



BORNEO RESTU

**BORNEO RESTU SDN BHD
REFERENCE ACCESS OFFER (“RAO”)**

**Version 2.0
Effective 1st February 2024**

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Section 1 – Introduction

- 1.1 Pursuant to Section 5.3.3 of the Commission Determination on the Mandatory Standard on Access, Determination No. 1 of 2022 (“the MSA Determination”) and Commission Determination on the Mandatory Standard on Access Pricing, Determination No. 1 of 2023, this Reference Access Offer (“RAO”) is made by **Borneo Restu Sdn Bhd [Company No. 201201026670 (1011160-X)]**, a company incorporated under the laws of Malaysia and having its place of business at Level 3, Lot 18, Block B1, Saradise Kuching, Off Jalan Stutong, 93350, Kuching, Sarawak (“BR”).
- 1.2 BR is required to prepare and maintain a Reference Access Offer in relation to the Facilities and Services on the Access List Determinations which it provides to itself or third parties, are consistent with the MSA Determination and where applicable, the rights and obligations set out in MSA Determination shall be applicable to BR’s RAO.
- 1.3 The access to be provided by BR to be consistent with the obligations under section 4.1.1 of the MSA Determination and section 149 the Act and on an equitable and non-discriminatory basis.
- 1.4 BR may offer network facilities, network services and applications services within Malaysia.
- 1.5 For the purposes of clarification, if the Access Seeker requests services outside BR’s RAO, the terms and conditions for the provision of such services shall not be governed by BR’s RAO, BR and the Access Seeker will negotiate in good faith in relation to such terms and conditions and enter into and conduct negotiations in a timely manner.
- 1.6 Additional Services

In addition, the Operators are free to consider BR’s RAO when negotiating the terms and conditions for the supply of other network facilities or network services that are not listed in the Access List.

1.7 Reference Access Offer

BR’s RAO comes into force and takes effect immediately from the date referred to in **Section 1.1** and continues until the earlier occurrence of the expiry of the RAO Term, a Review or withdrawal in accordance with BR’s RAO.

BR’s RAO has no effect on contractual arrangements for the supply of Facilities and Services by BR to an Access Seeker prior to the Commencement Date unless and until such contractual arrangement and/or Access Agreement is subsequently finalised and agreed between BR and the Access Seeker.

1.8 BR shall, not less than **twenty (20)** Business Days before effecting any amendment to the BR’s RAO, provide a copy of the amendments, or an amended copy of BR’s RAO to:

- 1.8.1 the Access Seeker who is being provided with access to network facilities or network services listed on the Access List under BR’s RAO; and

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- 1.8.2 the Access Seeker who has requested BR's RAO within the period of **ninety (90)** days prior to the making of such amendments, unless the Access Seeker has already indicated that it does not wish to proceed with an Access Request.
- 1.9 If the Commission revokes, varies or replaces the Access List Determination relating to the network facilities or network services listed on the Access List under section 56 of the Act, BR may, by giving written notice as prescribed under Section 7.4.2 of the MSA Determination to all Access Seekers to whom it is supplying network facilities or network services under BR's RAO, withdraw or replace BR's RAO in accordance with that written notice.
- 1.10 BR shall comply with Sections 5.3.5, 5.3.6, 7.4.2 and 7.4.3 of the MSA Determination where it withdraws or varies BR's RAO pursuant to **Section 1.9**.
- 1.11 In addition to **Section 1.10** above, BR may give the Access Seekers to whom it is supplying network facilities and network services under BR's RAO a notice of a variation or replacement of BR's RAO to effect such variations that are necessary or appropriate in the event of:
- 1.11.1 the occurrence of a Legislative Event that materially affects the rights or obligations of BR under BR's RAO; or
- 1.11.2 the occurrence of a Regulatory Event that relates to BR; or
- 1.11.3 a review by the Commission of the MSA Determination pursuant to Section 7.5 of the MSA Determination inclusive of any review by the Commission on the Mandatory Standard Access Pricing.
- 1.12 BR may subject to **Section 1.8** above, replace BR's RAO at any time.
- 1.13 BR's RAO shall be made available to an Access Seeker by written request, at BR principal place of business and on a publicly accessible website.

Section 2 – Interpretation

2.1 The following words have these meanings in this RAO unless otherwise stated: -

“Act” means the Communications and Multimedia Act 1998.

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

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

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

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

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

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

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

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

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

“Bank Guarantee” means the guarantee executed and to be granted to BR on behalf of the Access Seeker by a bank approved by BR.

“Billing Dispute” means the dispute of an invoice prepared by an Operator to the Other Operator which is made in good faith.

“Billing Period” means the period over which the supply of access to Facilities of Services is measured for the purposes of billing as contemplated in Section 6, which shall be more than thirty (30) days and in accordance with the relevant calendar month, unless otherwise agreed between the Operators.

“Business Day” means a day other than a Saturday and Sunday or in states where Friday is observed as the weekly holiday, Thursday and Friday or a day which is lawfully observed as a national public holiday on the same day around Malaysia.

“Charges” means the sums payable by the Access Seeker to BR for the provision of the Facilities or Services listed in the Access List Determination.

“Commencement Date” means the date on which the Operators enter into the Access Agreement or such other date as agreed between the Operators.

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

“Communication” means any communication, whether between persons and person, thing and things, or persons or things in the form of sound, data, text, visual image, signals, or any other form or any combination of those forms and, where the context permits, includes a Communication Attempt.

“Communication Information” means information in respect of Communications made during the Billing Period which may be required by BR and to be specified for each Facility or Service provided under Section 6.

“Communications Service” means the network facilities, network services, application services and/or content application services provided by the Operator, as the case may be, pursuant to its Licence(s).

“Creditworthiness Information” means the information required by BR to assess the creditworthiness of the Access Seeker which are more particularly described in Section 4.2 of the RAO and such other information as may be required from time to time

“Customer” means in relation to an Operator, a person having a contractual relationship with the Operator for the provision of Communications Services.

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

“Direction” means any lawful direction made by the Commission pursuant to Chapter 1 of Part V of the Act.

“Due Date” means in respect of an invoice, thirty (30) days from the date of receipt of an Invoice.

“Effective Date” means the date on which the relevant portions of the Access Agreement requiring registration is duly registered with the Commission under Section 150 of the Act in its entirety (and such registration is notified in writing to the Operators).

“End User” means a consumer and final recipient of the service, and includes an ultimate retail Customer of an Operator.

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

“Facilities” means network facilities and/or other facilities which facilitate the provision of network services or applications services including content applications services as offered in the RAO and listed in the Access List Determination.

“Facilities Access” means a Service for the provision of access of Facilities listed on the Access List Determination pursuant to Parts I and I of Schedule A.

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

“Invoice” means the invoice for amounts due in respect of the supply of requested Facilities or Services listed in the Access List Determination during a Billing Period.

“IP” or **“Internet Protocol”** means network-layer (Layer 2) protocol, as defined by the Internet Engineering Task Force, that contains addressing information and some control information that enables packets to be routed.

“Licence” means an individual licence granted by the Minister pursuant to the Act for Communications Services.

“Minister” means the Minister in charge of telecommunications or, if different, the Minister administering the Act.

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

“POI” or **“Point of Interconnection”** means any technically feasible point which demarcates BR’s Network (both collectively hereinafter referred to as “Interconnecting Networks”), and is the point at which communication is transferred between the Interconnecting Networks.

“POP” or **“Point of Presence”** means a point at which an Access Seeker has established itself for the purpose of obtaining access to Facilities of Services and is the point at which Communication is transferred between the Operators.

“Operators” means BR and the Access Seeker collectively.

“Other Operator” means either BR or the Access Seeker.

“QOS” means quality of service.

“QOS Standards” means the QOS standards in respect of certain services set out in the appropriate Manual to the Access Agreement.

“Review” means a review of the MSA Determination and/or the Mandatory Standard on Access Pricing.

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

“Security Sum” means the security:

- (a) Either in the form of a Bank Guarantee or cash, deposited with BR for the supply of Facilities or Services listed on the Access List Determination which is more particularly described in Section 4.3; and
- (b) As stated under the respective Facilities or Services.

“Services” means network services and/or other services which facilitate the provision of network services or applications services, including content applications services which are offered in BR’s RAO and listed in the Access List Determination.

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

“Technical Specifications” means any technical parameters, specifications and procedures applicable to Interconnection of the Operators’ Networks and provision of Facilities and/or Services documented in the Manuals to the Access Agreement.

Section 3 – Principles of Access and Interconnection

3.1 Services

3.1.1 This RAO applies only to Facilities or Services listed on the Access List Determination.

3.2 Eligibility for Access to Services

3.2.1 BR may at its discretion and in a manner consistent with the Licence(s) granted (and the licence rights accorded therein) by the Minister to the Access Seeker, determine on a case-by-case basis whether to provide the Access Seeker with access to Facilities or Services listed in the Access List Determination which are set out in the RAO and subject to Section 5.4.11 of the MSA Determination.

3.2.2 For the purposes of clarification, consistent with Government policy and Determinations by the Commission (and its predecessor), an Access Seeker may only request for access to any or all of the Facilities or Services listed in the Access List Determination which are set out in the RAO where the Access Seeker has been granted (i) an individual network facilities provider licence and (ii) an individual network services provider licence and (iii) an individual content applications services provider licence, and such individual licences are not limited or restricted from those detailed in the Communications and Multimedia (Licensing) Regulations 2000 and subject to Section 149 of the Act, 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 a specific area and/or areas in Malaysia to which the Access Seeker can provide such network facilities, network services and/or content applications services.

3.2.3 An Access Seeker may not request for access to the Facilities or Services listed in the Access List Determination where the requested Facilities or Services are to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.

3.2.4 Consistent with Government policy and Determinations by the Commissions (and its predecessor), where BR provides the Access Seeker with access to the Facilities or Services listed in the Access List Determination pursuant to Section 3.2.1, the charges for the requested Facilities or Services shall be negotiated between the Operators subject to any Mandatory Standard on Access Pricing determined by the Commission.

3.3 Principles of Access and Interconnection

3.3.1 BR shall subject to Section 3.2, if requested to do so by an Access Seeker, supply a Facility or Service listed in the Access List Determination to the Access Seeker on reasonable terms and conditions.

3.3.2 In supplying a Facility or Service listed in the Access List Determination, BR 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.

3.4 Principles of non-discrimination

3.4.1 The access provided by BR to the Access Seeker shall be consistent with Section 149(2) of the Act and Sections 4.1.5 and 4.1.6 of the MSA Determination.

