

Private and Confidential



PDC TELECOMMUNICATION SERVICES SDN BHD'S REFERENCE ACCESS OFFER ("RAO")

**Version 2.3
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PDC TELECOMMUNICATION SERVICES SDN BHD (9761-V) ("PDC")

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1. Background and Scope

- a. This Reference Access Offer ("RAO") is prepared by PDC Telecommunication Services Sdn Bhd ("Access Provider") pursuant to the Commission Determination on Access List (Determination No. 2 of 2015) ("Access List Determination"), the Commission Determination on the Mandatory Standard on Access (Determination No.3 of 2016) ("MSA Determination") and Commission Determination on the Mandatory Standard on Access Pricing (Determination No.1 of 2017) ("MSAP"), issued by the Malaysian Communications and Multimedia Commission in accordance with sections 55 and 104(2) of the Communications and Multimedia Act 1998 (Act 588).
- b. The Access Provider is a company incorporated in Malaysia with its registered and business addresses stated in page 1 hereof.
- c. The Access Provider is a licensed operator under the Act and pursuant to its License, may offer the Access Service hereunder.
- d. The Access Provider is pleased to prepare, publish and maintain this RAO for all Access Seekers' reference and request for access in compliance to the MSA Determination.
- e. 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 (Access Seekers) subject to the availability of the Facilities and/or Services offered by the Access Provider, 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 as provided in Appendix B hereof ("Confidentiality Agreement");
 - v. contains terms and conditions which are consistent with the rights and obligations set out in this RAO; and
 - vi. does not include terms and conditions which are inconsistent with the rights and obligations set out in this RAO.

- f. For facility and/or services outside the scope of this RAO, the terms and conditions of such facilities or services thereof shall remain outside the scope of Access Provider's RAO. Nevertheless, the Operators are free to be negotiate the terms and conditions for the supply of the said facilities or services that are not listed in the Access List Determination.
- g. The Access Provider considers that this RAO is consistent with:-
- i. the Standard Access Obligations stipulated under Section 149 of the Act, whereby In accordance with the Act and subject to exemptions determined by the Minister, all network facilities providers and network services providers shall provide access on reasonable terms and conditions to the Facilities and/or Services listed in the Access List to any other:
 - (1) network facilities provider;
 - (2) network services provider;
 - (3) applications services provider; or
 - (4) content applications services provider,
 - ii. who makes a written request to the relevant Access Provider for access; and
 - iii. the principle of non-discrimination stipulated in which, the Operators agree and acknowledge that the governing principle of this RAO is that the Operators are, in respect of the provision of Facilities and/or Services, in an operator-to-operator relationship. Further in consistent with section 149(2) of the Act, access to the Regulated Facilities and/or Services provided by an Access Provider to the Access Seeker shall be:-
 - (1) of at least the same or more favourable technical standard and quality as the technical standard and quality provided on the Access Provider's Facilities and Services; and
 - (2) on an equitable and non-discriminatory basis.

However, nothing in this RAO shall limit the Access Seeker's ability to freely request and agree on access to the Access Provider's Access Services that are either superior or inferior (in terms of technical standard and quality) to that which an Access Provider provides to itself or its related companies.
- i. This RAO may change from time to time. If the Access Provider proposes to amend this RAO, the following shall apply:-
- i. The Access Provider shall no less than twenty (20) Business Days before the Access Provider proposes to effect the changes to this RAO, provide a copy of the amended RAO showing the proposed changes made to this RAO, to:-
 - 1. all Access Seekers who are being provided with Access Services under this RAO; and
 - 2. all Access Seekers who have requested for Access Services under the existing RAO within the period of three (3) months prior to the making of such amendments, excluding any such Access Seeker who has since indicated that it does not wish to proceed with its Access Request.
 - ii. For clarification:-

1. nothing in this Section 1(l) above prevents an Access Seeker from initiating a dispute in relation to an amendment made to the RAO by the Access Provider under this Section;
2. where the terms and conditions of an Access Agreement are not identical to those in this RAO, an amendment to the RAO will not alter the terms of that Access Agreement except as agreed between the Operators; and
3. without prejudice to an Access Seeker's right to dispute a change to a RAO, where the terms and conditions of an Access Agreement are identical to those in this RAO, an amendment to the RAO will be deemed to alter the relevant terms and conditions of that Access Agreement. However, if the Access Seeker disputes the change to this RAO, no amendments to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favor of the Access Provider.

iii. Upon expiry of the twenty (20) Business Days in Clause 1(l)(i) above, the Access Provider will:-

1. make available the amended RAO on the Access Provider's publicly accessible website as soon as the RAO is finalised by the Access Provider (including updating its date and version number, both on the cover and on each page of the document); and
2. provide the updated RAO to the Commission within ten (10) Business Days after being made available under Clause 1(l)(iii)(1) above.

J. Notice of Withdrawal, Replacement and Variation of Access Provider's RAO:

- i. If subject to Section 56 of the Act, the Commission revokes, varies or replaces the Access List Determination relating to the Facilities and/or Services, the Access Provider may, by giving written notice to all Access Seekers to whom it is supplying Access Services under this RAO, withdraw or replace Access Provider's RAO.
- ii. Access Provider shall provide written notification to all Access Seekers as per the conditions provided below:
 - (a) Notice period - the notice period must be no shorter than:
 - (1) The period of time between the time of giving the notice and the time at which the Access Provider is proposing to no longer provide the Access Services to itself; or
 - (2) twelve (12) months.
 - (b) The Notice provided pursuant to Section 1(j) above shall state:
 - (1) when the variation or replacement will come into effect;
 - (2) how the variation or replacement is likely to affect the Access Seeker; and
 - (3) any alternative Access Services that may be available to be provided by Access Provider to the Access Seeker and the terms and conditions on which such alternative arrangements are made available.

- iii. Access Provider may give the Access Seekers to whom it is supplying Access Services under this RAO a notice of a variation or replacement of Access Provider's RAO to effect such variations that are necessary or appropriate in the event of:
 - (a) the occurrence of a Legislative Event that materially affects the rights or obligations of Access Provider under this's RAO; or
 - (b) the occurrence of a Regulatory Event that relates to Access Provider; or
 - (c) a review by the Commission of the MSA Determination.

K. Facilities and/or Services offered under this RAO: The following are the Facilities and/or Services offered under this RAO :

- (i) Infrastructure Sharing; and
- (ii) Duct and Manhole Access

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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 Determination and who is a Licensee as defined in the Act.

“Access Request” means a request for access to Facilities and/or Services made by the Access Seeker under Section 5 of this RAO and containing the information specified in Section 5(b) hereof and as per the format in Appendix A of this ROA.

“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).

“Access List Determination” means the Commission Determination on Access List Determination No.2 of 2015 which contains the list of Facilities and Services determined by the Commission under Chapter 3 of Part VI of the Act.

“Bank Guarantee” means the guarantee executed in favor of the Access Provider on behalf of the Access Seeker by a licensed 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 Section 12(e) hereof.

“Billing Dispute Notification Period” means the period after the date of Invoice described in Section 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 Section 11(b)(i) of this RAO 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, a copy 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 the Section 5 to Section 5 of this RAO.

“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.

“Creditworthiness Information” means the information required by Access Provider to assess the creditworthiness of the Access Seeker which are more particularly described in Section 5(s) of this RAO and such other information as may be required from time to time.

“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 this RAO.

“Due Date” means, in respect of an Invoice and payment of Access Charges, on or before the seventh (7th) 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 pursuant to Section 6 (Forecast Obligation).

“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 Section 9(c) of this RAO. “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 Section 5(u) of this RAO.

“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.

“Legislative Event” means

- (a) the enactment, amendment, replacement or repeal of the Act;
- (b) the enactment, amendment, replacement or repeal of the rules promulgated pursuant to sections 104 and 105 of the Act in respect of mandatory standards;
- (c) the registration, determination, promulgation, issue, amendment or replacement of any industry code with which Access Provider is required or obliged to comply; and/or
- (d) the making of a determination, direction or finding by the Commission, the Minister or a court of law that all or any part of Access Provider’s RAO contravenes any provision of any law, except to the extent that the making of such determination, direction or finding constitutes a Regulatory Event.

“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.

“Non-Regulated Facilities and/or Services” means:-

- (a) network facilities and/or other facilities that are not listed in the Access List; and/or
- (b) network services and/or other services that are not listed in the Access List, specified in this RAO which facilitates the provision of network services or applications services including content applications services.

“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 Section 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” shall have the meaning ascribed in Section 16..

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

“Regulatory Event” means:

- (a) the declaration, modification, variation or revocation of the MSA Determination;
- (b) the giving of a lawful direction to Access Provider by the Commission relating to Access Provider’s RAO; and/or
- (c) the giving of a lawful direction to Access Provider by the Minister relating to Access Provider’s RAO.

“Regulated Facilities and/or Services” means:-

- (a) network facilities and/or other facilities that are listed in the Access List; and/or
 - (b) network services and/or other services that are listed in the Access List
- specified in this RAO which facilitates the provision of network services or applications services including content applications services.

“Security Sum” means the security either in the form of a Bank Guarantee, 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 Section 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 which add to or vary the Content Obligations in respect of those Facilities and/or Services and as detailed in Appendix G, H (if any) and Schedule 1 hereof.

“Service Qualifications” means in relation to Infrastructure Sharing, Duct and Manhole Access, a desk and/or field study that may be conducted under Sections 7 of the RAO 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 this 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 as specified under Section 1 (g) of this RAO.
- c. However, nothing in this RAO 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 .
- 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 also agree and acknowledge that the following Customer relationship principles shall apply:
 - (1) the same person may be a Customer of more than one Operator:-
 - (i) in respect of the same or different Services provided by different Operators;
 - (ii) in respect of the same or different Facilities provided by different Operators;
 - (iii) in respect of Facilities provided by one Operator and Services provided by another Operator.
 - (2) The supply by an Operator to another Operator, which the latter Operator then utilises in providing Facilities and/or Services to its Customers, does not mean that those Customers are also Customers of the first-mentioned Operator.
 - (3) For the avoidance of doubt, the Operators acknowledge that each Operator will be responsible for billing its own Customers, unless otherwise agreed in writing by the Operators. Such an agreement may include, but is not limited to the following:-
 - (i) the Access Provider billing on behalf of the Access Seeker; or
 - (ii) the Access Provider, in its own right, bills the Customer of the Access Seeker and makes a separate payment to the Access Seeker.
 - (4) The Operators agree and acknowledge that, unless otherwise specifically agreed and identified in this RAO, the principle of non-discrimination also means that an Operator will treat its own Customers and Customers of the other Operator who are similarly situated on a non-discriminatory basis as regards:

- (a) to the extent technically feasible, the transparency, from the Customers' perspective, of services carried across the Access Provider's Network; and
 - (b) the standard and quality of Services which the Access Provider supplies to Customers of the Access Seeker, whenever those services are associated with or incidental to the supply of Communications Services by the Access Seeker.
- 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. (i)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; and (ii) Duct and Manhole Access: which comprises provision of physical access as provided under Schedule 1 of this RAO.

