



**MSA Resources Sdn Bhd**  
**Reference Access Offer**  
**Version 2.1**  
**January 2018**

**KUALA LUMPUR**

3-1-12, Kawasan B  
Jalan 27/56  
Keramat Wangsa  
54200 Kuala Lumpur

T: 03 4251 0545  
F: 03 4251 2545

**JOHOR BAHRU**

23B, Jalan Padi Ria  
Bandar Baru Uda  
81200 Johor Bahru

T: 07 234 6021  
F: 07 234 7146

<http://www.msar.tech>  
info@msar.tech

## **Table of Contents**

Part 1: Introduction	3
Part 2: Access List	9
Part 3: Service Description	10
Part 4: Principles of Access	11
Part 5: Access Request Procedures	13
Part 6: Forecasting Obligations	19
Part 7: Ordering and Provisioning Obligations	23
Part 8: Point of Interface Obligations	29
Part 9: Decommissioning Obligations	31
Part 10: Network Change Obligations	34
Part 11: Billing and Settlement Obligations	36
Part 12: Operations and Maintenance Obligations	40
Part 13: Technical Obligations	42
Part 14: Term, Termination and Suspension	43
Part 15: Dispute Resolution Procedure	45
Part 16: Charges and Charging Principles	50
Appendix 1: Confidentiality Agreement	52
Appendix 2: Access Request Form	56

## **Part 1: Introduction**

MSA Resources Sdn Bhd (“**MSAR**”) is a company incorporated in Malaysia with its registered business address at 23B, Jalan Padi Ria, Bandar Baru Uda, 81200 Johor Bahru.

MSA is a licensed individual network facilities provider under the Act. Pursuant thereto, MSA may offer network facilities in Peninsular Malaysia.

This Reference Access Offer (“**RAO**”) sets out the terms and conditions under which MSA as the Access Provider shall provide Access Service to an Access Seeker. This RAO is not an offer to enter into a legally binding contract but merely a reference document that details the terms and conditions under which MSA as Access Provider is prepared to provide the Access Service to the Access Seeker by entering into an Access Agreement.

For services outside of the scope of this RAO, the terms and conditions thereof shall be negotiated separately between the parties.

Where relevant, the rights and obligations set out in the MSA requirement shall be applicable to this RAO.

This RAO may be amended from time to time and upon happening of such an event.

THIS REFERENCE ACCESS OFFER is made by:

**MSA RESOURCES SDN BHD** (Company No: 463109-M) a company incorporated in Malaysia under the Companies Act 1965 and having its registered office at 23B, Jalan Padi Ria, Bandar Baru Uda, 81200 Johor Bahru

(Referred to hereunder as the “**Access Provider**”)

RECITALS Whereas:

- A. The Malaysian Communications and Multimedia Commission (the “Commission”) has published a Commission Determination on Access List - Determination No. 2 of 2015 and the Commission Determination on the Mandatory Standard on Access (Determination No. 3 of 2016) (collectively known as “**MSA**”).
- B. The MSA requires each Access Provider to prepare and maintain a Reference Access Offer (“**RAO**”) in relation to network facilities and/or network services listed in the Access List Determination which the Access Provider provides to itself or third parties and which contains terms and conditions which are consistent with the rights and obligations set out in the MSA.
- C. For the purposes of this RAO, the Access Provider is a licensed network facilities and network services provider (individual) under the Communications and Multimedia Act 1998 (“**the Act**”) that provides the terms and conditions in relation to network facilities and/or network services on the Access List which the Access Provider is required to do so by the Commission under the provisions of subsection 3.2 of the MSA.
- D. The Access Seeker is desirous to utilize of the network facilities and/or network services of the Access Provider and accordingly have been provided with this RAO by the Access Provider which detail the network facilities and/or network services provided by the Access Provider, and upon which any negotiations which may be had by the Access Seeker with the Access Provider pursuant to such network facilities and/or network services will be made.

### **Nature of the RAO**

It is hereby noted by the Access Seeker that this RAO is not a legally binding document but merely a reference document highlighting the terms and conditions on which the Access Provider is prepared to provide its network facilities and/or network services to the Access Seeker.

Accordingly, the Access Seeker shall enter into a written and duly executed Access Agreement with the Access Provider in order to utilize such network facilities and/or network services. It is further noted by the Access Seeker that the terms and conditions of the Access Agreement between itself and the Access Provider which may be entered in the future may also be subject to the negotiations between the Access Seeker and the Access Provider which may in part deviate from the terms and conditions noted in this RAO. However, any such deviation or alternatives agreed between the Access Provider and the Access Seeker shall not be of lesser terms than the minimum terms provided by the MSA.

The Access Provider may make changes to the RAO from time to time. The Access Seeker is advised to verify with the Access Provider that they have the current version of the RAO.

### **Requirements for making an Access Request**

The Access Seeker hereby notes, acknowledges and represents to the Access Provider that in making the Access Request for the Access Provider's network facilities and/or network services, the Access Seeker is a:

- a) Network facilities provider; and/or
- b) Network services provider; and/or
- c) Applications service provider; and/or
- d) Content applications service provider

And is duly licensed under the Act to carry out its activities as a network facilities provider, network services provider, applications service provider and/or content applications service provider under the Act.

Notwithstanding the representation of the Access Seeker, the Access Provider reserves the right to conduct due diligence reviews on the Access Seeker in any matter the Access Provider may deem fit, and accordingly reserves the right to request the Access Seeker to produce its license(s) under the Act whether the license(s) is individual license or a class license under the Act.

### **Provision of Access**

Access Provider shall at its discretion and in a manner consistent with the License(s) granted (and the license rights accorded therein) by the Minister to the Access Seeker, determine on a case by case basis whether to provide to Access Seeker with access to the Facilities and/or Services.

The Access Seeker may not request for the Facilities and/or Services where the requested Facilities and/or Services are to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.

It is hereby noted by the Access Seeker that the Access Provider only provides access to its network facilities and/or network services based on the Access List as briefly stated in the Preface that are explained in detail in the Access List of this RAO. The Access Provider is not obligated to provide any other network facilities and/or network services which are not contained in the Access List to the Access Seeker.

If the Access Seeker requires network facilities and/or network services that are not contained in the Access List prior to making its Access Request (see Obtaining Information from the Access Provider below).

## **Obtaining Information from the Access Provider**

The Access Seeker is advised to obtain further information from the Access Provider for any other network facilities and/or network services that are not contained in the Access List or this RAO. The request for information is intended to assist the Access Seeker in preparing the Access Request.

Any such request of information by the Access Seeker must be accompanied by the following documents:

- i. The type of network facilities and/or network services desired;
- ii. Copy of the license under the Act (individual license or class license);
- iii. Form 9 (Certificate of Incorporation);
- iv. Form 13 (Certificate of Change of Name) – if any;
- v. Form of Annual Return;
- vi. Form 24 (Return of Allotment of Shares);
- vii. Form 44 (Notice of Situation of Registered Office and of Office Hours and Particulars of Changes);
- viii. Form 49 (Return giving Particulars in Register of Directors, Managers and Secretaries and changes of particulars);
- ix. Memorandum and Articles of Association;
- x. Board of Directors Resolution authorizing the Access Seeker to execution of the Confidentiality Agreement between the Access Provider and then the Access Seeker;
- xi. The specimen signatures, full names and identity card particulars of the persons authorized to execute the Confidentiality Agreement; and
- xii. Two (2) copies of the Confidentiality and Non-Disclosure Agreement (in the form made available by the Access Provider) duly executed by the authorized persons.

The required information will only be released by the Access Provider to the Access Seeker upon the Access Provider's receipt of the complete set of the required information in (i) – (xii) above.

## **Information Required under the Access Request**

These are the information required that to be provided by the Access Seeker under the Access Request:

- i. The name and contact details of the Access Seeker;
- ii. The network services or network facilities in respect if which access is sought;
- iii. Whether the Access Seeker wishes to accept the RAO or to negotiate an Access Agreement;
- iv. The ready for the service date(s) the Access Seeker reasonably requires;
- v. The names of personnel the Access Seeker nominates to represent the Access Seeker in the negotiations and, in respect of each of those personnel:
  - a. his or her contact details;
  - b. his or her job title;
  - c. details of his or her availability for the access negotiations;

- vi. The identity of the negotiating team leader (who must have the authority to make binding representations on behalf of the Access Seeker in relation to matters arising from the negotiations subject to final approval from the Access Seeker's Chief Executive Officer or Board of Directors, if required by the Access Seeker);
- vii. The information (if any) that the Access Seeker reasonably requires the Access Provider to provide for the purposes of the negotiations;
- viii. Two (2) copies of a Confidentiality and Non-Disclosure Agreement properly executed by the Access Seeker in the form prescribed by the Access Provider;
- ix. Forecasts of the capacity the Access Seeker will reasonably require,
- x. The quality of service the Access Seeker requires;
- xi. Relevant technical information relating into the interface standards of the Access Seeker's;
- xii. Relevant information relating to the Access Seeker's Network and the functionality of its services, to the extent that the Access Seekers is aware that such information may affect the Access Provider's Network;
- xiii. Creditworthiness information in accordance with the Access Provider's requirements;
- xiv. Security in accordance with the Access Provider's security requirements;
- xv. Insurance information in accordance with the Access Provider's insurance requirements; and
- xvi. Such other information as the Access Provider may reasonably request.

### **Availability of RAO**

An Access Seeker who is interested in entering into an Access Agreement with Access Provider pursuant to Access Provider's RAO may request for a full copy of Access Provider's RAO.

A copy of Access Provider's RAO will be made available to the Access Seeker:

- (a) On written request, at Access Provider's principal place of business; and
- (b) On Access Provider's website.

Prior to the provision of Access Provider's RAO to the Access Seeker, the Access Seeker shall be required to enter into a Confidentiality Agreement with Access Provider.

### **Notice**

Version 2.0  
July 2017

Any communications in respect of Access Provider's RAO should be made in writing to:

**Razlan Radzi**

Corporate and Development

MSA Resources Sdn Bhd

3-1-12 Kawasan B

Jalan 27/56

Keramat Wangsa

54200 Kuala Lumpur

T: 03 4251 0545

E: [razlan@msar.tech](mailto:razlan@msar.tech)

**\*\*REST OF THIS PAGE LEFT INTENTIONALLY BLANK\*\***



## **Part 2: Access List**

The purpose of this section is to detail the Services provided by the Access Provider for the Access Seeker based on the Access List Determination and Access Pricing Principles released by the Commission pursuant to Section 55, 146 and 282 of the Communications and Multimedia Act 1988 (the Act).

