the provision, but it may change between organisations (this includes legal terms); and
- "***recommended clauses***", meaning that the content of the provision contains standard processes that should be followed by the Access Provider, and may contain elements that are mandatory under the Regulatory Framework.

21.2 All Access Providers would still be required to obtain the CRA's approval before adopting and publishing any form of Standard Access Offer that is produces. This approval must be obtained from the CRA within a reasonable time frame, not to exceed [60 calendar days] (including time for the CRA to assess and respond to iterations of the Access Provider's draft Standard Access Offer). If an Access Provider is not able to have its Standard Access Offer approved by the CRA within this time frame, the Access Provider must adopt the form and content of the Template SAO.

22. The approach described in paragraph 21 above is reflected in the revised Template SAO set out in Attachment A and is also mentioned in response to relevant comments in Part B (Specific Comments).

23. The CRA has considered the impact of this approach on regulation 5.2 of the Access Regulation. As mentioned above, regulation 5.2 requires Access Providers to follow templates issued by CRA. We have included a clear statement in the Preface to the Template SAO that Access Providers who are impacted by the release of this template are not required to follow it, subject to the caveat mentioned in paragraph 21.2 above.

General theme 2 – the CRA may not have sufficient powers over developers

24. Several Stakeholders queried whether the CRA has sufficient powers in respect of Access Providers who are not Service Providers. More specifically, those Stakeholders expressed concerns that the CRA may not have enforcement powers against those Access Providers.

25. **CRA response**

25.1 Article 53 of Decree Law No. (34) of 2006 on the promulgation of the Telecommunications Law (the **Telecommunications Law**) states the following:

> *The General Secretariat shall set the rules necessary for facilitating access to private and public property for the purposes of installing, operating and maintaining telecommunications facilities in accordance with the rules of this Law and in co-ordination with the concerned authorities.*

25.2 The Council of Ministers passed No. 51/2014 Establishing the Telecommunication Infrastructure Coordination Committee (the "**Committee**"). The Committee is comprised of the Ministry of Interior, Ashghal, Ooredoo, Vodafone and QNBN and has a number of powers, including:

- coordinating between the different governmental authorities, and coordinating between them and the licensed telecom companies, in relation to the procedures of establishing the telecom infrastructure;
- simplifying the procedures and approvals processes relating to the execution of the broadband network in the State of Qatar;
- revising and simplifying the sites and relevant construction licenses approval procedures (which include wired and wireless telecommunications);
- resolving matters relating to roads opening procedures and the designs thereof;
- resolving cases relating to the construction standards of the telecommunication towers and infrastructure in both private and public projects;
- resolving matters relating to the sharing of the telecom infrastructure which include the tracks of ground telecom cables and fibre optics cables, and to agree on the procedures necessary to facilitate this sharing; and
- any other competencies that the Minister of ICT might assign thereto.

25.3 The Access Regulation was enacted by the President of the CRA in consultation with the Committee. Ashgal, who is represented on the Committee, oversees and regulates public works and developers.

25.4 In light of the matters above, the CRA has no reservation that developers and other Access providers who are not Service Providers were adequately represented during the development of the Access Regulation and will be adequately represented during the development of the Template SAO. Further, given the level of advocacy of developers in this process and Ashgal's role on the Committee, there can be no doubt

that the CRA has appropriate powers in respect of Access Providers (irrespective of whether or not they are Service Providers) in relation to the Access Regulation and the Template SAO.

General theme 3 – the potential scope of Access Requests is unclear

26. The Stakeholders provided conflicting feedback in relation to what scope of access may be requested by Access Seekers in a single Access Request under the Template SAO.

27. For example, one Stakeholder requested amendments to the Template SAO to clarify that a single Access Request could cover multiple routes and ancillary services. While another Stakeholder requested amendments to the Template SAO to clarify that an Access Request must be limited to a single route and location.

28. Further, on a related point, the developers who submitted feedback on this issue suggested that the time frames set out in the Template SAO for responding to the Access Requests are too short, considering the scope of Access Requests that could be submitted by an Access Seeker is not expressly limited in quantity, time or location.

29. This issue will become a matter for Access Providers to deal with in their Standard Access Offer if the CRA's approach in paragraph 21 above is adopted. However, the CRA considers that the Template SAO requires greater clarity on this issue. To achieve this, the CRA proposes to distinguish between "Significant Developments" and "Standard Developments" in order to provide more guidance and flexibility in relation to the potential scope of Access Requests (i.e. for single or multiple routes and locations) and time frames for Access Requests in respect of each type of development.

30. **CRA request**

30.1 The CRA seeks feedback from stakeholders in relation to the appropriate definitions of "Significant Development" and "Standard Development", as well as feedback in relation to the scope and time frames for Access Requests in respect of each type of development.

30.2 Unless alternative and compelling feedback is received to the contrary, the CRA proposes to use the following definitions and tests:

Significant Developments:–

- Developments that will classify as a Significant Development where approved by the CRA, and will generally include:
  - large, complex or multi-purpose developments (for example, airports and city complexes); and
  - other development approved by the CRA as a Significant Development.
- For Significant Developments, Access Providers will be given more leniency to develop bespoke access rules for their SAOs, including longer time frames and justifiable limitations in relation to the submission and fulfilment of Access Requests.
- Unless otherwise agreed with the Access Provider:
  - Access Seekers must submit individual Access Requests covering each route and location within the development; and

- Access Requests must be fulfilled by the Access Provider within time frames set out in the developer's SAO (as approved by the CRA).

Standard Developments:–

- Developments that are not Significant Developments will be presumed to be Standard Developments, provided the lower threshold for Standard Developments will reflect the threshold stated at regulation 2.2 of the Access Regulation, i.e.:
  - developments with 100 or more residential dwellings or 20 or more commercial dwellings; and
  - buildings of five or more stories.

- For Standard Developments, Access Seekers will be permitted to submit Access Requests covering multiple routes and locations (within the development) and those Access Requests will need to be fulfilled by the Access Provider within the time frames set out in the Access Regulation and the Template SAO, unless reasonable justification is provided to the CRA as to why longer time frames are necessary.