- b. The Project: In addition to Infrastructure Sharing Duct and Manhole Access, 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 Section 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.

- e. No Exclusivity and no restriction on resale: The Access Provider shall not, in relation to the supply of the Access Service, include a term or condition in an Access Agreement preventing the Access Seeker from acquiring the same or any other Facility and/or Service from another Operator and the Access Provider shall not, in relation to the supply of the Access Service, include a term or condition in an Access Agreement preventing an Access Seeker from re-supplying that Facility and/or Service to any person unless otherwise agreed between the Operators.

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5. Access Request - Application for Access to Facilities and/or Services

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

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. indicate 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. contain information (if any) the Access Seeker reasonably requires the Access Provider to provide for the purposes of negotiations;
- v. where there is no such confidentiality agreement already in force, contain two (2) copies of the Confidentiality Agreement duly executed by the Access Seeker in the form prescribed by the Access Provider;
- vi. contain 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. contain relevant technical information relating to the interface standards of the equipment of the Access Seeker;
- viii. contain 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. contain creditworthiness information as set out in Section 5(s) of this RAO;
- x. assessed security or be accompanied by the security in line with Section 5 (s) of this RAO;
- xi. contain insurance information as required under Section 5(u) of this RAO; 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 .

c. For the purposes of Section 5 (b) (iv), the Access Seeker is entitled 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 under Section 5(t), 5 (s) and 5 (u); and
 - viii. the Access Provider's reasons for failing to supply any of the information above.
- d. Prior to the provision of information under Section 5(c) above, the Access Provider may request the Access Seeker to enter into the Confidentiality Agreement .
- e. One-Off Non-Refundable Fee/Charge : The Access Provider may charge an Access Seeker a non-refundable processing fee/one-off fee for undertaking the necessary administrative work to process the Access Request to be determined by reference to the costs incurred by the Access Provider, for allocation of manpower and other resources to enable the Access Provider to test and fulfil an Order for new Facilities and/or Services, provided that such one-off fee is justified by the Access Provider to the Access Seeker as necessary for the Access Provider to provide the requested Facilities and/or Services and such one-off fee shall be on reasonable costs according to the circumstances (examples:- time needed to be done, distance involved, number of personnel required, transportation whether by land, air or sea is required etc) and the applicable rate shall be fifteen percent (15%) above Jabatan Kerja Raya (JKR) rate (if any) or in case, no JKR rate is available, a rate to be agreed between the Operators and if the Access Seeker does not proceed with an Access Request accepted by the Access Provider, the processing fee/on-off fee will not be refunded to the Access Seeker .
- f. Processing of Access Request : 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 this RAO; 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 pursuant to Section 5B hereof.
- g. Acceptance of Access Request : If Section 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
- h. Negotiate different terms to the RAO : If Section 5(f)(ii) above shall apply, the Operators shall ensure that their designated representatives meet on one of the available dates notified in the Access Request and as agreed by both representatives and that such representative:-
- i. agree a timetable for the negotiations, including milestones and dates for subsequent meetings, required to meet the agreed target ready for service date provided that the representative of the Access Provider shall be available for an initial meeting with the representative of the Access Seeker no later than fifteen (15) Business Days from the Access Provider's response under Section 5.(b); and
 - ii. agree on negotiation procedures including:
 - (1) calling and chairing meetings;
 - (2) responsibility for keeping minutes of meetings;
 - (3) clearly defined pathways and timetables for escalation and resolution by each Operator of matters not agreed in meetings;
 - (4) procedures for consulting and including in the negotiating process relevant experts from the staff of each of the Operators; and
 - (5) procedures for preparing and exchanging position papers;
 - (6) review the information requested and provided to date and identify information yet to be provided by each Operator; and
 - (7) identify what technical investigations, if any, need to be made and by whom such investigations should be made.
- i. Where the Access Seeker wishes to negotiate and concluding an Access Agreement an Access Agreement, the Operators shall comply with the requirements specified hereunder:
- (1) the Operators shall co-operate, in good faith and in a commercially reasonable manner, in negotiating and implementing the amendments to the RAO. This includes avoiding unnecessary disputes and resolving disputes promptly and fairly.
 - (2) Each Operator shall establish and observe procedures adequate to protect the Confidential Information of the other Operator in the course of negotiating the Access Agreement.
 - (3) the Access Provider must set out in its response to the Access Seeker:

- (a) a place, date and time, not later than fifteen (15) Business Days from the date of the Access Seeker's Provider's response, when the Access Provider's representative that is authorised to negotiate on an Access Agreement, will be available for the initial meeting with the Access Seeker's representative that is authorised to negotiate on an Access Agreement; and
 - (b) one (1) copy of the executed confidentiality agreement returned by the Access Seeker that has also been properly executed by the Access Provider.

- j. The Operators shall use their best endeavors to conclude the Access Agreement or the supplemental agreement within three (3) months of receipt of the draft supplemental agreement in if there is an existing agreement or within four (4) months from the date of the first meeting in accordance with Section 5 of the RAO and if the same is not completed within the stipulated time period:- The Operators shall use their best endeavours to conclude the supplemental agreement within 3.7.2 (as the case may be), or such other period as may be mutually agreed in writing ("Negotiation Period") and if negotiations are not concluded within the Negotiation 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 in Section 11 shall take effect shall take effect; or
 - ii. either party may initiate the Dispute Resolution Procedures in Section 11

- 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 in accordance with this RAO under the Security Sum") under Section 11 of this RAO 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 Section 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.(m) of the RAO 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) subsection 5 (m) of the RAO, the Access Provider must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker;
- (2) subsection 5(m) of the RAO, the Access Provider must identify when additional capacity is likely to be available; and
- (3) Section 11(d) of the RAO, 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 Section 5(t) and Section 11.d of the RAO

m. Ground for Refusal: 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 .

Without limiting any other grounds that may be relied upon under the Act or as provided in this Section 5 of this RAO, 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) in the Access Provider's reasonable opinion, the Access Seeker has not provided all information required to be provided in accordance with Section 5(b) hereof
- (3) it is not technically feasible to provide access to the Facilities and/or Services requested by the Access Seeker;
- (4) subject to the RAO, the Access Provider has insufficient capacity or space to provide the requested Services or Facilities;
- (5) the Access Provider has reasonable grounds in the Access Provider's opinion 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 requirement under in accordance with this RAO;
- (6) there are reasonable grounds in the Access Provider's opinion 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 .

n. Technical infeasibility : For purpose of determining technical infeasibility in Section 5(m)(3) of this RAO, an Access Provider shall not refuse an Access Request on the grounds of technical infeasibility unless the Access Provider establishes that there are substantial technical or operational concerns preventing

the fulfilment of the Access Request. Each of the following matters shall be taken into account in determining whether access is technically feasible:

- (1) economic, accounting, billing, space or site concerns shall be disregarded by the Access Provider except that space or site concerns may be taken into account in circumstances where there is no possibility of expanding the space available on the relevant site;
 - (2) any requirement for the Access Provider to modify its facilities or Equipment in order to meet the Access Request will not, on its own, mean that the access is not technically feasible;
 - (3) if the Access Provider asserts that meeting the Access Request would have an adverse impact on network reliability, the Access Provider must provide evidence that provision of the requested Facilities and/or Services would result in a specific and significant adverse impact on network reliability; and
 - (4) the Access Provider must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this subsection) improvements that would allow the Access Provider to meet the Access Request (in whole, or in part, and including for an interim period until any primary difficulties can be resolved).
- o. Capacity Constraints: For purpose of determining capacity constraints in Section 5(m)(4) of this RAO (where applicable), An Access Provider may only refuse an Access Request on the ground that an Access Provider has insufficient capacity or space underset out in Section 5(m) (1) of this RAO where the Access Provider notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because the requisite capacity is:
- (1) already carrying traffic to capacity or near full capacity; or
 - (2) already reserved for future use by the Access Provider or another Access Seeker, where such future use shall commence not later than six (6) months from the date of the Access Request. If the reserved capacity is not subsequently used by the reserving Party within seven (7) months from the date of the Access Request, the Access Provider must promptly inform the Access Seeker and, if required by the Access Seeker, re-consider the Access Request in accordance with the process set out in this this RAO; and
 - (c) in the case of both Section 5.(o) (1) and (2), the Access Provider is unable to expand capacity to meet the requirements in the Access Seeker's Access Request.
- p. Assessment of the Access Seeker's ability to pay for supply of relevant network facilities or network services Reasonable grounds in which the Access Provider may refuse in accordance with Subsection 5 (m) (5) includes evidence that the Access Seeker is not, in the reasonable opinion of the Access Provider, creditworthy and such creditworthiness concerns cannot be addressed through a security requirement in accordance with this RAO.
- q. Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of relevant network facilities or network services Reasonable grounds in which the Access Provider may refuse in accordance with Subsection 5 (m) (6) includes repeated failures by the Access Seeker to comply with the terms and conditions on which similar access to network facilities or network services being provided by the Access Provider to the Access Seeker.
- r. 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 Section 5(m) hereof. .
- s. Creditworthiness Information: The Creditworthiness Information that is required to accompany an Access Request are:
- (1) a letter, signed by the executive director/senior general manager/senior vice president of the Access Seeker, stating that the Access Seeker is not insolvent and is not under any external

administration or under similar form of administration under any laws applicable to it in any jurisdiction;

- (2) a copy of the Access Seeker's most recently published audited balance sheet and audited profit and loss statement; and
- (3) such other information as may be reasonably requested by the Access Provider provided that such information are information which are publicly available.

t. Security Sum: The Access Provider may request for additional Security Sum to be specified by the Access Provider in accordance with Section 11 (d) of this RAO prior to the provision of the new network facilities and/or network services.

u. Insurance Information: Subject to Section 15 (q) of this RAO, the Access Provider may request for additional insurances, the sum of which is to be specified by the Access Provider, prior to the provisioning of new facilities and/or services.