The following Facilities and/or Services may be provided by Access Provider:

- (1) Duct and Manhole Access

**\*\*REST OF THIS PAGE LEFT INTENTIONALLY BLANK\*\***

## **Part 3: Service Description**

### 3.1 General

This Section sets out the terms and conditions that are applicable to the Facilities and/or Services that may be provided by Access Provider to the Access Seeker.

### 3.2 Commercial and Technical Obligations

All commercial terms and conditions applicable to provision by Access Provider of the Facility and/or Service and the operational and technical requirements shall be specified in the Access Agreement.

### 3.3 Facility / Service Description

#### 3.3.1 Duct and Manhole Access

This part sets out the terms and conditions that are applicable to Duct and Manhole Access.

#### 3.3.1 General Terms and Conditions for Duct and Manhole Access

- (a) Duct and Manhole Access is a Facility and/or Service that comprises the provision of physical access to:
  - a. Lead-In Ducts and associated manholes;
  - b. Mainline Ducts and associated manholes in areas in which Access Provider has exclusive rights to develop or maintain duct and manhole infrastructure, whether or not in combination with other Facilities and Services; and
  - c. Sub-ducts where there is no room for the Access Seeker to install its own sub-ducts.
  
- (b) Provision of physical access includes the provision of:
  - a. Space at specified network facilities to enable an Access Seeker to install and maintain its own lines, equipment and sub-ducts; and
  - b. Access for the personnel of the Access Seeker.
  
- (c) Exclusive rights to develop or maintain duct and manhole infrastructure includes exclusive rights in contracts, arrangements or understandings between Access Provider and any person.

## **Part 4: Principles of Access**

### **4.1 Application of Access Provider's RAO**

#### **4.1.1 Application of Access Provider's RAO**

Access Provider's RAO sets out the terms and conditions upon which Access Seekers may access the Access Provider's Facilities and/or Services. Access Provider's RAO applies only to the Facilities and/or Services.

4.1.2 Access Provider's RAO applies only to the Access Facilities and/or Services listed in Part 2 of the Access Provider RAO.

4.1.3 The service description of the Access Facilities and/or Services is set out in Part 3 of the Access Provider RAO

4.1.4 The charges and charging principles for the Access Facilities and/or Services is set out in Part 16 of Access Provider RAO.

#### **4.2 Eligibility for Access to Facilities and/or Services**

4.2.1 Access Provider shall at its discretion and in a manner consistent with the License(s) granted (and the license rights accorded therein) by the Minister to the Access Seeker, determine on a case by case basis whether to provide to Access Seeker with access to the Facilities and/or Services.

4.2.2 Consistent with Government policy and Determination by the Commission (and its predecessor), an Access Seeker may only request for access to any or all of the network facilities or network services listed in the Access List which are set out in Access Provider's RAO where the Access Seeker has been granted:

- (i) A network facilities provider License and/or;
- (ii) A network service provider License and/or
- (iii) An applications service provider License and/or a content applications service provider License, and such Licenses are not limited or restricted from those detailed in the Communications and Multimedia (Licensing) Regulations 2000, as amended in any way:
  - (a) By reference to the type of network facilities, network services and/or content applications services that can be provided; and
  - (b) By geographical limitations to only specific area and/or areas in Malaysia to which the Access Seeker can provide such network facilities, network services and/or content applications services.

4.2.3 An Access Seeker may not request for the Facilities and/or Services where the requested Facilities and/or Services are to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.

4.2.4 Consistent with Government policy and Determination by the Commissions (and its predecessor), where Access Provider provides the Access Seeker with access to the Facilities and/or Services, the charges for the requested Facilities and/or Services shall be negotiated and mutually agreed between the Operators in the Access Agreement subject to any mandatory standard on access pricing determined by the Commission.

#### 4.3 Standard Access Obligations

4.3.1 Access Provider shall, if requested to do so by an Access Seeker, supply the Access Service(s) to the Access Seeker on reasonable terms and conditions.

4.3.2 In supplying the Facilities and/or Services, Access Provider must treat an Access Seeker on a non-discriminatory basis as required by the Standard Access Obligations in relation to the supply of a Service.

#### 4.3 Principles of non-discrimination

4.3.1 The access provided to the Access Seeker shall be consistent with:

- (a) Section 149(2) of the Act; and
- (b) The principles set out in the MSA Determination.

#### 4.4 Customer Principles

4.4.1 Access Provider shall observe and comply with the customer relationship principles set out in the MSA Determination.

**\*\*REST OF THIS PAGE LEFT INTENTIONALLY BLANK\*\***

## **Part 5: Access Request Procedures**

### **5.1 Application for Access to Services**

5.1.1 Where an Access Seeker makes a request to Access Provider to supply Facilities and/or Services, the Access Seeker shall serve an Access Request on Access Provider.

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

5.1.3 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 accept Access Provider's RAO or negotiate an Access Agreement;
- (d) Contain the information (if any) as set out in section 5.3.6 of the MSA Determination that the Access Seeker reasonably requires Access Provider to provide for the purposes of the access negotiations;
- (e) Contain two (2) copies of Confidentiality Agreement properly executed by the Access Seeker in the form prescribed by Access Provider;
- (f) Specify forecasts of the capacity which the Access Seeker reasonably requires, having regard to Access Provider's disclosed provisioning cycle and forecasting procedures;
- (g) 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 Access Provider's Network;
- (h) Contain confirmation that the Access Seeker is not currently being supplied with the requested Facilities and/or Services;
- (i) Specify the type of communications licenses held by the Access Seeker and a copy of the license where a copy had not been previously provided;
- (j) Contain creditworthiness information as specified in this RAO;
- (k) Be accompanied by a security sum as specified in this RAO;
- (l) Contain insurance information as specified in this RAO;
- (m) Contain relevant technical information relating to the interface standards of the Access Seeker; and
- (n) Contain such other information that Access Provider may reasonably request.

### **5.2 Creditworthiness Information**

5.2.1 The Creditworthiness Information that is required to accompany an Access Request includes but shall not be limited to:

- (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 published audited balance sheet and audited profit and loss statement; and
- (c) Such other information as may be reasonably requested by Access Provider provided that such information are information which are publicly available.

5.2.2 The Creditworthiness Information shall commensurate with an estimate of the value of the access to the Services to be provided by Access Provider to the Access Seeker over a ninety (90) days period.

### 5.3 Security Sum

5.3.1 An Access Request shall be accompanied by a Security Sum. The security that may be given by the Access Seeker shall be in the form of a Bank Guarantee.

5.3.2 Access Provider is not obliged to consider entering into an Access Agreement with the Access Seeker pursuant to Access Provider's RAO until the Access Seeker has amongst other things, provided (at the Access Seeker's costs) to Access Provider such Security Sum on terms and conditions reasonably acceptable to Access Provider.

### 5.4 Insurance Information

5.4.1 An Access Request shall be accompanied by the following insurances:

- (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 or in connection with the work covered by the Access Agreement that may be entered and/or their dependents; and
- (b) Comprehensive General Liability Insurance of an amount which is not in excess of Ringgit Malaysia Twenty Million (RM 20,000,000) and not less than Ringgit Malaysia Five Million (RM 5,000,000) for any one claim or series of claims arising out of an accident or occurrence in connection with the Access Agreement that may be entered into resulting in bodily injury and/or personal injury including death and property damage of an Operator which shall arise out of or in consequence of any acts of omissions of the Other Operator. Such policy shall include contractual liability.

5.4.2 For the purpose of clarification, the insurance provided by the Access Seeker pursuant to this RAO shall commensurate with the reasonable sum, which is to be agreed by Access Provider.

### 5.5 Processing of Access Request

#### 5.5.1 Acknowledgement of Receipt of Access Request

Access Provider shall within two (2) Business Days of receipt of the Access Request, inform the Access Seeker in writing that it has received the Access Request and either:

- (a) Request for additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request. Access Provider shall

- comply with the MSA Determination when it requests for such additional information;  
or  
(b) Indicate whether it is willing to provide access to Facilities and/or Services in accordance with Access Provider's RAO.

Subject to the additional information being received by Access Provider within ten (10) Business days from the date of request, Access Provider shall reconsider the Access Request in accordance with this Section upon receipt of such additional information.

## 5.6 Non-refundable resource

5.6.1 In accordance with the MSA Determination, Access Provider may charge an Access Seeker a one-off non-refundable resources charge (including processing fees and additional and non-routine processing fees) to be determined by reference to the costs incurred by Access Provider for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Facilities and/or Services for the purposes of interconnection.

5.6.2 The one-off non-refundable resource charge shall also be inclusive of a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request as Access Provider is required to allocate manpower and resources for the same. Such non-refundable processing fee is only applicable to requested Facilities and/or Services that can be offered and made available by Access Provider. The non-refundable processing fees for the respective Facilities and/or Services will be mutually agreed by the Operators from time to time. Notwithstanding the foregoing, in the event that additional and non-routine administrative work is required to process the Access Request where there is insufficient and/or erroneous information provided by the Access Seeker or where the Access Seeker varies or changes the information provided, Access Provider shall be entitled to charge additional and non-routine processing fee for undertaking such additional and non-routine work as additional resources are required to do the same.

5.6.3 If the Access Seeker does not proceed with the Access Request accepted by Access Provider, the processing fees will not be refunded to the Access Seeker. However, if the Access Seeker proceeds with the Access Request accepted by Access Provider, the processing fee only will be set-off against the Charges for the requested Facilities and/or Services upon acceptance of the Access Request by Access Provider.

## 5.7 Assessment of Access Request

### 5.7.1 Reasons for Refusal

Without limiting any other grounds that may be relied upon under the Act, Access Provider may refuse to accept an Access Request for the supply of the Facilities and/or Services and accordingly may refuse to supply that Facilities and/or Services to the Access Seeker for any of the following reasons:

- (a) In Access Provider's reasonable opinion, the Access Seeker's Access Request was not made in good faith and Access Provider shall set out the basis on which the Access Request was not made in good faith;

- (b) In Access Provider's reasonable opinion, the Access Request does not contain the information reasonably required by Access Provider's RAO provided that Access Provider has sought the information from the Access Seeker under the above Section of Access Provider's RAO and has not received that information within ten (10) Business Days of making such a request;
- (c) Access Provider does not currently supply or provide access to the requested Facilities and/or Services to itself or to any third parties, except where the Access Seeker compensates Access Provider for the supply of access to such Facilities and/or Services;
- (d) It is not technically feasible to provide access to the requested Facilities and/or Services;
- (e) Access Provider has insufficient capacity or space to provide the requested Facilities and/or Services;
- (f) There are reasonable grounds in Access Provider's opinion to believe that the Access Seeker would fail to make timely payment for the supply of the relevant Facilities and/or Services;
- (g) There are reasonable grounds in Access Provider's opinion to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities and/or Services;
- (h) There are reasonable grounds for Access Provider to refuse access in the national interest; or
- (j) The access is being sought to Facilities and/or Services which are not in the Access List Determination.

