



**AIRZED BROADBAND SDN BHD'S  
REFERENCE ACCESS OFFER ("RAO")**

**Version 2**

**Effective Date: 31 July 2018**

Prepared by:-

**Regulatory & Legal Department**

**YTL Communications Sdn Bhd**

19th Floor, One Oriental Place,

No1, Jalan Hang Lekiu,

50100 Kuala Lumpur

Malaysia

Tel: 018 799 8888 Fax: 018 799 8828

For:-

**AIRZED BROADBAND SDN BHD (599069-V)**

**("the Access Provider")**

Registered Address

11th Floor, Yeoh Tiong Lay Plaza, 55,

Jalan Bukit Bintang,

55100 Kuala Lumpur

Wilayah Persekutuan

Business Address

Level 3, Annexe Block, Lot 10

Shopping Centre,

50 Jalan Sultan Ismail,

50250 Kuala Lumpur

Wilayah Persekutuan

This RAO is available upon written request at the Business Address above and at  
<https://www.yes.my/pdf/ARDBByAirzed.pdf>

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## PART A - APPLICABILITY & SCOPE OF RAO

### 1. Introduction

- 1.1 This Reference Access Offer (“RAO”) is published by **Airzed Broadband Sdn Bhd** (Co. No: **599069-V**) (“Airzed”) pursuant to Section 5.3.3 of the Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016 (“MSA”).
- 1.2 This RAO contains terms and conditions which are consistent with the rights and obligations of the Access Providers and Access Seekers and the principles of non-discrimination set out in the MSA. It does not contain terms and conditions which are inconsistent with rights and obligations set out in the MSA.
- 1.3 This RAO is divided into the following parts:

Part A	Applicability & Scope of the Reference Access Offer and Appendixes
Part B	List of Forms
Part C	RAO Agreement

- 1.4 Unless otherwise defined in this Part A, capitalized words in this Part A shall bear the same meaning as defined in Part C of this RAO.

### 2. Application of RAO

- 2.1 This RAO only applies to those network Facilities and Services of the Access List and which are set out in Appendix 1 herein of this Part A and is applicable to licensees who are licensed under the Communications and Multimedia Act 1998 as:

- (a) Network Facilities Providers;
- (b) Network Service Providers;
- (c) Applications Service Providers; or
- (d) Content Applications Service Providers

(hereinafter referred to as “Access Seeker”)

- 2.2 An Access Seeker may submit an official access request in accordance with Section 5.2.1 of this Part A (“Access Request”) for any of the applicable Facilities and Services listed in Appendix 1 herein of this Part A subject to the Application Process for Access as set out in Section 5 of Part A herein. This RAO is capable of being signed as an access agreement by Access Seeker in accordance with Section 5.3.1 of Part A below.

- 2.3 An Access Seeker may request to negotiate with Airzed for access on alternative terms that are different to terms offered in this RAO, and if Airzed is willing to proceed with negotiation on the Access Request of the Access Seeker, such negotiations shall be in accordance with the Negotiation Process and Timeline as set out in Section 6 of this Part A herein.

### **3. Amendment to RAO**

- 3.1 Airzed reserves its right to amend this RAO from time to time with no less than twenty (20) Business Days notice before giving effect to the proposed changes and access will be considered based on the current RAO published by Airzed.
- 3.2 Airzed will provide a copy of the amended RAO showing the proposed changes to the existing RAO, to
- (a) all Access Seekers who are being provided with access to Access Services under the existing RAO; and
  - (b) all Access Seekers who have requested 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.

Access Seekers who have already signed an Access Agreement/RAO Agreement with Airzed will not be affected by the amendments to the RAO, unless both Parties agree to incorporate any part of the amendments into their Access Agreement/RAO Agreement.

### **4. Airzed's Address for Correspondence**

All requests, notices, forms arising out of this RAO, shall be sent to Airzed at the address below:

**Airzed Broadband Sdn Bhd**

11th Floor, Yeoh Tiong Lay Plaza,

55 Jalan Bukit Bintang,

55100 Kuala Lumpur

Tel: 03- 23302700;

Fax: 03-23302703

Attention: **Mr. Lawrence Chu, Assistant Accountant.**

### **5. Application Process for Access**

#### **5.1 Introduction**

- 5.1.1 The following Sections set out the process for initiating an Access Request

with Airzed as well as the respective obligations of both the Access Seeker and Airzed.

## **5.2 Access Request**

5.2.1 If an Access Seeker intends to obtain access to any of the Access Services from Airzed, the Access Seeker must, submit a formal Access Request in writing to Airzed using the Request for Access Form attached as Attachment 1 in Part B herein providing the following:

- (a) the name and contact details of the Access Seeker;
- (b) the Facilities and/or Services in respect of which access is sought from Airzed;
- (c) whether the Access Seeker wishes to accept Airzed's RAO, to negotiate amendments to the RAO or to negotiate an access agreement on alternative terms;
- (d) preliminary information regarding the scale and scope of Facilities and/or services that Access Seeker expects to acquire from Airzed pursuant to the Access Request;
- (e) relevant information relating to the Access Seeker's Network and the functionality of its services, to the extent the Access Seeker is aware that such information may affect Airzed's Network;
- (f) all relevant technical information relating to the Access Services which may be the subject of the Access Request, including but not limited to any physical and logical interfaces of its Network necessary to allow the development and deployment of communications services, and communications Equipment that can interconnect to, and interoperate with, that of Airzed's Network;
- (g) execute the Confidentiality Agreement (A copy of the Confidentiality Agreement is attached as Appendix 2 of this Part A);
- (h) information of creditworthiness, insurance and financial security in accordance with the requirements stated in Request For Access Form attached as Attachment 1 in Part B herein; and
- (i) any such information as may be required in the Request For Access Form attached as *Attachment 1 in Part B herein*.

5.2.2 Upon receipt of the Access Request and all the relevant information, Airzed will within ten (10) Business Days respond to the Access Seeker in writing acknowledging receipt of the Access Request and stating that:

Part A – Applicability & Scope of RAO

- (a) Airzed will provide the access in accordance with the RAO if the Access Seeker is willing to accept the access on Airzed's RAO;
  - (b) if Sub-section 5.2.2 (a) does not apply, Airzed is willing to proceed to negotiate amendments to the RAO or an access agreement on alternative terms ("Access Agreement");
  - (c) if Airzed is unable to comply with the Access Seeker's request for the provision of access to the requested Access Service(s), Airzed will state in writing to the Access Seeker the grounds on which it is relying for the refusal in accordance with Section 5.5 below of this Part A; or
  - (d) if Airzed requires specified additional information to make a decision on the Access Request in accordance with Sub-section 5.2.2 (a) to 5.2.2 (c) and once such information is received from the Access Seeker, Airzed shall reconsider the Access Request within 10 Business Days from the receipt of the Access Seeker's additional information.
- 5.2.3 With respect to Airzed's response to the Access Seeker under this subsection 5.2.2, Airzed will provide a copy of its response to the Commission at the same time that Airzed provides a response to the Access Seeker.

**5.3 Airzed's Acceptance Response**

- 5.3.1 If Airzed responds that access will be provided in accordance with its RAO as described in subsection 5.2.2 (a) above, Airzed will use the Access Request Acceptance - RAO Response Form attached as Attachment 2 of Part B herein to respond, and within ten (10) Business Days of such response, provide to the Access Seeker two (2) copies of agreement on the same terms and conditions as set out in Part C herein (referred to as "RAO Agreement") executed by Airzed and return one (1) copy of the executed Confidentiality Agreement (as set out in Appendix 2 of this Part A) submitted by the Access Seeker in accordance with Sub-section 5.2.1(g) above that has also been executed by Airzed. Within 10 Business days from the receipt of the RAO Agreement executed by Airzed, the Access Seeker shall duly execute the RAO Agreement and return a copy to Airzed.
- 5.3.2 If the Access Seeker fails, neglects or refuses to execute and submit the RAO Agreement in accordance with Sub-section 5.3.1 above, the Access Seeker shall be deemed to have abandoned the Access Request and Airzed will not entertain any further communication from the Access Seeker.

**5.4 Airzed's negotiation Response**

- 5.4.1 If Airzed is willing to proceed with negotiation of the Access Request as described in Sub-section 5.2.2 (b) above, Airzed will response using the

## Part A – Applicability & Scope of RAO

Access Request Acceptance \_Negotiation Response Form attached as Attachment 3 of Part B herein which will set out a place and time for an initial meeting, which date shall be no later than fifteen (15) Business Days from the date of Airzed's response thereof, to negotiate on the Access Agreement between Airzed's authorized representative and the Access Seeker's authorized representative, and return one (1) copy of the executed Confidentiality Agreement submitted by the Access Seeker in accordance with Sub-section 5.2.1(g) above that has also been executed by Airzed.

- 5.4.2 Upon issuance of the response under Sub-section 5.4.1 above, the negotiation process and timelines as set out in Section 6 of this Part A herein shall apply.

### 5.5 Access Request Rejection

- 5.5.1 If Airzed rejects an Access Request in accordance with Sub-section 5.2.2 (c) above, Airzed shall do so using the Rejection For Access Form attached as Attachment 4 of Part B. The Access Seeker may attend and meet with the representatives of Airzed on the date and time specified in the said Rejection For Access Form which date shall not be later than seven (7) Business Days from Airzed's response date, to discuss issues arising from the refusal.
- 5.5.2 If the Access Seeker fails or neglects to attend the meeting with Airzed on the date and time stated, the Access Seeker shall be deemed to have abandoned the Access Request and Airzed will not entertain any further communication from the Access Seeker.
- 5.5.3 If the Access Seeker does attend, and the rejection of the Access Request is not resolved (whether at that meeting or any subsequent meetings between the parties), then either Airzed or the Access Seeker may initiate the Dispute Resolution Processes (where applicable) set out in Condition 12 of the General Terms and Conditions in Part C of this RAO, in order to determine the reasonableness of the rejection by Airzed.
- 5.5.4 Pending the final determination of the dispute, Airzed shall not be obliged to provide access to the Access Seeker.

### 5.6 Right to Reject

Airzed may reject an Access Request made by an Access Seeker if the provision of the Access Service requested in the Access Request is not reasonable on certain circumstances. For the purposes of this provision, Airzed may rely on the following grounds for rejection:

- (a) the information provided by the Access Seeker is incorrect or incomplete for Airzed to fully evaluate the Access Request;

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- (b) Airzed does not currently supply or provide access to the network facility or service requested by the Access Seeker to itself or to any third party;
- (c) it is not technically feasible (as determined in accordance with the criteria set out in section 5.4.17 of the MSA) to provide access to the network facilities or services requested by the Access Seeker;
- (d) Airzed has insufficient capacity or space to provide the requested network services or network facilities. Airzed may rely on this ground if the network is:
  - (i) already carrying traffic to capacity or near full capacity; or
  - (ii) already reserved for future use by Airzed and/or its holding, associate or affiliate companies, if such future use shall commence not later than six (6) months from the date of this Access Request or,
  - (iii) Airzed is unable to expand its own capacity within the period forecast by the Access Seeker.
- (e) Airzed reasonably believes that the Access Seeker may fail to make timely payments for the Access Services;
- (f) Airzed reasonably believes that the Access Seeker may fail, to a material extent, to comply with the terms and conditions set out in this RAO for the Access Services;
- (g) Airzed reasonably believes that the safety of its network will be compromised by the grant of the access requested;
- (h) Airzed reasonably believes that the provision of access to the Access Seeker will be in furtherance of an activity which is illegal under Malaysian law;
- (i) Airzed reasonably believes that the provision of access to the Access Seeker will be contrary to the provisions and objectives of the Communications and Multimedia Act 1998 or the national interest; or
- (j) the terms and conditions of access requested by the Access Seeker, in the opinion of Airzed are unreasonable.

**5.7 Request for Further Information**

- 5.7.1 Airzed may request the Access Seeker to provide further information pursuant to an Access Request, by issuing to the Access Seeker the Request for Further Information Form attached as Attachment 5 in Part B herein.
- 5.7.2 Upon receipt of Request for Further Information Form, the Access Seeker



shall within ten (10) Business Days provide such further information as requested to Airzed.

- 5.7.3 If in Airzed's opinion the information provided is sufficient for it to make a decision as to whether to accept or reject the Access Request, it shall reconsider the Access Request and inform the Access Seeker of its decision within twenty (20) Business Days from the date of receipt of the further information from the Access Seeker.
- 5.7.4 If Airzed issues additional Request for Further Information Form then the time limits set out in Sub-sections 5.7.2 and 5.7.3 above shall be adjusted accordingly.
- 5.7.5 If the Access Seeker does not provide the further information in response to a request made by Airzed in accordance with Sub-section 5.7.1 above, then the Access Seeker shall be deemed to have abandoned the Access Request. Such abandonment shall be without prejudice to the Access Seeker submitting a fresh Access Request.

#### **5.8 Right to Withdraw Access Request**

- 5.8.1 No later than the fifth (5<sup>th</sup>) Business Day following the date of the Access Request, the Access Seeker may withdraw the Access Request.
- 5.8.2 If the withdrawal is effective, then Airzed shall not be obliged to nor be under any obligation to fulfill the Access Request.
- 5.8.3 No Access Request may be withdrawn after the expiry of the fifth (5<sup>th</sup>) Business Day, and if an Access Seeker does do so, such withdrawal will not be effective unless agreed to by Airzed (whether on terms or otherwise).

#### **5.9 Applicability for Additional Services**

- 5.9.1 Notwithstanding that the Access Seeker may have entered into an Access Agreement or RAO agreement with Airzed, the Access Seeker shall submit an Access Request for additional Access Services which are not listed in Appendix of this Part A in accordance with the provisions set out above.

### **6. NEGOTIATION PROCESS AND TIMELINE**

#### **6.1 Introduction**

- 6.1.1 The following negotiation process and timelines shall be applicable to negotiations between an Access Seeker and Airzed in respect of an Access Agreement based on Sub-section 5.4.1 of Part A of this RAO.

- 6.1.2 All negotiations shall be conducted in good faith. For the purposes of determining “good faith” the provisions in Sub-section 5.4.2 of the MSA shall apply *mutatis mutandis*.

## **6.2 Commencement of Negotiation**

- 6.2.1 If an Access Seeker has received the Access Request Acceptance – Negotiation Response Form expressing an intention to negotiate terms and conditions of an Access Agreement), the Access Seeker must attend the initial meeting on the date, time and place as set forth in the said Form or otherwise, at least ten (10) Business Days before the proposed initial meeting date stated in the said Form request in writing for change to meeting date, time and/or place for the initial meeting. Any mutually agreed date of the initial meeting shall be no later than fifteen (15) Business Days from the date of Airzed’s response via the said Form under Part A, Sub-section 5.4.1 above.
- 6.2.2 If the Access Seeker fails, neglects or refuses to comply with the requirements in accordance with Sub-section 6.2.1, then the Access Seeker shall have been deemed to have withdrawn its Access Request and Airzed shall not be under any obligation to provide access to the Access Seeker.
- 6.2.3 Once the initial meeting date, time and place are confirmed, both Airzed and the Access Seeker shall notify the Commission when the negotiations for the Access Agreement begin pursuant to this Section 6.

## **6.3 Duration of Negotiations**

- 6.3.1 All negotiations for the Access Agreement shall be concluded within the following timeframes:-
- (i) where there is no Access Agreement in place between Airzed and the Access Seeker, four (4) months; or
  - (ii) where there is already an Access Agreement in place between Airzed and the Access Seeker, three (3) months.

The respective timeframe shall commence from the date of Airzed’s response to the Access Seeker under Sub-section 5.4.1 via the Access Request Acceptance – Negotiation Response Form as in Attachment 3 of Part B that it is willing to negotiate with the Access Seeker.

- 6.3.2 If the negotiations are not completed within the applicable timeframe specified in Sub-section 6.3.1 above, Airzed and the Access Seeker may jointly apply to the Commission for an extension of time to negotiate and:-

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- (i) if the extension of time is not granted by the Commission, there shall be deemed to be a dispute between Airzed and the Access Seeker and the Dispute Resolution Procedures in accordance with Condition 12 of the General Terms and Conditions in Part C of this RAO shall take effect; or
- (ii) Either party may initiate the Dispute Resolution Procedures; and

6.3.3 If the Commission grants an extension of time under Sub-section 6.3.2 subject to such conditions as may be specified by the Commission, Airzed and the Access Seeker shall comply with such of the Commission's conditions in pursuing the negotiations.

6.3.4 Pending such approval by the Commission, the parties shall continue to negotiate in good faith to conclude the Access Agreement.

**6.4 Initial Meeting**

6.4.1 The designated representatives of AirzedAccess Seeker and Airzed as specified in the Request for Access Form in the format in Attachment 1 of Part B and the Access Request Acceptance – Negotiation Response Form in the format as in Attachment 3 of Part B respectively shall meet on the date, time and at the venue specified of the initial meeting mentioned in Sub-section 6.2.1, and shall:

- (a) negotiate on the proposed amendments to the RAO or alternative terms of the Access Agreement as submitted by the Access Seeker in the Request for Access Form for the Access Request ;
- (b) agree a timetable for the negotiations, including milestones and dates for subsequent meetings within the applicable timeframes for negotiations under Sub-section 6.3.1 above,
- (c) agree the negotiating procedures, including:
  - (i) the calling and chairing of meetings;
  - (ii) the party responsible for keeping minutes of meetings;
  - (iii) clearly defined dispute escalation process for disputes arising during negotiations;
  - (iv) procedures for consulting, and including in the negotiation process, relevant experts from each party; and
  - (v) Procedures for preparing and exchanging position papers;
- (d) review the information requested and provided to date and identify

information yet to be provided by each party;

- (e) identify technical issues and how it is to be resolved.

#### **6.5 Right to Object to Negotiating Team Member**

- 6.5.1 Either party may object to the person or persons nominated by the other party to attend and/or lead any negotiations.
- 6.5.2 If a party wishes to object to such person or persons, then that party must as soon as reasonably practicable but not less than five (5) Business Days prior to the date of the initial meeting set out in accordance with Sub-section 6.2.1, submit an objection in writing (“Objection Notice”) to the other party:
  - (a) identifying the person or persons which the party objects to; and
  - (b) stating the reasons for such objection.
- 6.5.3 Upon receipt of an Objection Notice, the recipient shall ensure that the person objected to, does not attend the initial meeting.
- 6.5.4 Unless the objection is resolved at the initial meeting, such objected person shall not attend any of the negotiations between the parties.

#### **6.6 Failure to reach agreement**

- 6.6.1 If the parties are unable to reach agreement by the time limited for so doing, then:
  - (a) both parties may apply to the Commission for an extension of time to complete the negotiations, and if such application for extension of time is refused by the Commission, then either party may seek the resolution of such failure pursuant to the Dispute Resolution Processes (where applicable) set out Condition 12 of the General Terms and Conditions of Part C of this RAO; or
  - (b) either party may seek the resolution of such failure pursuant to the Dispute Resolution Processes (where applicable) set out in Condition 12 of the General Terms and Conditions of Part C of this RAO.
- 6.6.2 If Airzed and the Access Seeker are unable to reach agreement despite an extension of time granted by the Commission, then the provisions set out in Sub-section 6.6.1.(b) of this RAO shall apply.

### **7. LIST OF APPENDIXES**

The following Appendixes are attached to this Part A

Part A – Applicability & Scope of RAO

1. Appendix 1 - List Facilities and Services offered for access under this RAO
2. Appendix 2 - Confidentiality Agreement Format

**APPENDIX 1 – LIST OF FACILITIES AND SERVICES OFFERED FOR ACCESS UNDER THIS RAO**

Item No.	List of Facilities and/or Services
1	Infrastructure Sharing
2	Network Co-location

**APPENDIX 2 - CONFIDENTIALITY AGREEMENT FORMAT**

<b>COMPANY:</b> <b>Airzed Broadband Sdn Bhd</b>	<b>OTHER PARTY ("OP"):</b> 
<b>COMPANY REG. NO:</b> 599069-V	<b>COMPANY REG. NO:</b>
<b>ADDRESS:</b> 11th Floor, Yeoh Tiong Lay Plaza, 55 Jalan Bukit Bintang, 55100 Kuala Lumpur	<b>ADDRESS:</b> 
<b>CITY:</b> KUALA LUMPUR <b>POSTAL CODE:</b> 55100 <b>COUNTRY:</b> MALAYSIA	<b>CITY:</b>     <b>POSTAL CODE:</b>     <b>COUNTRY:</b>

This Non-Disclosure Agreement ("Agreement") is made by and between the above-named Parties in order that the Parties may exchange confidential information in furtherance of the Business Purpose set forth below.

**BUSINESS PURPOSE (tick one)**

- ☐ Explore the possibility of a business opportunity relating to | |
- ☐ For the work scope to be agreed with respect to | |
- ☒ Access Request under Reference Access Offer | |

**THE CONFIDENTIALITY TERMS AND CONDITIONS ATTACHED ARE INCORPORATED INTO THIS AGREEMENT AND WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COUNTRY SPECIFIED BELOW.**

**GOVERNING LAW** : Laws of Malaysia

**JURISDICTION** : Courts of Malaysia

Duration of the Agreement is twelve (12) months from the Effective Date ("**Validity Period**").

Notices shall be sent to the respective Party's address as specified above and to persons named below:

<b>If to COMPANY</b> <b>Attention: En. Amirluddin, Accountant</b> 11th Floor, Yeoh Tiong Lay Plaza, 55 Jalan Bukit Bintang, 55100 Kuala Lumpur, <b>Tel: 03-23302700</b> <b>Fax: 03-23302703</b> <b>Copy to:</b> Legal Department <b>Fax: 018799 8828</b> <b>Email: legal@yticomms.my</b>	<b>If to OP</b> <b>Attention:</b>      <b>Copy to:</b>  <b>Fax:</b>  <b>Email:</b>
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Company and OP agree to be bound by this Non-Disclosure Agreement (which includes the attached Confidentiality Terms and Conditions), effective as of the date the OP executes this Agreement.

**COMPANY**

**OP**

By: [ ]

By: [ ]

Name: [ ]

Name: [ ]

Title: [ ]

Title: [ ]

Date: [ ]

Date: [ ]

### **CONFIDENTIALITY TERMS AND CONDITIONS**

1. **Confidentiality.** Each Party will:

- (a) hold all Confidential Information in confidence and shall use the same means it uses to protect its own confidential information, but in any event not less than reasonable means, to prevent the disclosure and protect the confidentiality of information, whether oral or written, communicated to it by the Disclosing Party in connection with the Business Purpose;
- (b) use the Disclosing Party's Confidential Information only in connection with the Business Purpose;
- (c) limit the disclosure of the Confidential Information to its Representatives who have a "need to know" of such Confidential Information, and who shall have, prior to such disclosure, agreed to keep such information confidential and comply with the requirements of this Agreement. Where the disclosure by the Receiving Party is to third party consultants and/or advisors, the Receiving Party shall procure that such third parties enter into an agreement similar to this Agreement. The Receiving Party shall in any event be responsible or liable for any disclosure of Confidential Information or breach of the requirements of this Agreement by any of its Representatives. Save and except as aforementioned, the Receiving Party shall not disclose or otherwise provide any Confidential Information to any third party without the prior written consent of the Disclosing Party; and

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- (d) notwithstanding any provision herein, determine in its sole discretion what Confidential Information it shall disclose to the other Party, and nothing contained herein shall oblige any Party to disclose any Confidential Information requested by the other Party; and
- (e) neither copy nor use the Confidential Information except in relation to discussions for evaluation of the Business Purpose and/or finalisation of the details relating to the Business Purpose nor reverse engineer, de-compile or disassemble any Confidential Information.

The Parties agree that confidentiality obligations set out herein shall equally apply to any Confidential Information that is disclosed to a Receiving Party prior to the Effective Date.

2. Exclusions. Confidential Information will not include information which **(a)** was or becomes generally available to the public or is in the public domain other than as a result of disclosure by the Receiving Party or its Representatives to the public or any third party in violation of this Agreement, **(b)** becomes available to the Receiving Party from a source other than the Disclosing Party, provided that the Receiving Party has no reason to believe that such source is itself bound by a confidentiality or nondisclosure agreement with the Disclosing Party or otherwise prohibited from disclosing such Confidential Information by a legal, contractual or fiduciary obligation, **(c)** was rightfully in the Receiving Party's possession prior to receipt from the Disclosing Party, **(d)** is independently developed by the Receiving Party without the use of the Disclosing Party's Confidential Information and that the Receiving Party can demonstrate the same by written records, **(e)** is required to be disclosed by the Receiving Party by a governmental agency or law, so long as the Receiving Party provides the Disclosing Party with written notice of the required disclosure promptly upon receipt of notice of the required disclosure so that the Disclosing Party has an opportunity to review and comment on the proposed disclosure and if it wishes to do so (at its own cost), seek to defend, limit or protect against such disclosure, and the Receiving Party will disclose only that portion of the Confidential Information which is required to be disclosed. Nothing in this Clause will in any way prevent or unreasonably delay the obligation of the Receiving Party to comply with the said disclosure requirements; or **(f)** is authorised by the Disclosing Party in writing to be disclosed.
3. Duration of Confidentiality. Except as otherwise expressly agreed in writing by the parties, with respect to any particular Confidential Information, the Receiving Party's obligations under this Agreement shall be for the Validity Period until two (2) years from either the termination or expiry of the Agreement. Notwithstanding the foregoing, the Receiving Party shall hold all Personal Data disclosed to it strictly on a confidential basis, without any limitation in time.
4. Notification. The Receiving Party agrees to promptly notify the Disclosing Party upon discovery of any unauthorised use or disclosure of the Confidential Information caused by the Receiving Party and its Representatives and take reasonable steps to regain possession of the Confidential Information and prevent such further unauthorized actions or other breach of this Agreement.
5. Right to Terminate. The provision of Confidential Information and discussions held in connection with the Business Purpose will not prevent either Party from pursuing similar discussions or transactions with third parties, or obligate either Party to continue discussions with the other Party or to take, continue or forego any action relating to the Business Purpose. Any proposals, estimates or forecasts provided by either Party to the other Party will not constitute commitments. Either Party may terminate discussions regarding the Business Purpose at any time, without any liability or obligation whatsoever, except as expressly set forth in this Agreement. Either Party may terminate this Agreement by giving the other Party thirty (30) days prior written notice.
6. Return of Confidential Information. The Receiving Party shall within ten (10) days from either the termination or expiry of this Agreement or the written request of the Disclosing Party, return all Confidential Information to the Disclosing Party (including all copies thereof), delete all electronic records containing such Confidential Information from all computer files and cause its Representatives to do the same and certify in writing that all electronic records thereof have been deleted or destroyed. The Receiving Party, however, may retain one (1) archival copy of the Confidential Information for purposes of complying with the requirements of any applicable law, rule or regulation (including requirements of any applicable stock exchange) and/or for compliance with its corporate governance policies; provided, that such retained Confidential Information shall continue to be subject to the confidentiality provisions of this Agreement for as long as it is so retained without regard to duration of the confidentiality obligation set forth in Clause 3 above.