v. Assessment of Creditworthiness: In determining the creditworthiness of the Access Seeker, the Access Provider:

- i. may have regard to the list of information in Subsection 3.2; but
- ii. shall not take into account amounts outstanding for network facilities or network services previously provided by the Access Provider to the Access Seeker where, in accordance with the terms and conditions governing the provision of such network facility or network service, the Access Seeker is not required to pay such amounts to the Access Provider to the extent that there is a bona fide dispute in relation to the amounts outstanding by the Access Seeker to the Access Provider and the Access Seeker is relying on such terms and conditions as a basis for its non-payment.

w. For the purposes of the Section (5) (l) (1) of this RAO, good faith requires that an Access Provider shall not:

- (1) refuse to negotiate terms of access not related to price for the reason that the rate, charge, charging principles or methodologies of access has not been agreed upon;
- (2) refuse to negotiate access to network facilities or network services because the Access Seeker has not agreed to acquire access to other network services or network facilities or because the Access Seeker has not agreed to acquire a particular configuration, option or feature of a requested network facilities or network services;
- (3) require an Access Seeker to enter into a confidentiality agreement the terms of which would preclude the disclosure of information requested by the Commission or required to be disclosed for the purposes of dispute resolution;
- (4) require an Access Seeker to warrant that supplemental agreement to this RAO complies with all applicable laws;

- (5) refuse to include in supplemental agreement to this RAO a provision permitting variation of this RAO in the event of any change in rules, applicable laws or applicable regulations (including Commission decisions and Determinations);
- (6) make any negotiation conditional on the Access Seeker first obtaining any regulatory approval or consent;
- (7) intentionally mislead or coerce an Access Seeker into reaching an agreement, which would not otherwise have been reached if not for the misleading act or coercion;
- (8) intentionally obstruct or delay negotiations or any dispute resolution process;
- (9) fail to nominate representatives who have sufficient authority and with sufficient availability to progress negotiations in a timely and efficient manner; or
- (10) fail to provide information that is necessary to conclude the supplemental agreement to this RAO including, without limitation:
 - (i) information about the Access Provider's Network that the Access Seeker reasonably requires to identify the Network elements or network components to which it requires access; and
 - (ii) information about the basis of the determination of rates, charges or fees.

The Access Provider will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested network facility or network service until a Access Agreement has been executed between the Operators and the terms in respect of Regulated Facilities and/or Services are registered with the Commission in accordance with section 150 of the Act.

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5A Notification of Rejection to the Access Seeker

- a. where the Access Provider rejects the Access Request, the Access Provider shall:
- (1) notify the Access Seeker in writing within ten (10) Business Days from receipt of the Access Request or additional information requested pursuant to Section 5(f) (iv) and Section 5B below, as the case may be;
 - (2) provide reasons for rejection under Section 5 to the Access Seeker;
 - (3) provide the basis for the Access Provider's rejection of the Access Request; and
 - (4) indicate a date and time, not later than seven (7) Business Days from the date of the notice of rejection, at which representatives of the Access Provider will be available to meet with representatives of the Access Seeker to discuss the rejection 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 ground in:
 - (i) the Access Provider must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker;
 - (ii) the Access Provider must identify when additional capacity is likely to be available; and
 - (iii) 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 network facilities and/or network services, its reasons for the security requirement and why it considers such concern cannot be addressed through a security requirement.
- b. Where the Operators are unable to resolve their differences following the meeting held pursuant to Subsection 5B (a) (4), either Operator may request resolution of the dispute in accordance with Section 11.

5B Request for information

- a. Where the Access Provider requests for additional information pursuant to Subsection 5 (f) (iv), the Access Provider shall not require an Access Seeker to provide any of the following information to the Access Provider (whether as a condition of the provision of further information or as a condition of assessing the Access Seeker's application, or at any other time):
- (1) the Access Seeker's proposed service launch date (though the Access Provider may request the Access Seeker to specify any ready-for-service dates which the Access Seeker requires from the Access Provider in respect of the requested network facilities and/or network services);
 - (2) details of the functionality of the Access Seeker's proposed service, except to the extent that such functionality may affect the Access Provider's Network;
 - (3) details of the Access Seeker's Network rollout plans, except to the extent that such rollout plans relate to ready-for-service dates requested by the Access Seeker in respect of particular points of interface;
 - (4) details of the Access Seeker's current or proposed retail charges;

- (5) details of the Access Seeker's marketing strategy or proposed client base;
- (6) financial information relating to the Access Seeker's business, except to the extent that such information may be required pursuant to the creditworthiness requirement in accordance to this RAO;
- (7) details of any other supply arrangements or agreements to which the Access Seeker may be a party, except to the extent that such details are directly relevant to technical characteristics of the requested access; or
- (8) any other commercially sensitive information of the Access Seeker which is not strictly required by the Access Provider to supply a requested network facilities and/or network services

5C - Provision Of Information

- a. The obligations of each Operator to provide information to the other Operator are as set out in this RAO or as otherwise agreed between the Operators and are subject to the requirements of confidentiality imposed by this RAO.
- b. An Operator must provide the other Operator on a timely basis with all agreed information reasonably required to determine rates and charges to be billed by each Operator to the other Operator or by each Operator to its Customers.
- c. Each Operator will charge and bill its own Customers. The Operators will agree on the Communication Information which is to be exchanged for the purposes of charging and billing, and such Communication Information will be deemed to be included in the documents referred to in this RAO.
- d. To the extent permitted by Malaysian law and any relevant guidelines or Customer service standards in force, pursuant to the Operator's respective Licence conditions, the Operators will exchange information and otherwise cooperate in relation to the prevention and investigation of fraudulent use or misuse of the Operators' respective Communications Services and the theft of the Operator's provided terminal equipment.
- e. Information provided under this RAO may only be used for the purpose for which it was given. Personal information about a Customer's credit worthiness, credit standing, credit history or credit capacity may only be used for the purposes permitted by, and in compliance with, Malaysian law.
- f. If any of the information is used by an Operator for any purpose other than the purpose for which it was given, the providing Operator may deny the recipient Operator further access to the information for the period during which the non-observance or non-conforming use continues on notice specifying the non-observance or non-conforming use. The Operators will cooperate to resolve the providing Operator's reasonable concerns so that information exchange can be resumed as soon as possible.
- g. The Operators acknowledge that when information (including, for the purposes of this Section any updated information) required to be provided under this Section is held on a database, the Operator entitled to receive the information will not be entitled to obtain direct access to the database. The precise method by which information is to be made available will be determined by the Operator having regard to the reasonable cost, convenience and security concerns of the Operators.

- h. (1) Subject to the Act and any subordinate legislation, nothing in this RAO may be construed as requiring an Operator at any time to disclose to the other Operator information which is at the date when this RAO comes into force, the subject of a confidentiality obligation owed to a third person unless the third person consents to such disclosure. Where the consent of a third person is required, the Operator holding the information must use its reasonable endeavours to obtain the consent of that third person.
- (2) After this RAO comes into force an Operator must use its best endeavours not to enter into any contract which would prevent it from making information available to the other Operator unless the contract includes a term which permits the contracting Operator to make the information available if directed to do so by the Commission.
- i. All communication information and such other relevant information in relation to Communication Services must be kept confidential by both Operators for a period of two (2) years unless otherwise agreed in writing for the purposes of verification and audit.
- j. The Operators further agree that the information provided for the purpose of this RAO shall be subject to the Confidentiality Agreement.

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6. Forecasting Obligations

- a. Forecast Request: 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 a sufficient level of detail regards to a certain period of supply of access to Facilities and/or Services in accordance with Section 6 of the RAO to enable the Access Provider to carry out network planning and provisioning, the following information ("Forecast
- (1) the Facilities and/or Services in respect of which Forecasts are required;
 - (2) the total period of time covered by each Forecast, which period:
 - i. shall be determined having regard to the Access Provider's own planning and provisioning cycles and the forecasting requirements which apply to the Access Seeker's own business units in using the relevant Facilities and/or Services; and
 - ii. shall be the shorter of the period set out in the relevant Service Specific Obligations and the period of forecasting which the Access Provider provides to itself for network planning and provisioning purposes;
 - (3) the intervals or units of time to be used in making the Forecast, which shall be the shorter of the period set out in the relevant Service Specific Obligations and the intervals of time in which the Access Provider provides forecasting to itself;
 - (4) the network area or operational area to which Forecasts shall relate, which area shall correspond to that which the Access Provider uses for its own Network planning and provisioning;
 - (5) the frequency with which a Forecast must be updated or further Forecast made in accordance with this RAO, which shall be the shorter of the period set out in the relevant Service Specific Obligations and the length of time after which the Access Provider provides itself updated or further Forecasts; and
 - (6) such other information that the Access Provider reasonably requires in order to provide access to Facilities and/or Services requested by the Access Seeker (which shall not include any information that the Access Provider does not provide to itself in connection with forecasting for its own 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 this RAO and subsection 6 of the RAO and Section 7 hereof will apply.

- d. The Operators may agree to an alternative forecasting procedure other than that set out in Section 6 of this RAO and If agreement is reached about such matters, the Access Provider and Access Seeker will be bound by the terms of that alternative procedure and not Section6 hereof:.
- e. Subject to Sections 6 (i) 6 to 6 (k) of the RAO, 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 6 (c) of the RAO , it will be binding on the Access Seeker.
- f. Forecast provision: An Access Provider may only require an Access Seeker to provide Forecasts in accordance with a Forecast Request no sooner than four (4) weeks after receipt of a Forecast Request.
- g. Use of Forecast Information: Forecast Information provided by the Access Seeker shall be treated by an Access Provider as Confidential Information of the Access Seeker and shall only be used by those personnel of the Access Provider whose role is within either:

- (1) the Access Provider's wholesale or interconnection group; or
- (2) that part of the network engineering group of the Access Provider responsible for interconnection or access,

for the purpose of responding to and planning for the Forecast and related Orders. The Access Provider must maintain records that indicate which persons are provided with access to Forecast Information and, on request from the Commission, provide a copy of such records certified by the Access Provider's Chief Executive Officer or Chief Operating Officer.