#### 5.8 Determination of technical infeasibility

For the purpose of determining technical infeasibility, the Operators shall comply with the MSA Determination.

#### 5.9 Determination of capacity constraints

For the purpose of determining capacity constraints, the Operators shall comply with the MSA Determination.

#### 5.9 Assessment of the Access Seeker's ability to pay for supply of the Facilities and/or Services

5.9.1 Examples of reasonable grounds for Access Provider's belief as mentioned in Section 5.7.1(f) include evidence that the Access Seeker is not in the reasonable opinion of Access Provider creditworthy.

#### 5.9.2 Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of the Facilities and/or Services

Examples of reasonable grounds for Access Provider's belief as mentioned in Section 5.7.1(g) include repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to Facilities and/or Services have been provided (whether or not by Access Provider).



### 5.9.3 Assessment of Creditworthiness

In determining the creditworthiness of the Access Seeker, Access Provider may have regard to, but is not limited to the matters referred to in Section 5.2.

In determining the creditworthiness of the Access Seeker, Access Provider shall not take into account amounts outstanding for Facilities and/or Services previously provided by Access Provider to the Access Seeker where, in accordance with the terms and conditions governing the provision of such Service, the Access Seeker is not required to pay such amounts to Access Provider to the extent that there is a bona fide dispute in relation to the amounts outstanding by the Access Seeker to Access Provider and the Access Seeker is relying on such terms and conditions as basis for its non-payment.

### 5.10 Notification of Rejection to the Access Seeker

Where Access Provider rejects the Access Request, Access Provider shall:

- (a) Notify the Access Seeker in writing within ten (10) Business Days from receipt of the Access Request or additional information requested, as the case may be;
- (b) Provide reasons for rejection to the Access Seeker;
- (c) Provide the basis for Access Provider's rejection of the Access Request; and
- (d) Indicate a date and time, not later seven (7) Business Days from the date of the notice of rejection, at which representatives of 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 Access Provider to substantiate its reasons for refusal, and if access has been refused on the basis of capacity constraints, Access Provider must identify when additional capacity is likely to be available.

5.10.1 Where the Operators are unable to resolve their differences following the meeting held pursuant to Section 1.9.1(d), either Operator may request resolution of the dispute.

### 5.11 Acceptance of Access Request

5.11.1 In the event where Access Provider agrees to provide access to Facilities and/or Services to the Access Seeker in accordance with Access Provider's RAO, Access Provider shall within two (2) Business Days of such respond and provide the Access Seeker with two (2) copies of the executed Model Access Agreement, for execution by the Access Seeker.

5.11.2 Where the Access Seeker wish to negotiate an Access Agreement, the Operators shall comply with the requirements in the MSA Determination in negotiating and concluding an Access Agreement.

5.11.3 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 Facilities and/or Services until:

- (a) A Security Sum has been provided; and

(b) An Access Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with the Act.

**\*\*REST OF THIS PAGE LEFT INTENTIONALLY BLANK\*\***

## **Part 6: Forecasting Obligations**

### 6.1 General

6.1.1 The Access Seeker shall, for the duration of the Term of the Access Agreement:

- (a) Provide the Access Provider with a 12 month forecast of its requirements of Access within thirty (30) days from the date of this Access Agreement; and
- (b) Periodically not less than thirty (30) days before the anniversary of the Commencement Date of this Access Agreement, furnish to Access Provider, reasonably accurate 12 month forecasts of its requirements for Access Services.

### 6.1.2 Duration of Forecast.

All forecast provided by the Access Seeker shall be for a twelve (12) month period.

### 6.2 Forecast Request

6.2.1 Access Provider may at any time, request ("Forecast Request") that the Access Seeker provide the following information ("Forecast Information") in sufficient detail to enable the Access Provider to carry out its network and provision planning for the Access Services for which access is required:

- a) Network area or operational area where access is required;
- b) Specific time table when each of the Access Services are required;
- c) The required capacity;
- d) Any such other information as may be reasonably necessary for Access Provider to carry out network planning.

### 6.2.2 Time to Provide Forecast Information.

The Access Seeker shall provide the Forecast Information to the Access Provider within five (5) weeks from the date of receipt of the Forecast Request, unless the Access Provider agrees in writing to an extension of the time limited for the provision of the Forecast Information.

### 6.2.3 Confidentiality of Forecast Information.

The Access Provider shall treat all Forecast Information provided by the Access Seeker to as confidential and shall only be used by the following personnel:

- (a) Those personnel who are in the Access Providers' wholesale or interconnection group; or
- (b) Those personnel of the Access Provider who are part of its Network engineering group with responsibility for interconnection, for the purpose of responding to and planning for the forecast.

### 6.2.4 Distribution of Forecast Information.

The Access Provider may only distribute Forecast Information of an Access Seeker outside the group of people referred to in Section above if:

- (a) The Forecast Information of the Access Seeker is aggregated with forecasts provided by other operators and the Access Providers' own requirements; and
- (b) The Forecast Information or its use does not otherwise specifically identify the Access Seeker in any manner.

### 6.3 Updating & Confirming Forecasts

#### 6.3.1 Updating Forecasts

Regardless of whether the Access Provider makes a Forecast Requests, the Access Seeker shall update its forecast quarterly and shall inform the Access Provider in writing of the updated forecast in writing, so as to enable the Access Provider to carry out efficient network planning and management to meet its current and future requirements and the performance of its obligations under this Access Agreement.

#### 6.3.2 Forecast Confirmation.

If the Access Provider requires the Access Seeker to confirm its forecasts, then the Access Seeker shall within five (5) Business Days submit a statement confirming its forecasts. Upon such confirmation, the forecasts shall be deemed to be a confirmed Access Order for the purposes of this Agreement, to enable the Access Provider to undertake provisioning of the Access Services, subject always to the availability of spare capacity for such services or facilities.

### 6.4 Constrained Capacity

If the Access Provider reasonably believes that the aggregate of the total capacity of Access Services required by the Access Seeker under its relevant forecasts, its own requirements, and other 3rd party access seekers' forecast, would exceed the capacity which the Access Provider can provide, then the Access Provider will notify the Access Seeker of such constrained capacity, whereupon it will endeavor to allocate the available capacity to all access seekers in accordance with Capacity Allocation Policy maintained by the Access Provider.

### 6.5 Forecast Rejection or Acceptance

#### 6.5.1 Insufficiency of Forecast Information.

If the Access Provider considers that the Forecast Information supplied by the Access Seeker is insufficient, then the Access Provider will notify the Access Seeker within five (5) Business Days of receipt of the Forecast Information, of the insufficiency of the Forecast Information and specifying what additional information is required.

#### 6.5.2 Acceptance

The Access Provider will notify the Access Seeker within fifteen (15) Business Days of receiving the Forecast Information if the Forecast Information is accepted.

#### 6.5.3 Effect of Acceptance

If the Forecast Information is accepted, then the Access Seeker may not cancel, vary or alter the Forecast Information, unless Access Provider so agrees in writing.

#### 6.5.4 Rejection

Access Provider may send a rejection notice to the Access Seeker within fifteen (15) Business Days of receipt of the Forecast Information, if it rejects the Access Seeker's forecast. The rejection notice will specify the reasons for rejection together with an offer by Access Provider to meet with the Access Seeker within five (5) Business Days of the rejection notice, to discuss the rejection and alternative methods by which the Access Seeker may comply with the Forecast Request.

### 6.6 Review of Forecasts upon Rejection

#### 6.6.1 by Access Seeker

Upon the rejection of the Forecast Information by Access Provider, the Access Seeker may within twenty-one (21) Business Days from the receipt of the rejection notice by the Access Seeker, review its Forecast Information and re-submit an amended forecast for Access Providers' consideration.

#### 6.6.2 by Access Provider

If an Access Seeker submits an amended forecast, Access Provider shall reconsider the same and the provisions set out in this Section shall apply as if such amended forecast were a fresh forecast.

### 6.7 Over-forecasting

6.7.1 The Access Seeker shall refrain from over-forecasting its requirements for the Access Services.

6.7.2 Access Provider shall determine whether or not the Access Seeker has over-forecasted its requirements on an annual basis by comparing the forecast amount and the previous Access Orders made for that year.

6.7.3 Should the Access Seeker's forecasted requirements exceed the Access Orders for that year, then there shall be deemed to be an over-forecast, and Section 6.8 shall apply in such cases.

### 6.8 Effect of Over-Forecasting

6.8.1 If there has been an over-forecast by the Access Seeker, and

(a) Access Provider incurs costs and expenses in meeting such forecast, which were reasonably and necessarily incurred by Access Provider, and

(b) Access Provider has reasonably sought to mitigate its loss over a six (6) month period; then Access Provider shall be entitled to recover from the Access Seeker an amount not exceeding seventy-five (75%) percent of such costs and expenses which could not have been mitigated by Access Provider during the aforementioned six (6) month period.

6.8.2 The amount ascertained by Access Provider in accordance with Section 6.8.1 above, shall be deemed to be a debt due from the Access Seeker to Access Provider and said amount be included in the Invoice to the Access Seeker for the relevant Billing Period.

6.8.3 The Access Seeker shall pay the amount invoiced in accordance with this Access Agreement.

6.9 Failure to provide Forecasts

6.9.1 Any failure, neglect or refusal by the Access Seeker to comply with its obligations shall entitle Access Provider to continue to provide access to the Access Seeker but such provision of access may be at the level based on previous year's usage or level but such provision (if any) shall be without prejudice to Access Provider's right to reduce such provision as dictated by the needs of Access Provider and 3rd party access seekers. In either case, Access Provider shall not be responsible for any loss, damages, costs or expenses arising to the Access Seeker.

**\*\*REST OF THIS PAGE LEFT INTENTIONALLY BLANK\*\***

## Part 7: Ordering and Provisioning Obligations

### 7.1. Access Order Information by Access Seeker

7.1.1 The Access Seeker shall provide Access Provider with an Access Order, which shall set out the following information (“Access Order Information” or “AOI”):

- (a) The information specified in this RAO
- (b) The Access Services for which access is required;
- (c) The proposed time for delivery of access by Access Provider;
- (d) The locations of delivery in accordance with Access Provider’s published Points of Interface (POI);
- (e) The specifications, technical data, functionality and inter-operability of the Equipment which the Access Seeker will be using in connection with the Access Order; and
- (f) Such other information as the Access Seeker may reasonably believe that Access Provider may require in order to fulfil the requirements of Access Seeker.