3.5 Customer Principles

3.5.1 BR shall observe and comply with the customer relationship principles set out in Section 4.3 of the MSA Determination.

Section 4 – Access Request Procedures

4.1 Application for Access to Services

4.1.1 An Access Seeker shall request BR to supply Facilities or Services listed in the Access List Determination to it by serving an Access Request on BR.

4.1.2 The purpose of such Access Request is to provide BR with sufficient information to assess the Access Seeker's request for the supply of Facilities or Services listed in the Access List Determination under BR's RAO.

4.1.3 The Access Request must:

- (a) Contain the name and contact details of the Access Seeker;
- (b) Specify the Facilities or Services listed in the Access List Determination in respect of which access is sought;
- (c) Indicate whether the Access Seeker wishes to accept BR's RAO or negotiate an Access Agreement;
- (d) Contain the information (if any) as set out in Section 5.3.7 of the MSA Determination that the Access Seeker reasonably requires BR to provide for the purposes of the access negotiations;
- (e) Preliminary information regarding the scale and scope of Facilities and/or Services that the Access Seeker expects to acquire from the Access Provider pursuant to the Access Request;
- (f) 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 BR's Network;
- (g) Specify the type of communications licences held by the Access Seeker and a copy of the licence where a copy had not been previously provided;
- (h) Contain Creditworthiness Information as set out in Section 4.2;
- (i) Be accompanied by a Security Sum as set out in Section 4.3;
- (j) Contain Insurance Information as set out in Section 4.4;
- (k) Contain relevant technical information relating to the interface standards of the Access Seeker; and
- (l) Contain such other information that BR may reasonably request.

4.2 Creditworthiness Information

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

- (a) If BR reasonably believes that the Access Seeker may not be able to meet any liabilities that may arise under an Access Agreement with the Access Seeker;
- (b) If the creditworthiness information sought is limited to information which is publicly available (on this basis, BR may request the Access Seeker to warrant that such information is accurate); and
- (c) To the extent commensurate with a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the minimum period of access to Facilities and/or Services in an Access Agreement.

4.3 Security Sum

4.3.1 An Access Request shall be accompanied by a Security Sum. The security that may be given by the Access Seeker may in the form of bank guarantee or cash sum.

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

4.4 Insurance Information

4.4.1 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 within statutory limits as required by the laws of Malaysia in respect of its employees employed or in connection with the work covered by the Access Agreement that may be entered into; and
- (b) Comprehensive General Liability Instance of an amount which is not in excess of Ringgit Malaysia Twenty Million (RM20,000,000.00) only 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. Such policy shall include contractual liability.

4.5 Processing of Access Request

4.5.1 Acknowledgement of Receipt of Access Request

BR shall within **ten (10)** Business Days of receipt of the Access Request inform the Access Seeker in writing that is has received the Access Request and:

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- (a) Subject to Section 4.5.3, request additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request; or
 - (b) Indicate whether it is willing to provide access to Facilities or Services listed in the Access List Determination in accordance with BR's RAO; or
 - (c) Indicate whether BR is willing to negotiate any amendments to the RAO or the Access Agreement; or
 - (d) Refuses the request in accordance to Section 4.6 below.

Subject to the additional information being received by BR within **twenty (20)** Business days from the date of request, BR shall reconsider the Access Request in accordance with this Section 4.5.1 upon receipt of such additional information.

4.5.2 Request for information

4.5.2.1 BR shall comply with Section 5.4.16 of the MSA Determination where it requests additional information from the Access Seeker pursuant to Section 4.5.1(a).

4.6 Assessment of Access Request

4.6.1 Reasons for Refusal

Without limiting any other grounds that may be relied upon under the Act, BR may refuse to accept and an Access Request for the supply of a Facility or Service listed on the Access List Determination and accordingly may refuse to supply that Facility or Service to the Access Seeker for any of the following reasons:

- (a) In BR's reasonable opinion, the Access Seeker's Access Request was not made in good faith and BR shall set out the basis on which the Access Request was not made in good faith;
- (b) In BR's reasonable opinion, the Access Request does not contain the information reasonable required by BR's RAO provided that BR has sought the information from the Access Seeker under Section 4.5.1 of BR's RAO and has not received that information within **twenty (20)** Business Days of making such a request;
- (c) BR does not currently supply or provide access to the requested Facilities or Services listed in the Access List Determination to itself or to any third parties, except where the Access Seeker compensated BR for the supply of access to such Facilities or Services;
- (d) It is not technically feasible to provide access to the requested Facilities or Services listed in the Access List Determination;

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- (e) BR has insufficient capacity to provide the requested Facilities or Services listed in the Access List Determination;
 - (f) There are reasonable grounds in BR's opinion to believe that the Access Seeker would fail to make timely payment for the supply of the relevant Facility or Service listed in the Access List Determination and such concern cannot be addressed through a security requirement in accordance with the MSA;
 - (g) There are reasonable grounds in BR'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 or Services listed in the Access List Determination; or
 - (h) There are reasonable grounds for BR to refuse access in the national interest; or
 - (i) The facilities and/or services sought are not in the Access List Determination.

4.6.2 Determination of technical infeasibility

For the purpose determining technical infeasibility in Section 4.6.1(d), the Operators shall comply with Section 5.4.17 of the MSA Determination.

4.6.3 Determination of capacity constraints

For the purpose of determining capacity constraints in Section 4.6.1(e), the Operators shall comply with Section 5.4.18 of the MSA Determination.

4.6.4 Assessment of the Access Seeker's ability to pay for supply of relevant Facilities or Services listed in the Access List Determination

Examples of reasonable grounds for BR's belief as mentioned in Section 4.6.1(f) include evidence that the Access Seeker is not in the reasonable opinion of BR, creditworthy.

4.6.5 Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of relevant Facilities or Services listed in the Access List Determination

4.6.5.1 Examples of reasonable grounds for BR's belief as mentioned in Section 4.6.1(g) include repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to Facilities or Services have been provided (whether or not by BR).

4.6.6 Assessment of Creditworthiness

- (a) In determining the creditworthiness of the Access Seeker, BR may have regard to, but is not limited to the matters referred to in Section 4.2.

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

4.7 Notification of Rejection to the Access Seeker

4.7.1 Where BR rejects the Access request, BR shall:

- (a) Notify the Access Seeker in writing within ten (10) Business Days from receipt of the Access Request or additional information requested pursuant to Section 4.5.1, as the case may be;
- (b) Provide reasons for the rejection under Section 4.6 to the Access Seeker;
- (c) Provide the basis for BR's rejection of the Access Request; and
- (d) Indicate a date and time, no later than seven (7) business days from the date of the notice of rejection, at which representatives of BR 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 BR to substantiate its reasons for refusal, and if access has been refused on the basis of the following grounds: -
 - (i) Section 4.6.1(b), BR must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker;
 - (ii) Section 4.6.1 (e), BR must identify when additional capacity is likely to be available;
 - (iii) Section 4.6.1(f), BR must identify the form of security requirement which would satisfy its concern that the Access Seeker may fail to make timely payment for the requested Facilities and/or Services, its reasons for security requirement and why it considers such concern cannot be addressed through a security requirement under Section 4.3 herein.

4.7.2 Where the Operators are unable to resolve their differences following the meeting held pursuant to Section 4.7.1(d), either Operator may request resolution of the dispute in accordance with Section 7.

4.8 Acceptance of Access Request

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- 4.8.1 Where BR agrees to provide access to Facilities or Services listed in the Access List Determination to the Access Seeker in accordance with BR's RAO, BR shall within ten (10) Business Days of such respond under Section 4.5.1(b), provide the Access Seeker with two copies of the executed Access Agreement, for execution by the Access Seeker.
 - 4.8.2 Where the Access Seeker wish to negotiate an Access Agreement, the Operators shall comply with the requirement in Section 5.4.1, 5.4.2, 5.4.3, 5.4.4, 5.4.9 and 5.4.15 of the MSA Determination in negotiating and concluding an Access Agreement.
 - 4.8.3 BR will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Facility or Service listed in the Access List Determination until a Security Sum has been provided in accordance with Sections 4.1 and 4.3 and an Access Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with section 150 of the Act.

4.9 Timing

- 4.9.1 If an Access Seeker wishes to negotiate an Access Agreement with an Access Provider:
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- (a) Both parties shall notify the Commission when the negotiations for the Access Agreement begin under this subsection;
- (b) Both parties shall use their best endeavours to conclude the Access Agreement within:-
 - (i) where there is no Access Agreement in place between BR and the Access Seeker, four (4) months; or
 - (ii) where there is already a commercial agreement or an Access Agreement in place between BR and the Access Seeker, three (3) months;

After a written request by the Access Seeker to commence negotiations under Section 5.4.6(c) of the MSA Determination and BR's response confirming it is willing to negotiate under Section 5.4.7(b) of the MSA Determination.

- (c) If the negotiations are not completed within the applicable timeframe specified under Section 4.9.1(b): -
 - (i) the parties may jointly apply to the Commission for an extension of time to negotiate and if the extension of time is not granted by the Commission, there shall be deemed to be a dispute between the parties and the Dispute Resolution Procedures shall take effect; or
 - (ii) either party may initiate the Dispute Resolution Procedures; and

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- (d) if the Commission grants an extension of time Section 4.9.1(c)(i), it may do so subject to such conditions as it specifies (such as an ongoing requirement to provide updates on negotiations at specified intervals and the right to reduce or extend any extension).

4.10 Negotiation Response

4.10.1 If BR is willing to proceed with negotiation of the Access Request, BR must set out in its response to the Access Seeker: -

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

Section 5 – Provision of Information

- 5.1 The obligations of each Operator to provide information to the Other Operator are subject to the MSA Determination and the requirements of confidentiality imposed by BR's RAO.
- 5.2 An Operator must provide the Other Operator on a timely basis with all agreed information reasonably required determine rates and charges to be billed by each Operator to the Other Operator or by each Operator to its Customers.
- 5.3 To the extent permitted by Malaysian law and any relevant guidelines or customer service standards in force pursuant to the Operator's respective License conditions, the Operators will exchange information and otherwise cooperate in relation to the prevention and investigation of fraudulent use or misuse of the Operator's respective Communications Services and the theft of the Operator's provided terminal equipment.
- 5.4 Information provided BR's RAO may only be used for the purpose for which it was given. Personal information about a Customer's credit worthiness, credit standing, credit history or credit capacity may only be used for the purposes permitted by, and in compliance with, Malaysian law.
- 5.5 If the information is used by an Operator for any purpose other than the purpose for which it was given, the providing Operator may deny the recipient Operator further access to the information for the period during which the non-observance or non-conforming use. The Operators will cooperate to resolve the providing Operator's reasonable concerns so that information exchange can be resumed as soon as possible.
- 5.6 The Operators acknowledge that when information (including for the purposes of this clause any updated information) required to be provided under this Paragraph is held on a database, the Operator entitled to receive the information will not be entitled to obtain direct access to the database. The precise method by which information is to be made available will be determined by both BR and the Access Seeker having regard to the reasonable cost, convenience and security concerns of the Operators.
- (a) Subject to the Act and any subordinate legislation, nothing in the Access Agreement may be construed as requiring an Operator at any time to disclose to the Other Operator information which is at the date when the Access Agreement comes into force, the subject of a confidentiality obligation owed to a third person unless the third person consents to such disclosure. Where the consent of a third person is required, the Operator holding the information must use its reasonable endeavours to obtain the consent of that third person.
- (b) After the Access Agreement comes into force an Operator must use its best endeavours not to enter into any contract which would prevent it from making information available to the Other Operator unless the contract includes a term which permits the contracting Operator to make the information available if directed to do so by the Commission.

