

ANNEX 13
CO-LOCATION

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1. Introduction

- 1.1 Both Parties are licensed operators of public telecommunication services in the Sultanate of Oman. The public telecommunications licences of both Parties require that where reasonably possible, they negotiate and agree provisions for the sharing of telecommunications facilities and infrastructure to reduce the duplication of sites used for such purpose.
- 1.2 Ooredoo owns or operates certain sites and infrastructure (herein defined as the “**Co-Location Sites**” and “**Site Infrastructure**”).
- 1.3 Ooredoo has agreed to permit Access Seeker to co-locate their infrastructure and use the Site Infrastructure at the Co-Location Sites, all in accordance with the terms and conditions of this Agreement.

2. Definitions and Interpretation

- 2.1 In this Annex the following words and expressions have the meaning specified:
- 2.1.1 “**Authorised Use**” shall mean the installation, operation, maintenance, refurbishment, repair, alteration and/or replacement of the Installed Equipment for the purposes of the setting up and carrying out by Access Seeker of any licensed Telecommunications Services in the Sultanate of Oman and any other related activities permitted by Ooredoo.
- 2.1.2 “**Charges**” means the charges more particularly described in Schedule 3.
- 2.1.3 “**Co-Location Services**” shall mean the co-location services described in Schedule 2.
- 2.1.4 “**Co-Location Sites**” shall mean the areas and sites owned or operated by Ooredoo more particularly described in Schedule 1 together with all (if any) Site Infrastructure at the Co-Location Site.
- 2.1.5 “Commencement Date” shall mean the [] day of [] 2016.
- 2.1.6 “Installed Equipment” shall mean the equipment installed or to be installed by Access Seeker at the Co-Location Sites.
- 2.1.7 “Installed Infrastructure” shall mean the structures, fixtures and fittings, cable trays, buildings, equipment shelters, back-up generators and towers installed or to be installed by Access Seeker at the Co-Location Sites.
- 2.1.8 “Site Infrastructure” shall mean the structures, equipment, fixtures, fittings, buildings, towers and other apparatus situated on the Co-Location Sites as at the Commencement Date and/or erected or installed by Ooredoo during the Term.
- 2.1.9 “Site Sharing Fees” shall mean the fees more particularly described in Schedule 3 payable by Access Seeker to Ooredoo in respect of each of the Co-Location Sites. The Site Sharing Fees shall be inclusive of all taxes, customs duties and levies.
- 2.1.10 “SPOC” shall mean the single point of contact for communications between the Parties in relation to matters arising from this Agreement.
- 2.1.11 “Telecommunications Equipment Shelters” shall mean two shelters for the storage of telecommunications equipment, measuring 3.4x3m and 3.4x5m respectively, as more particularly described in Schedule 1.
- 2.1.12 “Telecommunications Services” shall have the meaning given to that term in the Telecommunications Regulatory Law.
- 2.1.13 “Term” shall mean the period from the Commencement Date of this Agreement until [] unless terminated earlier in accordance with clause 7.1.
- 2.1.14 “TRA” shall mean the Telecommunications Regulatory Authority of the Sultanate of Oman established pursuant to Royal Decree 30/2002 (the "Telecommunications Regulatory Law").

- 2.1.15 The singular includes the plural and vice versa and words of one gender include any other gender.
- 2.1.16 References generally to persons include references to natural or juridical persons including but not limited to firms, companies, government personnel, departments, ministries bodies and corporations whether incorporated or not.
- 2.1.17 The headings above the clauses and the contents pages of this Annex are for reference only and do not affect its construction.
- 2.1.18 Any reference to a clause or Schedule without further designation is a reference to a clause or schedule of this Agreement as may be amended from time to time.
- 2.1.19 Examples are illustrations only and do not limit general words and the words “such as”, “including”, “particularly” and similar expressions (in all parts, tenses and variants) are not used as, nor are intended to be interpreted as, words of limitation.
- 2.1.20 Any reference to a Royal Decree or law includes regulations and decisions under it and consolidations, amendments, re-enactments or replacements of any of them.