7.1.2 The Access Seeker shall provide the AOI in sufficient detail and in sufficient time to enable Access Provider to evaluate and plan the provisioning of the Access Services.

### 7.1.3 Confidentiality of AOI.

Access Provider shall treat all AOI provided by the Access Seeker to Access Provider pursuant to this Access Agreement as confidential and such AOI shall only be used by the following Access Provider personnel:

- (a) Those personnel of Access Provider who are in the wholesale or interconnection group; or
- (b) Those personnel of Access Provider who are part of Access Provider’s Network engineering group with responsibility for interconnection for the purpose of responding to and provisioning the Order.

### 7.2 Acknowledgement of Receipt of Access Order

7.2.1 Access Provider will issue to the Access Seeker an acknowledgement of receipt of the Access Order within two (2) Business Days. The following information will be provided in the receipt:

- (a) The time and date of receipt;
- (b) The available capacity in Access Provider’s relevant network facilities or network services;
- (c) Time frame for the fulfilment of the Access Order;
- (d) A statement that the Access Order has been placed in the queue based on Access Provider’s queuing policy; and
- (e) Such additional information as may be required by Access Provider to clarify the Access Order.

### 7.3 Additional Information

The Access Seeker shall revert to Access Provider within ten (10) Business Days, with the additional information requested by Access Provider. Insufficient or incomplete information provided by the Access Seeker will entitle Access Provider to reject the Access Order.

### 7.4 Service Qualifications

7.4.1 Access Provider shall be entitled to conduct Service Qualifications on the relevant portion of its network as deemed necessary, pursuant to any request for access by an Access Seeker. Access Provider will give a written notice to the Access Seeker within five (5) Business Days of receipt of the Access Order that it intends to conduct such Service Qualification.

7.4.2 The Access Seeker, may with the written consent of Access Provider and upon terms to be agreed, conduct its own Service Qualification.

7.4.3 Access Provider shall use all reasonable efforts to complete the Service Qualification with respect to an Access Order within twenty (21) Business Days of the commencement of the Service Qualification.

7.4.4 Access Provider will inform the Access Seeker of the result of the Service Qualification within two (2) Business Days of the completion of such Service Qualification.

7.4.5 The Access Seeker may withdraw its Access Order, without penalty, within fourteen (14) Business Days after receiving the results of the Service Qualification. Access Provider reserves the right to charge an administrative fee of RM 1000 if the Access Seeker withdraws its Access Order after the prescribed 14 day period.

### 7.5 Acceptance or Rejection of an Access Order

7.5.1 Access Provider will notify the Access Seeker, within either fourteen (14) Business Days or if Access Provider intends to carry out a Service Qualification, thirty five (35) days, (as the case may be), from the date of receipt of the Access Order by Access Provider, whether such Access Order is accepted or rejected.

#### 7.5.2 Rejection

Access Provider may reject an Access Order on any of the following grounds:

- (a) It is not technically feasible to provide the requested Access Services;
- (b) Access Provider has insufficient capacity to provide the requested network services of facilities at the time requested by the Access Seeker;
- (c) The Access Order exceeds the forecast levels provided by the Access Seeker
- (d) The Access Order or variation requested duplicates another Access Order waiting for fulfillment;
- (e) Access Seeker has not obtained the necessary related agreements from Access Provider;



- (f) Access Provider has reasonable grounds to believe that the Access Seeker would materially fail to comply with the terms of Access Agreement,
- (g) Access Provider has reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Access Services, to protect the integrity of Access Provider's Network and/or safety of individuals working on or using services supplied by Access Provider's Network.

7.5.3 If the Access Order is rejected, then Access Provider shall issue a notice of rejection which shall contain, inter alia, the following information:

- (a) The ground(s) of rejection as stated in this Section;
- (b) The time period by which Access Provider will accept a modified Access Order;
- (c) The nature of such acceptable modifications to the Access Order.

7.5.4 The Access Seeker may within five (5) Business Days of receipt of the Notice of Rejection, request in writing to meet Access Provider to discuss the reasons for rejection and alternative methods of compliance.

7.5.5 If Access Provider refuses to meet with the Access Seeker then the Access Seeker may if it disagrees with the grounds for rejection, initiate the dispute resolution process specified in this RAO.

#### 7.5.6 Acceptance

If the Access Order is accepted, then Access Provider shall issue a notice of acceptance which shall contain, inter alia, the following information:

- (a) The specific delivery date for the Access Services, which shall be:
  - (i) In the case of Access Order for new facilities or services, no later than eight (8) months from the date of the Access Order, or
  - (ii) in the case of augmentation of the current capacity on existing facilities or infrastructure, no later than sixty (60) days from the date of the Access Order.
- (b) The actual or an estimate of the charges payable to Access Provider by the Access Seeker, for the fulfillment of the Access Order. Access Provider may initially provide an estimate of the charges, which may be subsequently varied. If a variation of charges occurs, then the Access Seeker may withdraw the Access Order if the variation of the charges exceeds the original estimate by ten per centum (10%).
- (c) That the Access Seeker must within ninety (90) days from the date of the notice of acceptance confirm in writing to Access Provider of its intention to proceed with the Access Order. The charges set out shall remain valid for the period of ninety (90) days.

## 7.6 Confirmation & Charges

### 7.6.1 Access Seeker's Confirmation.

If Access Provider accepts an Access Order, the Access Seeker shall within the ninety (90) day period from the date of notice of acceptance, confirm in writing its agreement to proceed with such Access Order.

### 7.6.2 Estimate Charges

If Access Provider had provided an estimate of the charges to the Access Seeker, Access Provider will not exceed the estimate unless Access Provider provides the Access Seeker with written notice by prior to Access Provider exceeding the estimate, stating that:

- (a) The estimate will likely to be exceeded;
- (b) The reasons for exceeding the estimate; and
- (c) A further estimate of the charges for the work necessary to fulfill the Order.

7.6.3 If the revised estimate exceeds the original estimate by more than 10% of the original estimate, then the Access Seeker may within five (5) Business Days from the date of the notice specified in Section 7.6.2 above, withdraw the Access Order, and such withdrawal shall not expose the Access Seeker to any penalty, and Access Provider shall also be released from fulfilling the Access Order, without being in breach of any of its obligations under the Access Agreement.

7.6.4 If the Access Seeker does not withdraw the Access Order after being notified by Access Provider in accordance with Section 7.6.2 above, then the Access Seeker shall be deemed to have agreed to the revised charges from Access Provider, and Access Provider shall continue with the work and the Access Seeker shall be liable to pay to Access Provider the revised charges.

## 7.7 Fulfilment of an Access Order

Upon receipt of the confirmation specified in Section 7.6.1 above, Access Provider will use all reasonable efforts to fulfil the Access Orders for the Access Services which complies to the forecast supplied by such Access Seeker, on the terms and conditions contained in the Access Agreement

## 7.8 Required Extra Capacity

7.8.1 Access Provider may, by written notice, require the Access Seeker to purchase additional capacity on the Access Seeker's side of the Network, as Access Provider reasonably estimates, may be required by the Access Seeker to meet the demand on its Network.

7.8.2 Should the Access Seeker fail, neglect or refuse to procure such additional capacity within seven (7) Business Days of Access Provider's notice, and the actual demand exceeds the capacity on the Access Seeker's Network, Access Provider will notify the Access Seeker

in writing of such overload on Access Provider's Network. Thereafter, the parties shall meet within five (5) Business Days of the notice, to identify alternative sources of the required capacity for the Access Seeker.

7.8.3 If the access capacity issue on the Access Seekers Network cannot be resolved within ten (10) Business Days of the last meeting between the parties, Access Provider shall be entitled, without further notice to the Access Seeker, to bar or block services (including calls) to the Access Seeker's Network to the extent necessary to minimize congestion within Access Provider's Network.

#### 7.9 Delivery Date for Access

7.9.1 Access Provider will deliver the ordered access to the Access Services on or before the date specified in the notice of acceptance sent by Access Provider.

7.9.2 Should Access Provider be able to deliver the ordered access to the Access Seeker earlier than the agreed delivery date, Access Provider will advise the Access Seeker of such early delivery and if agreed to by the Access Seeker, deliver such ordered access at such earlier date.

#### 7.10 Delay to Delivery Dates

In the event there is a delay in the delivery date, Access Provider will as soon as reasonably practicable, notify the Access Seeker of the delay and the reasons for the delay and also advise the Access Seeker of the revised date of delivery. If the delay is longer than fourteen (14) days, the Access Seeker may cancel the Access Order without any penalty.

Access Provider will give the Access Seeker a rebate for any delay in the delivery date, such rebate shall be of an amount equivalent to the recurring charges payable by the Access Seeker to Access Provider for access to the network services or facilities over a period equal to the period of the delay solely due to Access Provider. Notwithstanding the foregoing, Access Provider shall not be liable for any delay caused by or attributable to the Access Seeker. The rebate will be reflected in the Invoice issued for the next Billing Cycle.

#### 7.11 Cancellation of Access Orders

An Access Seeker may cancel or vary an Access Order in writing provided to Access Provider at any time prior to provisioning of the Access Services by Access Provider. Access Provider shall be entitled to charge the Access Seeker for all costs and expenses incurred by Access Provider in relation to the cancelled or varied Access Order.

For the purposes of this Section a variation of an Access Order shall be an addition, modification, substitution or omission made to an Access Order.

#### 7.12 Testing and Provisioning by Access Seeker

Access Provider will offer all reasonable assistance and cooperation to the Access Seeker in relation to the testing and provisioning of ordered Access Services. Access Provider shall be

entitled to charge the Access Seeker a reasonable one-off fee for such assistance and cooperation.

### 7.13 Queuing Policy for Access

Access Provider maintains a Queuing Policy for all Access Seekers on a non-discriminatory basis that maximizes the efficiency of its ordering and provisioning process. Access Provider will place an Access Seeker in Access Provider's queuing system at the time of providing an acknowledgement of receipt of the Access Order pursuant to Section 7.2 above.