- h. Distribution of Forecast Information: An Access Provider may only distribute Forecast Information of an Access Seeker outside the groups of people referred to in subsection 6(g) above if:
 - (1) the Forecast Information of the Access Seeker is aggregated with Forecasts provided by other Operators and the Access Provider's own requirements (so as to protect the confidentiality of the Forecast Information); and
 - (2) the Forecast Information or its use does not otherwise identify the Access Seeker, its services or its Customers in any manner.
- i. Time for response: The Access Provider must notify the Access Seeker within five (5) Business Days of receiving a Forecast whether or not the Access Provider considers the Forecast to be in compliance with the Forecast Request and:
 - (1) if, the Access Provider considers that the Forecast does not comply with the Forecast Request, to specify in that notice the additional information which the Access Seeker is to provide to comply with the Forecast Request and the Access Provider will not require such information to be provided sooner than four (4) weeks after such a notice; or

(2) if, the Access Provider considers that the Forecast does comply with the Forecast Request, to specify in that notice that the Forecast is provisionally accepted subject to verification of the details of the Forecast and the matters set out in subsection 6 (j)(1) to 6 (j) (4) herein below. .

j. Reasons for rejection: An Access Provider may only reject a Forecast following provisional acceptance where the Access Provider reasonably believes that the Forecast is inaccurate or, there is insufficient capacity having regard to:

(1) total current usage of the Facilities and/or Services by the Access Provider and all Access Seekers;

(2) the current rate of growth of the Access Seeker's usage of the Facilities and/or Services;

(3) the current rate of growth of total usage of the Facilities and/or Services by the Access Provider and all Access Seekers; and

(4) the amount of capacity in the Facilities and/or Services that the Access Provider currently has available and can reasonably provision for the Access Seeker over the Forecast period, which must be at least equivalent to that which the Access Provider can reasonably provision for itself.

k. Time for acceptance or rejection: The Access Provider must give notice of any acceptance or rejection ("Rejection Notice") of a Forecast to the Access Seeker:

(1) within fifteen (15) Business Days of receipt of the relevant Forecast; and

(2) such Rejection Notice (if any) must specify:

a. the grounds on which the Access Provider rejects the Forecast in accordance with subsection 6 (j) of this RAO, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re• assessment of the Forecast; and

b. an offer to meet within five (5) Business Days of the Rejection Notice of the Forecast to discuss the reasons for rejection and alternative methods of compliance. The meeting shall take place between the Access Provider and Access Seeker if the offer is accepted by the Access Seeker.

l. Reconsideration by Access Seeker: The Access Provider must allow an Access Seeker to reconsider its Forecast following a Rejection Notice and allow the Access Seeker, within twenty-one (21) Business Days of receipt of a Rejection Notice, either:

- (1) to confirm its rejected Forecast, and explain why the Access Seeker considers that the Access Provider is obliged to accept the Forecast under the RAO; or
 - (2) to submit a new Forecast which the Access Seeker regards as meeting the Access Provider's concerns.
- m. Reconsideration by Access Provider: The Access Provider shall reconsider any re-submitted or amended Forecast provided pursuant to subsection .6 (l) above and subsections .6(i) to 6(l) of this RAO shall re-apply.
- n. Recovery for over-forecasting: An Access Provider shall not seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an Access Seeker if the Forecast is not met by the Access Seeker unless:
- (1) such costs and expenses were reasonably and necessarily incurred by the Access Provider;
 - (2) the Access Provider reasonably seeks to mitigate its loss (including through its own usage) provided the Access Provider shall not be required to do so for any greater period than the relevant Forecast period; and
 - (3) the Access Provider only recovers from the Access Seeker, seventy five percent (75%) of such costs and expenses which could not be mitigated under paragraph 6 (n) (2) above.
- o. Meeting Forecasts: Subject to subsections 6 (i) to 6 (k) of the RAO, an Access Provider must carry out network planning in order to enable Forecasts to be met. If an Access Seeker has confirmed a Forecast under subsection 6 (c) above, it will be binding on the Access Seeker.

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7. Ordering & Provisioning Obligations

- a. Contact point or mechanism : The Access Provider shall designate and notify an Access Seeker of one or more of the following: (i) Orders for Access Service are to be delivered to whom Orders for access to Facilities and/or Services are to be delivered; (ii) to the senior personnel of the Access Provider via mail to the address of the Access Provider as stated in the cover of this RAO or via email to the Access Provider's email address as stated on its website ; (iii) and a mechanism where Orders for access to Facilities and/or Services can be made (such as a web portal or B2B gateway), provided that if such a mechanism is the only method which the Access Provider provides for the receipt of Orders for that Facility and/or Service, the Access Provider cannot require the Access Seeker to unreasonably invest in specialised technology or systems (such as an automated interface between the Operational Support Systems of the Operators).The Access Provider shall notify the Access Seeker in writing or email from time to time of any change to the designated person(s) .
- b. Order content: 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 provided that such information shall not include any information which:
 - i. the Access Provider does not require from itself for similar provisioning;
 - ii. identifies, or which enables the identification of, a Customer or services of the Access Seeker; or
 - iii. is non-permitted information
- c. Use of ordering information: Ordering information provided by the Access Seeker shall be treated by an Access Provider as Confidential Information of the Access Seeker and shall only be used by those persons within the Access Provider whose role is within:-
- i. the Access Provider's wholesale or interconnection group; and
 - ii. that part of the network engineering group of the Access Provider responsible for interconnection or access,

for the purpose of responding to and provisioning for the Order (.

- d. Treatment of Orders and Service Qualifications: 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.
- e. Acknowledgment of receipt The Access Provider shall acknowledge receipt of an Order for Access Services in writing or in any other material or electronic form as agreed by the Operators within the period specified in the Service Specific Obligations for the purposes of this subsection.
- f. Notice of Receipt: The Access Provider shall include in its acknowledgement of receipt above (“Notice of Receipt”) the following information:-
- i. the time and date of receipt of the Order;
 - ii. a list of any additional information reasonably required by the Access Provider from the Access Seeker to provision the Order;
 - iii. if the relevant Facilities and/or Services available to the Access Provider are below the capacity required to provide the relevant Facilities and/or Services to the Access Seeker, the Access Provider shall inform the Access Seeker of the available capacity and timeframe for the fulfilment of the Order at the available capacity and (if relevant) with such augmentation as may be required to fulfil the Order as submitted;
 - iv. whether the Access Provider needs to perform post-Order Service Qualification because information is not readily available to the Access Provider together with the reasons for needing to undertake the Service Qualification; and
 - v. the position of the Order in the Access Provider's queue .
- g. Further information: The Access Provider shall allow the Access Seeker a period of up to ten (10) Business Days after a request for additional information under Section 7(f)(ii) above to provide the Access Provider with such information .
- h. Service Qualifications: The Access Provider shall make Service Qualifications available to the Access Seekers prior to placing Orders if such pre-Order Service Qualifications are undertaken for a given Facility and/or Service by the Access Provider for itself. The Access Provider shall only require post-Order Service Qualifications to be requested if:-
- i. no pre-Order Services Qualification has been completed;
 - ii. the Access Provider reasonably requires information from post-Order Service Qualifications which are not readily available; and

- iii. the Access Provider notifies the Access Seeker that the post-Order Service Qualifications are necessary together with the reasons for needing to take such Service Qualifications at the time of providing and as specified in the Access Provider's Notice of Receipt or if further information has been requested under Section 7(g) hereof, within two (2) Business Days upon the expiry of the period specified in Section 7(g) hereof .
- i. Commencement or completion of Service Qualifications: The Access Provider shall commence a Service Qualification on the date of issuing a Notice of Receipt and complete and notify the Access Seeker of the result of any Service Qualification within the shorter of:-
 - i. fifteen (15) Business Days after the date of the Notice of Receipt; and
 - ii. the time within which the Access Provider performs and notifies the result of an equivalent Service Qualification undertaken for itself.
- j. Withdrawal of Order following Service Qualifications: The Access Provider shall permit an Access Seeker to withdraw its Order without penalty (irrespective of whether the Access Provider has accepted the Order or not) before the earlier of:-
 - i. ten (10) Business Days after the Access Seeker receives the result of a Service Qualification under Section 7(i) above; and
 - ii. one (1) Business Day before the Access Provider commences civil works to provision the Order (where the civil works are required to provision the Access Service within the delivery timeframe specified in the Notice of Acceptance (as specified in Section 7(m) hereof)) and any civil works to be conducted must be subject to the issuance of a notice in writing by the Access Provider which may be in the form of a Notice of Acceptance if civil works is to occur after the Access Provider has accepted the Order.
- k. Acceptance obligation: 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 Section 6 of this RAO .
- l. Time for acceptance or rejection: The Access Provider must notify the Access Seeker that an Order is accepted or rejected within:-
 - i. the specified timeframe in the Service Specific Obligations for the purposes of this Section 7(l); or
 - ii. the timeframe within which it accepts or rejects equivalent Orders for itself,

whichever is shorter and if the Access Provider notifies the Access Seeker that an Order is rejected, the Access Provider must advise the Access Seeker whether the Access Provider would be able to accept the Order in a modified form .
- m. Notice of Acceptance: The Access Provider's notice of acceptance to the Access Seeker ("Notice of Acceptance") must contain the following information:-
 - i. the delivery date or activation date (as applicable) which must be the date that is requested by the Access Seeker or if that date cannot be met by the Access Provider, then no later than the

indicative delivery timeframe or activation timeframe specified in the Service Specific Obligations for the purposes of this Section 7(m) or the period of time taken by the Access Provider to deliver or activate such Facilities and/or Services for itself, whichever is shorter;

- ii. the date when civil works (if any) are intended to commence;
 - iii. the charges applicable to fulfil the Order;
 - iv. such information as is reasonably necessary for the Access Seeker to benefit from access to the Facilities and/or Services; and
 - v. the validity period, which shall be a period that is not shorter than three (3) months commencing from the date of the Notice of Acceptance ("Validity Period").
- n. Commencement of delivery timeframes: The applicable delivery timeframe for an Order as determined under Section 7(m)(i) above shall commence from:-
- i. where the Access Seeker's confirmation of an Order is required under Section 7(o) hereof, the date the Access Seeker confirms the Order in accordance with the sub- Section; and
 - ii. in any other case, from the start of the Validity Period .
- o. Access Seeker's confirmation: The Access Seeker's confirmation of an Order is not required if the Access Provider accepts the Order without change. A change may include circumstances where delivery dates are delayed, estimated charges are exceeded, a post-Order Service Qualification is required or any other matter that requires further confirmation from the Access Seeker before the Access Provider can proceed with the Order and where the Access Seeker's confirmation is required for the Access Provider to proceed with fulfilling an Order as provided for under this Section, the Access Provider shall permit the Access Seeker to provide its confirmation within the Validity Period and shall not provision the Order until the confirmation is received. Upon receipt of such confirmation, the Access Provider shall fulfil the Order in accordance with the Notice of Acceptance.
- p. Estimated charges: If the Notice of Acceptance provided by the Access Provider contains estimates of charges (e.g. based on time and materials):-
- i. the Access Provider shall not exceed the estimate without providing the Access Seeker with a written notice prior to exceeding the estimate that:-
 - (1) the estimate will likely be exceeded;
 - (2) an explanation of the reasons for exceeding the estimate; and
 - (3) a further estimate of the charges for the work necessary to fulfil the Order;
 - ii. the Access Provider shall permit the Access Seeker to withdraw the Order without penalty within ten (10) Business Days of the notice given by the Access Provider under Section 7(p)(i) above if the revised estimate in that notice exceeds the original estimate by more than ten percent (10%);

