



REFERENCE ACCESS OFFER DOCUMENT (RAO)

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REFERENCE ACCESS OFFER

Version: 1 of 2019

Date: 09 May 201

THIS REFERENCE ACCESS OFFER IS

MADE BY: Orissa Wicomm (M) Sdn Bhd (OWSB), company registration number 749922-W, a company incorporated under the laws of Malaysia and principal place of business at Suite 1.02, 1st Floor Plaza Hamodal Lot 15, Jalan 13/2, Seksyen 13, 46200 Petaling Jaya, Selangor

ON: 09 May 2019

Issued pursuant to the Commission Determination on Access List Determination, Determination 2 of 2015 (**Access List Determination**) and the Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016 (**MSA Determination**) and the Commission Determination on the Mandatory Standard on Access Pricing, Determination No. 1 of 2012 as varied by the Variation to Commission Determination on the Mandatory Standard on Access Pricing (Determination No. 1 of 2012) Determination 4 of 2015 (**Access Pricing Determination**).

A. The MSA Determination deals with access to infrastructure sharing Services included in the Access List and sets out the obligations that apply to Access Seekers concerning various access issues which include:

- (i) Disclosure obligations;
- (ii) Negotiation obligations;
- (iii) Content obligations;

B. Disclosure obligations are as set out in Section 5.3 of the MSA Determination

C. Negotiation obligations are as set out in Section 5.3 of the MSA Determination

D. Content obligations are as set out in Section 5.5 of the MSA Determination

SCOPE OF RAO

A. Pursuant to section 5.3.3 of the MSA Determination, OWSB is pleased to prepare and maintain a Reference Access Offer (RAO) for the Facilities and/or Services listed in the Access List Determination which OWSB provides to itself or third parties.

B. This RAO specifies the procedures and process to be followed by an Access Seeker who intends to acquire the Facilities and/or Services on the Access List Determination and which:

- (i) Contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and
- (ii) does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination.

C. OWSB's RAO are consistent with:

- (i) the standard access obligations stipulated under Section 4.1.1 of the MSA Determination and section 149 of the Act; and
- (ii) the principles of non-discrimination stipulated under Sections 4.1.5 and 4.1.6 of the MSA Determination.

PART 1 – OVERVIEW OF ORISSA WICOMM (M) SDN BHD REFERENCE ACCESS OFFER

1. INTRODUCTION

For the purposes of clarification, the terms and conditions of OWSB's RAO is applicable to the Facilities or Services on the Access List Determination and which is relevant to the provisioning of facilities and services within OWSB's licenses only. If the Access Seeker requests Facilities or Services outside OWSB's RAO, the terms and conditions for the provision of such Facilities or Services shall be negotiated and shall remain outside the scope of OWSB's RAO.

2. FACILITIES AND SERVICES PROVIDED UNDER OWSB'S RAO

This RAO contains the terms and conditions for the following facilities and services:

- (i) Infrastructure Sharing

3. AMENDMENTS TO OWSB'S ARD

OWSB shall within ten (10) Business Days of making any amendment to the OWSB's ARD, provide a copy of the amendments, or an amended copy of OWSB's ARD to: a) the Access Seeker who is being provided with access to infrastructure sharing listed on the Access List under OWSB's ARD; and b) The Access Seeker who has requested OWSB's ARD 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.

4. NOTICE OF WITHDRAWAL, REPLACEMENT AND VARIATION OF OWSB'S RAO

- A. If the Commission revokes, varies or replaces the Access List Determination relating to the Facilities or Services listed on the Access List Determination under section 56 of the Act, OWSB may, by giving written notice to all Access Seekers to whom it is supplying Facilities or Services under OWSB's RAO, withdraw or replace OWSB's RAO with effect from a date no earlier than the effective date of the Commission's revocation.
- B. OWSB shall comply with Sections 7.4.2 and 7.4.3 of the MSA Determination where it withdraws or varies OWSB's RAO pursuant to Section 4.A
- C. In addition to Section 4.B above, OWSB may give the Access Seekers to whom it is supplying Facilities and Services under OWSB's RAO a notice of a variation or replacement of OWSB's RAO to affect such variations that are necessary or appropriate in the event of:
 - (i) the occurrence of a Legislative Event that materially affects the rights or obligations of OWSB under OWSB's RAO; or
 - (ii) the occurrence of a Regulatory Event that relates to OWSB; or
 - (iii) a review by the Commission of the MSA Determination pursuant to Section 7.5 of the MSA Determination.
- D. Notwithstanding Sections 1.5.1, 1.5.2 and 1.5.3 above, OWSB may subject to Section 1.4 above, replace OWSB's RAO at any time.

5. AVAILABILITY

- A. OWSB's ARD shall be made available to an Access Seeker:
 - (i) on written request, at OWSB's principle place of business; and
 - (ii) on a publicly accessible website at www.orissawicomm.com.my
- B. Prior to the provision of OWSB's ARD to the Access Seekers, the Access Seekers shall be required to enter into a Confidentiality Agreement which shall be made separately.
- C. Any communication in respect of OWSB's RAO should be made in writing to:

Attention: SALES DEPARTMENT

Address: Suite 1.02, 1st Floor Plaza Hamodal

Lot 15, Jalan 13/2, Seksyen 13,

46200 Petaling Jaya, Selangor

Email: sales@orissawicomm.com.my

PART 2 – DEFINITION AND INTERPRETATION OWSB’S REFERENCE ACCESS OFFER DOCUMENT

The following words have these meanings in this OWSB’s ARD unless the contrary intention appears:

“**Act**” means the Communications and Multimedia Act 1998

“**Access Agreement**” means

(a) a Model Access Agreement or

(b) an agreement which is commercially negotiated between the Operators based on the AAT.

Whereby OWSB provides requested facilities or services listed in the access list determination to the access seeker in accordance with the terms therein contained and registered with the commission in accordance with Section 150 of the Act.

“**Access Charge**” means a charge paid by the Access Seeker to OWSB for accessing the Facilities and/or Services listed on the access List Determination provided by OWSB.

“**Access List**” means the list of Infrastructure sharing determined by the Commission under Section 146 of the Act.

“**Access List Determination**” means the Commission Determination on Access List, Determination No. 1 of 2005; which came into operation on 1st July 2005 read together with the Variation to Commission Determination on Access List (Determination No. 1 of 2005), Determination No. 1 of 2009 and Determination No.2 of 2015 which came into force on 1 st September 2015.