Part B – Specific Comments

Comment 1 – the Template SAO should be optional and amendable

31. As mentioned in Part A (General Comments) above, a Stakeholder provided feedback that the Template SAO should be optional for Access Providers to adopt when developing their Standard Access Offers, rather than being a strict form of contract:

> *[Stakeholder] appreciates and understands that the proposed SAO emanates from a request by certain developers for CRA's assistance in drawing up a standard access offer. In light of this,* ***[Stakeholder] suggests that the SAO be made optional enabling those Access Providers and Access Seekers wishing to make use of it to do so and allow amendment to the terms and conditions set out in the SAO pursuant to negotiations to the extent that these amendments do not contradict the Regulations*** *and Civil Code. Conversely, Access Providers wishing to draw up their own standard access offer should be allowed to do so within the ambit of the Regulations and Civil Code.*

32. Another Stakeholder provided feedback that the Access Request process in the Template SAO is too high level, oversimplified and unreasonable in terms of the duration of tasks. The Stakeholder also objected to certain provisions of the Template SAO such as the insurance obligations, liability and indemnity provisions, invoicing and pricing provisions and service levels. Stakeholders argued these should be established by each Access Seeker and negotiated and agreed between the two contracting parties to an Access Agreement on a case by case basis.

33. **CRA Response**

33.1 In response to this comment, we repeat our response to General Theme 1 set out in Part A (General Comments).

33.2 We note that the Template SAO will become a guiding document to assist Access Providers as they develop their Standard Access Offers. Access Providers will have flexibility to draft Standard Access Offers that fit their commercial, technical and operations requirements, provided it complies with the Regulatory Framework, and the Access Provider obtains the CRA's consent before adopting or publishing any form of Standard Access Offer.

Comment 2 – the Parties need more flexibility to negotiate Access Agreements

34. In a similar comment to comment 1 above, a Stakeholder provided feedback that the conditions of access in the Template SAO should be limited to the Main Terms and Conditions, and the Annexes and Schedules should be subject to negotiation.

35. This feedback suggested that the Template SAO does not take into account the differences between developers, both the type of business operated by the developers, the level of sophistication of the developers in facilitating access to passive civil infrastructure, and the control of the developer over management of passive civil infrastructure:

The CRA will recognize that developers also vary in size, expertise and infrastructure. *Each development would be different to the next and the conditions of access is likely to differ from development to development. In having the SAO in the form a fully-fledged commercial agreement template rather than a modifiable generic offer, the CRA inadvertently restricts developers from putting in place terms and conditions that reflect the specific requirements of their respective development, and indeed their business.* ***As an example, Article 2.2 of the Regulations provide that developers that own real estate developments of at least 100 residential or 20 commercial dwellings or buildings that are 5 storeys high or above must provide a standard access offer. It would be expected that the process for accessing Passive Civil Infrastructure for a development of at least 100 residential dwellings be significantly different from a building that is five storeys high, or indeed a development with thousands of residential dwellings. The SAO as proposed will not suit to fulfill the needs and requirements of markedly different types of developments.***

Having standard access processes and obligations risks in forcing Developers to ignore the specificities of their developments and infrastructure and pigeonhole them in a model that will not fit their requirements.

[Stakeholder], therefore, suggests ***that the conditions of access be limited to the Main Terms and Conditions of the SAO.*** *These terms and conditions ought to be sufficient to ensure that the CRA preserves key principles of equal access and non-discrimination as set out in the Regulations. In fact, [Stakeholder] stresses that the Regulations are already sufficiently prescriptive to ensure a great degree of consistency between developers.*

…

Additionally, the CRA would be aware that some Developers may outsource management of their Passive Civil Infrastructure to third parties while others may prefer to handle this themselves and ***some Developers may have GIS systems in place while others may not.*** *These differences would mean different processes and time frames from Developer to Developer.*

…

[Stakeholder] strongly recommends that the Annexes be subject to commercial negotiations between Access Provider and Access Seeker subject to the principles enunciated in the Regulations and Civil Code.

[Stakeholder]'s comments are made with the underlying principal that the Developer must be afforded the flexibility to implement the SOA in a practical manner, consistent with their level of resourcing and experience. The SOA should have cognizance to the different organizational structures, processes and systems within each Development.

36. Similar feedback was received from the same Stakeholder in terms of flexibility required for Access Providers and Access Seekers to negotiate terms relating to price, billing and operations and maintenance:

Furthermore, the differences between Developers would also warrant that the prices set out be left to commercial negotiations between Access Provider and Access Seeker, subject to the Charging Principles set-out at Article 11 in the Passive Civil Infrastructure Regulations.

[Stakeholder] considers that ***Annex D (Access to Passive Infrastructure Sites) and Annex E (Billing) should be commercially*** *negotiated between Access Provider and Access Seeker as these will heavily depend on the type of development, the billing mechanism of the parties and the extent of the services being taken.*

37. Feedback was received from Stakeholders who sought to set different targets in respect of Service Levels. A Stakeholder stated that Service Levels in relation to Access Requests should be linked to a number of variable factors, including the size and location of routes (and presumably the size of a location), and the resourcing capacity of the Access Provider:

> *With regard to Service Levels, again [Stakeholder] recommends that Service Levels be agreed between Access Provider and Access Seeker subject to non-discrimination principles enshrined in the Regulation. [Stakeholder] recommends that Service Levels be linked with the size and location of the routes within the Access Requests to ensure efficiency and clarity, as well as the reality of the resourcing capabilities of the actual Developer – again a one-size-fits-all approach would not be practical.*

38. Further, additional feedback was received that allowing the Access Provider and Access Seekers to negotiate terms would not fall foul of the objectives in the Access Regulation of non-discrimination and equal access:

> *It is imperative that the CRA does not fall in the fallacy of defining non-discrimination as access to different types of developments on the exact same terms and conditions. Non-discrimination and equal access would simply mean that each Developer would be required to apply the equivalent terms and conditions to Access Seekers. This does not mean that each and all Developers must offer the exact same terms and conditions of access. Indeed,* ***Developers may have different rules and obligations to reflect the specificities of their developments****, or indeed their operational or governance processes, and would be deemed legitimate for each Developer to offer access that whilst does not discriminate against Access Seekers, may be different from another Developer. Such an approach would still comply with the definition of non-discrimination in Articles 4.1 and 4.2 of the Regulations. In light of this,* ***[Stakeholder] suggests that the processes for Access Requests as set out in the Annexes of the SAO, be left to commercial negotiations between Access Providers and Access Seekers*** *subject to the principles set out in the Main Terms and Conditions and the Regulations.*

39. **CRA response**

39.1 In response to this comment, we repeat our response to General Theme 1 set out in Part A (General Comments).

39.2 In addition, we note that the Access Regulation does not curtail the rights of Parties to negotiate alternative positions in an Access Agreement,

provided the final Access Agreement is otherwise compliant with the Regulatory Framework.