- iii. where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope of work provided by the Access Provider due to:-
 - (1) information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker; or
 - (2) a change in the scope of work by the Access Seeker,the Access Seeker shall be obliged to pay the Access Provider for the actual cost incurred (but in no other circumstances unless otherwise agreed between the Operators); and\
- iv. the Access Provider shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate , whereby such confirmation to be provided by the Access Seeker within the timeframe set out in subsection 7 (m) (iv) or 7(p) (ii), as applicable.
- q. Reasons for rejection: The Access Provider may only reject an Order from an Access Seeker where:-
 - i. subject to Section 5(n) hereof, it is not technically feasible to provide the Access Services requested by the Access Seeker;
 - ii. the Access Provider has insufficient capacity to provide the requested Access Services;
 - iii. subject to Section 7(s) hereof, the Order is in excess of the agreed Forecast levels;
 - iv. the Order or variation request duplicates an Order awaiting fulfilment;
 - v. the Access Seeker has not obtained the necessary related agreements from the Access Provider;
 - vi. there are reasonable grounds to believe that the Access Seeker would fail to a material extent to comply with the terms and conditions of the Access Agreement and such concern cannot be addressed to the Access Provider's satisfaction acting reasonably; or
 - vii. in connection with the supply of the Access Services, there are reasonable grounds to believe that the Access Seeker would fail to protect the integrity of a Network or the safety of individuals working on or using services supplied by means of a Network or the Equipment and such concern cannot be addressed to the Access Provider's satisfaction acting reasonably .
- r. Notice of rejection: An Access Provider's notice of rejection of an Order to the Access Seeker must:-
 - i. set out the grounds on which the Access Provider rejects the Order at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Order; and
 - ii. offer to meet and meet if the offer to meet is accepted by the Access Seeker, within five (5) Business Days of the notice of rejection of the Order to discuss the reasons for rejection and alternative methods of compliance .
- s. Order in excess of Forecast: Notwithstanding Section 7(q)(ii) above, the Access Provider must use its reasonable efforts to provide sufficient capacity to enable the Access Provider to accept and fulfil

Orders from the Access Seeker for the Access Services which are in excess of the relevant Forecast. The Access Provider is only required to do so if after meeting the Forecast requirements of other Access Seekers and itself, there is available capacity or the Access Provider could readily upgrade existing capacity. The Access Provider shall allocate the available capacity on a non-discriminatory basis to meet the over Forecast requirements of all Access Seekers and itself. The Access Provider is not required to supply the Access Services in excess of the Forecast if despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of the Access Services provided to all Access Seekers and/or itself .

- t. **Delivery Dates:** The Access Provider shall deliver the Order for the Facilities and/or Services by the delivery date or activation date (as applicable) as specified in the Notice of Acceptance or the extended delivery date (if any) as determined in accordance with Section 7(v) below .

- u. **Early Delivery Dates:** If the Access Provider in the normal course of business is able to offer a delivery date earlier than the delivery date that would otherwise apply, it must advise the Access Seeker and if requested by the Access Seeker, deliver access to the relevant Facilities and/or Services at the earlier delivery date.

- v. **Delayed Delivery Dates:** Where there is a delay in the delivery of an Order, and:-
 - i. the delay is caused by the Access Provider:-
 - (1) the Access Provider shall notify the Access Seeker of the delay to the delivery date together with the reasons for the delay as soon as practicable after the Access Provider becomes aware of the possible delay;
 - (2) the Access Provider shall permit the Access Seeker to cancel the Order without penalty if the delay is longer than the equivalent time period for delivery of the Facility and/or Service; and
 - (3) the delivery date shall be extended for a further period as reasonably necessary and the Access Provider shall promptly notify the Access Seeker of the revised delivery date; or
 - ii. where the delay is caused by the Access Seeker:-
 - (1) the Access Provider shall notify the Access Seeker of the delay to the delivery date as soon as practicable after the Access Provider becomes aware of it;
 - (2) the Access Provider and Access Seeker must work together to minimize the delay; and
 - (3) the delivery date shall be extended for a further period as reasonably necessary and the Access Provider shall promptly notify the Access Seeker of the revised delivery date.

- w. **Cancellation and Variation of Orders:** An Access Provider shall allow an Access Seeker to cancel or vary an Order at any time subject to Section 7(x) below or otherwise mutually agreed between the Operators.

- x. Cancellation or Variation Penalty: The Access Provider may impose a charge for the cancellation or variation of the Order and the charge which the Access Seeker is required to pay shall not exceed the lesser of the following amounts:-
 - i. the sum of costs necessarily incurred by the Access Provider which is directly attributable to the cancellation or variation; or
 - ii. an amount equal to the Access Charges that would have been payable by the Access Seeker in the six (6) months immediately following the cancellation or variation had the Order not been cancelled or varied,

and reduced to the extent that those costs have been mitigated or would have been mitigated had the Access Provider used its best endeavors to do so, and unless otherwise agreed between the Operators in writing herein and/or in the Access Agreement.

- y. Testing and Provisioning: The Access Provider shall cooperate with the Access Seeker in relation to the testing and provisioning of the ordered Access Services and treat an Access Seeker's testing and provisioning on an equivalent basis to that which the Access Provider treats testing and provisioning for itself .
- z. Late Delivery: If the Access Provider fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with Section 7(v)(i)(3) hereof except where such failure has been caused solely by the Access Seeker's delay or a lack of authorisation by a third party, the Access Provider shall without limitation to any other rights the Access Seeker may have under Section 7 hereof or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the Access Charges payable for access to the Facilities and/or Services for the period of the Access Provider's delay. If the Access Provider alleges that a failure has been caused solely by the Access Seeker's delay or a lack of authorisation by a third party, the Access Provider shall have the burden of demonstrating that allegation and that the Access Provider has done all things reasonably practicable to minimize or avoid such failure .
- aa. In any case, the Operators shall comply with the Ordering and Provisioning obligations under section 7 of the RAO and all Orders shall be treated on a first come first serve basis.
- bb. Queuing policy: An Access Provider shall establish and maintain a queuing policy for each Facility and/or Service, which:
 - (a) shall be non-discriminatory;
 - (b) shall be applied to Orders and Service Qualifications of all Access Seekers and Orders and Service Qualifications for itself for the same or similar Facilities and/or Services, and shall treat the Orders and Service Qualifications of Access Seekers on an equivalent basis to that which the Access Provider treats Orders and Service Qualifications for itself for the same or similar Facilities and/or Services; and
 - (c) shall seek to maximise the efficiency of its ordering and provisioning process.

- cc. Acceptance on queue: An Access Provider shall promptly notify an Access Seeker at the time of providing an acknowledgment of receipt of the Order as specified in the Notice of Receipt under subsection 7(f) of the RAO, of their acceptance of, and position in, the Access Provider's queue.
- dd. Constrained capacity: If an Access Provider reasonably believes that the capacity in any Facilities and/or Services required by:
- (a) the Access Seeker pursuant to the relevant Forecast and/or Order;
 - (b) other Access Seekers, pursuant to their relevant Forecasts and/or Orders; and
 - (c) the Access Provider, for the purposes of its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest,
would, in aggregate, exceed the capacity which the Access Provider will be in a position to be able to provide, the Access Provider must:
 - (d) notify all Access Seekers to whom relevant capacity is supplied; and
 - (e) allocate the available capacity between itself, the Access Seeker and other Access Seekers in accordance with the Access Provider's Capacity Allocation Policy.
- ee. Capacity Allocation Policy: If the Access Provider claims or is likely to claim that it has insufficient capacity to meet an Access Seeker's Forecasts or Orders, the Access Provider shall maintain a Capacity Allocation Policy, which:
- (a) shall be disclosed, free of charge, to each Access Seeker upon entry into an Access Agreement, the Commission upon the Effective Date, to both Access Seekers with whom the Access Provider has an Access Agreement and the Commission each time it is amended, and any other Operator on request;
 - (b) shall set out the principles in accordance with which the Access Provider shall determine how to allocate capacity between its own divisions, subsidiaries, partners or other entities in which it has a direct
or indirect equity, contractual or other interest and any other Operator, in circumstances where the amount of capacity available is less than the aggregate of capacity required by the Access Provider's own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest, and the other Operator;
 - (c) shall:
 - i. be fair and reasonable;
 - ii. be consistent, so far as practicable, with the Access Provider's general duty of non-discrimination in accordance with subsection 149(2) of the Act;
 - iii. treat the requirements of all Access Seekers on an equivalent basis to the requirements of Access Provider's own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest; and

- iv. allocate the available capacity in the relevant Facilities and/or Services in proportion to each Operator's Forecast and/or Order requirements; and
- (d) shall set out the Access Provider's plans to expand their capacity over time (if any), where such information must be provided to Access Seekers on a non-discriminatory basis in terms of its content and frequency of updates.

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7A Decommissioning Obligations

- a. Decommissioning notice: Except where the Access Provider is required to vacate a Site as a result of a third party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, the Access Provider must provide no less than six (6) months' notice in writing to all relevant Access Seekers prior to the decommissioning of the relevant Facilities and/or Services which rely on the Access Provider's use of that Site.
- b. Co-operation: The Access Provider must co-operate and negotiate with all relevant Access Seekers in relation to the timetable for decommissioning of the relevant Facilities and/or Services.
- c. Alternative arrangements: Subject to availability, the Access Provider which notifies an Access Seeker of its intention to decommission any Facilities and/or Services shall attempt to provide to the Access Seeker access to alternative Facilities and/or Services on terms and conditions and at a recurring charge which are not disadvantageous to the Access Seeker relative to the terms and conditions and recurring charge applicable in respect of the Facilities and/or Services that are proposed to be decommissioned for a period that is not less than three (3) years from the date of decommissioning.
- d. Decommissioned Facilities and/or Services compensation: Except where decommissioning is caused by Force Majeure or as a result of a third party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, the Access Provider shall pay the Access Seeker's reasonable costs necessarily incurred in re-arranging the Equipment to connect to alternative Services offered in accordance with Section 7A(c) hereof.