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- 5.7 All Communication Information, call and such other relevant information must be kept by both Operators for a period of **two (2)** years unless otherwise agreed in writing for the purposes of verification and audit.

Section 6 – Billing and Settlement

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

6.2 Billing

6.2.1 (a) In respect of any charge due from the Access Seeker, BR shall raise the Invoice for amount due for the supply of Facilities and Services

(b) Unless otherwise agreed in writing, BR shall Invoice in writing or in electronic form (as requested by the Access Seeker), on a Party-to-Party basis, within **thirty (30)** days from the provisioning of the Facilities and/or Services for amounts due in respect of the supply of Facilities and Services during the Billing Period. BR shall provide with each Invoice, such information as may be reasonably necessary for the Access Seeker to verify the rates and charges specified in the Invoice. In addition, the Access Seeker may request, in writing, for the billing report to be provided by BR in an electronic format.

(c) BR shall provide the Access Seeker at the Access Seeker's written request, with an aggregated summary of billings for access to the Facilities and/or Services provided to the Access Seeker in monthly trenches.

(d) The Access Seeker shall, from time to time, inform BR of the mailing address and the department to which the Invoice should be sent to and also BR's bank account details for the purposes of enabling the Access Seeker to make payment. All physical Invoices shall be delivered by hand or post (either registered mail or courier).

6.3 Backdate Billing

Where appropriate, any taxes (including goods and service tax), duties or other imposts (as at the date of this Agreement or imposed after the date of this Agreement) shall be added to all or any charges under this Agreement and be paid by the Party responsible for making such payment.

6.4 Terms of Payment

6.4.1 (a) The Access Seeker must pay any amount due and owing to BR on the Due Date unless otherwise agreed in writing by both Parties.

(b) The Access Seeker to whom any Facilities and/or Service is provided under this Agreement must pay BR the applicable rates and charges, and on the terms and conditions set out or referred to, as the case may be, in this Agreement.

(c) The Access Seeker shall acknowledge their acceptance of invoice issued by BR to the Access Seeker upon receipt and fax over the acknowledgment to BR on

the day of receipt, failing which the Access Seeker is deemed to have been received by the Access Seeker three (3) days after posting or courier of the invoice.

6.4.2 Method of payments:

- (a) must be paid by electronic transfer to BR or by cheque to the nominated account(s) of BR;
- (b) must be accompanied by such information as it reasonably required by BR to properly allocate payments received, failing which BR shall have the absolute discretion to allocate payments received to any amounts due and payable; and
- (c) BR shall only be entitled to set-off any amounts stated in any Invoice and which is outstanding against any amounts owed to the Access Seeker: -
 - (i) in the event the Access Seeker is in or goes into or threatens to go into liquidation or passes a resolution to wind up; or
 - (ii) there are at least three (3) Invoices unpaid by the Access Seeker;
 - (iii) unless otherwise agreed by the Parties, set off it to be limited to the same type of Facilities and/or Services provided.

6.4.3 Unless otherwise agreed by BR and the Access Seeker, all invoices shall be stated in RM and payment must be made in RM; and

6.4.4 It is hereby expressly agreed that BR is entitled to the payment of interest without prejudice to any other rights of BR. Interest on due and unpaid amounts is payable (as well as before judgment and after judgment) at the rate of **two percent (2%)** per annum above Malayan Banking Berhad base rate calculated daily from the Due Date until the date of actual payment. Payments which are overdue by more than **sixty (60)** days will bear interest at the rate of **three percent (3%)** per annum above Malayan Banking Berhad base rate (as well before judgment and after judgment) calculated from the Due Date until the date of receipt by BR of full payment. Further, the base rate to be used shall be the published rate prevailing on the date of payment.

6.4.5 Where interest in respect of any due and unpaid amount is due to BR under Condition 6.4.4, BR may issue a debit note for this interest.

6.4.6 If BR discovers an error in an invoice given to the Access Seeker under this Section 6, it must notify the Access Seeker. BR which made the error must make the necessary adjustment to correct error (including adjusting any interest erroneously charged) within one (1) month of notification.

6.4.7 BR may include omitted or miscalculated Charges from an earlier Invoice in a later Invoice or issue an Invoice for Charges which previously have not been invoiced provided that BR is able to substantiate the Charges to the Access Seeker and such

inclusion, amendment or issuance is made within three (3) months from the end of the Billing Cycle of each of the Facilities and/or Services were provided.

6.4.8 Notwithstanding anything to the contrary, BR shall be entitled to deduct or withhold such taxes, duties, levies or such other sums imposed by such governmental authorities (“said taxes”) from any sum or sums due to the Access Seeker in the event BR is required by law to pay the said taxes for and on behalf of the Access Seeker.

6.5 Security Sum

6.5.1 The Access Seeker shall have deposited the Security Sum as security for the performance of all the Access Seeker’s obligations under this Agreement. The amount of the initial Security Sum for each Facility or Services shall be as stipulated respective Facility or Services description. For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts to BR as they become due and payable, nor does it constitute a waiver of the BR’s right to suspend, disconnect, or terminate the relevant Facilities or Services due to non-payment of any sums due or payable to BR.

6.5.2 (a) BR shall be entitled, from time to time and in no event once in any twelve (12) months, to revise the Security Sum in any of the following event: -

(i) where, in the opinion of BR, there is a material change in circumstances in relation to the Access Seeker’s creditworthiness. In such cases, BR may request for additional security in addition to the sum stated under the respective Facilities and/or Service to sufficiently and reasonably mitigate its risk in providing the Facilities and Services to the Access Seeker. For clarification, material change in circumstances includes, but is not limited to, failure to pay on the Due Date in respect of **three (3)** Invoices rendered in the preceding **six (6)** months, so long as those amounts have not been disputed in good faith; and/or

(ii) as provided under the respective Facilities and/or Service descriptions.

(b) Where the amount of the Security Sum is, at any time, less than the amount stated in the respective Facilities and/or Services (including when a demand has been made by BR) determined by BR, the Access Seeker shall within thirty (30) days from the written request of BR, deposit a new security equivalent to the requested sum.

(c) Upon termination of the Agreement:

(i) the Security Sum deposited with BR or parts thereof shall be returned and/or refunded to the Access Seeker within **sixty (60)** days from the date of termination provided all other amounts payable by the Access Seeker to BR have been paid; and

(ii) BR shall immediately in writing unconditionally waive its rights under any guarantee provided as Security Sum in respect of future performance of

this Agreement by the Access Seeker if any, since this Agreement has been terminated save and except that the guarantee shall remain in full force in respect of any antecedent breaches under this Agreement or in respect of any amounts payable by the Access Seeker to BR as at the date of termination, without prejudice to the rights and remedies of BR under this Agreement (including but not limited to the right to claim for any or all amounts due and payable under the Agreement and/or to call upon the Security Sum) and/or under law.

6.6 Billing Disputes

- 6.6.1 Where there is a Billing Dispute, the Parties shall comply with the dispute resolution procedures in Section 7.
- 6.6.2 For the avoidance of doubt, the Access Seeker shall not use the dispute resolution procedure in Section 7 to avoid or delay payment due to BR where there is no genuine dispute.

Section 7 – Dispute Resolution Process

7.1 Introduction

7.1.1 Subject to Section 7.2.3, the Operators shall adopt and comply with this dispute resolution procedure in relation to any dispute which may arise between the Operators in relation to or in connection with BR's supply of any Facilities and/or Services ("**Access Dispute**").

7.1.2 The following dispute resolution mechanisms are governed by this Section:

- (a) technical disputes (which must follow the procedures set out in Section 7.5 if they cannot be resolved through the application of the general dispute resolution provisions in Sections 7.2, 7.3 and 7.4);
- (b) Billing Disputes, which must follow the procedures set out in Section 7.6; or
- (c) any other types of disputes which, if cannot be resolved through the application of the general dispute resolution provisions in **Sections 7.2, 7.3 and 7.4**, must be referred to the Commission for resolution.

7.1.3 A dispute between the Operators regarding any matter dealt with under the Access Agreement shall first be attempted to be resolved by good faith negotiation between the Operators in accordance with this Section and the Access Agreement.

7.1.4 All disputes referred to the Commission pursuant to the Access Agreement shall be dealt with in accordance with the Act. Where the decision of the Commission is appealed in the Appeals Tribunal under the Act, the decision of the Appeals Tribunal shall be final and binding subject always to the right of judicial review contained in the Act. For the avoidance of doubt, the Commission will decide a dispute if it is satisfied that:

- (a) The Operators will not reach agreement, or will not reach agreement in a reasonable time;
- (b) The notification of the dispute is not trivial, frivolous or vexatious; and
- (c) The resolution of the dispute would promote the objects in the Act.

7.2 General

7.2.1 Until expiry of the dispute resolution procedures set out herein, an Operator may not commence court proceedings relating to that dispute other than an application for urgent interlocutory relief. Nothing in this Section shall be construed as ousting the jurisdiction of any court.

