



## REFERENCE ACCESS OFFER DOCUMENT (RAO)

## **ORISSA WICOMM (M) SDN BHD'S REFERENCE ACCESS OFFER ("RAO")**

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### **THIS REFERENCE ACCESS OFFER IS**

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## INTRODUCTION AND BACKGROUND

Issued pursuant to the Commission Determination on Access List, Determination 6 of 2021 (**Access List Determination**), the Commission Determination on the Mandatory Standard on Access, Determination No. 1 of 2022 (**MSA Determination**) and the Commission Determination on the Mandatory Standard on Access Pricing, Determination No. 1 of 2023 (**MSAP 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 5.4 of the MSA Determination
- D. Content obligations are as set out in Section 5.5 of the MSA Determination

## SCOPE OF RAO

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.

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.

OWSB's RAO are consistent with:

- (iii) the standard access obligations stipulated under Section 4.1.1 of the MSA Determination and section 149 of the Act; and
- (iv) 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:
- D.
  - (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.

- E. 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 principal place of business; and
  - (ii) on a publicly accessible website at [www.orissawicomm.com.my](http://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, 1<sup>st</sup> 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.

(c)

**“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. 6 of 2021 which came into operation on 15 December 2021 and any subsequent amendments thereto which sets out a list of Facilities or Services determined by the Commission under Chapter 33 of Part VI of the Act.

**“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.

**“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 additional Access Charges to be agreed between the Operators.

**“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 Dispute Notice”** means the written notification made by the Access Seeker to the Access Provider in relation to a Billing Dispute.

**“Billing Dispute Notification Period”** means the period after the date of Invoice.

**“Billing Period”** means the period over which the supply of access to Facilities or Services is measured for the purposes of billing, 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;.

**“Billing Representative”** means a representative of the Operators appointed to handle billings.

**“Billing System”** means a system to issue Invoices relating to Access Charges payable by the Access Seeker under this RAO.

**“Business Day”** means a day other than a Saturday and Sunday or in states where Friday is observed as the weekly holiday, Thursday and Friday or Friday and Saturday (whichever is applicable), or a day which is lawfully observed as a national public holiday throughout Malaysia or a day which is lawfully observed as a state public holiday in which state either the Access Provider or the Access Seeker is operating in.

**“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).

**“Content Obligations”** means those obligations set out in subsections 5.5 to 5.16 (inclusive) of the MSA Determination.

**“Communications Service”** means the network facilities, network services, application services and/or content application services propayvided 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.

**“Designated Infrastructure”** means the telecommunication infrastructure belonging to the Access Provider to be utilized by the Access Seeker to install the Equipment thereat, which may be any of the following:-

- a) the basic specification telecommunication infrastructure as specified in Appendix D hereof (“Basic Infrastructure”); or
- b) any telecommunications infrastructure below 200 feet and not as per the specifications in Appendix D hereof for example self-supporting monopoles with or without lighting features, floodlights and aesthetic towers; or
- c) any telecommunications infrastructure 200 feet and above not as per the specifications in Appendix D hereof for example self-supporting 3 or 4 legged telecommunications towers and aesthetic towers; or
- d) any other telecommunications belonging to the Access Provider

**“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. “Dispute Resolution Procedures” means the procedures outlined in Annexure A of the MSA Determination.

**“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”** has the meaning as described in Section 5(7) of the Access List

**“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 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:
  - a. 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 Ser-vice (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 Ser-vices 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 re-quired 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**

### **1. 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.

### **2. 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 by OWSB provided that such information is 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

### **3. 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.

### **4. 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 dependents; 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

### **5. 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. 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. The Access Provider may charge an Access Seeker a non-refundable processing fee/one-off fee for undertaking the necessary administrative work to process the Access Request to be determined by reference to the costs incurred by the Access Provider including for allocation of manpower and other resources to enable the Access Provider to test and fulfil an Order for new Facilities and/or Services, provided that such one-off fee is justified by the Access Provider to the Access Seeker as necessary for the Access Provider to provide the requested Facilities and/or Services and such one-off fee shall be on reasonable costs according to the circumstances (examples:- time needed to be done, distance involved, number of personnel required, transportation whether by land, air or sea is required etc) and the applicable rate shall be fifteen percent (15%) above Jabatan Kerja Raya (JKR) rate (if any) or in case, no JKR rate is available, a rate to be agreed between the Operators and if the Access Seeker does not proceed with an Access Request accepted by the Access Provider, the processing fee/on-off fee will not be refunded to the Access Seeker (MSA 5.7.28).
- v. 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).