“**RAO Term**” means the period of three years from the date set out in Section 1.1 or such other period as may be specified by OWSB from time to time.

“**Access Request**” means a request for access to Infrastructure sharing on the Access List Determination made by the Access seeker to OWSB and containing the information in Section 4.1.3.

“**Access Seeker**” means an Access Seeker who;

a) is a network facilities provider, network service provider, application service provider or content application service provider and who is a licensee as defined in the Act; and

b) makes a written request for access to the Infrastructure sharing listed in the Access List

Determination.

“**Associated tower sites**” is the space surrounding the tower where the Access Seeker may place its cabin or outdoor support equipment including space required for cable gantry connecting to the tower and generator-set OWSB’S REFERENCE ACCESS OFFER DOCUMENT

“**Bank Guarantee**” means the guarantee executed and to be granted to OWSB on behalf of the Access Seeker by a bank approved by OWSB pursuant to Section 4.3

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

“**Billing Period**” means the period over which the supply of access to Facilities or Services is measured for the purposes of billing as contemplated in Chapter 6, which shall be more than **thirty one (31)** 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 OWSB for the provision of Infrastructure sharing 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 Malaysian Communication and Multimedia Commission Act 1998.

“Communication” means any communication, whether between persons and person, things 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 OWSB and to be specified for each Facility or service provided under Chapter 6 (Billing & Settlement).

“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).

“Confidentiality Agreement” means a confidential agreement entered into between the Operators in accordance with Section 5.3.8 of the MSA Determination.

“Creditworthiness Information” means the information required by OWSB to assess the creditworthiness of the Access Seeker which is more particularly described in Section 4.2 of OWSB’s ARD 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. OWSB’S REFERENCE ACCESS OFFER DOCUMENT

“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 or the Act in its entirety (and such registration is notified in writing to the Access Seekers).

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

“Infrastructure sharing” means infrastructure sharing and/or other infrastructure sharing which facilitate the provision of network services.

“Handover Date” means the date on which access to be the Infrastructure as endorsed by a Certificate of Acceptance hereunder is given to the Access Seeker for installation of Equipment at that Site.

“Handover” shall be construed accordingly

“Infrastructure sharing” shall have the meaning as defined in Part I of Schedule A

“Insurance Information” means the insurance information required by OWSB pursuant to Section 4.4

“Invoice” means the invoice for amounts due in respect of the supply of requested Infrastructure sharing listed in the Access List Determination during a Billing Period

“Letter of Undertaking” refers to the letter in the form set out in Part II of Schedule C by the Access Seekers to OWSB where, upon receipt of such Letter of Undertaking, OWSB shall acknowledge and thereafter execute the work commencement in relation to an infrastructure Project as Infrastructure sharing.

“License” means an individual license granted by the Minister pursuant to the Act for Communication Services

“License Fee” means the monthly fee payable by an Access Seeker according to the payment structure pursuant to the Master Agreement set out in Schedule B and as recorded in the relevant Letter of Offer in Part III of Schedule C

“Manuals” means the Technical and Implementation Manual, the Access Seekers and Maintenance Manual and Other Manuals which the Access Seekers establish pursuant to the Access Agreement

“Master Agreement” means the main Agreement entered between OWSB and the Access Seeker (that has confirmed the demand for utilization of infrastructure sharing services once Access Request is established and agreed upon)

“Minimum Value” for the purpose of calculating the Security Sum means the total estimated value of access to the requested Infrastructure sharing provided (based on the most recent OWSB’S

REFERENCE ACCESS OFFER DOCUMENT amounts invoice for those requested Infrastructure sharing) or to be provided by OWSB to the Access Seeker for a ninety (90) days period.

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

“Model Access Agreement” means the model agreement entered into pursuant to an Access Request

“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.

“Operators” means OWSB and the Access Seeker collectively;

“Other Operator” means either

(a) OWSB; or

(b) the Access Seeker,

as the context requires. **“Review”** means a review of the MSA Determination pursuant to Section 6.5 of the MSA Determination

“RM” means Ringgit Malaysia which shall be the monetary currency used by OWSB’s ARD unless otherwise provided **“Security Sum”** means the security, either in the form of a Bank Guarantee or cash, deposited with OWSB for the supply of Infrastructure sharing listed on the Access List

“Security Sum” means the security, either in the form of a Bank Guarantee or cash, deposited with OWSB for the supply of Infrastructure sharing listed on the Access List OWSB’S REFERENCE ACCESS OFFER Page 12 of 49 Determination which is more particularly described in Section 4.3; and which amount is equivalent to the Minimum Value

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

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

“OWSB” means Orissa Wicomm (M) Sdn Bhd and in OWSB’s RAO, is OWSB unless otherwise stated.

In OWSB’s RAO except where the contrary intention appears;

- (i) the singular includes the plural and vice versa; and
- (ii) a document includes all amendments or supplements to that document, or replacements or novation’s of it; and
- (iii) a reference to statute, ordinance, regulations, code or other law and other instruments under it, shall include any statute, ordinance, regulation, code and other law consolidating, amending, re-enacting or replacing of any of them from time to time relating thereto or in connection therewith; and
- (iv) a reference to a person includes a firm, body corporate, unincorporated association or an authority; and
- (v) a reference to a person includes the person’s executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; and
- (vi) if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the Next Business Day and any reference to Act that have to be done or to be done by or on before a particular day or Business Day means by or on before a particular day or Business Day means by or on before the close of business at 6.00pm on that particular day or Business Day; and
- (vii) a reference to a related body corporate of an Access Seeker has the same meaning as in the Companies Act 1965; and
- (viii) a reference to a third person is a reference to a person is a reference to a person who is not a party to this RAO; and headings are included for convenience and do not affect the interpretation of OWSB’s

PART 3 – INFRASTRUCTURE SHARING

A. Infrastructure Sharing is a Facility and/or Service which comprises the following:

(i) provision of physical access, which refers to the provision of space at specified network

B. Specified network facilities include towers and Associated Tower Sites.

C. Physical access includes power, environmental services (such as heat, light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access Seeker.

D. Provision of space at Associated Tower Sites 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.

PART 4 – PRINCIPLES OF ACCESS

A. Access Services

This RAO applies only to the Access Service (s) listed and described in Schedule B.

B. Eligibility for Access of Services

(i) OWSB shall at its discretion and in a manner consistent with the License(s) granted (and the license rights accorded therein) by the Minister to the Access Seeker, provide to the Access Seeker with access to Access Service (s) on reasonable terms and conditions as set out in this OWSB's RAO.