3. Rights and Services

3.1 For the Term Ooredoo permits Access Seeker in common with Ooredoo and (so far as is not inconsistent with such permission) any person authorised by Ooredoo, to use and share with Ooredoo the Co-Location Sites for the Authorised Use in accordance with the terms of this Agreement.

3.1.1 In consideration of the payment of the Charges, Ooredoo agrees:

3.1.1.1 to provide to Access Seeker, and Access Seeker agrees to accept from Ooredoo, the Co-Location Services in relation to the Co-Location Sites; and /

3.1.1.2 to sell to Access Seeker, and Access Seeker agrees to buy from Ooredoo, the Telecommunications Equipment Shelters for the price set out in Schedule 3, all in accordance with the terms and conditions of this Agreement.

3.1.2 The rights and permissions granted to Access Seeker under this Agreement include the right (without any limitation or additional charge) to allow Access Seeker or its third party contractors or service providers to access, operate and support the Installed Infrastructure and Installed Equipment provided that any such access, operation or support shall be limited to access, operation and support for the benefit of Access Seeker and shall be consistent with the terms of this Agreement.

3.1.3 The Parties may from time to time agree that Ooredoo shall provide Access Seeker with additional Co-Location Services. The cost of additional services will be subject to TRA approval.

4. Access Seeker Undertakings

- 4.1 Access Seeker shall:
- 4.1.1 pay the Site Sharing Fees to Ooredoo annually in advance within thirty days of receipt of a valid invoice by Access Seeker from Ooredoo. For the avoidance of doubt, neither Party shall be entitled to net or set off sums payable by the other Party pursuant to any other agreement with the other Party, against sums due and payable pursuant to the invoices;
 - 4.1.2 in respect of the Co-Location Sites upon which it installs Installed Equipment, fully maintain, repair and generally up-keep at its expense such Installed Equipment;
 - 4.1.3 not use any of the Co-Location Sites for any purpose other than the Authorised Use unless authorised by Ooredoo and legally permitted;
 - 4.1.4 keep the Co-Location Sites clean, tidy and at the conclusion of the Term, leave them in at least as good a condition as at the Commencement Date;
 - 4.1.5 not do or permit to be done anything that will constitute a breach of any laws affecting or in respect of the Co-Location Sites;
 - 4.1.6 ensure that the location and installation of the Installed Equipment added to Site Infrastructure complies with international norms regarding technical and health and safety criteria;
 - 4.1.7 pay in full for any reservations of land or space in respect of the Co-Location Sites whether or not such reservations are utilised for Installed Equipment or Installed Infrastructure;
 - 4.1.8 subject to the terms of this Agreement observe all rules and regulations which Ooredoo reasonably makes and notifies to Access Seeker in writing from time to time relating to the use by Access Seeker of the Co-Location Sites;
 - 4.1.9 separately ground all Installed Infrastructure and Installed Equipment where good industry practice would require such earthing independently of any earthing installed by Ooredoo unless otherwise agreed with Ooredoo on a case by case basis;
 - 4.1.10 not in any way impede Ooredoo in the exercise of its rights of possession, control and use for its own business purposes at the Co-Location Sites or parts thereof;
 - 4.1.11 arrange for insurance cover of Access Seeker's equipment at the Co-location sites;
 - 4.1.12 not make any external charges on any part of the leased site without Ooredoo written consent; and
 - 4.1.13 Assume full responsibility for any incidents or accidents at the Co-Location Sites due to work carried out by Access Seeker.