## 6. 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. 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
- 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
  - 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)
  - 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

## **7. 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 4.6.11, 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

## 8. 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
- iv. 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
- v. OWSB will not be taken to have agreed to acquire the requested Facility listed in the Access List Determination until:
  - c) a security sum has been provided in accordance with Section 5.A and 5.B; and
  - d) 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 – Forecasting Obligations**

- a) The Access Provider may require, as a condition of accepting Orders for access to Facilities and/or Services from the Access Seeker that the Access Seeker provide Forecasts in good faith with regards to a certain period of supply of access to Facilities and/or Services.
- b) The Access Seeker may request preliminary information from the Access Provider about the availability and capacity of its Facilities and/or Services to the extent the Access Seeker requires such information to provide Forecasts.
- c) Once an Access Seeker confirms a Forecast, it is deemed to be an Order for the purposes of the MSA Determination and this RAO and subsection 5.7 of the MSA Determination hereof will apply (MSA 5.6.3).
- d) The Operators may agree to an alternative forecasting procedure other than that set out in subsection 5.6 of the MSA Determination or to dispense with such procedure altogether. If agreement is reached about such matters, the Access Provider and Access Seeker will be bound by the terms of that alternative procedure (or mutual dispensation) and not subsection 5.6 of the MSA Determination (MSA 5.6.4).
- e) Subject to subsections 5.6.11 to 5.6.13 of the MSA Determination, the Access Provider must carry out network planning in order to enable Forecasts to be met (MSA 5.6.17).

## **PART 7 – Ordering & Provisioning Obligations**

- A. Orders for Access Service are to be delivered to the senior personnel of the Access Provider via mail to the address of the Access Provider as stated in the cover of this RAO or via email to the Access Provider's email address as stated on its website and the Access Provider shall notify the Access Seeker in writing or email from time to time of any change to the designated person(s) (MSA 5.7.1).
- B. Prior to access being provided, the Access Provider may require the Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. The Access Provider may request the Access Seeker to provide, at a level of detail (sufficient for planning and provisioning), the following in an Order for access to the Access Service:-
  - (i) the Access Service to which access is requested;
  - (ii) a requested date and time for delivery;
  - (iii) the detailed address of the location of the points of delivery and location maps, if necessary;
  - (iv) the Technical Specifications of the Equipment to be used in connection with the Order and its Technical Proposal;
  - (v) such other information that the Access Provider reasonably requires in order for it to plan for the provision of access to the Facilities and/or Services as requested by the Access Seeker provided that such information shall not include any information which:-

1. the Access Provider does not require for itself for similar provisioning;
  2. identifies, or which enables the identification of a Customer or services of the Access Seeker; or
  3. is not permitted information under subsection 5.4.16 of the MSA Determination (MSA 5.7.2).
- C. Ordering information provided by the Access Seeker shall be treated by an Access Provider as Confidential Information of the Access Seeker and shall only be used by those persons within the Access Provider whose role is within:-
- (i) the Access Provider's wholesale or interconnection group; and
  - (ii) that part of the network engineering group of the Access Provider
  - (iii) responsible for interconnection or access,
- for the purpose of responding to and provisioning for the Order (MSA 5.7.3).
- D. The Access Provider shall:-
- (i) establish a single queue for all Orders and Service Qualifications for a given type of Facility and/or Service, whether those Orders and Service Qualifications are required for itself or any Licensee;
  - (ii) give the equivalent priority to the handling of all Orders and Service Qualifications in each queue; and
  - (iii) otherwise treat all Orders and Service Qualifications in each queue in compliance with its queuing policy established under subsection 5.7.29 of the MSA Determination (MSA 5.7.4) and in any case, on a first come first serve basis.
- E. The Access Provider shall acknowledge receipt of an Order for Access Services in writing or in any other material or electronic form as agreed by the Operators within:-
- (i) two (2) Business Days for Infrastructure Sharing; and
  - (ii) the relevant period specified in the Service Specific Obligations under section 6 of the MSA Determination for the other Access Services (MSA 5.7.5).
- F. The Access Provider shall include in its acknowledgement of receipt above ("Notice of Receipt") the following information:-
- (i) the time and date of receipt of the Order;
  - (ii) a list of any additional information reasonably required by the Access Provider from the Access Seeker to provision the Order;
  - (iii) whether the Access Provider needs to perform post-Order Service Qualification because information is not readily available to the Access Provider together with the reasons for needing to undertake the Service Qualification; and
  - (iv) the position of the Order in the Access Provider's queue (MSA 5.7.6).
- G. The Access Provider shall allow the Access Seeker a period of up to ten (10) Business Days after a request for additional information under PART 7(f)(ii)

above to provide the Access Provider with such information (MSA 5.7.7).