Comment 3 – the Template SAO limits residual freedom to contract from the Access Regulation and Civil Code

40. Feedback was received that the Template SAO limits the freedom of Access Providers and Access Seekers to enter into their own Access Agreements that comply with existing legislative requirements:

> *The current form of the SAO simply limits any residual freedom to contract from the Regulations and the Civil Code. This is unnecessary as the Laws and Regulations in force already are clear enough to guide Developers in creating an access agreement.*

41. **CRA response**

41.1 We do not consider that the Access Regulation contains a sufficient level of detail to guide developers in relation to matters that are very well known to Service Providers. Without further detail in a Template SAO, developers may not have the guidance necessary to have informed and fair negotiations with Service Providers.

41.2 Nonetheless, in response to this comment, we repeat our response to General Theme 1 set out in Part A (General Comments).

Comment 4 – the CRA's jurisdiction over Access Providers

42. As mentioned in Part A (General Comments) above, feedback was received seeking clarification regarding the CRA's powers in relation to Access Providers who are not licensed providers of telecommunications services, including under the Telecommunications Law:

> *The Telecommunications Law No 34 of 2006 ("Telecoms Law") gives a mandate to the CRA over the regulation of telecommunications networks and services for which a licence is required. It clearly set out in Article 9 that:*
>
> *"No person shall without a License engage in any of the following practices:*
>
> *(a) provision of telecommunications services to the public in return for a direct or indirect fee, whether the services are provided to all the public or a segment thereof, including the resale of telecommunications services obtained from another person, even if only one person benefits from such a service;*
>
> *(b) own or operate a telecommunications network used for the provision of telecommunications services to or for the public in return for a direct or indirect fee;*
>
> *(c) own or operate any other telecommunications network*
>
> *We request clarifications from the CRA regarding the question of jurisdiction over the Access Providers contemplated in the Access Offer, namely "public and private entities, such as developers, government*

departments, and non-government organisations that control access to Passive Civil Infrastructure":

(a) What enforcement powers does the CRA has over those Access Providers who are not licensed?

(b) What licenses do the Access Providers hold (if any)?; and

(c) If some or all of the Access Providers are not licensed, what legal authority does the CRA have over the Access Providers.

Without clear jurisdiction, various critical provisions (e.g. on dispute resolution, on the role of the Authority) of the Access Offer will not be operative or enforceable.

43. This issue was unpacked in further detail by the Stakeholder in the context of the dispute resolution rules governing the Template SAO:

Paragraph 6 on page 7 of the Access Offer provides that "if the Access provider fails to comply with the process and timescales set out above, the Access Seeker may request the Authority to intervene under its Dispute Resolution Rules". Further at paragraph 1.2 the Access Offer says that "the purpose of the dispute resolution rules is to assist the CRA in the fair and efficient resolution of disputes arising between Service Providers". [Stakeholder] believes that not all of the Access Providers are currently licensed as "Service Providers" in Qatar and this raises the issue of CRA's jurisdiction. Service Provider is clearly defined in the Telecoms Law as:

> *"a person that is licensed to provide one or more telecommunications services to the public or licensed to own, establish or operate a telecommunications network to provide telecommunications services to the public. This includes providers of information or content provided using a telecommunications network."*

Based on the above definitions the Dispute Resolution Rules cannot be applied for disputes with Access Providers who are not licensed under the Telecoms law. [Stakeholder] recommends that the CRA address this gap and should consider prescribing a separate dispute process for all disputes envisioned under the Access Offer.

44. **CRA Response**

44.1 In response to this comment, we repeat our response to General Theme 2 in Part A (General Comments).

Comment 5 – the potential scope of Access Requests is unclear

45. Feedback was received that Access Seekers are not limited in the scope of access that they may request, including access to multiple routes and multiple locations, which may not be achievable for developers, especially those whose core business isn't providing infrastructure access:

In attempting to simplify the process for Developers, the CRA has inadvertently made access to Passive Civil Infrastructure more onerous from an administrative perspective for Developers. *In the*

SAO, an Access Request is not limited in quantity or in time. In fact, an Access Seeker may submit an Access Request with any number of routes (start and end points) and any number of locations. The Access Provider is required to review and accept such Access Requests within a total of 15 days of receipt.

The CRA will agree that Developers do not provide access to Passive Civil Infrastructure as a core business function and it would require significant administrative resources to process Access Requests within the proposed CRA processes and service levels.

While some large Developers may eventually get around meeting such obligations, it is not the case for all Developers.

46. The Stakeholder expanded on this point in relation to Clause B.1.1 of the Template SAO:

> *[Stakeholder] suggests that Access Request be limited in terms of routes being requested at any one time. Access Requests with an open number of routes will unnecessarily create significant administrative burden on the Access Provider, which may not be sufficiently resourced to deal with this. As stated before, Access Providers, in this case developers, may not dedicate resources for access to Passive Civil Infrastructure, and it would be unwise to set unachievable expectations.*

47. To the contrary, another Stakeholder provided feedback that an Access Request should be able to cover multiple routes and ancillary services, on the basis that it would make the ordering process more efficient and:

> *…to ensure that the Offer is practical and operationally sound. It will neither be workable nor efficient if for each and every duct route between two points or space request, a separate access request was mandated.*

48. Yet another Stakeholder expressed concern that the scope of Access Requests that could be submitted by an Access Seeker is not expressly limited "in quantity, time or location".

49. **CRA response**

49.1 In relation to this issue, we repeat our comments regarding General Theme 3 in Part A (General Comments) above.

Comment 6 – the time periods for processing Access Requests are too short or should not be consistently applied for all Access Requests

50. Feedback was received from multiple Stakeholders that the time periods in the Template SAO for processing Access Requests are too short. One Stakeholder foreshadowed that this may lead to a souring of relationships between Access Providers and Access Seekers and create unnecessary costs that will be passed on to consumers:

> *It could be argued that telecommunications service providers will primarily be Access Seekers, and as such, shorter time scales should be welcomed. However, the fact is that [Stakeholder] does not seek to see a situation where the SOA sets expectations, which practically just cannot be met. In those circumstances the SOA has the potential to sour the*

relationship between the Service Provider and the Developer, and creating unnecessary costs that will be passed on to the Service Providers, and ultimately to consumers.