(ii) 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 as contained in OWSB's RAO where the Access Seeker has been granted: -

- a) an individual network facilities provider license and/or;
- b) an individual network services provider license and/or;
- c) a content applications services provider license and/or
- d) an applications service provider license;

Provided that such request is made in writing by the Access Seeker to OWSB.

(iii) An Access Seeker may not request for the Access Service (s) where the Access Service(s) are to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.

C. Standard Access Obligations

(i) Access Terms and Conditions

OWSB shall subject to Section 3.2, supply the Access Service(s) to the Access Seeker on reasonable terms and conditions.

(ii) Principles of non-discrimination

OWSB shall treat an Access Seeker on a non-discriminatory basis as required by the Standard Access Obligations in relation to the supply of Access Service(s).

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

- a) The principles set out in section 4.1.5 and 4.1.6 of the MSA Determination; and
- b) Section 149(2) of the Act

(iii) Customer Principles

Where applicable OWSB shall observe and comply with the customer relationship principles set out in Section 4.3 of the MSA Determination.

D. Negotiation Principles

(i) Intellectual Property

An Operator shall only use such Intellectual Property and information provided by another Operator for the purposes of providing access to the Access Service(s). An Operator must not use such Intellectual Property or information for the development or marketing of other Communication Services or equipment by that Operator, its affiliates or third parties.

(ii) Good faith and Dispute Resolution

Each party shall co-operate, in good faith and commercially reasonable manner, in negotiating and implementing the terms of the Access Agreement. This includes:

- a) acting promptly, honestly and not perversely, capriciously or irrationally;
- b) avoiding the imposition of unreasonable restrictions or limitations on the provision of access to the Access Service(s) (such as refusing to provide particular forms of access that OWSB provide to itself); and
- c) avoiding unnecessary dispute and use all reasonable endeavours to re-solve any disputes promptly and fairly which arising from or in connection with OWSB's RAO. If any dispute or difference of any kind shall arise between the parties in connection with or arising out of OWSB's RAO, the Dispute Resolution Procedure in Annexure A of the MSA Determination shall be adhered to

An Operator must protect from disclosure any confidentiality information provided by another Operator given in the course of negotiating an Access Agreement or during the term of OWSB's RAO in accordance with the Confidentiality Agreement signed between the parties.

(iii) Necessary Third-Party Involvement Causing or Contributing to Non-compliance in Timeframe
If:

- a) OWSB fails to comply with a timeframe under this RAO; and
- b) OWSB considers such failure was caused or contributed to by necessary third-party involvement or other matters reasonably outside OWSB's control (for example, where approval from local or other authority is required)

OWSB must notify the Commission of such non-compliance and such third-party involvement, and provide contact details of such third party, to permit the Commission to investigate the non-compliance

PART 5 – ACCESS REQUEST PROCEDURES

A. Application for Access to Services

(i) an Access Seeker shall request OWSB to supply Infrastructure sharing listed in the Access List Determination to it by serving an Access Request to OWSB

(ii) the purpose of such Access Request is to provide OWSB with sufficient information to assess the Access Seeker's request for the supply of Infrastructure sharing listed in the Access List Determination under OWSB's RAO

(iii) The Access Request must:

- a) contain the name and contact details of the Access Seeker;
- b) specify the Infrastructure sharing listed in the Access List Determination in respect of which access is sought;
- c) indicate whether the Access Seeker wishes to accept OWSB's RAO or negotiate an Access Agreement;
- d) contain the information (if any) as set out in Section 5.3.6 of the MSA Determination that the Access Seeker reasonably requires OWSB to provide for the purposes of the access negotiations;
- e) contain two (2) copies of Confidentiality Agreement properly executed by the Access Seeker in the form prescribed by OWSB in Annexure 1;
- f) specify forecasts of the capacity which the Access Seeker reasonably requires, having regard to OWSB's disclosed provisioning cycle as described in Part I and Part V of Schedule C;
- g) provide the relevant information relating to the Access Seeker's Network and the functionality of its services, to the extent that the Access Seeker is aware that such information may affect OWSB's Network;
- h) contain confirmation that the Access Seeker is not currently being supplied with the requested Facility listed in the Access List Determination or if so, the reasons for the additional request for the said Facility;
- i) specify the type of communications licenses held by the Access Seeker and a copy of the license where a copy had not been previously provided;
- j) contain Creditworthiness Information as set out in Section 5.B;
- k) be accompanied by a Security Sum as set out in Section 5.C;
- l) contain Insurance Information as set out in Section 5.D;
- m) contain relevant technical information relating to the interface standards of the Access Seeker; and
- n) contain such other information that OWSB may reasonably request.

B. Credit Worthiness Information

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

- a) a letter, signed by the executive director of the Access Seeker, stating the Access Seeker is not insolvent and is not under any external administration or under similar form of administration under any laws applicable to it in any jurisdiction
- b) a copy of the Access Seeker's most recently published audited balance sheet and audited profit and loss statement; and

c) such other information as may be reasonably requested b OWSB provided that such information are information which are publicly available

(i) the Creditworthiness Information shall commensurate with an estimate of the value of the access to the Infrastructure sharing to be provided by OWSB to the Access Seeker over a ninety (90) day period

C. Security Sum

(i) An Access Request shall be accompanied by a Security Sum. The Security that may be given by the Access Seeker may be in term of either:

- a) Bank Guarantee; or
- b) Cash Sum

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

D. Insurance Information

(i) Subject to Section D.(ii), an Access Request shall be accompanied by the following insurances:

- a) Worker's Compensation and/or Social Security Insurance and/or Employer's Liability Insurance and/or other insurance with statutory limits as required by the laws of Malaysia to provide for payment to its employees employed or in connection with the work covered by the Access Agreement that may be entered into and/or their dependants; and
- b) Comprehensive General Liability Insurance of an amount which is not in excess of Ringgit Malaysia Five Million (RM5,000,000.00) for any one claim or series of claims arising out of an accident or occurrence in connection with the Access Agreement that may be
- c) entered into resulting in bodily injury and/or personal including death and property damage of an Access Seeker which may arise out of or in consequence of any acts or omissions of the Other Access Seeker. Such policy shall include contractual liability

(ii) For the purpose of clarification, the insurance provided by the Access Seeker pursuant to Section