- H. The Access Provider shall make Service Qualifications available to the Access Seekers prior to placing Orders if such pre-Order Service Qualifications are undertaken for a given Facility and/or Service by the Access Provider for itself. The Access Provider shall only require post-Order Service Qualifications to be requested if:-
  - (i) no pre-Order Services Qualification has been completed under subsection 5.4.5 of the MSA Determination;
  - (ii) the Access Provider reasonably requires information from post-Order Service Qualifications which are not readily available; and
  - (iii) the Access Provider notifies the Access Seeker that the post-Order Service Qualifications are necessary together with the reasons for needing to take such Service Qualifications at the time of providing and as specified in the Access Provider's Notice of Receipt or if further information has been requested under PART 7(g) hereof, within two (2) Business Days upon the expiry of the period specified in PART 7(g) hereof (MSA 5.7.8).
1. The Access Provider shall commence a Service Qualification on the date of issuing a Notice of Receipt and complete and notify the Access Seeker of the result of any Service Qualification within the shorter of:-
  - a. fifteen (15) Business Days after the date of the Notice of Receipt; and
  - b. the time within which the Access Provider performs and notifies the result of an equivalent Service Qualification undertaken for itself.
2. Where there is a delay in the commencement and/or completion of the Service Qualification, and the delay is caused by either the Access Seeker or by third party that is not acting under the Access Provider's direction or control:
  - a. the Access Provider shall notify the Access Seeker of the delay to the delivery date as soon as practicable after the Access Provider becomes aware of it;
  - b. the Access Provider and the Access Seeker must work together to minimize the delay; and
  - c. the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised completion date.
3. If the relevant Facilities and/or Services available to the Access Provider are below the capacity required to provide the relevant Facilities and/or Services to the Access Seeker, the Access Provider shall notify the Access Seeker, at the same time as providing the Notice of Receipt, of the available capacity and time-frame for the fulfilment of the Order at the available capacity and (if relevant) with such augmentation as may be required to fulfil the Order as submitted (MSA 5.7.9).
- I. The Access Provider shall permit an Access Seeker to withdraw its Order without penalty (irrespective of whether the Access Provider has accepted the Order or not) before the earlier of:-



- J. ten (10) Business Days after the Access Seeker receives the result of a Service Qualification under PART 7
- (i) above; and
  - (ii) one (1) Business Day before the Access Provider commences civil works to provision the Order (where the civil works are required to provision the Access Service within the delivery timeframe specified in the Notice of Acceptance (as defined in PART 7(M) hereof)) and any civil works to be conducted must be subject to the issuance of a notice in writing by the Access Provider which may be in the form of a Notice of Acceptance if civil works is to occur after the Access Provider has accepted the Order (MSA 5.7.10).
- K. The Access Provider must use its reasonable efforts to accept and fulfil Orders from the Access Seeker for Facilities and/or Services which comply with a Forecast accepted by the Access Provider pursuant to subsection 5.6 of the MSA Determination (MSA 5.7.11).
- L. The Access Provider shall notify the Access Seeker that an Order is accepted or rejected within:-
- the specified timeframe in the Service Specific Obligations under Section 6 of the MSA Determination for the purposes of this PART 7(I); or
- the timeframe within which it accepts or rejects equivalent Orders for itself,
- whichever is shorter and if the Access Provider notifies the Access Seeker that an Order is rejected, the Access Provider must advise the Access Seeker of the grounds of rejection and whether the Access Provider would be able to accept the Order in a modified form (MSA 5.7.12).
- M. The Access Provider's notice of acceptance to the Access Seeker ("Notice of Acceptance") must contain the following information:-
- (i) the delivery date or activation date (as applicable) which must be the date that is requested by the Access Seeker or if that date cannot be met by the Access Provider, then no later than the indicative delivery timeframe or activation timeframe specified in the Service Specific Obligations under Section 6 of the MSA Determination for the purposes of this PART 7(M) or the period of time taken by the Access Provider to deliver or activate such Facilities and/or Services for itself, whichever is shorter;
  - (ii) the date when civil works (if any) are intended to commence;
  - (iii) the charges applicable to fulfil the Order, including without limitation additional works such as internal wiring, right of way, land rental, local authority permits and third-party deposits;
  - (iv) such information as is reasonably necessary for the Access Seeker to benefit from access to the Facilities and/or Services; and
  - (v) the validity period, which shall be a period that is not shorter than three (3) months commencing from the date of the Notice of Acceptance ("Validity Period") (MSA 5.7.13).
- N. The applicable delivery timeframe for an Order as determined under PART