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- 7.2.2 An Operator shall ensure that its representatives acting in relation to a dispute are of sufficient seniority and have authority to settle an access dispute on behalf of the Operator. At the commencement of the dispute resolution procedure, each Operator must notify the Other Operator of the scope of the authority of each of their representatives. If in the course of the dispute resolution procedures it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to a representative, an Operator may require that those matters be referred to more senior officers of that Operator who have authority to settle those matters.
- 7.2.3 During a dispute and any dispute resolution process invoked in accordance with this Section, the Operators must continue to fulfil their obligations under the Access Agreement between themselves.
- 7.2.4 Subject to Section 7.2.5, the Operators shall exchange information of a type described in the Access Agreement during the course of, and to facilitate, resolution of such a dispute.
- 7.2.5 Confidential information of an Operator which is disclosed, and any other oral or written submissions made by an Operator or an Operator's representatives during the course of any dispute resolution process will be subject to the confidentiality restrictions contained in the Confidentiality Agreement and the Access Agreement.
- 7.2.6 An Operator must not use information obtained under Section 7.2.4 or described in Section 7.2.5 for any purpose other than to resolve the dispute.
- 7.2.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of a dispute (including a Technical Expert (as hereinafter defined) or the Commission, in accordance with this Section 7) may decide not to determine the dispute if the arbitrator considers that the dispute is trivial, frivolous or vexatious, or if there is insufficient evidence before the arbitrator to determine the dispute.
- 7.2.8 The cost of the arbitration is to be shared equally between the Operators, unless the arbitrator of the dispute has decided not to determine the dispute in accordance with Section 7.2.7. If an arbitrator decides not to determine the dispute, the Operator that initiated the dispute must pay the costs of the arbitration including the Other Operator's costs thereto.

7.3 Billing dispute resolution

- 7.3.1 BR shall allow the Access Seeker to dispute an Invoice prepared by BR if in the case of any other Facilities and Services, the Access Seeker notifies BR in writing within **thirty (30)** business days after the date of receipt of such Invoice. If the Access Seeker fails to dispute an Invoice within the specified time period above, Access Seeker is deemed to have accepted the Invoice.

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

- (a) BR'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; or
- (c) there is, or has been, a fraud perpetrated by BR; or
- (d) BR has made some error in respect of the calculation of the charges which are the subject of the Billing Dispute.

7.3.3 All Billing Dispute Notices must specify:

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

7.3.4 BR shall allow the Access Seeker to dispute an Invoice prepared by BR, if in the case if the Access Seeker notifies BR in writing within **thirty (30)** business days after the date of receipt of such Invoice. If the Access Seeker fails to dispute an Invoice within the specified time period above, Access Seeker is deemed to have accepted the Invoice.

7.3.5 Notwithstanding **Section 7.3.4**, if the Operators are not able to settle a Billing Dispute within the time periods specified in **Section 7.3.7**, an Operator may withhold payment of amounts disputed in good faith for all subsequent Invoices issued by BR. If the Dispute is resolved between the Operators in writing against the Access Seeker, then the Access Seeker shall pay interest (calculated in accordance with **Section 6.4.4**) on the outstanding amounts due to BR. The interest shall be payable within **fourteen (14)** days from the settlement of the Dispute, as documented by the Operators. Interest

shall be calculated from the Due Date to the date of actual payment of the outstanding amount.

- 7.3.6 The Operators agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this **Section 7.6**.
- 7.3.7 If the Operators are unable to resolve any Billing Dispute within **thirty (30)** calendar days (or such other period as the Operators may agree) from the date on which the Billing Dispute Notice is received, either Operator may seek the consent of the Other Operator to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The Other Operator is, however, under no obligation to agree to such extension.
- 7.3.8 Although it is the good faith intention of the Operators to use the billing dispute resolution procedures to the fullest extent to try to solve Billing Disputes, nothing in the Access Agreement shall prevent either Operator from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.

An Operator may request a joint investigation of Invoice discrepancies after that Operator has conducted comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the Operators must agree the terms of the joint investigation, including:

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

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

- 7.3.9 Enquires relating to billing, collecting and settlement arrangements or in relation to Network and operation issues may be directed to the Billing Representatives nominated by each Operator.
- 7.3.10 Either Operator may at any time nominate another Billing Representative, provided that **ten (10)** Business Days prior notification of such appointment is given.
- 7.3.11 If the Operators are unable to resolve any Billing Dispute after exhausting the Billing Dispute Escalation Procedure, either Operator may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the Act. For the purposes of clarification, the Billing Dispute procedure shall follow the procedure in this Section.

Section 8 - Intellectual Property Rights

- 8.1 All right, title and interest in and to any:
- (a) Intellectual Property or to be developed vests in the Operator who developed that Intellectual Property or for whom that Intellectual Property was developed by a third person; and
 - (b) improvements to or adaptations, versions or modifications of Intellectual Property vest in the Operator who developed that Intellectual Property or on behalf of whom that Intellectual Property was developed.
- 8.2 The Operators will negotiate arrangements concerning Intellectual Property jointly developed in the course of performing or otherwise in connection with this Agreement.
- 8.3 Each Operator shall licence to the other Operator on a royalty-free basis, all Intellectual Property rights necessary for the on-going operation of this Agreement and the interoperability of the Operators' Networks but shall be subject to any relevant third party licences. The Operators agree that such Intellectual Property rights accorded to them shall only be used for purposes of this Agreement unless otherwise agreed in writing.
- 8.4 Each Operator ("**Indemnifying Operator**") indemnifies the other Operator ("**Innocent Operator**") against all liability or loss arising directly from, and all reasonable costs, charges and expenses incurred by the Innocent Operator in connection with any claim, action, suit or demand alleging infringement of the rights of a third party arising from use by the Innocent Operator of Intellectual Property disclosed or licensed by the Indemnifying Operator under this Agreement. This indemnification will represent the only remedy and form of compensation available to the Innocent Operator in relation to the infringement of Intellectual Property licensed or disclosed by the Indemnifying Operator under this Agreement.

Section 9: Confidentiality Obligation

- 9.1 All Confidential Information disclosed or communicated by one Operator to the other Operator or obtained by one Operator from the other Operator in connection with this Agreement including but not limited to the business and operations of an Operator and the terms of this Agreement shall be treated as Confidential Information unless the information:
- (a) is or become publicly available through no fault of the receiving Operator;
 - (b) which the receiving Operator can prove was in its possession or known to it prior to its receipt from the disclosing Operator without a duty of confidentiality;
 - (c) is or was rightfully received by the receiving Operator from a third party without a duty of confidentiality being owed by the receiving Operator to the third party, except where the receiving Operator has knowledge that the third party has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the disclosing Operator; or
 - (d) is independently developed by the receiving Operator without the use of the Confidential Information.
- 9.2 Each Operator's Confidential Information shall be held in strict confidence by the other Operator, using no lesser security measures and degree of care as it uses to protect its own Confidential Information. In any event, the security measures and the degree of care it uses shall, as a minimum, comply with the standards imposed by the applicable laws including the Personal Data Protection Act 2010. The receiving Operator shall further ensure that the Confidential Information is secured from unauthorised access from internal and external parties and that all Confidential Information used, stored and/or processed shall be free from virus, malware or other malicious codes.
- 9.3 Neither Operator shall publicise or announce the execution of this Agreement or otherwise disclose the terms thereof without the prior written consent of the other save and except where its disclosure becomes mandatory pursuant to any laws or any acts of authority or is for the purposes of court proceedings in which case **Section 9.5** shall apply.
- 9.4 The Confidential Information shall not be used, copied, reproduced, distributed or disclosed by the receiving Operator for any purpose except that:
- (a) it may be disclosed to its employees or its advisers strictly on a need to know basis to implement or perform this Agreement provided that its employees and advisers is subject to and maintains the confidentiality obligations under this Agreement; and/or
 - (b) its disclosure becomes mandatory pursuant to any laws or any acts of authority or rules of any stock exchange, or is for the purposes of court proceedings.
- 9.5 Where the receiving Operator is required to disclose any Confidential Information pursuant to any laws or any acts of authority or rules of any stock exchange, or is for the purposes of court proceedings, the receiving Operator:

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- (a) shall where practicable and lawful give **one (1)** Business Day's notice to disclosing Operator that it is required to disclose the Confidential Information so that the disclosing Operator has an opportunity to protect the confidentiality of its Confidential Information; and
- (b) provides the disclosing Operator with a copy of the Confidential Information that the receiving Operator is required to disclose.
- 9.6 Upon the expiry or termination of this Agreement, the receiving Operator shall promptly return to the disclosing Operator or, where instructed, destroy Confidential Information of the disclosing Operator at its own cost and immediately cease using all such Confidential Information. Where required by the disclosing Operator, the receiving Operator shall provide to the disclosing Operator a written undertaking confirming that it has fully complied with the requirements of this Section and that it is not in possession or control of any of the disclosing Operator's Confidential Information.
- 9.7 The receiving Operator shall ensure that each of its personnel and advisers to whom the Confidential Information of the disclosing Operator is disclosed will strictly comply with the confidentiality obligations under this Section.
- 9.8 Each Operator shall comply with all applicable privacy and personal data protection laws and regulations. Each Operator may be required to provide to the other Operator personal data (as defined in the Personal Data Protection Act 2010) of third parties (including but not limited to the Operator's contact persons and employees) as part of and/or for the performance of this Agreement. Each Operator represents and warrants that it has and will comply with any applicable laws to provide notices to or obtain consents from any such individuals to allow sharing of their personal data with the other Operator and/or their employees or agents to facilitate the performance of this Agreement and any other ancillary matters related to the performance of this Agreement including but not limited to the disclosure of their personal data to any other third parties on a need to know basis.
- 9.9 The obligations of the receiving Operator in this Section shall survive the termination or expiry of this Agreement.

Section 10: Liability and Indemnity

10.1 General Principle

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

10.2 Insurance

10.2.1 Without limiting or reducing each Operator's liability and responsibility as contained elsewhere in this Agreement, each Operator shall procure and maintain the following insurances applicable to its operations with respect to and for the duration of this Agreement provided that the Operators shall not be required to maintain additional insurances beyond the following: -

- (a) Worker's Compensation and/or Social Security Insurance and/or Employer's Liability Insurance and/or other insurance with statutory limits as required by the laws of Malaysia to provide for payment to its employees employed on or in connection with the work covered by this Agreement and/or their dependents.
- (b) Comprehensive General Liability Insurance or Public Liability Insurance of an amount which is not more than Ringgit Malaysia Twenty Million Only (RM 20,000,000.00) for any one claim or series of claims arising out of an accident or occurrence in connection with this Agreement resulting in bodily injury and/or personal injury including death and property damage of an Operator which shall arise out of or in consequence of any acts or omission of the other Operator.

10.3 Damage to Property

10.3.1 Either Operator ("**defaulting Operator**") shall indemnify and hold the other Operator safe and harmless from and against all costs, expenses and claims relating to damage to or destruction or loss of all or any property beneficially and/or absolutely owned by the other Operator arising out of any act or omission of the defaulting Operator, its servants or agent in so far as such damage, destruction or loss arises out of or in the course of or by reason of the carrying out any works for or in relation to the Interconnection or providing the Communications Services.