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8. Term, Suspension and Termination

a. Term: Access Provider’s RAO shall only take effect on the Effective Date and shall remain in force until the termination of this RAO. An Operator shall, unless otherwise required by the Access Seeker, enter into Access Agreements for a period of at least three (3) years from the date of execution of the Access Agreement. 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 Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, and subject to the Access Provider not being able to provide access as a result of Force Majeure, the Access Provider shall only require the Access Seeker to acquire access to individual Facilities and/or Services under the Access Agreement for a minimum period as follows:

Facilities and/or Services	Minimum term
Network facilities access	Three (3) years

- 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 Section 8(b) above and subject to the provision of Section 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 and 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 under this RAO;
 - vi. Section 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 Section 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 Section 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 Section 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 Section 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 Section s 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 Section 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 already been constructed prior to the date the Access Seeker seeks the Access Services thereat, 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 Section 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.
- e. The Access Provider shall specify all charges in an Access Agreement and the respective SLO and shall not attempt to recover any other costs, expenses or charges which are not specified in the same except where such work is to be done on a time and materials basis in which case the Access Provider shall do such work in accordance with a quotation agreed with the Access Seeker as set out in the Access Agreement and under the RAO.

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11. Billing and Terms of Payment

a. The billing and settlement obligations set out in this Section 11 of the RAO shall be applicable to the Operators.

b. Billing

- i. Subject to Section 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 (1st) 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 or in electronic form 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 Period, unless otherwise agreed with the Access Seeker.
- vi. Where appropriate, any taxes (including GST), duties or other imposts (as at the date of this RAO or imposed after the date of this RAO) 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 in the Access Agreement, Access Provider may not set-off invoices except where the Access Seeker is in liquidation or at least three (3) Invoices have been issued and such Invoices have not been paid (excluding disputed amount) .
- iii. Unless otherwise agreed 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 two percent (2%) 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 two (2) months will bear interest at the rate of three percent (3%) 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 Section 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. In addition, an Operator's right to assign its rights under an Access Agreement prepared by it shall be reciprocal with the other Operator's rights of assignment .

- 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 fifteen (15) Business 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 Section 12(e)(iii) hereof .

- xii. Unless as provided under Section 8(l) hereof, the Access Provider shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or any SLO and access to any Facilities and/or Services provided under it except Charges invoiced in arrears and not yet paid or Charges arising during an applicable minimum contractual period provided that:-
 - (1) such Charges must be reduced to reflect any cost savings to the Access Provider from not having to supply the Facilities and/or Services to the extent that they have been terminated or suspended; and
 - (2) the Access Provider must use reasonable endeavors to mitigate its costs of termination or suspension and maximize cost savings under Section 11(c)(xii)(1) above .

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 Section.
- iv. Where the Security Sum is revised pursuant to Section 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 Section 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. On termination of an Access Agreement or any SLO, the Access Provider shall refund to the Access Seeker the Security Sum for the respective Site and all amounts paid in advance to the extent that the amount (or part of the amount calculated on a pro-rata basis) relate to the period after the date of effect of such termination unless otherwise agreed between the

Operators in an Access Agreement or such Security Sum had been utilized or will be utilized to settle any outstanding sum to the Access Provider .

vii. Notwithstanding the obligation under Section 12(d)(vi) above, the Access Provider shall within two (2) months of termination of the Access Agreement or the respective SLO refund to the Access Seeker the relevant deposit paid provided all other amounts payable by the Access Seeker to the Access Provider have been paid and immediately upon termination of the Access Agreement or the respective SLO, unconditionally waive any rights under any guarantees provided by the Access Seeker except in respect of amounts payable by the Access Seeker to the Access Provider as at the date of termination .

e. Billing Dispute

- i. Where there is a Billing Dispute, the Operators shall comply with the Dispute Resolution Procedures set out in Section 12(e) of this RAO.
- ii. For the avoidance of doubt, the Access Seeker shall not use the Dispute Resolution Procedure in Section 12(e) hereof to avoid or delay payment due to the Access Provider where there is no genuine dispute.
- iii. With respect to Charges, the Operators agree that where there is a discrepancy the amounts payable, in an Invoice for a particular month, a variance of up to one percent (1%) of the total Charges shall be acceptable and shall not be subject to a billing dispute provided that such discrepancy is not a result of an error in charging principles or applicable rates.

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12. Dispute Resolution Procedures

a. Introduction

- i. Subject to Section 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 Section 12(d) hereof if they cannot be resolved through the application of the general dispute resolution provisions in Sections 12(b) and 12(c) hereof);
 - B. Billing Disputes, which must follow the procedures set out in Section 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 Section s 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 Section 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 Section 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 Procedure invoked in accordance with this Section 12, an Access Provider and an Access Seeker must continue to fulfil their obligations under the RAO between themselves.

- iv. Subject to Section 12(b)(v), 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 Section 12(b)(iv) or described in Section 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 Section 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 Section 12(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 Section 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 Section 12(c)(iv), either Party may:-
 - (1) refer any technical dispute to a Technical Expert in accordance with Section 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 Section 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 Section 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 Section 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 favor 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 ten (10) 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 Section 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 Section 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 Section 12(e)(vi) and any extension granted has expired, the Billing Dispute may be referred by the Access Seeker to the procedure described in Section 12(e)(viii) hereof (“Billing Dispute Escalation Procedure”).
- viii. The Access Seeker may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this Section 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 RAO. 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 Section 12(e) and does not involve the Inter-Party Working group and Technical Experts under Sections 12(c) and 12(d).

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13. Operation & Maintenance Obligations

- 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 service described in Clause 13(b) 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

- 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 this RAO.
- 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 15(i)(i) and 15(i)(ii) above 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 15(j), 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. 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.
- q. **Liability And Indemnity**
1. General Principle
- Save to the extent that another provision of this RAO expressly provides for (or expressly excludes or limits) a remedy, a liability or a form of compensation in relation to an act, omission or event, this Condition shall regulate the liability (whether arising in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach or any other cause) of an Operator to the other Operator under and in relation to this RAO and in relation to any act, omission or event relating to or arising out of this RAO.
2. Insurance
- 2.1 Without limiting or reducing each Operator’s liability and responsibility as contained elsewhere in this RAO, each Operator shall procure and maintain the following insurances applicable to its operations with respect to and for the duration of this RAO provided that the Operators shall not be required to maintain additional insurances beyond paragraphs (i) and (ii) below:-
- (i) Worker's Compensation and/or Social Security Insurance and/or Employer's Liability Insurance and/or other insurance with statutory limits as required by the laws of Malaysia to provide for payment to its employees employed on or in connection with the work covered by this RAO and/or their dependants.
 - (ii) Comprehensive General Liability Insurance or Public Liability Insurance of an amount which is not more than Ringgit Malaysia Twenty Million (RM 20,000,000) for any one claim or series of claims arising out of an accident or occurrence in connection with this RAO resulting in bodily injury and/or personal injury including death and property damage of an Operator which shall arise out of or in consequence of any acts or omission of the other Operator.
3. Damage to Property
- 3.1 Either Operator ("defaulting Operator") shall indemnify and hold the other Operator safe and harmless from and against all costs, expenses and claims relating to damage to or destruction or loss of all or any property beneficially and/or absolutely owned by the other Operator arising out of any act or omission of the defaulting Operator, its servants or agent in so far as such damage, destruction or loss arises out of or in the course of or by reason of the carrying out any works for or in relation to the interconnection or providing the Communications Services.
4. Death and Personal Injury
- 4.1 Subject to subsection 6.4 herein below, the defaulting Operator shall be absolutely liable for, and hereby indemnifies the other Operator from and against all costs, expenses and claims in respect of all injuries to, including the death of any and all employees of the other Operator arising out of any act or omission of the defaulting Operator, its servants or agent.
5. Third Person Indemnity
- 5.1 Subject to subsection 6.4 herein below, the defaulting Operator shall indemnify and hold the other Operator safe and harmless from and against all costs, expenses and claims in respect of:

- (i) all injuries to, including death of; and/or
- (ii) loss of or damage to property of,

third parties arising out of or in connection with or in the course of or by reason of the defaulting Operator's breach or when due to any acts, omission or default of the defaulting Operator, its servants and/or agents in the carrying out of any works for or in relation to the interconnection or in providing the Communications Services.

6. Liability

- 6.1 Neither Operator excludes liability for death or personal injury attributable to its own negligence or the negligence of its servants and agents.
- 6.2 Subject to subsection 15 (d) and subsection 6.5 herein below, an Operator shall not be liable to the other Operator or any other third party and shall not indemnify the other Operator for any claims, proceedings or actions brought or made by a third party against the other Operator, howsoever arising, including but not limited to:
 - (i) the lack of or loss or interruption or any delays to access, interconnection transmission or otherwise; and
 - (ii) any claims, proceedings or actions brought or made against the other Operator by any person pursuant to a contractual relationship with the other Operator.
- 6.3 Notwithstanding subsection 3.1 and 5.1 herein above, an Operator shall not be liable for damage to property due to hacking and the transmission of malicious codes and/or programs by third parties (other than its employees, agents, servants, contractors and/or other persons under its control) provided that presently available security solutions and anti-virus solutions have been put in place by the Operator.
- 6.4 In no event will either Operator's liability under this RAO exceed Ringgit Malaysia Twenty Million (RM 20,000,000) only per event for any accident or occurrence in connection with this RAO save that the limitation of liability set out in this subsection 6.4 shall not apply to damage to property and/or fraud by that Operator and/or amounts due and payable under an Invoice.

7. Exclusion of Warranties

- 7.1 Except as expressly set out in this RAO, all representations, conditions and warranties (whether express or implied, statutory or otherwise) including but not limited to any implied warranty of merchantability, implied warranty of fitness for a particular purpose, implied warranty of non infringement and implied warranty arising out of the course of dealing, custom or usage of trade with respect to any service provided by either Operator are expressly negated and excluded. The warranties set forth in this RAO are the only warranties made by each Operator and will not be enlarged or diminished without that Operator's approval.
- 7.2 In no event will either Operator be liable to the other Operator or any other person for loss of profits, loss of business, loss of use of data or special, exemplary, indirect, incidental, consequential or punitive damages of any kind for any reason, including, without limitation, the breach of this RAO or any termination of this RAO, whether such liability is asserted on the basis of contract, equity, tort (including negligence and strict liability) or otherwise, even if either Operator has been advised of the possibility of such damages. The essential purpose of this provision is to limit the potential liability of each Operator arising out of this RAO.