7(M)(i) above shall commence from:-

- (i) where the Access Seeker's confirmation of an Order is required under PART 7(O) hereof, the date the Access Seeker confirms the Order in accordance with the sub-clause; and
- (ii) in any other case, from the start of the Validity Period (MSA 5.7.14).

O. The Access Seeker's confirmation of an Order is not required if the Access Provider accepts the Order without change. A change may include circumstances where delivery dates are delayed, estimated charges are exceeded, a post-Order Service Qualification is required or any other matter that requires further confirmation from the Access Seeker before the Access Provider can proceed with the Order and where the Access Seeker's confirmation is required for the Access Provider to proceed with fulfilling an Order as provided for under this clause, the Access Provider shall permit the Access Seeker to provide its confirmation within the Validity Period and shall not provision the Order until the confirmation is received. Upon receipt of such confirmation, the Access Provider shall fulfil the Order in accordance with the Notice of Acceptance (MSA 5.7.15).

P. If the Notice of Acceptance provided by the Access Provider contains estimates of charges (e.g. based on time and materials):-

- (i) the Access Provider shall not exceed the estimate without providing the Access Seeker with a written notice prior to exceeding the estimate that:-
  - a. the estimate will likely be exceeded;
  - b. an explanation of the reasons for exceeding the estimate; and
  - c. a further estimate of the charges for the work necessary to fulfil the Order;
- (ii) the Access Provider shall permit the Access Seeker to withdraw the Order without penalty within ten (10) Business Days of the notice given by the Access Provider under PART 7(P)(i) above if the revised estimate in that notice exceeds the original estimate by more than ten percent (10%);
- (iii) where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope of work provided by the Access Provider due to:-
  - 1. information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker; or
  - 2. a change in the scope of work by the Access Seeker; the Access Seeker shall be obliged to pay the Access Provider for the actual cost incurred (but in no other circumstances unless otherwise agreed between the Operators); and
- (iv) the Access Provider shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate, whereby such confirmation is to be provided by the Access Seeker within the time-frame set out in PART 7(M)(v) or PART 7(P)(ii) hereof (MSA 5.7.16).

Q. The Access Provider may only reject an Order from an Access Seeker where:-

- (i) subject to subsection 5.4.17 of the MSA Determination (as if references to 'Access Request' in that subsection were references to 'Orders') and PART 5(N) hereof, it is not technically feasible to provide the Access Services requested by the Access Seeker;
- (ii) subject to compliance with subsections 5.7.31 and 5.7.32 of the MSA Determination, the Access Provider has insufficient capacity to provide the requested Access Services;
- (iii) subject to subsection 5.7.19 of the MSA Determination and PART 7(S) hereof, the Order is in excess of the agreed Forecast levels;
- (iv) the Order or variation request duplicates an Order awaiting fulfilment;
- (v) there are reasonable grounds to believe that the Access Seeker would fail to a material extent to comply with the terms and conditions of the Access Agreement and such concern cannot be addressed to the Access Provider's satisfaction acting reasonably; or
- (vi) in connection with the supply of the Access Services, there are reasonable grounds to believe that the Access Seeker would fail to protect the integrity of a Network or the safety of individuals working on or using services supplied by means of a Network or the Equipment and such concern cannot be addressed to the Access Provider's satisfaction acting reasonably (MSA 5.7.17).

R. An Access Provider's notice of rejection of an Order to the Access Seeker must:-

- (i) set out the grounds on which the Access Provider rejects the Order at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Order; and
- (ii) offer to meet and meet if the offer to meet is accepted by the Access Seeker, within five (5) Business Days of the notice of rejection of the Order to discuss the reasons for rejection and alternative methods of compliance (MSA 5.7.18).

