



# **KENANGA MARKETING SDN BHD'S REFERENCE ACCESS OFFER ("RAO")**

**Version 1  
Effective 31 July, 2017**

Prepared by:-

**KENANGA MARKETING SDN. BHD. (551942-K)  
("the Access Provider")**

## **Registered & Business Address**

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This RAO is available upon written request at the Business Address above and at [www.kenangamarketing.com](http://www.kenangamarketing.com)

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## 1. Background and Scope

- a. The Access Provider is a company incorporated in Malaysia with its registered and business addresses stated in page 1 hereof.
- b. The Access Provider is a licensed operator under the Act and pursuant to its License, may offer the Access Service hereunder.
- c. The Commission has issued the MSA Determination and this RAO is prepared in compliance to subsection 5.3.3 of the MSA Determination.
- d. This RAO:-
  - i. sets out the full terms and conditions on which the Access Provider is prepared to supply Facilities and/or Services to any Licensees, including the rates, charging principles and methodologies to be applied for the Facilities and/or Services and any applicable fees or rebates;
  - ii. incorporates the details of all available POIs offered by the Access Provider (if any), as specified on its publicly accessible website from time to time;
  - iii. contains a copy of the application form required to be completed by the Access Seeker to apply for access to Facilities and/or Services (as provided in Appendix A hereof) ("Access Request");
  - iv. contains a copy of the Access Provider's standard confidentiality agreement which complies with subsection 5.3.8 of the MSA Determination (as provided in Appendix B hereof) ("Confidentiality Agreement");
  - v. contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and
  - vi. does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination (MSA 5.3.3).
- e. For services outside the scope of this RAO, the terms and conditions thereof shall be negotiated separately between the parties.
- f. The Access Provider considers that this RAO is consistent with:-
  - i. the Standard Access Obligations stipulated under subsection 4.1.1 of the MSA Determination and section 149 of the Act; and

- ii. the principle of non-discrimination stipulated under subsections 4.1.5 and 4.1.6 of the MSA Determination.
- g. Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to this RAO.
- h. This RAO may be amended from time to time and upon the happening of such an event, the Access Provider shall comply with subsections 5.3.5 and 5.3.6 of the MSA Determination.

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## 2. Definitions and Interpretation

### a. Definitions

The following words have these meanings in this RAO unless the contrary intention appears:-

“Access Agreement” means an agreement entered into between Operators whereby the Access Provider provides access to the Facilities and/or Service to the Access Seeker in accordance with the terms therein contained.

“Access Charges” means the sum payable under the Access Agreement and/or this RAO agreed by the Operators to be paid by the Access Seeker to the Access Provider for providing the Access Service, the indicative Access Charges are as per Appendix C hereof which rate is exclusive of GST which shall be payable also by the Access Seeker.

“Access List” means the Commission Determination on Access List, Determination No. 2 of 2015 which came into operation on 1 September 2015 and any subsequent amendments thereto which sets out a list of Facilities or Services determined by the Commission under section 146 of the Act.

“Access Provider” in this RAO means the Access Provider stated in the cover of this RAO who owns or provides the Access Service listed in the Access List and who is a Licensee as defined in the Act.

“Access Request” means a request for access to Facilities and/or Services on the Access List made by the Access Seeker under subsection 5.4.5 of the MSA Determination and containing the information in subsection 5.4.6 of the MSA Determination and in Clause 5(b) hereof and as per the format in Appendix A hereof.

“Access Seeker” means a network facilities provider, network services provider, application services provider or content application service provider who is a Licensee who makes a written request for access to the Access Provider’s Facilities and/or Services listed in the Access List.

“Access Service” means the access to the Facilities and/or Services that is provided by the Access Provider to the Access Seeker pursuant to an Access Request and upon terms and conditions in this RAO or the relevant Access Agreement.

“Act” means the Communications and Multimedia Act 1998 and any subsequent amendments thereto.

“Additional Infrastructure” shall mean any additional telecommunications infrastructure which may include but not limited to cabins and generator sets which are other than the infrastructure to be included for a specific Site which shall be at the Access Seeker’s own costs OR upon an additional Access Charges to be agreed between the Operators.

“Associated Tower Site” means land owned, licensed, leased or tenanted by the Access Provider surrounding or on which the Designated Infrastructure is situated at or built on including space required for cable gantry connecting to the tower, or generator-set and space at the base of the Designated Infrastructure to install the Equipment thereat and includes the necessary right-of-way and permission to dig (subject to further commercial terms being agreed by the Operators (if any) and to space availability at the Site).

“Bank Guarantee” means the guarantee executed in favor of the Access Provider on behalf of the Access Seeker by a bank approved by the Access Provider in a format acceptable to the Access Provider.

“Billing Dispute” means the dispute of an Invoice prepared by the Access Provider for the Access Seeker which is made in good faith.

“Billing Dispute Notice” means the written notification made by the Access Seeker to the Access Provider in relation to a Billing Dispute in accordance with Clause 12(e) hereof.

“Billing Dispute Notification Period” means the period after the date of Invoice described in Clause 12(e) hereof.

“Billing Period” means the period over which the supply of access to Facilities and/or Services is measured for purpose of billing as contemplated under subsection 5.11.1 of the MSA Determination and Clause 11(b)(i) hereof which shall be no more than one (1) month and in accordance with the relevant calendar month unless otherwise agreed between the Operators.

“Billing Representative” means a representative of the Operators appointed to handle billings.

“Billing System” means a system to issue Invoices relating to Access Charges payable by the Access Seeker under this RAO.

“Business Day” means a day other than a Saturday and Sunday or in states where Friday is observed as the weekly holiday, Thursday and Friday or Friday and Saturday (whichever is applicable), or a day which is lawfully observed as a national public holiday throughout Malaysia or a day which is lawfully observed as a state public holiday in which state either the Access Provider or the Access Seeker is operating in.

“Commencement Date” means the date on which access to the Site as endorsed by a SLO hereunder is given to the Access Seeker for installation of the Equipment at the relevant Site.

“Commission” means the Malaysian Communication and Multimedia Commission established under the Act.

“Communication Services” means the network facilities, network services, application services and/or

content application services provided by the Operator, as the case may be, pursuant to its License(s).

“Confidentiality Agreement” means a confidential agreement entered into between the Operators in accordance with Section 5.3.8 of the MSA Determination, a sample of which is enclosed as Appendix B hereof.

“Confidential Information” means all oral or written information of a confidential manner or in any kind as is more specifically detailed in the Confidentiality Agreement.

“Content Obligations” means those obligations set out in subsections 5.5 to 5.16 (inclusive) of the MSA Determination.

“Customer” means in relation to an Operator, a person having a contractual relationship with that Operator for the provision of Communication Services by means of that Operator’s Facilities and/or Services.

“Designated Infrastructure” means the telecommunication infrastructure belonging to the Access Provider to be utilized by the Access Seeker to install the Equipment thereat, which may be any of the following:-

- (a) the basic specification telecommunication infrastructure as specified in Appendix D hereof (“Basic Infrastructure”); or
- (b) telecommunications infrastructure below 200 feet and not as per the specifications in Appendix D hereof for example poles, monopoles, lamp-poles and aesthetic towers; or
- (c) telecommunications infrastructure 200 feet and above not as per the specifications in Appendix D hereof for example 4 legged towers and aesthetic towers; or
- (d) any other telecommunications belonging to the Access Provider.

“Determination” means any lawful determination made by the Minister under section 10 of the Act or by the Commission under section 55 of the Act.

“Direction” means any lawful direction made by the Minister under section 7 of the Act or the Commission under section 51 of the Act.

“Dispute Resolution Procedures” means the procedures outlined in Annexure A of the MSA Determination.

“Due Date” means, in respect of an Invoice and payment of Access Charges, on or before the seventh (7<sup>th</sup>) of each month or thirty (30) days from the date of receipt of an Invoice, whichever is earlier.

“Effective Date” means the date on which this RAO or the Access Agreement is signed by the Operators.

“Equipment” means any equipment (whether hardware or software), or device which is part of or

within a Network and in the context of this RAO, the Access Seeker's telecommunications equipment (excluding equipment relating to broadcasting) installed by the Access Seeker solely belonging to it (including any equipment leased or hired to be used by the Access Seeker to provide its Communications Services) and not shared in whatsoever and howsoever way with other Licensees under the Act at the Site at its own cost subject to the approval of the Access Provider which may include Very Small Aperture Terminal ("VSAT"), indoor and outdoor radio equipment with shelter, cabin or outdoor unit, antenna system, microwave dishes, Remote Radio Unit ("RRU") with its related mechanical, electronic and electrical system, Base Transceiver Station ("BTS") and generator sets but exclude filters and tower mounted amplifier ("TMA").

"Existing Operator(s)" shall mean the Licensee(s) or User(s) which is/are currently occupying the Site with the Access Provider's consent.

"Facilities" means network facilities and/or other facilities which facilitate the provision of network services or applications services including content applications service as listed in the Access List.

"Force Majeure" means an event or circumstance beyond the reasonable control of the Operator(s) which affects its/their ability to perform its/their obligations under the Access Agreement or this RAO.

"Forecast" means a forecast made by the Access Seeker referred to in subsection 5.6 of the MSA and Clause 6 hereof.

"Goods and Services Tax" or "GST" means the Goods and Services Tax or whatsoever taxes called by whatever name charged by the Government of Malaysia for the supply of good and/or services provided hereunder.

"Handover Date" means the date on which access to the Tower and Associated Tower Site is given to the Access Seeker for installation of the Equipment at that Site as stated in Clause 9(c) hereof. "Handover" shall be construed accordingly.

"Infrastructure Sharing" means a Facility and/or Service which comprises the provision of physical access, which refers to the provision of space at specified network facilities to enable an Access Seeker to install and maintain the Equipment

"Insurance Information" means the insurance information required by the Access Provider pursuant to Clause 5(b)(xi) hereof.

"Invoice" means the invoice for the Access Charges in respect of the supply of Facilities and/or Services during a Billing Period forwarded by the Access Provider to the Access Seeker.

"License" means the relevant license granted by the Minister pursuant to the Act.

"Licensee" means a person who either holds an individual license or undertakes activities which

are subject to a class license granted under the Act.

“License Term” means in respect of each Site, the period for its license to be used by the Access Seeker commencing on the Commencement Date and as stipulated in the respective SLO.

“Minister” means the Minister of Communications and Multimedia or, if different, the Minister administering the Act.

“MSA Determination” means the Commission Determination on the Mandatory Standard on Access, Determination No 3 of 2016 which came into operation on 1 January 2017 and any subsequent amendments thereto.

“Network” means network facilities and/or network services comprising a system that carries or a series of systems within Malaysia that carries or is capable of carrying communications by means of guided or unguided electromagnetic energy or both which is owned or operated by an Operator.

“Operators” means the Access Provider and the Access Seeker collectively.

“Order” means the request which the Access Seeker must give to the Access Provider to procure access to the Facilities and/or Services as described in Clause 7 hereof.

“Other Operator” means either the Access Provider or the Access Seeker, as the context requires.

“Project” means the procurement, design, construction, erection, installation, acceptance testing, project management, maintenance and renting and/or licensing of the Designated Infrastructure erected on the Site.

“Reference Access Offer” or “RAO” means this RAO prepared and maintained by the Access Provider for each Facility and/or Service listed in the Access List which it provides to itself and the Licensees.

“Review” means a review of the MSA Determination pursuant to Section 7.5 of the MSA Determination

“RM” means Ringgit Malaysia which shall be the monetary currency used in this RAO unless otherwise provided.

“Security Sum” means the security either in the form of a Bank Guarantee or cash, provided or to be provided by the Access Seeker to the Access Provider for the provision of access to the Facilities and/or Services which amount is detailed in Clause 11(d) hereof.

“Services” means network services and/or other services, which facilitate the provision of network services or applications services, including content applications services, as listed in the Access List.

“Service Specific Obligations” means the obligations which relate to specific types of Facilities

and/or Services set out in section 6 of the MSA Determination and which add to or vary the Content Obligations in respect of those Facilities and/or Services and as detailed in Appendix G and H (if any) hereof.

“Service Qualifications” means a desk and/or field study that may be conducted under subsections 5.4 and 5.7 of the MSA and may include the testing of a line to ascertain whether it could be used in response to an Access Request and/or an Order or proposed Order.

“Site” means the Access Provider’s site where access to Facilities and/or Services is offered and provided under this RAO which include the Designated Infrastructure and the Associated Infrastructure Site.

“Site License Offer” or “SLO” shall mean the form set out in the Appendix E hereof which is forwarded by the Access Provider to the Access Seeker upon the Commencement Date and the SLO issued pursuant to this RAO shall be deemed to incorporate all the terms and conditions of this RAO and each SLO shall form part of this RAO and includes any subsequent amendments made thereto.

“Standard Access Obligations” or “SAO” has the meaning prescribed in Section 149 of the Act.

“Technical Proposal” means the Technical Specifications proposed by an Access Seeker for a Site.

“Technical Specifications” means any technical parameters, specifications and procedures applicable to a Site.

“Users” herein shall mean the Existing Operators and the Access Seeker that are utilizing any Designated Infrastructure or Site under any form of agreement with the Access Provider whilst utilizing a minimum 3 antennas and/or 1 dish OR installing Equipment of at least 50 kilograms on any Designated Infrastructure.

b. Interpretations

In this RAO except where the contrary intention appears:-

- i. the singular includes the plural and vice versa; and
- ii. a document includes all amendments or supplements to that document, or replacements or novation of it; and
- iii. a reference to a statute, ordinance, regulations, code or other law and other instruments under it, shall include any statute, ordinance, regulation, code and other law consolidating, amending, re-enacting or replacing of any of them from time relating thereto or in connection therewith; and
- iv. a reference to a person includes a firm, body corporate, unincorporated association or an

authority; and

- v. a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; and
- vi. if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the next Business Day and any reference to acts that have to be done or to be done by or on or before a particular day or Business Day means by or on or before the close of business at 5.00pm on that particular day or Business Day; and
- vii. a reference to a related body corporate of an Operator has the same meaning as in the Companies Act 2016; and
- viii. a reference to a third person is a reference to a person who is not a party to this RAO; and
- ix. headings are included for convenience and do not affect the interpretation of this RAO.