[Stakeholder] suggests that:

- *Processing of Access Request needs to be on a best effort basis, subject to the distance and size of the route being requested. Alternatively, [Stakeholder] would suggest to reflect the position adopted by the CRA in the RIAO with the introduction of a Route Access Request ('RAR') after an Access Request has been submitted with a time limitation on each step ; and*

- *Similarly, Site Surveys, Provisioning process and Ready for Service must be based on a case-by-case and best effort basis, based on the requirements of the routes being requested.*

51. Another Stakeholder claimed that the Access Request process does not take into account the length of the route for which access is requested which has an impact on the duration of tasks in the process. The Stakeholder has provided revised timelines for Access Requests, Feasibility Requests and Implementation Requests which are dependent on number of duct segments and joint boxes.

52. Another Stakeholder provided significantly extended timelines for the steps in the Access Request process.

53. In addition, feedback was received in relation to the feasibility of the 20 Working Day time period set out in Clause B.2.3 to propose an alternative solution if the requested access is rejected due to lack of capacity:

Clause B.2.3: the obligation on the Access Provider to propose an alternative solution within 20 days is onerous. There is no guarantee that an alternative solution may actually exists and therefore this paragraph should be limited on the grounds on technical feasibility.

54. **CRA response**

54.1 In relation to in Clause B.2.3, the Access Regulation already specifies a time frame of 20 Working Days (not 20 calendar days) to develop an alternative solution if the requested access is rejected due to lack of capacity, meaning that the requirement would exist notwithstanding the existence of the Template SAO.

54.2 Nonetheless, we repeat our comments regarding General Themes 1 and 3 in Part A (General Comments) above in relation to the Access Provider's scope to amend the Template SAO for its own purposes and the rights of the parties to an Access Agreement to negotiate bespoke terms.

Comment 7 – Access Seekers should be supervised when installing equipment and cables and bear the cost of that supervision

55. Feedback was received that supervision and inspection should be mandatory when the Access Seeker installs equipment or cables, and the Access Seeker should bear the costs of any supervision and inspection activities:

With regard to supervision and inspection, [Stakeholder] suggests that this be made mandatory at the cost of the Access Seeker. As any service provider would agree, it is of utmost importance that cables and equipment of other access seekers as well as the Passive Civil Infrastructure of the Access Provider are protected during installation by a new Access Seeker. It is sensible that the new Access Seeker bears the cost of supervision and inspection, whether this is done by the Access Provider or another third party.

56. **CRA response**

56.1 We repeat our comments regarding General Theme 1 in Part A (General Comments) above in relation to the Access Provider's scope to amend the Template SAO for its own purposes and the rights of the parties to an Access Agreement to negotiate bespoke terms.

56.2 It is up to the Access Provider to decide whether or not supervision or inspection is required and how the costs of supervision or inspection are built into the costs of providing access (or considering an access request). Operationally, we expect that the Access Provider will notify other Service Providers and Occupants with equipment or cables at/in a route or location for which access is being sought that an Access Seeker will be conducting installation activities.

Comment 8 – Clause A.2.7 confuses the Access Provider's ability to reject Access Requests due to capacity constraints

57. Feedback was received that:

... the language of [Clause A.2.7] suggests that the Access Provider is obligated to satisfy the Access Seeker's requests regardless of any limitations such as capacity constraints. [Stakeholder] suggests that this clause be amended to allow rejection of the access request if technically impossible

58. **CRA response**

58.1 The Template SAO sets out clear guidance on when an access request can be rejected for technical infeasibility under Clause A.2.5 and Clause B.2.3.

58.2 However, the obligation in Clause A.2.7 on Access Providers to attempt to resolve capacity issues with existing Occupants or access seekers (or those who have reserved capacity) by using its best endeavours is onerous and may come at a cost, as other Service Providers may not wish to cooperate in these discussions. We agree with the stakeholder feedback that the Access Provider should have fulfilled its obligations under this provision if the access request is found to be not technically feasible.

58.3 In the next draft of the Template SAO, the words "…shall use its best endeavours…" will be amended to "…shall take reasonable steps…" and the words "provided that the Access Provider is not obligated to satisfy the Access Seeker's request if it is not technically feasible, or if there is no capacity, pursuant to Clause B.2.3" will be included at the end of the last sentence.

Comment 9 – Clauses A.2.9 and A.3.8 confuse the process for granting access

59. Clause A.2.9 and A.3.8 requires Access Providers to consult with other users of Towers or Spaces before it carries out installation activities, and resolving issues of interference of other impediments raised by the other users.

60. Feedback was received that:

> *Clause A.2.9 … lacks clarity. It would seem that the Access Seeker may already be authorized by the Access Provider to install its equipment but may still be denied by other users of the Tower*

61. Similar feedback was received in relation to Clause A.3.8 in relation to the Space Service.

62. **CRA response**

62.1 It may not be possible to consult with all existing tenants before approving an Access Request, so these consultations may take place in parallel to the ordering and provisioning process. However, Clauses A.2.9 and A.3.8 provision do not permit the Access Provider to deny an Access Request if an issue is raised by an existing tenant after an Access Request is granted. Presumably, if an existing tenant complains about electromagnetic interference issues or other impediments (e.g. on a tower) the issue would be resolved privately.

62.2 If this provision is universally applied to all tenants at a site, it would protect the Access Seeker in the future as prospective tenants would need to consult with the Access Seeker before installing equipment.

62.3 No change required.

Comment 10 – Access Providers may not have the electronic records required by the Template SAO

63. Clause B.6.2 requires Access Providers to maintain electronic records of its Passive Civil Infrastructure showing its "location, capacity and usage by the cable and equipment of the Access Seeker and other Access Seekers or Service Providers" and to "make these records available on request to the Access Seeker".

64. Feedback was received in relation to Clause B.6.2 that:

> *… it is unlikely that all developers would have the capacity to maintain electronic records to this level of detail.*

65. **CRA response**

65.1 No developers have objected to this specific requirement. Also, the Access Regulation only applies to major developments and buildings, and it would be highly unlikely for developers of that scale to not have electronic records of their passive civic infrastructure and cabling and other equipment in place. If any developers do not have these types of records in place, then they should be required to do so to achieve the objectives of the Access Regulation and to streamline the granting of access under the access regime.

65.2 However, we repeat our comments regarding General Theme 1 in Part A (General Comments) above in relation to the Access Provider's scope to amend the Template SAO for its own purposes and the rights of the parties to an Access Agreement to negotiate bespoke terms.