S. Notwithstanding PART 7(Q)(ii) above, the Access Provider must use its reasonable efforts to provide sufficient capacity to enable the Access Provider to accept and fulfil Orders from the Access Seeker for the Access Services which are in excess of the relevant Forecast. The Access Provider is only required to do so if after meeting the Forecast requirements of other Access Seekers and itself, there is available capacity or the Access Provider could readily upgrade existing capacity. The Access Provider shall allocate the available capacity on a non-discriminatory basis to meet the over Forecast requirements of all Access Seekers and itself. The Access Provider is not required to supply the Access Services in excess of the Forecast if despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of the Access Services provided to all Access Seekers and/or itself (MSA 5.7.19).

T. The Access Provider shall deliver the Order for the Facilities and/or Services by the delivery date or activation date (as applicable) as specified in the Notice of Acceptance or the extended delivery date (if any) as determined in accordance with PART 7(V) below (MSA 5.7.22).

- U. If the Access Provider in the normal course of business is able to offer a delivery date earlier than the delivery date that would otherwise apply, it must advise the Access Seeker and if requested by the Access Seeker, deliver access to the relevant Facilities and/or Services at the earlier delivery date (MSA 5.7.23).
- V. Where there is a delay in the delivery of an Order, and:-
- (i) the delay is caused by either the Access Provider or by a third party, that is not acting under the Access Provider's direction or control:-
    - (1) the Access Provider shall notify the Access Seeker of the delay to the delivery date together with the reasons for the delay as soon as practicable after the Access Provider becomes aware of the possible delay;
    - (2) the Access Provider shall permit the Access Seeker to cancel the Order without penalty if the delay is longer than the equivalent time period for delivery of the Facility and/or Service; and
    - (3) the delivery date shall be extended for a further period as reasonably necessary and the Access Provider shall promptly notify the Access Seeker of the revised delivery date; or
  - (ii) where the delay is caused by the Access Seeker:-
    - (1) the Access Provider shall notify the Access Seeker of the delay to the delivery date as soon as practicable after the Access Provider becomes aware of it;
    - (2) the Access Provider and Access Seeker must work together to minimize the delay; and
    - (3) the delivery date shall be extended for a further period as reasonably necessary and the Access Provider shall promptly notify the Access Seeker of the revised delivery date (MSA 5.7.24).
- W. An Access Provider shall allow an Access Seeker to cancel or vary an Order at any time subject to PART 7(X) below or otherwise mutually agreed between the Operators (MSA 5.7.25).
- X. The Access Provider may impose a charge for the cancellation or variation of the Order and the charge which the Access Seeker is required to pay shall not exceed the lesser of the following amounts:-
- (i) the sum of costs necessarily incurred by the Access Provider which is directly attributable to the cancellation or variation; or
  - (ii) an amount equal to the Access Charges that would have been payable by the Access Seeker in the six (6) months immediately following the cancellation or variation had the Order not been cancelled or varied,
  - (iii) and reduced to the extent that those costs have been mitigated or would have been mitigated had the Access Provider used its best endeavours to do so, and unless otherwise agreed between the Operators in writing herein and/or in the Access Agreement (MSA 5.7.26).

- Y. The Access Provider shall cooperate with the Access Seeker in relation to the testing and provisioning of the ordered Access Services (including, but not limited to, by implementing a proof of concept if requested by the Access Seeker) and shall treat an Access Seeker's testing and provisioning on an equivalent basis to that which the Access Provider treats testing and provisioning for itself and may require reasonable co-operation by the Access Seeker in respect of such activities (MSA 5.7.27).
- Z. If the Access Provider fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with PART 7(V)(a)(3) hereof except where such failure has been caused solely by either the Access Seeker's delay or a delay by a third party that is not acting under the Access Provider's direction or control (for example, where local authority or landowner delays providing the necessary approvals for works to commence), the Access Provider shall without limitation to any other rights the Access Seeker may have under PART 7 hereof or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the Access Charges payable for access to the Facilities and/or Services for the period of the Access Provider's delay. If the Access Provider alleges that a failure has been caused solely by the Access Seeker's delay by a third party not acting under the Access Provider's direction or control, the Access Provider shall have the burden of demonstrating that allegation and that the Access Provider has done all things reasonably practicable to minimize or avoid such failure (MSA 5.7.33).

## **PART 8 – DECOMMISSIONING OBLIGATIONS**

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

## PART 9 – 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 include a term which permits the contracting Operator to make the information available if directed to do so by the Commission.

## **PART 10 – 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.
- (iii) Section 5.11: Where relevant, the billing and settlement obligations set out in Section 5.11 of the MSA Determination shall be applicable.