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7. Third Party Information. Either Party's Confidential Information may include information which belongs to a third party. In such event, such third party will be a third party beneficiary of this Agreement. Except as provided in the preceding sentence, this Agreement does not confer any rights or remedies upon any person or entity not a party to this Agreement.
8. Remedies. Upon any actual or threatened breach of this Agreement by the Receiving Party or its Representatives, the Receiving Party acknowledges that damages may not be a sufficient or adequate remedy and accordingly the Disclosing Party may seek specific performance or injunctive relief (as appropriate) against such breach, in addition to any other rights or remedies which such Party may have at law or in equity. If the Receiving Party is held liable to the Disclosing Party on account of this Agreement, the measure of damages will not include any amounts for indirect, consequential or punitive damages or lost profits.
9. No Licence. Nothing contained in this Agreement will be construed as granting or conferring any rights by license or otherwise in either Party's Confidential Information, except for the use of such Confidential Information as expressly provided in this Agreement.
10. Public announcements. Except to the extent required by law or in accordance with any regulatory or stock exchange requirements, or by mutual agreement between the Parties, neither Party shall make or issue, or cause to be made or issued, any announcement or statement regarding the Business Purpose for dissemination to the general public or any third party without the prior written consent of the other Party.
11. No Warranties or Further Rights. All Confidential Information disclosed under this Agreement is provided on an "as is" basis. Save as otherwise provided in separate written agreement(s) executed by the Parties, neither Party makes any representation or warranty, express or implied, with respect to any of its Confidential Information, including the accuracy, completeness or suitability for use of such Confidential Information or the non-infringement of Intellectual Property rights or any other rights of third parties. The Disclosing Party represents that it has the right to disclose the Confidential Information.
12. No obligation to enter further agreements. No Party shall be under obligation or commitment to enter into any further agreement with the other Party and/or any third party(s) by reason of the execution of this Agreement or the disclosure, evaluation or inspection of Confidential Information. Any agreement for such business relationship shall be at the discretion of the Parties and shall be evidenced by separate written agreement(s) executed by the Parties.
13. Data Protection. The Parties shall comply with all applicable laws and regulations including, without limitation, the requirements of the Personal Data Protection Act 2010. Where a Party discloses Personal Data to the other under this Agreement, the Receiving Party agrees to implement and operate appropriate technical and organisational security measures and only to act on the Disclosing Party's instructions in relation to that Personal Data.
14. Miscellaneous. **(a)** The relationship of the Parties is that of independent contractors. Neither Party will act or have authority to act as an agent of the other Party for any purpose whatsoever. This Agreement does not evidence or create an agency, partnership, joint venture or similar relationship between the Parties. **(b)** This Agreement will be binding on Company and OP and their successors and assigns, but neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party. **(c)** This Agreement sets forth the entire understanding of the Parties with respect to the subject matter of this Agreement. **(d)** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same counterparts. The exchange of copies of this Agreement and of signature pages by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by such electronic means shall be deemed to be their original signatures for all purposes. This Agreement may be modified only by a written instrument executed by the Parties. **(e)** Nothing in this Agreement shall preclude a Party from making, using, marketing, licensing or selling any independently developed technology, product or material, whether similar or related to the Confidential Information disclosed under this Agreement, provided the Party has not done so in breach of this Agreement. **(f)** Either Party may enter into any transaction with

## Part A – Applicability &amp; Scope of RAO

any third party in respect of the matters contemplated under this Agreement. **(g)** In the event of the invalidity of any provision of this Agreement, the Parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, and further agree to substitute for such invalid provision a valid provision that most closely approximates the intent and economic effect of the invalid provision. **(h)** Any failure by either Party to enforce strict performance by the other Party of any provision herein shall not constitute a waiver of the right to subsequently enforce such provision or any other provision of this Agreement. No single or partial exercise of any right or remedy shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy available. **(i)** Each Party shall bear its own solicitor's costs and costs of preparing, negotiating and executing this Agreement. **(j)** *The Receiving Party will not transfer, directly or indirectly, any product, technical data or software furnished hereunder or the direct product of such technical data or software to any country for which an export license or other governmental approval applicable to the Receiving Party is required without first obtaining such license or approval.* **(k)** Any notices to be given shall be in writing and shall be addressed as provided in above and if so addressed shall be considered as validly served if sent by personal delivery, upon delivery at the address of the relevant Party; if sent by prepaid mail, three (3) working days after despatch; or if sent by facsimile, at the time of despatch of the facsimile provided that the sender's transmission report shows that the entire transmission has been received by the recipient without error, provided that any facsimile sent and received after the close of business (i.e. 1700 hours) at the city of the Receiving Party as set out above, shall be considered as validly served only on the immediate following working day. Reference to "**working day**" means a day on which commercial banks are open for business in the Federal Territory of Kuala Lumpur, Malaysia (other than Saturdays, Sundays and public holidays). **(l)** Either Party may notify the other in writing of a change to its name, relevant address, addressee, facsimile number or email address as specified in this Agreement and such change shall only be effective on the date specified or if no date then 7 days after receipt.

15. Definitions. Unless the context otherwise requires, the following words and expressions shall have the following meanings:

<b>"Confidential Information"</b>	:	means all information, whether or not labelled as 'Confidential', 'Commercial In Confidence', 'P&C' or with other similar phrases or words, in any and all mediums (whether oral, written or otherwise), including without limitation, data, technology, know-how, inventions, discoveries, designs, processes, formulations, models, equipment, algorithms, software programs, interfaces, documents, specifications, information concerning research and development work, and/or trade and business secrets, current, planned or proposed products, marketing and business plans, forecasts, projections and analyses, financial information and prices, customer information, site information and Intellectual Property.
<b>"Affiliate"</b>	:	means with respect to either Party, any company which is now or during the term of this Agreement, directly or indirectly, through one or more intermediaries, controlling or is controlled by, or is under common control with, such Party. For these purposes, "control" of any company shall mean the ownership of, or the power to direct the voting of, more than fifty percent (50%) of the common stock or other equity interests having ordinary voting power for the election of directors (or persons performing comparable functions) of such company
<b>"Disclosing Party"</b>	:	means the Party and its Affiliates disclosing the Confidential Information or from whom the Confidential Information originates.
<b>"Effective Date"</b>	:	means the date of execution of this Agreement by OP.
<b>"Intellectual Property"</b>	:	includes patents, trade marks, service marks, rights in designs, trade names, copyrights, industrial designs and topography rights, whether or not any of them are registered, and including applications for registration of any of them, and rights under licences and consents in relation to any of them and all forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world.

Part A – Applicability & Scope of RAO

<b>“Party”</b>	:	means Company or OP (as the case may be) and Parties shall mean Company and OP collectively.
<b>“Personal Data”</b>	:	means any information in respect of commercial transactions, which (a) is being processed wholly or partly by means of equipment operating automatically in response to instructions given for that purpose; (b) is recorded with the intention that it should wholly or partly be processed by means of such equipment; or (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, that relates directly or indirectly to a data subject, who is identified or identifiable from that information or from that and other information in the possession of a Party, including any sensitive personal data and expression of opinion about the data subject; but does not include any information that is processed for the purpose of a credit reporting business carried on by a credit reporting agency under the Credit Reporting Agencies Act 2009.
<b>“Receiving Party”</b>	:	means the Party and its Affiliates to whom the Confidential Information is disclosed or given.
<b>“Representatives”</b>	:	with respect to either Party, means any employee, director or officer, or consultant and/or advisor who is either employed under a contract of employment, or is engaged under a contract of service, by that Party.

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Part B – List of Forms

**PART B – LIST OF FORMS**

The following are the list of forms referred to in this RAO:

1. Attachment 1 - Request for Access
2. Attachment 2 - Access Request Acceptance – RAO Response Form
3. Attachment 3 - Access Request Acceptance – Negotiation Response Form
4. Attachment 4 - Access Request Rejection Form
5. Attachment 5 - Request for Further Information

**Attachment 1 – Request for Access**

Notes to Attachment 1 Request for Access:

1. An Access Seeker who wishes to obtain access to the Access Services offered by Airzed must first complete and submit this form with all relevant data and supporting documents.
2. The footnotes contain instructions on how to complete the form. Incomplete or inaccurate Forms may be rejected by **Airzed Broadband Sdn Bhd** (“Airzed”)

To:

**Airzed Broadband Sdn Bhd**

11th Floor, Yeoh Tiong Lay Plaza,

55 Jalan Bukit Bintang,

55100 Kuala Lumpur

ATTENTION:

**R e q u e s t   f o r   A c c e s s**

We, <name of requesting party> (Co. No.           ), the holder of [specify license types] which are valid and subsisting and issued by the Minister of Communications and Multimedia, do hereby make this Request for Access:

**Section A      Contact Details**

Our Contact Details are:

Description	Contact Details
1. Address	
2. Telephone Number (General)	
3. Fax Number	
4. Contact person's name <sup>1</sup>	
5. Designation	
6. Telephone Number	
7. Mobile Number	
8. E-mail address	

---

<sup>1</sup> If the designated person has an alternate please specify the alternate's details (items 4 to 8)

Attachment 1 -Request for Access

**Section B Access Request**

- (a) the nature of the Access Services sought from Airzed ;
- (b) the forecasts of the capacity the Access Seeker may reasonably require for an initial 12 month period;
- (c) execute the Confidentiality Agreement attached as Appendix 2 of Part A to the RAO

We hereby make the following Request for Access:

1. Access To<sup>2</sup>:

[State the Name of Access Service]

Nature of Access Service	Detail Description of the Nature of Access <sup>3</sup>	Ready For Service (RFS) Date
		[Instruction: Specify the RFS date for each service which you require Airzed to grant access to]

2. Forecast for 12 Months

[Provide the forecast for the Access Services for 12 months]

3. Confidentiality Agreement

I confirm that a duly executed Confidentiality Agreement is attached with this request Form.<sup>4</sup>

4. Acceptance or Rejection of RAO terms

Instruction: Please select one or the other of the statements below:

- ☐ We accept that access will be provided to us by Airzed in accordance with the terms and conditions set out in the Reference Access Offer specifically.
- ☐ We wish to negotiate a separate Access Agreement.

<sup>2</sup> Please tick whether you seek access to Airzed's Access Services.

<sup>3</sup> Once you have so selected, please provide detailed description of the nature of the access you require.

<sup>4</sup> Non-compliance with this requirement may result in rejection of the Request for Access

Attachment 1 -Request for Access

**Section C Access Seeker Details**

1. General

The Access Seeker has elected to negotiate an Access Agreement. In furtherance of such election, we provide the following additional details of the various personnel who will be involved in the negotiation of an Access Agreement:

Names Details	Employee 1	Employee 2	Employee 3
Name			
Designation of person <sup>5</sup>			
Telephone No			
Fax No			
Mobile Phone No			
E-mail address			
Dates available for negotiations <sup>6</sup>			

---

<sup>5</sup> Please specify whether the person is an employee or independent consultant engaged by you.

<sup>6</sup> Please specify at least 4 sets of dates. The dates must at least be sufficiently close to be continuous, yet reasonably practical in the circumstances.



Attachment 1 -Request for Access

2. Negotiation Team Leader

Our negotiation team leader is [please specify name] who is [designation] of the Access Seeker, and we hereby confirm that the team leader is able to make binding representations, concessions and accept proposals made during the course of negotiations.

3. Request for Information from Airzed

The Access Seeker makes the following request for the provision of specified information by Airzed for the purposes of negotiation<sup>7</sup>:

Nature of Information Required from Access Seeker	Reason for Request
Instruction: Please identify the nature of information required from Airzed	Please give your reasons for requesting such information

4. Confidentiality Agreement

We enclose with this Form, the duly executed Confidentiality Agreement (), for your further action.

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<sup>7</sup> If there is no information needed DO NOT COMPLETE Section C/Item 3.

Attachment 1 -Request for Access

**Section D      Technical Requirements**

The following technical requirements are being provided:

1. Capacity forecasts

We will require the following capacity:

Identify type of Network Service	Description	Forecast capacity requirement

2. Types of Equipment to be installed under the Access Request
3. [State the type and quantities of the equipment to be installed under the Access Request. State the other details such as height of the Tower Space required and any other type of ancillary facilities required. Access Seeker's Network Information

The Access Seeker provides the following information about its network to Airzed: [Instruction: Please specify all necessary information relating to your network which may affect Airzed's network or facility in the course of providing the Access Services]

## Attachment 1 -Request for Access

**Section E Creditworthiness**

Prior to providing the requested Access Services, Airzed requires verification of your creditworthiness to ensure that you have the necessary financial resources to pay for the Access Services. In that regard, you are required to provide a certified financial statement by your auditors of your current financial position.

**Section F Insurance**

We confirm that we have affected the following insurance policies as at [date of request]:

Insurance type	e.g. Employer's All Risk	Workmen's Compensation	Social Security	Employer's Liability	General Liability
Risks	e.g. Public				
Persons Covered	e.g.[Access Seeker], [contractors],				
Amount insured	e.g. RM20 Million				
Period of validity	e.g. 3 years from 1 January 2017				
Name of Insurer	e.g. MAA Assurance				
Insurance					



Attachment 2 - Access Request Acceptance – RAO Response

**Attachment 2 – Access Request Acceptance – RAO Response**

Notes to Attachment 2 Access Request Acceptance:

1. Airzed Broadband Sdn Bhd (“Airzed”) will use this Form if it accepts the Request for Access (Attachment 1) issued by an Access Seeker and the Access Seeker has indicated that it will take the Access Service in accordance with the Reference Access Offer (“RAO”)

To:

[Name of Access Seeker] [Address]

ATTENTION: [The name of the contact person]

**A c c e s s R e q u e s t      A c c e p t a n c e**

**(RAO RESPONSE)**

We, Airzed Broadband Sdn Bhd (Co. No. 599069-V), as the Access Provider, wish to inform you, [name of Access Seeker], that in respect of your Request for Access dated [insert date] which was received by us on [insert date of receipt], as follows:

1. Pursuant to your statement in the Request for Access to take the Access Service in accordance with the terms and conditions of the RAO, we shall be forwarding to you within 10 business days of this letter:
  - i. two (2) copies of the RAO Agreement as set out in Part C of the RAO, executed by us, and
  - ii. one (1) copy of the executed Confidentiality Agreement returned by you in accordance with the Request for Access Form and executed by us.
2. You are required to execute the RAO Agreement (mentioned in paragraph 1(ii)) and return one copy of the same to us within 10 business days from your receipt thereof.

Dated: [insert date of document]

Signed by the authorised representative of Airzed

.....

Name:

Designation:

Date:

Company Stamp:

Attachment 3 – Access Request Acceptance – Negotiation Response

**Attachment 3 – Access Request Acceptance – Negotiation Response**

Notes to Attachment 3- Access Request Acceptance – Negotiation Response

1. Airzed Broadband Sdn Bhd (“Airzed”) will issue this form if it accepts the Request for Access (Attachment 1) issued by an Access Seeker and the Access Seeker has intimated that it wishes to negotiate the terms of the Reference Access Offer (“RAO”).

To:

[Name of Access Seeker] [Address]

ATTENTION: [The name of the contact person]

Access Request Acceptance

(NEGOTIATION RESPONSE)

We, Airzed Broadband Sdn Bhd (“Airzed”) (Co. No. **599069-V**), as the in respect of your Request for Access dated [insert date] which was received by us on [insert date of receipt], as follows:

1. Since you have indicated that you wish to negotiate the terms and conditions of the RAO, we hereby advise that we are willing to enter into such negotiations with you to reach agreement on the definitive terms. In that regard, Section 6 of Part A of the RAO (Negotiation Process) shall apply.
2. Pursuant to and in accordance with the Mandatory Standard on Access, the following information is provided to you:
  - (a) Airzed’s Nominated Personnel

Pursuant to your request to negotiate an access agreement, we provide the

Attachment 3 – Access Request Acceptance – Negotiation Response

following details:

Names Details	Employee 1	Employee 2	Employee 3
Name			
Status of person <sup>8</sup>			
Designation			
Telephone No			
Fax No			
Mobile Phone No			
E-mail address			
Dates available for negotiations <sup>9</sup>			

---

<sup>8</sup> Please specify whether the person is an employee or independent consultant engaged by you

<sup>9</sup> Please specify at least 4 sets of dates. The dates must at least be sufficiently close to be continuous, yet reasonably practical in the circumstances.

Attachment 3 – Access Request Acceptance – Negotiation Response

(b) Negotiation Team Leader

Our negotiation team leader is [please specify name] who is [designation] of Airzed, and we hereby confirm that the team leader is able to make binding representations, concessions and accept proposals made during the course of negotiations, subject to the final approval being given by the Board of Directors of Airzed.

(c) Request for Information from Access Seeker

Airzed request for the provision of the following information by the Access Seeker, which Airzed reasonably requires for the purposes of the negotiation:

Nature of Information Required from Access Seeker

[Set out the information Airzed requires]

(d) Confidentiality Agreement

We enclose with this Form, a duly executed Confidentiality Agreements ( ) for your records.

(e) Date, Time and Venue

The first meeting to commence negotiations is proposed to be at [specify venue] on [specify date] at [specify time].

Dated: [insert date of document]

Signed by the authorized representative of Airzed

.....

Name:

Designation:

Date:

Company Stamp:



Attachment 4 – Rejection of Access Request

**Attachment 4 – Rejection of Access Request**

Notes to Attachment 4 - Rejection of Access Request

1. Airzed Broadband Sdn Bhd (“Airzed”) will issue this Form if it rejects the Request for Access (Attachment 1) by an Access Seeker.

To:

[Name of Access Seeker]

[Address]

ATTENTION: [The name of the contact person]

**R e j e c t i o n O f A c c e s s R e q u e s t**

We, Airzed Broadband Sdn Bhd (“Airzed”) (Co. No. 599069-V), as the Access Provider, wish to inform you, [name of Access Seeker], that your Access Request dated [insert date] which was received by us on [insert date of receipt] is hereby REJECTED.

- A. The grounds of our rejection of your Access Request are set out below: [the grounds must be in accordance with section 5.4.11 of the MSA]
- B. The basis of our decision is set out below: [set out basis in numbered paragraphs] [if additional documents are being referred to, please attach them to this Form]
- C. Should you so desire, as provided in the MSA you are entitled to meet with our representatives [provide the names and designation of Airzed’s representatives] at [specify venue] on [specify date] at [specify time] to discuss this rejection of your Request for Access.

Dated: [insert date of document]

Signed by the authorized representative of Airzed

.....

Name:

Designation:

Date:

Company Stamp:

Attachment 5 – Request for Further Information

**Attachment 5 – Request for Further Information**

Notes to Form Attachment 5 – Request for Further Information:

- (ii) Airzed Broadband Sdn Bhd (“Airzed”) will issue this Form to acknowledge receipt of the Access Request (Attachment 1) issued by an Access Seeker, but requires additional information from the Access Seeker before deciding whether it is able to provide access or not.

To:

[Name of Access Seeker] [Address]

ATTENTION: [The name of the contact person]

**R e q u e s t F o r F u r t h e r I n f o r m a t i o n**

We, Airzed Broadband Sdn Bhd (“Airzed”) (Co. No. 599069-V), as the Access Provider, having considered the Request for Access by [name of Access Seeker], dated [insert date] which was received by us on [insert date of receipt], require the following additional information in order for us to decide whether to accept or reject your Access Request:

- [specify the additional information Airzed may require]

Dated: [insert date]

.....

Name:

Designation:

Date:

Company Stamp:

## **PART C – RAO AGREEMENT**

Dated this

day of

2017

Between

**(Name of Access Seeker)**

**(Company No.            )**

And

**AIRZED BROADBAND SDN BHD**

**(Company No. 599069-V)**

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**RAO AGREEMENT**

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## ARTICLES OF AGREEMENT

**BETWEEN:**

**AND**

**RECITALS:**

***Private and Confidential***

**Articles of Agreement**

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**NOW IT IS HEREBY AGREED AS FOLLOWS:**

1. In consideration of the Parties mutual promises, the Parties agree that the provision of Facilities and/or Services by Airzed to the Access Seeker shall be governed by the terms of this Agreement.
2. **General Scope and Structure of the Agreement**
  - (a) This Agreement governs the terms and conditions of access to the Facilities and Services. More specifically:-
    - (i) the Definitions and Rule of Interpretation are applicable to all documents consisting part of this Agreement unless otherwise stated;
    - (ii) the General Terms and Conditions govern the supply of the Facilities and/or Services unless otherwise stated;
    - (iii) the Terms and Conditions for Technical Matters govern the technical matters pertaining to the Services unless otherwise stated; and
    - (iv) the Terms and Conditions for Regulated Facilities and Services govern the supply of Regulated Facilities and/or Facilities and Services unless otherwise stated in this Agreement; and
    - (v) the Terms and Conditions for Non-Regulated Facilities and Services govern the supply of Non-Regulated Facilities and/or Facilities and Services unless otherwise stated.
3. **Conditions Precedent**
  - (a) This Agreement shall be effective upon the relevant portion of this Agreement requiring registration is duly registered with the Commission under section 150 of the Act in its entirety; and
  - (b) The Access Provider shall not be obliged to provide the Facilities and/or Services unless the Access Seeker has provided the Security Sum in accordance with **Condition 1.4** of the **General Terms and Conditions**.
4. **Conversion of Regulated Facilities and Services to Non-Regulated Facilities and Services and vice versa**
  - (a) In the event that a Regulated Service is removed from the Access List pursuant to a Determination by the Commission in accordance with section 146 of the Act, thereby becoming a Non-Regulated Service, that Service shall be deemed to be:-
    - (i) removed from the Terms and Conditions for Regulated Facilities and Services; and



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**Articles of Agreement**

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- (ii) incorporated into the Terms and Conditions for Non-Regulated Facilities and Services,

on the date the Regulated Facilities and Services is removed from the Access List as specified in the Commission's Determination.

- (b) In the event that a Non-Regulated Facility and/or Service is included into the Access List pursuant to a Determination by the Commission in accordance with section 146 of the Act, thereby becoming a Regulated Facility and/or Service, that Facility and/or Service shall be deemed to be:-

- (i) removed from the Terms and Conditions for Non-Regulated Facilities and Services; and

- (ii) incorporated into the Terms and Conditions for Regulated Facilities and Services,

on the date the Non-Regulated Facilities and Services is added to the Access List as specified in the Commission's Determination.

- (c) For purposes of **Articles 4(a) and 4(b)**, either Party may exercise its rights in accordance with **Clause 11.4 of the General Terms and Conditions**.

- 5. The following documents shall be deemed to form and be read and construed as an integral part of this Agreement:-

- (a) these Articles of Agreement;
- (b) Terms and Conditions for Regulated Facilities and/or Services;
- (c) Terms and Conditions for Non-Regulated Facilities and/or Services;
- (d) the General Terms and Conditions and the Terms and Conditions for Technical Matters including all annexures, appendices and schedules referred to therein; and
- (e) the Definitions and Rules of Interpretation.

- 6. If there is a conflict between or among the documents stated in **Clause 5**, the documents shall take precedence according to the order in which they are listed. If there are any conflicts between a document incorporating any annexures, appendices or schedules ("**main document**") and its annexures, appendices or schedules, the main document shall take precedence.

- 7. Notwithstanding Article 6, there shall be no order of precedence between the following:-

- (a) the General Terms and Conditions and the Terms and Conditions for Technical Matters;

***Private and Confidential***

**Articles of Agreement**

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- (b) the terms and conditions of the different Services within a particular category; and
- (c) the annexures, appendices and schedules unless expressly specified.

**8. Services Provided by the Access Provider**

- 8.1. The Access Provider agrees to provide the Access Seeker on the prices and terms and conditions set out in this Agreement those Facilities and/or Services requested by the Access Seeker in the Access Request Form submitted by the Access Seeker pursuant to the RAO and to which the Access Provider has accepted using the Access Request Acceptance - RAO Response Form in accordance with the terms of the RAO.
- 8.2. In addition to the Facilities and/or Services that are provided by the Access Provider to the Access Seeker as stipulated in Section 8.1 above, the Parties may, from time to time, mutually agree to add any of the following Services as listed below in accordance with Condition 4 of the General Terms and Conditions:

Item No.	List of Services
1.	Infrastructure Sharing Services
2	Co-location Services

- 9. The definitions of all words used in this RAO are contained in the Definitions and Rules of Interpretation of this RAO.

*[The remainder of this page is intentionally left blank]*

***Private and Confidential*****Articles of Agreement**

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**Structure of this Agreement**

This diagram is only a broad summary and illustration of the scope and structure of this Agreement. This diagram shall not limit or prejudice the interpretation or scope of the respective documents forming this Agreement.