5. Ooredoo Obligations

- 5.1 Ooredoo shall:
 - 5.1.1 Access Seeker, its employees, agents and contractors to have free and unrestricted access to and egress from the Co-Location Sites for any purpose in respect of Authorised Use;
 - 5.1.2 not impede in any way the ability of Access Seeker to carry out any actions on the Co-Location Sites in respect of the Authorised Use;
 - 5.1.3 supply Access Seeker with a reasonable power source, sufficient to power the Installed Infrastructure and Installed Equipment;
 - 5.1.4 provide Access Seeker with reasonable notice of any changes or proposed changes in respect of the Co-Location Sites, or parts thereof (including in particular but not limited to the erection, replacement or installation of any Site Infrastructure) which it intends to undertake and which will effect in any way Access Seeker's ability to utilise such sites for the Authorised Use;
 - 5.1.5 upon the notification referred to in clause 4.1.3 being given, discuss and agree with Access Seeker any alternative arrangements with respect to use of, access to and egress from the Co-Location Sites and any other matters relating to the Authorised Use which will have to be changed as a result of the changes referred to in clause 4.1.3;
 - 5.1.6 generally upkeep, pay for all land taxes, municipal fees and other similar fees, and in respect of those parts of the Site Infrastructure and the Co-Location Sites which are not the responsibility of Access Seeker pursuant to clause 3 of this Agreement and (where applicable) in such condition so as to allow Access Seeker to use the Co-Location Sites for the Authorised Use;
 - 5.1.7 not utilise any land or space reserved by Access Seeker in accordance with clause 3.1.7 above;
 - 5.1.8 Comply with and adhere to the rules and regulations regarding technical norms, health and safety and empty space referred to in clause 3.1.6.
- 5.2 In the event that the Parties cannot agree the alternative arrangements referred to in clause 4.1.4 within 14 days of the notification referred to in clause 4.1.3 then the matter shall be dealt with in accordance with the dispute resolution provisions in clause 22 of this Agreement.
- 5.3 The Parties acknowledge and agree that the Installed Equipment and Installed Infrastructure is the property of and shall remain the property of Access Seeker, and Ooredoo shall not interfere with, use, deal with in any way, sell or otherwise dispose of, mortgage, pledge or otherwise encumber or allow or cause any of the Installed Equipment to be taken from the Co-Location Sites without the consent of Access Seeker.

5.4 Where Access Seeker installs Installed Infrastructure and/or Installed Equipment on a Co-Location Site and Ooredoo utilises it for its own purposes then Ooredoo shall pay to Access Seeker a fee for such use at rates of to be agreed by the Parties prior to such use.

6. Conditions of Access and Use

- 6.1 Ooredoo hereby provides Access Seeker with permission for its personnel and contractors to gain access to the Co-Location Sites in accordance with the method and procedure from time to time agreed between the Parties.
- 6.2 For the avoidance of doubt, a separate written authority shall not be needed for each separate access to any of the Co-Location Sites.

7. Warranties

- 7.1 Ooredoo represents, warrants and undertakes that:
 - 7.1.1 it is entitled and has full power and authority to enter into and perform this Agreement;
 - 7.1.2 this Agreement constitutes valid and binding obligations on Ooredoo in accordance with its terms;
 - 7.1.3 to the best of its knowledge neither the execution of this Agreement nor the consummation of the transactions contemplated hereby violates any applicable laws in force in the Sultanate of Oman; and
 - 7.1.4 it shall provide the Co-Location Services and discuss all matters in relation to the Co-Location Services in good faith, with due skill, care and diligence, in a timely and professional manner using appropriately trained, qualified, knowledgeable and experienced personnel.
- 7.2 Access Seeker represents, warrants and undertakes that:
 - 7.2.1 it is entitled and has full power and authority to enter into and perform this Agreement;
 - 7.2.2 this Agreement constitutes valid and binding obligations on Access Seeker in accordance with its terms;
 - 7.2.3 to the best of its knowledge neither the execution of this Agreement nor the consummation of the transactions contemplated hereby violates any applicable laws in force in the Sultanate of Oman; and
 - 7.2.4 in relation to its obligations under this Agreement, it shall at all times act in good faith, in a timely and professional manner and in accordance with good international practices.