### **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) 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.
  - a) The amount of the Provisional Charges must not exceed:
    - (1) the average amount of the Charges that were billed in respect of the relevant Service in the recent three Bills; or
    - (2) 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.
  - b) 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.
    - (1) 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.
    - (2) 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).
  - c) 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) 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.
  - a) 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.



(iii) Party.

- I. If the parties agree, the Party who made the error must reissue the Bill free of error.
- II. If not, the Party who made the error must correct that error in the next Bill.

## C. Payment

1. The Access Seeker must pay the amount due and owing by the Due Date.
2. Bills must be paid by the Access Seeker in Ringgit Malaysia by one of the following methods:
  - a. electronic funds transfer to the Bank Account designated by the Access Provider which shall be specified by the Access Provider in writing; or
    - 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:
    - if payment is by electronic funds transfer – when the amount is shown as having been deposited in the Bank Account; and
    - 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
3. 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").
4. 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.
  - 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 or does not meet the requirements.
  - 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.
  - II. Interest on the Refundable Difference payable by the Access Provider shall be calculated: -
    - a. from (and including) the day the Access Seeker had paid the Refundable Difference was refunded to the Access Seeker; and
    - 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.
  - III. Interest on the Payable Difference payable by the Access Seeker shall be calculated: -
    - 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.
    - b. 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.
5. Unless otherwise agreed, Bills must be paid in full without set-off, counterclaim or deduction.
6. (i) 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:
- a. the Access Seeker notifies the Access Provider's Billing Representative within 21 days from the day the Bill is received; and
  - b. 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.
  - c. 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
  - d. 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:
- (ii) treats any amounts withheld as amounts that are not in dispute; and
- (iii) reject any Billing Dispute Notice lodged 21 days after the day the Bill is received unless the amounts in dispute are paid in full.

- (iv) 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.
- (v) Unless otherwise agreed, Bills must be paid in full without set-off, counterclaim or deduction.
- (vi) 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:
  - a. the Access Seeker notifies the Access Provider's Billing Representative within 21 days from the day the Bill is received; and
  - b. 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.
  - c. 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
  - d. 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:
- (vii) treats any amounts withheld as amounts that are not in dispute; and
- (viii) reject any Billing Dispute Notice lodged 21 days after the day the Bill is received unless the amounts in dispute are paid in full.
- (ix) 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 (MSA Annexure A)**

- (i) The Access Seeker may direct enquiries relating to billing, collecting and settlement arrangements
- (ii) to the Access Provider's Billing Representative.
- (iii) 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
  - b. in respect of recording calls;
  - c. there is, or has been, a discrepancy between the Bills in dispute and the
  - d. records generated by the Access Seeker's billing systems;
  - e. there is, or has been, fraud perpetrated by the Access Provider; or
  - f. the Access Provider has made some other error in recording calls or calculating Charges which are the subject of the Billing Dispute.

- (iv) 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 (MSA 6.33)
  - c. It is also hereby agreed and consented by the Operators that the Access Provider shall be entitled to irrevocably assign all proceeds of the Access Charges to any party and/or parties as may be notified in writing by the Access Provider to the Access Seeker and such assignment shall be only in respect of the Access Charges and shall not in any way affect the liability, obligations and covenants of the Operators under this RAO or the Access Agreement and the Access Seeker shall as and when requested by the Access Provider produce any confirmation/consent in writing regarding the same and to forward the said confirmation/consent to whosoever party notified by the Access Provider. In addition, an Operator's right to assign its rights under an Access Agreement prepared by it shall be reciprocal with the other Operator's rights of assignment (MSA 5.16.9).
- (v) 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.
- (vi) 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
  - e. Seeker's outgoing traffic report, indicating the relevant traffic data that is in dispute.
- (vii) 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. 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.

- (viii) 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.
- (ix) 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 under the Billing Dispute Resolution, any amount to be paid or refunded by the relevant Party shall follow the procedures set.
- (x) 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.
- (xi)
  - 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.
- (xii) 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 10 –TERMINATION, SUSPENSION AND OTHER PROVISIONS**

### **A. Term (MSA 5.14.2)**

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 (MSA 5.14.3)**

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 (MSA 5.14.4)**

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 Service(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 operation 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) poses 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.
- i) 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 no-tice 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 with-drawn 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 (MS)**

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. (MSA 5.16.6)

## **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-request 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**

If a Party ("Affected Party") is prevented from performing any of its material 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 circumstances 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.

If the delay in performance or non-performance of the Affected Party's obligations 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.