<b>Structure of this Agreement</b>				
<b>Articles of Agreement</b>	<b>Definitions and Rules of Interpretation</b>	<b>General terms and Conditions</b>	<b>Terms and Conditions For Technical Matters</b>	<b>Terms and Conditions For Specific Facilities and/or Services</b>
Sets out the:  (a) generic scope of this Agreement; and  (b) list of documents forming part of this Agreement; and  (c) list of Facilities and Services which may be provided under this Agreement.	Sets out the definitions and rules of interpretation applicable to this Agreement.	Sets out the general terms and conditions for the provision of the Agreement from <b>Condition 1 to Condition 13</b>	Sets out the technical and operational matters applicable to the Facilities and/or Services.	Sets out the specific terms and conditions & the Charging Principles and Charges for Infrastructure Sharing and Network Co-Location.

***Private and Confidential***

**Articles of Agreement**

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

SIGNED by	)	
as authorised representative for	)	
<b>YTL COMMUNICATIONS SDN BHD</b>	)	
<b>(Company No. 793634-V)</b>	)	
in the presence of	)	
	)	
	)	
.....	)	
Signature of witness	)	
	)	
	)	
.....	)	.....
Name of witness	)	By executing this Agreement the
	)	signatory warrants that the
.....	)	signatory is duly authorised to
NRIC No. of witness	)	execute this Agreement on
	)	behalf of <b>AIRZED BROADBAND SDN BHD</b>
Occupation of witness	)	<b>(Company No. 599069-V)</b>

Definitions & Rules of Interpretation

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SIGNED by	)	
as authorised representative for	)	
<b>[Name of Access Seeker]</b>	)	
<b>(Company No.     )</b>	)	
	)	
in the presence of:	)	
	)	
	)	
	)	
.....	)	
Signature of Witness	)	.....
	)	By executing this Agreement the
.....	)	signatory warrants that the
Name of witness (block letters)	)	signatory is duly authorised to
	)	execute this Agreement on behalf of
.....	)	<b>(Name of Access Seeker)</b>
NRIC No. of witness	)	<b>(Company No.     )</b>
	)	
.....	)	
Occupation of witness	)	

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**Definition & Rules of Interpretation**

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**DEFINITIONS**

**&**

**RULES OF INTERPRETATION**

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**Definition & Rules of Interpretation**

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

**“Access Charge”** means the charges payable by the Invoiced Party to the Invoicing Party for accessing Facilities and/or Services provided by the Invoicing Party.

**“Access List”** means the list of Facilities and Facilities and/or Services in the Commission Determination on Access List Determination No. 2 of 2015 or any amendments thereto or any revised Commission Determination on Access List Determination as may be determined by the Commission from time to time under Chapter 3 of Part VI of the Act.

**“Access Provider”** means a network facilities provider who owns or provides Facilities and/or a network service provider who provides Facilities and/or Services under this Agreement, and who is a licensee as defined in the Act and to whom an Access Request has been provided or who is providing Facilities and/or Services under this Agreement;

**“Access Request”** means a request for access to the Facilities and/or Services by the Access Seeker to the Access Provider containing the information in **Condition 3.1.3 of the General Terms and Conditions** and any additional information requested under **Condition 3.5.1(a) of the General Terms and Conditions**;

**“Access Seeker”** means a network facilities provider, a network service provider, an applications service provider, or a content applications service provider who is a licensee as defined in the Act and who makes a written request for access to Facilities and/or Services and is being provided with Facilities and/or Services by Access Provider under this Agreement.

**“Access Service”** in relation to Facilities and/or Services listed in Section 8.2 of the Article of Agreement which is provided by the Access Provider;

**“Act”** means the Communications and Multimedia Act 1998 and includes all amendments thereto from time to time;

**“Agreement”** means this agreement consisting of the documents set out in **Clause 5 of the Articles of Agreement**, including any modification, amendment or addition thereto as may be agreed in writing between the Parties from time to time;

**“Associated Tower Sites”** means land owned, leased or tenanted by a Party surrounding or on which the tower is situated, including necessary right-of-way and permission to dig;

**“Bank Guarantee”** means the guarantee, in the form set out in **Annexure 2 of the General Terms and Conditions**, executed in favour of the Access Provider by a licensed bank approved by the Access Provider pursuant to **Condition 1.4 and/or Condition 3.2A of the General Terms and Conditions** on behalf of the Access Seeker;

**“Billing Dispute”** means the dispute of an Invoice prepared by a Party to the other Party which is made in good faith;

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**Definition & Rules of Interpretation**

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**“Billing Dispute Notice”** means the written notification made by a Party to the other Party in relation to a Billing Dispute in accordance with **Conditions 12.6.1 and 12.6.3 of the General Terms and Conditions**;

**“Billing Dispute Notification Period”** means the relevant period specified in **Condition 12.6.1 of the General Terms and Conditions**;

**“Billing Period”** means a one (1) calendar month period over which the supply to Facilities and/or Services is measured for the purposes of billing unless otherwise agreed between the Parties;

**“Billing Representative”** means a representative of the Party appointed in accordance with the billing procedures set out in **Condition 12.6.13 of the General Terms and Conditions**;

**“Billing System”** means a system to issue Invoices relating to Access Charges payable by the Invoiced Party under this Agreement;

**“Business Day”** means a day on which banks are open for general banking business in Kuala Lumpur, Wilayah Persekutuan or Selangor, other than Saturday or Sunday or a public holiday;

**“Charge(s)”** means sum(s) payable by one Party to the other Party for accessing and/or being provided the Facilities and/or Services;

**“Co-Location”** means the provision of space at the Access Provider’s building to enable the Equipment to be installed for Access Seeker’s services;

**“Commission”** means the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998;

**“Communications Service”** means the network facilities, network services, application services and/or content application services provided by the Party, as the case may be, pursuant to its License(s);

**“Confidential Information”** means the type of information as defined in **Condition 8 of the General Terms and Conditions**;

**“Creditworthiness Information”** means the information required by the Access Provider to assess the creditworthiness of the Access Seeker which are more particularly described in **Condition 3.2 of the General Terms and Conditions** and such other information as may be required from time to time;

**“Customer”** means, in relation to a Party, a person having a contractual relationship with that Party for the provision of communications by means of that Party’s Facilities and/or Services;

**“Determination”** means any lawful determination made by the Commission and/or Minister, pursuant to the Act;

**“Direction”** means any lawful direction made by the Commission and/or Minister, pursuant to the Act;



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**Definition & Rules of Interpretation**

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**“Due Date”** means, in respect of an Invoice, thirty one (31) days from the date of receipt of an Invoice;

**“Effective Date”** means the date on which this Agreement is duly registered with the Commission under Section 150 of the Act;

**“Equipment”** means any equipment (whether hardware or software), or device which is part of or within the Network;

**“Facilities”** means network facilities and/or other facilities which facilitate the provision of network services or applications services, including content applications services;

**“Facilities Access”** in relation to Regulated Facilities and/or Services, means a service for the provision of access to network facilities and/or premises;

**“Forecast”** means a forecast made by the Access Seeker pursuant to **Section II of the Terms and Conditions for Technical Matters**;

**“Force Majeure”** means any event, circumstance or cause which is not reasonably within the control of the Party affected, including but not limited to, an act of God, industrial disputes of any kind, war declared or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, explosion of meteor, governmental restraint and expropriation;

**“Infrastructure Sharing”** shall have the meaning as defined in **Clause 1.2, Section I – Infrastructure Sharing of the Terms and Conditions for Specific Facilities and/or Services**;

**“Instrument”** means any lawful instrument which is issued by the Commission pursuant to the Act;

**“Insurance Information”** means the insurance information required by the Access Provider pursuant to **Conditions 3.4 and 9.2 of the General Terms and Conditions**;

**“Invoice”** means the invoice for amounts due in respect of the supply of Access Service(s) during a Billing Period;

**“License”** means an individual or class license granted by the Minister pursuant to the Act for Communications Services;

**“Minimum Value”** for the purposes of calculating the Security Sum, means the total estimated value of access to the Services provided (based on the amounts invoiced for those Services) or to be provided to the Access Seeker for a ninety (90) day period ending on a date that is on or just before the date the Security Sum is calculated;

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

**“MSA”** means the Commission Determination on the Mandatory Standard on Access, Determination No.3 of 2016 and any amendments or modification thereof;

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**Definition & Rules of Interpretation**

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**“Network”** means network facilities and/or network services comprising a system, 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;

**“Network Boundary”** has the meaning given to that term in section 128 of the Act;

**“Network Capacity”** means equipment and facilities required to be installed in the Access Provider’s Network for use in the provision of one or more Services but does not include Interconnect Capacity;

**“Network Conditioning”** means the conditioning, equipping and installation of facilities at the Access Provider’s Network to enable the provision of one or more Services;

**“Network Co-location”** means an Access Service which comprises Co-location and which is necessary for the provision of an Access Service;

**“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 Agreement which facilitates the provision of network services or applications services including content applications services;

**“Order”** means an order placed by the Access Seeker pursuant to **Condition 4 of the General Terms and Conditions**;

**“Operator”** means a network facilities provider, a network service providers, an applications service provider, or a content applications service provider who is, an access provider or an access seeker as defined in the Access List Determination issued by the Commission;

**“Party”** means the Access Seeker or the Access Provider and **“Parties”** means the Access Seeker and the Access Provider collectively;

**“Physical Co-Location”** shall have the meaning assigned to it in **Clause 2.1(a), Section II – Network Co-Location of the Terms and Conditions for Specific Facilities and/or Services**;

**“Preparatory Work”** means all supporting task including supply and engineering services to be conducted in order for the Access Seeker to Co-Locate in Access Provider’s premises;

**“Reference Access Offer” or “RAO”** means the reference access offer issued by the Access Provider pursuant to the MSA and as modified from time to time;

**“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,

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**Definition & Rules of Interpretation**

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specified in this Agreement which facilitates the provision of network services or applications services including content applications services;

**“RM”** means Ringgit Malaysia which shall be the monetary currency used in this Agreement unless otherwise provided;

**“Security Sum”** means the security in the form of Bank Guarantee provided or to be provided by the Access Seeker to the Access Provider under **Condition 1.4** of the **General terms and Conditions** for the supply of Service(s) or under **Condition 3.3** of the **General terms and Conditions** for the supply of Facilities or Services;

**“Services”** means both the Regulated Services and Non-Regulated Services that are provided by the Access Provider to the Access Seeker under this Agreement;

**“Service Ordering Procedures”** means the procedures governing the forecasting, planning and ordering of relevant Service(s) as set out in this Agreement and the relevant Manuals;

**“Service Qualification”** means a desk and field study that may be conducted in accordance with **Condition 3.1.1 of the General Terms and Conditions** and includes the testing of a line to ascertain whether it could be used in response to an access request by the Access Seeker;

**“Standard Access Obligations”** has the meaning prescribed in Section 149 of the Act;

**“Technical Specifications”** means any technical parameters, specifications and procedures applicable to Interconnection of the Parties' Networks and provision of Services documented in the Manuals to the Access Agreements; and

**“Validity Date”** shall have the meaning as assign in Sub-section 2.1 (b), Section II, Network Co-Location Charging Principles and Charges of the Terms and Conditions for Specific Facilities and/or Services.

1.2 In this Agreement except where the contrary intention appears;

- (a) the singular includes the plural and vice versa; and
- (b) a document includes all amendments or supplements to that document, or replacements or novations of it; and
- (c) 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 to time relating thereto or in connection therewith; and
- (d) a reference to a person includes a firm, body corporate, unincorporated association or an authority; and
- (e) a reference to a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation), and assigns; and

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**Definition & Rules of Interpretation**

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- (f) 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
- (g) a reference to a related body corporate of an Party has the same meaning as in the Companies Act 1965; and
- (h) a reference to a third person is a reference to a person who is not a party to this Agreement;
- (i) headings are included for convenience and do not affect the interpretation of this Agreement; and
- (j) use of the word “include” or “including” means without limitation.

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**General Terms & Conditions**

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**GENERAL TERMS AND CONDITIONS  
OF THE AGREEMENT**

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**General Terms & Conditions**

**Condition 1**

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**CONDITION 1 – PRINCIPLES OF ACCESS AND INTERCONNECTION**

**2.1 Provision and Usage of Facilities and Services subject to Licence**

- 1.1.1 The Facilities and/or Services provided by the Access Provider shall at all times be subject to Facilities and/or Services which the Access Provider is permitted to provide under its Licence. Concurrently, the Facilities and/or Services provided to the Access Seeker shall only be used in connection with an activity or activities in which the Access Seeker is authorised to provide under its Licence.

**1.2 Principles of Non-Discrimination**

- 1.2.1 The Parties agree and acknowledge that the governing principle of this Agreement is that the Parties are, in respect of the provision of Facilities and/or Services, in an operator-to-operator relationship.
- 1.2.2 Consistent with section 149(2) of the Act, access to Facilities and/or Services provided by an Access Provider to the Access Seeker shall be:-
- (a) 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/or Services; and
  - (b) on an equitable and non-discriminatory basis.
- 1.2.3 However, nothing in this Agreement shall limit the Access Seeker's ability to freely request and agree on access to the Access Provider's Facilities and/or 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.

**1.3 Provision of Access Service**

The Access Provider may provide access to the Facilities and/or Services if:-

- i. an Access Request had been made by an Access Seeker to the Access Provider and the Access Provider has accepted the said Access Request;
- ii. the Access Provider is the legal owner of the Designated Infrastructure;
- iii. the Access Seeker has the appropriate License to operate the service for the purpose for which the Equipment is to be installed;
- iv. there is spare capacity at the relevant Designated Infrastructure and Associated Tower Site;
- v. any new installation by the Access Seeker will not exceed the structural loading of the relevant Designated Infrastructure;
- vi. an Access Agreement or the RAO had been entered into between the Operators; and
- vii. there are no circumstances disallowing the Access Provider from providing the Access Service.

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**General Terms & Conditions**

**Condition 1**

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**1.4 Security Sum**

1.4.1 Access Seeker shall have deposited the Security Sum (based on terms and conditions reasonable acceptable to Access Provider) as security for the performance of all Access Seeker's obligations under this Agreement within fourteen (14) days of the execution of this Agreement. The amount of the initial Security Sum shall be based on the Minimum Value calculated over a ninety (90) day period. For the purpose of clarification, the Security Sum does not relieve Access Seeker from its obligations to pay amounts to Access Provider as they become due and payable, nor does it constitute a waiver of Access Provider's right to suspend, disconnect, or terminate the relevant Facilities or Facilities and/or Services due to non-payment of any sums due or payable to Access Provider.

1.4.2 (a) Access Provider shall be entitled, from time to time, to revise the Security Sum in any of the following event:-

- (i) where, the amount of the Security Sum is less than the Minimum Value calculated over an immediately preceding period of ninety (90) days;
- (ii) where, in the reasonable opinion of Access Provider, there is a material increase in the credit risk to the Access Seeker due to changes in either or both of the circumstances under paragraphs 5.3.9(b)i and 5.3.9(b)ii of the MSA. For clarification, material change in circumstances includes failure to pay on the Due Date in respect of three (3) Invoices rendered in the preceding six (6) months, so long as those amounts have not been disputed in good faith provided that such revision is only carried out once in any twelve (12) month period; and/or
- (iii) upon the provisioning of new or additional Facilities or Services to Access Seeker, to ensure that the Security Sum is equivalent to the Minimum Value after taking into consideration the estimated value of new or additional Facilities or Services provided or to be provided over a ninety (90) day period commencing from the effective date of the supplemental agreement.

(b) Where the amount of the Security Sum is, at any time, less than the Minimum Value (including when a demand has been made by Access Provider) determined in accordance with **Condition 1.4.2(a)(i)** above, Access Seeker shall within twenty-one (21) Business Days from the written request of Access Provider, deposit a new security equivalent to the Minimum Value.

1.4.3 (a) The Security Sum deposited by the Access Seeker with the Access Provider shall only be used for the purposes set out in **Condition 1.4.1**. Access Provider may upon service of reasonable notice to the Access Seeker, call upon the Security Sum at any time after the Due Date (if payment has not been made by Access Seeker) or upon a breach of any of Access Seeker's obligation subject to the limitation on liability stipulated in

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**General Terms & Conditions**

**Condition 1**

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**Condition 9** of this Agreement (except for non-payment). For the avoidance of doubt, non-payment of any sum properly withheld in accordance with **Condition 12.6.4** shall not be a basis for the Access Provider to call upon the Security Sum as stipulated herein; and

- (b) Upon termination of this Agreement, Access Provider shall immediately in writing unconditionally waive its rights under any guarantee provided as Security Sum in respect of future performance (from the date of termination) of this Agreement by Access Seeker if any, since this Agreement has been terminated. However, the guarantee shall remain in full force in respect of any antecedent breaches under this Agreement,

without prejudice to the rights and remedies of Access Provider under this Agreement (including the right to claim for any or all amounts due and payable under the Agreement and/or to call upon the Security Sum) and/or under law.

**1.5 Provision of Information**

- 1.5.1 The obligations of each Party to provide information to the other Party are as set out in this Agreement or as otherwise agreed between the Parties and are subject to the requirements of confidentiality imposed by this Agreement.
- 1.5.2 A Party must provide the other Party on a timely basis with all agreed information reasonably required to determine charges to be billed by one Party to the other Party or by a Party to its Customers.
- 1.5.3 Such information, pursuant to **Condition 3** shall include information necessary:
  - (a) for the provision of the Facilities and/or Services;
  - (b) to plan and implement operational practices and procedures; and
  - (c) to design and build its network in such a way as will ensure that the Parties' networks are properly interconnected.
- 1.5.4 Information provided under this Agreement may only be used for the purpose for which it was given.
- 1.5.5 (a) Subject to the Act and any subordinate legislation, nothing in this Agreement may be construed as requiring a Party at any time to disclose to the other Party information which is at the date when this Agreement comes into force, the subject of a confidentiality obligation owed to a third person unless the third person consents to such disclosure. Where the consent of a third person is required, the Party holding the information must use its reasonable endeavours to obtain the consent of that third person.



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**General Terms & Conditions**

**Condition 1**

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- (b) After this Agreement comes into force a Party must use its best endeavours not to enter into any contract which would prevent it from making information available to the other Party unless the contract includes a term which permits the contracting Party to make the information available if directed to do so by the Commission.

3.10.6 The Parties further agree that the information provided for the purpose of this Agreement shall be subject to **Condition 8**.

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**General Terms and Conditions**

**Condition 2**

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**CONDITION 2 – PARAMETERS OF THE AGREEMENT**

- 2.1 The scope of this Agreement is, unless otherwise specified in this Agreement, limited only to the provision of Facilities and/or Services pursuant to Condition 1.1.
- 2.2 The Parties agree that this Agreement is not intended to govern the provision of any facilities and/or services not specified in this Agreement.
- 2.4 Except where this Agreement provides to the contrary, the rights and obligations conferred by this Agreement apply to the Parties as between two (2) Operators, the Access Provider being the provider of the Facilities and/or Services and the Access Seeker being the subscriber of the Facilities and/or Services.
- 2.5 For the avoidance of doubt, this Agreement is intended to apply only to the provision of Facilities and/or Services listed in Section 8 of the Articles of Agreement including any other Communication Services which may be added from time to time in writing to this Agreement and to related matters concerning the Parties and may not be construed as conferring benefits on third persons.
- 2.6 The Parties hereby agree and acknowledge that this Agreement in its entirety shall only be effective and enforceable upon registration of the relevant portion of this Agreement (which requires registration) with the Commission pursuant to section 150 of the Act. The Parties hereby agree and acknowledge that the Terms and Conditions for Non-Regulated Facilities and/or Services will not be lodged with the Commission for registration.
- 2.7 Each Party shall notify the other Party as soon as possible of all correspondences from the Commission pertaining to the registration of the relevant portion of this Agreement requiring registration. In the event that the Commission refuses or fails to register this Agreement or part thereof, the Parties shall negotiate in good faith to decide on the next course of action to secure registration of this Agreement under the Act.
- 2.8 Each Operator warrants and represents to the other that:
- (a) it has all requisite power, authority, licences, permits, and franchises, corporate or otherwise, to execute and deliver this Access Agreement;
  - (b) it has all requisite power and authority and either has or will have when and as required by all applicable Laws, all licences, permits and franchises, corporate or otherwise, to perform its obligations hereunder;
  - (c) its execution, delivery, and performance of this Access Agreement have been duly authorized by, or are in accordance with its constituent documents and that this Access Agreement has been duly executed and delivered for the respective Operator by the signatories so authorized and further that this Access Agreement constitutes

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**Condition 2**

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its legal, valid and binding obligation enforceable against it in accordance with the terms hereof; and

- (d) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which may have a material effect on its ability to perform hereunder.

- 2.9 Where a Party in this Agreement consists of more than one (1) company, all warranties, representations, indemnities, covenants, agreements and obligations given, undertaken or entered into by the Party are given, undertaken and entered into by all the companies comprising that Party, jointly and severally. Notwithstanding the foregoing, where the liability of such a Party is limited by any provision in respect of limitation liability, the liability of that Party shall not exceed the stipulated limit whether jointly or severally.

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**General Terms and Conditions**

**Condition 3**

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**CONDITION 3 – PROCEDURES FOR REQUESTING ACCESS SERVICE**

**3.1.1 If an Access Seeker:-**

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

such Access Seeker shall submit an Access Request in the format in Attachment 1, Part B of the RAO to the Access Provider. The Access Provider shall develop a process for desk/field studies and Service Qualifications that the Access Seeker may take up prior to granting access to the Facilities and/or Services (MSA 5.4.5).

3.1.2 The purpose of such Access Request is to provide the Access Provider with sufficient information to assess the Access Seeker's request for the Facilities and/or Services.

3.1.3 The Access Request must:

- (a) contain the name and contact details of the Access Seeker;
- (b) specify the Facilities and/or Services in respect of which access is sought;
- (c) indicate whether the Access Seeker wishes to either accept the Access Provider's terms of offering as stated in this Agreement for the Facilities or Services or negotiate different terms;
- (d) specify the ready for service date(s) for the Facilities or Services that is being sought by the Access Seeker;
- (e) contain the names of personnel(s) whom the Access Seeker nominates to represent the Access Seeker in access negotiations with the Access Provider, and in respect of each of those personnel:
  - (i) his or her contact details;
  - (ii) his or her job title; and
  - (iii) details of his or her availability for the access negotiations;
- (f) state the identity of the negotiating team leader whom shall have the authority to make binding representations on behalf of the Access Seeker in relation to matters

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**General Terms and Conditions**

**Condition 3**

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arising from the access negotiations (subject to final approval from the Access Seeker's Chief Executive Officer or Board of Directors, if required by the Access Seeker);

- (g) contain two (2) copies of confidentiality agreement properly executed by the Access Seeker in the form prescribed by the Access Provider, where there is no such confidentiality agreement already in force;
- (h) where applicable, specify forecasts of the capacity which the Access Seeker reasonably requires, having regard to the Access Provider's disclosed provisioning cycle and forecasting procedures as described in **the Terms and Conditions for Technical Matters**;
- (i) provide the 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;
- (j) contain confirmation that the Access Seeker is not currently being supplied with the Facilities or Services or if so, the reasons for the additional request for the Facilities or Services;
- (k) specify the type of Licenses held by the Access Seeker and a copy of the License where a copy had not been previously provided;
- (l) contain Creditworthiness Information as set out in **Condition 3.2**;
- (m) contain Insurance Information as set out in **Condition 3.3**;
- (n) relevant technical information relating to the interface standards of the Access Seeker; and
- (o) such other information that the Access Provider may reasonably request.

3.1.4 The Access Provider must provide the following information to the Access Seeker within ten (10) Business Days of receipt of a written request from that Access Seeker:

- (a) the Access Provider's description of each of the network facilities or network services that may be supplied by the Access Provider, such description to be consistent with the description (if applicable) of the network facilities or network services in the Access List;
- (b) the application forms required to be completed by the Access Seeker to apply for access to network facilities or network services;

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**General Terms and Conditions**

**Condition 3**

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- (c) a confidentiality agreement required to be executed by the Access Seeker, where there is currently none in force;
- (d) the Access Provider's current access charges for access to network facilities or network services, including individual and wholesale offerings;
- (e) details of the basis on which the Access Provider's current access charges are determined;
- (f) all relevant technical information relating to the network facilities or network services which may be the subject of the Access Request, including 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, that Access Provider's Network;
- (g) details of the Access Provider's provisioning cycles and any impact such cycles may have upon an Access Request by the Access Seeker (e.g. capacity constraints);
- (h) details of the Access Provider's quality of service targets and achievements in respect of the Facilities or Services;
- (i) any creditworthiness information, security and insurance requirements required by the Access Provider under Conditions 3.2, 3.2A and 3.3 respectively;
- (j) the Access Provider's reasons for failing to supply any of the information referred to in paragraphs (a) to (g) of this Condition 3.1.4.

The provision of information under this Condition 3.1.4 is subject to the Confidential Agreement.

**3.2 Creditworthiness Information**

3.2.1 The Creditworthiness Information that is required to accompany an Access Request are:

- (a) a letter, signed by the executive director 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;
- (b) a copy of the Access Seeker's most recently audited balance sheet and audited profit and loss statement.

**3.3 Security Sum**

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**General Terms and Conditions**

**Condition 3**

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- 3.3.1 Access Provider shall ensure that the amount and type of security requirements imposed on Access Seeker in its security policy, commensurate with:
- (a) the estimate of the value of access to the Facilities or Services to be provided to Access Seeker by Access Provider over a ninety (90) day period (“**Minimum Value**”);
  - (b) the creditworthiness of Access Seeker (including prior payment records of Access Seeker); and
  - (c) the security previously reasonably required by Access Provider (if any).
- 3.3.2 Access Seeker must provide the Security Sum to Access Provider in the form of a Bank Guarantee.

**3.4 Insurance Information**

- 3.4.1 In addition to **Condition 9.2**, the Access Provider may request for any additional insurances, the sum of which is to be specified by the Access Provider, prior to the provisioning of the Facilities or Services.