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### **3. General Principles and Scope**

- a. The Operators agree and acknowledge that the governing principle of the RAO is that the Operators are, in respect of the provision of access to Facilities and/or Services, in an Operator-to-Operator relationship.
- b. Consistent with Section 149(2) of the Act, access to Facilities and/or Services provided by the Access Provider to the Access Seeker shall be:-
  - i. of at least the same or more favourable technical standard and quality as the technical standard and quality provided to itself on the Access Provider's Facilities and/or Services; and
  - ii. provided on an equitable and non-discriminatory basis (MSA 4.1.5).
- c. However, nothing in the MSA Determination shall limit the Access Seeker's ability to freely request and agree on access to the Access Provider's Facilities and/or Services that is either superior or inferior (in terms of technical standard and quality) to that which an Access Provider provides to itself (MSA 4.2.2).
- d. The Access Provider shall if requested to do so by an Access Seeker, supply the Access Service to the Access Seeker on reasonable terms and conditions.
- e. An Access Seeker may not request for access to Access Service where the requested Access Service is to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.
- f. The Operators shall recognize and act consistently with the Customer relationship principles set out in subsection 4.3.2 of the MSA Determination.
- g. The scope of this RAO is, unless otherwise specified, limited only to the provision of access to the Facilities and/or Services stated herein.
- h. For the avoidance of doubt, this RAO is intended to apply only to the provision of access to Facilities and/or Services by the Access Provider to the Access Seeker and may not be construed as conferring benefits on third person(s).

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#### 4. The Access Provider's Access Service

- a. Infrastructure Sharing: The Access Service provided by the Access Provider is Infrastructure Sharing whereby the Access Provider shall provide the Access Seeker space at its Site to enable the Access Seeker to install and maintain its Equipment.
- b. The Project: In addition to Infrastructure Sharing, the Access Provider also provides the services of undertaking the Project which is subject to negotiations between the Operators.
- c. Other Access Service: In addition to the Access Service provided by the Access Provider under Clause 4(a) herein, the Access Provider also provides the additional Access Service as stated in Appendix F hereof.
- d. Provision of Access Service: The Access Provider may provide access to the Facilities and/or Services if:-
  - i. an Access Request had been made by an Access Seeker to the Access Provider and the Access Provider has accepted the said Access Request;
  - ii. the Access Provider is the legal owner of the Designated Infrastructure;
  - iii. the Access Seeker has the appropriate License to operate the service for the purpose for which the Equipment is to be installed;
  - iv. there is spare capacity at the relevant Designated Infrastructure and Associated Tower Site;
  - v. any new installation by the Access Seeker will not exceed the structural loading of the relevant Designated Infrastructure;
  - vi. an Access Agreement or the RAO had been entered into between the Operators; and
  - vii. there are no circumstances disallowing the Access Provider from providing the Access Service.

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## 5. Access Request

### a. If an Access Seeker:-

- i. has no Access Agreement in force with the Access Provider and wishes to seek access to Facilities and/or Services under this RAO; or
- ii. has an Access Agreement with the Access Provider but:-
  - (1) the current term of the Access Agreement will expire or terminate within the next four (4) months; or
  - (2) the requested Facilities and/or Services are outside the scope of that Access Agreement;

such Access Seeker shall submit an Access Request in the format in Appendix A hereof to the Access Provider. The Access Provider shall develop a process for desk/field studies and Service Qualifications that the Access Seeker may take up prior to granting access to the Facilities and/or Services (MSA 5.4.5).

### b. The Access Request shall contain the following information and/or documents:-

- i. the names and contact details of the Access Seeker;
- ii. the Facilities and/or Services in respect of which is sought;
- iii. whether the Access Seeker wishes to accept the RAO or to negotiate amendments to the RAO or to negotiate an Access Agreement on alternative terms;
- iv. the information (if any) the Access Seeker reasonably requires the Access Provider to provide for the purposes of negotiations;
- v. two (2) copies of the Confidentiality Agreement duly executed;
- vi. preliminary information regarding the scale and scope of Facilities and/or Services that the Access Seeker expects to acquire from the Access Provider pursuant to the Access Request;
- vii. relevant technical information relating to the interface standards of the equipment of the Access Seeker;
- viii. relevant information relating to the Access Seeker's Network and the functionality of its services, to the extent that the Access Seeker is aware that such information may affect the Access Provider's Network (if applicable);
- ix. creditworthiness information as set out in subsection 5.3.11 of the MSA Determination;
- x. assessed security or confirmation of security offered to the Access Provider in line with subsection 5.3.9 of the MSA Determination;
- xi. insurance information as required under subsection 5.3.10 of the MSA Determination; and
- xii. such other information as the Access Provider may reasonably require for the sole purpose of providing access to the requested Facilities and/or Services (MSA 5.4.6).

- c. The Access Seeker is entitled under subsection 5.3.7 of the MSA Determination to request from the Access Provider who shall provide such information within ten (10) Business Days of its receipt of the written request from the Access Seeker for the provision of access:-
- i. any supplementary details of a Facility and/or Service offered by it not included in the RAO, including details concerning all POIs (if any) and other locations (including sites deemed to be critical national information infrastructure and other secure sites) at which physical co-location, virtual co-location or in-span interconnection is available to Access Seekers (if any);
  - ii. any supplementary access charges for access to Facilities and/or Services not included in the RAO;
  - iii. all supplementary technical information relating to the Facilities and/or Services which may be the subject of the Access Request which are not included in the RAO, including but not limited to any physical and logical interfaces of its Network necessary to allow the development and deployment of communications services, value-added services and communications equipment that can interconnect to, and interoperate with the Access Provider's Network;
  - iv. supplementary details of the Access Provider's operational processes and procedures not included in the RAO;
  - v. supplementary details of the Access Provider's provisioning cycles not included in the RAO and any impact such cycles may have upon an Access Request by the Access Seeker;
  - vi. details of the Access Provider's alternative quality of service targets not included in the RAO and actual achievements of service targets in respect of the Facilities and/or Services which may be the subject of the Access Request;
  - vii. any security requirements, insurance requirements and creditworthiness information required by the Access Provider; and
  - viii. the Access Provider's reasons for failing to supply any of the information above.
- d. Prior to the provision of information under Clause 5(c) above, the Access Provider may request the Access Seeker to enter into the Confidentiality Agreement (Proviso to MSA 5.3.7).
- e. The Access Provider may charge an Access Seeker a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request. In the event additional and non-routine work is required in order to process the Access Request, the Access Provider may charge a separate fee for undertaking such additional work. If the Access Seeker does not proceed with an Access Request accepted by the Access Provider, the processing fee will not be refunded to the Access Seeker.
- f. The Access Provider shall within ten (10) Business Days of the receipt of the Access Request, respond to the Access Seeker in writing acknowledging receipt of the Access Request and state the following:-
- i. if the Access Seeker is willing to accept the RAO, the Access Provider will provide access in accordance with the RAO; or
  - ii. if the Access Seeker wishes to negotiate amendments to the RAO or to negotiate an Access Agreement on alternative terms, the Access Provider is willing to proceed with the same; or
  - iii. the Access Provider refuses the Access Request pursuant to subsection 5.4.10 of the MSA; or

- iv. the Access Provider requires specified additional information to make a decision on the Access Request and upon receipt of the information, the Access Provider shall reconsider the Access Request and the ten (10) Business Days for the Access Provider to consider the Access Request recommences from the receipt of the information from the Access Seeker (MSA 5.4.7).
  
- g. If Clause 5(f)(i) above shall apply, the Access Provider shall within ten (10) Business Days of such response, provide two (2) copies of the SLO for the Site requested by the Access Seeker issued pursuant to the RAO and one (1) copy of the Confidentiality Agreement duly executed by it to the Access Seeker (MSA 5.4.8).
  
- h. If Clause 5(f)(ii) above shall apply, the Access Provider shall set out the following in its response to the Access Seeker:-
  - i. a place, date and time not later than fifteen (15) Business Days from the date of its response when its representatives that is authorised to negotiate on an Access Agreement will be available for an initial meeting with the Access Seeker's representatives that is authorised to negotiate on an Access Agreement; and
  - ii. return a copy of the Confidentiality Agreement duly executed by it (MSA 5.4.9).
  
- i. Where the Access Seeker wishes to negotiate an Access Agreement, the Operators shall comply with the requirements under the MSA Determination particularly to subsections 5.4.2, 5.4.3, 5.4.13 and 5.4.15 of the MSA Determination in negotiating and concluding an Access Agreement.
  
- j. The Operators shall use their best endeavors to conclude the Access Agreement within the time stipulated in subsection 5.4.1(b) of the MSA Determination and if the same is not completed within the stipulated time period:-
  - i. the Operators may jointly apply to the Commission for an extension of time to negotiate and if the extension of time is not granted by the Commission, there shall be deemed to be a dispute between the Operators and the Dispute Resolution Procedures shall take effect; or
  - ii. either party may initiate the Dispute Resolution Procedures in the MSA Determination (MSA 5.4.1(c)).
  
- k. The Access Provider will not be taken to have agreed to provide and the Access Seeker will not be taken to have been given access to the facilities and/or Services until:-
  - i. the security requirements under subsection 5.3.9 of the MSA Determination ("the Security Sum") has been provided; and
  - ii. the Access Agreement or the RAO has been executed between the Operators and the same (whichever is applicable) is registered with the Commission in accordance with section 150 of the Act.
  
- l. If Clause 5(f)(iii) above shall apply, the Access Provider shall set out in its response to the Access

Seeker the following:-

- i. the grounds under subsection 5.4.11 of the MSA Determination it is relying upon;
  - ii. the basis of its decision with sufficient particulars to enable the Access Seeker to make its own assessment about the applicability of the specified grounds of refusal; and
  - iii. a place, date and time, not later than seven (7) Business Days from the date of the refusal notice, at which representatives of the Access Provider authorised to review its assessment of the Access Request will be available to meet the representatives of the Access Seeker for the purpose of discussing the refusal of the Access Request. At this meeting, the Access Seeker may request the Access Provider to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in:-
    - (1) paragraph 5.4.11(d) of the MSA, the Access Provider must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker;
    - (2) paragraph 5.4.11(d) of the MSA, the Access Provider must identify when additional capacity is likely to be available; and
    - (3) paragraph 5.4.11(e) of the MSA, the Access Provider must identify the form of security requirement which would satisfy its concern that the Access Seeker may fail to make timely payment for the requested Facilities and/or Services, its reasons for the Security Sum and why it considers such concern cannot be addressed through a security requirement under sub-section 5.3.9 of the MSA (MSA 5.4.10).
- m. The Access Provider may refuse a request if:-
- i. supply of the relevant Facilities and/or Services would not be reasonable; or
  - ii. supply of the relevant Facilities and/or Services would be reasonable, but the terms and conditions requested by the Access Seeker are not reasonable (MSA 4.1.2).

Without limiting any other grounds that may be relied upon under the Act or as provided in the MSA Determination, the Access Provider shall not refuse an Access Request, except on the grounds that:-

- (1) the Access Provider does not currently supply or provide access to the relevant Facilities and/or Services to itself or to any third parties, except where the Access Seeker compensates the Access Provider for the original supply of access to Facilities and/or Services to the Access Seeker;
- (2) the Access Seeker has not provided all information required to be provided in accordance with Clause 5(b) hereof and subsection 5.4.6 of the MSA Determination;
- (3) it is not technically feasible to provide access to the Facilities and/or Services requested by the Access Seeker;
- (4) subject to the MSA, the Access Provider has insufficient capacity or space to provide the requested Services or Facilities;
- (5) the Access Provider has reasonable grounds to believe that the Access Seeker may fail

to make timely payment for the requested Facilities and/or Services and such concern cannot be addressed by the Security Sum;

- (6) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities and/or Services; or
- (7) there are reasonable grounds for the Access Provider to refuse access in the national interest (MSA 5.4.11).

- n. For purpose of determining technical infeasibility in Clause 5(m)(iii)(3), the Operators shall comply with subsection 5.4.17 of the MSA Determination.
- o. For purpose of determining capacity constraints in Clause 5(m)(iii)(4), the Operators shall comply with subsection 5.4.18 of the MSA Determination.
- p. If the Access Provider refuses an Access Request, it must notify the Commission within five (5) Business Days of that refusal together with an explanation of its reason for refusal under subsection 5.4.11 of the MSA Determination (MSA 5.4.19).

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**6. Forecasting Obligations (MSA 5.6)**

- a. The Access Provider may require, as a condition of accepting Orders for access to Facilities and/or Services from the Access Seeker that the Access Seeker provide Forecasts in good faith with regards to a certain period of supply of access to Facilities and/or Services.
- b. The Access Seeker may request preliminary information from the Access Provider about the availability and capacity of its Facilities and/or Services to the extent the Access Seeker requires such information to provide Forecasts.
- c. Once an Access Seeker confirms a Forecast, it is deemed to be an Order for the purposes of the MSA and this RAO and subsection 5.7 of the MSA Determination and Clause 7 hereof will apply.
- d. The Operators may agree to an alternative forecasting procedure other than that set out in subsection 5.6 of the MSA Determination.
- e. Subject to subsections 5.6.11 to 5.6.13 of the MSA Determination, the Access Provider must carry out network planning in order to enable Forecasts to be met. If the Access Seeker has confirmed a Forecast under subsection 5.6.3 of the MSA Determination, it will be binding on the Access Seeker.