**\*\*REST OF THIS PAGE LEFT INTENTIONALLY BLANK\*\***

## **Part 8: Point of Interface Obligations**

### **8.1 Available Locations**

8.1.1 The list of Access Provider's available points of interface locations:

- (a) At which physical co-location is available;
- (b) In respect of which virtual co-location is available and technically feasible; and
- (c) In respect of which in-span interconnection is available and technically feasible;

is available upon request, and may be amended by Access Provider from time to time, but notwithstanding, the Access Seeker shall confirm with Access Provider the availability of the Point of Interface locations, at the time of making a Forecast or an Access Order.

### **8.2 Deemed Access Providers**

8.2.1 If the Access Seeker obtains physical co-location at a POI from Access Provider, the Access Seeker shall, for the purposes of the MSA, be deemed an access provider with respect to other access seekers requiring co-location at the same POI, and Access Provider shall be considered as the principal access provider.

8.2.2 In such a case, the Access Seeker shall notify Access Provider of the identity of all other operators with whom it has reached co-location agreements within two (2) Business Days of reaching such agreements, and shall ensure that such other access seekers comply with the relevant co-location obligations contained in the MSA, and this Access Agreement.

8.2.3 For the purposes of Section 8.2.2 above, the Access Seeker may disclose to such other operators the provisions of the Access Agreement without breaching its confidentiality obligations under the Access Agreement.

### **8.3 Change of POI by Access Seeker**

Access Provider may consider a request in writing by the Access Seeker to interconnect at a point other than the POI provided by Access Provider and may at its absolute discretion provide access at such selected POI to the Access Seeker and any additional costs incurred by Access Provider shall be paid by the Access Seeker. For the avoidance of doubt, this Section 8.3 does not impose an obligation on Access Provider to interconnect at a non-specified POI Location.

### **8.4 Third party POI**

8.4.1 Should the Access Seeker nominate a third party POI for the purposes of interconnection between the Access Seeker and Access Provider, it shall first notify Access Provider of such nomination giving sufficient details to Access Provider to enable it to decide if it accepts or rejects such nomination.

8.4.2 If Access Provider accepts such nomination, the Access Seeker shall remain responsible at all times for all costs of interconnection and access at such third party's POI.

8.4.3 If Access Provider rejects such nomination, Access Provider shall notify the Access Seeker of its decision and shall provide reasons for its rejection.

8.4.4 Notwithstanding the agreement of Access Provider to interconnect at such third party POI, the Access Seeker shall indemnify and keep Access Provider indemnified for the duration of the Term of the Access Agreement, against all and any claims, demands, expenses, losses and expenses which Access Provider may incur or be exposed to, arising from such interconnection at the third party's point of interconnect.

**\*\*REST OF THIS PAGE LEFT INTENTIONALLY BLANK\*\***

## **Part 9: Decommissioning Obligations**

### 9.1 Decommissioning Notice

In the event Access Provider is desirous of decommissioning a Point of Interface, either:

- (a) As a result of a third party landlord's notice to vacate under a tenancy or lease agreement, or
- (b) For any other commercial reason, Access Provider shall give a Decommissioning Notice to the Access Seekers if the Access Seeker is so affected, at least:
  - (i) one (1) year's notice in writing to the Access Seeker prior to the decommissioning of a Point of Interface; or
  - (ii) six (6) months' notice in writing to the Access Seeker prior to the decommissioning of any network facilities or network services (as the case may be).

Access Provider may give a shorter notice in circumstances where it is unable to meet the notice requirements set out in this section 9.1, but in any event shall give as much notice as possible.

### 9.2 Cooperation by Access Provider

Access Provider will offer reasonable co-operation to all relevant Access Seekers to work out a timetable for the decommissioning of a relevant Point of Interface, network facilities or network services.

### 9.3 Alternative Arrangements

9.3.1 Where Access Provider gives a Decommissioning Notice, Access Provider will use all reasonable efforts to provide the affected Access Seeker, a functionally equivalent interconnection at an alternative Point of Interface, on terms and conditions that are similar to that applicable to the Point of Interface that has been decommissioned, for a period of three (3) years from the date the alternative Point of Interface was commissioned. In the event Access Provider is unable to agree or provide an alternative Point of Interface to the Access Seeker, the parties will discuss and agree on a reasonable compensation as stated below upon the decommissioning. The Access Seeker shall use its best efforts to obtain interconnection from another Operator.

9.3.2 Where Access Provider gives a Decommissioning Notice to the Access Seeker that it will decommission a network facility or network service, Access Provider will use all reasonable efforts to provide the affected Access Seeker access to an alternative network facility or network service on terms and conditions that are similar to that applicable to the network facilities or network services that has been decommissioned, for a period of three (3) years from the date the alternative network facilities or network services are commissioned. In the event Access Provider is unable to agree or provide an alternative network facilities or network services to the Access Seeker, the parties will discuss and agree on a reasonable compensation as stated below upon the decommissioning. The Access Seeker shall use its best efforts to obtain access to network facilities or network services from another Operator.

## 9.4 Compensation for Decommissioning Point of Interface

9.4.1 Access Provider shall pay to the Access Seeker, the Access Seeker's reasonable costs, necessarily incurred in: (a) decommissioning any of the Access Seeker's links to the Point of Interface that is proposed to be decommissioned and that are or will be rendered redundant by the proposed decommissioning; (b) installing or otherwise procuring links between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to Section 9.3.1 above; and (c) the carriage of traffic between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to Section 9.3.1 above for a period of three (3) years from the date of decommissioning.

## 9.5 Compensation for Decommissioning Network Facilities or Network Services

9.5.1 Access Provider shall pay to the Access Seeker, the Access Seeker's reasonable costs, necessarily incurred in (a) moving the Access Seeker's Equipment from the decommissioned network facilities to the alternative network facilities offered in accordance with Section 9.3.2 above; or (b) rearranging Equipment to connect to the alternative network services offered in accordance with Section 9.3.2 above, unless such decommissioning is caused by an event of Force Majeure.

## 9.6 Determining Compensation.

The parties agree to the following process to determine the compensation payable by reason of Sections 9.4 and 9.5 above:

9.6.1 The Access Seeker must within thirty (30) days of the completion of the decommissioning and re-installation at the substitute Point of Interface, submit to Access Provider details of the Access Seeker's reasonable costs identified in Sections 9.4.1 and 9.5.1 above.

9.6.2 If Access Provider considers that the submission is insufficient for Access Provider to verify the costs, Access Provider may request the Access Seeker to provide further information, whereupon the Access Seeker shall within thirty (30) days submit the further information required or provide an explanation as to its unavailability.

9.6.3 Upon receipt of all requisite information from the Access Seeker, Access Provider shall within thirty (30) days, evaluate and determine if the costs incurred is reasonable and necessary, and if Access Provider agrees with quantum of costs incurred, Access Provider shall notify the Access Seeker in writing of its decision and the Parties shall agree on a mechanism for payment of the compensation.

9.6.4 If after the period set out in Section 9.6.3, Access Provider disagrees with the computation provided by the Access Seeker, then Access Provider shall notify the Access Seeker stating its reasons for its disagreement. Upon such notification, the Parties shall meet at a mutually agreed venue and time to resolve the disagreement failing which, a dispute is



deemed to have arisen, which shall be resolved in accordance with the Dispute Resolution Procedure in this RAO.

**\*\*REST OF THIS PAGE LEFT INTENTIONALLY BLANK\*\***

## Part 10: Network Change Obligations

### 10.1 Scope of Network Change

This section deals with the obligations between Access Provider and the Access Seeker (including all other operators, whether or not they are Access Seekers or Access providers), with respect to the implementation of a Network Change (as set out in Section 10.2 below) which necessitates a change in the hardware or software of the other party's Network in order to ensure the continued proper operation and compatibility of the parties respective Networks.

The obligations in this Section are reciprocal in nature and apply both to Access Provider and the Access Seeker.

### 10.2 Types of Network Changes

For the purposes of this Agreement, the following changes would be considered as a network change:

- (a) Interface change
- (b) Service change
- (c) Network change
- (d) Operational Support Systems (OSS) change (includes billing, Ordering and provisioning, and Customer Churn process)
- (e) Functionality change (Collectively referred to as the "Relevant Changes")

### 10.3 Notification of Change

10.3.1 If either Access Provider or the Access Seeker (as "the notifying party") proposes to make a Relevant Change to its Network, services and procedures, the notifying party will issue a Change Notice to the other party (the "recipient party") stating the nature, effect, technical details and potential impact on the recipient party's Network. Upon receipt of the Change Notice, the recipient party shall immediately identify and begin planning the necessary consequential changes that it has to implement to make its Network, services or procedures compatible with the notifying party's Network.

10.3.2 The notifying party will, no later than ten (10) Business Days from the Change Notice, make its technical representatives available to the recipient party to discuss the Relevant Changes, and the necessary consequential changes that the recipient party has to implement to make the recipient party's Network, services or procedures compatible with the notifying party's Network. All Relevant Changes initiated by the notifying party shall only be carried out after the expiry of three (3) months from the date of the Change Notice.

<b>Relevant Change</b>	<b>Notice Period</b>
Interface Change	3 months
Network Change	3 months
Service Change	3 months
OSS Change	3 months
Functionality Change	3 months

#### 10.4 Post notification Procedure and Testing

10.4.1 The notifying party will co-operate and meet with the recipient party within the time frame set out in section 10.2 above, and provide additional information reasonably requested by the recipient party so as to minimize any adverse impact of the Relevant Changes.

10.4.2 The notifying party will cooperate with the recipient party in relation to the development of procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the parties' respective Networks. The notifying party will jointly with the recipient party carry out such tests as developed above at least twenty (20) days prior to the notifying party implementing the Relevant Changes.

10.4.3 The cost of the tests shall be borne by the parties taking into account the number of operators that may be affected by the Relevant Change.

#### 10.5 Testing Failures

10.5.1 Subject to the recipient party having fully co-operated with the notifying party in relation to the development and execution of the tests above, and having regard to the notifying party's requirement for the Relevant Changes:

- (a) If the recipient party does not accept the tests or the results of such tests within ten (10) days prior to the date when the notifying party proposes to effect the Relevant Changes; or
- (b) Such tests do not provide reasonable assurance of the continued operation and compatibility of the parties' respective Networks, services or procedures,

Then the notifying party will postpone implementation of the Relevant Changes for such period as may be necessary to allow the parties to repeat the testing procedures set out above. In the event of continuous failure of the tests, then the Relevant Change shall be abandoned.

**\*\*REST OF THIS PAGE LEFT INTENTIONALLY BLANK\*\***

## **Part 11: Billing and Settlement**

### **11.1 Deposit & Charges**

#### **11.1.1 Charges**

The Access Seeker shall pay Access Provider the agreed charges for the Access Services. The charges may either be commercially set prices or regulated prices set out in the Mandatory Standard on Access Pricing, Commission Determination No. 1 of 2005. ("MCMC 2005 Price Determination") or any other Price Determinations issued by the MCMC from time to time.