8. Termination

- 8.1 Without prejudice to Ooredoo's rights in respect of any breach of the undertakings contained in clause 3, and only subject to Clause 19.1 of the Main Body of this Agreement, this Annex shall terminate:
- 8.1.1 Immediately on notice in writing given by the one Party to the other at any time following any material breach by the other Party of its undertakings contained in this Agreement or where such breach is capable of remedy three months after notice of the material breach without reasonable remedy having been made;
- 8.1.1.1 On not less than 3 months written notice given by Ooredoo;
- 8.1.1.2 On not less than 3 months' notice given by Access Seeker; or
- 8.1.1.3 Upon the conclusion of the Term.
- 8.2 Access Seeker may terminate this Agreement in respect of individual Co-Location Sites on 3 months' notice to expire at the last day of a month without prejudice to the continuing effect of this Agreement in respect of the remaining Co-Location Sites.
- 8.3 On termination of this Agreement in accordance with clause 7.1 or in respect of particular Co-Location Sites in accordance with clause 7.2, Ooredoo shall allow Access Seeker access to the Co-Location Sites for the purpose of removing the Installed Equipment and Installed Infrastructure and compliance with the undertaking specified in clause 3.1.6.
- 8.4 On termination of this Agreement by Ooredoo in accordance with Clause 7.1(ii), Ooredoo shall provide Access Seeker with a pro-rata refund of any fees paid upfront for the remaining period following the termination date.

9. Status of Permission

- 9.1 Possession and control of the Co-Location Sites will at all times remain vested in Ooredoo subject to the rights of Access Seeker under this Agreement.
- 9.2 Access Seeker will not at any time be entitled to use the Co-Location Sites to the exclusion of Ooredoo or its rights.

10. Indemnity

- 10.1 Access Seeker shall indemnify and hold Ooredoo harmless against any losses, damage, costs and expenses reasonably and necessarily incurred by Ooredoo which have been caused by any breach of this Agreement on the part of Access Seeker or its contractors.
- 10.2 Ooredoo shall indemnify and hold Access Seeker harmless against any losses, damage, costs and expenses reasonably and necessarily incurred by Access Seeker which have been caused by any breach of this Agreement on the part of Ooredoo or its contractors.
- 10.3 In the event that the Installed Infrastructure, Installed Equipment or any part thereof is damaged as a result of any act or breach of this Agreement on the part of Ooredoo or its personnel or contractors, Ooredoo shall reimburse Access Seeker for the cost of any repairs thereto provided that such reimbursement will not be made unless the costs are first approved by Ooredoo prior to them being incurred by Access Seeker such approval not to be unreasonably withheld or delayed.
- 10.4 In the event that any property, equipment, buildings or any other apparatus situated on the Co-Location Sites and which is the property of Ooredoo are damaged as a result of any act or breach of this Agreement on the part of Access Seeker, its personnel or contractors then Access Seeker shall reimburse Ooredoo for the cost of repairing such damage provided that Access Seeker shall first approve such costs prior to them being incurred such approval not to be unreasonably withheld or delayed.
- 10.5 Access Seeker shall indemnify Ooredoo against any harm, injury or ill health that may be caused to Ooredoo employees if it can reasonably be shown that it was caused by the presence of Access Seeker's equipment at the Co-Location Sites. Ooredoo shall also indemnify and hold Access Seeker harmless against any harm, injury or ill health that may be caused to its employees if it can reasonably be shown that it was caused by Ooredoo's equipment at the Co-Location Sites or on the part of Ooredoo or its contractors.
- 10.6 **THIRD PARTY CONSENTS**

Where the Co-Location Services would require any third party consents (such as where the Co-Location Sites are owned by a third party) Ooredoo will facilitate procuring such consents on the best possible terms for Company in good faith and to the extent necessary. Any costs or charges payable to that third party shall be borne by Company provided that Company has first agreed to pay such charges. For the avoidance of doubt, nothing in this clause entitles Ooredoo to make any commitment or representation on behalf of Company.

11. Costs of Installation

- 11.1 Access Seeker shall be solely responsible for the costs of installing any Installed Infrastructure and Installed Equipment including costs relating to their purchase and delivery.
- 11.2 Should Access Seeker require a back-up generator capability at the Co-Location Sites, Access Seeker shall be responsible for installing its own independent back-up generators (at its sole discretion). Before installing any back-up generators, Access Seeker must obtain approval from Ooredoo in accordance with procedures in Schedule 1 where site layouts, and other relevant information, must be submitted to Ooredoo for review. Access Seeker agrees to pay the applicable charges in Schedule 2. Access Seeker shall not be entitled to share the back-up generators of Ooredoo unless otherwise agreed on a case-by-case basis.