10.4 Death and Personal Injury

10.4.1 Subject to **Section 10.6.4**, the defaulting Operator shall be absolutely liable for, and hereby indemnifies the other Operator from and against all costs, expenses and claims in respect of all injuries to, including the death of any and all employees of the other

Operator arising out of any act or omission of the defaulting Operator, its servants or agent.

10.5 Third Person Indemnity

10.5.1 Subject to **Section 10.6.4**, the defaulting Operator shall indemnify and hold the other Operator safe and harmless from and against all costs, expenses and claims in respect of:-

(a) all injuries to, including death of; and/or

(b) loss of or damage to property of,

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

10.6 Liability

10.6.1 Neither Operator excludes liability for death or personal injury attributable to its own negligence or the negligence of its servants and agents.

10.6.2 Subject to **Sections 8.4 and 10.5**, an Operator shall not be liable to the other Operator or any other third party and shall not indemnify the other Operator for any claims, proceedings or actions brought or made by a third party against the other Operator, howsoever arising, including but not limited to:

(a) the lack of or loss or interruption or any delays to access, interconnection transmission or otherwise; and

(b) any claims, proceedings or actions brought or made against the other Operator by any person pursuant to a contractual relationship with the other Operator.

10.6.3 Notwithstanding **Sections 10.3.1 and 10.5.1**, an Operator shall not be liable for damage to property due to hacking and the transmission of malicious codes and/or programs by third parties (other than its employees, agents, servants, contractors and/or other persons under its control) provided that presently available security solutions and antivirus solutions have been put in place by the Operator.

10.6.4 In no event will either Operator's liability under this Agreement exceeds Ringgit Malaysia Twenty Million Only (RM 20,000,000.00) only per event for any accident or occurrence in connection with this Agreement save that the limitation of liability set out in this Section shall not apply to damage to property and/or fraud by that Operator and/or amounts due and payable under an Invoice.

10.7 Exclusion of Warranties

10.7.1 Except as expressly set out in this Agreement, all representations, conditions and warranties (whether express or implied, statutory or otherwise) including but not limited to any implied warranty of merchantability, implied warranty of fitness for a particular purpose, implied warranty of non-infringement and implied warranty arising out of the course of dealing, custom or usage of trade with respect to any service provided by either Operator are expressly negated and excluded. The warranties set forth in this Agreement are the only warranties made by each Operator and will not be enlarged or diminished without that Operator's approval.

10.7.2 In no event will either Operator be liable to the other Operator or any other person for indirect loss of profits, loss of business, use of data or special, exemplary, indirect, incidental, consequential or punitive damages of any kind for any reason, including, without limitation, the breach of this Agreement or any termination of this Agreement, whether such liability is asserted on the basis of contract, tort (including negligence and strict liability) or otherwise, even if either Operator has been advised of the possibility of such damages. The essential purpose of this provision is to limit the potential liability of each Operator arising out of this Agreement.

Section 11 – Termination and Suspension

- 11.1 This Agreement shall only take effect on the Effective Date and shall remain in force until the termination of this Agreement.
- 11.2 (a) An Operator (“**Notifying Operator**”) may terminate this Agreement or part thereof if:-
- (i) the other Operator (“**Defaulting Operator**”) fails to remedy a breach (which is capable of remedy) of a material obligation under this Agreement (including but not limited to the events specified in **Section 11.3(a)(iii) to (v)**) within thirty (30) days of receiving a notice of breach from the Notifying Operator;
 - (ii) a winding up order has been made against the Defaulting Operator and the order remains or will remain in effect for a continuous period of ninety (90) days;
 - (iii) an order is made or an effective resolution is passed, for the reconstruction and amalgamation of the Defaulting Operator or otherwise under Section 176 of the Companies Act 1965 or any other similar action or proceeding under any other law and the order or resolution remains or will remain in effect for a continuous period of sixty (60) days;
 - (iv) a receiver, receiver and manager, official manager, provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the undertaking and property of the Defaulting Operator;
 - (v) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of the Defaulting Operator;
 - (vi) the Defaulting Operator fails to remedy breaches (which are capable of remedy) of any laws, regulations, rules or standards which has a material adverse effect on the Notifying Operator or this Agreement or the provision of Facilities and/or Services, within thirty (30) days of receiving a notice of breach from the Notifying Operator; or
 - (vii) a Force Majeure, substantially and adversely affecting the ability of an Operator to perform its obligations to the other Operator under this Agreement, continues for a consecutive period of ninety (90) days. However, Notifying Operator may not give notice under this **Section 11.2** unless the Notifying Operator has:
 - (A) negotiated or endeavoured to negotiate in good faith with the other Operator to remedy the Force Majeure with the purpose of amending the terms of this Agreement to enable this Agreement to remain in full force and effect notwithstanding such inability to so perform; and
 - (B) has failed to reach any agreement within thirty (30) days from the commencement of negotiations.

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- (b) Upon the occurrence of the events set out in **Section 11.2** above or where a breach is incapable of remedy, and subject to the provision of **Section 11.4** below, the Notifying Operator may terminate this Agreement by issuing a termination notice to the Defaulting Operator/other Operator (in the case of Force Majeure) and this Agreement shall terminate in accordance with the terms of the termination notice.
- 11.3 (a) The Notifying Operator may, without liability, suspend, to the extent necessary, access to its Facilities and/or Services where:
- (i) the Defaulting Operator fails to remedy a breach (which is capable of remedy) of a material obligation under this Agreement (including the failure to pay Invoices in accordance with this Agreement within thirty (30) days of receiving a notice of breach from the Notifying Operator;
 - (ii) the Defaulting Operator fails to remedy breaches (which are capable of remedy) of any laws, regulations, rules or standards, which has a material adverse effect on the Notifying Operator or this Agreement or the provision of Facilities and/or Services, within thirty (30) days of receiving a notice of breach from the Notifying Operator;
 - (iii) the Defaulting Operator fails to remedy any fault or condition (which is capable of remedy), that causes the Defaulting Operator's network facilities materially adversely affect the normal operation of the Notifying Operator's Network, or are a material threat to any person's safety;
 - (iv) the Defaulting Operator fails to remedy any condition (which is capable of remedy), that causes the Defaulting Operator's network facilities or supply of a network service posing an imminent threat to life or property of the Notifying Operator's, its employees or contractors;
 - (v) the Defaulting Operator fails to remedy any fault or condition (which is capable of remedy) in the Defaulting Operator's network facilities that cause material physical or technical harm to any network facilities of the Notifying Operator or any other person;
 - (vi) where the Defaulting Operator has failed to provide a new Security Sum as required in accordance with this Agreement; or
 - (vii) subject to **Section 13.1.1**, where Force Majeure applies.
- (b) Upon the occurrence of the events set out in **Section 11.3(a)** above or where a breach is incapable of remedy and subject to the provision of **Section 11.4** below, the Notifying Operator may suspend access to its Facilities and/or Services by issuing a suspension notice and the suspension of access to the Notifying Operator's Facilities and/or Services shall take effect in accordance with the terms of the suspension notice.
- (c) During the period of suspension, the Notifying Operator shall be entitled to charge the Defaulting Operator for all Charges invoiced in arrears and not yet paid or Charges

arising during an applicable minimum contractual period in respect of the Facilities and/or Services provided that where a suspension is due to Force Majeure, the fixed periodic Charges for Services affected by the Force Majeure only will not be charged. The Defaulting Operator shall be solely responsible for any loss, costs, damages or expenses which the Defaulting Operator may incur or suffer during the period of suspension.

- 11.4 (a) Where the Notifying Operator seeks to terminate the Agreement (or part thereof) or suspend, to the extent necessary, access to Facilities and/or Services on any grounds including those specified in Sections 11.2(a) and 11.2(b), the Notifying Operator shall first notify the Commission in writing of (“**Notice to the Commission**”) of the action that the Notifying Operator proposes to take and the reasons why it considers such action is appropriate. The Commission may invite the Defaulting Party to make submissions to the Commission regarding the proposed termination or suspension. The Notifying Operator:
- (i) shall only give effect to the proposed termination or suspension with the Commission’s written consent and subject to any time delay or conditions which the Commission may specify (if any). In this respect, the Commission shall respond to the Notifying Operator’s notice within ten (10) Business Days or such other period that the Commission considers is reasonable; and
 - (ii) must not give effect to the proposed termination or suspension unless the Access Provider has received written consent from the Commission to such termination or suspension.
- (b) If the Commission notifies the Notifying Operator that the Notifying Operator is permitted to terminate this Agreement (or part thereof) or suspend access to the Facilities and/or Services, the Notifying Operator may, issue:
- (i) a termination notice immediately to the Defaulting Operator (with a copy of the said notice to be provided to the Commission on the same day) and this Agreement shall terminate in accordance with the terms of the notice; or
 - (ii) a suspension notice, with reasons, to the Defaulting Operator immediately where the suspension is due to any of the events under **Section 11.3(a)(ii) to (v)**; or with five (5) Business Days’ notice where the suspension is due to events under **Section 11.3(a)(i), (vi) and/or (vii)**, (with a copy of the said notice to be provided to the Commission on the same day) and the access to the Facilities and/or Services shall be suspended immediately or after the expiry of the five (5) Business Day period (as the case may be) in accordance with the terms of the notice.
- 11.5 The issuance of a suspension notice shall not in any way prejudice or prevent the Notifying Operator from exercising its right to issue a termination notice under **Section 11.2**.
- 11.6 In the event the Notifying Operator suspends access to Facilities and/or Services by reason of the Defaulting Operator’s failures set out in **Section 11.3**, the Notifying Operator must

reinstate access to Facilities and/or Services upon the Defaulting Operator remedying its failure or the direction of the Commission.

11.7 Notwithstanding **Section 11.4**, in the event that: -

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

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

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

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

without the necessity of first exercising any of its rights herein. For the avoidance of doubt, **Sections 11.2, 11.3, 11.4 and 11.7** shall not preclude the other Operator from immediately seeking urgent interlocutory action under this Section.