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## 7. Ordering & Provisioning Obligations (MSA 5.7)

- a. Orders for Access Service are to be delivered to the senior personnel of the Access Provider and the Access Provider shall notify the Access Seeker in writing from time to time of any change to the designated person(s).
- b. Prior to access being provided, the Access Provider may require the Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. The Access Provider may request the Access Seeker to provide, at a level of detail (sufficient for planning and provisioning), the following in an Order for access to the Access Service:-
  - i. the Access Service to which access is requested;
  - ii. a requested date and time for delivery;
  - iii. the detailed address of the location of the points of delivery and location maps, if necessary;
  - iv. the Technical Specifications of the Equipment to be used in connection with the Order and its Technical Proposal;
  - v. such other information that the Access Provider reasonably requires in order for it to plan for the provision of access to the Facilities and/or Services as requested by the Access Seeker.
- c. The Access Provider shall:-
  - i. establish a single queue for all Orders and Service Qualifications for a given type of Facility and/or Service, whether those Orders and Service Qualifications are required for itself or any Licensee;
  - ii. give the equivalent priority to the handling of all Orders and Service Qualifications in each queue; and
  - iii. otherwise treat all Orders and Service Qualifications in each queue in compliance with its queuing policy established under subsection 5.7.29 of the MSA Determination.
- d. The Access Provider must use its reasonable efforts to accept and fulfil Orders from the Access Seeker for Facilities and/or Services which comply with a Forecast accepted by the Access Provider pursuant to subsection 5.6 of the MSA Determination.
- e. In any case, the Operators shall comply with the Ordering and Provisioning obligation under section 5.7 of the MSA Determination.

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**8. Term, Suspension and Termination (MSA 5.14)**

- a. Term: The License Term for each Site shall be for a period of at least three (3) years. Each SLO entered into pursuant to this RAO or the Access Agreement prior to the early termination or expiry of this thereof shall continue to be valid until the early termination or expiry of the respective SLO. The terms and conditions under this RAO or the Access Agreement shall survive to govern the SLO until its early termination or expiry.
- b. Termination Circumstances: Either Party ("Notifying Operator") may terminate the Access Agreement or any SLO (as the case may be) when:-
- i. the other Party ("Defaulting Operator") fails to remedy a breach of a material obligation and has not remedied the breach within one (1) month of receiving a notice of breach from the Notifying Operator; or
  - ii. a winding up order has been made against the Defaulting Operator provided the order has not been stayed and the order remains or will remain in effect for a continuous period of ninety (90) days; or
  - iii. an order is made or an effective resolution is passed, for the reconstruction and amalgamation of the Defaulting Operator or otherwise under Section 366 of the Companies Act 2016 or any other similar action or proceeding under any other law and the order or resolution remains or will remain in effect for a continuous period of sixty (60) days; or
  - iv. a receiver, receiver and manager, official manager, provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the undertaking and property of the Defaulting Operator; or
  - v. a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of the Defaulting Operator; or
  - vi. the Defaulting Operator fails to remedy breaches of any laws, regulations, rules or standards which has an adverse material effect on the Notifying Operator or this RAO or the Access Agreement or the provision of the Facilities and/or Services within one (1) month of receiving a notice of breach from the Notifying Operator; or
  - vii. a Force Majeure, substantially and adversely affecting the ability of an Operator to perform its obligations to the other Party under this RAO or the Access Agreement, continues for a consecutive period of more than three (3) months.
- c. Termination: Upon the occurrence of the events set out in Clause 8(b) above and subject to the provision of Clause 8(g) below, the Notifying Operator may terminate the Access Agreement or the respective SLO, as the case may be, by issuing a termination notice to the Defaulting Operator the Access Agreement or the respective SLO, as the case may be, shall terminate in accordance with the terms of the termination notice. In addition, the Notifying Operator shall also forward to the Commission a copy of the said notice of termination.
- d. Change in Law: Where continued operation of the RAO or any Access Agreement or access to any Facilities and/or Services provided under it is or will be unlawful (as a result of a legislative change), the Access Seeker and the Access Provider must meet within five (5) Business Days

of becoming aware of the relevant change in law to review whether access to the relevant Facilities and/or Services may be provided by the Access Provider on different terms and conditions (which are acceptable to the Access Seeker). If the Operators cannot agree to the provision of access on different terms and conditions, the Access Provider may terminate the provision of access to the relevant Facilities and/or Services

- e. Suspension: The Access Provider may, without liability, suspend access to the Facilities and/or Services where:-
- i. the Access Seeker's facilities and/or Equipment materially and adversely affect the normal operation of the Access Provider's or the Existing Operators' Network or are or will become a material threat to any person's safety or property;
  - ii. the Access Seeker's facilities and/or Equipment or the supply of services pose an imminent threat to life or property of the Access Provider, its employees or contractors;
  - iii. the Access Seeker's facilities and/or Equipment cause material, physical or technical harm to the Facilities of the Access Provider or any other person;
  - iv. the Access Seeker fails to settle any three (3) Invoices for the Access Charges due to the Access Provider unless otherwise agreed in writing by the Operators subject nevertheless to the Access Seeker's right hereunder to dispute any amount in an Invoice;
  - v. the Access Seeker has failed to provide the new Security Sum as required herein this RAO;
  - vi. Clause 15(a) hereof on Force Majeure applies; or;
  - vii. the Access Seeker breaches any laws, regulations, rules or standards, which has a material and adverse effect on the Access Provider or this RAO or the provision by the Access Provider of the Facilities and/or Services hereunder;

in which case, the Access Provider shall provide the Access Seeker with five (5) Business Days' notice, including reasons, prior to suspending access to any Facilities and/or Service and also a copy of such notice to the Commission and the suspension of access to the Access Provider's Facilities and/or Services shall take effect in accordance with the terms of the suspension notice.

- f. Continue Charging: During the period of suspension, the Access Provider shall be entitled to continue charging the Access Seeker the Access Charges in respect the Facilities and/or Services save for suspension due to Force Majeure. The Access Seeker shall be solely responsible for any loss, costs, damages or expenses which the Access Seeker may incur or suffer during the period of suspension.
- g. Notice: Prior to terminating, suspending or seeking to materially vary an Access Agreement or access to any Facilities and/or Services provided under it, an Access Provider must notify the Commission in writing of the action the Access Provider proposes to take and the reasons why it considers such action is appropriate. The Commission may invite the Access Seeker to make submissions to the Commission regarding the proposed termination, suspension or material variation. The Access Provider:-
- i. shall only give effect to the proposed termination, suspension or material variation with the Commission's written consent and subject to any time delay or conditions which the Commission may specify (if any) and the Commission will endeavor to

respond to the Access Provider's notice within ten (10) Business Days or such other period that the Commission considers is reasonable;

- ii. must not give effect to the proposed termination, suspension or material variation unless the Access Provider has received written consent from the Commission to such termination, suspension or material variation; and
- iii. shall take all steps practicable to minimize disruptions and inconvenience to the Customers of the Access Seeker, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the suspension or termination of this RAO or access to Facilities and/or Services provided under it pursuant to any SLO.

h. Right to Terminate: Subject to Clause 8(g) above, the issuance of a suspension notice shall not in any way prejudice or prevent the Access Provider from exercising its right to issue a termination notice under Clause 8(c) above.

i. Reinstate: In the event the Access Provider suspends access to Facilities and/or Services by reason of the Access Seeker failures set out in Clause 8(e) above, the Access Provider must reinstate access to the Facilities and/or Services upon the Access Seeker remedying its failure.

j. Access on Different Terms: Notwithstanding Clause 8(g) above, in the event that:-

- i. An Operator's License is terminated and the Operator is not immediately granted another Licence(s) of that type (where a License of that type is required); or
- ii. there is change in the law or regulation which renders this RAO to become unlawful,

the RAO or part thereof shall be inapplicable in so far as this RAO or part thereof is affected by the termination of the Operator's Licence(s) or change in law or regulation. However, other obligations under this RAO which are not affected by such events shall remain in force. The Operators shall meet within five (5) Business Days of the affected Operator notifying the other Operator of the events specified in Clauses 8(j)(i) or 8(j)(ii) above, review the RAO to ascertain whether access to the Facilities or Services are lawful and may be provided on different terms which are mutually agreeable by both Operators.

k. Urgent Interlocutory Action: Notwithstanding anything to the contrary, in the event an Operator breaches any of its obligations under this RAO or the Access Agreement, the other Operator shall, without prejudice to any of its rights and remedies under this RAO or the Access Agreement and under law, have the absolute discretion to immediately seek urgent interlocutory action which shall include but not be limited to:-

- i. preventing such further breaches from occurring;
- ii. preventing the continuation of the said breach; and/or
- iii. requiring the Operator in breach to comply with its obligations under this RAO or the Access Agreement;

without the necessity of first exercising any of its rights herein.

- i. Unexpired License Term: Upon termination of the Access Agreement or any SLO specifically arising from a breach of the terms by the Access Seeker, the Access Seeker shall immediately pay the Access Charge for the unexpired License Term to the Access Provider. Towards this end, the Access Provider shall be entitled to utilise all amounts paid in advance by the Access Seeker (including the Security Sum) towards payment of Access Charges for the unexpired License Term. The payment above shall be in full and final settlement of any losses suffered by the Access Provider arising from such breach by the Access Seeker or from such termination.
- m. Enforcement of Rights: Nothing in this Clause 8 shall prejudice, limit or negate the rights and remedies of the Access Provider under this RAO or law to seek redress or claim damages, cost and expenses for breach of this RAO or the Access Agreement by the Access Seeker, to enforce its right of indemnities, to claim interest and generally to enforce its rights and remedies.
- n. Non-waiver: Termination or expiry of the Access Agreement, in whole or in part, does not operate as a waiver of any breach by an Operator of any of its provisions and is without prejudice to any rights, liabilities or obligations of the other Operator which have accrued up to the date of the termination or expiry, including a right of indemnity.

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**9. Installation of Equipment at Designated Infrastructure and Associated Tower Site**

- a. Issuance of SLO: Upon confirmation of an Order, the Access Provider shall issue the SLO to the Access Seeker and allow access to the relevant Designated Infrastructure for the purpose of the Access Seeker installing the Equipment within fourteen (14) days from the receipt of the SLO.
- b. As per Technical Specification: The Access Seeker shall ensure that the Equipment installed at the Designated Infrastructure and/or the Associated Tower Site shall be as per the Technical Specifications.
- c. Keys: On the Handover Date for the Designated Infrastructure, the Access Provider hereby agrees to provide a set of keys to the Access Seeker for the purpose of twenty-four (24) hour access to the respective Designated Infrastructure and the Associated Tower Site.
- d. As is Where is Basis: The Access Seeker hereby confirms its understanding that for Sites that have been constructed prior to the date of this RAO, the Access Seeker agrees to accept the Sites on an “as is where is” basis.

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**10. Access Charges**

- a. The charging principles of the Access Charges and the applicable Access Charges for the Facilities and/or Services are as detailed in Appendix C hereof and more specifically in the respective SLOs for the Sites.
- b. The Access Seeker to whom access to the Facilities and/or Services is provided under this RAO or the Access Agreement and the respective SLOs pursuant to its Order shall pay the Access Provider the applicable Access Charges on the terms and conditions set out or referred to in this RAO or the Access Agreement.
- c. All payment of Access Charges under this RAO or the Access Agreement and the respective SLO for the Sites are non-refundable.
- d. Nothing in this Clause 10 shall prejudice, limit or negate the rights and remedies of the Access Provider under this RAO or law to seek redress or claim damages, cost and expenses for breach of this RAO or the Access Agreement by the Access Seeker, to enforce its right of indemnities, to claim interest and generally to enforce its rights and remedies.

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## 11. Billing and Terms of Payment

a. Section 5.11: Where relevant, the billing and settlement obligations set out in Section 5.11 of the MSA Determination shall be applicable.

### b. Billing

- i. Subject to Clause 11(b)(ii) below, the Operators agree that the Access Charges shall be payable by the Access Seeker to the Access Provider on or before the Due Date or upon receipt of the Access Provider's invoice, whichever is later. In the event the Commencement Date does not fall on the first (1<sup>st</sup>) day of the calendar month, the Access Charge for that calendar month shall be pro-rated accordingly.
- ii. The Invoice for the Access Charges shall be in writing and forwarded to the Access Seeker before the Due Date. The Access Provider shall provide with each Invoice, such information as may be reasonably necessary for the Access Seeker to verify the rates and charges specified in the Invoice. In addition, the Access Provider shall provide the Access Seeker the billing report in electronic format upon request.
- iii. All Invoices shall be delivered by hand or posted by registered mail or licensed courier to the Billing Representative and address of the Access Seeker as shall be notified in writing from time to time.
- iv. The Access Provider shall provide the Access Seeker at the Access Seeker's written request, with an aggregated summary of billings for access to the Facilities and/or Services provided to the Access Seeker in monthly tranches.
- v. The billing cycles for the purposes of invoicing shall be in monthly Billing Periods, unless otherwise agreed with the Access Seeker.
- vi. Where appropriate, any taxes (including GST), duties or other imposts (as at the date of this Agreement or imposed after the date of this Agreement) shall be added to all or any charges under this RAO or the Access Agreement and shall be paid by the Access Seeker.