**3.5 Processing of Access Request**

**3.5.1 Access Provider’s Reply to the Access Request**

The Access Provider shall within ten (10) Business Days of receipt of the Access Request inform the Access Seeker in writing that it has received the Access Request and:

- (a) request for additional information from the Access Seeker where there is a need for further information prior to considering the Access Request. The Access Provider shall comply with Section 5.4.16 of the MSA when it requests for such additional information; or
- (b) indicate whether it is willing to provide access to the Facilities or Services under Condition 3.8 or if it is rejecting the Access Request in accordance to Condition 3.7
- (c) If the Access Provider is willing to provide access to Facilities or Services, the Access Provider shall (together with its notice of acceptance) indicate the Security Sum, any non-refundable processing fee and resource fee payable by the Access Seeker prior to the execution of the supplemental Access Agreement.

If the Access Provider requests additional information under **Condition 3.5.1(a)** and the Access Seeker provides the requested information to the Access Provider’s satisfaction, the

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**General Terms and Conditions**

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Access Provider shall within ten (10) Business Days of such response, provide the Access Seeker with a response under **Condition 3.5.1(b)**.

**3.5.2 Non-Refundable Resource Charge and Processing Fee**

- (a) The Access Provider may charge the Access Seeker a one-off non-refundable resource charge to be determined by reference to the reasonable costs incurred by the Access Provider for the allocation of manpower and other resources to enable the Access Seeker to test and provide Facilities or Services for the purposes of Interconnection. Before the Access Provider incurs the resource charge the Access Provider shall provide a quotation of the estimated charge for the approval of the Access Seeker.
- (b) Subject to **Condition 3.5.2(c)**, the Access Provider may charge the Access Seeker a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request.
- (c) The non-refundable processing fee is only applicable to Facilities or Services that can be offered and made available by the Access Provider.
- (d) The non-refundable processing fee for the respective Facilities and/or Services is set out in the **Charges and Charging Principles in Part B** of the **Terms and Conditions For Regulated Facilities and Services**. Processing fees for the Non-Regulated Facilities and/or Services not currently specified in the **Charges and Charging Principles** will be mutually agreed by the Parties from time to time.
- (e) In the event that additional and non-routine work is required in order to process the Access Request, the Access Provider may charge a separate reasonable fee for undertaking such additional work. Despite the above, before the Access Provider undertakes any additional and non-routine work, the Access Provider shall provide a quotation of the estimated charges for the approval of the Access Seeker. If the Access Seeker does not proceed with the Access Request accepted by the Access Provider, the processing fee will not be refunded to the Access Seeker.
- (f) The processing fee will be set-off against the Access Charges for the requested network facilities and network services upon the acceptance of the Access Request by the Access Provider pursuant to **Condition 3.8**.

**3.5.3 Non-permitted Information**

Notwithstanding anything else in this Agreement, an Access Provider shall not require an Access Seeker to provide any of the following information to the Access Provider (whether



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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):

- (a) the Access Seeker's proposed service launch date;
- (b) 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;
- (c) 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;
- (d) details of the Access Seeker's current or proposed retail charges;
- (e) details of the Access Seeker's marketing strategy or proposed client base;
- (f) financial information relating to the Access Seeker's business, except to the extent that such information may be required pursuant to the creditworthiness requirements in **Condition 3.2**; or
- (g) details of any other supply arrangements or agreements to which the Access Seeker is or may be a party, except to the extent that such details are directly relevant to technical characteristics of the requested access.

**3.6 Rejection of an Access Request**

**3.6.1 Reasons for Refusal**

Without limiting any other grounds that may be relied upon under the MSA, the Access Provider may refuse to accept an Access Request for the supply of a Facilities or Service and accordingly may refuse to supply that Facilities or Service to the Access Seeker for any of the following reasons (such reason to be provided to the Access Seeker in writing):

- (a) in the Access Provider's reasonable opinion, the Access Seeker's Access Request was not made in good faith;
- (b) in the Access Provider's reasonable opinion, the Access Request does not contain the information reasonably required by the Access Provider provided that the Access Provider has sought the information from the Access Seeker under **Condition 3.5.1 (a)**;
- (c) the Access Provider does not currently supply or provide access to the requested Facilities or Services to itself or to any third parties, except where the Access Seeker

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compensates the Access Provider for the supply of access to the Facilities or Services;

- (d) it is not technically feasible to provide access to the Facilities or Services;
- (e) the Access Provider has insufficient capacity or space to provide the requested Facilities or Services;
- (f) there are reasonable grounds in the Access Provider's opinion to believe that the Access Seeker would fail to make timely payment for the supply of the Facilities or Services;
- (g) 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 this Agreement and the terms and conditions applicable to the supply of the Facilities or Services; or
- (h) there are reasonable grounds for the Access Provider to refuse access in the national interest.

**3.6.2 Determination of technical infeasibility**

For the purposes of **Condition 3.6.1(d)**, the Access Provider shall not reject an Access Request on the grounds of technical infeasibility unless the Access Provider establishes that there are substantial technical or operational concerns preventing the fulfillment of the Access Request. The following shall be taken into account in determining whether access is technically feasible:

- (a) economic, accounting, billing, space or site concerns shall be disregarded by the Access Provider except to the extent 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;
- (b) any requirement for the Access Provider to modify its facilities or Equipment in order to meet the Access Request will not, of itself, mean that the access is not technically feasible;
- (c) 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 or services would result in a specific and significant adverse impact on Network reliability; and
- (d) the Access Provider must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this Condition) improvements that

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would allow the Access Provider to meet the Access Request (in whole or part and including for an interim period until any primary difficulties can be resolved).

**3.6.3 Determination of capacity constraints**

An Access Provider may only refuse an Access Request on the ground set out in **Condition 3.6.1(e)**, 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:-

- (a) already carrying traffic to capacity or near full capacity;
- (b) 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 operator 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 this **Condition 3**; and
- (c) in the case of both **Conditions 3.6.3(a) and (b)**, the Access Provider is unable to expand capacity within the period forecast by the Access Seeker on the Access Seeker's Access Request.

**3.6.4 Assessment of the Access Seeker's ability to pay for supply of the Facilities or Services**

Reasonable grounds in which the Access Provider may refuse in accordance with **Condition 3.6.1(f)** includes evidence that the Access Seeker is not, in the reasonable opinion of the Access Provider, creditworthy.

**3.6.5 Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of Facilities or Services**

Reasonable grounds in which the Access Provider may refuse in accordance with **Condition 3.6.1(g)** includes repeated failures by the Access Seeker to comply with the terms and conditions on which similar access to Services are being or have been provided (whether or not by the Access Provider).

**3.6.6 Assessment of Creditworthiness**

In determining the creditworthiness of the Access Seeker, the Access Provider:

- (a) may have regard to, but is not limited to the matters referred to in **Condition 3.2**; but

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- (b) 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.

**3.7 Notification of Rejection to the Access Seeker**

3.7.1 Where the Access Provider rejects the Access Request, the Access Provider shall within ten (10) Business Days of receiving the Access Request or additional information requested under **Condition 3.5.1(a)**, as the case may be:

- (a) notify the Access Seeker in writing of the Access Provider's rejection;
- (b) provide reasons for rejection under **Condition 3.5.1** to the Access Seeker;
- (c) provide the basis for the Access Provider's rejection of the Access Request; and
- (d) 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 **Condition 3.6.1(e)**, the Access Provider must identify when additional capacity is likely to be available.

3.7.2 Where the Parties are unable to resolve their differences following the meeting held pursuant to **Condition 3.7.1(d)**, either Party may request resolution of the dispute in accordance with **Condition 12**.

**3.8 Acceptance of Access Request**

3.8.1 Where the Access Seeker has requested under **Condition 3.1.3(c)** and the Access Provider agrees to provide access to the Facilities or Services to the Access Seeker in accordance with the terms and conditions as specified in this Agreement the Access Provider shall within ten (10) Business Days of such response under **Condition 3.5.1(b)**, provide the Access Seeker with a supplemental agreement that includes the Access Charges for execution by the Access Seeker.

3.8.2 With respect to **Condition 3.8.1**, the Access Seeker shall within ten (10) Business Days either, execute and return the supplemental access agreement to the Access Provider or

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indicate in writing to the Access Provider that it wishes to negotiate the supplemental agreement on different terms and conditions.

**3.9 Access Seeker elects to negotiate the Agreement**

- 3.9.1 (a) If the Access Seeker elects to negotiate the supplemental agreement under **Condition 3.1.3(c)**, the Access Provider must set a date and time not later than fifteen (15) Business Days from the date of Access Provider's response pursuant to **Condition 3.5.1(a)** at which the Access Provider representatives will be available for an initial meeting with the Access Seeker's representatives;
- (b) If the Access Seeker elects to negotiate the supplemental agreement under **Condition 3.7.2**, the Access Provider must set a date and time not later than fifteen (15) Business Days from the date of the Access Seeker's response under **Condition 3.7.2** at which the Access Provider's representatives will be available for an initial meeting with the Access Seeker's representatives.
- 3.9.2 Parties must use their best endeavours to conclude the supplemental access agreement within one hundred and twenty (120) days from the date the Access Seeker receives a written request from the Access Provider to commence negotiations.
- If negotiations are not completed within the one hundred and twenty (120) days period:
- (a) the Parties may jointly apply to the Commission for further time to negotiate and if the further time is not granted, the Parties are deemed to be in dispute and the Dispute Resolution Procedures in Condition 12 will take effect; or
- (b) either Party may initiate the Dispute Resolution Procedures in the Condition 12.
- 3.9.3 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 Access Service until:-
- (a) the Security Sum has been provided in accordance with **Conditions 3.3 and Condition 3.5.1(c)**; and
- (b) a supplemental agreement to this Agreement has been executed between the Parties and the terms in respect of the Facilities or Services are registered with the Commission in accordance with section 150 of the Act.
- 3.8.4 A Party shall co-operate, in good faith and in a commercially reasonable manner, in negotiating and implementing any supplemental to this Agreement, including this Agreement. This includes avoiding unnecessary disputes and resolving disputes promptly and fairly.

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3.8.5 For the purposes of this Condition, good faith requires that an Access Provider shall not:

- (a) refuse to negotiate terms of access not related to price for the reason that the price of access has not been agreed;
- (b) refuse to negotiate access to Facilities or Services because the Access Seeker has not agreed to acquire access to other network services or network facilities;
- (c) 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;
- (d) require an Access Seeker to warrant that supplemental agreement to this Agreement complies with all applicable laws;
- (e) refuse to include in supplemental agreement to this Agreement a provision permitting variation of this Agreement in the event of any change in rules, applicable laws or applicable regulations (including Commission decisions and Determinations);
- (f) make any negotiation conditional on the Access Seeker first obtaining any regulatory approval or consent;
- (g) intentionally mislead or coerce an Access Seeker into reaching an agreement it would not otherwise have reached;
- (h) intentionally obstruct or delay negotiations or any dispute resolution process;
- (i) fail to nominate representatives who have sufficient authority and sufficient availability to progress negotiations in a timely and efficient manner; or
- (j) fail to provide information that is necessary to conclude the supplemental agreement to this Agreement including:
  - (i) information about the Access Provider's Network that the Access Seeker reasonably requires to identify the Network elements to which it requires access; and
  - (ii) information about the basis of the determination of charges.

**3.10 Application of Condition 3 to Facilities and Services not listed in the Access List**

3.10.1 With respect to services which are not in the Access List, the Parties agree that:-

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- (a) the procedures and obligations under **Conditions 3.5.1, 3.6, 3.7 and 3.8** shall not apply to any Access Request for network services not listed in the Access List;
  - (b) where an Access Request for network services not listed in the Access List has been made by the Access Seeker, the Parties will arrange to meet within ten (10) Business Days from the date of the receipt of Access Request or such other date to be mutually agreed, to discuss the Access Request made by the Access Seeker; and
  - (c) where the Access Provider agrees to provide the requested network services, both Parties will negotiate the terms and such agreed terms and conditions shall be documented in a supplemental agreement (which shall not be registered with the Commission).
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**CONDITION 4 – ORDERING AND PROVISIONING OBLIGATIONS**

- 4.1** Orders for Access Service are to be delivered to the senior personnel of the Access Provider and the Access Provider shall notify the Access Seeker in writing from time to time of any change to the designated person(s).
- 4.2** 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:-
- (a) the Access Service to which access is requested;
  - (b) a requested date and time for delivery;
  - (c) the detailed address of the location of the points of delivery and location maps, if necessary;
  - (d) the Technical Specifications of the Equipment to be used in connection with the Order and its Technical Proposal;
  - (e) 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.
- 4.3** The Access Provider shall:-
- (a) 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;
  - (b) give the equivalent priority to the handling of all Orders and Service Qualifications in each queue; and
  - (c) otherwise treat all Orders and Service Qualifications in each queue in compliance with its queuing policy established under subsection 5.7.29 of the MSA.
- 4.4** The Access Provider must use its reasonable efforts to accept and fulfil Orders from the Access Seeker for Facilities and/or Services which comply with a Forecast accepted by the Access Provider pursuant to subsection 5.6 of the MSA.
- 4.5** In any case, the Operators shall comply with the Ordering and Provisioning obligation under section 5.7 of the MSA.
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**Condition 5**

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**CONDITION 5 – BILLING AND SETTLEMENT**

**5.1 Billing**

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

**5.1.2 Billing**

- (a) Subject to Condition 5.1.3 (k) below, the Operators agree that the Access Charges shall be payable by the Access Seeker to the Access Provider on or before the Due Date or upon receipt of the Access Provider's invoice, whichever is later. In the event the Commencement Date does not fall on the first (1<sup>st</sup>) day of the calendar month, the Access Charge for that calendar month shall be pro-rated accordingly.
- (b) 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.
- (c) All Invoices shall be delivered by hand or posted by registered mail or licensed courier to the Billing Representative and address of the Access Seeker as shall be notified in writing from time to time.
- (d) 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.
- (e) The billing cycles for the purposes of invoicing shall be in monthly Billing Periods or as stated in the relevant Service Specific Obligation unless otherwise mutually agreed by the Parties.
- (f) Where appropriate, any taxes (including GST), duties or other imposts (as at the date of this Agreement or imposed after the date of this Agreement) shall be added to all or any charges under this RAO or the Access Agreement and shall be paid by the Access Seeker.
- (g) The Good and Services Tax (GST) wherever applicable shall be applied as follows:

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- (i) If at any time the Invoicing Party is required under the GST Law to impose any goods and services tax or any similar value added tax (collectively, referred to as “GST”) for the provision of any Facilities or Services to the Invoiced Party, then, for the avoidance of doubt, any amount payable by the Invoiced Party under this Agreement shall be deemed to be net of such GST and the Invoiced Party shall be liable to pay to the Invoicing Party the GST in addition to such amounts payable. In this Agreement, “GST Law” means the Goods and Services Tax Act 2014, subsidiary legislations, statutory orders and regulations governing the application of GST, including any legislation passed to repeal and replace the Goods and Services Tax Act 2014.
- (ii) The Invoicing Party must, as a precondition to the payment of the GST under paragraph (a) above, give the Invoiced Party a tax invoice complying with the requirements of the GST Law.
- (iii) If an adjustment arises in connection with a supply made under this Agreement, the Invoicing Party must give the Invoiced Party a credit or debit note in accordance with GST Law.
- (iv) If this Agreement requires an Party to indemnify, compensate, pay for, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the other Party (“Reimbursable Expenses”), the amount required to be indemnified, compensated, paid, reimbursed or contributed by the Party will be increased by the amount of GST payable by the other Party (if any) and reduced by the amount of input tax credits (if any) to which the other Party is entitled in respect of the Reimbursable Expenses.

**5.1.3 Terms of Payment**

- (a) 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.
- (b) All payments:-
  - (i) must be paid by electronic transfer to the Access Provider or by cheque to the nominated account(s) of the Access Provider;
  - (ii) 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
  - (iii) unless otherwise agreed by the Operators, shall not be subject to any set-offs except where the Access Seeker is in liquidation or at least three (3) Invoices have been

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issued and such Invoices have not been paid.

- (c) All Invoices shall be stated in Ringgit Malaysia and payment must be made in Ringgit Malaysia.
- (d) Subject to Condition 5.3 below, it is hereby expressly agreed that the Invoicing Party is entitled to the payment of interest without prejudice to any other rights of the Invoicing Party. Interest on due and unpaid amounts is payable (as well as before judgment and after judgement) at the rate of two percent (2%) per annum above Malayan Banking Berhad Base Rate (BR) calculated daily from the Due Date until the date of actual payment. Payments which are overdue by more than sixty (60) days will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad Base Rate (BR) (as well before judgment and after judgement) calculated from the Due Date until the date of receipt by the Invoicing Party of full payment. Further, the BR rate to be used shall be the published rate prevailing on the date of payment.
- (e) 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.
- (f) If the Access Provider discovers an error in an Invoice given to the Access Seeker under this Condition 5, 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.
- (g) 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. 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.
- (h) 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

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on the said omitted Access Charge.

- (i) 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.
- (j) 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.
- (k) The Access Provider shall allow an Access Seeker to withhold payment of any amount disputed in good faith by the Access Seeker if:-
  - (ii) the Access Seeker notifies the Access Provider within twenty-one (21) days from the date of receipt of the Invoice of such dispute; and
  - (iii) the Access Seeker's notification specifies the information referred to in Condition 5.1.3 (k) hereof.

**5.3 Billing Disputes**

- 5.3.1 Where there is a Billing Dispute, the Parties shall comply with the dispute resolution procedures in **Condition 12**.
- 5.3.4 For the avoidance of doubt, the Access Seeker shall not use the dispute resolution procedure in **Condition 12** to avoid or delay payment due to the Invoicing Party where there is no genuine dispute.

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**CONDITION 6 – ACCESS CHARGES**

- 4.2 The charging principles of the Access Charges and the applicable Access Charges for the Facilities and/or Services are as detailed in Appendix 1 hereof and more specifically in the respective SLOs for the Sites.
- 4.3 The Access Seeker to whom access to the Facilities and/or Services is provided under this 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 Agreement.
- 4.4 All payment of Access Charges under this Agreement and the respective SLO for the Sites are non-refundable.
- 4.5 Nothing in this Condition 6 shall prejudice, limit or negate the rights and remedies of the Access Provider under this Agreement or law to seek redress or claim damages, cost and expenses for breach of this RAO or the Access Agreement by the Access Seeker, to enforce its right of indemnities, to claim interest and generally to enforce its rights and remedies.
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**CONDITION 7 - INTELLECTUAL PROPERTY RIGHTS**

7.1 All right, title and interest in and to any:

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

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

7.3 Each Party shall licence to the other Party on a royalty-free basis, all Intellectual Property rights necessary for the on-going operation of this Agreement and the inter-operability of the Parties' Networks but the terms of any such licence shall be subject to any relevant third party licences. The Parties agree that such Intellectual Property rights accorded to them shall only be used for purposes of this Agreement unless otherwise agreed in writing.

7.4 Each Party ("**Indemnifying Party**") indemnifies the other Party ("**Innocent Party**") against all liability or loss arising directly from, and all reasonable costs, charges and expenses incurred in connection with any claim, action, suit or demand alleging infringement by the Innocent Party of the rights of a third party arising from use by the Innocent Party of Intellectual Property disclosed or licensed by the Indemnifying Party under this Agreement provided that:

- (a) the Innocent Party notifies the Indemnifying Party without undue delay of any claim which would fall within the scope of this Condition 7.4, and provide the Indemnifying Party with all information which it may have in relation to such claim; and
- (b) the Innocent Party turns over to the Indemnifying Party sole and exclusive control of defending or settling the claim, subject to the Innocent Party having the right to be represented by counsel of its choice at its own expense and to participate in, and be kept informed of the status of such claim. If the Indemnifying Party should fail to defend or settle the claim, the Innocent Party shall have the right to do so without prejudice to any claim the Innocent Party may have against the Indemnifying Party for indemnity pursuant to this Clause; and

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- (c) the Innocent Party fully cooperates with the Indemnifying Party on the claim, including its defense and settlement.

This indemnification will represent the only remedy and form of compensation available to the Innocent Party in relation to the infringement of Intellectual Property licensed or disclosed by the Indemnifying Party under this Agreement.

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**CONDITION 8 – CONFIDENTIALITY OBLIGATIONS**

- 8.1 All Information relating to or arising from this Agreement and all matters contemplated herein shall be treated as Confidential Information by the receiving Party.

**“Confidential Information”** of an Party means all information of any kind, whether in written, oral, electronic format or otherwise, and whether or not labeled as “Confidential” including information relating to contract terms, know-how, ideas, concepts, technology and/or technical information, manufacturing processes, industrial, business, operations, financial conditions, customers’ information, pricing, marketing and commercial knowledge and all information of any kind relating to either Party, their respective shareholders and/or related or associated companies or corporation which are disclosed, submitted or howsoever made available, either directly or indirectly by or on behalf of one Party to the other or to their personnel relating to or developed in connection with or in support of the business of the Party, whether before or after the date of this Agreement.

- 8.2 Disclosure of Confidential Information to the Party’s advisers, consultants, employees, subsidiaries, holding or related companies within the meaning of section 6 of the Companies Act, 1965 (“Affiliates”), is permitted only if necessary and on a need to know basis for the purpose of performing the Party’s obligations under this Agreement and for purpose of **Condition 8.4 (e)** and provided that the undertaking of confidentiality shall extend to such parties.
- 8.3 The receiving Party hereby undertakes to protect the Confidential Information of the disclosing Party using, not less than the standard of care with which it treats its own Confidential Information, but in no event less than reasonable care, to prevent unauthorised use or disclosure of such information.
- 8.4 Except as otherwise provided in this Agreement, an Party (**“receiving Party”**) may disclose the Confidential Information of the other Party (**“disclosing Party”**) which information:
- (a) is or becomes part of the public domain (other than through any breach of this Agreement); or
  - (b) is received by the receiving Party from a third person without a duty of confidentiality being owed by the receiving Party to the third person, except where the receiving Party has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the disclosing Party; or
  - (c) has been independently developed by another party; or
  - (d) is required by law or by order of a court of competent jurisdiction or by any rule, direction or regulation of any regulatory or governmental authority or any other relevant authority, including a recognized stock exchange, to be disclosed, provided



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always that, to the extent permitted by law, prior to any such disclosure being made, the receiving Party shall notify and consult with the disclosing Party as to the proposed form, nature and purpose of the disclosure; or

- (e) is required to be made on a need to know basis to any investor or potential investor, financier or potential financier in connection with :
  - (i) an investment or potential investment;
  - (ii) an initial public offering of the Party's shares or the shares of its Affiliates for the purpose of listing on any stock exchanges; or
  - (iii) funding or potential funding for the Party or its Affiliates and such investor or potential investor or financier or potential financier, as the case may be, is bound by confidentiality obligations.

8.5 All Confidential Information (including copies of such Confidential Information) disclosed by or on behalf of the disclosing Party shall remain the property of the disclosing Party and shall be returned (or, at the disclosing Party's option, certified destroyed) upon written request or upon the receiving Party's need for it having expired, and in any event, upon completion or termination of this Agreement. The Parties agree that they shall within ten (10) days of written notice return or destroy all documents and tangible items in their possession which contain any Confidential Information and provide a certificate of destruction if such Confidential Information is destroyed. Even though the Confidential Information is returned or destroyed, each Party shall continue to be bound by its obligations in this Agreement. No rights or licenses to trademarks, inventions, copyrights, patents or trade secrets or other intellectual property rights are implied or granted under this Agreement. Neither Party shall use for its own benefit or the benefit of any third party any information disclosed from access to or work with the other Party's Confidential Information.

8.6 The Parties' obligations of confidentiality herein shall survive the expiration or termination of this Agreement.

8.7 The Parties acknowledged that a breach of this confidential obligation by one Party may cause the other Party irreparable damage for which monetary damage would not be an adequate remedy. Accordingly, in addition to other remedies that may be available (including recovery of monetary damages), an Party may seek injunctive relief against such a breach or threatened breach.

8.8 The confidentiality agreement executed by the Parties is attached hereto as Annexure 3.

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**General Terms & Conditions**

**Condition 9**

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**CONDITION 9 - LIABILITY AND INDEMNITY**

**9.1 General Principle**

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

**9.2 Insurance**

- 9.2.1 Without limiting or reducing each Party's liability and responsibility as contained elsewhere in this Agreement, each Party shall procure and maintain the following insurances applicable to its operations with respect to and for the duration of this Agreement provided that the Parties shall not be required to maintain additional insurances beyond that mentioned in **paragraphs (a) and (b)** below:-

- (a) 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 Agreement.
- (b) 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 Agreement resulting in bodily injury and/or personal injury including death and property damage of an Party which shall arise out of or in consequence of any acts or omission of the other Party.

**9.3 Damage to Property**

- 9.3.1 The Access Seeker shall indemnify and hold Access Provider 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 Access Provider arising out of any act or omission of the Access Seeker, 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 Facilities and/or Services or under this Agreement.

**9.4 Death and Personal Injury**

- 9.4.1 The Access Seeker shall be absolutely liable for, and hereby indemnifies Access Provider from and against all costs, expenses and claims in respect of all injuries to, including the death of any and all employees of Access Provider arising out of any act or omission of the Access Seeker, its servants or agent.

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**9.5 Third Person Indemnity**

9.5.1 The Access Seeker shall fully indemnify and hold the Access Provider safe and harmless from and against all costs, expenses and claims in respect of:-

- (a) all injuries to, including death of; and/or
- (b) 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 Access Seeker's breach or which is due to any acts, omission or default of the Access Seeker, its servants and/or agents in the carrying out of any works under this Agreement .

**9.6 Liability**

9.6.1 Neither Party excludes nor limits its liability for death or personal injury attributable to its own negligence or the negligence of its servants and agents.