12. Shut Downs for Maintenance

- 12.1 Where either Party intends to conduct any planned maintenance on the Co-Location Sites and such maintenance would require the other Party's Installed Equipment or Installed Infrastructure to be shut down for any period of time in the interests of health and safety or otherwise, the Party proposing such maintenance must notify the other Party of this fact at least one week prior to such planned maintenance (a "**Maintenance Notice**").
- 12.2 Following receipt of such notice, the Parties' representatives shall discuss in good faith how such maintenance can be conducted with a view to minimising the shut down time and mitigating the potential effects of such shut downs on the Parties' respective networks. The Parties shall follow any agreed shut down and maintenance timetables agreed in these discussions.
- 12.3 In the event of emergency maintenance being required (including where such maintenance is required in order to avoid death, personal injury or severe damage to property), the notice period referred to in clause 13.1 above shall not apply and the Parties shall meet expeditiously upon notice of such circumstances in order to agree upon appropriate and proportionate shut down and maintenance proposals.

13. Service ordering and provisioning/delivery

13.1 The Requesting Party shall be allowed to access/visit Ooredoo premises within 7 working days. Delivery of Co-Location services for indoor of Ooredoo data center (subject to availability of space and power) shall take 25-70 working days. Delivery for outdoor locations (subject to availability of space and power) shall take 25-70 working days. These delivery dates are subject to the Requesting Party having fully cooperated with Ooredoo and that there will be no delays caused by factors outside Ooredoo's control such as, for example, due to the delay arising from the involvement of governmental entities. Service ordering and provisioning/delivery shall be as per the Main Body of the Agreement.

SCHEDULE 1

CO-LOCATION PROCESS

CO-LOCATION WITHIN OOREDOO PREMISES (INDOOR)

1. Each request for Co-Location Services shall be initiated by Access Seeker by the submission of a Co-Location Approval Request Form. Ooredoo has the right to immediately reject any co-location request if Ooredoo observes any missing details in the request.
2. Ooredoo reserves the right not to offer the requested or surveyed location for plot co-location at its own discretion, in which case Ooredoo will inform Access Seeker accordingly. When Ooredoo is negotiating and providing an Unregulated A&I Service, it may, for example, refuse to offer the requested or surveyed location for colocation. It shall, however, treat all Requesting Parties and Wholesale Customers in an equal and non discriminatory manner in that request.
3. Access Seeker may install active and non-active network equipment at the Approved Co-Location Sites.
4. Ooredoo will provide a lockable cage around the Approved Co-Location Site for the purpose of protecting the Installed Equipment.
5. Ooredoo will provide the required light, air conditioning, fire extinguishing equipment and fire and burglary alarms to the Approved Co-Location Sites.
6. Ooredoo will provide a separate duct for wiring at each Approved Co-Location Site.
7. In the event that Ooredoo discover Installed Infrastructure and/or Installed Equipment that was not approved in accordance with the procedure above Ooredoo may retrospectively charge the applicable Site Sharing Fees from the date of the Agreement and/or may request Access Seeker to dismantle such installations immediately.
8. Access Seeker will be solely responsible for removing all Installed Infrastructure and/or Installed Equipment, cabling and other related infrastructure and equipment within two months of the termination of this Agreement, failing which Ooredoo will remove all Installed Infrastructure and Installed Equipment and will charge Access Seeker accordingly.

SCHEDULE 2
SITE SHARING FEES

The charges for co-location of Installed Equipment at an Approved Co-Location Site are outlined in Annex F – pricing.

SCHEDULE 3

COLOCATION APPROVAL REQUEST FORM

Date:

Site(s) Name:

Description:

Ooredoo Reviewed and Approved

Name:

Signature:

Site& Equipment Detail

Project Name		Date	
		Site ID	
1. Method of proposed Co-Location			
2. Evidence of site survey report with photographs, HSE report and plan of proposed layout attached			
3. Site, Building and Equipment			
Equipment Room/Shelter			
Existing site type			
Location of the Equipment Room/Shelter			
Height of the Room/Shelter			
Building Height			
Equipment Detail			