11.1.2 If Access Provider incurs additional costs outside those envisaged by the parties in the Access Agreement, then the Access Seeker shall pay such additional costs to Access Provider, in accordance with the terms set out herein.

#### **11.1.3 Deposits**

Within thirty (30) days of the execution of this Access Agreement, the Access Seeker shall provide to Access Provider a bank guarantee from a Bank in Malaysia for an amount equal to two (2) months charges of the relevant Access Services provided to the Access Seeker.

### **11.2 Invoices**

11.2.1 Access Provider will issue Invoices to the Access Seeker in writing and/or in electronic form, in within thirty (30) calendar days of the end of the Billing Period. The invoices shall be for all amounts due to Access Provider in respect of the supply of Access Services during such Billing Period, including such amounts as referred to in Section 11.1.2 above, less any rebates payable by Access Provider to the Access Seeker under the Access Agreement.

#### **11.2.2 Billing Cycle**

Access Provider will issue invoices in monthly billing cycles, unless otherwise agreed between Access Provider and the Access Seeker, and each Invoice will be supported by such information reasonably necessary to allow the Access seeker to verify the Invoice.

11.2.3 In the event Access Provider is unable for any reason to issue an invoice, Access Provider may issue a provisional Invoice based on the previous months invoice.

### **11.3 Billing Errors**

The Access Seeker must notify Access Provider, within ten (10) days from the date of the Invoice, if there are errors in the Invoice. Upon verification and confirmation of such errors, Access Provider will make the necessary adjustments in the next Invoice to the Access seeker.

## 11.4 Payment

11.4.1 The Access Seeker shall make full payment of all Invoices (including any provisional Invoice) issued to it by Access Provider within thirty (30) days from the date of each Invoice. The payments, in Malaysian Ringgit may be made either by cheque or electronic fund transfer directly to an account nominated by Access Provider.

11.4.2 Notwithstanding anything to the contrary, the Access Seeker may withhold payment of amounts disputed in good faith, provided that the Access Seeker notifies Access Provider within the timelines as set out in Section 11.6.1 below.

11.4.3 After resolution of the Billing Dispute, if Access Provider is obliged to refund an amount to the Access Seeker, Access Provider will pay interest on the refunded amount in accordance with Section 11.8 below. Interest will be payable from the date the Access Seeker paid the disputed amount to the date of the refund by Access Provider.

11.4.4 If the dispute is resolved against the Access Seeker, the Access Seeker shall, in addition to paying the amount disputed, pay interest at the rate specified in Section 11.8.

## 11.5 Billing Dispute Notification

### 11.5.1 Right to Dispute

If the Access Seeker disputes any of the Invoices (within the time periods specified in section 11.6 below), the Access Seeker shall provide sufficient and complete information to Access Provider relating to such dispute including:

- (a) The nature of the dispute, supported with necessary documents;
- (b) The amount disputed;
- (c) Detail of the Invoice stating the Access Seekers account number with Access Provider, the invoice reference number, the invoice date, the invoice amount and the billing verification information
- (d) Such other information as the Access Seeker deems necessary to facilitate the expeditious resolution of the dispute.

### 11.5.2 Grounds for Disputing Invoice

An Invoice may be disputed by the Access Seeker if the Access Seeker has reasonable grounds to believe that an error has arisen from one of the following circumstances:

- (a) Access Provider'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;
- (b) There is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Access Seeker's Billing System;
- (c) Access Provider has made some other error in respect of the recording of the calls or calculation of the Charges.

## 11.6 Billing Disputes Timeline

11.6.1 If the Access Seeker intends to dispute an Invoice, the Access Seeker must do so within four (4) weeks of receipt of the disputed invoice from Access Provider.

11.6.2 If the Access Seeker does not dispute the Invoice within the above specified time lines, then the Access Seeker shall be deemed to have accepted the Invoices and shall pay the disputed amount to Access Provider within five (5) Business Days without any deductions or set-off.

## 11.7 Billing Dispute Resolution

The parties agree to use their reasonable endeavors to promptly resolve any Billing Dispute notified under this section 11. If the parties are unable to resolve a Billing Dispute, then such Billing Dispute will be resolved in accordance with the Dispute Resolution Procedure in of the MSA Determination.

## 11.8 Late Payment Interest

11.8.1 Access Provider shall be entitled to charge the Access Seeker late payment interest on all amounts outstanding with respect to any overdue Invoice, at the rate of one percent (1%) per annum above Base Lending Rate calculated daily from the due date of the Invoice until the date of full payment or eight percent (8%) per annum from the due date until full payment (whichever is the lower).

11.8.2 If any invoice is overdue by sixty (60) days or more, such invoice shall be subject to further interest at the rate of 2% per annum above the Base Lending Rate calculated daily from the sixtieth day following the due date until the date of full payment, or eight percent (8%) per annum from the due date until full payment (whichever is the lower).

## 11.9 Back Billing

11.9.1 If Access Provider discovers that there are any errors or omissions, or miscalculations in an Invoice ("the affected Invoice"), Access Provider shall include the difference between the revised value (taking into account the errors, omissions and miscalculations) and the value of the affected invoice (with such errors, omissions and miscalculations), and such difference shall be included into a later Invoice. This differential amount shall be identified in sufficient detail to enable the Access Seeker to undertake a reconciliation of the Invoices and payments made, provided the amendment is made within two (2) months from the date of issuance of the affected invoice, or three (3) months from the latest date when the calls were made or service provided by Access Provider.

11.9.2 Upon receipt of the Invoice containing such differential amounts, the Access Seeker may either request for further information within ten (10) Business Days or pay the said Invoice.

## 11.10 Set Off

The Access Seeker shall not deduct, withhold or set-off any amounts stated in the Invoices against any amounts which Access Provider may owe the Access Seeker or which may be due from Access Provider to the Access Seeker.

11.10.1 If the Access Seeker in contravention of this section 9 withholds, sets-off or deducts any amounts from the Invoice (except if a Billing dispute has been initiated under Sections 11.5 to 11.7 above), then Access Provider may suspend the provision of the Access Services, until the Access Seeker pays the amount withheld.

11.10.2 The amount withheld shall be subject to interest as computed in accordance with Section 11.8 above.

11.10.4 Access Provider may set-off any amount owing to it by the access seeker if the access seeker is in default of payment for 2 billing cycles, from any monies held by the access provider to the account of the access seeker including calling on any security guarantees or security deposits.

**\*\*REST OF THIS PAGE LEFT INTENTIONALLY BLANK\*\***

## **Part 12: Operations and Maintenance Obligations**

### 12.1 Operations & Maintenance Responsibility

Access Provider will be responsible for the operations and maintenance of its own network facilities and network services. The Access Seeker shall be responsible for the operations and maintenance of its own network facilities and network services. The party in whose Network a fault occurs is responsible for rectifying and restoring services in accordance with the response times stated in this Section below.

### 12.2 Fault Management

#### 12.2.1 Establishing Fault Reporting Service

Both the Access Seekers and Access Provider will establish and maintain, at their own costs, a fault reporting service that allows their respective Customers who are connected to their respective Networks, to report such faults directly to their fault management systems.

#### 12.2.2 Fault Reporting

Both Access Provider and the Access Seeker will ensure that it advises it's directly connected customers to report all faults to the fault reporting service set up by the relevant operator, and will manage its fault reporting and identification on a non- discriminatory basis.

#### 12.2.3 Major inter-working faults

If a major fault occurs in the interconnected Network, which affects communications that crosses both Access Provider's and the Access Seekers Networks, initial identification of fault will rest with the Operator who first becomes aware of the fault. Once it is determined accurately where the fault lies, the affected Operator in whose Network the fault has occurred will promptly repair the said fault.

#### 12.2.4 Faults affecting other Networks or Equipment.

If an Operator identifies a fault occurring in its Network which may have an adverse effect on the other Operators Network or Equipment, the Operator identifying the fault shall promptly notify the other Operator of the existence of the fault, and the remedial actions being taken by the affected Operator.

#### 12.2.5 Fault Priority and Response Times

In the event of interruption or failure of any of the facilities and/or services, the affected party will restore those services as soon as is reasonably practicable. Both Access Provider and the Access Seeker will assign priority levels for each of the defect that it experiences in its Network, and will give the highest priority and service to faults that will affect a large number of customers, and to recurring faults affecting any part of the network.



### 12.3 Fault Rectification Response Time

Each party to this Access Agreement, agrees to respond and rectify faults in its Network in accordance with the pre-agreed response and rectification time frames.

### 12.4 Planned Maintenance

12.4.1 The operator (“the Maintenance Operator”) who intends to carry out planned maintenance on any part of its network, which may affect the Access Seekers network or Access Provider’s network, then the Maintenance Operator is required to:

- (a) Provide a minimum of ten (10) Business days’ notice of the planned maintenance;
- (b) Use reasonable endeavors to minimize any disruption to the interconnect and access communications between Access Provider and the Access Seeker; and
- (c) Where reasonably practicable, and if agreed between Access Provider and the Access Seeker, Access Provider will provide an alternative route or carriage on terms to be agreed.

### 12.5 Emergency Maintenance

12.5.1 If the Maintenance Operator needs to undertake emergency maintenance on any part of its Network, which may affect the provision of Access Services, then the Maintenance Operator will, if it is able to:

- (a) Provide at least one (1) Day notice of the planned maintenance, where reasonably practical;
- (b) Use reasonable endeavors to minimize any disruption to the Interconnect and Access communications between Access Provider and the access Seeker; and
- (c) Where reasonably practicable, and if agreed between Access Provider and the Access Seeker, Access Provider will provide an alternative route or carriage of the Access Seekers communication on terms to be agreed.

**\*\*REST OF THIS PAGE LEFT INTENTIONALLY BLANK\*\***

## **Part 13: Technical Obligations**

### **13.1 Compliance to Commission Technical Guidelines and Standards**

Subject to the technical obligations set out in the RAO, Access Provider and the Access Seeker will adhere to the relevant guidelines and all applicable technical standards adopted or issued by the Commission from time to time.

### **13.2 Technical and Implementation Manual**

The parties shall agree to a Technical and Implementation manual ("T&I Manual") in respect of the enablement of the access to the required Access Services as specified in the T&I Manual. Such manual shall be agreed to within 30 days from the date of execution of the Access Agreement, or such longer period as may be mutually agreed.