Comment 11 – Access Seekers should be able to request variations to the Template SAO

66. Feedback (and proposed mark-up to page 6 of the Template SAO) was received suggesting that Access Seekers should also be able to request variations to the Template SAO, in addition to Access Providers, who already have specific rights to do so at page 6 of the Template SAO; further, that any proposed variations to the Template SAO should be subject to a consultation process with stakeholders:

> *[Stakeholder] supports the provision in the preface section that the Access Offer may be varied periodically. We are however concerned that only the CRA and Access Providers may request a variation. [Stakeholder] submits that Access Seekers should also have the right to request variation of the Access Offer. As users, they will be able to identify processes and procedures that may not work and/or could be improved for the provision of services to customers.*
>
> *Further a clear process for variations should be set out in the Access Offer.*

67. **CRA Response**

67.1 It makes sense that both Access Providers and Service Providers have the ability to request variations to the Template SAO. We have amended the Preface to the Template SAO to clarify that Access Seekers are not precluded from suggesting amendments to the Template SAO.

67.2 The CRA agrees that material variations to the Template SAO should be subject to public consultation if the CRA considers the consultation will be beneficial or is required for fairness.

Comment 12 – The term of Access Agreements should be longer and less susceptible to termination, to protect the Access Seeker's investment

68. Feedback was received suggesting that the term and termination provisions of the Template SAO do not promote the deployment of telecommunications networks using access to Passive Civil Infrastructure as intended by the Template SAO:

> *Given the nature of the facilities involved, the sunk cost associated with the use of the facilities (e.g. cost to lay cable, cost to alter the facilities of the access provider to accommodate access requests) and risks in terms of continuity of services, there should be a sufficiently long minimum term for the agreement (we are proposing ten years) and notice period. This is a pre-condition for any sunk investment to be undertaken by an Access Seeker. Further, the Access Provider should be entitled to terminate an Access Agreement only for a limited number of clearly defined reasons and any termination should require the approval of the Authority. We have drafted changes to that effect.*

Our suggested changes are necessary for the Access Offer to provide some predictability as the current provisions are unlikely to support the attainment of the overarching purposes of the Access Offer, namely to facilitate access to civil infrastructure and thereby avoid the unnecessary duplication of infrastructure and ease the provision of telecommunications services.

69. Further to those general comments, mark-up was received to Clauses 3 and 12 of the Template SAO encouraging the CRA to:

(a) remove the Access Provider's right to terminate the Access Agreement on 12 months' written notice (with the CRA's authorisation);

(b) require any purported termination of the Access Agreement as a whole, or access to a site or service, to be authorised by the CRA; and

(c) mandate a minimum term of access of 10 years, rather than 1 year.

70. We received feedback from another Stakeholder that the obligation to obtain permission from the Authority to terminate an Access Agreement is onerous. Stating that:

Access Providers should have the right to terminate without the need to obtain permission from the Authority.

71. **CRA response**

71.1 We have amended Clause 3.2.2 of the Template SAO to state that termination initiated by the Access Provider must be with the Parties' mutual consent.

71.2 Any termination by the Access Provider already requires approval from the CRA pursuant to Clause 12.6.

71.3 We have amended Clause 3.3 to increase the minimum term of access from 1 year to 20 years, unless otherwise agreed between the Parties.

71.4 In addition, we have made a number of other amendments to the term and termination provisions (Clauses 3 and 12) to make those provisions more appropriate for encouraging investment by Access Seekers and Access Providers in access to Passive Civil Infrastructure.

Comment 13 – Access Seekers should be able to request access under a Standard Access Offer if the Access Provider is already supplying the relevant services under a pre-existing agreement

72. Feedback was received that the wording of the Template SAO would restrict Access Seekers from seeking access under a Standard Access Offer if the relevant services are provided by the Access Provider under a pre-existing agreement that is on foot:

Page 6 of the Access Offer sets out the procedure for the parties wishing to enter into the Access Offer. Paragraph 3 on this page provides that the Access Provider may reject the request where the Access Provider is already supplying the services requested by the Access Seeker under a pre-existing agreement which has not been terminated. [Stakeholder] submits that the Access Seeker cannot be expected to terminate a pre-

existing contract without the Access Offer being in place with the Access Provider, therefore the reason for rejection should be amended as follows:

> *"The access provider is already providing the services requested by the Access Seeker to the Access Seeker under a pre-existing agreement and the Access Seeker has not provided a notice of intention to terminate the pre-existing agreement, subject to conclusion of the Access Offer."*

73. **CRA response**

73.1 The relevant paragraphs of the Preface have been removed as they are not consistent with the Access Regulation.

Comment 14 – Inclusion of standard pricing for access costs

74. Annex F (Pricing) current sets out categories of access fees, but does not set out the actual figures.

75. Feedback was received that Annex F (Pricing) should set out standard prices for access:

> *[Stakeholder] notes that Annex F, the Pricing schedule, does not set out the prices for the services and seeks clarity whether CRA intends to set the prices or leave them to commercial negotiations? [Stakeholder]'s view is that to facilitate negotiations, it should define pricing principles to be applied by Access Providers. Our position is that the charges should be fair and reasonable and be cost oriented. [Stakeholder] is of the view that the wholesale charges for the Ooredoo RIAO issued by the CRA on 25 November 2015 are a reasonable proxy for determining cost oriented prices.*

76. **CRA response**

76.1 Annex F (Pricing) will not set out suggested pricing. The costs associated with reviewing, processing and implementing Access Requests will vary for each Access Provider, having regard to variables such as the nature of the development in question, the type of access sought, the Access Provider's systems and dependencies, and the potential scope of Access Requests. It should be within the discretion of the Access Provider to set its standard pricing in the Standard Access Offer, which must be consistent with the Access Regulation and the broader Regulatory Framework.

76.2 Also, Parties to each Access Agreement can negotiate pricing, having regard to industry standard pricing such as Ooredoo's RIAO. In this regard, we note that Access Providers are required by the Access Regulation to negotiate in good faith and on commercially reasonable terms and conditions.

Comment 15 – responsibility for costs of modifications and improvements

77. Feedback was received that Access Seekers should be able to recover the cost of modifications and improvements to a route or location, paid for by the Access Seeker, if other access seekers benefit from them:

In relation to charging, we consider that an apportionment mechanism of the cost of alterations, modifications and improvement should be introduced where the work carried out to accommodate an access request and paid by an access seeker benefit a subsequent access seeker(s).In such cases, the access seeker which has paid the cost of the work should be entitled to recover a reasonable proportion of the cost it has incurred from any other access seeker(s) that benefit from the work.