9.6.2 Subject to **Conditions 7.4 and 9.5**, the Access Provider shall not be liable to the the Access Seeker or any other third party including the Customers of the Access Seeker and shall not indemnify Access Seeker for any claims, proceedings or actions brought or made by a third party against the Access Seeker, howsoever arising, including:

- (a) the lack of or loss or interruption or any delays to access, interconnection transmission or otherwise; and
- (b) any claims, proceedings or actions brought or made against the Access Seeker by any person pursuant to a contractual relationship with the Access Seeker.

9.6.4 Unless otherwise expressly provided, in no event shall either Party's liability under this Agreement exceed, Ringgit Malaysia Twenty Million (RM 20,000,000) per event for any accident or occurrence, in connection with this Agreement. The limitation of liability set out in this **Condition 9.6.4** shall not apply to obligations and/or liabilities relating to death, personal injury, damage to property, intentional default, amount due and payable under an invoice, breach of confidentiality, and to the indemnification obligations set out in **Condition 7.4** of this Agreement relating to breach of Intellectual Property rights.

**9.7 Exclusion of Warranties**

9.7.1 Except as expressly set out in this Agreement, all representations, conditions and warranties (whether express or implied, statutory or otherwise) including 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 the Access Provider are expressly negated

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and excluded. The warranties set forth in this Agreement are the only warranties made by the Access Provider and will not be enlarged or diminished without the Access Provider's approval.

- 9.7.2 In no event will either Party be liable to the other Party or any other person for loss of profits, loss of business, loss of use of data or exemplary, indirect, incidental, consequential or punitive damages of any kind for any reason, including the breach of this Agreement or any termination of this Agreement, whether such liability is asserted on the basis of contract, equity, tort (including negligence and strict liability) or otherwise, even if either Party has been advised of the possibility of such damages. The essential purpose of this provision is to limit the potential liability of each Party arising out of this Agreement.

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**Condition 10**

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**CONDITION 10 – TERMINATION AND SUSPENSION**

- 10.1 This Agreement shall only take effect on the Effective Date and shall remain in force until the termination of this Agreement. The License Term for each Site shall be for a period of at least three (3) years. Each Service License Offer (SLO) entered into pursuant to this Agreement prior to the early termination or expiry of this Agreement shall continue to be valid until the early termination or expiry of the respective SLO. The terms and conditions under this Agreement shall survive to govern the SLO until its early termination or expiry.
- 10.2 (a) A Party ("**Notifying Party**") may terminate this Agreement or part thereof if:-
- (i) the other Party ("**Defaulting Party**") fails to remedy a breach (which is capable of remedy) of a material obligation under this Agreement (including the events specified in **Condition 10.3(a)(iii) to (vi)**) within thirty (30) days of receiving a notice of breach from the Notifying Party;
  - (ii) a winding up order has been made against the Defaulting Party and the order remains or will remain in effect for a continuous period of thirty (30) days; or
  - (iii) an order is made or an effective resolution is passed, for the reconstruction and amalgamation of the Defaulting Party or otherwise under Section 176 of the Companies Act 1965 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 Party; or
  - (v) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of the Defaulting Party; or
  - (vi) the Defaulting Party fails to remedy breaches (which are capable of remedy) of any laws, regulations, rules or standards which has a material adverse effect on the Notifying Party or this Agreement or the provision of Facilities and/or Services, within thirty (30) days of receiving a notice of breach from the Notifying Party; or
  - (vii) a Force Majeure, substantially and adversely affecting the ability of an Party to perform its obligations to the other Party under this Agreement, continues for a consecutive period of ninety (90) days provided that the Notifying Party may not give notice under this Condition 10.2 unless the Notifying Party has negotiated or endeavoured to negotiate in good faith with the other Party to remedy the Force Majeure and amend the terms of this Agreement to enable this Agreement to remain in full force and effect notwithstanding such inability to so perform but has failed to reach any agreement within thirty (30)

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days from the commencement of negotiations or such other period as mutually agreed.

- (b) Upon the occurrence of the events set out in **Condition 10.2** above or where a breach is incapable of remedy, and subject to the provision of **Condition 10.4** below, the Notifying Party may terminate this Agreement by issuing a termination notice to the Defaulting Party/other Party (in the case of Force Majeure) and this Agreement shall terminate in accordance with the terms of the termination notice.
- 10.3
  - (a) In the case if the Notifying Party is the Service Provider, the Notifying Party may, without liability, suspend, to the extent necessary, access to its Facilities and/or Services where:
    - (i) the Defaulting Party fails to remedy a breach (which is capable of remedy) of a material obligation under this Agreement (including the failure to pay Invoices which are not subject to a Billing Dispute in accordance with this Agreement within thirty (30) days of receiving a notice of breach from the Notifying Party;
    - (ii) the Defaulting Party fails to remedy breaches (which are capable of remedy) of any laws, regulations, rules or standards, which has a material adverse effect on the Notifying Party or this Agreement or the provision of Facilities and/or Services within thirty (30) days of receiving a notice of breach from the Notifying Party;
    - (iii) the Defaulting Party fails to remedy any fault or condition (which is capable of remedy), that causes the Defaulting Party's network facilities to materially and adversely affect the normal operation of the Notifying Party's Network, or are a material threat to any person's safety;
    - (iv) the Defaulting Party fails to remedy any condition (which is capable of remedy), that causes the Defaulting Party's network facilities or supply of a network service to pose an imminent threat to life or property of the Notifying Party's, its employees or contractors;
    - (v) the Defaulting Party fails to remedy any fault or condition (which is capable of remedy) in the Defaulting Party's network facilities that cause material physical or technical harm to any network facilities of the Notifying Party or any other person; or
    - (vi) the Defaulting Party fails to settle any three (3) outstanding Invoices due to the Access Provider in accordance with **Condition 5**, unless otherwise agreed in writing by the Parties; or
    - (vii) subject to **Condition 13.1.1**, where Force Majeure applies.
  - (b) Upon the occurrence of the events set out in **Condition 10.3 (a)** above or where a breach is incapable of remedy and subject to the provision of **Condition 10.4** below,

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the Notifying Party may suspend access to its Facilities and/or Services by issuing a suspension notice and the suspension of access to the Notifying Party's Facilities and/or Services shall take effect in accordance with the terms of the suspension notice.

- (c) During the period of suspension, the Notifying Party shall be entitled to charge the Defaulting Party for all fixed periodic Access Charges in respect of the Facilities and/or Services, provided that, where a suspension is due to Force Majeure, the fixed periodic Access Charges for Facilities and/or Services affected by the Force Majeure only will not be charged. The Defaulting Party shall be solely responsible for any loss, costs, damages or expenses which the Defaulting Party may incur or suffer during the period of suspension.

- 10.4 (a) Where the Notifying Party is the Access Provider and seeks to terminate the Agreement (or part thereof) or suspend, to the extent necessary, access to Facilities and/or Services on any grounds including those specified in:-

- (i) **Conditions 10.2 (a)(i) to (vii)** with respect to termination; and/or
- (ii) **Conditions 10.3 (a)(i) to (vi)** with respect to suspension,

the Notifying Party shall first notify the Commission (such notification to be copied immediately to the Defaulting Party) in writing of such action and specify the reasons for such action ("**Notice to the Commission**").

- (b) If the Commission notifies the Notifying Party that the Notifying Party is permitted to:-
  - (i) terminate this Agreement (or part thereof); or
  - (ii) suspend access to the Facilities and/or Services,

the Notifying Party may, issue a termination or suspension notice to the Defaulting Party and this Agreement shall terminate or access to Facilities and/or Services shall suspend (as the case may be) in accordance with the terms of the notice. The Notifying Party shall not terminate or suspend until such time and on such conditions as the Commission may specify.

- 10.5 Subject to **Condition 10.4**, the issuance of a suspension notice shall not in any way prejudice or prevent the Notifying Party from exercising its right to issue a termination notice under **Condition 10.2**.

- 10.6 In the event the Notifying Party suspends access to Facilities and/or Services by reason of the Defaulting Party's failures set out in **Condition 10.3**, the Notifying Party must reinstate access to Facilities and/or Services upon the Defaulting Party remedying its failure or the direction of the

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Commission.

10.7 Notwithstanding **Condition 10.4**, in the event that:-

- (a) a Party's Licence(s) is terminated, cancelled or suspended and the Party is not immediately granted another Licence(s) of that type (where a License of that type or another License is required); or
- (b) there is any change in law or regulation which renders this Agreement or access to any Facilities and/or Services unlawful,

the Agreement or part thereof shall terminate in so far as the Agreement or part thereof is affected by the termination of an Party's Licence(s) or change in law or regulation. However, other obligations under this Agreement which are not affected by such events shall remain in force. The Parties shall meet within five (5) Business Days of the affected Party notifying the other Party of the events specified in paragraphs (a) or (b) above, review the Agreement to ascertain whether access to the Facilities and/or Services are lawful and may be provided on different terms which are mutually agreeable by both Parties.

10.8 Notwithstanding anything to the contrary, in the event a Party breaches any of its obligations under this Agreement, the other Party shall, without prejudice to any of its rights and remedies under the Agreement and under law, have the absolute discretion to immediately seek urgent interlocutory action which shall include:-

- (a) preventing such further breaches from occurring;
- (b) preventing the continuation of the said breach; and/or
- (c) requiring the Party in breach to comply with their obligations under this Agreement,

without the necessity of first exercising any of its rights herein. For the avoidance of doubt, **Conditions 10.2, 10.3, 10.4 and 12** shall not preclude the other Party from immediately seeking urgent interlocutory action under this Clause.

10.9 If, after the termination or expiry of this Agreement in whole or in part:

- (a) a Party ("**requesting Party**") gives the other Party written notice requesting the other Party to carry out necessary disconnection works and to return any equipment or facilities of the requesting Party or a third person installed by or for the requesting Party; and
- (b) the other Party has failed to comply with the request in (a) above, the requesting Party may enter the premises of the other Party on reasonable notice for the purposes of carrying out any necessary disconnection works and repossessing any such equipment and facilities. The other Party on whose premises such equipment or facilities were installed is responsible for compensating the requesting Party for any such equipment or facility which is not delivered up in good condition (fair wear and tear excepted) and for making good all the damage to the requesting Party's



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premises, if the equipment or facilities of the other Party are in the requesting Party's premises or under the requesting Party's care. The other Party shall indemnify the requesting Party in respect of any damage thereby caused to the premises, equipment and facilities of or under the care of the requesting Party.

**10.10** Upon termination of this Agreement or part thereof:

- (a) subject to Condition 10.10 (b) below the Access Provider shall refund to the Access Seeker within sixty (60) days all amounts paid in advance in respect of Facilities and/or Services to the extent that the amount (or part of the amount calculated on a pro-rata basis) relate to the period after the effective date of termination; and
- (b) the Access Seeker shall immediately pay all amounts due to the Access Provider for the provision of Facilities and/or Services prior to and up to the effective date of termination (save for disputed amounts which the Access Seeker is entitled to withhold under **Condition 12.6.4**).

For the avoidance of doubt, the Access Provider shall be entitled to claim for all Access Charges arising during an applicable minimum contractual period provided under this Agreement notwithstanding that the provision of Facilities and/or Services was terminated prior to the expiry of the applicable minimum period save that where the provision of Facilities and/or Services is terminated due to Force Majeure, the minimum charge for Facilities and/or Services affected by the Force Majeure shall not be applicable during the period of Force Majeure.

**10.11** Upon termination of this 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. Nothing in this **Condition 10.11** shall prejudice, limit or negate the rights and remedies of the Access Provider under this Agreement or law to seek redress or claim damages, cost and expenses for breach of this Agreement by the Access Provider, to enforce its right of indemnities, to claim interest and generally to enforce its rights and remedies.

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

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**General Terms & Conditions**

**Condition 11**

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**CONDITION 11 - REVIEW**

11.1 Subject to **Condition 11.4**, if:-

- (a) the Minister issues a Direction or Determination relating to the subject matter of this Agreement;
- (b) the Commission issues a Direction or Determination relating to the subject matter of this Agreement;
- (c) there are any amendment, changes or modifications to the Act, its subsidiary legislation and the instruments issued thereunder including the Access Pricing Determination, the MSA and the Access List Determination which relates to the subject matter of this Agreement;
- (d) enactment of new laws and regulations which relates to the subject matter of this Agreement;
- (e) the registration, Determination, promulgation, issue, amendment or replacement of any industry code with which a Party is required or obliged to comply;
- (f) if a condition of a Party's Licence is amended or deleted or a new condition is imposed which relates to this Agreement; or
- (g) by agreement of each of the Parties,

the Parties 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 Agreement, the Parties shall negotiate, as soon as practicable and in good faith, such amendments to this Agreement as are necessary or appropriate to ensure compliance with such changes.

11.2 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 Party in making or keeping its Network and/or Facilities available, or maintaining its Network and/or Facilities, then either Party will be entitled to request for a review of the Access Charges which are affected by it and the Parties will in good faith negotiate any amendments to this Agreement.

11.3 The obligation to negotiate set out in **Conditions 11.1 and 11.2** commences promptly after delivery of a notice from one Party to the other Party setting out in reasonable detail, the amendments sought.

11.4 (a) If a Facility and/or Service is removed from the Access List pursuant to a revocation or an amendment to the Access List:

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- (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 Parties 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 Parties 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 Parties, then the Access Provider shall be entitled to terminate or withdraw that network facility or network service under **Condition (a)(i)(A)** above. In such a case, the notice period referred to in **Condition 11.4(c)**, shall commence from the date of the Access Provider's notice to vary the terms. Nothing in this **Condition (i)(B)** shall prevent the Access Seeker from terminating the affected network facility or network service at any time in accordance with **Condition 11.4(a)(ii)(A)**.
- (ii) the Access Seeker may by giving notice to the Access Provider either:-
  - (A) terminate that network facility or network service; 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 Parties 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 Parties 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 Parties, the Access Seeker may terminate or withdraw that network facility or network services in accordance with **Condition 11.4(a)(ii)(A)**. Nothing in this **Condition 11.4(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 **Condition 11.4(a)(i)(A)**.
- (b) If there is a variation or amendment to the Access List service description of a Facility and/or Service, either Party 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 Parties shall, within fourteen (14)

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days, from the date of the written notice by the notifying Party, first discuss the variation or modification proposed to be adopted (“**preliminary meeting**”). Thereafter, if the Parties fail to agree on the amended terms and conditions within one hundred and twenty (120) days from the preliminary meeting or such other time as may be mutually agreed in writing by the Parties, then either Party may initiate the dispute resolution procedures in **Condition 12**. Nothing in this **Condition 11.4(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 period given pursuant to **Condition 11.4(a)(i)(A)** and **11.4(a)(ii)(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
  - (ii) twelve (12) months,whichever is the earlier.
- (d) The notice given pursuant to **Condition 11.4(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 Parties 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.

**11.5 For the avoidance of doubt:**

- (a) the variation of the Agreement pursuant to **Condition 11.4** shall not be subject to the approval process required under **Condition 13.8.1(b)**; and
- (b) the provisions of this Agreement shall remain in full force and effect during any negotiations conducted under this **Condition 11** until commencement of an agreement replacing or amending this Agreement.

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**Condition 12**

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**CONDITION 12 – DISPUTE RESOLUTION PROCESS**

**12.1. Introduction**

12.1.1 Subject to **Condition 12.2.3**, 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 Access Provider in relation to or in connection with the supply of any Facilities and/or Services (“**Access Dispute**”).

12.1.2 The following dispute resolution mechanisms are governed by this Condition:

- (a) inter-party working groups;
- (b) Interconnect Steering Group; and
- (c) specific resolution of disputes, being:
  - (i) technical disputes (which must follow the procedures set out in Condition 12.5 if they cannot be resolved through the application of the general dispute resolution provisions in Conditions 12.3 and 12.4);
  - (ii) Billing Disputes, which must follow the procedures set out in **Condition 12.6**; or
  - (iii) any other types of disputes which, if cannot be resolved through the application of the general dispute resolution provisions in **Conditions 12.2, 12.3 and 12.4**, must be referred to the Commission for resolution.

12.1.3 A dispute between the Parties regarding any matter dealt with under this Agreement shall first be attempted to be resolved by good faith negotiation between the Parties in accordance with this Agreement.

12.1.4 All disputes referred to the Commission pursuant to this Agreement shall be dealt with in accordance with the Act. Where the decision of the Commission is appealed in the Appeals Tribunal under the Act, the decision of the Appeals Tribunal shall be final and binding subject always to the right of judicial review contained in the Act.

**12.2 General**

12.2.1 Until expiry of the dispute resolution procedures set out herein, a Party may not commence court proceedings relating to that dispute, other than an application for purposes set out in **Condition 13.2.2**. Nothing in this **Condition 12.2.1** shall be construed as ousting the jurisdiction of any court.

12.2.2 A Party shall ensure that its representatives acting in relation to a dispute are of sufficient seniority and have authority to settle an access dispute on behalf of the Party. At the commencement of the dispute resolution procedure, each Party must notify the other Party

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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, a Party may require that those matters be referred to more senior officers of that Party who have authority to settle those matters.

- 12.2.3 During a dispute and any dispute resolution process invoked in accordance with this **Condition 12**, an Access Provider and Access Seeker must continue to fulfill their obligations under this Agreement between themselves.
- 12.2.4 Subject to **Condition 12.2.5**, the Parties shall exchange information of a type described in this Agreement during the course of, and to facilitate, resolution of such a dispute.
- 12.2.5 Confidential information of a Party which is disclosed, and any other oral or written submissions made by a Party or a Party's representatives during the course of any dispute resolution process will be subject to the confidentiality restrictions contained in the Confidentiality Agreement and this Agreement.
- 12.2.6 A Party must not use information obtained under **Condition 12.2.4** or described in **Condition 12.2.5** for any purpose other than to resolve the dispute.
- 12.2.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of a dispute (including a Technical Expert (as hereinafter defined) or the Commission, in accordance with this **Condition 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.
- 12.2.8 The costs of the arbitration are to be shared equally between the Parties, unless the arbitrator of the dispute has decided not to determine the dispute in accordance with **Condition 12.2.7**. If an arbitrator decides not to determine the dispute, the Party that initiated the dispute must pay the costs of the arbitration including the other Party's costs thereto.

**12.3 Inter-Party Working group**

- 12.3.1 In the first instance, the Party raising a dispute must inform the other Party in writing and the Access Seeker and Access Provider should attempt to resolve the Access Dispute between themselves in good faith.
- 12.3.2 An Access Provider and Access Seeker shall establish a working group, or working groups, to fulfill the requirements set out in **Condition 12.3.1**. The working group shall be comprised of representatives of the Parties, 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.

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12.3.3 The Access Provider shall provide for:

- (a) subject areas dealt with by each working group;
- (b) equal representation by the Access Seeker and the Access Provider;
- (c) chairmanship and administrative functions of the working group which is to be shared equally; and
- (d) formal notification procedures to the working group.

12.3.4 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 forty five (45) days from the first meeting of the working group or such other period as the Parties may agree in writing, subject always to an Party's right to obtain relief in court as set out in **Condition 13.2.2**.

**12.4 Interconnection Steering Group**

12.4.1 In the event that the Parties cannot resolve the dispute between themselves within the time specified in **Condition 12.3.4**, or after any agreed time extension has expired, either Party may give ten (10) Business Days written notice ("**Notice Period**") to the other Party stating its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice Period, then either Party may notify the other Party ("**Receiving Party**") that it wishes to refer the issue to the Interconnect Steering Group (**ISG**). In such an event, the Parties shall promptly form a committee comprising the ISG with an equal number of appropriate representatives from each Party.

12.4.2 The ISG to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Party of a notice under **Condition 12.4.1**. If the ISG fails to meet or has not been formed within ten (10) Business Days of the receipt by the Receiving Party of a notice of escalation of the Dispute, either Party may refer the dispute to a Technical Expert (in accordance with **Condition 12.5**) or to the Commission for resolution in accordance with **Conditions 12.4.3(a) or (b)**, respectively.

12.4.3 If the ISG does not resolve the dispute within twenty (20) Business Days after it first meets to review that dispute under **Condition 12.4.2**, either Party may:

- (a) refer any technical dispute to a Technical Expert in accordance with **Condition 12.5**;  
or
- (b) refer the dispute to the Commission for final resolution.

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**12.5 Use of a Technical Expert**

- 12.5.1 A dispute will only be referred to a Technical Expert if the provisions in **Conditions 12.3 and 12.4** have been complied with.
- 12.5.2 Once a dispute is referred to a Technical Expert, it may not be referred back to a working group or ISG.
- 12.5.3 The Technical Expert:
- (a) will be an expert appointed by agreement of the Parties or, if the Parties cannot agree, by the Commission;
  - (b) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communication industry;
  - (c) need not be a Malaysian citizen or resident; and
  - (d) will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interest.
- 12.5.4 If the Parties 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.
- 12.5.5 When relying on the services of a Technical Expert, the following procedures will apply to the dispute resolution procedure of the Technical Expert:
- (a) the Parties will present written submission to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and
  - (b) 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.
- 12.5.6 A Technical Expert hearing will be within fifteen (15) Business Days of the last written submission unless:
- (a) a Party requests for and the other Party agrees that the use of the Technical Expert be by documents only; or
  - (b) failing agreement of the Parties, the Technical Expert decides within five (5) Business Days of the last written submission that the use of the Technical Expert be by documents only.
- 12.5.7 Should a Technical Expert dispute resolution procedure hearing be held, each Party will have the opportunity of making an oral submission. This process will be conducted in private.



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12.5.8 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Parties) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.

12.5.9 The Technical Expert will not have the power to appoint any other experts.

12.5.10 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 time frame in this **Condition 12.5.10** does not invalidate the Technical Expert's award.

12.5.11 Every dispute referred to a Technical Expert will be considered separately so that time limits for each dispute are complied with.

12.5.12 The Technical Expert's decision will be final and binding on the Parties (in the absence of manifest error of fact or law).

**12.6 Billing dispute resolution**

12.6.1 An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if:

- (a) in the case of domestic Call Communications, the Invoiced Party notifies the Invoicing Party in writing within thirty (30) Business Days of receipt of such invoice, in which late or omitted Access Charges for a particular traffic month may be invoiced;
- (b) in the case of outgoing and incoming international calls and Interconnection, the Access Seeker notifies the Access Provider within six (6) months after the date of receipt of such invoice; or
- (c) in the case of any other Facilities and/or Services (other than those specified in paragraph (a) above) the Invoiced Party notifies the Invoicing Party in writing within thirty (30) Business Days after the date of receipt of such Invoice,

provided that, in any case specified above, the Invoiced Party's notification specifies the information referred to in Condition 12.6.3.

If the Invoiced Party fails to dispute an Invoice within the relevant Billing Dispute Notification Period specified above, the Invoiced Party is deemed to have accepted the Invoice.

12.6.2 Unless otherwise agreed in writing, a Billing Dispute may only arise where the Invoiced Party has reasonable grounds to believe that an error has arisen from one of the following circumstances:

- (a) the Invoicing Party's Billing System is, or has been, defective or inaccurate in respect of the recording of the calls which are the subject of the dispute;

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- (b) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Party's Billing System;
- (c) there is, or has been, a fraud perpetrated by the Invoicing Party;
- (d) the Invoicing Party has made some other error in respect of the recording of the Call Communications and/or calculation of the Access Charges which are the subject of the Billing Dispute; or
- (e) where the Billing Dispute arises as a result of different interpretations or views by the Parties of the terms and conditions of this Agreement including the Access Services.

12.6.3 All Billing Dispute Notices given under this **Condition 12.6** must specify;

- (a) the reasons for which the Invoiced Party disputes the Invoice;
- (b) the amount in dispute;
- (c) details required to identify the relevant Invoice and charges in dispute including:
  - (i) the account number;
  - (ii) the Invoice reference number;
  - (iii) the Invoice date;
  - (iv) the Invoice amount; and
  - (v) billing verification information; and
- (d) evidence in the form of the Invoiced Party's outgoing report, indicating the relevant traffic data which is in dispute.

12.6.4 The Invoiced Party shall pay all amounts stated in the Invoice by the Due Date other than amounts that the Invoiced Party bona fide disputes is due and payable to the Invoicing Party PROVIDED THAT:

- (a) as a condition precedent to the exercise of the right to withhold payment, the Invoiced Party has given the Invoicing Party within twenty one (21) days from the date of receipt of the Invoice a Billing Dispute Notice.

For the avoidance of doubt, a failure by the Invoiced Party to submit the Dispute Notice in accordance with the sub-condition (1) above shall prohibit the Invoiced Party from withholding payment of an amount in dispute;

- (b) The amount disputed by the Invoiced Party is not less than the allowable variance as specified in **Condition 5.3.2**; and

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- (c) In the event the disputed amount has been withheld by the Invoiced Party under **Condition 12.6.4 (a)** and the Billing Dispute is resolved against the Invoiced Party, the Invoiced Party shall be required to pay the disputed amount (free of interest) within fourteen (14) days from the settlement of the Billing Dispute, as documented by the Parties.
  - (d) In the event the disputed amount in accordance with **Condition 12.6.1** has been paid to the Invoicing Party, and the Billing Dispute is resolved in favour of the Invoiced Party, the Invoicing Party shall issue a credit note of the disputed amount (free of interest) within fourteen (14) days from the settlement of the Billing Dispute, as documented by the Parties.
  - (e) In the event the disputed amount in accordance with **Condition 12.6.1** has been paid to the Invoicing Party, and the Parties are unable to resolve the Billing Dispute within ninety (90) calendar days or such other periods as the Parties may mutually agree, from the date of receipt of the Billing Dispute Notice, the Invoicing Party shall allow the Invoiced Party to withhold the disputed amount in the subsequent Invoice issued by the Invoicing Party for that Facilities and/or Services.
- 12.6.5 The Parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this **Condition 12.6**.
- 12.6.6 If the Parties are unable to resolve any Billing Dispute within thirty (30) calendar days (or such other period as the Parties may agree) from the date on which the Billing Dispute Notice is received, either Party may seek the consent of the other Party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other Party is, however, under no obligation to agree to such extension.
- 12.6.7 To the extent that a Billing Dispute notified under this **Condition 12.6** involves a Billing Dispute with an international correspondent of the Invoicing Party, the dispute resolution procedures shall be suspended for a reasonable period of time pending resolution of the dispute with that international correspondent. As a general rule, the period of suspension will not exceed one-hundred and twenty (120) days. However, the Parties recognize that some Billing Disputes with international correspondents may take longer to resolve, in which case the Invoicing Party must promptly inform the Invoiced Party of the likely period required for resolution.
- 12.6.8 Once the negotiation period under **Condition 12.6.6** and/or any extension granted under **Condition 12.6.7** has expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in **Condition 12.6.9** ("**Billing Dispute Escalation Procedure**").
- 12.6.9 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this **Condition 12.6.9** by notifying the Invoicing Party's Billing Representative. Each of the Parties shall then appoint a designated representative that has authority to settle the Billing Dispute, and that is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall

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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 Party to the other Party shall be honored.