(iii) shall commensurate with the reasonable sum which is to be agreed by OWSB

E. Processing of Access Request

(i) Acknowledgement of Receipt of access request OWSB shall, within ten (10) Business Days of receipt of the Access Request, inform the Access Seeker in writing that it has received the Access Request and: a) subject to section E.(iii), 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 Infrastructure sharing listed in the Access List Determination in accordance with OWSB's RAO Subject to the additional information being received by OWSB within twenty (20) Business Days from the date of request, OWSB shall reconsider the Access Request in accordance with this Section E.(i) upon receipt of such additional information

(ii) Non-refundable processing fee

- a) Subject to clause (b) of Section E.(ii) OWSB may charge an Access Seeker a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request
- b) the non-refundable processing fee is only applicable to requested infrastructure sharing listed in the Access List Determination that can be offered and made available by OWSB
- c) in the event that additional and non-routine work is required in order to process the Access Request, OWSB may charge a separate fee for undertaking such additional work. If the Access Seeker does not proceed with the Access Request accepted by OWSB, the processing fee will not be refunded to the Access Seeker

(iii) Resources charge, in accordance with Section 5.7.28 of the MSA Determination OWSB may charge an Access Seeker a resource charge to be determined by reference to the costs incurred by OWSB for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Infrastructure sharing for the purposes of interconnection

(iv) Request for information OWSB 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).

F. Assessment of Access Request

(i) Reasons for Refusal Without limiting any other grounds that may be relied upon under the Act, OWSB may refuse to accept an Access Request for the supply of a Facility listed on the Access List Determination and accordingly may refuse to supply that Facility to the Access Seeker for any of the following reasons:

- a) in OWSB's reasonable opinion, the Access Seeker's Access Request was not made in good faith;
- b) in OWSB's reasonable opinion, the Access Request does not contain the information reasonably required by OWSB's RAO provided that OWSB has sought the information from the Access Seeker under Section E.(i) of OWSB's RAO and has not received that information within twenty (20) Business Days of making such a request;
- c) OWSB does not currently supply or provide access to the requested Infrastructure sharing listed in the Access List Determination to itself or to any third parties, except where the access Seeker compensates OWSB for the supply of access to such Infrastructure sharing;
- d) It is not technically feasible to provide access to the requested Infrastructure sharing listed in the Access List determination;
- e) OWSB has insufficient capacity to provide the requested Infrastructure sharing listed in the Access List Determination;
- f) There are reasonable grounds in OWSB's opinion to believe that the Access Seeker would fail to make timely payment for the supply of the relevant Facility listed in the Access List Determination;
- g) There are reasonable grounds in OWSB'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 Infrastructure sharing listed in the Access List Determination; or
- h) There are reasonable grounds for OWSB to refuse access in the national interest

(ii) Determination of technical infeasibility

For the purpose of determining technical infeasibility in section F.(i)(d), the Access Seekers shall comply with Section 5.4.17 of the MSA Determination

(iii) Determination of capacity constraints

For the purpose of determining capacity constraints in Section F.(i), the Access Seekers shall comply with Section 5.4.18 of the MSA Determination

(iv) Assessment of the Access Seeker's ability to pay for supply of relevant Infrastructure sharing listed in the Access List Determination Examples of reasonable grounds for OWSB's belief as mentioned in Section F.(i)(f) mentioned above include evidence that the Access Seeker is not in the reasonable opinion of OWSB creditworthy

(v) Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of relevant Infrastructure sharing listed in the Access List Determination Examples of reasonable grounds for OWSB's belief as mentioned in Section F.(i)(g) include repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to Infrastructure sharing have been provided (whether or not by OWSB)

(vi) Assessment of Creditworthiness

- a) in determining the creditworthiness of the Access Seeker, OWSB may have regard to, but is not limited to the matters referred to in Section 4.2
- b) in determining the creditworthiness of the Access Seeker, OWSB shall not take into account amounts outstanding for Infrastructure sharing previously provided by OWSB 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 OWSB to the extent that there is a bona fide dispute in relation to the amounts outstanding by the Access Seeker to OWSB and the Access Seeker is relying on such terms and conditions as basis for its non-payment

G. Notification of Rejection to the Access Seeker

(i) Where OWSB rejects the Access Request, OWSB 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 rejection under Section 4.6 to the Access Seeker;
- c) provide the basis for OWSB's rejection of the Access Request; and
- d) indicate a date and time, not later seven (7) Business Days from the date of the notice of rejection, at which representatives of OWSB 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 OWSB to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in section 4.6.1I, OWSB must identify when additional capacity is likely to be available.

(ii) Where the Access Seekers are unable to resolve their differences following the meeting held pursuant to Section G.(i)(d), either Access Seeker may request resolution of the dispute in accordance with Annexure A of the MSA Determination

H. Acceptance of Access Request

(i) Where OWSB agrees to provide access to Infrastructure sharing listed in the Access List Determination to the Access Seeker in accordance with OWSB's RAO, OWSB shall within ten (10) Business days of such respond under Section E.(i)(b), provide, the Access Seeker with two copies of the executed Model Access Agreement, for execution by the Access Seeker

(ii) Where the Access Seeker wish to negotiate an Access Agreement, the Access Seekers shall comply with the requirements in Sections 5.4.2, 5.4.4, 5.4.9 and 5.4.15 of the MSA Determination in negotiating and concluding an Access Agreement

(iii) OWSB will not be taken to have agreed to acquire the requested Facility listed in the Access List Determination until:

- (a) a security sum has been provided in accordance with Section 5.A and 5.B; and
- (b) an Access Agreement has been executed between the Access Seekers and the Access Agreement is registered with the Commission in accordance with Section 150 of the Act

PART 6 PROVISION OF INFORMATION

- A. The obligations of each Operator to provide information to the Other Operator are subject to the MSA Determination and the requirements of confidentiality in the confidentiality agreement signed by the Operators.
- B. An Operator must provide the Other Operator on a timely basis with all agreed information reasonably required to determine rates and charges to be billed by each Operator to the Other Operator or by each Operator to its Customers.
- C. To the extent permitted by Malaysian law and any relevant guidelines or customer service standards in force pursuant to the Operator's respective Licence conditions, the Operators will exchange information and otherwise cooperate in relation to the prevention and investigation of fraudulent use or misuse of the Operator's respective Communications Services and the theft of the Operator's provided terminal equipment.
- D. Information provided under OWSB'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.
- E. Information required to be provided under OWSB's RAO need not be provided if the recipient Operator has not established security measures that are adequate to protect the confidentiality of the information. If the recipient Operator does not observe such security measures or any of the information is used by it for any purpose other than the purpose for which it was given, the providing Operator may deny the recipient Operator further access to the information for the period during which the non-observance or non-conforming use continues on notice specifying the non-observance or non-conforming use. The Operators will co-operate to resolve the providing Operator's reasonable concerns so that information exchange can be resumed as soon as possible.