### c. Terms of Payment

- i. Save for a disputed amount, the Access Seeker must make full payment of any Invoice to the Access Provider on or before the Due Date unless otherwise agreed in writing by both Operators.
- ii. All payments:-
  - (1) must be paid by electronic transfer to the Access Provider or by cheque to the nominated account(s) of the Access Provider;

- (2) must be accompanied by such information as is reasonably required by the Access Provider to properly allocate payments received, failing which the Access Provider may allocate payments received to any amounts due and payable with full accounts of such allocation to the Access Seeker; and
  - (3) unless otherwise agreed by the Operators, shall not be subject to any set-offs except where the Access Seeker is in liquidation or at least three (3) Invoices have been issued and such Invoices have not been paid.
- iii. All Invoices shall be stated in Ringgit Malaysia and payment must be made in Ringgit Malaysia.
- iv. Save for disputed amounts, it is hereby expressly agreed that the Access Provider is entitled to the payment of interest without prejudice to any other rights of the Access Provider. Interest on due and unpaid amounts is payable (as well as before judgement and after judgment) at the rate of one percent (1%) per annum above Malayan Banking Berhad's Base Lending Rate (BLR) calculated daily from the Due Date until the date of actual payment. Payments which are overdue by more than sixty (60) days will bear interest at the rate of two percent (2%) per annum above Malayan Banking Berhad's Base Lending Rate ("BLR") (as well as before judgement and after judgment) calculated from the due date until the date of receipt by the Access Provider of full payment. Further, the BLR rate to be used shall be the published rate prevailing on the date of payment.
- v. Where interest in respect of any due and unpaid amount is due to the Access Provider hereunder, the Access Provider may add the amount of such interest to its next Invoice.
- vi. If the Access Provider discovers an error in an Invoice given to the Access Seeker under this Clause 11, it must promptly notify the Access Seeker. The Access Provider who made the error must make the necessary adjustment to correct that error (including adjusting any interest erroneously charged) in its next Invoice.
- vii. The Access Provider may include omitted or miscalculated Access Charges from an earlier Invoice in a later Invoice or issue an Invoice for Access Charges which have not been invoiced provided that the Access Provider is able to substantiate the Access Charges to the Access Seeker and such inclusion, amendment and issuance is made within three (3) months from the end of the Billing Period for the Facilities and/or Services provided. Nevertheless, the Operators agree that if the omission or miscalculation is due to the Access Seeker under declaring or not declaring its actual number of Equipment or for any other reason thereby avoiding the additional Access Charges payable to the Access Provider, then the period of three (3) months above shall be extended to the time when the additional Equipment was/were added to the Site without notifying the Access Provider.
- viii. For the avoidance of doubt, in the event the Access Provider fails, neglects, or omits to submit an omitted or miscalculated Access Charge in a later Invoice (as provided above), or fails, neglects or omits to submit an Invoice for any Access Charges within

the time period specified in this RAO or the Access Agreement, then the Operator shall be deemed to have waived and/or forfeited its right to make any further claims on the said omitted Access Charge.

- ix. The demand or acceptance of the Access Charges and any other payment by the Access Provider after default or breach by the Access Seeker does not prejudice the exercise by the Access Provider of the powers conferred upon the Access Provider in this RAO or the Access Agreement and/or under law nor does it constitute an election by the Access Provider to exercise or not to exercise any of the rights, powers or privileges hereunder and/or under any law.
- x. It is also hereby agreed and consented by the Operators that the Access Provider shall be entitled to irrevocably assign all proceeds of the Access Charges to any party and/or parties as may be notified in writing by the Access Provider to the Access Seeker and such assignment shall be only in respect of the Access Charges and shall not in any way affect the liability, obligations and covenants of the Operators under this RAO or the Access Agreement and the Access Seeker shall as and when requested by the Access Provider produce any confirmation/consent in writing regarding the same and to forward the said confirmation/consent to whosoever party notified by the Access Provider.
- xi. The Access Provider shall allow an Access Seeker to withhold payment of any amount disputed in good faith by the Access Seeker if:-
  - (1) the Access Seeker notifies the Access Provider within twenty-one (21) days from the date of receipt of the Invoice of such dispute; and
  - (2) the Access Seeker's notification specifies the information referred to in Clause 12(e)(ii) hereof.

d. Security Sum

- i. The Access Seeker shall have deposited or procured the deposit of the Security Sum as security for the performance of all of the Access Seeker's obligations under this RAO or the Access Agreement. The amount of the said Security Sum shall be at least two (2) times the monthly Access Charges.
- ii. For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts to the Access Provider as and when they become due and payable, nor does it constitute a waiver of the Access Provider's right to suspend, disconnect or terminate the Access Service due to non-payment of any sums due or payable to the Access Provider.
- iii. The Access Provider shall be entitled to revise the Security Sum in any of the following event:-

- (1) at each subsequent anniversary from the Commencement Date;
  - (2) where, in the opinion of the Access Provider, the Security Sum is less than the total estimated value of access to the requested Facilities and/or Services provided (based on the most recent amounts invoiced for those requested Facilities and Services) or to be provided by the Access Provider at the end of the most recent two (2) months period;
  - (3) upon the provisioning of new or additional Access Service to the Access Seeker; or
  - (4) where there is material change in circumstances in relation to the Access Seeker's creditworthiness. For clarification, a material change in circumstances includes, but is not limited to, a failure by the Access Seeker to pay the Access Charges on or before the Due Dates for at least three (3) Invoices rendered in the preceding six (6) months (so long as those amounts have not been disputed in good faith). If the amounts in the Invoices are disputed in good faith, this will not constitute a material change in circumstances for purposes of this Clause.
- iv. Where the Security Sum is revised pursuant to Clause 11(d)(iii) above, the Access Seeker shall within five (5) Business Days from the written request of the Access Provider, deposit the new Security Sum with the Access Provider in the manner specified in Clause 11(d)(i) hereof.
- v. In the event the Access Provider elects to suspend or terminate the provisioning of the Access Service to the Access Seeker for any Site, the Access Provider shall have the right to use the Security Sum for that Site (together with any interest thereon) to set off any outstanding sum due and payable to the Access Provider by the Access Seeker at other Sites.
- vi. Subject to Clause 11.3(d)(v) above, upon termination of this RAO or the respective SLO, the Security Sum deposited with the Access Provider or parts thereof, may be returned and/or refunded to the Access Seeker, unless the same had been utilized or will be utilised to settle any outstanding sum to the Access Provider.
- e. Billing Disputes
- i. Where there is a Billing Dispute, the Operators shall comply with the dispute resolution procedures in Clause 12(e) hereof.
  - ii. For the avoidance of doubt, the Access Seeker shall not use the dispute resolution procedure in Clause 12(e) hereof to avoid or delay payment due to the Access Provider where there is no genuine dispute.

## 12. Dispute Resolution Procedures (MSA Annexure A)

### a. Introduction

- i. Subject to Clause 12(s)(a)(ii) hereof, an Access Provider and an Access Seeker shall adopt and comply with this dispute resolution procedure in relation to any dispute which may arise between an Access Seeker and an Access Provider in relation to or in connection with the supply of the Access Service (“Access Dispute”).
- ii. The following dispute resolution mechanisms are governed by this condition:-(1) inter-party working groups; and  
(2) specific resolution of disputes, being:-
  - A. technical disputes (which must follow the procedures set out in Clause 12(d) hereof if they cannot be resolved through the application of the general dispute resolution provisions in Clauses 12(b) and 12(c) hereof);
  - B. Billing Disputes, which must follow the procedures set out in Clause 12(e) hereof; or
  - C. any other types of disputes which, if cannot be resolved through the application of the general dispute resolution provisions in Clauses 12(b), 12(c) or 12(d), must be referred to the Commission for resolution.
- iii. A dispute between the Operators relating to any matter dealt with under this RAO shall be attempted firstly to be resolved by good faith negotiation between the Operators in accordance with Clause 12(c). An Access Provider shall not prevent the Access Seeker from notifying a dispute to the Commission in accordance with this RAO.
- iv. All disputes referred to the Commission pursuant to this RAO shall be dealt with in accordance with the Act.

### b. General

- i. Until expiry of the dispute resolution procedures set out herein, an Operator may not commence court proceedings relating to that dispute other than an application for urgent interlocutory relief. Nothing in this Clause 12(b)(i) shall be construed as ousting the jurisdiction of any court.
- ii. Operators shall ensure that their representatives acting in relation to a dispute are of sufficient seniority and have authority to settle an Access Dispute on behalf of each Operator. At the commencement of the dispute resolution procedure, each Operator must notify the other of the scope of the authority of each of their representatives. If, in the course of the dispute resolution procedures it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to a representative, an Operator may require that those matters be referred to more senior officers of that Operator who have authority to settle those matters.
- iii. During a dispute and any dispute resolution process invoked in accordance with this Clause 12, an Access Provider and an Access Seeker must continue to fulfil their obligations under the RAO between themselves.

- iv. Subject to Clause 12(b)(v)(e), the Operators shall exchange information of a type described in this RAO during the course of and to facilitate resolution of such a dispute.
- v. Confidential Information of an Operator which is disclosed and any other oral or written submissions made by an Operator or an Operator's representatives during the course of any dispute resolution process will be subject to the confidentiality restrictions contained in the Confidentiality Agreement and this RAO.
- vi. An Operator must not use information obtained under Clause 12(b)(iv) or described in Clause 12(b)(v) for any purpose other than to resolve the dispute.
- vii. Subject to Chapter 7 of Part V of the Act, an arbitrator of a dispute (including a Technical Expert (hereinafter defined) or the Commission, in accordance with this Clause 12) may decide not to determine the dispute if the arbitrator considers that the dispute is trivial, frivolous or vexatious, or if there is insufficient evidence before the arbitrator to determine the dispute.
- viii. The costs of the arbitration are to be shared equally between the Operators unless the arbitrator of the dispute has decided not to determine the dispute in accordance with Clause 16(b)(vii). If an arbitrator decides not to determine the dispute, the Operator that initiated the dispute must pay the costs of the arbitration including the other Operator's reasonable costs thereto.

c. Inter-Party Working Group

- i. In the first instance, the Operator raising a dispute must inform the other Operator in writing and the Operators should attempt to resolve the Access Dispute between themselves in good faith.
- ii. An Access Provider and an Access Seeker shall establish a working group, or working groups, to fulfil the requirements set out in this Clause 12(c). The working group shall be comprised of representatives of the Operators and be headed by a person who holds a position at least equivalent to the head of the Access Provider's wholesale or interconnection group.
- iii. The Inter Party Working Group shall provide for:-
  - (1) subject areas dealt with by each working group;
  - (2) equal representation by the Access Seeker and the Access Provider;
  - (3) chairmanship and administrative functions of the working group which is to be shared equally; and
  - (4) formal notification procedures to the working group.
- iv. The Access Provider and the Access Seeker shall use reasonable endeavors to attempt to settle an Access Dispute in the working group level for a period of no longer than thirty (30) Business Days from the first meeting of the working group or such other period as the Operators may agree, subject always to an Operator's right to seek urgent interlocutory relief.
- v. If the Inter Party Working Group does not resolve the dispute within the time provided under Clause 12(c)(iv), either Party may:-
  - (1) refer any technical dispute to a Technical Expert in accordance with Clause 12(d); or
  - (2) refer the dispute to the Commission for arbitration.

d. Use of a Technical Expert

- i. A dispute will only be referred to a Technical Expert if the provisions in Clause 12(c) have been complied with.
- ii. Once a dispute is referred to a Technical Expert, it may not be referred back to a Working Group.
- iii. The Technical Expert:
  - (1) will be an expert appointed by agreement of the Operators or, if the Operators cannot agree, by the Commission;
  - (2) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communication industry;
  - (3) need not be a Malaysian citizen or resident; and
  - (4) will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interest.
- iv. If the Operators fail to appoint a Technical Expert within ten (10) Business Days of the notice to refer a dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.
- v. When relying on the services of a Technical Expert, the following procedures will apply to the dispute resolution procedure of the Technical Expert:-
  - (1) the Operators will present written submission to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and
  - (2) each Party may respond to the other Party's submission in writing within fifteen (15) Business Days from the date of the other Party's submission.
- vi. At the request of either Operator and subject to the Operators agreeing or the Technical Expert deciding within five (5) Business Days of the last written submission that the use of the Technical Expert be by documents only, a technical expert hearing will be within fifteen (15) Business Days of the last written submission.
- vii. Should a Technical Expert dispute resolution procedure be held, each Operator will have the opportunity of making an oral submission. This process will be conducted in private.
- viii. The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Operators) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.
- ix. The Technical Expert will not have the power to appoint any other experts.
- x. The Technical Expert will deliver his award within fifteen (15) Business Days of the conclusion of the hearing or of the last written submission where the arbitration is by documents only. A failure to comply with the timeframe in this Clause 12(d)(x) does not invalidate the Technical Expert's award.
- xi. Every dispute referred to a Technical Expert will be considered separately so that time limits for each dispute are complied with.
- xii. The Technical Expert's decision will be final and binding on the Operators (in the absence of manifest error of fact or law).

e. Billing Dispute Resolution

- i. The Access Provider shall allow the Access Seeker to dispute an Invoice prepared by the Access Provider provided the dispute is reasonable and the Access Seeker notifies the Access Provider in writing within thirty (30) days after the date of receipt of such Invoice (“Billing Dispute Notification Period”) and if the Access Seeker fails to dispute an Invoice within the specified time period above, the Access Seeker is deemed to have accepted the Invoice.
- ii. Unless otherwise agreed in writing, a Billing Dispute may only arise where the Access Seeker has reasonable grounds to believe that an error has arisen from one of the following circumstances:-
  - (1) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Access Seeker’s Billing System;
  - (2) there is, or has been, a fraud perpetrated by the Access Provider;
  - (3) the Access Provider has made some other error in respect of calculating the charges which are the subject of the Billing Dispute.
- iii. All Billing Dispute Notices given under this Clause 12(e) must specify:-
  - (1) the reasons for which the Access Seeker disputes the Invoice;
  - (2) the amount in dispute;
  - (3) details required to identify the relevant Invoice and charges in dispute including:-
    - A. the account number;
    - B. the Invoice reference number;
    - C. the Invoice date;
    - D. the Invoice amount;
    - E. billing verification information; and
    - F. evidence in the form of the Access Seeker’s outgoing report, indicating the relevant traffic data which is in dispute (if applicable).
- iv. Where the Access Seeker has paid an amount and subsequently notifies the Access Provider of a Billing Dispute in relation to that amount, within the Billing Dispute Notification Period, the Access Provider is not obliged to refund any/or that entire amount until the Billing Dispute is resolved in respect of that amount. Once the Billing Dispute is resolved and if any amounts are then found in favour of the Access Seeker, the Access Provider is obliged to refund by way of a credit note of such amounts to the Access Seeker (“Refundable Amount”) within fourteen (14) Business Days of the date of settlement of the dispute. Notwithstanding the foregoing, the Access Seeker shall charge interest on the Refundable Amount which shall be at the rate specified in Clause 11(c)(iv) from the date of payment of the disputed amount by the Access Seeker to the date of the issuance of the credit note by the Access Provider.
- v. The Operators agree to use their reasonable endeavor to promptly resolve any Billing Dispute notified under this Clause 12(e).
- vi. If the Operators are unable to resolve any Billing Dispute within one (1) month (or such other period as the Operators may agree) from the date on which the Billing Dispute Notice is received, either Operator may seek the consent of the other to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other Operator is, however, under no obligation to agree to such extension.