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

- (a) An Operator ("**requesting Operator**") gives the other Operator written notice requesting the other Operator to carry out necessary disconnection works and to return any equipment or facilities of the requesting Operator or a third person installed by or for the requesting Operator; and
- (b) The other Operator has failed to comply with the request, the requesting Operator may enter the premises of the other Operator on reasonable notice for the purposes of carrying out any necessary disconnection works and repossessing any such equipment and facilities. The other Operator on whose premises such equipment or facilities were installed is responsible for compensating the requesting Operator for

any such equipment or facility which is not delivered up in good condition (fair wear and tear excepted) and for making good all the damage to the requesting Operator's premises, if the equipment or facilities of the other Operator are in the requesting Operator's premises or under the requesting Operator's care. The other Operator shall indemnify the requesting Operator in respect of any damage thereby caused to the premises, equipment and facilities of or under the care of the requesting Operator.

11.10 Upon termination of this Agreement or part thereof:

- (a) subject to **Section 11.10 (b)** below, the Access Provider shall refund to the Access Seeker within sixty (60) days all amounts paid in advance in respect of Facilities and/or Services to the extent that the amount (or part of the amount calculated on a pro-rata basis) relate to the period after the effective date of termination; and
- (b) the Access Seeker shall immediately pay all amounts due to the Access Provider for the provision of Facilities and/or Services prior to and up to termination,

(save for disputed amounts which the Access Seeker is entitled to withhold under **Section 7.6.5**).

For the avoidance of doubt, the Access Provider shall be entitled to claim for all Charges arising during an applicable minimum contractual period provided under this Agreement notwithstanding that the provision of Facilities and/or Services was terminated prior to the expiry of the applicable minimum period provided that such charges must be reduced to reflect any cost savings to the Notifying Operator from not having to supply the Facilities and/or Services to the extent that they have been terminated or suspended and the Notifying Operator must use reasonable endeavours to mitigate its cost of termination or suspension and maximise cost savings under this Section. Where the provision of Services is terminated due to Force Majeure, the minimum charge for Services affected by the Force Majeure shall not be applicable during the period of Force Majeure.

11.11 Without prejudice to the Access Provider's rights and remedies under this Agreement and/or law, upon termination of this Agreement or suspension of access to Facilities and/or Services, the Access Provider shall not be entitled to penalise the Access Seeker with a penalty with respect to the provision of Facilities and/or Services. Nothing in this **Section 11.11** shall prejudice, limit or negate the rights and remedies of the Access Provider under this Agreement or law to seek redress or claim damages, cost and expenses for breach of this Agreement by the Access Provider, to enforce its right of indemnities, to claim interest and generally to enforce its rights and remedies.

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

Chapter 12 – Review

12.1 Subject to Section 12.3, if: -

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

the Operators agree to review the Agreement as soon as practicable in good faith. Where the changes referred to in **paragraphs (a) to (g)** above affect this Agreement, the Operators shall negotiate, as soon as practicable and in good faith, such amendments to this Agreement as are necessary or appropriate to ensure compliance with such changes.

12.2 If after the date hereof:

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

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

-
- 12.3 The obligation to negotiate set out in **Sections 12.1 and 12.2** commences promptly after delivery of a notice from one Operator to the other Operator setting out in reasonable detail, the amendments sought.
- 12.4 (a) If a Regulated Facility and/or Service is removed from the Access List or becomes a non-regulated facility or service pursuant to a revocation or an amendment to the Access List:
- (i) the Access Provider may, at its discretion and by giving notice to the Access Seeker:
 - (A) terminate or withdraw that network facility or network service; or
 - (B) vary or modify the terms and conditions pertaining to that network facility or network service subject to mutual agreement provided always that the Operators shall, within fourteen (14) days from the date of Access Provider's notice, first discuss the variation or modification which the Access Provider proposes to adopt ("**initial meeting**"). Thereafter, if the Operators fail to agree on the amended terms and conditions within forty five (45) days from the initial meeting or such other time as may be mutually agreed in writing by the Operators, then the Access Provider shall be entitled to terminate or withdraw that network facility or network service under **paragraph (a)(i)(A)** above. In such a case, the notice period referred to in **Section 12.4(c)**, shall commence from the date of the Access Provider's notice to vary the terms. Nothing in this Section shall prevent the Access Seeker from terminating the affected network facility or network service at any time in accordance with **Section 12.4(a)(ii)(A)**.
 - (ii) the Access Seeker may by giving notice to the Access Provider either:-
 - (A) Terminate that network facility or network service by giving at least three (3) months written notice without penalty; or
 - (B) Propose to vary or modify the terms and conditions pertaining to that network facility or network service subject to mutual agreement provided always that the Operators shall, within fourteen (14) days from the date of Access Seeker's notice, first discuss the variation or modification which the Access Seeker proposes ("**first meeting**"). Thereafter, if the Operators fail to agree on the amended terms and conditions within forty five (45) days from the first meeting or such other time as may be mutually agreed in writing by the Operators, the Access Seeker may terminate or withdraw that network facility or network services in accordance with **Section 12.4(a)(ii)(A)**. Nothing in this Section shall prevent the Access Provider from terminating or withdrawing the affected network facility or network service at any time in accordance with **Section 12.4(a)(i)(A)**.
- (b) If:
- (i) a non-regulated facility and/or service becomes a Regulated Facility and/or Service pursuant to an amendment to the Access List; or

-
- (ii) where there is a variation or amendment to the Access List service description of a Regulated Facility and/or Service,

either Operator may propose variation or modification to the terms and conditions pertaining to that network facility or network service subject to mutual agreement provided always that the Operators shall, within fourteen (14) days, from the date of the written notice by the notifying Operator, first discuss the variation or modification proposed to be adopted (“**preliminary meeting**”). Thereafter, if the Operators fail to agree on the amended terms and conditions within ninety (90) days from the preliminary meeting or such other time as may be mutually agreed in writing by the Operators, then either Operator may initiate the dispute resolution procedures in **Section 7**. Nothing in this Section shall prevent the Access Seeker from terminating the affected network facility or network service at any time, without penalty, by giving the Access Provider three (3) months’ written notice.

- (c) The notice given pursuant to **Section 12.4(a)(i)(A)**, shall be the period of time between the time of giving notice and the time at which the Access Provider is proposing to no longer provide the network facility or network service to itself or other access seekers or twelve (12) months, whichever is earlier.
- (d) The notice given pursuant to **Section 12.4(a)(i)(A)** must state any alternative network facility or network service that may be available to be provided by the Access Provider to the Access Seeker and the terms and conditions of such alternative arrangement.
- (e) The amended terms and conditions agreed between the Operators shall take retrospective effect from the date of the relevant Commission’s Determination takes effect (or where none is specified, the date of the Commission’s Determination was made) unless otherwise agreed.

12.5 For the avoidance of doubt:

- (a) The variation of the Agreement pursuant to **Section 12.4(a)** shall not be subject to the approval process required under **Section 13.8.1(b)**; and
- (b) The provisions of this Agreement remain in full force and effect during any negotiations conducted under this **Section 12** until commencement of an agreement replacing or amending this Agreement.

Chapter 13 – General Provisions

13.1 Force Majeure

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

- (a) gives the other Operator to which the obligation is owed prompt notice of the Force Majeure with reasonably full particulars thereof and an estimate of the extent and duration of its inability to perform; and
- (b) shall continue to take all actions within its power to comply as fully as possible with the said terms and conditions.

then that obligation is suspended insofar as it is affected by, and during the continuance of the Force Majeure.

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

13.1.3 The requirement that a Force Majeure be removed with all possible diligence does not require the settlement of strikes, lockouts or other labour disputes or claims or demands on unreasonable terms. If a strike, lockout or other labour dispute or claim or demand principally concerns any matter the subject of this Agreement, the Operator affected must so notify and consult with the other Operator.

13.2 Governing Law

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

13.2.2 In the event of:

- (a) an Operator seeking urgent interlocutory relief in respect of any matter; or
- (b) an Operator seeking relief in respect of the other Operator failing to comply with the dispute resolution process set out in **Section 7**; or
- (c) an Operator seeking relief in respect of a manifest error or mistake of law of the arbitrator (be it the Technical Expert or the Commission), established by the Operators pursuant to any dispute resolution procedures agreed in writing,

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

13.3 Operators in Act in Good Faith

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

13.4 Costs and Expenses

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

13.5 Relationship of the Operators

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

13.6 Surviving Obligations

13.6.1 Termination or expiration in whole or in part of this Agreement does not affect those Conditions (including, without limitation, **Sections 8, 9, 10, 11.6, 11.9 and 7**) which by their nature survive termination or expiry.

13.7 Relationships with Third Persons

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

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

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

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

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

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

13.8 Variation

13.8.1(a) A variation of any part of this Agreement is valid if, and only if, made between and in writing subscribed by the Operators and that the variation in respect of Regulated Facilities and Services is registered with the Commission in accordance with the Act.

(b) Subject to **Section 13.8.1(a)**, where the Operators agree to materially vary the Agreement or access to its Facilities and/or Services, the Operators shall inform the Commission in writing of the action the Access Provider proposes to take and the reasons why such action is appropriate. This Agreement or access to Facilities and/or Services shall not be varied until such reasonable time and on such reasonable conditions as the Commission may legally specify.

(c) In this **Section 13.8**, a reference to a variation includes a reference to an addition, deletion, amendment, modification, alteration or other variation.

13.9 Assignment

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

13.10 Remedies

13.10.1 Subject to any clause or provision of this Agreement which provides for a remedy or form of compensation to the exclusion of any other remedy or form of compensation, the rights, powers and remedies provided in this Agreement are cumulative and not exclusive of the rights, powers or remedies provided by law independent of this Agreement.

13.11 Notices

13.11.1 Subject to **Section 6.1.1(d)**, a notice, invoice, approval, consent, request or other communication in connection with this Agreement:

(a) must be in writing; and

(b) must be left at the address of the addressee, or sent by ordinary post, registered post or licensed courier to the address of the addressee or sent by facsimile (to be followed by post) to the facsimile number of the addressee which is set out below or if the addressee notifies another address or facsimile number then to that address or facsimile number.

13.11.2 A notice, invoice, approval, consent, request or other communication takes effect from the time it is received unless a later time is specified in it.

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

- (a) in the case of A.R registered post, on the third Business Day after posting;
- (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicated that the facsimile was sent in its entirety to the facsimile number of the recipient;
- (c) in the case of an email, upon transmission of the email provided there is no notification of error or failure in transmission is received by the sender, if sent before and
- (d) in the case of a communication left at the address of the addressee or licensed courier, at the time the communication was so left.

13.11.4 Notwithstanding anything to the contrary in this Section, notification by way of email shall not be applicable to or valid with respect to any legal notices, claims, demands, suits, actions and/or proceedings.