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16. REVIEW

16.1. Subject to Subsection 16.3, if:-

- (a) the Minister issues a direction or determination relating to the subject matter of this RAO;
- (b) the Commission issues a direction or determination relating to the subject matter of this RAO;
- (c) there are any amendment, changes or modifications to the Act, its subsidiary legislation and the instruments issued there under including but not limited to the MSA Determination, the Access List Determination and the Ministerial Direction on Access Pricing which relates to the subject matter of this RAO;
- (d) enactment of new laws and regulations which relates to the subject matter of this RAO;
- (e) the registration, determination, promulgation, issue, amendment or replacement of any industry code with which an Operator is required or obliged to comply;
- (f) if a condition of an Operator's Licence is amended or deleted or a new condition is imposed which relates to this RAO; or
- (g) by agreement of each of the Operators, the Operators agree to review the agreement as soon as practicable in good faith. Where the changes referred to in paragraphs (a) to (g) 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.

16.2 If after the date hereof,

- (i) any change in, or the introduction of, any law, regulation or regulatory requirement; or
- (ii) any direction, request or requirement of any central bank, monetary, regulatory or other authority,

results in a currency depreciation of the Ringgit or the appreciation of any other currency against the Ringgit or any other currency control that will increase the cost to, or impose an additional cost on, either Operator in making or keeping its Network and Facilities available, or maintaining its Network and Facilities, then either Operator will be entitled to request for a review of the Charges which are affected by it and the Operators will in good faith negotiate any amendments to this RAO.

16.3 The obligation to negotiate set out in Subsection 16.1 and 16.2 commences promptly after delivery of a notice from one Operator to the other Operator setting out in reasonable detail, the amendments sought.

16.4 (a) If a Regulated Facility and/or Service is removed from the Access List or becomes a Non-Regulated facility or service pursuant to a revocation or an amendment to the Access List:

- (i) the Access Provider may, at its discretion and by giving notice to the Access Seeker:
 - (A) terminate or withdraw that network facility or network service; or
 - (B) vary or modify the terms and conditions pertaining to that network facility or network service subject to mutual agreement provided always that the Operators shall, within fourteen (14) days from the date of Access Provider's notice, first discuss the variation or modification which the Access Provider proposes to adopt ("initial meeting"). Thereafter, if the Operators fail to agree on the amended terms and conditions within forty five (45) days from the initial meeting or such other time as may be mutually agreed in writing by the Operators, then the Access Provider shall be entitled to terminate or withdraw that network facility or network service under paragraph (a)(i)(A) above. In such a case, the notice period referred to in Subsection 16.4(c), shall commence from the date of the Access Provider's notice to vary the terms.

Nothing in this paragraph (i)(B) shall prevent the Access Seeker from terminating the affected network facility or network service at any time in accordance with Subsection 16.4(a) (ii) (A).

- (ii) the Access Seeker may by giving notice to the Access Provider either:-
 - (A) terminate that network facility or network service by giving at least three (3) months written notice without penalty; or
 - (B) propose to vary or modify the terms and conditions pertaining to that network facility or network service subject to mutual agreement provided always that the Operators shall, within fourteen (14) days from the date of Access Seeker's notice, first discuss the variation or modification which the Access Seeker proposes ("first meeting"). Thereafter, if the Operators fail to agree on the amended terms and conditions within forty five (45) days from the first meeting or such other time as may be mutually agreed in writing by the Operators, the Access Seeker may terminate or withdraw that network facility or network services in accordance with Subsection 10.6(a) (ii)(A). Nothing in this Subsection 10.6(a) (ii)(B) shall prevent the Access Provider from terminating or withdrawing the affected network facility or network service at any time in accordance with Subsection 10.6(a) (i)(A).

- (b) If:
 - (i) a Non-Regulated facility and/or service becomes a Regulated Facility and/or Service pursuant to an amendment to the Access List; or
 - (ii) where there is a variation or amendment to the Access List service description of a Regulated Facility and/or Service,

either Operator may propose variation or modification to the terms and conditions pertaining to that network facility or network service subject to mutual agreement provided always that the Operators shall, within fourteen (14) days, from the date of the written notice by the notifying Operator, first discuss the variation or modification proposed to be adopted ("preliminary meeting"). Thereafter, if the Operators fail to agree on the amended terms and conditions within ninety (90) days from the preliminary meeting or such other time as may be mutually agreed in writing by the Operators, then either Operator may initiate the dispute resolution procedures in Section 11. Nothing in this Subsection 10.6(b) shall prevent the Access Seeker from terminating the affected network facility or network service at any time, without penalty, by giving the Access Provider three (3) months written notice.

- (c) The notice given pursuant to Subsection 10.6(a) (i) (A), shall be:
 - (i) the period of time between the time of giving notice and the time at which the Access Provider is proposing to no longer provide the network facility or network service to itself or other access seekers; or
 - (ii) twelve (12) months, whichever is the earlier.
- (d) The notice given pursuant to Subsection 10.6(a) (i) (A) must state any alternative network facility or network service that may be available to be provided by the Access Provider to the Access Seeker and the terms and conditions of such alternative arrangement.
- (e) The amended terms and conditions agreed between the Operators shall take retrospective effect from the date of the relevant Commission's Determination takes effect (or where none is specified, the date of the Commission's Determination was made) unless otherwise agreed.

16.5 For the avoidance of doubt:

- (a) the variation of the Agreement pursuant to Subsection 16.4(a) herein above shall not be subject to the approval process required under Subsection 15 (a) (i) (2); and
- (b) the provisions of this RAO remain in full force and effect during any negotiations conducted under this Section 16 until commencement of an agreement replacing or amending this RAO.

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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 (s) of the RAO:

10) Enclosed our assessed security or confirmation of security offered to you in line with Section 5 and Section 11 of the RAO:

11) Enclosed our insurance information as required under Section 5(t) of the RAO:

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

PDC TELECOMMUNICATION SERVICES SDN BHD (9761-V), a company incorporated in Malaysia with its business address at 1-12A-12A, SUNTECH@PENANG Cybercity, Lintang Mayang Pasir 3, 11950 Bandar Bayan Baru, Penang (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 disclosed 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.

Term of supply: Unless otherwise agreed by the Access Provider and Access Seeker in an Access Agreement, and subject to the Access Provider not being able to provide access as a result of Force Majeure, the Access Provider shall only require the Access Seeker to acquire access to individual Facilities and/or Services under the Access Agreement for a minimum period as follows:

Access Services (e.g. originating and terminating access)

No minimum term Access to Network Elements

Twelve (12) months Transmission Services
Twelve (12) months Network facilities access

Twelve (12) months HSBB Network Services
Three (3) years

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 (i) Infrastructure Sharing is detailed in Appendix C1A; and (ii) Duct and Manhole is detailed in Schedule 1.
 - 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 depend amongst others on the following:-
- 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;
 - the monthly Operational Expenditure (OPEX) for the Site including the rental thereof;
 - the number of Users at the Site;
 - 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;
 - reasonable interests for calculation purposes; and
 - 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	

SITE LICENSE OFFER

Site License Offer No. ()

This Site License Offer (“SLO”) is issued pursuant to the Reference Access Offer or Access Agreement entered into between the Access Provider and the Access Seeker. The terms and conditions of those agreements are incorporated herein.

1. Site Details

Access Provider’s ID :	Access Seeker’s ID :
Site Name :	Site Address :
Latitude :	Longitude :
Structure Type :	Structure Height :
PMship :	Current Site User Configuration :

2. Equipment proposed to be installed by the Access Seeker

Description	Unit	Installation Date				Remark
RF Panel Antenna						
Tx Antenna 0.6 Ø						
Tx Antenna 1.2 Ø						
Remote Radio Unit (RRU)						
Filter						
Cabin Space						
Genset Space						

3. Equipment Shelter: Indoor / Outdoor

4. License Period:

5. Access Charges (Monthly):

Basic Charges (RM)	VO (RM)	Add. Dish (RM)	Add. RRU (RM)	Add Antenna (RM)	Total (RM)	Deposit (RM)	Access Charges Commencement Date	Access Charges Expiry Date	License Term & Extended License Term

6. Electricity

Deposit	:	
Monthly Fee	:	
Management Levy	:	

7. Variation Order

Capex (RM)	:	Commencement date	:
VO1 (RM)	:	Commencement date	:
VO2 (RM)	:	Commencement date	:

8. Handover/Commencement Date:

9. Terms of AA applicable in this SLO

Notwithstanding the earlier termination or expiry of the Reference Access Offer or Access Agreement entered into between the Access Provider and the Access Seeker, the terms and conditions therein shall be incorporated and applicable in respect of this SLO and shall survive until the expiry or termination of this SLO.

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

<p>Access Seeker</p> <p>_____</p> <p><i>(Name)</i></p> <p><i>(Position)</i></p> <p>Date : _____</p>	<p>Access Provider</p> <p>_____</p> <p><i>(Name)</i></p> <p><i>(Position)</i></p> <p>Date : _____</p>
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*Company Stamp

*Company Stamp

APPENDIX F

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

APPENDIX G

Service Specific Obligations for Infrastructure Sharing

- (1) **Application:** Additional terms and conditions which are applicable to Infrastructure Sharing Services.
- (2) **Forecasts:** For the purposes of Section 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 Section 7(e) of the RAO , 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 Section 7(l) of the RAO, 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 Section 7(h) of the RAO; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under Clause 7(i) hereof, where the Access Provider has undertaken post-Order Service Qualification for that Order under Section 7(h) of the RAO.
- (5) **Indicative delivery timeframe:** For the purposes of Section 7(m)(i) of the RAO , 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 Section 7(n) of the RAO f;
 - (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:** As outlined in the billing provisions of this RAO at Section 11 of the RAO, 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 (7), (9) and (10) of Appendix G 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 subsection (9)(d) herein, 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 subsection (9)(d) herein, 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 subsection (9)(b) or (9)(c) herein (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 (7) of Appendix G herein, if an escort does not arrive at the Site within the timeframe specified in the subsection (9) above, 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 (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 subsection (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; orwhere 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 subsection (16)(c)(i) above, 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.
- (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. 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)(ii) and (17)(c)(iii) 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 subsection (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 subsection (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 subsection (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.