- vii. Once the negotiation period under Clause 12(e)(vi) and any extension granted has expired, the Billing Dispute may be referred by the Access Seeker to the procedure described in Clause 12(e)(viii) hereof.
- viii. The Access Seeker may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this Clause 12(e)(viii) by notifying the Access Provider's Billing Representative. Each of the Operators shall then appoint a designated representative that has authority to settle the Billing Dispute and that is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives however all reasonable requests for relevant information made by one Operator to the other shall be honored.
- ix. Although it is the good faith intention of the Operators to use the billing dispute resolution procedures to the fullest extent to try to solve Billing Disputes, nothing in this RAO shall prevent either Party from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- x. An Operator may request a joint investigation of Invoice discrepancies after that Operator has conducted comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the Operators must agree the terms of the joint investigation, including:-
  - (1) the scope of the joint investigation;
  - (2) how the joint investigation will be conducted; and
  - (3) the date by which the joint investigation must be concluded.
- xi. Enquiries relating to billing, collecting and settlement arrangements or in relation to Network and operation issues may be directed to the Billing Representatives nominated by each Operator.
- xii. Either Operator may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- xiii. If the Operators are unable to resolve any Billing Dispute after exhausting the Billing Dispute Escalation Procedure, either Operator may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the Act. For the purposes of clarification, the Billing Dispute procedure shall follow the procedure in this Clause 12(e) and does not involve the Inter-Party Working group and Technical Experts under Clauses 12(c) and 12(d).

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**13. Operation & Maintenance Obligations (MSA 5.12)**

- a. Operations and maintenance responsibility: Each Operator shall be responsible for the operations and maintenance of its own facilities and services.
- b. Fault reporting service: Each Operator shall establish and maintain a fault reporting service that allows Customers who are directly connected to the Network of that Operator and to whom that Operator supplies Facilities and/or Services (inter alia) to report faults relating to any Network, Facility and/or Service.
- c. Customer notification: Each Operator will advise all of its directly connected Customers to report all faults to the fault reporting serviced described in Clause 17.2 hereof.
- d. Non-discriminatory fault reporting and identification: An Operator shall perform fault reporting and identification on a non-discriminatory basis and treat the faults reported by the other Operator on an equivalent basis as it treats the faults reported by itself.
- e. Bear own costs: Each Operator is responsible for establishing and maintaining a fault reporting service at its own cost irrespective of the location of the fault.
- f. Fault priority: Each Operator shall give priority to faults in the following order:-
  - i. the highest service loss impact in terms of the number of Customers affected;
  - ii. those which have been reported on previous occasions and have re-occurred; and
  - iii. all other faults.
- g. Fault rectification: Each Operator shall rectify faults on a non-discriminatory basis.
- h. Planned maintenance: If any User intends to undertake planned maintenance ("Maintenance Operator") which may affect the Access Seeker's Network, Facilities and/or Services, the Maintenance Operator must:-
  - i. provide at least the greater of the time which it notifies its own Customers and ten (10) Business Days' notice of the planned maintenance;
  - ii. use its reasonable endeavors to minimize any disruption to the carriage of communications that crosses or would cross all Users Networks, and which are caused by the maintenance or re-routing; and
  - iii. where the Users agree that it is practicable, provide alternative routing or carriage at no additional cost to the Access Seeker.
- i. Planned maintenance windows: A Maintenance Operator shall undertake planned maintenance within windows of time agreed with other Users, and where the windows of time for such planned maintenance have the least effect on end users.

- j. Emergency maintenance: If a Maintenance Operator needs to undertake emergency maintenance which may affect the other Users' Network, the Maintenance Operator must, if it is able to:-
- i. provide at least twenty-four (24) hours' notice of the planned maintenance;
  - ii. use its reasonable endeavors to minimize any disruption to the carriage of communications that crosses or would cross all Users' Networks, and which are caused by the maintenance or re-routing; and
  - iii. where the Users agree that it is practicable, provide alternative routing or carriage at no additional cost to the other Users.
- k. Hours of fault reporting and rectification: An Access Provider shall maintain a twenty-four (24) hours a day, seven (7) days a week fault reporting and rectification service.

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**14. Technical Obligations (MSA 5.13)**

- a. Compliance: Operators shall adhere to the relevant guidelines issued by the Commission from time to time to the extent that they have not been expressly revoked and are not inconsistent with any technical obligations set out in the MSA.
- b. Prevention of technical harm: The Access Seeker must take reasonable measures to ensure that interconnection and access do not cause physical or technical harm to the other Users' Network, which measures shall be no less robust than the measures which the Access Seeker takes in respect of new facilities or Equipment incorporated into its own Network.
- c. Technical Standards: The Access Seeker must comply with any applicable technical Standard adopted by the Commission under Chapter 3 of Part VII of the Act.
- d. No Interference: The Access Seeker must not do anything or knowingly permit any third person to do anything in relation to Network, network facilities, network services or Equipment which:-
  - i. causes interference; or
  - ii. materially obstructs, interrupts or impedes the continuous use or operation of, the Network, network facilities, network services or Equipment of another User.
- e. Notice of interference and rectification: If the Access Provider notifies the Access Seeker that the Access Seeker's Network, network facilities, network services or Equipment is causing interference to the Access Provider's and or the other User's Network, network facilities, network services or Equipment:-
  - i. The Access Seeker shall rectify the situation as soon as possible, and in any case, within twenty-four (24) hours of receiving notice from the Access Provider, so that no interference is caused or will continue; or
  - ii. If the Access Seeker is not able to locate the source of the interference within twenty-four (24) hours under Clause 14(e)(i) hereof, the Access Seeker shall promptly notify the Access Provider and both Operators shall meet as soon as possible and in any case, within twenty-four (24) hours of such notice and jointly examine each other's Network, network facilities, network services or Equipment to locate the source of the interference.

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## 15. General Provisions

### a. Force Majeure

- i. If an Operator is unable to perform any obligation (other than an obligation to pay money) under this RAO by reason of Force Majeure and that Operator:-
  - (1) gives the other Operator to which the obligation is owed prompt notice of the Force Majeure with reasonably full particulars thereof and an estimate of the extent and duration of its inability to perform; and
  - (2) shall continue to take all actions within its power to comply as fully as possible with the said terms and conditions,then that obligation is suspended insofar as it is affected by, and during the continuance of the Force Majeure.
- ii. If the Force Majeure continues beyond fourteen (14) days after the notice given under Clause 15(a)(i), the Operators shall meet to discuss in good faith a mutually satisfactory resolution to the problem.
- iii. The requirement that a Force Majeure be removed with all possible diligence does not require the settlement of strikes, lockouts or other labour disputes or claims or demands on unreasonable terms. If a strike, lockout or other labour dispute or claim or demand principally concerns any matter the subject of this RAO, the Operator affected must so notify and consult with the other Operator.

### b. Good faith: An Operator shall co-operate, in good faith and in a commercially reasonable manner, in negotiating and implementing the terms of its Access Agreements which includes:-

- i. acting promptly, honestly, and not perversely, capriciously or irrationally;
- ii. avoiding the imposition of unreasonable restrictions or limitations on the provision of access to Facilities and/or Services (such as refusing to provide particular forms of access that the Access Provider provides to itself); and
- iii. avoiding unnecessary disputes and resolving disputes promptly and fairly.

### c. Confidentiality: An Operator must protect from disclosure any Confidential Information provided by another Operator in the course of negotiating and during the term of this RAO or an Access Agreement in accordance with a Confidentiality Agreement.

### d. Intellectual Property: An Operator shall only use such Intellectual Property and information provided by another Operator for the purposes of providing or acquiring access to requested Facilities and/or Services. An Operator must not use such Intellectual Property or information for the development or marketing of other communication services or Equipment by that Operator, its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest, or third parties.

- e. Governing Law: This RAO and the transactions contemplated by it are governed by the laws of Malaysia and in the event of:-
- i. an Operator seeking urgent interlocutory relief in respect of any matter; or
  - ii. an Operator seeking relief in respect of the other Operator failing to comply with the dispute resolution process set out in Clause 12 hereof; or
  - iii. an Operator seeking relief in respect of a manifest error or mistake of law of the arbitrator (be it the Technical Expert or the Commission), established by the Operators pursuant to any dispute resolution procedures,
- each Operator irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Malaysia for such relief.
- f. Costs and Expenses: The Operators agree to bear their own legal, registration, and other costs incurred in relation to the preparation, negotiation and execution of this RAO and all documents contemplated by it (except where this RAO or those other documents expressly provides to the contrary). The stamp duty in respect of this RAO shall be borne by the Access Seeker.
- g. Relationship of the Operators: The relationship of the Operators to this RAO is one of independent contractors only. Nothing in this RAO is to be construed as creating an agency, partnership, association, trust or joint venture between the Operators. Each Operator is responsible only for its obligations as set out in this RAO.
- h. Surviving Obligations: Termination or expiration in whole or in part of this RAO does not affect those terms and conditions which by their nature survive termination or expiry.
- i. Relationship with Third Persons
- i. Neither Operator nor any of its employees, agents, representatives or contractors is to be deemed an employee, agent, contractor or representative of the other Operator.
  - ii. Subject to this RAO, no Operator has any authority to bind or oblige or incur any liability on behalf of the other Operator and no such authority is to be implied.
  - iii. Clauses 19.7(a) and 19.7(b) have neither the effect nor imply:-
    - (1) that an Operator or any of its employees, agents, representatives or contractors is the employee agent contractor or representative of the other Operator, or
    - (2) that an Operator has the authority to bind or oblige or incur a liability on behalf of the other Operator.
  - iv. Either Operator may advise its Customers that certain services are provided by it, but each Operator must not represent that the other Operator jointly participates in the Operator's services.
- j. Variation
- i. A variation of any part of this RAO is valid if, and only if, made between and in writing subscribed by the Operators and that the variation is registered with the Commission in accordance with the Act.

- ii. Subject to Clause 15(j)(i), where the Operators agree to materially vary the RAO or the SLOs, the Operators shall inform the Commission in writing of the action the Operators proposes to take and the reasons why such action is appropriate. The RAO or the Access Service shall not be varied until such time and on such conditions as the Commission may specify.
  - iii. In this Clause 19.8, a reference to a variation includes a reference to an addition, deletion, amendment, modification, alteration or other variation.
- k. Remedies Cumulative: Subject to any condition or provision of this RAO which provides for a remedy or form of compensation to the exclusion of any other remedy or form of compensation, the rights, powers and remedies provided in this RAO are cumulative and not exclusive of the rights, powers or remedies provided by law independent of this RAO.
- l. Notices
- i. A notice, Invoice, approval, consent, request or other communication in connection with this RAO:-
    - (1) must be in writing;
    - (2) must be left at the address of the addressee as per Clause 1 hereof or sent by ordinary post to the address of the addressee or sent by facsimile (to be followed by post) to the facsimile number of the addressee which is informed to the other Operator or if the addressee notifies another address or facsimile number then to that address or facsimile number.
  - ii. A notice, Invoice, approval, consent, request or other communication takes effect from the time it is received unless a later time is specified in it.
  - iii. A notice, Invoice, approval, consent, request or other communication is, in the absence of contrary evidence, deemed to be received:-
    - (1) in the case of a posted letter, on the third day after posting; and
    - (2) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicated that the facsimile was sent in its entirety to the facsimile number of the recipient; and
    - (3) in the case of a communication left at the address of the addressee, at the time the communication was so left.
- m. Waiver
- i. A provision of or right under this RAO may not be waived except in writing signed by the Operator or Operators to be bound.
  - ii. No failure or delay on the part of any Operator in exercising any rights hereunder shall operate as a waiver thereof nor shall any single or partial exercise of such right preclude any other or further exercise of any other right hereunder provided however that nothing in this condition shall extend time or be construed to extend time for the performance of any right or obligation under this RAO if a time period is imposed for the performance of such right or obligation.

- iii. Knowledge or acquiescence by any Operator of, or in breach of any of the provisions of this RAO shall not operate as or be deemed to be a waiver of such provision and notwithstanding such knowledge or acquiescence, such Operator shall remain entitled to exercise the rights and remedies under this RAO, and at law, and to require strict performance of all of the provisions of this RAO.
  
- n. Severability: The whole or any part of this RAO that is illegal or unenforceable will be read down to the extent necessary so that it is legal and enforceable or severed (if it cannot be read down) and will not affect the continued operation of the remaining provisions of this RAO.
  
- o. Time of the Essence: Time wherever referred to in this RAO shall be of the essence.
  
- p. Review (MSA 5.16.10): If:-
  - i. the Minister issues a Direction or Determination relating to the subject matter of this RAO;
  - ii. the Commission issues a Direction or Determination relating to the subject matter of this RAO;
  - iii. there are any amendments, changes or modifications to the Act, its subsidiary legislation and the instruments issued thereunder including but not limited to the Access List or MSA Determination which affects the subject matter of this RAO;
  - iv. enactment of new laws and regulations which relates to the subject matter of this RAO;
  - v. the registration, determination, promulgation, issue, amendment or replacement of any industry code with which an Operator is required or obliged to comply;
  - vi. a condition of an Operator's License is amended or deleted or a new condition is imposed which has an effect on this RAO; or
  - vii. by agreement of the Operators;

the Operators agree to review the RAO as soon as practicable in good faith. Where the changes referred to in Clauses 15(p)(i) to (vii) above affect this RAO, the Operators shall negotiate as soon as practicable and in good faith such amendments to this RAO as are necessary or appropriate to ensure compliance with such changes (MSA 5.16.10).