### **13.3 Network Protection and Safety**

The parties agree that each of them is responsible for the safe operation of its side of the network boundary, and shall take all reasonable steps to ensure that its side of the network, its network operations, and the implementation of this Access Agreement:

- a) Will not endanger the safety or health of any person, both its own personnel and those of the other party;
- b) Will not cause physical or technical harm to the other party's Network, including causing damage, interfering with or causing deterioration in the operation of the other party's Network.

### **13.4 Interference to the Network**

Both Access Provider and the Access Seeker shall take all necessary precautions against interference, and shall not knowingly, do anything or permit any third party to do anything in relation to their respective network and/or equipment which will:

- (a) Cause radio interference to the other party's network;
- (b) Materially obstruct, interrupt or impede the continuous use or operation of the network facilities, network services or equipment.

### **13.5 Notice of Interference**

If either Access Provider or the Access Seeker ("the Notifying Operator") notifies the other party ("the Recipient Operator") that the Recipient Operator's network facilities, network services or equipment is causing interference to the Notifying Operator's network facilities, network services or equipment, then the Recipient Operator shall upon receipt of the aforesaid notice from the Notifying Operator, complete all rectification and repair works so that the interference ceases do all things necessary to remove the interference UNLESS the Recipient Operator is unable to locate the source of the interference, whereupon the Recipient Operator shall notify the Notifying Operator of its inability to locate the source of the interference and the parties agree that both of them shall within twenty four (24) hours of such notice, jointly meet and inspect each other's network facilities, network services or equipment to locate the source of the interference.

### **13.6 Quality of Service**

Subject to technical capacity, the access provided by Access Provider to the Access Seeker shall be at the quality of service level set out in the Quality of Service Schedule.

## Part 14: Term, Termination and Suspension

### 14.1 Term

The Operators shall unless otherwise required by the Access Seeker enter into an Access Agreement for a term of no less than three (3) years from the execution date of the said Access Agreement.

### 14.2 Term of Supply

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

<b>Facilities and/or Services</b>	<b>Minimum Term</b>
Duct and Manhole Access	36 months

### 14.3 Termination Circumstances:

Access Provider may terminate an Access Agreement or part thereof if any of the circumstances referred below apply and Access Provider has notified the Access Seeker of its intention to terminate the Access Agreement:

- (a) The Access Seeker has materially breached the Access Agreement and Access Provider has notified the Access Seeker that it will terminate the said agreement in no less than thirty (30) days if the Access Seeker has not remedy its breach by the end of that period; or
- (b) The Access Seeker is subject to a winding up Order; or
- (c) A Force Majeure has continued for a period of more than 90 days.

Access Provider shall forward to the Commission a copy of the notice of termination at the same time as providing the notice of termination to the Access Seeker.

### 14.4 Changes in Law:

Where the continued operation of the Access Agreement or access to any Facilities and/or Services provided by Access Provider is or will be unlawful (as a result of a legislative change), the Access Seeker and Access Provider shall meet within five (5) Business Days of becoming aware of the relevant change in law to review whether access to the relevant Facilities and/or Services may be provided by Access Provider on different terms and conditions (which are acceptable to the Access Seeker). If the Operators cannot agree to the provision of access on different terms and conditions, Access Provider may terminate the provision of access to the relevant Facilities and/or Services.

### 14.5 Suspension Circumstances

Access Provider may only suspend access to any Facilities and/or Services in the following circumstances:

- (a) The Access Seeker is in breach of a material obligation and fails to remedy such breach within 30 days (or 7 days for breach of payment obligations) of receiving written notice from Access Provider to remedy such breach;
- (b) The Access Seeker's Facilities materially adversely affect the normal operation of Access Provider's Network or are a material threat to any person's safety;
- (c) The Access Seeker's Facilities or the supply of Facilities and/or Services pose an imminent threat to life or property of Access Provider, its employees or contractors;
- (d) The Access Seeker's Facilities cause material physical or technical harm to any Facilities of Access Provider or any other person;
- (e) Where the Access Seeker has failed to pay Bills or Invoices in accordance with this RAO and/or the MSA Determination;
- (f) Where Force Majeure applies; or
- (g) The Access Seeker breaches any laws, regulations, rules or standards which has a material adverse effect on Access Provider or the provision by Access Provider of Facilities and/or Services under the Access Agreement.

For the purposes of this Section, Access Provider must provide the Access Seeker five (5) Business Days' notice in writing, including written reasons, prior to suspending access to any Facilities and/or Services.

#### 14.6 Post-Termination Fees

Access Provider shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any Facilities and/or Services provided under it except:

- (a) Charges invoiced in arrears and not yet paid; or
- (b) Charges arising during an applicable minimum contractual period

#### 14.7 Upfront Charges Refund

On termination of an Access Agreement or access to any Facilities and/or Services provided under it, Access Provider shall refund to the Access Seeker all amounts paid in advance to the extent that the amount (or part of the amount calculated on a pro-rata basis) relate to the period after the date of effect of such termination.

#### 14.8 Deposits and Guarantees

Access Provider shall:

- (a) Within sixty (60) days of termination of the Access Agreement refund to the Access Seeker any deposit paid (without interest) provided all other amounts payable by the Access Seeker to Access Provider have been paid; and
- (b) Immediately upon termination of the Access Agreement unconditionally waive any rights under any guarantees provided by the Access Seeker except in respect of amounts payable by the Access Seeker to Access Provider as at the date of termination.

## Part 15: Dispute Resolution Procedure

### 15.1 General

15.1.1 The following Section sets out the procedure that applies in respect of any dispute or difference between an Access Seeker and Access Provider arising in relation to the Access Agreement.

15.2 For the purposes of the procedures set out in this Section and unless Access Provider and the Access Seeker expressly agree otherwise, a “dispute” is any disagreement or difference relating to, arising out of or in connection with the Access Agreement.

15.3 Subject to subsection 15.4 below, Access Provider and an Access Seeker will adopt and comply with this Dispute Resolution Procedure in relation to any dispute which may arise in respect of or in connection with the supply of Facilities and/or Services to which the Access Agreement applies (“Access Agreement Disputes”).

15.4 All Access Agreement Disputes arising between the parties under the Access Agreement will be dealt with as follows:

(a) Inter-party working group (IPWG). Resolution of any dispute between the parties will first be attempted through negotiation between the parties by means of an inter-party working group

(b) Interconnect Steering Group (ISG). In the event the parties cannot resolve the dispute within the time provided, or after any extension of time has expired, then either party may refer the issue to the Interconnect Steering Group (“ISG”)

(c) Technical Expert or Commission. If the ISG does not resolve a dispute, either party may:

- (i) Refer any technical dispute to a Technical Expert
- (ii) Refer the dispute to the Commission under section 151 of the Act for final resolution.

d) Where a dispute is referred to the Commission pursuant to section 151 of the Act, the Commission will decide the dispute if it is satisfied that the:

- (i) Parties cannot reach agreement, or will not reach an agreement in a reasonable time;
- (ii) Notification of the dispute is not trivial, frivolous or vexation; and
- (iii) Resolution of the dispute would promote the objects in the Act.

15.5 Access Provider will not prevent the Access Seeker from referring a dispute to the Commission in accordance with the Act.

### 15.6 Court Proceedings.

Until expiry of these Dispute Resolution Procedures, an Operator may not commence court proceedings relating to that dispute, other than an application for urgent interlocutory relief. Nothing in this section will be construed as ousting the jurisdiction of any court.

## 15.7 Representatives.

Either party will ensure that its representative acting in relation to a dispute are of sufficient seniority and are authorized to settle an Access Dispute on its behalf.

15.7.1 At the commencement of the Dispute Resolution Procedure, each party must notify the other party of the scope of the authority of each of their representatives.

15.7.2 If in the course of the Dispute Resolution Procedure it is identified that the matters for resolution 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 with the authority to settle those matters.

15.8 During a dispute and any Dispute Resolution process invoked in accordance with this Section, Access Provider and the Access Seeker must continue to fulfill their respective obligations under the Access Agreement unless the fulfillment of those obligations will affect the outcome of the dispute.

15.9 A party is prohibited from using all information obtained as a result of the Dispute Resolution process for any purpose other than to resolve the dispute.

15.10 Subject to the Act, an arbitrator appointed under this Dispute Resolution Procedure (including a Technical Expert or the Commission) may decide not to determine the dispute if the arbitrator considers the dispute trivial, frivolous or vexatious, or if there is insufficient evidence to determine the dispute. In such a case, the arbitrator will, within five (5) Business Days of receiving the reference to arbitration inform the parties in writing, of his decision. The parties will thereafter be entitled to pursue their dispute by litigation.

15.11 Where the arbitrator decides to determine the dispute, the costs of the arbitration will be shared equally between the parties. If the arbitrator decides not to determine the dispute, the party that initiated the dispute must pay the other party's costs.

## 15.12. Inter-party Working Group ("IPWG")

15.12.1 Access Provider and the Access Seeker will first attempt to resolve an Access Dispute among themselves by setting up a working group(s) which must consist of an equal number of representatives of each party and be headed by a person who holds a position at least equivalent to the General Manager of Access Provider.

15.12.2 In setting up the working group(s), Access Provider will provide for:

- (a) Clear terms of reference, the decision making process, timelines and manner of documenting and reporting of the discussions, negotiations and outcome or decisions agreed on depending on the nature and urgency or time by which the dispute must be resolved;
- (b) Equal representation by Access Provider and the Access Seeker in the working group(s);

- (c) Chairmanship and administrative functions of the working group(s) to be shared equally;
- (d) Formal notification procedures to the working group.

15.12.3 Access Provider and the Access Seeker will use reasonable endeavors to attempt to settle an Access Dispute within the Inter-party working groups no later than forty five (45) days from the date the dispute is referred to the Inter-party working group, subject always to the right for either party to seek urgent interlocutory relief. The parties may agree in writing to an extension of the time for resolution of the Access Dispute.

15.12.4 In default of Access Provider providing for the process contemplated in subsection 15.12.2 above, the process will be as follows:

- (a) Each working group will consist of an equal number of representatives from each party. Such representatives must have, or be able to expeditiously obtain the knowledge and information regarding all aspects (for example technical, financial, commercial, and regulatory) necessary for resolution of the dispute;
- (b) One of the representatives in the working group will be a person who holds a position at least equivalent to the General Manager of Access Provider;
- (c) The working group will meet as often and for as long as is necessary to resolve the Access Dispute by the time by which the dispute must be resolved subject always to the time-limit of forty five (45) days referred to in subsection 15.12.3 above;
- (d) The working group will meet at a convenient and practical location. Each party will bear the costs of its participation in such meetings;
- (e) All discussions, outcomes and decisions made at every meeting of the working group will be recorded and minutes of each meeting will be produced for circulation to the representatives of the working group concerned. The representatives of the working group can decide among themselves who records and produces the minutes of the meetings;
- (f) Regardless of whether the Access Dispute is resolved by the working group, the working group will produce a report of the final outcome or decision of the working group which will be signed by each party's representative in the working group. Each party is entitled to a copy of the report.