- F. (i) 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.
- (ii) 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 relevant 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.

PART 7 BILLING AND SETTLEMENT OBLIGATIONS

A. Billing and payment

- (i) This Section describes the billing and settlement procedures for all Services.
- (ii) A Service Schedule may contain billing and settlement arrangements that add to or amend this Section in respect of the relevant Service.

B. Billing

- (i) Unless agreed otherwise between the Parties, the Access Provider shall bill Charges in accordance with the billing Cycle. Each Bill will:
- a) State charges in Ringgit Malaysia;
 - b) Show Charges payable for the Service provided in the last preceding calendar month (the "Billing Period"); unless otherwise agreed with the Access Seeker in the Access Agreement
 - c) Be accompanied by information as may be reasonably necessary for the Access Seeker to verify rates and charges contained in the Bill; and
 - d) Be issued within 30 days following the Billing Period.
- (ii) The Bill shall be sent to the Access Seeker at the Access Seeker's specified address. The Access Seeker may change the address by giving the Access Provider at least 20 Business Days' notice.
- a) The Access Seeker shall give the Access Provider information (including Call Information) required by the Access Provider to determine Charges For Services provided to the Access Seeker.
 - b) The Access Provider will give the Access Seeker information (including Call Information) required by the Access Seeker to provide accurate and timely billing services to itself, its affiliates or other Operators.
 - c) If the Access Seeker requests, the Access Provider will provide, in monthly tranches, an aggregated summary of billings for Services provided to the Access Seeker. (However, the Access Provider is not obliged to meet the request retrospectively.

- (iii)
- a) If the Access Provider is unable to obtain information required to determine the Charges that apply during a Billing Period, the Access Provider may determine the Charges on a provisional basis (“Provisional Charges”) and issue the Bill based on the Provisional Charges the Provisional Charges must be clearly identified in the Bill.
 - b) The amount of the Provisional Charges must not exceed:
 - i. the average amount of the Charges that were billed in respect of the relevant Service in the recent three Bills; or
 - ii. if there have not been three Bills in respect of those Charges, the amount of the Charges that were billed in the most recent Bill in respect of the relevant Service.
 - c) An adjustment to reflect the actual Charges incurred must be made in a subsequent Bill, as soon as practicable but no later than 3 months after the calendar month in which the Services were provided.
 - i. If an adjustment is not made within 3 months after the calendar month in which the services were provided, the Access Seeker may treat the Provisional Charges as the actual Charges.
 - ii. No interest is payable in respect of an adjustment, whether:
 - By the Access Seeker (even if the actual Charges incurred are higher than the Provisional Charges); or
 - By the Access Provider (even if the actual Charges incurred are lower than the Provisional Charges).
 - d) the Access Provider must not determine Charges on a provisional basis for more than three successive Billing Periods without the consent of the Access Seeker.
- (iv)
- a) The Access Provider must bill all Charges within 3 months from the calendar month in which the Services were provided. The Access Seeker is not obliged to pay Charges that are billed after this timeframe except otherwise agreed.
 - b) The Access Provider may include omitted or miscalculated Charges from a bill in a later Bill, provided that:
 - i. the Access Provider is able to substantiate the Charges to the Access Seeker; and
 - ii. the inclusion is made:
 - Within 2 months of the issuing of the original Bill being issued in which the omitted Charges should have been included or the miscalculated Charges were included; or
 - If not original Bill was issued, within 3 months from the calendar month in which the Services were provided.
- (v) Party.
- a) If the parties agree, the Party who made the error must reissue the Bill free of error.
 - b) If not, the Party who made the error must correct that error in the next Bill.

C. Payment

- (i) The Access Seeker must pay the amount due and owing by the Due Date.
- (ii) a) Bills must be paid by the Access Seeker in Ringgit Malaysia by one of the following method:
- i. electronic funds transfer to the Bank Account designated by the Access Provider which shall be specified by the Access Provider in writing; or
 - ii. by bank cheque to the Bank Account designated by the Access Provider which shall be specified by the Access Provider in writing, for the purpose of this sub-clause, the Access Provider shall have the sole discretion to determine the primary method of Bill payment to be complied with by the Access Seeker and the Access Provider shall notify the Access Seeker of the same. The primary method of Bill payment shall be complied with by the Access Seeker at all times unless it is not possible to do so in which case, the Access Seeker must notify the Access Provider within one (1) day after the Bill payment is made using the secondary method.
- b) Payment of an amount is received:
- i. if payment is by electronic funds transfer – when the amount is shown as having been deposited in the Bank Account; and
 - ii. if payment is by bank cheque – when the cheque is received by the Access Provider, and the bank cheque is cleared and funds are deposited in the Bank Account
- c) On the day a payment is made, the Access Seeker must send the Access Provider a statement specifying the details of the Bill in respect of which the payment is made (“Remittance Advice”).
- d) If a Remittance Advice is not provided, the Access Provider may allocate the payment to any amount payable to the Access Provider by the Access Seeker which is not the subject of Billing Dispute. The Access Provider must notify the Access Seeker of any such allocation.
- (iii) a) The Access Provider may charge the Access Seeker interest calculated in the manner specified in the MSA on any overdue amount as follow;
- i. the entire Bill amount, if the bill is not in dispute; or
 - ii. the entire Bill amount, if the Bill is in dispute but the Billing Dispute Notice was not submitted to the Access Provider within the time period specified in clause 3.5 or does not meet the requirements of clause 5.E of this Section.
- b) If the Bill is in dispute and upon resolution of the dispute, the disputed amount determined to be valid (“Overbilled Amount”):
- i. is more than the amount previously withheld by the Access Seeker, the Access Provider shall refund the Access Seeker the difference (“Refundable Difference”) calculated by deducting the amount withheld by the Access Seeker from the Overbilled Amount. The Access Provider shall pay interest on the Refundable Difference.
 - A. Interest on the Refundable Difference payable by the Access Provider shall be calculated: -
 - a.a from (and including) the day the Access Seeker had paid the Refundable Difference was refunded to the Access Seeker; and
 - a.b at the interest rate specified in the MSA is less than the amount previously withheld by the Access Seeker, the Access Seeker shall pay the Access Provider the difference (“Payable Difference”) calculated by deducting the Overbilled Amount from the amount withheld by the Access Seeker. The Access Seeker shall pay interest on the payable Difference.
 - A. Interest on the Payable Difference payable by the Access Seeker shall be calculated: -

a.a from (and including) the original due date of the Bill to (but excluding) the day the Access Seeker pays the Payable Difference; and a.b at the interest rate specified in the MSA.

c. Where the Access Seeker has paid the Bill but subsequently notifies the Access Seeker of a Billing Dispute in relation to that Bill within the Billing Dispute Notification Period, the Access Provider is not obliged to refund the sum paid or part thereof until the Billing Dispute is resolved.