78. The services listed in Annex A (Services) are currently divided between:

78.1 those that require the Access Provider to bear the cost of modifications or improvement works to enable the installation of the Access Seeker's cable and equipment (these are Duct and In-building Services, Tower Services and Space Services); and

78.2 those that require the Parties to agree on their respective proportions of the costs, having regard to the benefit of the works to other tenants (these are Ancillary Services, Metered Electric Power and Unmetered Electric Power).

79. However, Clauses B.3.3 and B.3.4 (which applies to all services) requires that the parties consider during a site survey how the costs of modifications or improvements should be shared between them.

80. **CRA response**

80.1 In light of the conflict between Annexes A and B, we have amended the relevant provisions of Annex A and also Clauses B.3.3 and B.3.4 so the default position in each case is that the Parties agree on their respective proportions of the costs.

80.2 This approach is consistent with the Access Regulation.

Comment 16 – Requirement to obtain the CRA's consent to any SAO with terms and conditions that are different to the Template SAO

81. The Preface to the Template SAO provides that:

An Access Agreement based on terms and conditions different from those included in this Standard Access Offer shall be submitted to the Authority for approval within five (5) Days of its conclusion. The Authority shall approve or reject the changes, detailing the reasons, within ten (10) Days.

82. The following feedback was received in relation to that paragraph:

[Stakeholder] does not consider it to be necessary or appropriate for the Authority to approve different terms and conditions when those are mutually agreed by the Access Seeker and Access Provider.

We however support the provision to submit any signed access agreement to the Authority.

83. **CRA response**

83.1 To address the specific comment, there must be a distinction made here between approval of an Access Provider's own Standard Access Offer and the approval of each Access Agreement.

83.2 Regulation 5 of the Access Regulation requires Access Providers to obtain the CRA's approval before using a Standard Access Offer in respect of a Passive Civil Infrastructure. However, once the Standard Access Offer is approved, it would not prevent the Access Provider and Access Seeker from amending terms and conditions in the Standard Access Offer when negotiating an Access Agreement. A copy of the signed Access Agreement must be submitted to the CRA but it is not necessary for the CRA to approve it.

83.3 However, to avoid confusion, we have removed the relevant paragraph from the Preface to the Template SAO, and have updated the Preface accordingly, on the basis that the correct requirements are already set out in the Access Regulation.

83.4 Further, we repeat our comments regarding General Theme 1 in Part A (General Comments) above in relation to the Access Provider's scope to amend the Template SAO for its own purposes and the rights of the parties to an Access Agreement to negotiate bespoke terms.

Comment 17 – Passive Civil Infrastructure Committee

84. The following feedback was received in relation to Clause B.2.5, which states that an Access Seeker may refer a refusal the Access Provider to grant access for technical reasons to the Passive Civil Infrastructure Committee:

> *Passive Civil Infrastructure Committee is not defined in the Access Offer nor are there provisions on the committee in the document. Vodafone submits that the CRA should provide a definition in the document of the proposed Committee, its role and governance.*

85. **CRA response**

85.1 The Passive Civil Infrastructure Committee, which is referred to in the Access Regulation, was formed by Council of Ministers Decision No. 51 of 2014 Establishing the Passive Civil Infrastructure Committee, as mentioned in Part A (General Comments).

85.2 Please refer to paragraph 25.2 above for more information on the role and governance structure of the Passive Civil Infrastructure Committee.

Comment 18 – Internal Cabling Guidelines for Ducts and In-building Facilities

86. A Stakeholder claimed that it is already bound by the Small-Office Home-Office (SOHO) and Residential Services Internal Cabling Guidelines (the **In-Cabling Guidelines**) drafted by the CRA and approved by QNBN, Ooredoo and Vodafone. As such, it considers that Annex A is not necessary to prescribe the basis on which access must be provided to an access seeker and that the Access Regulation does not have the power to impose these restrictions.

87. **CRA response**

87.1 The In-Cabling Guidelines sets out the minimum requirements for the provision of internal wiring to support telecoms services in Qatar as well as best practices.

87.2 Section 2 of the In-Cabling Guidelines specifies that in addition to complying with the In-Cabling Guidelines, industry participants are obliged to comply with all applicable laws, regulations and requirements of any government body, and that any inconsistency would be resolved in the following (descending) order of precedence:

(a) Any legislation or relevant regulation;

(b) The In-Cabling Guidelines;

(c) Any Bilateral Agreement.

87.3 The Access Regulation takes precedence over the In-Cabling Guidelines and must be followed. However, an Access Agreement (once signed) would fall behind the In-Cabling Guidelines in terms of precedence.

87.4 In any event, the In-Cabling Guidelines are technical best practices which govern material selection, engineering plans, installation practices, quality assurance and other design factors relevant to wiring. Whereas Annex A of the Template SAO sets out the requirements for the provision of ducts and in-building facilities. Both documents are meant to work together in synergy and do not materially contradict one another.

Comment 19 – requirement to notify access seekers of new developments

88. We received feedback that the positive requirement at Clause 4 and Annex C of the Template SAO for an Access Provider to consult in advance with any Access Seeker with which it has an existing Access Agreement of its plans to carry out construction of a development containing Passive Civil Infrastructure is outside the ambit of the Access Regulation.

89. **CRA response**

89.1 We repeat our comments regarding General Theme 1 in Part A (General Comments) above in relation to the Access Provider's scope to amend the Template SAO for its own purposes and the rights of the parties to an Access Agreement to negotiate bespoke terms.

Comment 20 – Operations and Maintenance

90. We received feedback on Annex D (Operations and Maintenance) that the Stakeholder objects to those provisions which undermine its ability to manage and control its own infrastructure asset. E.g. allowing the Access Seeker to carry out unsupervised maintenance of the telecommunications infrastructure without giving notice to the Access Provider.

91. We also received feedback from another Stakeholder that the Access Provider should have the ability to request the Access Seeker to relocate its equipment at no cost.

92. **CRA Response**

92.1 We repeat our comments regarding General Theme 1 in Part A (General Comments) above in relation to the Access Provider's scope to amend the Template SAO for its own purposes and the rights of the parties to an Access Agreement to negotiate bespoke terms.