- q. Good and Services Tax ("GST"): Where applicable, GST shall be added to all or any charges under this RAO and all SLOs for the Sites and shall be payable by the Access Seeker together with the Access Charges.

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## APPENDIX A

### Access Request

(On the Access Seeker's letterhead)

To the Access Provider

Dear Sir,

#### ACCESS REQUEST

We refer to the matter above wherein we hereby make the following Access Request and forward the following:-

1) Our Details:

Name:

Registered Address:

Business Address:

Contact Person(s):

Telephone No.:

Facsimile No:

E-mail:

2) Your Facilities and/or Services which is/are sought:

3) We hereby wish to \* accept the RAO / \* negotiate amendments to the RAO / \* negotiate an Access Agreement on alternative terms (\* delete whichever is not applicable).

4) We hereby request the following information for the purposes of negotiations:

5) Enclosed herein two (2) copies of the Confidentiality Agreement duly executed.

6) We wish to acquire from you the following preliminary information regarding the scale and scope of your Facilities and/or Services:

7) Enclosed the relevant technical information relating to the interface standards of our equipment:

8) Enclosed the relevant information relating to our Network and the functionality of its services, to the extent that we are aware that such information may affect your Network (if applicable):

9) Enclosed our creditworthiness information as set out in subsection 5.3.11 of the MSA:

10) Enclosed our assessed security or confirmation of security offered to you in line with subsection 5.3.9 of the MSA:

11) Enclosed our insurance information as required under subsection 5.3.10 of the MSA:

12) Kindly confirm if you require further information or documents in order to process this Access Request.

Yours faithfully,

For and on behalf of the Access Seeker

## APPENDIX B

### Confidentiality Agreement

**THIS AGREEMENT** is made on

BETWEEN

**KENANGA MARKETING SDN BHD (551942-K)**, a company incorporated in Malaysia with its registered address at 466-b Jalan Kenanga, Off Jalan Kamaruddin, 20400 Kuala Terengganu, Terengganu (hereinafter referred to as “the Access Provider”) of the one part;

AND

..... a company incorporated under the laws of Malaysia and having its registered address at..... and its business address at ..... (hereinafter referred to as “the Access Seeker”) of the other part.

#### **WHEREAS:-**

- A. The Access Provider is a licensed individual network facilities provider under the Communications and Multimedia Act 1998. Pursuant thereto, the Access Provider may offer network facilities in Malaysia.
- B. The parties are discussing certain matters thereby necessitating the exchange of information for the purpose of determining their respective interests in establishing a business relationship between them.
- C. The parties wish to defend their rights with respect to the said information and to protect the confidentiality thereof and proprietary features contained therein.

**NOW THIS AGREEMENT WITNESSETH** as follows:-

#### 1. Definition

“Confidential Information” means all oral or written information of any kind, whether in printed or electronic format, including but not limited to technical information, data or know-how which relates to research, product plans, product, services, customers, markets, software, developments, inventions, process, designs, drawings, engineering, hardware and software configuration information, marketing or finance or any form of business plans whether or not labelled as “Confidential” and submitted by one party to the other party during the discussions and/or meetings, which Confidential Information is designated in writing to be confidential or proprietary or if given orally, is confirmed promptly in writing as having been disclose as confidential or proprietary.

“Disclosing Party” means the party from whom the Confidential Information originates and is disclosed to the Recipient.

“Recipient” means the party to whom the Confidential Information is given or disclosed.

#### 2. Non-Disclosure of Confidential Information

- a) The Recipient agrees not to use any Confidential Information disclosed to it by the Disclosing Party for its own use or for any purpose except to carry out discussions concerning and the undertaking of any business relationship between the two.

- b) The Recipient will not disclose any Confidential Information of the Disclosing Party to third parties or to employees or agents of the Recipient except employees and/or agents who are required to have the information in order to carry out the discussion of the contemplated business.
- c) The Recipient agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the Disclosing Party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized hereunder to have any such information, which measures shall include the highest degree of care that the Recipient utilize to protect its own Confidential Information of a similar nature.
- d) The Recipient agrees to notify the Disclosing Party in writing of any misuse or misappropriation of Confidential Information of the Disclosing Party which may come to the Recipient attention.

3. Information excluded from Confidentiality

The obligation imposed upon either party herein shall not apply to information which:-

- a) is in the possession of the Recipient at the time of disclosure as shown by the Recipient's files and records immediately prior to the time of disclosure; or
- b) prior or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of the Recipient; or
- c) is approved in writing by the Disclosing Party for release; or
- d) is independently developed by the Recipient; or
- e) is disclosed to a third party pursuant to written authorisation from the Disclosing Party; or
- f) is received from a third party without similar restrictions as against the Receiving Party; or
- g) is disclosed pursuant to a requirement or request of a Government agency, but only to the extent so ordered.

4. No Commitment

Nothing in this Agreement imposes on either party an obligation to enter into any agreement or transaction.

5. Return of Materials

Any materials or documents which have been furnished by the Disclosing Party to the Recipient will be promptly returned, accompanied by all copies of such documentation, after the business possibility has been rejected or concluded.

6. Patent or Copyright Infringement

Nothing in this Agreement is intended to grant any rights to the Recipient under any patent or copyright nor shall this Agreement grant the Recipient any rights in or to the Disclosing Party's Confidential Information which was given solely for the purpose of determining whether to enter into the proposed business relationship with the Disclosing Party.

7. Term

The foregoing commitments of the Recipient shall survive any termination of discussions between the parties and shall continue for a period of two (2) years thereafter.

8. Miscellaneous

This Agreement shall be binding upon and for the benefit of the undersigned parties, their successors and assigns, provided that Confidential Information of the Disclosing Party may not be assigned without the prior written consent of the Disclosing Party. Failure to enforce any provision of this Agreement shall constitute a waiver of any term hereof.

9. Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of Malaysia and shall be binding upon the parties hereto in Malaysia and worldwide. The courts of Malaysia shall have exclusive jurisdiction to hear and determine all actions and proceedings arising out of this Agreement and the Recipient hereby submits to the jurisdiction of the courts of Malaysia for the purpose of any such actions and proceedings.

10. Remedies

The Recipient agrees that the obligations of the Recipient provided herein are necessary and reasonable in order to protect the Disclosing Party and its business and the Recipient expressly agrees that monetary damages would be inadequate to compensate the Disclosing Party for any breach by the Recipient of its covenants and agreement set forth herein. Accordingly, the Recipient agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the Disclosing Party and that in addition to any other remedies that may be available, in law, in equity or otherwise, the Disclosing Party shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the Recipient without the necessity of providing actual damages.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

SIGNED by }  
for and on behalf of }  
**the Access Provider** }  
in the presence of:- }

SIGNED by }  
for and on behalf of }  
**the Access Seeker** }  
in the presence of:- }

## **APPENDIX C**

### Access Charges

1. This Appendix C shall comprise the following:-
  - a. The Access Charges payable by the Access Seeker for Infrastructure Sharing is detailed in Appendix C1 hereof; and
  - b. The Access Charges payable by the Access Seeker for other Access Service provided by the Access Provider under Appendix F hereof, is detailed in Appendix C2 hereof.
2. The Access Charges and terms herein this Appendix C shall be applicable for all SLOs and its subsequent amended SLOs issued under the RAO or the Access Agreement.

## APPENDIX C1

### The Access Charges for Infrastructure Sharing

- 1) The Access Charges for License Term of three (3) years only for Sites under Appendix D (“Basic Infrastructure”) are as follows (unless such Site has any Variation Orders) and in any case, will be reflected in its respective Site Licenses Offer:-

per month per User (excluding GST)

Tower Height	2 Users	3 Users	4 Users	5 Users	6 Users
150 feet	RM6,426	RM3,672	RM2,916	RM2,624	RM2,362
200 feet	RM8,883	RM5,076	RM4,104	RM3,694	RM3,324
250 feet	RM9,450	RM5,400	RM4,320	RM3,888	RM3,499
300 feet	RM12,075	RM6,900	RM5,500	RM4,950	RM4,455
350 feet	RM15,225	RM8,700	RM6,900	RM6,210	RM5,589
400 feet	RM17,325	RM9,900	RM7,900	RM7,110	RM6,399

and in the event the Access Seeker shall wish to procure a License Term for a duration longer than three (3) years, the Operators shall negotiate terms thereof in an Access Agreement.

- 2) If the Access Seeker wishes to gain access at Designated Infrastructure other than Basic Infrastructure for example poles, monopoles, lamp-poles and aesthetic towers, the Access Charges shall be at the rate the Existing Operators are currently paying for the Site notwithstanding the increase of the number of Users for the Site by the addition of the Access Seeker.
- 3) In any case, the Access Charges for a Site shall depends amongst others on the following:-
- a) the Capital Expenditure (CAPEX) incurred for the construction of the Designated Infrastructure and the Associated Tower Site and the other fixtures and fittings on the Site;
  - b) the monthly Operational Expenditure (OPEX) for the Site including the rental thereof;
  - c) the number of Users at the Site;
  - d) the numbers and types of Access Seekers equipment and the Equipment to be installed at the Site and/or on the Designated Infrastructure or Associated Tower Site;
  - e) reasonable interests for calculation purposes;
  - and f) any Variation Orders;

but in any event, the applicable Access Charges is Site specific and shall be reflected in the SLO for the Site.

- 4) If in the event the number of User per Site increases, the Access Charges payable by the Users may be revised downwards but there shall be no further reduction for the Access Charges if the Users for any Site exceed six (6). If the number of Users per Site reduces for any reasons whatsoever, the Access Charges will be revised upwards.

- 5) Any amendment to Access Charges shall be reflected by all Users for the Site amending the SLO or any such agreement they have with the Access Provider which may be called an Authorised Work Order or AWO or any agreement under any name, and shall be entitled to the amended Access Charges with effect from the date stated in the latest SLO.
- 6) The actual number of User per Site shall be based upon the available loading and space at the Designated Infrastructure thereat and all equipment and the Equipment to be installed by the Access Seeker at a Designated Infrastructure shall have been prior approved by the Access Provider upon a submission of a Technical Proposal for the same by the Access Seeker to the Access Provider.

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## APPENDIX C2

Access Charges payable by the Access Seeker  
for other Access Service provided by the Access  
Provider under Appendix F hereof (if any)

## APPENDIX D

### Basic Infrastructure

The specifications for Basic Infrastructure being a type of Designated Infrastructure shall be as follows:

- (1) Self-supporting towers (Heavy Duty)
- (2) Lightning Protection System
- (3) Horizontal Cable gantry (from cabin cable outlet hole to the tower vertical cable gantry)
- (4) Cable ladder, from OD BTS Cabinet to the tower vertical cable gantry
- (5) Platform or Concrete Plinth for Cabin, Generator or Outdoor Base Transceiver Station
- (6) Access road (crusher run with earth drain) up to 200 meters only (compound area finished in premix or concrete)
- (7) Civil Works and Drainage system
- (8) Fencing system and entrance gate
- (9) Normal Structural foundation, based on normal Soil Investigation Report without piling (Pad footing)
- (10) AC power supply (subject to availability from TNB) up to project cost of RM10,000 only based on current JKR rate or JKR VOP rate + 15% or a maximum number of ten (10) TNB poles, whichever is lower in value
- (11) Feeder pillar with meter panel
- (12) AC main distribution board systems comes with Auto Reset System and Surge Protection Device (SPD)
- (13) Basic Grounding and Earthing System (all joints cad-welded and with necessary Equipment Grounding Busbar)
- (14) Aviation Light system (to use approved high intensity LED c/w dry contact output)
- (15) Cabin Space not exceeding 3.6 x 2.7 m
- (16) Generator set Space not exceeding 3.3m x 3.6m

## APPENDIX E

### Site License Offer (SLO)

Ref:	
Date:	

This Site License Offer (SLO) is issued pursuant to the RAO or Access Agreement entered into between the Access Provider and the Access Seeker stated herein.

**1. The Site's Details:**

Access Provider's ID		Access Seeker's ID	
Latitude		Longitude	
Site Name			
Site Address			
Structure Height			
Current Site User Configuration			

**2. Equipment proposed by Access Seeker:**

Omni Antenna	
RF Panel Antenna	
Tx Antenna	
Cabin Space	
Genset Space	
RRU	

3. License Term:	From		Expiry	
4. Total Access Charge (Monthly):	RM			
5. Security Sum:	RM			
5. ROW	RM			

**7. Calculation of Access Charges**

Basic Access Charge (RM)	VO (RM)	Additional RRU/Filter (RM)	Additional MW/Antenna (RM)	VO Rental Beyond (RM)	Total Access Charges (RM)

**8. Terms and Conditions**

- i) The issuance of this SLO is subject to the terms and conditions stipulated in the RAO or Access Agreement entered into between the parties.
- ii) Possession of Site is upon payment of Security Sum and one (1) month Access Charge in advance.
- iii) All Equipment to be installed within the Site boundary.
- iv) Access Seeker shall be liable for damages caused to the existing equipment on the Site at the time when the Access Seeker's works/installations are in progress.
- v) The terms and conditions under the RAO Agreement shall survive to govern this SLO until its early termination or expiry.
- v) Other additional terms and conditions, if any, as agreed between the parties.

IN WITNESS WHEREOF, the undersigned have through their duly authorized representatives signed this SLO on the day and year written below.