### **Review**

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 License is amended or deleted or a new condition is
- g) imposed which relates to this Agreement; or
- h) by agreement of each of the Operators,

the Operators agree to review the RAO as soon as practicable in good faith. Where the changes referred to in SCHEDULE B of this RAO, the Operators shall negotiate as soon as practicable and in good faith such amendments to this RAO as are necessary or appropriate to ensure compliance with such changes (MSA 5.16.10).

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

**Governing Law**

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

**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.

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## APPENDIXES

### SCHEDULE A

#### SERVICE DESCRIPTION

#### PART I – INFRASTRUCTURE SHARING

##### General

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

##### 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 licenses 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

##### Infrastructure Sharing

- 1.1 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 another Access Seeker. The terms and conditions for technical matters are also spelled out in the said Master Agreement.
- 1.2 The Access Seekers shall publish on its website and keep updated a list of the Designated Tower leased from OWSB
- 1.3 Duration of Infrastructure Sharing
- 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").
- 1.4 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.

## Access Seeker's Obligations

- 1.5 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.
- 1.6 Installation of Equipment
  - 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
- 1.7 Safety and health and Security Procedures
  - 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.
- 1.8 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.
- 1.9 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.
- 1.10 Time for acceptance or rejection

Subject to any shorter timeframe required under PART 7(l) hereof and subsection 5.7.12 of the MSA Determination, the Access Provider must notify the Access Seeker that an Order for Infrastructure Sharing is accepted or rejected within ten (10) Business Days after:-

- a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under PART 7(h) hereof and subsection 5.7.8 of the MSA Determination; or
- b) providing the Access Seeker with the result of post-Order Service Qualification under PART 7(i) hereof and subsection 5.7.9 of the MSA Determination, where the Access Provider has undertaken post-Order Service Qualification for that Order under PART 7(h) hereof and subsection 5.7.8 of the MSA Determination.

### 1.11 Indicative delivery timeframe

- a) For the purposes of PART 7(m)(i) hereof and paragraph 5.7.13(a)(i) of the MSA Determination, the following are the indicative delivery timeframe for the following aspect:

Order type	Indicative delivery timeframes
For ground-based Designated Infrastructure and new sites	90 Business Days or such other longer period as may be agreed between the Operators
For fixed telecommunication poles	10 Business Days or such other longer period as may be agreed between the Operators
For all other structures (including street furniture)	40 Business Days or such other longer period as may be agreed between the Operators

- b) For clarification: -

- I. the period of "10 Business Days", and/or "40 Business Days" and/or "90 Business Days" (as the case may be) shall commence from the start of the Validity Period.
- II. The Access Provider shall provide progress updates of the site delivery to the Access Seeker on a monthly basis.
- III. where a delay in the delivery of an Order is caused by the Access Seeker, the delivery date specified in the confirmed Order or indicative delivery time set out above shall be extended for a further period as may be reasonably required by the Access Provider; and
- IV. the Access Provider is not required to commence work on an Order unless and until all requisite way leave and/or governmental authority approval has been obtained.

### 1.12 Billing Cycle

For the purposes of subsection 5.11.3 of the MSA Determination, between the Operators, the Billing Cycle for Infrastructure Sharing will be one (1) year in advance for the first year and quarterly in advance for subsequent years, unless otherwise agreed between the Operators.

### 1.13 Physical access

Where required to fulfil an Order for Infrastructure Sharing or for the Access Seeker to perform operations or maintenance activities, the Access

Provider shall allow the Access Seeker, its nominated employees and/or contractors to physically access the Access Provider's network facilities and the Access Seeker's Equipment, and to have physical control over the Access Seeker's Equipment located at such network facilities, at equivalent times and in accordance with equivalent processes and procedures as are applicable to itself.

#### 1.14 Nominated personnel

The employees and/or contractors nominated by the Access Seeker under subsections 6.8.7, 6.8.9 and 6.8.10 of the MSA Determination and items (7), (9) and (10) herein will be reasonable, having regard to:-

- a) the position of each person and the number of persons nominated; and
- b) the position of each of the Access Provider's own personnel and the number of the Access Provider's personnel to which the Access Provider provides physical access to such network facilities.