Comment 21 – clarification on definitions referring to the Law

93. We received feedback that the definitions of the following terms are not clear because reference to the 'Law' is nonspecific:

(a) *Public Telecommunications Network*

(b) *Public Telecommunications Service*

(c) *Service Provider*

94. **CRA response**

94.1 The references to "Law" in these definitions have been amended to refer to the "Telecommunications Law" (as defined in the Template SAO).

Comment 22 – various requests for amendments and drafting clarifications

95. **Drafting clarification – Meaning of "to scale" in respect of Passive Civil Infrastructure**

95.1 Feedback was received that the meaning of the words "to scale" in Clause B.3.4 (extracted below) is not clear, in light of the process for alterations, modifications and improvements in Clauses A.1.11, A.2.11, A.3.11, A.5.11, A.6.11, B.3.3 and B.4.4:

> *If the site survey shows that there is insufficient capacity on existing Passive Civil Infrastructure to meet the Access Request, if technically feasible, the Access Provider shall agree with the Access Seeker to scale the Passive Civil Infrastructure to meet the Access Request. The Access Seeker and the Access Provider may agree that the Access Seeker shall have a separate Indefeasible Right of Use for a minimum period of twenty (20) years or may enter into a separate lease arrangement that is subject to the participation of other Access Seekers or may have access to the new capacity provided by the Access Provider under the terms of this Access Agreement.*

95.2 We agree that the language isn't defined, though it is also used in the Access Regulation and the meaning (namely to expand or enhance) is clear enough for its purpose.

96. **Drafting clarification – definition of "Customer"**

96.1 Feedback was received suggesting that the definition of "Customer" should refer to the definition in the Telecommunications Law. The Stakeholder considers that the definition in the Template SAO is not appropriate and is inconsistent with the definition in the Telecommunications Law.

96.2 The definition of "Customer" in the Template SAO is extracted below:

> ***Customer*** *means a party which has subscribed to a Service Provider for the provision of a Public Telecommunications Service, but which is not, for the purposes of this Standard Access Offer, a Service Provider.*

96.3 The definition of "Customer" in the Telecommunications Law is extracted below:

> ***Customer****: any subscriber or user of telecommunications services, whether such services are acquired for the custom**er's** own use or for resale.*

96.4 The definition of "Customer" in the Telecommunications Law is more aligned with a "business-to-consumer" arrangement, rather than a wholesale or "business-to-business" arrangement. We have, however, amended the definition in the revised Template SAO so that it is clearer and anticipates both types of arrangements.

97. **Drafting clarification – definition of "Day"**

97.1 Feedback was received suggesting that the definition of "Day" should be reviewed to ensure consistency with the Regulatory Framework.

97.2 The definition of "Day" in the Template SAO is extracted below:

> ***Day*** *means a day other than Friday and Saturday or a day which is lawfully observed as a national public holiday in the State of Qatar.*

97.3 There is no definition of "Day" in the Telecoms Law and the Access Regulation refers to "working days" (undefined) to describe a similar concept to the Template SAO definition.

97.4 In the next draft Template SAO, the definition of "Day" will be amended to "Working Day" and all reference to "Day" (upper case) in the Template SAO will be amended to "Working Day".

98. **Drafting change – purpose of access in clause 2.3**

98.1 The following amendment was proposed to Clause 2.3:

> *The Passive Civil Infrastructure is only available to the Access Seeker for the purpose of providing services which it is licensed to offer or other services as agreed between the Parties.*

98.2 This amendment was suggested on the basis that the notion of electronic communications services is not present in Qatari telecoms law.

98.3 The amendment (with minor tweaks) has been implemented in the revised Template SAO.

99. **Drafting change – Service Levels**

99.1 The following amendment was proposed to Clause 2.10:

> *The Parties commit themselves to use their best endeavours and the Access Provider must comply with the service levels and*

timescales set out in Annex G – Service Levels, and to pay the penalties set out in this Annex in the event on non-compliance.

99.2 This amendment was suggested on the basis that it is consistent with Clause G.1 which provides that the Access Provider must adhere to the Service Levels, without any dilution of the obligation.

99.3 There is a distinction between the obligation of the Access Provider to comply with the Service Levels and the obligations on the parties to use their best endeavors to meet the timescales set out in Annex G (Service Levels) – some of which are not Service Levels.

99.4 The amendment (with structural changes, taking into account the distinction above) has been implemented in the revised Template SAO.

100. **Drafting change – Confidential Information**

100.1 The following amendment was proposed to Clause 7.2.5:

The Receiving Party must:

(a) ensure that Confidential Information is only available to the staff responsible for the management or implementation of this Access Agreement, as well as its subsidiaries, group companies and third party sub-contractors.

100.2 This amendment was suggested on the basis that it is standard wording for most confidentiality provisions.

100.3 The first amendment has been implemented in the revised Template SAO. The second amendment, regarding the ability of affiliates and sub-contactors to access Confidential Information, is not acceptable in its current form. Any disclosure of Confidential Information outside of the contracting entity must only be to personnel in Qatar (including sub-contractors) on a 'need to know' basis, and only if the recipient has agreed to comply with confidentiality obligations no less onerous than those on the Receiving Party. The revised Template SAO sets out the CRA's amendments to capture this intent.

101. **Drafting change – Insurance**

101.1 The following amendment was proposed to Clause 9.1:

Each Party shall maintain adequate and proper insurance cover for public liability with a reputable insurance company licensed in Qatar. The Access Seeker will insure all its equipment placed on a Passive Civil Infrastructure Site for no less than ten (10) million Qatari Riyals. Neither Party shall be liable to the other Party (or to the other Party's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard "All Risks" insurance policy, and, in the event of such insured loss, neither Party's insurance company shall have a subrogated claim against the other and each Party shall indemnify the other Party and its officers, directors, employees, agents and representatives from and against any damages, costs, penalties, fines, liabilities

loss or expenses, including reasonable attorney's fees, resulting from the failure to obtain such waiver.

101.2 This amendment was suggested on the basis that it is required by the stakeholder's insurer.

101.3 No amendment has been made to the revised Template SAO. However, we repeat our comments regarding General Theme 1 in Part A (General Comments) above in relation to the Access Provider's scope to amend the Template SAO for its own purposes and the rights of the parties to an Access Agreement to negotiate bespoke terms.