12.6.10 Although it is the good faith intention of the Parties to use the billing dispute resolution procedures to the fullest extent to try to solve Billing Disputes, nothing in this Agreement 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.

12.6.11 A Party may request a joint investigation of Invoice discrepancies after that Party has conducted comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the Parties must agree on the terms of the joint investigation, including:

- (a) the scope of the joint investigation;
- (b) how the joint investigation will be conducted; and
- (c) the date by which the joint investigation must be concluded.

The joint investigation may include the generation of test Call Communications to the other Party's Network.

12.6.12 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 Party.

12.6.13 Either Party may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.

12.6.14 If the Parties are unable to resolve any Billing Dispute after exhausting the Billing Dispute Escalation Procedure, either Party 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 **Condition 12.6** and does not involve the inter-party working group, Interconnect Steering Group and Technical Expert under **Conditions 12.3, 12.4 and 12.5**.

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**Terms & Conditions For technical Matters**

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**CONDITION 13 – GENERAL PROVISIONS**

**13.1 Force Majeure**

13.1.1 If a Party is unable to perform any obligation (other than an obligation to pay money) under this Agreement by reason of Force Majeure and that Party:

- (a) gives the other Party to which the obligation is owed prompt notice of the Force Majeure with reasonably full particulars thereof and an estimate of the extent and duration of its inability to perform; and
- (b) 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. Notwithstanding the foregoing, where the effect of the Force Majeure on an obligation in this Agreement that can be mitigated by a contingency, disaster recovery or business continuity plan including the Business Contingency Plan as defined in Condition 6.2, Section VIII of the Terms and Conditions for Technical Matters, that obligation shall not be suspended during Force Majeure.

13.1.2 If the Force Majeure continues beyond fourteen (14) days after the notice given under **Condition 13.1.1**, the Parties shall meet to discuss in good faith a mutually satisfactory resolution to the problem.

13.1.3 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 Agreement, the Party affected must so notify and consult with the other Party.

**13.2 Governing Law**

13.2.1 This Agreement and the transactions contemplated by it are governed by the laws of Malaysia.

13.2.2 In the event of:

- (a) a Party seeking urgent interlocutory relief in respect of any matter; or
- (b) a Party seeking relief in respect of the other Party failing to comply with the dispute resolution process set out in Condition 12; or
- (c) a Party 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 Parties pursuant to any dispute resolution procedures agreed in writing,

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**Condition 13**

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each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Malaysia for such relief.

**13.3 Parties to Act in Good Faith**

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

**13.4 Costs and Expenses**

13.4.1 The Parties agree to bear their own legal, registration and other costs incurred in relation to the preparation, negotiation and execution of this Agreement and all documents contemplated by it (except where this Agreement or those other documents expressly provides to the contrary). The stamp duty in respect of this Agreement shall be borne by the Access Seeker.

**13.5 Relationship of the Parties**

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

**13.6 Surviving Obligations**

13.6.1 Termination or expiration in whole or in part of this Agreement does not affect those Conditions (including **Conditions 7, 8, 9, 10.8, 10.9, 10.10, 10.11, 10.12 and 13**) which by their nature survive termination or expiry.

**13.7 Relationship with Third Persons**

13.7.1 A Party and any of its employees, agents, representatives or contractors shall not be deemed to be an employee, agent, contractor or representative of the other Party unless the other Party is a related body corporate of the first mentioned Party.

13.7.2 Subject to **Condition 13.7.1**, no Party has any authority to bind or oblige or incur any liability on behalf of the other Party and no such authority is to be implied.

13.7.3 **Conditions 13.7.1 and 13.7.2** have neither the effect nor imply:

- (a) that a Party or any of its employees, agents, representatives or contractors is the employee agent contractor or representative of the other Party, or
- (b) that a Party has the authority to bind or oblige or incur a liability on behalf of the other Party,

unless the first mentioned Party is a related body corporate of the other Party.

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13.7.4 Either Party may advise its Customers that certain services are provided by it, but each Party must not represent that the other Party jointly participates in the Party's services.

**13.8 Variation**

- 13.8.1 (a) A variation of any part of this Agreement is valid if, and only if, made between the Parties and in writing and that the variation in respect of Facilities and/or Services is registered with the Commission in accordance with the Act.
- (b) Subject to **Condition 13.8.1(a)**, where the Parties agree to materially vary the Agreement or access to its Facilities and/or Services, the Parties shall inform the Commission in writing of the action the Access Provider proposes to take and the reasons why such action is appropriate. This Agreement or access to the Facilities and/or Services shall not be varied until such reasonable time and on such reasonable conditions as the Commission may legally specify.
- (c) In this **Condition 13.8**, a reference to a variation includes a reference to an addition, deletion, amendment, modification, alteration or other variation.

**13.9 Assignment**

13.9.1 No rights, benefits or obligations under this Agreement may be assigned or novated by a Party without the prior written consent of the other Party, which consent must not be unreasonably withheld or delayed.

**13.10 Remedies Cumulative**

- 13.10.1 Subject to any clause or provision of this Agreement 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 Agreement are:
- (a) cumulative; and
- (b) not exclusive of the rights, powers or remedies provided by law independent of this Agreement.

**13.11 Notices**

- 13.11.1 Subject to **Condition 5.1.1(d)**, a notice, invoice, approval, consent, request or other communication in connection with this Agreement:
- (a) must be in writing;
- (b) must be left at the address of the addressee, or sent by ordinary post, registered post or licensed courier to the address of the addressee or sent by facsimile (to be followed by post) to the facsimile number of the addressee which is set out below or

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if the addressee notifies another address or facsimile number then to that address or facsimile number;

The address and facsimile number of each Party is:

**Access Seeker: (Name of Access Seeker)**

Attention:

Address:

**Access Provider:** Airzed Broadband Sdn Bhd

Attention:

Address:

Facsimile:

13.11.2 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.

13.11.3 A notice, invoice, approval, consent, request or other communication is, in the absence of contrary evidence, deemed to be received by the addressee:

- (a) in the case of delivery by hand or courier, at the time the receipt of such delivery is duly acknowledged by the receiving Party;
- (b) in the case of a posted letter or registered post, on the third day after posting; and
- (c) 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 provided that it is sent during normal Business Days and hours of between 9.00 a.m. and 5.00 p.m., failing which the receipt would be deemed to have been received on the next Business Day.

13.11.4 In proving the giving of a notice, approval, consent or other communication under or in connection with this Agreement, it shall be sufficient to show:

- (a) in the case of delivery by hand or courier, written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the addressee;
- (b) in the case of delivery by registered post or other express postal service, that the notice or other document was contained in an envelope which was duly addressed and posted; or



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- (c) in the case of facsimile, that the facsimile was duly transmitted from the dispatching terminal, as evidenced by a transmission or delivery report generated by the transmitted equipment or computer system.

**13.12 Application For Registration**

13.12.1 The Parties shall jointly submit the application to the Commission for registration of the relevant portion requiring registration under this Agreement in accordance with the MSA and any requirements of the Commission.

**13.13 Waiver**

- 13.13.1 (a) A provision of or right under this Agreement may not be waived except in writing signed by the non-defaulting Party or Parties to be bound.
- (b) No failure or delay on the part of any Party 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 clause shall extend time or be construed to extend time for the performance of any right or obligation under this Agreement if a time period is imposed for the performance of such right or obligation.
- (c) Knowledge or acquiescence by any Party of, or in, breach of any of the provisions of this Agreement shall not operate as, or be deemed to be, a waiver of such provision and, notwithstanding such knowledge or acquiescence, such Party shall remain entitled to exercise the rights and remedies under this Agreement, and at law, and to require strict performance of all of the provisions of this Agreement.

**13.14 Entire Agreement**

13.14.1 This Agreement constitutes the entire agreement of the Parties regarding the subject matter of this Agreement.

**13.15 Severability**

13.15.1 The whole or any part of this Agreement that is illegal or unenforceable:

- (a) will be:
  - (i) read down to the extent necessary so that it is legal and enforceable; or
  - (ii) severed (if it cannot be read down in accordance with paragraph (i)); and
- (b) will not affect the continued operation of the remaining provisions of this Agreement.

**13.16 Time of the Essence**

Time wherever referred to in this Agreement shall be of the essence.

## **TERMS AND CONDITIONS FOR TECHNICAL MATTERS**

## Terms and Conditions for Technical Matters

### Section I - Forecasting

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#### SECTION I - FORECASTING

##### 1. General

**1.1** Section 1 sets out forecasting terms and procedures that are applicable in relation to the provision of the Facilities and/or Services.

##### 2.2 Forecasting Obligations (MSA 5.6)

2.2.1 The Access Provider may require, as a condition of accepting Orders for access to Facilities and/or Services from the Access Seeker that the Access Seeker provide Forecasts in good faith with regards to a certain period of supply of access to Facilities and/or Services.

2.2.2 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.

2.2.3 Once an Access Seeker confirms a Forecast, it is deemed to be an Order for the purposes of the MSA and this Agreement and subsection 5.7 of the MSA and the Ordering provisions will apply.

2.2.4 The Operators may agree to an alternative forecasting procedure other than that set out in subsection 5.6 of the MSA.

2.2.5 Subject to subsections 5.6.11 to 5.6.13 of the MSA, the Access Provider must carry out network planning in order to enable Forecasts to be met. If the Access Seeker has confirmed a Forecast under subsection 5.6.3 of the MSA, it will be binding on the Access Seeker.

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**Terms and Conditions for Technical Matters  
Section II – Technical Obligations**

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**SECTION II – TECHNICAL OBLIGATIONS**

**1. General**

- 1.1 Section II** sets out Technical Obligations relation to the provision of the Facilities and/or Services
2. Compliance: Operators shall adhere to the relevant guidelines issued by the Commission from time to time to the extent that they have not been expressly revoked and are not inconsistent with any technical obligations set out in the MSA.
  3. 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.
  4. 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.
  5. 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:-
    - (a) causes interference; or
    - (b) materially obstructs, interrupts or impedes the continuous use or operation of, the Network, network facilities, network services or Equipment of another User.
  6. 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:-
    - (a) 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
    - (b) If the Access Seeker is not able to locate the source of the interference within twenty-four (24) hours under Clause 6 (a) above, 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.

**SECTION III - NETWORK FACILITIES ACCESS AND CO-LOCATION**

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**Terms and Conditions for Technical Matters**  
**Section III – Network Facilities Access and Co-Location**

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**1. General**

**1.1** Section III sets out the terms and conditions for technical matters in relation to the provision of the Network Facilities Access and Co-Location.

**2. Inspection and Site Survey**

- (a) The Access Provider shall allow nominated employees or contractors of a potential Access Seeker to physically inspect a network premise and/or facility of the Access Provider during normal business hours provided that:
- i) the Access Seeker has provided no less than five (5) Business Days notice of its request to perform a physical inspection and details of its nominees; and
  - ii) the nominations made by the Access Seeker are reasonable, having regard to the position of each person and the number of persons nominated.

**3. Physical access**

- (a) The Access Provider shall allow an Access Seeker, its employees and contractors to physically access the Access Provider's network facilities/premises for the purpose of installing, commissioning, modifying, maintaining, repairing, decommissioning and/or removing its Equipment, twenty four (24) hours a day seven (7) days a week, subject to the terms and conditions of any tenancy agreement provided always, the Access Provider is given five (5) Business Days prior written notice.
- (b) Where access to the Access Provider's network facilities/premises is required for emergency maintenance and repairs, the Access Seeker shall provide the Access Provider with a verbal notice on the day access is required and a facsimile confirmation within twenty four (24) hours.
- (c) Notwithstanding **Clause 3(a) and 3(b)** above, access to the Access Provider's network facilities/premises shall at all times be subject to the terms and conditions of the respective tenancy agreement which shall be made known to the Access Seeker by the Access Provider at the time of fulfillment of an Order.

**4. Safety and Security**

- (a) Each Party shall be responsible and held accountable for all safety and security issues when carrying out any works in the other Party's premises. Each Party shall provide supervision of all such works and shall be responsible for breach of any safety and security standards when on the premises of the other Party. Each Party shall ensure that all the personnel deployed in the performance of any works at the premise of the other Party shall be fully trained and competent and perform their duties in a safe and orderly manner.

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**Terms and Conditions for Technical Matters**  
**Section III – Network Facilities Access and Co-Location**

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5. Escorts

- (a) If the Access Provider determines that it is necessary to have an escort present when employees or contractors wish to enter onto the Access Provider's property, the Access Provider shall:
  - i) make such escort service available at all times during ordinary business hours:
  - ii) have such escort service on call (with no longer than a thirty (30) minute response time to attend at the Access Provider's property) outside ordinary business hours; and
  - iii) bear the costs of such escort service.

6. Absence of escort

- (a) For the purposes of **Clause 5**, if an escort does not arrive at the Access Provider's property within thirty (30) minutes of the scheduled commencement of the visit by the Access Seeker, the Access Seeker's staff may proceed to enter the Access Provider's property without an escort subject to the security requirements of the Access Provider and the terms and conditions of any tenancy agreement.
- (b) If the tenancy agreement requires that the Access Seeker be escorted by the Access Provider in order to gain physical access to the Access Provider's network facility, the Access Provider shall escort the Access Seeker.

7. Site register

- (a) The Access Seeker must establish and maintain a register of all persons who visit the Access Provider's property, which must be made available for inspection by the Access Provider, upon request.
- (b) If the Access Seeker does not maintain or properly maintain a site register, the Access Provider may prohibit any representatives of the Access Seeker from entering the premises.

8. Preparatory Work by the Access Seeker

- (a) If Preparatory Work is necessary for the purposes of allowing the Access Seeker to obtain access to an Access Provider's network facilities/premises, the Access Provider shall permit the Access Seeker's employees or contractors to perform such Preparatory Work if the Access Seeker satisfies the Access Provider (acting reasonably and in accordance with the guidelines referred to below) that such employees or contractors have the necessary qualifications. The policy and guidelines pertaining to the necessary qualifications of employees and contractors who will be permitted to perform Preparatory Work under this **Clause 8** may be obtained from the Access Provider. The policy and guidelines must be

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**Terms and Conditions for Technical Matters**  
**Section III – Network Facilities Access and Co-Location**

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applied in a non-discriminatory manner to the personnel or contractors of the Access Provider and Access Seeker who perform similar functions.

- (b) If the Parties agree that the Access Provider shall carry out the Preparatory Work on behalf of the Access Seeker, then the Access Provider shall undertake the Preparatory Work and the Access Seeker shall furnish all necessary and sufficient co-operation to the Access Provider to complete the Preparatory Work. The Access Seeker agrees to pay the Access Provider for undertaking the Preparatory Work.

**9. Preparatory Work by the Access Provider**

- (a) If the Access Provider agrees to perform Preparatory Work and does so on the basis of an estimated charge (e.g. based on a time and materials basis) for a specific scope of work:
  - i) the Access Provider shall not exceed the estimate without providing the Access Seeker with prior written notice that:
    - A. the estimate will likely be exceeded; and
    - B. a further estimate of the charges for the work necessary to complete the Preparatory Work;
  - ii) the Access Provider shall permit the Access Seeker to withdraw the request for Preparatory Work without penalty if the revised estimate exceeds the original estimate by more than ten percent (10%) of the original estimate within fourteen (14) days of the notice given by the Access Provider under **Condition 3.17.1(a)**. If the Access Seeker fails to withdraw the request within the said time period, the Access Seeker is deemed to have accepted the revised estimate charges and shall be liable for the revised estimated charges only.
- (b) Notwithstanding **Clause 9 (a)**, where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope of works provided by the Access Provider due to information or facts which are inaccurate or erroneous, or which were not disclosed or provided by the Access Seeker, or due to 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.

**10. Delays**

- (a) If the Access Provider agrees to perform Preparatory Work and the Access Provider is or is likely to be unable to perform such work within the agreed timeframe, the Access Provider shall:
  - i) notify the relevant Access Seeker of the delay to a delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;

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**Terms and Conditions for Technical Matters**  
**Section III – Network Facilities Access and Co-Location**

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- ii) permit the Access Seeker notified under **Clause 9 (a) i)** to cancel the Preparatory Work without penalty if the delay is longer than fourteen (14) days; and
- iii) compensate the Access Seeker for the reasonable costs it has incurred as a result of delay, subject to the Access Seeker using reasonable endeavours to mitigate those costs.

**11. Utilities and ancillary services**

If the Access Provider has permitted access at a particular location or network facilities that 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 at the Access Seeker's costs to enable the Access Seeker to benefit from such access, including:

- i) access to roads;
- ii) access to land;
- iii) power, including the provision of backup power;
- iv) environmental services (including heat, light, ventilation and air-conditioning, fire protection);
- v) 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; and
- vi) site maintenance.

- 10A Where Physical Co-Location is provided, Parties shall discuss and agree on terms relating to utilities and ancillary services to be provided by the Access Provider to enable the Access Seeker to benefit from such access including the items referred to in **Clause 11**.

**12. Security caging**

The Access Provider shall not require the use of cages or similar structures to physically segregate Equipment to be located at or on network facilities of the Access Seeker.

**13. Equipment allowance**

Subject to any restrictions under any tenancy agreement, the Access Provider shall permit an Access Seeker to locate Equipment on or at the Access Provider's network facilities which is necessary for the purposes of obtaining the benefit of access to the Facilities and/or Services provided in accordance with this Agreement, including multi-functional Equipment which may also be used for purposes other than those specified in this **Clause 13**. Where



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restrictions in the tenancy agreement prohibits an Access Seeker from locating its Equipment at the Access Provider's facilities/premises, the Access Provider:

- i) shall use best endeavours to obtain the consent of the landlord for the Access Seeker to locate its Equipment at the Access Provider's facilities/premises; and
- ii) may at its own discretion offer an alternative premise and/or facility where the Access Seeker is permitted to locate its Equipment.

**14. Marking**

The Parties will mark or label their Equipment in such a manner that they can be easily identified as the Equipment of the Party.

**15. Maintenance**

The Access Provider shall permit, and do all the things reasonably necessary to allow an Access Seeker to maintain its Equipment at or on the network facilities/premises to which access has been granted. This includes the provision of physical access.

**16. Extensions**

- (a) Subject to all necessary permits, consents and approvals required by law being obtained, the Access Provider shall reasonably permit the Access Seeker, at the Access Seeker's cost, to extend network facilities/premises of the Access Provider as may reasonably be required to meet the Access Seeker's requirements in the circumstances and to the extent technically feasible.
- (b) Prior to any extension works being carried out, the Access Seeker shall submit a written proposal to the Access Provider detailing the works to be carried out and the impact of such works on the Access Provider's network.
- (c) If the Access Provider agrees or disagrees with the proposal, the Access Provider will notify the Access Seeker of the same. If the Access Provider disagrees with the proposal, the Access Seeker may request for a meeting with the Access Provider to discuss amendments to the Access Seeker's proposal. The Access Seeker shall be responsible for all works carried out and the Access Provider shall be responsible for obtaining all permits, consent and approvals required by law.

**17. Cost**

The utility costs in respect of the network facilities/premises as contemplated in this **Clause 11** shall be apportioned (in accordance with fair and equitable principles) against the utility and ancillary costs charged to other Access Seekers at the relevant location. Where there are no other access seekers at the relevant location, the apportionment shall be done in good faith between the Parties in accordance with fair and equitable principles.

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Section III – Network Facilities Access and Co-Location**

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18. Conditional supply

The Access Provider shall not require an Access Seeker to acquire another service or Facilities from the Access Provider as a condition of providing access to Facilities or Services to the Access Provider's network facilities or premises under this Agreement.

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**Terms and Conditions for Technical Matters**

**Section IV - Installation of Equipment at Designated Infrastructure and Associated Tower Site**

**SECTION IV - INSTALLATION OF EQUIPMENT AT DESIGNATED INFRASTRUCTURE AND ASSOCIATED TOWER SITE**

**1. General**

- 1.1 Section IV** sets out the terms and conditions for technical matters in relation to the installation of Equipment at Designated Infrastructure and Associated Tower.
- 2. 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.
- 3. 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.
- 4. 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.
- 5. As is Where is Basis:** The Access Seeker hereby confirms its understanding that for Sites that have been constructed prior to the date of this RAO, the Access Seeker agrees to accept the Sites on an “as is where is” basis.

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**Terms and Conditions for Specific Facilities and/or Services**

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**TERMS AND CONDITIONS FOR  
SPECIFIC FACILITIES AND/OR SERVICES**

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**Terms and Conditions for Facilities Regulated and/or Services**  
**SECTION I – INFRASTRUCTURE SHARING**

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**SECTION I –INFRASTRUCTURE SHARING**

**1. General**

1.1 This **Section** sets out the terms and conditions which are applicable to Infrastructure Sharing. The General Terms and Conditions and the Terms and Conditions for Technical Matters shall also apply to this Service subject to any modifications specified herein.

1.2 Description of Infrastructure Sharing:

- (a) Infrastructure Sharing is a Facility and/or Service which comprises the following:
  - (i) provision of physical access, which refers to the provision of space at specified network facilities to enable an Access Seeker to install and maintain its own equipment; or
  - (ii) provision of access to in-building Common Antenna Systems and physical access to central equipment room.
- (b) Specified network facilities include towers and Associated Tower Sites.
- (c) Physical access includes power, environmental services (such as heat, light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access Seeker.
- (d) Provision of space at Associated Tower Sites include space where the Access Seeker may place its cabin or outdoor equipment and space required for cable gantry connecting to the tower and generator set.

**2. Pre-Requisites for Applying for Infrastructure Sharing**

2.1 The Access Provider shall not be obliged to provide to the Access Seeker Infrastructure Sharing, unless:

- (a) the Access Provider:
  - (i) is the legal owner of the Designated Tower (as defined in **Clause 3.1** below) and the land on which the Designated Tower resides; or
  - (ii) has exclusive rights of use of the land (save in respect of portions of the land which has been sub-tenanted or sub-leased) pursuant to a lease or tenancy agreement on which the Designated Tower resides and the Access Provider has been granted approval by the owner or landlord of such land to permit the Access Seeker to use the land in accordance with these terms.

**Terms and Conditions for Specific Facilities and/or Services**

**SECTION I– INFRASTRUCTURE SHARING**

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- (b) the Access Seeker has the appropriate license under the Act and its subsidiary legislation to operate the service for the purpose for which the equipment is to be installed and other approvals from relevant authorities, where required;
- (c) the Access Seeker has first obtained the approval from a third party to use its tower where the tower structure of the third party resides in the Access Provider's compound; and
- (d) there is sufficient space .

**3. Infrastructure Sharing**

3.1 The Access Provider agrees to provide Infrastructure Sharing at the designated tower or associated tower sites ("**Designated Tower or Associated Tower Sites**") to the Access Seeker in accordance with the terms of this Agreement including the relevant **Terms and Conditions for Technical Matters** and the terms and conditions of this **Section I – Infrastructure Sharing**.

3.2 Where third party towers are located on the Access Provider's premises, Infrastructure Sharing by the Access Provider shall be limited to providing support services at Associated Tower Sites only.

3.3 The list of the Designated Tower and Associated Tower Sites may be obtained from the Access Provider upon written request.

3.4 Duration of Infrastructure Sharing

3.4.1 Infrastructure Sharing at a Designated Tower or Associated Tower Site, agreed between the Parties, 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 or the Access Provider's right to use the building space is less than three (3) years) and may be further renewed subject to the mutual agreement of the Parties. 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 Sites, notify the Access Provider in writing as to whether or not it wishes to renew the term of the Infrastructure Sharing.

3.4.2 The term of the Infrastructure Sharing shall commence on the date ("**Start Date**"):

- (a) the Access Provider provides physical access to the shared space ("**Shared Space**") at the Designated Tower or Associated Tower Site in accordance with the agreed specifications and the Access Provider has notified the Access Seeker in writing of the same; or
- (b) the Access Seeker takes physical possession of the Shared Space at the Designated Tower or Associated Tower Site,

whichever is the earlier.

**Terms and Conditions for Specific Facilities and/or Services**

**SECTION I– INFRASTRUCTURE SHARING**

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- 3.5 Access Seeker shall, together with the request made for Infrastructure Sharing pay a non-refundable processing fee of RM300 per site to the Access Provider for processing such request.

**4. Access Seeker's Obligations**

**4.1 Utilities**

- 4.1.1 The Access Seeker shall be responsible to apply for its own individual meter and power supply to the Shared Space and shall be further responsible for and bear the cost of all electricity utilised by the Access Seeker at the Shared Space.
- 4.1.2 In the event that the Access Seeker's application to the relevant authority for an individual meter is not successful, the Access Seeker may:
- (a) subject to the Access Provider's prior written approval, utilise the electricity supplied to the Access Provider at that premises provided that:
    - (i) the Access Provider is of the opinion that the electricity power load is sufficient to be shared with the Access Seeker and other access seekers within its tower or associated tower site; and
    - (ii) 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 Shared Space, the charges of which shall be determined by the Access Provider; or
  - (b) where the Access Provider is not able to provide the electricity supply to the Access Seeker, the Access Seeker shall be entitled to bring and install its own generator at the Shared Space only at the Designated Tower or Associated Tower Site.