#### 1.15 Escorts

The Access Provider is only permitted to require an escort to be present when nominated employees and/or contractors of the Access Seeker wish to enter into the Access Provider's property if the Access Provider requires an escort for its own employees or contractors in the same circumstances. If an Access Provider determines that it is necessary to have an escort present when the nominated employees and/or contractors of the Access Seeker wish to enter into the Access Provider's property,

#### **the Access Provider shall:-**

- a) bear the costs of such escort service;
- b) subject to paragraph 6.8.9(d) of the MSA Determination and item (9)(d) hereof, provide immediate physical access to the Access Seeker for emergency maintenance requests, twenty- four (24) hours a day, seven (7) days a week;
- c) subject to paragraph 6.8.9(d) the MSA Determination and item (9)(d) hereof, provide physical access at the time requested by an Access Seeker for planned maintenance requests on the shorter of:-
  - (i) two (2) Business Days' notice for manned Sites and five (5) Business Days' notice for unmanned Sites; and
  - (ii) the period of notice which it requires from itself when providing itself with physical access for planned maintenance;
- d) for both planned and emergency maintenance requests at unmanned Sites only, have its escort arrive within the shorter of:-
  - (i) thirty (30) minutes of time required by the Access Seeker pursuant to paragraph 6.8.9(b) or 6.8.9(c) of the MSA Determination or item (9)(b) or (9)(c) hereof (as applicable) plus a reasonable window to allow for travel time (which must be estimated in an operations and maintenance manual given to the Access Seeker, or estimated at the time of responding to the Access Seeker's physical access request); and

- (ii) the period of time it requires for its escorts to arrive for planned and emergency maintenance at unmanned Sites.

#### 1.16 Absence of escort

For the purposes of subsection 6.8.7 of the MSA Determination and item (7) herein, if an escort does not arrive at the Site within the timeframe specified in subsection 6.8.9 and item (9) hereof, the Access Seeker's nominated employees and/or contractors may proceed to enter the Site without an escort.

#### 1.17 Cost

The utility and ancillary costs in respect of the network facilities provided by the Access Provider to the Access Seeker as contemplated in subsection 6.8.12 of the MSA Determination and item (12) above shall be apportioned (in accordance with fair and equitable principles) between the Access Provider and all Users at the relevant location.

#### 1.18 Sub-letting and Assignment

- 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**

<b>TOWER HEIGHT</b>	
<b>TYPE OF TOWER</b>	
<b>DATE</b>	
<b>COORDINATE</b>	
<b>LONGITUDE</b>	<b>LATITUDE</b>

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	N/A	N/A
2	Tower, 60m	Per Site/Month	N/A	N/A
3	Tower, 45m	Per Site/Month	N/A	N/A
4	Monopole, 45m	Per Site/Month	N/A	N/A
5	Monopole, 30m	Per Site/Month	5,700 – 6,700	3,550 – 4,550
6	Monopole Tree, 45m	Per Site/Month	N/A	N/A
7	Monopole Tree, 30m	Per Site/Month	N/A	N/A
8	Minaret, 30m/24m	Per Site/Month	4,200 – 5,200	3,000 – 4,000
9	Lamp Pole, 30m	Per Site/Month	4,500 – 5,500	3,300 – 4,300
10	Pylon, 30m/24M	Per Site/Month	N/A	N/A

## SCHEDULE C

### ACCESS REQUEST

We refer to the matter above wherein we hereby make the following Access Request and forward the following: -

1. Our Details
  - i. Name:
  - ii. Registered Address:
  - iii. Business Address:
  - iv. Contact Person(s):
  - v. Telephone No.:
  - vi. Facsimile No:
  - vii. E-mail:

2. Your Facilities and/or Services which is/are sought:

We hereby wish to \* accept the RAO / \* negotiate amendments to the RAO / \* negotiate an Access Agreement on alternative terms (\* delete whichever is not applicable).

- (i) We hereby request the following information for the purposes of negotiations:
- (ii) Enclosed herein two (2) copies of the Confidentiality Agreement duly executed.

We wish to acquire from you the following preliminary information regarding the scale and scope of your Facilities and/or Services:

- a) Enclosed the relevant technical information relating to the interface standards of our equipment:
- b) Enclosed the relevant information relating to our Network and the functionality of its services, to the extent that we are aware that such information may affect your Network (if applicable)
- c) Enclosed our creditworthiness information as set out in subsection 5.3.11 of the MSA Determination
- d) Enclosed our assessed security or confirmation of security offered to you in line with subsection 5.3.9 of the MSA Determination
- e) Enclosed our insurance information as required under subsection 5.3.10 of the MSA Determination

Kindly confirm if you require further information or documents in order to process this Access Request.

## **SCHEDULE D**

### **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.