13.12 Waiver

- 13.12 (a) A provision of or right under this Agreement may not be waived except in writing signed by the non-defaulting Operator or Operators to be bound.
- (b) No failure or delay on the part of any Operator in exercising any rights hereunder shall operate as a waiver thereof nor shall any single or partial exercise of such right preclude any other or further exercise of any other right hereunder provided however that nothing in this condition shall extend time or be construed to extend time for the performance of any right or obligation under this Agreement if a time period is imposed for the performance of such right or obligation.
- (c) Knowledge or acquiescence by any Operator of, or in, breach of any of the provisions of this Agreement shall not operate as, or be deemed to be, a waiver of such provision and, notwithstanding such knowledge or acquiescence, such Operator shall remain entitled to exercise the rights and remedies under this Agreement, and at law, and to require strict performance of all of the provisions of this Agreement.

13.13 Entire Agreement

13.13.1 This Agreement constitutes the entire agreement of the Operators regarding the subject matter of this Agreement.

13.14 Severability

13.14.1 The whole or any part of this Agreement that is illegal or unenforceable will be read down to the extent necessary so that it is legal and enforceable or severed (if it cannot be read down) and will not affect the continued operation of the remaining provisions of this Agreement.

13.15 Time

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

SCHEDULE A

PART I – INFRASTRUCTURE SHARING

1. Infrastructure Sharing
 - 1.1 Infrastructure Sharing is a Facility and/or Service which comprises the following: -
 - (a) Provision of physical access, which refers to the provision of space at specified network facilities to enable an Access Seeker to install and maintain its own equipment; or
 - (b) Provision of access to in-building, Common Antenna Systems and physical access to central equipment room.
 - 1.2 Specified network facilities include towers and Associated Tower Sites.
 - 1.3 Provision of space at Associated Tower Sites includes space where the Access Seeker may place its cabin or outdoor equipment and space required for cable gantry connecting to the tower and generator set.
2. Pre-Requisites for Applying for Infrastructure Sharing
 - 2.1 BR shall not be obliged to provide to the Access Seeker Infrastructure Sharing for the Designated and Associated Tower Sites unless:
 - (a) BR is the legal owner of the tower;
 - (b) the Access Seeker has the appropriate license from the relevant authorities to operate the service for the purpose for which the equipment is to be installed;
 - (c) there is no space constraint; and
 - (d) allowable loading.
3. Infrastructure Sharing
 - 3.1 BR agrees to provide Infrastructure Sharing at the designated tower or associated tower sites ("**Designated Tower or Associated Tower Sites**") to the Access Seeker in accordance with the terms of BR's RAO.
 - 3.2 Duration of Infrastructure Sharing
 - 3.2.1 The minimum period for Infrastructure Sharing at a Designated Tower or Associated Tower Site, agreed between the Parties, shall be for **ten (10)** years for Facilities and/or Services involving new infrastructure and **ten (10)** years for Facilities and/or Services involving existing infrastructure.

3.2.2 The terms of the Infrastructure Sharing shall commence on the date (“**Commencement Date**”), the Party agrees to commence Infrastructure Sharing or the Access Seeker enters into the shared space (“**Shared Space**”) at the Designated Tower or Associated Tower Site, whichever is the earlier.

4. Charges and Charging Principles

4.1 The Access Seeker shall pay to BR for the Infrastructure Sharing in accordance to the charges and the charging principles stated in **Annexure A**.

ANNEXURE A

The Access Charges for Infrastructure Sharing

The Access Charges for License Term of ten (10) years only (“Basic Infrastructure”) are as follows (unless such Site has any Variation Orders) and in any case, will be reflected in its respective Site Licenses Offer: -

RM per month per User

Site Type	Height	New Build (1 user)	2 users	3 users
Pole	18m	3,750.00	-	-
Pole	30m	4,000.00	3,200.00	3,000.00
Ground Based Tower	45m	5,800.00	3,750.00	3,000.00
Ground Based Tower	60m	8,300.00	5,200.00	3,750.00

RM per month per User

Telecommunication Infrastructure Type	Height (as applicable)	Single Tenant Site	2 users	3 users
Boom	3m-6m	4,000.00	3,500.00	2,800.00
Pole	≤6m	4,800.00	3,266.00	2,653.00
Pole	6.1m-9m	5,100.00	3,332.00	2,706.00

RM per month per User

No. of antenna	Rate per antenna (In Building System)			
	1 W	2 W	3 W	4 W
0 -200	50	31	25	22
201-400	48	30	24	21
401-600	45	28	23	20
>601	43	27	22	19

and in the event the Access Seeker shall wish to procure a License Term for a duration longer than ten (10) years, the Parties shall negotiate terms thereof in an Access Agreement.

All charges listed are subject to any relevant taxes imposed by the Government.

PART II - NETWORK CO-LOCATION SERVICE

1. General

1.1 This Part sets out the terms and conditions which are applicable to Network Co-Location Service.

2. Scope of Network Co-Location Service

2.1 Network Co-Location Service is a Facility and/or Service which comprises: -

- (a) physical co-location, which refers to the provision of space at BR's premises to enable the Access Seeker to install and maintain equipment necessary for the provision of the Access Seeker's services through the Facilities and/or Services of any Other Operator. Physical co-location includes physical space, power, environmental services (such as heat, light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access Seeker;
- (b) virtual co-location, which refers to the provision of Facilities or Services at BR's premises to enable the acquisition by the Access Seeker of Facilities and Services in the Access List, where equipment is owned and maintained by BR; or
- (c) in-span interconnection, which is the provision of a POI at an agreed point on a physical cable linking BR's network facilities to an Access Seeker's network facilities.

2.2 Network premises at which co-location is to be provided includes switching sites, earth stations, exchange buildings, roadside cabinets and such other network facilities locations associated with the provision of a Facility or Service in the Access List, and includes co-location provided at any location where main distribution frame is housed.

3. Provisioning of Network Co-Location Service

3.1 Network Co-Location Service

3.1.1 BR will provide Network Co-Location Service requested by the Access Seeker in accordance with BR's RAO and the Access Agreement.

3.1.2 BR agrees to provide Network Co-Location Service at the designated sites subject to the following terms and conditions: -

- i. BR is the sole or beneficial owner of the space to be occupied or the Access Seeker has obtained the permission from the legally rightful owner(s) of the space for physical co-location;

-
- ii. The Access Seeker has the required license and/or permit from the relevant authorities to operate the service for the purpose for which the equipment is to be installed;
 - iii. There are no space constraints at the designated sites; and
 - iv. That it is not technically infeasible to implement Network Co-Location at the designated site.

3.1.3 Each Operator shall make sure that its Facilities at each designated site where the Network Co-Location Service is commissioned complies with the QOS Standards and Technical Specifications.

3.1.4 The Access Seeker shall provide the following minimum information to BR when seeking for Network Co-Location Service: -

- (a) the designated site at which the Network Co-Location Service is located;
- (b) the list and details of Equipment to be installed by the Access Seeker at the designated site;
- (c) the required space for the Network Co-Location Service at the designated site and the floor loading for the Access Seeker's equipment;
- (d) list of utilities required for the provisioning of the Network Co-Location Service;
- (e) type and diameter of optical fibre cable inclusive of the capacity and specifications of any tie cables;
- (f) work plan for the installation of the equipment including drawings.

3.1.5 Each Operator shall be responsible for the provisioning, installation, testing, operating and maintaining their respective Facilities at the designated site at which the Network Co-Location Service located, unless the Operators agreed otherwise.

3.1.6 The Operators shall comply with Section 6.9 of the MSA Determination.

3.1.7 The minimum tenure to lease the Network Co-Location Service is three (3) years.

4. Security Sum

4.1 The Access Seeker may be required to provide the Security Sum equivalent **two (2)** months from the annual Charges for each Access Request

5. Charges and Charging Principles

5.1 The Access Seeker will pay to BR for Network Co-Location Service based on the charges stated in the table below:

Ringgit Malaysia Per Square Meter Per Year	
Physical co-location (space) including services	RM200

5.2 Notwithstanding the above, in the event the Access Seeker requires the provision of Facilities and/or Services which require BR to incur new investment, BR may charge a **one (1)** time capital contribution or review the above rates for the preparatory work. If BR agrees to perform preparatory work and does so on the basis of an estimated charge (e.g. based on time and material basis):

- (a) BR shall not exceed the estimate without providing the Access Seeker with prior written notice that: -
 - (i) the estimate will likely be exceeded; and
 - (ii) a further estimate of the charges for the work necessary to complete the preparatory work; and
- (b) BR shall permit the Access Seeker to withdraw the request for preparatory work without penalty if the revised estimate exceeds the original estimate by more than ten percent (10%) of the original estimate.

5.3 If BR agrees to perform preparatory work and BR is or likely to be unable to perform such work within the agreed timeframe, BR shall: -

- (a) Notify the relevant Access Seeker of the delay to a delivery date, together with the reasons for the delay, as soon as possible after BR becomes aware of the possible delay;
- (b) Permit the Access Seeker notified under section 5.3 (a) above to cancel the preparatory work without penalty if the delay is longer than ten (10) Business Days; and
- (c) Compensate the Access Seeker for the costs it has incurred as a result of delay, subject to the Access Seeker using reasonable endeavours to mitigate those costs.

5.4 The charges for virtual co-location and in-span interconnection shall be negotiated and agreed by the Operators.

6. Payment Terms

6.1 The payment terms for the Network Co-Location Service shall be as follows:-

- (a) For the 1st year payable in advance before the commencement of the Network Co-Location Service; and
- (b) For subsequent year onwards on a quarterly advance basis.

PART III – END-TO-END TRANSMISSION SERVICE

1. General

1.1 This Part sets out the terms and conditions which are applicable to End-To-End Transmission Service.

2. Scope of End-To-End Transmission Service

2.1 The End-To-End Transmission Service is a Facility and/or Service for the carriage of communications between:-

- (a) two End User locations;
- (b) between two Access Seeker Points of Presence; or
- (c) between one End User location and one Access Seeker Point of Presence,

via such network interfaces at such transmission rates as may be agreed between BR and the Access Seeker on a permanent or virtual basis.

2.2 Network interfaces may use any technology as may be agreed between BR and the Access Seeker including, for example, Ethernet interfaces.

2.3 The functionalities of the End-To-End Transmission Service include:-

- (a) transmission and switching, whether packet or circuit;
- (b) the signalling required to support the technology or to provide a service;
- (c) termination at either end by a port, router, network termination unit, switch, submarine cable landing centre or earth station; and
- (d) a digital protocol including Internet Protocols.

2.4 An End User location or Access Seeker Point of Presence in clause 2.1 may include submarine cable link between Sarawak, Sabah and Peninsular Malaysia, submarine cable landing centre or an earth station.