**4.2 To Permit the Access Provider to Enter and View Condition**

- 4.2.1 Where the Shared Space at the Designated Tower or Associated Tower Site is in an enclosed or secured area, the Access Seeker shall permit the Access Provider and his agents, servants and contractors, to enter the Shared Space at all reasonable times and upon giving five (5) Business Days' written notice for the purpose of viewing the state and condition thereof or for any other reasonable purpose. The Parties agree however, that in an emergency, the Access Provider may, upon the provision of an advance verbal notice, be entitled to enter the said Secured Shared Space and take reasonable actions as the circumstances dictate to address the emergency situation but shall subsequently notify the Access Seeker within twenty four (24) hours from the giving of the verbal notice, in writing. The Access Seeker shall have the option to provide an escort to the Access Provider, at its own cost, but the Access Provider shall not be prevented from entering if the escort fails to be present.

**4.3 Use of Shared Space**

**Terms and Conditions for Specific Facilities and/or Services**

**SECTION I– INFRASTRUCTURE SHARING**

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- 4.3.1 The Access Seeker shall only use the Shared Space 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 owner or owners or adjacent buildings or any of the other access seekers at the site.
- 4.3.2 If the Access Seeker has not complied with **Clause 4.3.1**, the Access Seeker shall take the necessary rectification or remedial action to address any legitimate complaints made by the Access Provider or affected owners or other access seekers in the Designated Tower or Associated Tower Site.
- 4.3.3 The Access Seeker's right to use the Shared Space 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 or in or to the Designated Tower or Associated Tower Sites save for the Access Seeker's own equipment and materials.
- 4.3.4 Where the Designated Tower or Associated Tower Sites is owned or controlled by a third party ("**Infrastructure Site Owner**") and the Access Provider's use of the Designated Tower or Associated Tower Sites is pursuant to a tenancy or lease ("**Infrastructure Site Owner's Lease**"), the Access Provider shall be under no obligation to seek any renewal of the term of the tenancy or lease. The Access Seeker agrees that it shall not seek a tenancy or lease to the Designated Tower or Associated Tower Sites from the Infrastructure Site Owner unless the Access Provider signifies in writing that it is no longer interested in the use of the Designated Tower or Associated Tower Sites or the Access Provider's tenancy or lease in respect of the Designated Tower or Associated Tower Sites is terminated. The Access Provider must notify the Access Seeker within five (5) Business Days after receiving or issuing notice of termination from or to the Infrastructure Site Owner or after receiving a written query from the Access Seeker regarding the status of the tenancy or lease..
- 4.3.5 Notwithstanding anything to the contrary herein, the Access Provider shall as soon as reasonably practicable give notice to the Access Seeker if the Infrastructure Site Owner's Lease is terminated or will be terminated or if the Access Provider's right to use a Designated Tower or Associated Tower Site otherwise comes to an end or if the provision of the Infrastructure Sharing or Communications Service relating to the said Designated Tower or Associated Tower Site is disrupted as a result of any action, direction or determination by the landlord of the said Designated Tower or Associated Tower Site, the Access Provider or any other party (including without limitation government and regulatory authorities) prior to the expiry of the tenancy or lease.

4.4 Storage

- 4.4.1 The Access Seeker shall not permit to be kept on the Shared Space or any part thereof:
- (a) any materials the storage of which may contravene any applicable ordinance, statute, regulation or by-law;
  - (b) any materials the storage of which an increased rate of insurance is usually required save for the Access Seeker's Equipment which conforms to industry standards; or



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- (c) any substance which by nature is explosive, combustible or radioactive.
- 4.4.2 Notwithstanding **Clause 4.4.1(c)**, the Access Seeker may have a skid tank containing sufficient fuel to operate its generator sets at the Shared Space provided that there is sufficient space for the safe storage of the skid tank and the amount of fuel does not exceed a reasonable quantity necessary to operate the generator sets at the same Shared Space.
- 4.5 Increase in Premium
- 4.5.1 The Access Seeker shall not do or permit to be done anything (save for the equipment of the Access Seeker which are required or otherwise ancillary to the operation of the Access Seeker) which would render the insurance policy or policies with respect to the Access Provider's Designated Tower or Associated Tower Site on which the Shared Space is located 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.
- 4.6 Repairs
- 4.6.1 In the event of any damage caused to the Shared Space by the Access Seeker, the Access Seeker shall, at its own cost and expense, restore and forthwith make good within a reasonable time, 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. Where applicable, the Access Provider may specify therein all necessary replacements and/or repairs to be effected to the plant, facilities and equipment to be effected as may be commensurate with the extent of the damage caused by the Access Seeker.
- 4.6.2 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, enter the Shared Space and make all necessary replacements and/or repairs to the plant, facilities and equipment. 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.
- 4.7 Tenantable Condition
- 4.7.1 The Access Seeker shall keep the Shared Space and the interior thereof including the flooring and interior plaster or other surface material or rendering on walls or ceilings and the Access Provider's fixtures thereon including doors, windows, glass shutters, locks, fastenings, electric wires, installations and fittings for electricity supply and other fixtures and additions and other goods therein including the items specifically attached thereto, if any, in good and tenantable repair and condition (reasonable wear and tear excepted).
- 4.8 Consents, Licences and Approvals

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- 4.8.1 The Access Seeker shall be fully responsible to obtain applicable consents, permits, approvals and licenses from third parties and governmental authorities or agencies to carry out/provide its Communications Services at the Shared Space including operating and using all equipment, systems, cables, links and devices.
- 4.8.2 The Access Seeker shall further observe and comply with applicable laws, by-laws, rules and regulations affecting the Access Seeker which are now in force or which may hereafter be enacted.
- 4.8.3 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 access seekers) from time to time and notified to the Access Seeker in writing Provided Always that the Access Provider shall not be liable to the Access Seeker in any way for violation of the rules and regulations by any person including the Access Seeker or its employees, independent contractors, agents or invitees. Notwithstanding the aforesaid, the Access Provider shall be responsible for its own actions.

4.9 Installation of Equipment

- 4.9.1 The Access Seeker shall ensure that all equipment, system or devices on the Shared Space shall:
- (a) be type-approved and comply with all relevant laws and regulations;
  - (b) not cause any frequency interference to the Access Provider's and/or any other access seekers' equipment or services provided in or around the Shared Space. Where the Access Seeker's equipment causes frequency interference to the Access Provider's and/or other access seekers' equipment or services provided in or around the Shared Space, the Access Seeker shall immediately (and in any event no longer than 24 hours) take all such necessary steps to stop any such interference; and/or
  - (c) be electromagnetically compatible in accordance with the prescribed standards and shall not cause electromagnetic interference to the Access Provider's and/or any other access seekers' equipment or services provided in or around the Shared Space. Where the Access Seeker's equipment causes electromagnetic interference to the Access Provider and/or other access seekers' equipment or services provided in or around the Shared Space, the Access Seeker shall immediately (and in any event no longer than 24 hours) upon receipt of a written notification take all such necessary steps to stop any such interference.
- 4.9.2 In the event that:
- (a) the Access Seeker fails to fulfil its obligations under **Clause 4.9.1**; or

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- (b) the equipment, system or devices of the Access Seeker is or poses an imminent threat or danger to the public health and safety or the Access Provider and/or other access seeker's 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.

- 4.9.3 The Access Seeker shall only be permitted to install its equipment, system and/or devices on the Shared Space for the provision of its Communications Service and shall not be permitted to install any other operator's equipment, system and/or devices on the Shared Space without the prior written approval of the Access Provider.

- 4.9.4 The Access Seeker shall not damage, tamper, modify, alter or handle any equipment, system or devices belonging to the Access Provider or any other access seeker in the POI site and/or the Shared Space without the prior written approval of the Access Provider and/or the other access seeker.

- 4.9.5 The Access Seeker shall be responsible for insuring its equipment and shall purchase the necessary insurances when carrying out any works including installation works on the Access Provider's Designated Tower or Associated Tower Sites. In particular, the Access Seeker shall obtain or procure an Erection All Risks insurance, whereby the Access Provider is a named insured (whether solely or jointly) in the insurance policy, against all risks of physical loss or damage to the Access Provider's Designated Tower or Associated Tower Sites including all plants, equipment and material incidental thereto for the duration of the works, the amount of such insurance to be reasonably agreed on a case-by-case basis.

4.10 Installation of Electrical Points and Plumbing Connection

- 4.10.1 The Access Seeker shall only install any electrical sockets, plugs or electrical power points or electrical motor or engine or appliances or make any additional plumbing connections on or to the Shared Space after obtaining the written consent of the Access Provider, which consent shall not be unreasonably withheld, conditioned or delayed.

4.11 Safety and Health and Security Procedures

- 4.11.1 The Access Seeker and Access Provider 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.

- 4.11.2 The Access Seeker shall exercise due care in the execution of their work so as to minimise the occurrence of 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.

- 4.11.3 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

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guidelines, rules and regulations equally apply to all access seekers) from time to time on site access and security procedures with respect to access to and use of the Shared Space. Further, the Access Seeker shall take reasonable measures to ensure that there is no unauthorised entry to the Shared Space.

**4.12 Sub-letting and Assignment**

- 4.12.1 The Access Seeker shall not sub-let, assign or part with the possession of the Shared Space without the prior written approval of the Access Provider. Where the Access Provider allows the Access Seeker to sub-let the Shared Space, the Access Seeker shall be fully responsible for the acts and omission of its sub-lessee and shall ensure that its sub-lessee complies with all the Access Seeker's obligations with respect to the Shared Space under this Agreement.

**5. The Access Provider's Obligations**

**5.1 Exclusive Possession**

- 5.1.1 The Access Seeker recognises that it does not have exclusive possession of the Shared Space since the Access Provider occupies the Shared Space and may sub-let or intend to sub-let the Shared Space to other parties. However, the Access Provider agrees that it shall not tamper, modify, alter or handle any or interfere with equipment, system or devices belonging to the Access Seeker at the Shared Space for the duration of the Infrastructure Sharing unless an emergency situation arises where the situation dictates otherwise.

**5.2 Payment of Quit Rents, Rates and Taxes**

- 5.2.1 The Access Provider will pay all quit rents, rates including local council fees (save for utilities), taxes, assessments which are or may hereafter be charged upon the Designated Tower or Associated Tower. Any increase in quit rent, assessment, taxes or rates from the relevant Start Date of the Infrastructure Sharing shall be borne by the Access Provider and all access seekers in proportion to their usage of space.

**5.3 The Access Provider's Covenant**

- 5.3.1 The Access Seeker acknowledges and agrees that it is using the Shared Space at its own risk as the Access Provider does not warrant or represent that it has obtained all the necessary authorisation, approvals or permits from the relevant authorities (including the Federal and State Government) to erect the infrastructure on the Designated Tower or Associated Tower Site in which the Shared Space has been rented to the Access Seeker or use or occupy the land on which the said Designated Tower or Associated Tower Site is located. The Access Provider shall, upon request of the Access Seeker, inform the Access Seeker if specific approvals or permits have been obtained in respect of a particular Designated Tower or Associated Tower Site.
- 5.3.2 In the event that:

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- (a) the Access Provider is required by the relevant authorities (whether directly or through a directive to the owner/landlord of the land) to dismantle the infrastructure and/or network facilities ; or
- (b) any governmental or State authority or owner/landlord of the land on which the Designated Tower resides, requires the Access Provider to vacate the land on which the Designated Tower resides for whatsoever reason,

such that the Access Seeker is not able to install its equipment, system or devices thereon or to provide its Communication Services in the Shared Space, the Access Seeker and/or the Access Provider may, notwithstanding the minimum term, terminate the Infrastructure Sharing at Shared Space without liability. Any advance payment will be refunded on a pro-rated basis. The Parties agree that the remedies set out in this **Clause 5.3** shall be the only remedy against the Access Provider. Neither Party shall be liable to the other Party for any damages, costs and/or expenses including the costs of dismantling and removing the other Party's equipment, system or devices. However, the Access Provider will use its best endeavours to offer the Access Seeker other suitable Designated Tower or Associated Tower Sites, if available.

5.3.3A Where the Access Provider is required by any governmental authority or agency or any state backed company to sell or dispose of the Designated Tower to the governmental authority or its nominated person or entity, the Access Provider will use its endeavours (but does not guarantee that it will be able) to sell the Designated Tower subject to any existing rights of the Access Seeker to use the Shared Space on the Designated Tower. However, where the third party purchaser requires that the Access Seeker vacate the Shared Space prior to the sale of the Designated Tower, the Access Seeker shall dismantle its equipment, system and devices and vacate the Shared Space prior to the sale of the said Designated Tower to the third party. However, the Access Provider will use its best endeavours to offer the Access Seeker other suitable Designated Tower or Associated Tower Sites, if available.

5.3.3B In the event of sale or disposal of the Designated Tower, any advance payment will be refunded on a pro-rated basis within ninety (90) days from the notice to dismantle, failing which interest at the rates specified in **Clause 5.2.4** of the General Terms and Conditions shall apply. The Parties agree that the remedies set out in this **Clause 5.3** 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 including the costs of dismantling and removing the Access Seeker's equipment, system or devices.

**6. Vacating the Shared Space**

6.1 The Access Seeker shall on the expiration or termination of the Infrastructure Sharing at each Shared Space, at its own cost and expense, remove all its equipment, system and devices which may have been installed by the Access Seeker and to peaceably and quietly yield up the Shared Space to the Access Provider with all the Access Provider's fixtures and additions thereto in good and tenable repair and condition (fair wear and tear excepted) in accordance with the covenants herein contained.

6.2 The Access Seeker shall be given:

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- (a) a grace period of ten (10) Business Days effective from the expiry or termination of the Infrastructure Sharing at the Shared Space; or
- (b) where the Designated Tower is to be dismantled or the Access Provider is to vacate the land (on which the Designated Tower resides in accordance with **Clauses 5.3.2 and 5.3.3A** as notified by the Access Provider, such reasonable grace period as may be specified by the Access Provider taking into consideration the time lines provided by the relevant authorities (including any extension obtained from the relevant authorities) or the owner of the land / landlord to the Access Provider to dismantle the Designated Tower or to vacate the said land or building provided always that the Access Seeker must vacate the Shared Space earlier than the stipulated time line provided to the Access Provider to enable the Access Provider to comply with the requisite time lines,

to vacate the Shared Space, during which no monthly rental will be charged by the Access Provider. Should the equipment, system or devices not be removed within the grace period, the Access Provider shall have the right to:

- (i) charge for the use of the Shared Space at the rate of two (2) times the current rental or the cost of reinstatement as debt due and payable; and
- (ii) without any liability to the Access Seeker, dispose of the equipment, system or devices in such manner as the Access Provider deems fit with a one (1) month's written notice. If the Access Seeker fails to settle any debt due, the Access Provider shall have a lien on the equipment, system or devices and is entitled to retain such equipment, system or devices or to sell the equipment system or devices at any price in such manner as it deems fit 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, system or devices against any and all debts due by the Access Seeker to the Access Provider.

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## SECTION II – NETWORK CO-LOCATION

### 1. General

- 1.1 This **Section** sets out the terms and conditions which are applicable to Network Co-location Service. The General Terms and Conditions and the Terms and Conditions for Technical Matters shall also apply to this Service subject to any modifications specified herein.

### 2 Network Co-Location Services

- 2.1 The Network Co-Location Service is a Facility and/or Service which comprises:
- (a) Physical Co-Location, which refers to the provision of space at an Access Provider's premises to enable the Access Seeker to install and maintain equipment necessary for the provision of the Access Seeker's services through the Facilities and/or Services of any Party. Physical Co-Location includes physical space, power, environmental services (such as heat, light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access Seeker;
  - (b) virtual co-location, which refers to the provision of Facilities or Services at an Access Provider's premises to enable the acquisition by the Access Seeker of Facilities and Services in this Agreement, where equipment is owned and maintained by the Access Provider; or
  - (c) in-span interconnection, which is the provision of a POI at an agreed point on a physical cable linking an Access Provider's network facilities to an Access Seeker's network facilities.
- 2.2 Network premises at which co-location is to be provided includes switch sites, submarine cable landing centres, earth stations, exchange buildings, other Customer Access Modules including roadside cabinets and such other network facilities locations associated with the provision of a Facility or Service in this Agreement, and includes Co-Location provided at any location where main distribution frame is housed.

### 3 Pre-requisites for Applying for Network Co-Location Services

#### 3.1 General Pre-requisites for Network Co-Location

- 3.1.1 The Access Provider shall not be obliged to provide to the Access Provider Network Co- Location at the designated sites ("**Designated Sites**") unless:
- (a) the Access Provider:
    - (i) Is the legal owner of the Designated Site; or
    - (ii) has exclusive rights of use of the Designated Sites pursuant to a lease or tenancy agreement and the Access Provider has been granted the requisite approval by the owner or landlord of Designated Sites to

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**SECTION II–NETWORK CO-LOCATION**

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permit the Access Seeker to use space for Physical Co-Location in accordance with the terms herein contained.

- (b) Access Seeker has the appropriate license under the Act and its subsidiary legislation to operate the service for the purpose for which the equipment is to be installed and other approvals from relevant authority, where required;
- (c) there being sufficient space at the Designated Sites; and
- (d) that it is not technically infeasible to implement Network Co-Location at the Designated site.

3.1.2 The list of the Designated Sites may be obtained from the Access Provider within ten (10) Business Days upon written request

**3 General Terms and Conditions on Network Co-Location Services**

**4.1 Duration**

4.1.1 Network Co- Location at a Designated Site, agreed between the Parties, 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 Designated Site is less than three (3) years) and may be further renewed subject to the mutual agreement of the Parties. The Access Seeker shall within six (6) months prior to the expiry of the term of the Network Co-Location at the Designated Site notify the Access Provider in writing as to whether or not it wishes to renew the term of the Network Co- Location.

4.1.2 The term of the Network Co-Location shall commence on the date ("**Commencement Date**"):

- (a) the Access Provider makes available for physical possession the co-located space ("**Co-located Space**") at the Designated Site; or
- (b) the Access Seeker takes physical possession of the Co-located Space at the Designated Site,

whichever is the earlier.

**5 Specific Terms and Conditions for Physical Co-Location**

**5.1 Use of Co-Located Space**

5.1.1 The Access Seeker shall only use the Co-Located Space 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 by the owner or any of the other access seekers in the Access Provider's Designated Site or any other buildings adjoining the Designated Site.



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**SECTION II–NETWORK CO-LOCATION**

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- 5.1.2 If the Access Seeker has not complied with **Clause 5.1.1**, the Access Seeker shall take the necessary rectification or remedial action to address any legitimate complaints made by the Access Provider or other access seekers in the Designated Site.
- 5.1.3 The Access Seeker's right to use the Co-Located Space 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 or in or to the Designated Site save for the Access Seeker's own equipment.
- 5.1.4 Where the Designated Site is owned or controlled by a third party ("Site Owner") and the Access Provider's use of the Designated Site is pursuant to a tenancy or lease, the Access Provider shall be under no obligation to seek any renewal of the term of the tenancy or lease. The Access Seeker agrees that it shall not seek a tenancy or lease to the Designated Sites from the Site Owner unless the Access Provider signifies in writing that it is no longer interested in the use of the Designated Sites.

5.2 Storage

- 5.2.1 The Access Seeker shall not permit to be kept on the Co-Located Space or any part thereof:
- (a) any materials the storage of which may contravene any ordinance, statute, regulation or by-law;
  - (b) any materials the storage of which an increased rate of insurance is usually required; or
  - (c) any explosive, combustible or radioactive substances

5.3 Increase in Premium

- 5.3.1 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 Designated Site on which the Co-Located Space is located 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.

5.4 Repairs

- 5.4.1 In the event of any damage caused to the Co-Located Space by the Access Seeker, the Access Seeker shall, at its own cost and expense, restore and to forthwith make good within a reasonable time 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 as may be commensurate with all the extent of the damage.

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- 5.4.2 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, enter the Co-Located Space and make all necessary replacements and/or repairs to the building, plant, facilities and equipment. 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.

5.5 Tenantable Condition

- 5.5.1 The Access Seeker shall keep the Co-Located Space and the interior thereof including the flooring and interior plaster or other surface material or rendering on walls or ceilings and the Access Provider's fixtures thereon including doors, window, glass shutters, locks, fastenings, electric wires, installations and fittings for electricity supply and other fixtures and additions and other goods therein including the items specifically attached thereto, if any, in good and tenantable repair and condition (reasonable wear and tear excepted).

5.6 Consents Licenses and Approvals

- 5.6.1 The Access Seeker shall be fully responsible to obtain all relevant consents, permits, approvals and licenses from third parties and governmental authorities or agencies to carry out/provide its Communications Service at the Co-Located Space including operating and using all equipment, systems, cables, links and devices.
- 5.6.2 The Access Seeker shall further observe and comply with all relevant laws, by-laws, rules and regulations affecting the Access Seeker which are now in force or which may hereafter be enacted.
- 5.6.3 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 access seekers) from time to time and notified to the Access Seeker in writing Provided Always that the Access Provider shall not be liable to the Access Seeker in any way for violation of the rules and regulations by any person including the Access Seeker or its employees, independent contractors, agents or invitees Notwithstanding the aforesaid, the Access Provider shall be responsible for its own action.

5.7 Sub-letting and Assignment

- 5.7.1 The Access Seeker shall not sub-let, assign or part with the possession of the Co-Located Space without the prior written approval of the Access Provider. Where the Access Provider allows the Access Seeker to sub-let the Co-Located Space, the Access Seeker shall be fully responsible for the acts and omission of its sub-lessee and shall ensure that its sub-lessee complies with all the Access Seeker's obligations with respect to the Co-Located Space under this Agreement.

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**SECTION II–NETWORK CO-LOCATION**

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5.7.2 Where the Access Seeker is permitted by the Access Provider to sub-let part of the Co-Located Space to other access seekers for the purposes of co-locating with the Access Seeker at the Co-Located Space, the Access Seeker shall strictly comply with the same procedures in respect of permitting access as those stipulated and/or required by the Access Provider in providing access. The Access Seeker must notify the Access Provider of all persons with whom the Access Seeker has reached a colocation agreement within two (2) Business Days of reaching such agreement. The Access Seeker shall provide sufficient evidence to the Access Provider to demonstrate that such agreement with the other access seeker have been duly registered with the Commission, failing which the other access seekers shall not be permitted to co-locate at the Co-Located Space. The Access Seeker shall be fully responsible to ensure that all other access seekers co-locating with the Access Seeker at the Co- Located Space shall strictly comply with all the relevant terms and conditions contained in this Agreement including but not limited to provisions pertaining to the preservation of and the security of the Access Provider's Network Facilities and premises.

5.8 Payment of Quit Rents, Rates and Taxes

5.8.1 The Access Provider will pay all quit rents, rates (save for utilities), taxes, assessments which are or may hereafter be charged upon the Co-Located Space. Any increase in quit rent, assessment, taxes or rates on the Co-Located Space after the date hereof shall be borne between the Access Provider and all access seekers in proportion to their usage of space.

5.9 The Access Provider's Covenant

5.9.1 The Access Seeker acknowledges and agrees that it is using the Co-Located Space at its own risk as the Access Provider does not warrant or represent that it has obtained all the necessary authorisations, approvals or permits from the relevant authorities (including the Federal and State Government) to erect the Infrastructure on the Designated Site in which the Co-Located Space has been rented to the Access Seeker or to use or occupy the Designated Site.

5.9.2 In the event that:

- (a) the Access Provider is required by the relevant authorities to dismantle the infrastructure on the Designated Site; or
- (b) any governmental or State authority or owner/landlord of the Designated Sites, requires the Access Provider to vacate the Designated Site for whatsoever reason,

such that the Access Seeker is not able to:

- (i) install or utilize the equipment, system or devices thereon; or
- (ii) provide its communication services at the Designated Site,

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**SECTION II–NETWORK CO-LOCATION**

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the Access Seeker and/or the Access Provider may, notwithstanding the minimum term, terminate the Network Co-Location at the Co-Located Space without liability. The Parties agree that the remedies set out in this **Clause 5.9** 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 including but not limited to the costs of dismantling and removing the Access Seeker's equipment, system or devices. However, the Access Provider will use its reasonable endeavours to offer the Access Seeker other suitable Designated Sites.

- 5.9.3 Where the Access Provider is required by any governmental authority or agency or any state backed company to sell or dispose the Designated Site to the governmental authority or its nominated person or entity, the Access Provider will notify the Access Seeker in writing and will in good faith endeavour (but does not guarantee that it will be able) to sell the Designated Site subject to any existing rights of the Access Seeker to use the Co-Located Space on the Designated Site. However, where the third party purchaser requires that the Access Seeker vacate the Co-Located Space prior to the sale of the Designated Site, the Access Seeker shall dismantle its equipment, system and devices and vacate the Co-Located Space prior to the sale of the said Designated Site to the third party unless a separate arrangement is reached between the Access Seeker and the third party purchaser. Any advance payment will be refunded on a pro-rated basis. The Parties agree that the Access Seeker and/or the Access Provider may, notwithstanding the minimum term, terminate the Co-Located Space without liability. The Parties agree that the remedies set out in this **Clause 5.9** 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 including but not limited to the costs of dismantling and removing the Access Seeker's equipment, system or devices.

5.10 Utilities

- 5.10.1 The Access Seeker shall be responsible to apply for its own individual meter and power supply to the Co-Located Space and shall be further responsible for and bear the cost of all electricity utilised by the Access Seeker at the Co- Located Space.