For and on behalf of the Access Seeker

Date
Name
Designation

Company Chop

For and on behalf of the Access Provider

Date
Name
Designation

Company Chop

## APPENDIX F

Other Access Service Offered by the Access Provider (if any)

## APPENDIX G

### Service Specific Obligations for Infrastructure Sharing (MSA 6.8)

- (1) **Application:** Additional terms and conditions which are applicable to Infrastructure Sharing Services.
- (2) **Forecasts:** For the purposes of subsection 5.6.6 of the MSA Determination and Clause 6 hereof, the Access Provider shall only request Forecasts where:-
  - (a) the maximum period of time covered by Forecasts regarding Infrastructure Sharing is one (1) year;
  - (b) the minimum intervals or units of time to be used in Forecasts regarding Infrastructure Sharing is one (1) year; and
  - (c) the maximum frequency to update or to make further Forecasts regarding Infrastructure Sharing is once a year.
- (3) **Acknowledgement of receipt:** For the purposes of subsection 5.7.5 of the MSA Determination, the Access Provider shall acknowledge receipt of each Order for Infrastructure Sharing within two (2) Business Days.
- (4) **Time for acceptance or rejection:** Subject to any shorter timeframe required under subsection 5.7.12 of the MSA Determination, the Access Provider must notify the Access Seeker that an Order for Infrastructure Sharing is accepted or rejected within ten (10) Business Days after:-
  - (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of the MSA Determination; or
  - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of the MSA Determination, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of the MSA Determination.
- (5) **Indicative delivery timeframe:** For the purposes of paragraph 5.7.13(a)(i) of the MSA Determination, the indicative delivery timeframe for Infrastructure Sharing is forty (40) Business Days. For clarification:-
  - (a) the indicative delivery timeframe commences from the Notice of Acceptance or confirmation of the Order (whichever is later) in accordance with subsection 5.7.14 of the MSA Determination hereof;
  - (b) where a delay in the delivery of an Order is caused by the Access Seeker, the delivery date specified in the confirmed Order or indicative delivery time set out above shall be extended for a further period as may be reasonably required by the Access Provider; and
  - (c) the Access Provider is not required to commence work on an Order unless and until all requisite way leave and/or governmental authority approval has been obtained.
- (6) **Billing Cycle:** For the purposes of subsection 5.11.3 of the MSA Determination, between the

Operators, the Billing Cycle for Infrastructure Sharing will be one (1) year in advance for the first year and quarterly in advance for subsequent years, unless otherwise agreed between the Operators.

- (7) **Physical access:** Where required to fulfil an Order for Infrastructure Sharing or for the Access Seeker to perform operations or maintenance activities, the Access Provider shall allow the Access Seeker, its nominated employees and/or contractors to physically access the Access Provider's network facilities and the Access Seeker's Equipment, and to have physical control over the Access Seeker's Equipment located at such network facilities, at equivalent times and in accordance with equivalent processes and procedures as are applicable to itself.
- (8) **Nominated personnel:** The employees and/or contractors nominated by the Access Seeker under subsections 6.8.7, 6.8.9 and 6.8.10 of the MSA Determination and items (7), (9) and (10) herein will be reasonable, having regard to:-
- (a) the position of each person and the number of persons nominated; and
  - (b) the position of each of the Access Provider's own personnel and the number of the Access Provider's personnel to which the Access Provider provides physical access to such network facilities.
- (9) **Escorts:** The Access Provider is only permitted to require an escort to be present when nominated employees and/or contractors of the Access Seeker wish to enter into the Access Provider's property if the Access Provider requires an escort for its own employees or contractors in the same circumstances. If an Access Provider determines that it is necessary to have an escort present when the nominated employees and/or contractors of the Access Seeker wish to enter into the Access Provider's property, the Access Provider shall:-
- (a) bear the costs of such escort service;
  - (b) subject to paragraph 6.8.9(d) of the MSA Determination and item (9)(d) hereof, provide immediate physical access to the Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;
  - (c) subject to paragraph 6.8.9(d) the MSA Determination and item (9)(d) hereof, provide physical access at the time requested by an Access Seeker for planned maintenance requests on the shorter of:-
    - (i) two (2) Business Days' notice for manned Sites and five (5) Business Days' notice for unmanned Sites; and
    - (ii) the period of notice which it requires from itself when providing itself with physical access for planned maintenance;
  - (d) for both planned and emergency maintenance requests at unmanned Sites only, have its escort arrive within the shorter of:-
    - (i) thirty (30) minutes of time required by the Access Seeker pursuant to paragraph 6.8.9(b) or 6.8.9(c) of the MSA Determination or item (9)(b) or (9)(c) hereof (as applicable) plus a reasonable window to allow for travel time (which must be estimated in an operations and maintenance manual given to the Access Seeker, or estimated at the time of responding to the Access Seeker's physical access request); and
    - (ii) the period of time it requires for its escorts to arrive for planned and emergency maintenance at unmanned Sites.

- (10) **Absence of escort:** For the purposes of subsection 6.8.7 of the MSA Determination and item (7) herein, if an escort does not arrive at the Site within the timeframe specified in subsection 6.8.9 and item (9) hereof, the Access Seeker's nominated employees and/or contractors may proceed to enter the Site without an escort.
- (11) **Site register:** The Access Seeker must establish and maintain a register of all persons who visit the Site on the Access Seeker's behalf, which must be made available for inspection by the Access Provider upon request.
- (12) **Utilities and ancillary services:** The Access Provider must, where the relevant utilities and ancillary services are within the Access Provider's control, ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access to the same extent that the Access Provider provides to itself, including but not limited to:-
- (a) access to roads;
  - (b) access to land;
  - (c) power (provided available from the relevant power provider), including the provision of back-up power (upon commercial terms herein);
  - (d) space for the Access Seeker to provide its own environmental services (including but not limited to heat, light, ventilation and air-conditioning, fire protection);
  - (e) security, taking care to ensure that its agents, representatives or sub-contractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft;
  - (f) site maintenance; and
  - (g) any other utilities and ancillary services as mutually agreed by Operators.
- (13) **Cost:** The utility and ancillary costs in respect of the network facilities as contemplated in subsection 6.8.12 of the MSA Determination and item (12) above shall be apportioned (in accordance with fair and equitable principles) between the Access Provider and all Users at the relevant location.
- (14) **Marking:** The Access Seeker shall clearly mark or label its Equipment in such a manner that they can be easily identified as the Equipment of the Access Seeker.
- (15) **Maintenance:**
- (a) The Access Provider shall permit and do all the things reasonably necessary to allow the Access Seeker to maintain its Equipment at or on the Designated Infrastructure to which access has been granted. This includes the provision of physical access.
  - (b) The Access Provider shall ensure that the Site and the Designated Infrastructure, as the case may be, shall be in good and working order and shall be responsible for the general upkeep, maintenance and repair of the Site, the Designated Infrastructure, the chain link fencing surrounding each Site (where applicable) as well as the access roads to the same during the License Term.

- (c) In the event of any structural damage or defects occurring unto the Site or the Designated Infrastructure, the chain link fencing surrounding each Site (where applicable) or the access roads, as the case may be, whether through ordinary usage, wear and tear or otherwise (except where the damage or defects was caused by the fault or negligence of the Access Seeker) then the Access Provider shall repair the same immediately at the Access Provider's own costs and expenses upon the discovery of such damage or defects or upon notification by the Access Seeker.

**(16) Access Seeker's Obligations**

**(a) Utilities**

- (i) Notwithstanding item (13) above, the Access Seeker shall be responsible to apply for its own individual meter and power supply to the Sites and shall be further responsible for and bear the cost of all electricity utilised by the Access Seeker at the Sites.
- (ii) In the event that the Access Seeker's application to the relevant authority for an individual meter is not successful, the Access Seeker may, subject to the Access Provider's prior written approval, utilise the electricity supplied to the Sites provided that:
- a. the electricity power load is sufficient to be shared with the Access Seeker and the Existing Operators; and
  - b. the Access Seeker reimburse the Access Provider for all electricity charges utilised (and any additional charges for back-up power) by the Access Seeker at the Sites together with the applicable administrative charges; or

where the Access Provider is not able to provide the electricity supply to the Access Seeker, the Access Seeker shall be entitled to bring and install its own generator at the Sites at its own costs and expense.

- (iii) The Access Provider may upon request by the Access Seeker, apply for the connection of electricity to the Sites under its own name and at its own costs and expenses for the benefit of the Access Seeker upon commercial terms to be agreed between the Operators for that purpose.
- (iv) In cases where a generator is required for a Site due to the non-availability of electricity supply thereat, the Operators shall decide on the solution a case by case basis.
- (b) Access Provider's Right to Enter and View Condition: The Access Seeker shall never disallow or restrain the Access Provider and his agents, servants and contractors from entering the Sites at all reasonable times for the purpose of viewing the state and condition thereof or for any other reasonable purpose.
- (c) Use of Sites
- (i) The Access Seeker shall only use the Sites for the sole purpose of providing Communication Services and shall not do or permit to be done any act or thing which is illegal or may become a nuisance or give reasonable cause for complaint from the Access Provider, owner of the land or any of the other Users at the Site.

- (ii) If the Access Seeker has not complied with item (16)(c)(i) hereof, the Access Seeker shall take the necessary rectification or remedial action to address any complaints made by the Access Provider or other Users at the Site.
  - (iii) The Access Seeker's right to use the Sites and the right of access does not entitle the Access Seeker to any proprietary rights or interest whether under statute, common law, equity or any theory of law in any building, land, fixture, other structure in, on or at the Sites.
  - (iv) Where the respective Site is owned or controlled by a third party ("Infrastructure Site Owner") and the Access Provider's use of the Site is pursuant to a license or tenancy or lease, the Access Provider shall be under no obligation to seek any renewal of the term of the license or tenancy or lease. The Access Seeker agrees that it shall not seek a tenancy or lease to the Sites from the Infrastructure Site Owner unless the Access Provider signifies in writing that it is no longer interested in the use of the Sites and the Infrastructure Site Owner advertises or makes or takes any action to indicate that the said Site is up for tenancy or lease to the best available offer or the Access Provider does not renew or take a lease or license or tenancy of the Site within three (3) months from the date of expiry.
- (d) Storage: The Access Seeker shall not permit to be kept on the Sites or any part thereof:-
- (i) any materials the storage of which may contravene any ordinance, statute, regulation or by-law;
  - (ii) any materials the storage of which an increased rate of insurance is usually required; or
  - (iii) any explosive, combustible or radioactive substances except for the fuel tank which is an integral part of the generator set(s). For the avoidance of doubt, no additional stored fuel tank is permitted.
- (e) Increases in Premium: The Access Seeker shall not do or permit to be done anything which would render the insurance policy or policies with respect to the Access Provider's Site becomes void or voidable or whereby the premium of the said policy or policies may be increased. In the event of an increase in premium or other expenses on renewal of such policy of policies due to a breach or non-observance of this condition by the Access Seeker, the Access Seeker undertakes to repay all sums paid by the Access Provider including the expenses incurred thereto.
- (f) Repairs: In the event of any damage caused to the Sites by the Access Seeker, the Access Seeker shall, at its own cost and expense, restore and to forthwith make good any replacement and/or repair (fair wear and tear excepted) as specified in the notice in writing given by the Access Provider to the Access Seeker specifying therein all necessary replacements and/or repairs to be effected and if the Access Seeker fails to effect the replacements and/or repairs within the time period stipulated in the notice (which period must be a reasonable time), the Access Provider may, whether or not together with its workmen make all necessary replacements and/or repairs. The costs for all such necessary replacements and/or repairs shall be a debt due from the Access Seeker and shall be recoverable by the Access Provider save where the replacements and/or repairs were due to the natural failure of the structure or due to the Access Provider.

(g) Tenantable Condition: The Access Seeker shall keep the Sites including the Designated Structure, its flooring and its interior plaster or other surface material or rendering on walls or ceilings (if any) and the Access Provider's fixtures thereon including the tower member, fencing, electric wires, installations and fittings for electricity supply and other fixtures and additions (if any) and other goods therein including the items specifically attached thereto, if any, in good and tenantable repair and condition (reasonable wear and tear excepted).

(h) Consents, Licenses and Approvals

- (i) The Access Seeker shall be fully responsible to obtain all necessary consents, permits, approvals and licenses from third parties and governmental authorities or agencies to carry out/provide its Communications Services at the Sites including operating and using all equipment, systems, cables, links and devices.
- (ii) The Access Seeker shall further observe and comply with all laws, by-laws, rules and regulations affecting the Access Seeker which are now in force or which may hereafter be enacted.
- (iii) The Access Seeker shall further observe and perform and cause all its employees, independent contractors, agents or invitees to observe and perform all rules and regulations made by the Access Provider (and which rules and regulations equally apply to all Users) from time to time and notified to the Access Seeker in writing.

(i) Installation of the Equipment

- (i) The Access Seeker shall ensure that all the Equipment shall:
  - 1. be as per its Technical Proposal;
  - 2. be type-approved and comply with all relevant laws and regulations;
  - 3. not cause any frequency interference to the Access Provider's and/or the Existing Operators' equipment or services provided in or around the Sites; and/or
  - 4. be electromagnetically compatible in accordance with the prescribed standards and shall not cause electromagnetic interference to the Access Provider's and/or the Existing Operators' equipment or services provided in or around the Sites.

For the purposes of item (16)(i)(i)(2) till (4) above, the Operators agree that where the Access Seeker's Equipment causes frequency interference or electromagnetic interference to the Access Provider and/or the Existing Operators' equipment or services provided in or around the Sites, the Access Provider shall provide immediate verbal notification followed by a written notice within 24 hours to the Access Seeker. The Access Seeker shall immediately (and in any event no longer than 24 hours) upon receipt of the verbal notification take all such necessary steps to stop any such interference.

(ii) In the event that:

- 1. the Access Seeker fails to fulfil its obligations under this item (16)(i)(i); or

2. the Equipment, system or devices of the Access Seeker is or poses a threat or danger to the public health (as advised by the relevant authorities or equipment manufacturer) and safety of the Access Provider and/or the Existing Operators' facilities, equipment, device or system;

the Access Provider may direct the Access Seeker to take such remedial action as may be necessary to remedy such breaches including temporary shutting down of the Equipment, system or devices.