102. **Drafting change – Liability**

102.1 The following amendment was proposed to Clause 10.7:

Where the Access Seeker has caused a disruption to the provision of services to the Customers of another Access Seeker in the Passive Civil Infrastructure, whether through negligence or otherwise during the Access Seeker's installation of its cable or equipment, or through the maintenance of its cable or equipment, the Access Seeker shall be liable for any vouched and substantiated direct loss arising from such disruption and shall hold the Access Provider harmless against any action brought by any third party for any such direct loss, damage or liability caused by such disruption.

102.2 This amendment was suggested on the basis that:

…this liability is very onerous and not reasonable and should be limited to only vouched and substantiated direct losses.

102.3 We have adopted some (but not all) of these suggested amendments in the revised Template SAO.

103. **Drafting change – Liability (continued)**

103.1 The following amendment was proposed to Clause 10.8:

For the avoidance of doubt neither Party shall have any liability against the other with respect to consequential, incidental, indirect, punitive, speculative or special damages including but not limited to, any loss of data, business interruption, and loss of income or profits, irrespective of whether it had any advance notice of the possibility of any such damages.

103.2 This amendment was suggested on the basis that the drafting is unclear and would expose the access seeker to consequential losses.

103.3 We have not adopted these amendments in the revised Template SAO. However, we repeat our comments regarding General Theme 1 in Part A (General Comments) above in relation to the Access Provider's scope to amend the Template SAO for its own purposes and the rights of the parties to an Access Agreement to negotiate bespoke terms.

104. **Drafting change – Review**

104.1 The following amendment was proposed to Clause 11.1.1:

> *Either Party may request a review to modify or amend this Access Agreement by serving a Review Notice to the other Party if:*
>
> *11.1.1 a material part of the service license issued by the Authority to the Access Seeker is materially modified to the extent that such modification materially affects the ability of either Party to comply with this Agreement.*

104.2 No justification was given for the amendment.

104.3 The wording "material part" in reference to the service license means that the part is material to the Access Agreement, meaning that the requested amendment would be redundant.

104.4 We have not adopted these amendments in the revised Template SAO. However, we repeat our comments regarding General Theme 1 in Part A (General Comments) above in relation to the Access Provider's scope to amend the Template SAO for its own purposes and the rights of the parties to an Access Agreement to negotiate bespoke terms.

105. **Drafting change – Material breach**

105.1 The following amendment was proposed to Clauses 12.1 and 12.2:

> *12.1 If a Party is in material breach of any of the terms of this Access Agreement, the Notifying Party may send it a notice (the Breach Notice) specifying the nature of the breach, remedial actions expected and 30 days to remedy the material breach, and the consequences of a failure to remedy the breach (including the suspension and termination of this Access Agreement).*
>
> *12.2 Upon expiry of the timescale set out in the Breach Notice, the Notifying Party may suspend the use of Passive Civil Infrastructure at a specific Passive Civil Infrastructure Site or Sites, the use of Passive Civil Infrastructure at all Passive Civil Infrastructure Sites, or the Access Agreement if the material breach has not been remedied to its satisfaction.*

105.2 These amendments were suggested on the basis that:

> *… a timescale to remedy a material breach [should] be specified in the Access Offer and we recommend 30 days in this respect...*
>
> *The process in 12.1 and 12.2 applies solely for material breach. CRA should consider specifying a process to dealing with other breaches.*

105.3 We have not adopted these amendments in the revised Template SAO. However, we repeat our comments regarding General Theme 1 in Part A (General Comments) above in relation to the Access Provider's scope to

amend the Template SAO for its own purposes and the rights of the parties to an Access Agreement to negotiate bespoke terms.

106. **Drafting change – Ducts and In-building Facilities Service**

106.1 The following amendment was proposed to Clause A1.1:

> ***Service description:*** *The Access Provider shall provide the Access Seeker with space in its Ducts and In-building Facilities for the purpose of installing the Access Seeker's telecommunications cables that provide access to the Access Seeker's Customers. This service does not include the provision of space for the Access Seeker's own terminal equipment, nor the supply of electricity (see Services A.3 Space and A.5 Electric Power). For avoidance of doubts, the service includes access to the entire duct network including drop and lead in ducts, conduits, manholes, hand holes, cable tray, equipment mounting, riser shafts and overhead aerial, consistently with the Regulation.*

106.2 No justification was given for the amendment.

106.3 We have not adopted these amendments in the revised Template SAO. However, we repeat our comments regarding General Theme 1 in Part A (General Comments) above in relation to the Access Provider's scope to amend the Template SAO for its own purposes and the rights of the parties to an Access Agreement to negotiate bespoke terms.

107. **Drafting change –Ducts and In-building Facilities Service (continued)**

107.1 The following amendment was proposed to Clause A.1.7:

> *If the Ducts and In-building Facilities are already occupied or reserved by another Service Provider, the Access Provider shall use its best endeavours to resolve any conflicts or issues between the Service Providers or any claims to exclusive occupancy, so that the Access Seeker's requests can be satisfied. Any arrangement between the Access Provider and other Services Providers, including pre-existing arrangements, should not lead to the exclusion of other Access Seekers.*

107.2 This amendment was suggested on the basis that it would address anti-competitive arrangements.

107.3 We have not adopted these amendments in the revised Template SAO, as the justification is unclear. However, we repeat our comments regarding General Theme 1 in Part A (General Comments) above in relation to the Access Provider's scope to amend the Template SAO for its own purposes and the rights of the parties to an Access Agreement to negotiate bespoke terms.

108. **Drafting change – Metered Electric Power Service**

108.1 The following amendment was proposed to Clause A.5.12:

> *If requested by the Access Provider, the Access Seeker shall promptly provide the Access Provider with meter readings to show the Access Seeker's consumption of Electric Power. The Access*

Provider shall bill the Access Seeker for the Electric Power charges quarterly, based on actual (or based on estimate until actuals become available) meter readings, plus any other charges set out in Clause 4.8 above. All other charges will be billed by the Access Provider after they have been incurred.

108.2 No justification was given for the amendment.

108.3 This proposed change is rejected on the basis of the energy is inexpensive in Qatar and the concern about using estimates rather than metered readings isn't a material one.

Other matters

109. A number of other amendments to the Template SAO, including amendments of a grammatical, clerical or stylistic nature that were suggested by the Stakeholders and are not been addressed in our comments above. These proposed amendments have either been accepted or rejected in the revised Template SAO set out in Attachment A. In addition, the CRA has taken this opportunity to implement several other revisions to the Template SAO to improve the document.

Attachment A – Revised Template SAO

Please see the revised Template SAO provided with this CRA Response Document.

*** End of Document ***