- 5.10.2 In the event that the Access Seeker's application to the relevant authority for an individual meter is not successful or delayed, the Access Seeker may:

- (a) subject to the Access Provider's prior written approval, utilise the electricity supplied to the Access Provider at that premises provided that:
  - (i) the Access Provider is of the reasonable opinion that the electricity power load is sufficient to be shared with the Access Seeker and other access seekers within its Designated Site; and
  - (ii) the Access Seeker reimburse the Access Provider for all electricity charges utilised (and any other additional charges for back-up power) by the Access Seeker at the Co-Located Space, the charges of which

**Terms and Conditions for Specific Facilities and/or Services**

**SECTION II–NETWORK CO-LOCATION**

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shall be determined by the Access Provider, in accordance with **Clause 2.4 of Appendix 2 –Charges For Network Co-Location**; or

- (b) where the Access Provider is not able to provide the electricity supply to the Access Seeker, the Access Seeker shall be entitled to bring and install its own generator at the Co-Located Space at the Designated Site.

**5.11 Permission to Enter and View Condition**

5.11.1 The Access Seeker shall permit the Access Provider and his agents, servants and contractors, to enter the portion of the Shared Space under the possession of the Access Seeker which has been enclosed or secured or otherwise not accessible by the Access Provider. ("**Secured Co-Located Space**") at such reasonable times for the purpose of viewing the state and condition thereof or for any other reasonable purpose PROVIDED ALWAYS that the Access Seeker is given a two (2) Business Days prior written notice. The Access Seeker may at its discretion assign an escort to be present at all times during the time of inspection provided that if the escort is not present within a reasonable time, the Access Provider shall not be prevented from entering the Secured Co-Located Space without an escort.

5.11.2 Notwithstanding **Clause 5.11.1**, the Access Provider shall in the event of an emergency be entitled upon the provision of an advance verbal notice (which shall be followed by a written notice within twenty four (24) hours) be entitled to enter the said Secured Co-Located Space and take reasonable actions as the circumstances dictate to address the emergency situation.

**5.12 Installation of Equipment**

5.12.1 The Access Seeker shall ensure that all equipment, system or devices on the Co-Located Space shall:

- (a) be type-approved and comply with all relevant laws and regulations;
- (b) not cause any frequency interference to the Access Provider's and/or any of the other access seekers' equipment or services provided in or around the Co-Located Space. Where the Access Seeker's equipment causes frequency interference to the Access Provider's and/or other access seekers' equipment or services provided in or around the Co-Located Space, the Access Seeker shall immediately (and in any event no longer than 24 hours) take all such necessary steps to stop any such interference;
- (c) be electromagnetically compatible in accordance with the prescribed standards and shall not cause electromagnetic interference to the Access Provider's and/or any of the other access seekers' equipment or services provided in or around the Co-Located Space. Where the Access Seeker's equipment causes electromagnetic interference to the Access Provider and/or other access seekers' equipment or services provided in or around the Co-Located Space,

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**SECTION II–NETWORK CO-LOCATION**

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the Access Seeker shall immediately (and in any event no longer than 24 hours) take all such necessary steps to stop any such interference; and/or

- (d) only connect its equipment to pre-determined equipment belonging to the Access Provider.

5.12.2 In the event that:

- (a) the Access Seeker fails to fulfill its obligations under this **Clause 5.12.1**; or
- (b) the equipment, system or devices of the Access Seeker is or poses a threat or danger to the public health and safety or the Access Provider and/or other access seeker's 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.

5.12.3 The Access Seeker shall only be permitted to install its Equipment on the Co- Located Space for the provision of its Communications Services and shall not be permitted to install any other operator's equipment, system and/or devices on the Co-Located Space without the prior written approval of the Access Provider.

5.12.4 The Access Seeker shall not damage, tamper, modify, alter or handle any equipment, system or devices belonging to the Access Provider or any other access seeker in the Designated Site and/or the Co-Located Space without the prior written approval of the Access Provider and/or the other access seeker.

5.12.5 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 Access Provider's Designated Sites. In particular, the Access Seeker shall obtain or procure an Erection All Risks insurance against all risks of physical loss or damage to the Access Seeker's work whereby the Access Provider is a named insured (either solely or jointly) in the insurance policy and the insurance shall be in the amount which is sufficient to insure the full value of the works carried out by the Access Seeker.

5.13 Installation of Electrical Points and Plumbing Connection

5.13.1 The Access Seeker shall install any electrical sockets, plugs or electrical power points or electrical motor or engine or appliances or make any additional plumbing connections on or to the Co-Located Space after obtaining the prior written consent of the Access Provider, which consent shall not be unreasonably withheld.

5.14 Safety and Health and Security Procedures

5.14.1 The Access Seeker 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

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**SECTION II–NETWORK CO-LOCATION**

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gadgets as prescribed by OSHA. Any failure to comply with OSHA by the Access Seeker shall be rectified immediately and if required by the Access Provider, the Access Seeker shall comply with all actions specified by the Access Provider including to cease or suspend work or to disconnect their equipment from the power supply or source.

5.14.2 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.

5.14.3 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 rules and regulations equally apply to all access seekers) from time to time on site access and security procedures with respect to access to and use of the Co-Located Space. Further, the Access Seeker shall undertake all such necessary measures to prevent unauthorised access to the Co-Located Space.

5.15 Exclusive Possession

5.15.1 The Access Seeker recognises that it does not have exclusive possession of the Co-Located Space since the Access Provider occupies the Co-Located Space and may sub-let or intends to sub-let the Co-Located Space to other parties. However, the Access Provider agrees that it shall not tamper, modify, alter or handle any or interfere with equipment, system or devices belonging to the Access Seeker at the Co-Located Space for the duration of the Physical Co-Location unless an emergency situation arises and immediate notice has been given to the Access Seeker.

5.16 Maintenance of Equipment

5.16.1 The Access Seeker shall be responsible for the operation and maintenance of its Equipment, system and/or devices at the Co-Located Space.

5.16.2 The Access Provider shall not be responsible for any damage to the Access Seeker's Equipment, system and/or devices at the Co-Located Space caused by fire, water leakage, air-conditioning/mechanical ventilation failure, power fluctuation/interruption, and/or by any other causes or reasons unless due to the Access Provider's negligence.

5.16.3 In the operation and maintenance of the Equipment, systems and/or devices at the Co-Located Space, the Access Seeker must:

- (a) take such other action as a reasonably prudent Access Seeker would in operating and maintaining their Equipment, systems and/or devices;
- (b) keep the Co-Location Space in a tidy and safe condition at all times; and
- (c) ensure that flammable or toxic material is not left in or around the Co-Location Space following maintenance and/or other operations.

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**SECTION II–NETWORK CO-LOCATION**

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5.16.4 If a fault, defect or problem with the Access Seeker's Equipment, systems and/or devices at the Co-Located Space causes or may cause damage to the Co-Location Space and/or to the Access Provider's and other access seeker's equipment and/or facilities, the Access Seeker must:

- (a) notify the Access Provider in writing as soon as practicable; and
- (b) repair the fault, defect or problem or take other appropriate corrective action immediately to the Access Provider's satisfaction.

5.16.5 If the Access Seeker detects a fault, defect or problem in the Co-Location Space, it must notify the Access Provider as soon as possible.

5.17 Vacating the Co-Located Space

5.17.1 The Access Seeker shall on the expiration or termination of the Physical Co- Location at each Co-Located Space, at its own cost and expense, remove all its equipment, system and devices which may have been installed by the Access Seeker and to peaceably and quietly yield up the Co-Located Space 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.

5.17.2 The Access Seeker shall be given:

- (a) a grace period of ten (10) Business Days effective from the expiry or termination of the Physical Co-Location; or
- (b) where the infrastructure on the Designated Site is to be dismantled or the Access Provider is to vacate the Designated Site in accordance with **Clause 5.9**, such reasonable grace period 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 to the Access Provider to dismantle the said Infrastructure or to vacate the Designated Site provided always that the Access Seeker must vacate the Co-Located Space earlier than the stipulated time line provided to the Access Provider to enable the Access Provider to comply with the requisite time lines,

to vacate the Co-Located Space, during which no monthly rental will be charged by the Access Provider. Should the equipment, system or devices not be removed within the grace period, the Access Provider shall have the right to:

- (i) charge for the use of the Co-Located Space at the rate of two (2) times the current rental or the cost of reinstatement as debt due and payable; and
- (ii) without any liability to the Access Seeker, dispose of the equipment, system or devices 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, system or devices and is entitled to retain such equipment, system or devices or to sell the equipment, system or



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**SECTION II–NETWORK CO-LOCATION**

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devices at any price in such manner as it deems fit 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, system or devices against any and all debts due by the Access Seeker to the Access Provider.

**6 Specific Terms and Conditions for Virtual Co-Location**

- 6.1 Virtual Co-Location at a Designated Site shall be subject to the availability of the equipment which the Access Seeker is requesting the Access Provider to own and maintain on its behalf.
- 6.2 The terms of Virtual Co-Location at a Designated shall be subject to terms and conditions (including the Charges thereof) to be mutually agreed on a case by case basis.

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**CHARGING PRINCIPLES AND CHARGES**

## Charging Principles And Charges For Specific Facilities and/or Services

### SECTION I– INFRASTRUCTURE SHARING

#### SECTION I –INFRASTRUCTURE SHARING CHARGING PRINCIPLES AND CHARGES

##### 1. General

- 1.1 This **Section I** sets out the charging principles and Charges which would be applicable to Infrastructure Sharing related to Designated Tower and Associated Tower Site.

##### 2. Charges and Charging Principles

###### 2.1 Rental and Other Charges by the Access Provider

- (a) Infrastructure Sharing supplied by the Access Provider shall be subject to the rental charges and/or utility charges listed in **Appendix 1 to Charges for Infrastructure Sharing**
- (b) Rental charges for a particular Designated Tower or Associated Tower Site shall be fixed for the contract period. However, the Access Provider reserves the right to revise the rental charges for the subsequent contract period, where the Access Seeker wishes to renew the contract.
- (c) The Access Provider reserves the right to revise the rental charges and/or utility charges listed in the relevant portions of **Appendix 1 - Charges for Infrastructure Sharing**. In the event the Access Provider intends to revise the rental charges and/or utility charges , the Access Provider shall notify the Access Seeker of the same in writing. However, any such revision of the rental charges and/or other charges shall only be applicable for new Orders or renewal of the term of any existing lease of Designated Sites.

###### 2.2 Mode of Payment

- 2.2.1 The Access Seeker shall pay to the Access Provider the recurring charges rental stated in **Clause 2.1** above (“**Rental**”) for physically sharing the infrastructure at the Access Provider’s Designated Tower or Associated Tower Sites as follows:
- (a) For the first year, the first year’s Rental charges shall be paid in advance on the Commencement Date; and
  - (b) For subsequent years, a quarterly advance shall be paid to the Access Provider.
- 2.2.2 The Access Seeker shall pay to the Access Provider the one-time charges stated in **Clause 2.1** above within thirty (30) days from the date of receipt of the invoice.
- 2.2.3 The Access Seeker agrees to pay the Access Provider the Rental recurring charges for the whole three (3) year period irrespective of use of the Shared Space as the Access Seeker has committed to the minimum period of three (3) years (or such lesser period specified by the Access Provider, where the Access Provider lease or tenancy is less than three (3) years). This minimum period commitment shall apply to every renewal of the Shared Space.

**Charging Principles And Charges For Specific Facilities and/or Services**

**SECTION I– INFRASTRUCTURE SHARING**

- 2.2.4 The demand or acceptance of Rental 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 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 under this Agreement and/or under law.
- 2.2.5 All utility charges shall be paid quarterly in advance.

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**Charging Principles And Charges For Specific Facilities and/or Services**  
**APPENDIX 1 –Charges for Infrastructure Sharing**

**APPENDIX 1 – CHARGES FOR INFRASTRUCTURE SHARING**

**1. DESIGNATED TOWER AND ASSOCIATED TOWER SITE**

- 1.1 Infrastructure Sharing with the Access Seeker for Designated Tower and Associated Tower Site shall, only to the extent necessary, be subject to the Charges listed in **Table A** below. For the purposes of clarification, all other Infrastructure Sharing Services not listed in **Table A** shall be mutually negotiated.

**TABLE A: ONE-TIME CHARGES**

Type of Charges	Location Category	Charge (RM)
Site Survey	Urban Area	RM 895
	Rural Area	RM 1,320
	Remote Area and Island	RM 2,320
	Very Remote Area	RM 4,250
Site Preparation Work	Applicable to all location	As per quotation
Site Supervision Work	Urban Area	RM 895
	Rural Area	RM 1,320
	Remote Area and Island	RM 2,320
	Very Remote Area	RM 4,250

**Note:** The Location Category for Designated Tower and Associated Tower Site is currently available only at Urban Area.

**1.2 Site Survey**

- 1.2.1 Site survey is to be done for each site requested by Access Seeker for the purpose of determining the suitability of the site upon Access Provider's confirmation of space availability. Access Seeker's personnel and/or appointed contractor is to perform the survey together with Access Provider at a mutually agreed date and time. The Parties shall assign personnel who are knowledgeable of the site facilities and plan.
- 1.2.2 The same site survey charge will apply for each visit requested by Access Seeker if more than one visit is required before determination of suitability.

**Charging Principles And Charges For Specific Facilities and/or Services**  
**APPENDIX 1 –Charges for Infrastructure Sharing**

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- 1.2.3 Site Survey is to be performed and completed during office hours only between 8:30 a.m. to 5:30 p.m. However for location where access is difficult, the charge imposed already takes into consideration the necessary travel time and overnight stay.
- 1.2.4 All costs incurred by Access Seeker's personnel and/or contractor in performing the site survey are to be borne by the Access Seeker.
- 1.2.5 Definition of Location Category
- (a) UrbanArea
- Urban area is defined as major towns and cities in Malaysia within the administration of the city or local town council.
- (b) Rural Area
- Rural area is defined as towns under the administration of the local district council and the surrounding area within 30 km radius from the general post office located in the specified rural area.
- (c) Remote Area and Island
- Remote Area is as all area that is between -30 km to 60 km radius from the Rural Area. Island is as an area that is separated from the peninsular mainland and Borneo mainland where transportation to and from the area will be by water (ferry or boat).
- (d) Very Remote Area
- Very Remote Area is as all area that is either more than -60 km radius from the Rural Area or the area is difficult to access, not connected by paved roads and requires an overnight stay and/or travel by flight from the nearest airport.
- 1.3 Site Preparation Work
- 1.3.1 The site preparation to be performed by the Access Provider or the Access Seeker shall be done in accordance to the agreed technical specification document generated based on the site survey unless otherwise agreed in writing by both Parties.
- 1.3.2 The Access Provider's site preparation work in general includes the activities listed below (exact specification and quantity required may differ from site to site):
- (a) Civil and structural works which include preparation of concrete plinth, TNB meter plinth and meter panel and the sub-main AC cable ducting from the cabin or outdoor unit to the TNB meter pane.
- (b) Mechanical and electrical works which include horizontal and vertical cable ladder, microwave and antenna bracket and boom and earthing system.

**Charging Principles And Charges For Specific Facilities and/or Services**  
**APPENDIX 1 –Charges for Infrastructure Sharing**

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- (c) Dedicated room, split air conditioning and fire suppression for indoor configuration.
  - (d) Conducting a joint testing and commissioning of the site.
  - (e) Preliminaries work and Site monitoring.
  - (f) Physical access for the Access Seeker for its installation, commissioning and Integration activities.

where Access Provider performs the site preparation, the items not mentioned under Clause 1.3.2 above is to be supplied and installed by the Access Seeker.

#### 1.4 Recurring Charges

- 1.4.1 Infrastructure Sharing with Access Provider shall be subject to the Charges listed in **Table B** below. For the purposes of clarification, all other Infrastructure Sharing Services not listed in **Table B** below shall be mutually negotiated.
- 1.4.2 Recurring charges for Infrastructure sharing will be based on the following category of locations:
  - (i) Urban Area

**TABLE B: RECURRING CHARGES**

TYPE OF CHARGE	CATEGORY (Structure Height)	CHARGE (RM) Per month per site
Tower (Urban Area)	150 feet and below	RM 4,223
	200 feet and below	RM 5,837
	250 feet and below	RM 6,210
	300 feet and below	RM 7,935
	350 feet and below	RM 10,005
	400 feet and below	RM 11,385

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Additional charges based on antenna and dish size:

TYPE OF CHARGE	CATEGORY (Antenna and Dish Size - diameter)	ADDITIONAL CHARGE (RM)
Dish Diameter	4 feet & below	To be commercially negotiated
	Above 4 feet	RM 700 per month per additional foot
Antenna length	7 feet and below	No additional charge
	Above 7 feet	RM 700 per month per additional foot
Additional Dish/Antenna	above 4 antennas / 1 dish	RM 1,000 per item per month

**Note:**

Conversion rate: 1m = 3.25 feet

- 1.5 Recurring charges, as referred to Clause **1.4** above, are inclusive of the following services:
- (a) Site maintenance and housekeeping;
  - (b) Tower maintenance;
  - (c) Physical access to site;
  - (d) Site security such as guards for manned station and fencing and pad lock for unmanned station;
  - (e) Basic Utilities such general area lighting and water;
  - (f) Engineering services such as maintenance of power distribution board, generator set, lift, air conditioning, etc.;
  - (g) Routine Maintenance of hill roads (for towers located on hill stations); and
  - (h) Other costs such as tower permit and quit rent.

The rental is inclusive of space for a maximum of 4 antennas and 1 dish and for each additional antenna or dish installed RM 1,000 per item per month rental will be applied.



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- 1.5.1 Space for cabin or supporting equipment is not included in the tower charges. Additional charge will be calculated based on size and type of space acquired. Access Seeker has the following options of space to choose from:

<b>LOCATION</b>	<b>LAND (RM/sq ft/month)</b>	<b>FLOOR SPACE (RM/sq ft/month)</b>
Urban	RM 8.00	RM 25.00
Rural	RM 7.50	RM 22.00
Remote & Island	RM 8.50	RM 23.00
Very Remote	RM 10.00	RM 26.00

Note: Currently space available only Urban location

Additional Charges for Hill Station

<b>LOCATION</b>	<b>LAND (RM/sq ft/month)</b>	<b>FLOOR SPACE (RM/sq ft/month)</b>
Urban, Rural, Remote & Island, Very Remote	RM 2.50	RM 2.50

Note: Currently space available only Urban location

1.6 Other Applicable Charges

- 1.6.1 Where the Access Seeker is sharing a 3<sup>rd</sup> party tower located in the Access Provider's premise and the Access Provider is providing only the space required for the Access Seeker's cabin, outdoor or indoor BTS, then the following charges will apply:

<b>LOCATION</b>	<b>LAND (RM/sq ft/month)</b>	<b>FLOOR SPACE (RM/sq ft/month)</b>
<b>Urban</b>	<b>RM 8.00</b>	<b>RM 25.00</b>
<b>Rural</b>	<b>RM 7.50</b>	<b>RM 22.00</b>
<b>Remote &amp; Island</b>	<b>RM 8.50</b>	<b>RM 23.00</b>

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<b>Very Remote</b>	<b>RM 10.00</b>	<b>RM 26.00</b>
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**Note: Currently only available at Urban location**

Additional Charges for Hill Station

<b>LOCATION</b>	<b>LAND (RM/sq ft/month)</b>	<b>FLOOR SPACE (RM/sq ft/month)</b>
Urban, Rural, Remote & Island, Very Remote	RM 2.50	RM 2.50

- 1.6.2 Where the Access Seeker is also sharing power supply with the Access Provider from the same meter the following charges will apply.

<b>POWER SOURCE TYPE</b>	<b>RATE RM (per kW/h)</b>
Electricity with one (1) genset backup	0.70
Electricity with two (2) genset backup (for Hill Station only)	0.85
Electricity without genset backup	0.55

**A - Calculation Based on Fuse rating**

**I. Single Phase**

$$\text{Kilowatt(kW)} = (\text{Volts} \times \text{Amperes} \times \text{Power Factor}) / 1000$$

**II. Three-phase**

$$\text{Kilowatt(kW)} = (\text{Volts} \times \text{Amperes} \times \text{Power Factor} \times 1.73) / 1000$$

This calculation is applicable when customer installs their own sub-db.

**B - Calculation Based on Equipment Rating**

$$\text{Kilowatt(kW)} = \text{Watt}/1000$$

**Charging Principles And Charges For Specific Facilities and/or Services**  
**SECTION II– NETWORK CO-LOCATION**

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**SECTION II – NETWORK CO-LOCATION CHARGING PRINCIPLES AND CHARGES**

**1. General**

- 1.1 This **Section II** sets out the charges and the charging principles which would be applicable to Physical Co-Location unless otherwise expressly stated.
- 1.2 The charges and the charging principles herein are based on the Variation to Commission Determination on the Mandatory Standard on Access Pricing (Determination No.1 of 2012), Determination No. 4 of 2015 until a new Mandatory Standard on Access Pricing is determined by the Commission.

**2. Charges and Charging Principles**

**2.1 Rental and Other Charges by the Access Provider**

- (a) Physical Co-Location supplied by the Access Provider shall be subject to the charges listed in **Appendix 2 - Charges for Network Co-location Service**.
- (b) The validity of the charges listed in **Appendix 2 - Charges for Network Co-location Service** shall be subject to Clause 1.2 above ("Validity Date") unless otherwise specified in writing by the Access Provider. The Access Provider reserves the right to revise the rental charges and/or other charges after the Validity Date onwards and shall notify the Access Seeker of the same.
- (c) Rental charges and/or utility charges for a particular Designated Site shall be fixed for the contract period. However, the Access Provider reserves the right to revise the rental charges and/or utility charges for the subsequent contract period, where the Access Seeker wishes to renew the contract.

**2.2 Mode of Payment**

- 2.2.1 The Access Seeker shall pay to the Access Provider the recurring charges stated in **Clause 2.1** above for Physical Co-Location at the Access Provider's Designated Site as follows:
- (a) For the first year, the first year's charges shall be paid in advance on the Commencement Date; and
- (b) For subsequent years, a quarterly advance shall be paid to the Access Provider.
- 2.2.2 The Access Seeker shall pay to the Access Provider for the one-time charges stated in **Clause 1.2** above within thirty (30) days from the date of receipt of the invoice.
- 2.2.3 The Access Seeker agrees to pay the Access Provider the recurring charges for the whole three (3) year period irrespective of use of the Co-Located Space as the Access Seeker has committed to the minimum period of three (3) years (or such lesser period specified by the

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**Charging Principles And Charges For Specific Facilities and/or Services**  
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Access Provider, where the Access Provider lease or has tenancy less than three (3) years). The minimum period commitment shall apply to every renewal of the Co-Located Space.

- 2.2.4 The demand or acceptance of any 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 under this 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 under this Agreement and/or under law.
- 2.2.5 All utility charges shall be paid quarterly in advance.

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**Charging Principles And Charges For Specific Facilities and/or Services\**  
**APPENDIX 2 - CHARGES FOR NETWORK CO-LOCATION**

**APPENDIX 2 – CHARGES FOR NETWORK CO-LOCATION**

- 1.1 Physical Co-Location Service supplied by the Access Provider, only to the extent necessary, will be subject to the Physical Co- Location Service Charges listed in **Table A** below. For the purposes of clarification, all other Physical Co-Location Service charges not listed in **Table A** below are negotiated charges.

**TABLE A: ONE-TIME CHARGES**

Type of Charges	Location Category	Charge (RM)
Site Survey	Applicable to all location	As per quotation
Site Preparation Work	Applicable to all location	As per quotation
Site Supervision Work	Applicable to all location	As per quotation

The charges and terms and conditions for site survey and site preparation for Infrastructure Sharing (Clause 1.2 and 1.3 of Appendix 1 – Infrastructure Sharing) shall also apply to site survey and site preparation for Physical Co-Location Service.

- 1.2 The prices for Network Co-Location Service shall be applied for Physical Co-Location for space, environmental services (heat, light, ventilation and air-conditioning), security and maintenance at switching sites, submarine cable landing centres, earth stations and exchange buildings.

Physical Co-Location Charges shall be based on the following:

Type of Charge	Ringgit Malaysia per square meter per year
Physical Co-Location: Space (including services)	233.00

- For the avoidance of doubt, the charges shall apply for all types of location category of the Access Provider's network premises as described in **Clause 1.1**.

- 1.3 The following rate is applicable if Access Seeker requires all access routes into the Access Provider's building.

TYPE OF CHARGE	CATEGORY	ADDITIONAL CHARGE (RM) (per month)
Access Route	Applicable to all locations	2,000.00

- 2.3 Floor space charges are inclusive of the following services:

**Charging Principles And Charges For Specific Facilities and/or Services\**

**APPENDIX 2 - CHARGES FOR NETWORK CO-LOCATION**

- (a) Site maintenance and housekeeping
- (b) Physical access
- (c) Site Security
- (d) Utilities (lighting & water)
- (e) Engineering services such as maintenance of power distribution board, generator set, lift, air conditioning, fire suppression system, etc.
- (f) Routine maintenance of hill road (for hill station only)

2.4 Where the Access Seeker is also sharing power supply with the Access Provider from the same meter the following charges will apply.

<b>POWER SOURCE TYPE</b>	<b>RATE RM (per kW/h)</b>
Electricity with one (1) genset backup	0.70
Electricity with two (2) genset backup (for Hill Station only)	0.85
Electricity without genset backup	0.55
<b>A - Calculation Based on Fuse rating</b> <b>I. Single Phase</b> $\text{Kilowatt(kW)} = (\text{Volts} \times \text{Amperes} \times \text{Power Factor}) / 1000$ <b>II. Three-phase</b> $\text{Kilowatt(kW)} = (\text{Volts} \times \text{Amperes} \times \text{Power Factor} \times 1.73) / 1000$	

This calculation is applicable when customer installs their own sub-db.

<b>B - Calculation Based on Equipment Rating</b> $\text{Kilowatt(kW)} = \text{Watt}/1000$
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