(iv) Unless otherwise agreed, Bills must be paid in full without set-off, counterclaim or deduction.

- (v) a) the Access Seeker may withhold payment of any amounts disputed in good faith by the Access Seeker (which shall be confirmed by the Access Provider) if:
- i. the Access Seeker notifies the Access Provider's Billing Representative within 21 days from the day the Bill is received; and
 - ii. the notification is accompanied by a complete Billing Dispute Notice which shall contain complete and accurate information as specified in sub-clause 4.5 below.
- b. If a complete and accurate Billing Dispute Notice is not lodged with the Access Provider's Billing Representative within 21 days from the day the Bill is received, the Access Seeker must pay the Bill in full before lodging a Billing Dispute Notice (which must in any event be lodged within the Billing Dispute Notification Period specified in clause 4.3). If not, the Access Provider may:
- i. treat any amounts withheld as amounts that are not in dispute; and
 - ii. reject any Billing Dispute Notice lodged 21 days after the day the Bill is received unless the amounts in dispute are paid in full.

(vi) On resolution of a Billing Dispute, any sum to be paid or refunded must be paid or refunded (with interest) within 14 days of the resolution of the Billing Dispute and in the manner as provided in clause 6.23 above.

D. Billing Dispute Resolution

(i) The Access Seeker may direct enquiries relating to billing, collecting and settlement arrangements to the Access Provider's Billing Representative.

(ii) The Access Seeker may submit a Billing Dispute Notice where it has reasonable grounds to believe that an error has arisen because;

- a) the Access Provider's billing system is, or has been, defective or inaccurate in respect of recording calls;
- b) there is, or has been, a discrepancy between the Bills in dispute and the records generated by the Access Seeker's billing systems;
- c) there is, or has been, fraud perpetrated by the Access Provider; or
- d) the Access Provider has made some other error in recording calls or calculating Charges which are the subject of the Billing Dispute.

(iii) The Access Seeker must submit a Billing Dispute Notice within the following periods ("Billing Dispute Notification Period"):

- a) if the Billing Dispute relates to Charges – within 30 days of the Bill Date;
- b) the Access Provider is not obliged to accept a Billing Dispute Notice that is submitted outside the Billing Dispute Notification Period specified in this clause 6.33

(iv) For the avoidance of doubt and notwithstanding clauses 4.A and 4.B of this Section, the Access Seeker may only withhold payment of a Bill as provided for in clause 3.E of this Section.

(v) The Billing Dispute Notice must specify:

- a) the reason for the Billing Dispute;
- b) the amount in dispute; and
- c) details required to identify the relevant Bill and Charges in dispute including:
 - i. the Access Seeker's account number;
 - ii. the Bill reference number;
 - iii. the Bill date;
 - iv. the Bill amount; and
 - v. billing verification information; and
- d) evidence to substantiate the Billing Dispute, including (where applicable) the Access Seeker's outgoing traffic report, indicating the relevant traffic data that is in dispute.

(vi) The parties must use reasonable endeavours to resolve any Billing Dispute promptly and in any event within:

- a) 30 days from the date on which the Billing Dispute Notice is received; or
- b) such longer period as requested by one party (giving reason for that request) and agreed to by the other party, ("Negotiation Period"). For clarification between the parties, the Access Provider is not obliged to refund any of the disputed amounts until the Billing Dispute is resolved in accordance with sub-clause C(iii)(c) of this Section. In the event the Billing Dispute is resolved under the Billing Dispute Resolution, any amount to be paid or refunded by the relevant Party shall follow the procedures set by subclauses C.(iii)(b) and C.(vi) of this Section.

(vii) To the extent a Billing Dispute notified under this clause involves a dispute with and International Correspondent of the Access Provider, the Dispute Resolution Procedure is suspended for a reasonable period of time pending resolution of the dispute with that International Correspondent. As a general rule, the period of suspension will not exceed 120 days. However, the parties recognize that some Billing Disputes with International Correspondents may take longer to resolve. If this happens, the billing party must promptly inform the other party of the likely period required for resolution.

- (viii) a) At the end of the Negotiation Period, either party may notify the other party:
 - i. stating why it is not satisfied with the progress of the Billing Dispute;
 - and
 - ii. seeking escalation of the Billing Dispute.
- b) Each party must appoint a representative who has authority to settle the Billing Dispute. The representatives must:
 - i. meet as often as they reasonably deem necessary to discuss Billing Dispute;
 - ii. negotiate in good faith to resolve the Billing Dispute; and
 - iii. meet all reasonable requests for relevant information made by either party to the other.
- c) If the parties are unable to resolve any Billing Disputes within 30 days from any date as might be agreed under sub-clause 4.F, either party may refer the Billing Dispute to the Commission for resolution under the Act and the decision of the Commission or in the event of an appeal from the decision of the Commission, the decision of the Appeal Tribunal, shall be final and binding on the parties.

(xi) Either party is free to pursue any other remedy in law or equity that may be available to that party at any time during the progress of negotiations over the Billing Dispute.

PART 8 –TERMINATION, SUSPENSION AND OTHER PROVISIONS

A. Term

The Operators shall enter into an Access Agreement for a term of no less than 3 years from the execution date of the said Access Agreement.