15.12.5 The process in subsection 15.12.4 may be amended by mutual agreement of the Parties to suit the requirements of the Access Dispute.

### 15.13. Interconnect Steering Group ("ISG")

15.13.1 If the parties cannot resolve the Access Dispute within the Inter-party working group within the stipulated time, or after the expiry of any extension of time agreed on, 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.

15.13.2 If the issue is not resolved prior to the expiry of the Notice Period, then either party may notify the other party ("Receiving Party") in writing that it wishes to refer the issue to the Interconnect Steering Group ("ISG") ("Referral Notice")

15.13.3 If an Access Dispute is referred to an ISG under subsection 15.13.2, the ISG will meet within ten (10) Business Days of the receipt by the Receiving Party of a Referral Notice. In default of the ISG meeting within the stipulated time of ten (10) Business Days, either party may refer the dispute to a Technical Expert in accordance with this Schedule or to the Commission for arbitration.

15.13.4 If the ISG have not resolved an Access Dispute within twenty (20) Business Days after it first meets to review that Access Dispute under subsection 15.13.3, either party may:

- (a) Refer any technical dispute to a Technical Expert in accordance with this Schedule;  
or
- (b) Refer the dispute to the Commission for final arbitration.

#### 15.14 Technical Expert

15.14.1 An Access Dispute can only be referred to a Technical Expert if the provisions of this section have been complied with.

15.14.2 Once a dispute is referred to a Technical Expert, it may not be referred back to an IPWG or an ISG.

15.14.3 The Technical Expert:

- (a) Will be an expert appointed by agreement of the parties or, if the parties cannot agree within ten (10) Business Days, by the Commission;
- (b) Will have the appropriate qualifications and experience to arbitrate the Access Dispute, including knowledge of the communications industry;
- (c) Need not be a Malaysian citizen or resident; and
- (d) Will not be an officer, director or employee of a telecommunication company or otherwise have a potential for conflict of interest.

15.14.4 If the parties fail to appoint a Technical Expert within ten (10) Business Days of notice of the need to refer an Access Dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.

15.14.5 If a dispute is referred to a Technical Expert, the following dispute resolution procedure will apply and be utilized by the Technical Expert:

- (a) The parties will deliver written submissions setting out their positions together with supporting evidence 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 receipt of the other party's written submission.

15.14.6 Unless otherwise agreed by the parties and either party requesting the Technical Expert or if the Technical Expert decides within five (5) Business Days of the receipt of the last written submission, that the arbitration by the Technical Expert be by documents only, the



Technical Expert shall convene a hearing (where both parties may attend and witnesses produced) within fifteen (15) Business Days of the delivery of the last written submission.

15.14.7 Where a hearing by Technical Expert is held pursuant to this section, each party will have the opportunity to make an oral submission to the Technical Expert. This process will be conducted in private.

15.14.8 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 hearing by the Technical Expert will last no longer than three (3) Business Days.

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

15.14.10 The Technical Expert will deliver his decision within fifteen (15) Business Days after the conclusion of the hearing or after receipt of the last written submission where the arbitration is by documents only.

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

15.14.12 The award of the Technical Expert will be final and binding on the parties (in the absence of manifest error of fact or law), and shall be effected promptly by the parties.

**\*\*REST OF THIS PAGE LEFT INTENTIONALLY BLANK\*\***

## Part 16: Charges and Charging Principles

16.1 This Section sets out the Charges and charging principles that would be applicable to the Facilities and/or Services provided by Access Provider to the Access Seeker.

### 16.2 Type of Charges

In consideration of the Access Provider's obligations in the provision of the Facilities and/or Services in the Access Agreement, Access Seeker shall pay to Access Provider in accordance with the applicable provisions in the following Charges:

Type of Facilities/Services	Type of Charges	Description	Billing Cycle
Duct and Manhole Access	One Time Charge	Installation and Interconnection	Post Activation
Duct and Manhole Access	Recurring Charges	Rental	Monthly

### 16.3 Charges and Charging Principles of Duct and Manhole Access

The charges for the Duct and Manhole Access are as follows:

Duct and Manhole Access	Type of Charge	Ringgit Malaysia (RM)
25% of Duct and Manhole Access	Recurring	RM316 per KM per month
Fibre Optic Rental (pair)	Recurring	RM26,000 per KM per month
Interconnect Fee	One Time	RM15,000
Site Access	As Needed	RM2,000

16.3.1 The recurring Charges including rental charges shall commence to be payable from the date Service is provided, and shall be paid according to the Billing Period elected by the Access Seeker in the Service Order Form and payments shall be made in advance on or before the payment periods.

16.3.2 In relation to the Charges, Access Seeker shall also be liable to pay any government taxes (including Goods and Services Tax) relevant to the Service provided it is legally required

to be paid by the Access Seeker and utility charges imposed (if any) on utilization of the Service. Where applicable such taxes shall be added to the invoice and shall be paid to Access Provider at the same time as the relevant invoice is settled.

16.3.3 In relation to the One–Time Charges for each Service, Access Seeker shall pay the Charges no later than the Ready for Service (“RFS”) Date, Service Activation Date or Handover Date, whichever is relevant.

16.3.4 All amounts payable by Access Seeker pursuant hereto shall be paid in full free and clear of all bank or transfer charges imposed by the Access Seeker bank(s) to such account(s) as Access Provider may by notice to Access Seeker designate without reduction for any deduction or withholding for or on account of any tax, duty or other charge of whatever nature imposed by any taxing authority. If Access Seeker is required by law to make any deduction or withholding from any payment hereunder, Access Seeker shall pay such additional amount to Access Provider so that after such deduction or withholding the net amount received by Access Provider will be not less than the amount Access Provider would have received had such deduction or withholding not been required. Access Seeker shall make the required deduction or withholding, shall pay the amount so deducted or withheld to the relevant governmental authority and shall promptly provide Access Provider with evidence of such payment.

16.3.5 Any type of Charges chargeable to the Access Seeker shall be determined and made known to the Access Seeker before the commencement of the Service and shall not be changed for the duration of the Service period unless mutually agreed between the Access Seeker and Access Provider or unless provided otherwise in the Access Agreement.

16.3.6 Any unregulated Facilities and/or Services rates that Access Provider will offer to the Access Seeker will be provided to the Access Seeker upon written request to Access Provider.

#### 16.4 Charging Principle on One- Time Charges

16.4.1 One–Time Charges are installation charges, interconnect charges, supervision and administrative charges which may be charged to the Access Seeker in relation to the Service provided to the Access Seeker and such charges may vary from case to case depending on the extend and complexity of the work involved for the installation and interconnection related thereto.

#### 16.5 Charging Principle for Service outside Access Provider’s Existing Network Topology

16.5.1 Any request for Service located outside of Access Provider’s existing Network Topology and subsequently provided to the Access Seeker shall be subject to other charges including third party charges, if any.

#### 16.6 Cancellation Charges

16.6.1 If Access Seeker cancels a confirmed order for a Service, Access Seeker shall be liable to pay Access Provider cancellation charges.

## CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on

BETWEEN

MSA RESOURCES (463109-M), a company incorporated in Malaysia with its registered address at No. 23B, Jalan Padi Ria ,Bandar Baru UDA,81200 Johor Bahru, Johor Darul Takzim (hereinafter referred to as “MSA RESOURCES.”) of the one part;

AND

(Hereinafter referred to as “Access Seeker”) of the other part.

WHEREAS:-

- A. MSA RESOURCES is a licensed individual network facilities provider under the Communications and Multimedia Act 1998. Pursuant thereto, MSA RESOURCES may offer Duct and Manhole Access aft Malaysia-Singapore 2nd Link, Johor Darul Takzim.
- B. The parties are discussing certain matters thereby necessitating the exchange of information for the purpose of determining their respective interests in establishing a business relationship between them.
- C. The parties wish to defend their rights with respect to the said information and to protect the confidentiality thereof and proprietary features contained therein.

NOW THIS AGREEMENT WITNESSETH as follows:-

### 1. Definition

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

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

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

### 2. Non-Disclosure of Confidential Information

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

3. Information excluded from Confidentiality

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

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

4. No Commitment

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

5. Return Of Materials

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

6. Patent or Copyright Infringement

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

7. Term

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

8. Miscellaneous

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

9. Governing Law

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

10. Remedies

The Recipient agrees that the obligations of the Recipient provided herein are necessary and reasonable in order to protect the Disclosing Party and its business and the Recipient expressly agrees that monetary damages would be inadequate to compensate the Disclosing Party for any breach by the Recipient of its covenants and agreement set forth herein. Accordingly, the Recipient agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the Disclosing Party and that in addition to any other remedies that may be available, in law, in equity or otherwise, the Disclosing Party shall be entitled to obtain injunctive relief against the

threatened breach of this Agreement or the continuation of any such breach by the Recipient without the necessity of providing actual damages.

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

Signed by

Company Chop:

\_\_\_\_\_  
For and behalf of MSA RESOURCES  
SDN BHD

In the presence of:

\_\_\_\_\_  
Name:

Signed by

Company Chop:

\_\_\_\_\_  
For and behalf of:

In the presence of:

\_\_\_\_\_  
Name:

ACCESS REQUEST FORM

1. MSA RESOURCES Site Details

Site Name : Malaysia –Singapore 2nd Link Bridge, Johor Darul Takzim

2. Requirement proposed by Access Seeker:

Nos of Sub Ducts: \_\_\_\_\_

Equipment  
Specify Equipment to install: \_\_\_\_\_

Space Requirement: \_\_\_\_\_

3. License Term : \_\_\_\_\_

4. License Fee (Yearly) : \_\_\_\_\_

5. Security Deposit: \_\_\_\_\_

6. Start Date : \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned have through their duly authorized representatives signed this SUB DUCT AND MANHOLE ACCESS LICENSE OFFER on the day and year written below.

For or On Behalf of Access Seeker

Signature :

Company Seal :

Name :

Designation :

Date :

For or On Behalf of MSA Resources Sdn. Bhd.



Signature :

Company Seal :

Name :

Designation :

Date :