(22) Term

- (a) Infrastructure Sharing at a Designated Tower or Associated Tower Site, agreed between the Operators, shall be for a fixed period of three (3) years unless a lesser period is stipulated by the Access Provider (where the Access Provider’s right to use the land on which the Designated Tower or Associated Tower Site is located is less than three (3) years) and may be further renewed subject to the mutual agreement of the Operators.

- (b) The Access Seeker shall within six (6) months prior to the expiry of the term of the Infrastructure Sharing at the Designated Tower or Associated Tower Site notify the Access Provider in writing as to whether or not it wishes to renew the term of the Infrastructure Sharing. If the Access Seeker notifies the Access Provider that it wishes to renew the term of the Infrastructure Sharing but the Access Provider's lease or tenancy to use the land on which the Designated Tower or Associated Tower Site expires upon or will expire in the renewed term, the Access Provider shall inform the Access Seeker as to its intention to renew its lease or tenancy of the said land.
- (c) The term of the Infrastructure Sharing shall commence on the date ("Start Date"):
- (i) the Access Provider makes available for physical possession the shared space at the Designated Tower or Associated Tower Site ("Shared Space") in accordance with the agreed specifications and the Access Provider has notified the Access Seeker in writing of the same; or
 - (ii) the Access Seeker takes physical possession of the Shared Space at the Designated Tower or Associated Tower Site, whichever is the earlier.

APPENDIX H

Service Specific Obligation for other Access Service under Appendix F hereof

(Nil or If any)

**SCHEDULE I
SERVICE DESCRIPTION**

DUCT AND MANHOLE ACCESS

1.0 General

The terms and conditions which are applicable to Duct And Manhole Access.

Scope of Duct and Manhole Access

- 1.1 Duct And Manhole Access is a Facility and/or Service which comprises provision of physical access to:-
 - 1.1.1 Lead-In Ducts and associated manholes;
 - 1.1.2 Mainline Ducts and associated manholes in areas in which a single Operator has exclusive rights to develop or maintain duct and manhole infrastructure, whether or not in combination with other Facilities and Services; and
 - 1.1.3 sub-ducts where there is no room for the Access Seeker to install its own sub-ducts.
- 1.2 The provision of physical access includes the provision of:-
 - 1.2.1 space at specified network facilities to enable an Access Seeker to install and maintain its own lines, equipment and sub-ducts; and
 - 1.2.2 access for the personnel of the Access Seeker.
- 1.3 Exclusive rights to develop or maintain duct and manhole infrastructure includes exclusive rights in contracts, arrangements or understandings between the Access Seeker and any person.
- 1.4 **Charges and Charging Principles**
 - 1.4.1 The applicable charges for Duct and Manhole Access are as follows:-

TABLE A : CHARGES PER INCIDENT

No	Charges	Nature of Charges	RM
1	Site Survey	Per incident	6,000
2	Rodding	Per KM	7,500
3	Subduct Pulling	Per KM	6,500
4	Verification on Make Good	Per incident	1,200
5	Work Recovery for Termination	Per KM	5,500
6	Technical proposal Verification	Per incident	500

TABLE B: CHARGES FOR NEW INSTALLATION

	Types of Charges	Descriptions	Charges
1	Site Survey	Batu Kawan / PSP	RM2,000
2	Site Preparation Work	Applicable to all Location	To be undertaken by Access Seeker
3	Site Supervision Work	Before Start work and After Completion of Work	RM2000/ Visit

TABLE C: MONTHLY RECURRING CHARGES

Ringgit Malaysia per sub-duct per km (or part thereof) per month			
	2018	2019	2020
Duct and Manhole Access	316	332	349

No	Types of Charges	Descriptions	Charges
1	Technician checking at Sites	Inspection	RM1000 /quarter

TABLE C: DEPOSITS

NO	Deposit Descriptions	Charges
1	Less than 6km	RM 50,000
2	More than 6km	Based on KM utilize x 2

1.5 DUCT AND MANHOLE ACCESS

1.5.1 Application: This subsection 1.5 applies where Duct and Manhole Access has been requested or is to be provided.

1.5.2 Forecasts: For the purposes of Section 6 (a)of the RAO, an Access Provider shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Duct and Manhole Access is one (1) year;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Duct and Manhole Access is one (1) year; and
- (c) the maximum frequency to update or to make further Forecasts regarding Duct and Manhole Access is once a year.

- 1.5.3 Acknowledgement of receipt: For the purposes of Section 7(e) of the RAO, an Access Provider shall acknowledge receipt of each Order for Duct and Manhole Access within two (2) Business Days.
- 1.5.4 Time for acceptance or rejection: Subject to any shorter timeframe required under subsection 7 (l) of the RAO, an Access Provider must notify an Access Seeker that an Order for Duct and Manhole Access 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; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification under Section 7(h) of the RAO, where the Access Provider has undertaken post-Order Service Qualification for that Order.
- 1.5.5 Indicative delivery timeframe: The indicative delivery timeframe for Duct and Manhole Access is ten (10) Business Days. For clarification, the indicative delivery timeframe in this subsection 1.8 commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with subsection 5.7.14 of MSA.
- 1.5.6 Billing Cycle: As outlined in the billing provisions of this RAO at Section 11, between the Operators, the Billing Cycle for Duct and Manhole Access will be one (1) year in advance for the first year and quarterly in advance for subsequent years.
- 1.5.7 Reporting: Access Provider shall notify the Commission in writing details of:
- (a) each area in which the Access Provider has built or assumed maintenance obligations in respect of lead-in ducts and associated manhole infrastructure;
 - (b) each area in which the Access Provider has been granted exclusive rights to develop or maintain mainline ducts and associated manhole infrastructure;
 - (c) each area in which an Access Seeker has requested the supply of Duct and Manhole Access in respect of mainline ducts and associated manholes but in which the Access Provider has not been granted exclusive rights to develop or maintain the duct and manhole infrastructure;
 - (d) each location in which an Access Seeker has requested the supply of Duct and Manhole Access, in which there is no room for the Access Seeker to install its own sub-ducts and in which the Access Provider has therefore offered to supply access to its own sub-ducts; and
 - (e) each location in which an Access Seeker has requested the supply of Duct and Manhole Access, in which there is no room for the Access Seeker to install its own sub-ducts and in which there is also no room in the Access Provider's own sub-ducts.
- 1.5.8 Physical access: Where required to fulfil an Order for Duct and Manhole Access or for the Access Seeker to perform operations or maintenance activities, an Access Provider shall allow an 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. The Access Provider shall provide:

- (a) immediate physical access to Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;
- (b) 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.

1.5.9 Nominated personnel: The employees and/or contractors nominated by the Access Seeker under subsection 8 of Appendix G of this RAO 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.

1.5.10 Site register: The Access Seeker must establish and maintain a register of all persons who visit the Access Provider's property on the Access Seeker's behalf, which must be made available for inspection by the Access Provider, upon request.

1.5.11 Joint survey: For the purposes of subsection 12 of Appendix G of the RAO and subject to the timeframe specified under subsection 7 (i) of the RAO, a joint survey may be conducted by the Access Provider and the Access Seeker, along with surveyors, where necessary, to determine the availability of requested ducts and manholes at a particular area, provided that the scope of the survey be jointly decided, and any costs are necessarily incurred, itemised and agreed between the parties.

1.5.12 Capacity Allocation Policy: In addition to subsection 7 (ee) of the RAO, the Access Provider's Capacity Allocation Policy for Duct and Manhole Access shall set out the principles to be applied on an equivalent basis between itself and other Access Seekers, where:

- (a) the Access Provider has already taken steps to optimise space by using the current available technology, including removing any unused cables;
- (b) the Access Provider shall determine the available space only after considering:
 - i. the requirements for ducts and space in manholes for the Access
 - ii. Provider's then existing maintenance purposes; and
 - iii. the reservation of the ducts or sub-ducts for future use by the Access Provider or another Access Seeker, applicable on an equivalent basis for six (6) months, upon receipt of an Order; and

- (c) the allocation of available space shall be:
 - i. on a first-come, first-served basis;
 - ii. applicable to reserved capacity that is not used by either the Access Provider or an Access Seeker within the seven (7) months from the date of the Order; and
 - iii. to the extent possible, based on efficient allocation principles to minimise space wastage.

1.5.13 Operational manuals: An Access Provider shall establish operations and maintenance manuals which are made available to Access Seekers, containing reasonable processes and procedures relating to Duct and Manhole Access including but not limited to:

- (a) safety, security and occupational health and safety.
- (b) laying, maintenance, restoration and removal of cables;
- (c) entry to manholes; and
- (d) sealing or closing of manholes.

1.15.14 The Access Provider's processes and procedures for Duct and Manhole Access shall:

- (a) not be intentionally designed to deny or have the effect of denying or delaying the Access Seeker's access to ducts and manholes;
- (b) not completely or substantially prohibit an Access Seeker from physically accessing ducts and manholes unless the Access Provider has been directed in writing to do so by the Government (in which case, the Access Provider shall notify the Commission); and
- (c) be no more restrictive or onerous than the processes and procedures that the Access Provider imposes on its own personnel who physically access ducts and manholes.

1.5.15 Ground for refusal: In addition to the grounds for refusal in Section 5 (m) of the RAO, an Access Provider may refuse an Access Request to Duct and Manhole Access to the extent (and only to the extent that) the Access Provider has entered into an exclusive arrangement for access to duct and manhole infrastructure in Putrajaya with the Government of Malaysia and such arrangement has been entered into (without extension or amendment) prior to the Effective Date of this Determination. In the event Access Provider refuse Access Request, Access Provider must notify the Commission in writing within five (5) Business Days of that refusal together with explanation for its refusal under Section 5 (m) of the RAO.

1.6 Duration of Duct and Manhole Access

- (a) Duct and Manhole Access agreed between the Operators, shall be for a fixed period of three (3) years unless a lesser period is stipulated by the Access Provider and may be further renewed subject to the mutual agreement of the Operators. The Access Seeker shall within six (6) months prior to the expiry of the term of the Duct and Manhole Access notify the Access Provider in writing as to whether or not it wishes to renew the term of the Duct and Manhole Access.

- (b) The term of the Duct and Manhole Access shall commence on the date (“Start Date”):
 - (i) agreed between the Operators for the Access Seeker to be permitted to have physical access to the sub-duct and manhole space (“Sub-duct and Manhole Space”); or
 - (ii) the Access Seeker installs their equipment and fiber optic cables in the sub-ducts and associated manholes, whichever is the earlier.

END