- (iii) The Access Seeker shall only be permitted to install the Equipment at the Sites for the provision of its Communications Services and shall not be permitted to install any other Licensees' equipment, system and/or devices on the Sites without the prior written approval of the Access Provider.
  - (iv) The Access Seeker shall not damage, tamper, modify, alter or handle any equipment, system or devices belonging to the Access Provider or the Existing Operators at the Sites without the prior written approval of the Access Provider and/or the Existing Operators.
  - (v) The Access Seeker is responsible for insuring its Equipment and shall purchase the necessary insurances when carrying out any works including installation works on the Sites. In particular, the Access Seeker or its contractor shall obtain or procure an Erection All Risks insurance or the relevant insurance against all risks of physical loss or damage to the Access Seeker's work and Equipment for the duration of the works and the insurance shall be in the amount which is sufficient to insure the full value of the works and Equipment carried out by the Access Seeker.
- (j) Installation of Electrical Points and Plumbing Connection: The Access Seeker shall only install electrical sockets, plugs or electrical power points or electrical motor or engine or appliances or make any additional plumbing connections on or to the Sites after obtaining the written consent of the Access Provider to the work plan.
- (k) Installation Works
- (i) The Access Seeker shall submit the installation and work plan which shall include installation and works schedule and work methods to the Access Provider and obtain the Access Provider's written approval prior to undertaking the installation or upgrading or any Equipment at the Sites or for Site preparation works.
  - (ii) Where required by the Access Provider, the Access Seeker shall secure certification by an independent consultant engineer that the installation or upgrading of its Equipment at the Sites or site preparation works undertaken and completed, comply with the terms of all approvals, authorisation, permits, consents and clearances and the installation plans submitted to the Access Provider.
  - (iii) Any revision to or revocations of the approvals, authorisations, consents, permits, clearances and installation plans shall be notified to the Access Provider. All revision to the installation plans must be approved in writing by the Access Provider.

- (iv) No work shall be undertaken by the Access Seeker at a Site in the event the approvals, consents, permits, authorisations and clearances are revoked.
  - (v) The Access Provider shall be entitled at any time to visit and inspect the installation works and the site preparation works.
  - (vi) Upon completion of the installation works and site preparation works, the Access Seeker shall inform the Access Provider.
  - (vii) The Access Provider shall be entitled to conduct an inspection of the Sites to verify that the installation of the Equipment at the Sites and completion of the site preparation works comply with the approved installation and work plan. In the event there is any non-compliance by the Access Seeker, the Access Seeker shall commence and complete rectification works within fourteen (14) Business Days failing which the Access Provider shall be entitled to terminate the license granted under the SLO.
- (l) Safety and Health and Security Procedures
- (i) At all times when entering the Site, the Access Seeker and its employees, servants, contractors, agents and any other parties authorised by it shall comply with the provisions and requirements of the Occupational Safety and Health Act 1994 (“OSHA”). These provisions include the usage of personal protective equipment such as safety helmet, safety boots, safety goggles and other safety gadgets as prescribed by OSHA.
  - (ii) The Access Seeker shall exercise due care in the execution of their work so as to prevent accidents and are required to report any incidents including but not limited to accidents as a result of their works, to the Access Provider within twenty-four (24) hours from the time of the occurrence.
  - (iii) The Access Seeker shall comply and cause its employees, agents and contractors to comply with all guidelines, rules and regulations issued by the Access Provider (and which guidelines, rules and regulations equally apply to all Users) from time to time on Site access and security procedures with respect to access to and use of the Sites.
- (m) Sub-letting and Assignment: The Access Seeker shall not sub-let, assign or part with the possession of the Sites without the prior written approval of the Access Provider. Where the Access Provider allows the Access Seeker to sub-let or sub-lease the Sites, the Access Seeker shall be fully responsible for the acts and omission of its sub-tenant or sub-lessee and shall ensure that its sub-tenant or sub-lessee complies with all the Access Seeker’s obligations with respect to the Sites under this RAO Agreement.
- (n) Security on Site
- (i) The Operators acknowledge that there are Sites that may require additional security measures than that provided for under this RAO Agreement. The Operators shall mutually agree on the said Sites that may require additional security measures (“High Risk Sites”).

In the event a Site has been mutually agreed as a High Risk Sites, the Access Seeker may elect to have additional security measures implemented on that particular High Risk Site.

- (ii) Nothing herein stated shall make it an obligation for the Access Provider to provide additional security for any of the Sites even for High Risks Sites except for the basic security to be provided being the provision of security fencing for the Sites which shall be hot dip galvanised steel anti-intruder chain link fence.

**(17) The Access Provider's Obligations**

(a) Exclusive Possession: The Access Seeker recognizes that it does not have exclusive possession of the Sites since the Access Provider may sub-let or grant license to use thereof or intends to sub-let or grant license to use thereof to other parties. However, the Access Provider agrees that it shall not tamper or handle any or interfere with the Equipment, system or devices belonging to the Assess Seeker at the Sites for the duration of the Infrastructure Sharing unless an emergency situation arises and immediate notice has been given to the Access Seeker. Furthermore, the Access Provider shall ensure the security of the Sites and shall prevent unauthorised access to the Sites by erecting a chain linked fence surrounding the Sites.

(b) Payment of Quit Rents, Rates and Taxes: The Access Provider will ensure that the Infrastructure Site Owners pay all quit rents, rates (save for utilities), taxes, assessments which are or may hereafter be charged upon the Sites.

(c) The Access Provider's Covenant

(i) Where the Designated Infrastructure at the Sites were erected on or before 30 June 2003, the Access Provider does not warrant or represent that it has obtained all the necessary authorization, approvals or permits from the relevant authorities (including Federal and State Government) to erect the Designated Infrastructure on those Sites.

(ii) In the event that:-

1. the Access Provider is required by the relevant authorities to dismantle the Designated Infrastructure on the Site; or
2. any governmental or State authority or owner/landlord of the land on which the Designated Infrastructure resides, requires the Access Provider to vacate the land on which the Designated Infrastructure resides for whatsoever reason;

such that the Access Seeker is not able to install or maintain its Equipment, system or devices thereon or to provide its Communication Services at the Sites, the Access Seeker and the Access Provider may, notwithstanding the minimum term, terminate the Infrastructure Sharing at the Sites without liability. The Operators agree that the remedies set out in this item (17)(c) shall be the only remedy against the Access Provider and the Access Provider shall not be liable to the

Access Seeker for any damages, costs and/or expenses. However, the Access Provider will use its reasonable endeavors to offer the Access Seeker other suitable sites

- (iii) Where the Access Provider is required by any governmental authority or agency to sell or dispose the Designated Infrastructure to the governmental authority or its nominated person or entity, the Access Provider will use its endeavors (but does not guarantee that it will be able) to sell the Designated Infrastructure subject to any existing rights of the Access Seeker to use the Sites. However, where the third party purchaser requires that the Access Seeker vacate the Sites prior to the sale of the Designated Infrastructure, the Access Seeker shall dismantle its Equipment, system and devices and vacate the Sites prior to the sale of the said Designated Infrastructure to the third party. In such an event, the Access Provider shall use its reasonable endeavors to procure from the third party purchaser adequate time for the Access Seeker to dismantle the Equipment. The Operators agree that the Access Seeker and/or the Access Provider may, notwithstanding the minimum term, terminate the Infrastructure Sharing at Sites without liability. The Operators agree that the remedies set out in this item (17)(c) shall be the only remedy against the Access Provider and the Access Provider shall not be liable to the Access Seeker for any damages, costs and/or expenses. For the avoidance of doubt, any advance payment will be refunded on a prorated basis.

**(18) Vacating the Sites**

- (a) The Access Seeker shall on the expiration or termination of the Access Service at each Site, at its own cost and expense, remove all the Equipment which may have been installed by the Access Seeker and to peaceably and quietly yield up the Sites to the Access Provider with all the Access Provider's fixtures and additions thereto in good and tenantable repair and condition in accordance with the covenants herein contained.
- (b) The Access Seeker shall be given:-
  - (i) a grace period of fourteen (14) Business Days effective from the expiry or termination of the Infrastructure Sharing Services at the Sites; or
  - (ii) where the Designated Infrastructure is to be dismantled or the Access Provider is to vacate the Sites in accordance with items (17)(c)(2) and (17)(c)(3) above, such grace period (as stated in item (18)(b)(i)) as may be specified by the Access Provider taking into consideration the time lines provided by the relevant authorities or the owner of the land/landlord (including any extension obtained from the relevant authorities or the owner of the land/landlord) to the Access Provider to dismantle the Designated Infrastructure or to vacate the Sites provided always that the Access Seeker must vacate the Sites earlier than the stipulated time line provided to the Access Provider to enable the Access Provider to comply with the requisite time line;

to vacate the Sites, during which the Access Charges will not be charged by the Access Provider. Should the Equipment not be removed within the grace period as stated in item (18)(b)(i), the Access Provider shall have the right to:-

1. charge for the use of the Sites at the same Access Charge; and

2. without any liability to the Access Seeker, dispose off the Equipment at current market value in such manner as the Access Provider deems fit with a one (1) month's prior written notice. If the Access Seeker fails to settle any debt due, the Access Provider shall have a lien on the Equipment and is entitled to retain such Equipment or to sell the Equipment at the best market price obtainable for payment of any such debt and the cost of sale shall be borne by the Access Seeker. The Access Provider shall be entitled to set off the proceeds from the sale of the Equipment against all and any debts due by the Access Seeker to the Access Provider.

**(19) Variation Order**

- (a) The Operators shall have the right at any time to propose Additional Infrastructure in respect of the Sites. The Access Provider shall consult and acquire the approval of the project manager of the Access Seeker for the relevant Site and provide the written particulars of any such variations proposed to the said project manager particularly the specifications involved and the potential costs thereof ("Variation Order").
- (b) The Access Provider's authorised personnel for the specific Site shall then co-ordinate and procure the consent of the Users of the Site to proceed with the Variation Order and soon thereafter, issue the approval letter to all Users for the Variation Order ("Approval letter for VO") indicating the accepted specifications and costs for the said Variation Order. The Approval letter for VO shall be distributed by the Access Provider to the Users and shall be signed by the Users in acknowledgement of receipt thereof.
- (c) For the initial connection of power supply to the Sites, the Access Provider's obligation is/was to bear the cost for the application and connection including the related installation works of Ringgit Malaysia Ten Thousand (RM10,000.00) only for each Site and any amount in excess of RM10,000.00 shall be dealt with in accordance with the relevant provisions of item (19) hereof and shall be part of the additional Access Charges.
- (d) Unless stated otherwise, the completion and acceptance of the Approval letter for VO will be evidenced by the issuance of an amended SLO by the Access Seeker stating the Additional Infrastructure with the agreed additional Access Charges (in addition to the Access Charges for the Infrastructure Sharing) and the commencement date of the license period for such Additional Infrastructure ("VO Commencement Date") unless if there is a one-off payment which one off payment shall be applicable only for the supply by the Access Provider to the Access Seeker of cabin(s) for any Site(s) under item (19)(i) herein.
- (e) Unless expressly stated otherwise, the rates in Ringgit Malaysia (RM) per RM1,000.00 of the total cost of the relevant Additional Infrastructure under any Variation Order payable by way of additional Access Charges on a monthly basis are as follows effective from the VO Commencement Date:-

Table 1

Cost for User	Additional Access Charges effective from VO Commencement Date (per month per User) for every RM1,000.00 of the total costs (excluding GST)
---------------	--

Cost per User (2 Users)	17.32
Cost per User (3 Users)	10.83
Cost per User (4 Users)	8.66
Cost per User (5 Users)	7.58
Cost per User (6 Users)	6.93

- (f) In respect of the cost for the supply of cabin(s), the same is as stated in item (21) hereof.
- (g) The Access Seeker may if it so wishes makes a one off payment for a Variation Order in relation to the supply of cabin(s) only instead of converting the same to additional Access Charges under the provisions above in which case an amended SLO will not be issued as provided under item (19)(d) above.
- (h) Alternatively, the Sites may currently have an existing Variation Order applicable thereat in which case, the Access Seeker shall bear its proportion of the applicable monthly additional Access Charges for the same over and above the Access Charges for the Infrastructure Sharing.
- (i) In respect of all additional Access Charges payable under item (19) herein:-
- (i) It will be dependent on the number of Users using any particular Site as per the table above at the material time.
- (ii) If in the event the number of User per Site increases, the additional Access Charges payable by the Users will be revised downwards as per the payment structure above. There shall be no further reduction for the additional Access Charges if the Users for any Site exceed six (6). The change in payment structure for additional Access Charges or number of Users (as the case may be) will be reflected by way of issuance of an amended SLO.
- (j) For avoidance of doubt, the Operators hereby acknowledge that all additional Access Charges under any Variation Orders for the Additional Infrastructures will commence from the VO Commencement Date.

**(20) Right of Way (“ROW”) in respect of Fiber Infrastructure**

- (a) In the event that the Access Seeker is interested:-
- (i) to lay its own Fiber Telecommunication Structure and/or Related Fiber Telecommunication Structure (as defined hereunder) at the Sites; and/or
- (ii) to share/lease/use the Existing Operators’ or other Users’ or any third parties’ Fiber Telecommunication Structure and/or Related Fiber Telecommunication Structure (“Fiber Provider”) at the Sites;

the Access Provider is under no obligation whatsoever to agree to the abovesaid.

- (b) For each Site, if the Access Seeker intends to procure or share a Right of Way, the Access Seeker shall submit technical specifications relating thereto to the Access Provider who shall revert

with the approval/refusal within 14 working days and the Operators shall commercially agree on the terms thereto within 30 working days.

**(21) Supply of Cabin**

- (a) The Access Seeker may request the Access Provider to provide cabins for the Sites in which case, subject to the agreement of the Access Provider, a Variation Order for the supply of the cabins shall be issued by the Access Seeker in the manner set out in item (19) hereof.
- (b) Any cabin supplied by the Access Provider shall be in accordance with the design and specifications agreed to by the Access Seeker.

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## APPENDIX H

### Service Specific Obligation for other Access Service under Appendix F hereof

(Nil or If any)