2.5 The End-To-End Transmission Service may be for the carriage of communications which comprise a content applications service.

2.6 Technologies used to supply End-To-End Transmission Service such as Metro-E, may be requested by Access Seeker and BR must supply End-To-End Transmission Service using these technologies on request.

-
3. Provisioning of End-To-End Transmission Service
 - 3.1 The minimum period in which the Access Seeker may lease End-To-End Transmission Service is **one (1) year**.
 - 3.2 The Access Seeker shall pay to BR for End-To-End Transmission Services stated in accordance to BR's RAO.
 - 3.3 BR shall ensure End-To-End Transmission Service conform to the agreed service level availability and Technical Specifications, subject to the Access Seeker's use of those End-To- End Transmission Service in accordance with the Technical Specifications and Commission Determination on the Mandatory Standard for Quality of Service (Digital Leased Line Service), Determination No. 3 of 2009 other agreed requirements.

 4. Security Sum
 - 4.1 The Access Seeker may be required to provide the Security Sum equivalent **two (2)** months from the annual Charges for each Access Request.

 5. Charges and Charging Principles
 - 5.1 The Charges for End-To-End Transmission Service will be as stated in the Commission Determination on the Mandatory Standard on Access Pricing (Determination No. 1 of 2023) as stated below:-

Within Peninsular Malaysia and within Sabah and Sarawak

	Ringgit Malaysia per month (Effective 1 st January 2024)
	2024
1 Mbps	55
10 Mbps	817
100 Mbps	1,122
200 Mbps	1,460
500 Mbps	2,476
750 Mbps	3,321
1 Gbps	4,663
3 Gbps	11,741
5 Gbps	18,622
6 Gbps	22,181
7 Gbps	25,740
8 Gbps	29,299
9 Gbps	32,858
10 Gbps	36,417

Between Peninsular Malaysia and Sabah and Sarawak

	Ringgit Malaysia per month (Effective 1st January 2024)
	2024
1 Mbps	59
10 Mbps	917
100 Mbps	2,119
200 Mbps	3,455
500 Mbps	7,462
750 Mbps	10,801
1 Gbps	14,830
3 Gbps	42,243
5 Gbps	69,460
6 Gbps	83,186
7 Gbps	96,913
8 Gbps	110,639
9 Gbps	124,366
10 Gbps	138,092
Installation (non-recurring charge)	6,768

Notwithstanding the above, in the event the Access Seeker requires the provision of Facilities and/or Services which require BR to incur new investment, BR may charge **one (1)** time capital contribution or review the above rates.

PART IV – LAYER 2 HSBB NETWORK SERVICE WITH QOS

1. General
 - 1.1 This Part sets out the terms and conditions which are applicable to Layer 2 HSBB Network Services.
 - 1.2 Both Parties agree that the term for the Layer 2 HSBB Network Service will be for a minimum of one (1) year. After the expiry of this minimum period, the term will be renewed on a monthly basis unless otherwise terminated in accordance with the Agreement.
2. Scope of Layer 2 HSBB Network Service
 - 2.1 The Layer 2 HSBB Network Service is an access and transmission Facility and/or Service for the provision of Layer 2 connectivity for the carriage of certain communications, being data in digital form and conforming to Internet Protocols, between customer equipment at an end users' premises and a POI at the mutually agreed location, where in respect of the service:
 - (a) the customer equipment is directly connected to the Access Provider High- Speed Broadband Network;
 - (b) The Access Seeker selects the bit rate; and
 - (c) The Access Seeker assigns the customer an IP address.
 - 2.2 The Layer 2 HSBB Network Service includes shared splitting services, interfaces to operational support systems and network information.
 - 2.3 Nothing in this service description is intended to limit:
 - (a) The number of concurrent Layer 2 HSBB Network Services acquired by the Access Seeker from the Access Provider associated with a single Customer;
 - (b) Concurrent acquisition of Layer 2 HSBB Network Service and other HSBB Network Services by the Access Seeker from the Access Provider associated with a single Customer; or
 - (c) The number of Layer 2 HSBB Network Service that may be acquired by the Access Seeker, either in a single location or at multiple locations (or permit the Access Provider to require the Access Seeker to acquire any minimum or maximum number of HSBB Network Services, either in a single location or at multiple locations), as condition of the Access Provider supplying the Layer 2 HSBB Network Service.

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- 2.4 The Access Provider shall only request Forecasts where:
- (a) The maximum period of time covered by the Forecasts regarding Layer 2 HSBB Network Service is one (1) year;
 - (b) The minimum intervals or units of time to be used in Forecast regarding Layer 2 HSBB Network Service is three (3) months; and
 - (c) The maximum frequency to update or to make further Forecasts regarding Layer 2 HSBB Network Service is once every three (3) months.

2.5 The Access Provider shall acknowledge receipt of each Order for Layer 2 HSBB Network Service within one (1) Business Day.

2.6 The Access Provider shall commence a Service Qualification on the date of issuing a Notice of Receipt and complete and notify the Access Seeker of the result of any post- Order Service Qualification within the shorter of:

- (a) Five (5) Business Days after the commencement of the post-Order Service Qualification; and
- (b) The time within which the Access Provider performs and notifies the result of an equivalent post-Order Service Qualification undertaken for itself.

The Access Provider shall only require post-Order Service Qualification to be requested in respect of the premises on a street that is not connected to Layer 2 HSBB Network Service.

2.7 The Access Provider must notify the Access Seeker that an Order for Layer 2 HSBB Network Service is accepted or rejected within one (1) Business Day after:

- (a) Issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order; or
- (b) providing the Access Seeker with the result of post-Order Service Qualification, where the Access Provider has undertaken post-Order Service Qualification for that Order.

2.8 The indicative activation timeframe for Layer 2 HSBB Network Service is:

- (a) In respect of a premises on a street that is connected to Layer 2 HSBB Network Service, five (5) Business Days including the date of the Broadband Termination Unit (“BTU”) installation appointment; or
- (b) otherwise, up to twenty (20) Business Days including the date of the BTU installation appointment.

The Access Provider will perform activations within the shorter of the timeframe specified in this **Subsection 2.8**, the time within which the Access Provider performs activations for itself and the time which would permit The Access Seeker or downstream operator to

comply with the Commission Determination on the Mandatory Standards for Quality of Service (Wired Broadband Access Service), Determination No.2 of 2016 including such modification or variation as may be determined by the Commission from time to time. For clarification, the indicative activation timeframe in this **Subsection 2.8** commences from the Notice of Acceptance or confirmation of the Order.

- 2.9 The Billing Period for Layer 2 HSBB Network Service will be monthly.
- 2.10 The Access Seeker shall pay to the Access Provider for Layer 2 HSBB Network Service stated in this Section.
- 2.11 The Access Seeker shall be responsible for all matters related to the customer service, first level troubleshooting including the connection of BTU to the Access Seeker's Residential Gateway ("RG") to the Customer's devices, fault reports, technical issues and settlement save and except for the cases where the fault is ascertained to be caused by the Access Provider or any of its equipment to support the provision of The Access Seeker's Services by the Access Seeker. For the avoidance of doubt, the Access Provider shall not be obligated to ensure the compatibility of its equipment with the Access Seeker's retail devices, RG or any other related equipment owned and/or installed by the Access Seeker. The Access Provider may provide reasonable technical support, upon request the Access Seeker.
- 2.12 The Access Seeker is responsible for implementing sufficient procedures and checkpoints and taking reasonable precautions to ensure that whatever method selected by the Access Seeker for use of Layer 2 HSBB Network Services is free of viruses, hacking, spamming, worms, trojan horses and other items of a destructive nature. The detail process shall be as set out in the Technical and Implementation manual.
- 2.13 The Access Seeker shall be responsible for any content transmitted from the Access Seeker's Customer, whether authorised or unauthorised using the Layer 2 HSBB Network Services with QOS. The Access Seeker shall ensure that the use of the Layer 2 HSBB Network Services shall comply at all times with all applicable laws, regulations and instructions for use of the Layer 2 HSBB Network Services, if any.
- 2.14 The parties' responsibilities relating to the operation and maintenance of the Layer 2 HSBB Network Services shall be as set out in the Operation and Maintenance manual.

3. Provisioning of Layer 2 HSBB Network Service

- 3.1 The Access Provider shall work together with the Access Seeker to comply with the obligations on service fulfillment timelines.
- 3.2 The Access Seeker may request for Layer 2 HSBB Network Services by submitting a Service Order Form ("SOF") via a portal or other method to be agreed by both Parties.

4. Security Sum

The Access Seeker may be required to provide the Security Sum equivalent to two (2) months from the annual charges.

5. Charges and Charging Principles

5.1 The Access Seeker will pay to Access Provider for Trunk Transmission Services based on the charges and charging principles as follows: -

1. One-Time Charges

1.1 BTU Installation

Item	Price (RM)
Broadband termination unit port (non-recurring charge) - Installation	450.00

1.2 Service Gateway (Non-recurring charge)

Item	Price (RM)
Service gateway	658.00

1.3 Modification (reconfiguration charge)

Item	Price (RM)
Reconfiguration Charges (per request)	30.00
VLAN changes	
Package upgrade and downgrade	

1.4 Return Order

Item	Price (RM)
Return Order	200.00

2. Recurring Charges

2.1 Port BTU

Item	Effective from 1 January 2024
Broadband termination unit port (RM per port per month)	45.00

2.2 Layer 2 HSBB Service Gateway

LAYER 2 SERVICE GATEWAY (RM PER MONTH):	Effective from 1 January 2024
100 Mbps	201.38
250 Mbps	503.45
500 Mbps	1,006.90
600 Mbps	1,208.28
700 Mbps	1,409.66
800 Mbps	1,611.04
1 Gbps	2,013.80
2 Gbps	4,027.60
3 Gbps	6,041.39
5 Gbps	10,068.99
10 Gbps	20,137.98
20 Gbps	40,275.96
50 Gbps	100,689.90
100 Gbps	201,379.79
200 Gbps	402,759.58
500 Gbps	1,006,898.96

2.3 Backhaul Transmission

Backhaul Transmission (RM PER MONTH):	Effective from 1 January 2024
1 Mbps	55
10 Mbps	817
100 Mbps	1,122
200 Mbps	1,460
500 Mbps	2,476
750 Mbps	3,321
1 Gbps	4,663
3 Gbps	11,741
5 Gbps	18,622
6 Gbps	22,181
7 Gbps	25,740
8 Gbps	29,299
9 Gbps	32,858
10 Gbps	36,417