B. Termination

Subject to Section E, OWSB may terminate an Access Agreement or part thereof if any of the circumstances referred to in Section B(a), B(b) or B(c) below apply and OWSB has notified the Access Seeker of its intention to terminate the Access Agreement: -

- a) the Access Seeker has materially breached the Access Agreement and OWSB has notified the Access Seeker that it will terminate the said agreement in no less than one (1) month if the Access Seeker does not remedy its breach by the end of that period; or
- b) the Access Seeker is subject to a winding up order (whether compulsorily or voluntarily) or cease to trade in normal course of business or become insolvent or a receiving order has made against it or has entered into any agreement or composition with or assignment for the benefit of its creditors or the Access Seeker's assets are subject of any form distress or execution or any analogous insolvency event related to the Access Seeker has occurred in any jurisdiction ; or
- c) a Force Majeure has continued for a period of more than three (3) months.
- d) OWSB shall forward to the Commission a copy of the notice of termination at the same time as providing the notice of termination to the Access Seeker. For clarifications, a notice to be given under this subsection B is in addition to the notice required under subsection E of this RAO

C. Change In Law

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

D. Suspension

Subject to Section E, OWSB may only suspend access to any Access Ser-vice(s) in the following circumstances:

- a) the Access Seeker is in breach of a material obligation and fails to remedy such breach within thirty (30) days of receiving written notice from OWSB to remedy such breach;
- b) the Access Seeker's Facilities materially adversely affect the normal oper-ation of OWSB's Network or are a material threat to any person's safety;
- c) the Access Seeker's Facilities or the supply of Access Service(s) pose an imminent threat to life or property of OWSB, its employees or contractors;

d) the Access Seeker's Facilities cause material physical or technical harm to any Facilities of OWSB or any other person;

e) where the Access Seeker has failed to pay Invoices in accordance with Chapter 6 of this RAO (and subject to any right that the Access Seeker has under Chapter 6 of this RAO to dispute any amount in an invoice);

f) where the Access Seeker has failed to provide the new security amount under subsection K, L and Section 4.C of this RAO

g) where Force Majeure applies; or

h) the Access Seeker breaches any laws, regulations, rules or standards which has a material adverse effect on OWSB or the provision by OWSB of Access Service(s) under the Access Agreement.

For the purposes of this Section D, OWSB must provide the Access Seeker five (5) Business Days' notice in writing, including written reasons, prior to suspending access to any Access Service(s). OWSB shall forward to the Commission a copy of the notice of suspension at the same time as providing the notice of suspension to the Access Seeker. For clarification, a notice to be given under this subsection D is an addition to the notice required under subsection E.

E. Notice

Prior to terminating or suspending or seeking to materially vary an Access Agreement or access to any Access Service(s) provided under it, OWSB must notify the Commission in writing of the action it proposes to take and the reasons why such action is appropriate. OWSB shall not terminate, suspend or seek to materially vary the Access Agreement or access to any Access Service(s) until such time and on such conditions, as the Commission may specify. OWSB :

a) Shall give effect to the proposed termination, suspension or material variation with Commission's written consent and subject to any time delay or any conditions which the Commission may specify (if any)

b) must not give effect to the termination, suspension or material variation unless OWSB has received written consent from Commission to such termination, suspension or material variation; and

c) shall take all steps practicable to minimize disruption, inconvenience to the Customer to the Access Seeker, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the termination or suspension of the Access Agreement or access to the Access Service provided under it

F. Undertakings

If the parties to an Access Agreement adopt the terms and conditions specified in an undertaking that has been registered with the Commission in accordance with the Act, the parties must notify the Commission within five (5) Business Days of such adoption. In such circumstances, the terms and conditions of the Access Agreement will continue to be in force for the remainder of the term of that Access Agreement, even if the access undertaking is withdrawn or expires prior to the expiry of that term.

G. Post-termination fees

OWSB shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any Access Service(s) provided under it except:

- a) Charges invoiced in arrears and not yet paid; or
- b) Subject to Clause K of this Chapter 8, charges arising during an applicable minimum contractual period (as described in Section A above), provided that:
 - i. such charges must be reduced to reflect any cost savings from OWSB not having to supply the Access Service to the extent that they have been terminated or suspended; and
 - ii. OWSB must use reasonable endeavour to mitigate its cost of termination or suspension and maximize cost savings under paragraph G.b(i) above.

H. Upfront charges refund

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

I. Deposits and guarantees

Notwithstanding the obligation in subsection H, OWSB shall:

- a) within two (2) months of termination of the Access Agreement refund to the Access Seeker any deposit paid (without interest) provided all other amounts payable by the Access Seeker to OWSB have been paid; and
- b) Immediately upon termination of the Access Agreement unconditionally waive any rights under any guarantees provided by the Access Seeker except in respect of amounts payable by the Access Seeker to OWSB as at the date of termination.

J. Intellectual Property Rights

The Operators agree not to use any patent, trade mark, trade name, house mark, service mark, designs, copyright, database rights, know-how and any other type of intellectual property rights belonging to the Other Operator or any of its affiliates without the prior written consent of the Other Operator for purposes including but not limited to any advertising, publicity releases or sales presentations.

K. Security Review

An Operators shall only vary the amount and type of any security requirement imposed on another Operator:

- a) a maximum of once in any twelve (12) months period;
- b) if there is material increase in the credit risk to the Operator due to changes in either or both of the circumstances under paragraph 4.3.1(i) and 4.3.1(ii) of this RAO; and
- c) if the Operator determines, acting reasonably, that the variation will materially reduce or removed the increased of credit risk

If the amounts contained in invoices are disputed in good faith, this will constitute a material increase in the credit risk to the Operator for the purpose of paragraph 7.11(b) above.

L. Additional Security

For the purpose of subsection 7.11 above, an Operator may only re-quest additional or substitute security from another Operator in manner consistent with subsection 4.3 of this RAO. If the other Operator was making a new Access Request under subsection 5.3 of this RAO

M. Force Majeure

(i). If a Party (“Affected Party”) is prevented from performing any of its mate-rial obligations under this Agreement (but shall not include any of the Customer’s payment obligations) by reason of Force Majeure, it must immediately notify the other Party (“Other Party”) in writing of the circum-stances constituting the event of Force Majeure and must keep the Other Party regularly informed of the progress in resolving the event of Force Majeure and use all reasonable steps to minimize the adverse effects of the event of Force Majeure on the performance of its obligations under this Agreement.

7.13.2. If the delay in performance or non-performance of the Affected Party’s ob-ligations due to the event of Force Majeure is continuous for a period of 90 days from the date of the Affected Party’s written notification under Section 7.2(c), then either Party shall have the right to terminate this Agreement with immediate effect and neither Party shall have any claim against the other in respect of such termination save for antecedent breaches.

7.14. Review

7.14.1. If:-

- a) the Minister issues a direction or determination relating to the subject matter of this Agreement;
- b) the Commission issues a direction or determination relating to the subject matter of this Agreement;
- c) there are any amendment, changes or modifications to the Act, its subsidiary legislation and the instruments issued thereunder, including but not limited to the Access Pricing Determination and the MSA Determination and the Access List, 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.

7.14.2. The obligation to negotiate set out in Conditions 7.14.1 commences promptly after delivery of a notice from one Operator to the other Opera-tor setting out in reasonable detail, the amendments sought.

7.15. Governing Law

This RAO shall be governed by and interpreted in accordance with the laws of Malaysia.

7.16. Assignment

Neither party shall be entitled to assign, transfer or novate any of its rights, obligations or liabilities without the prior written consent of the other party.

SCHEDULE A**SERVICE DESCRIPTION****PART I – INFRASTRUCTURE SHARING****1. General**

1.1 Part I of schedule A sets out the terms and conditions which are applicable to Infrastructure Sharing.

2. Pre-Requisites for Applying for Infrastructure Sharing

2.1 OWSB shall not be obliged to provide to Access Seeker Infrastructure Sharing for the Designated and associated Tower Sites unless :

- a) OWSB is the legal owner of the tower
- b) The Access Seeker has the appropriate licences from the relevant authorities to operate the service for the purpose for the equipment is to be installed; and
- c) There is no space constraint

3. Infrastructure Sharing

3.1 OWSB agrees to provide Infrastructure Sharing at the designated tower to the requesting Access Seekers in accordance with the terms of Master Agreement initially entered into between OWSB and other Access Seeker. The terms and conditions for technical matters are also spelled out in the said Master Agreement.

3.2 The Access Seekers shall publish on its website and keep updated a list of the Designated Tower leased from OWSB

3.3 Duration of Infrastructure Sharing

3.3.1 Infrastructure Sharing at a designated Tower or agreed between the Access Seekers, shall be for an Initial Period of five (5) years with an option to renew for three (3) successive terms of five (5) years each up to a maximum of fifteen (15) years (“Renewal Term”).

3.3.2 The term of the Infrastructure Sharing shall commence on the date (“Handover date”)

- a) The Access Seeker agrees to commence Infrastructure Sharing
- b) The Access Seeker takes physical possession of the shared space (“Shared Space”) at the Designated Tower or Associated Tower Site, after informing OWSB the exact location of the equipment/antenna.

4. Access Seeker’s Obligations

4.1 The Access Seeker shall be responsible for and bear the cost of all electricity utilized by the Access Seeker at the Shared Space. OWSB shall provide the access for power supply and assist the Access Seekers for its own individual meter.

4.2 Installation of Equipment

4.3 The Access Seeker shall only be permitted to install its equipment, system and/or devices on the Shared Space and shall not be permitted to install any other party's equipment, system and/or devices on the Shared Space without the prior written approval of OWSB

4.4 Safety and health and Security Procedures

4.5 The Access Seeker shall comply with the provisions and requirements of the occupational safety and Health Act 1994 ("OSHA"). These provisions include the usage of personal protective equipment such as safety helmet, safety boots, safety goggles and other safety gadgets as prescribed by OSHA.

4.6 The Access Seeker shall exercise due care in the execution of their work so as to prevent accidents and are required to report any incidents including but not limited to accidents as a result of their works to OWSB within twenty-four (24) hours from the time of the occurrence.

4.7 The Access Seeker shall comply and cause its employees, agents and contractors to comply with all guidelines, rules and regulations issued by OWSB from time to time on site access and security procedures with respect to access to and use of the Shared Space. Further the Access Seeker shall ensure the security of its Shared Space is such that no unauthorized person shall enter the Shared Space.

4.8 Sub-letting and Assignment

4.9 The Access Seeker shall not at any time sub-let, assign or lease the Shared Space to the others.

SCHEDULE B

ACCESS SEEKERS PLANNING INFORMATION & CHARGES

ACCESS SEEKERS PLANNING INFORMATION SITE NAME

TOWER HEIGHT	
TYPE OF TOWER	
DATE	
COORDINATE	
LONGITUDE	LATITUDE

ACCESS SEEKERS	ANTENNA QUANTITY	ANTENNA AZIMUTH	ANTENNA SIZE	ANTENNA HEIGHT	CABLE TYPE	CABLE LENGTH
ACCESS SEEKERS 1						
ACCESS SEEKERS 2						
ACCESS SEEKERS 3						

A) LICENSE FEE FOR VACANT LAND

Item	Site Type	UOM	Monthly Rental Rate up to 7 years License Term (RM)	
			Single Operator	2 Sharing Operators
1	Tower, 76m	Per Site/Month	7,440.00	4,464.00
2	Tower, 60m	Per Site/Month	6,640.00	3,984.00
3	Tower, 45m	Per Site/Month	5,040.00	3,024.00
4	Monopole, 45m	Per Site/Month	6,240.00	3,744.00
5	Monopole, 30m	Per Site/Month	5,200.00	3,116.00
6	Monopole Tree, 45m	Per Site/Month	6,720.00	4,032.00
7	Monopole Tree, 30m	Per Site/Month	5,500.00	3,300.00
8	Minaret, 30m/24m	Per Site/Month	6,200.00	4,700.00
9	Lamp Pole, 30m	Per Site/Month	5,500.00	3,750.00
10	Pylon, 30m/24M	Per Site/Month	6,200.00	6,000.00

SCHEDULE C**PART I OPERATIONS AND MAINTENANCE****1. General**

1.1 Part VI of Schedule C sets out the operations and maintenance procedures that are applicable in relation to the Services as listed in the OWSB

1.2 Where relevant, the operations and maintenance obligations set out in Section 5.15 of the MSA Determination shall be applicable.

2. Operations and Maintenance Standard

2.1 Each Access Seeker shall be responsible for the operations and maintenance of its own Infrastructure sharing or Network Services.

3. Maintenance Procedures and Practices

3.1 Each Access Seeker shall on its own establish the recommended maintenance procedures for maintaining and servicing its own Infrastructure sharing or Network Services.

4. Fault Management

4.1 The Access Seeker will manage their own Networks to minimize disruption to services and, in the event of interruption or failure of any service, will restore those services as soon as is reasonably practical.

4.2 In the event of failure of electric supply, OWSB shall provide alternative power supply as agreed in the Master Agreement.

5. Network Monitoring

5.1 Each Access Seeker is responsible for monitoring of alarms belonging to its own Network.