

ACCESS REFERENCE DOCUMENT

By

SETIA HARUMAN TECHNOLOGY SDN BHD

(“ACCESS PROVIDER”)

2016

v5.0

TABLE OF CONTENTS

Part 1: Introduction	Page 02
Part 2: Access List	Page 07
Part 3: Facility / Service Description	Page 08
Part 4: Principles Of Access	Page 10
Part 5: Access Request Procedures	Page 12
Part 6: Billing And Settlement	Page 20
Part 7: Term, Termination, And Suspension	Page 27
Part 8: Dispute Resolution Procedure	Page 30
Part 9: Charges And Charging Principles	Page 35

SETIA HARUMAN TECHNOLOGY SDN BHD
(“ACCESS PROVIDER”)
ACCESS REFERENCE DOCUMENT
PART 1: INTRODUCTION

THIS ACCESS REFERENCE DOCUMENT is made by:

SETIA HARUMAN TECHNOLOGY SDN BHD (Company No: 501001-A) a company incorporated in Malaysia under the Companies Act 1965 and having its registered office at The Lodge, Persiaran Multimedia, Cyber 7, 63000 Cyberjaya, Selangor.

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

RECITALS

Whereas:

- A. The Malaysian Communications and Multimedia Commission (the “Commission”) has published a Commission Determination on Access List - Determination No. 2 of 2015 pursuant to the Ministerial Direction to Determine a Mandatory Standard on Access - Determination No. 2 of 2005 and Variation to Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005) - Determination No. 2 of 2009 (collectively known as “the MSA”).
- B. Subsection 5.3.2 of the MSA requires each Access Provider to prepare and maintain an Access Reference Document (ARD) in relation to network facilities and/or network services listed in the Access List Determination which the Access Provider provides to itself or third parties and which contains terms and conditions which are consistent with the rights and obligations set out in the MSA.
- C. For the purposes of this ARD, the Access Provider is a licensed network facilities and network services provider (individual) under the Communications and Multimedia Act 1998 (“the Act”) that provides the terms and conditions in relation to network facilities and/or network services on the Access List which the Access Provider is required to do so by the Commission under the provisions of subsection 3.2 of the MSA.
- D. The Access Seeker is desirous to utilize of the network facilities and/or network services of the Access Provider and accordingly have been provided with this ARD by the Access Provider which detail the network facilities and/or network services provided by the Access Provider, and upon which any negotiations which may be had by the Access Seeker with the Access Provider pursuant to such network facilities and/or network services will be made.

1. Warning Statement: Nature of the ARD

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

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

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

2. Requirements for making an Access Request

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

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

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

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

3. Provision of Access

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

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

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

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

4. Obtaining Information from the Access Provider

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

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

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

- xii. Two (2) copies of the Confidentiality and Non-Disclosure Agreement (in the form made available by the Access Provider) duly executed by the authorized persons.

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

5. What is the information required under the Access Request?

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

- a. The name and contact details of the Access Seeker;
- b. The network services or network facilities in respect of which access is sought;
- c. Whether the Access Seeker wishes to accept the ARD or to negotiate an Access Agreement;
- d. The ready for the service date(s) the Access Seeker reasonably requires;
- e. The names of personnel the Access Seeker nominates to represent the Access Seeker in the negotiations and, in respect of each of those personnel:
 - i. his or her contact details;
 - ii. his or her job title; and
 - iii. details of his or her availability for the access negotiations;
- f. The identity of the negotiating team leader (who must have the authority to make binding representations on behalf of the Access Seeker in relation to matters arising from the negotiations subject to final approval from the Access Seeker's Chief Executive Officer or Board of Directors, if required by the Access Seeker);
- g. The information (if any) that the Access Seeker reasonably requires the Access Provider to provide for the purposes of the negotiations;
- h. Two (2) copies of a Confidentiality and Non-Disclosure Agreement properly executed by the Access Seeker in the form prescribed by the Access Provider;
 - i. Forecasts of the capacity the Access Seeker will reasonably require,
- j. The quality of service the Access Seeker requires;
- k. Relevant technical information relating into the interface standards of the Access Seeker's;
- l. Relevant information relating to the Access Seeker's Network and the functionality of its services, to the extent that the Access Seekers is aware that such information may affect the Access Provider's Network;
- m. Creditworthiness information in accordance with the Access Provider's requirements;
- n. Security in accordance with the Access Provider's security requirements;
- o. Insurance information in accordance with the Access Provider's insurance requirements; and
- p. Such other information as the Access Provider may reasonably request.

6. Availability of ARD:

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

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

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

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

7. Notices:

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

Attention: General Manager
Address: Setia Haruman Technology Sdn. Bhd.
The Lodge, Persiaran Multimedia, Cyber 7,
63000 Cyberjaya,
Selangor, MALAYSIA
Facsimile: +60(3)83128130
Email: info@shtech.com.my

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SETIA HARUMAN TECHNOLOGY SDN BHD
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ACCESS REFERENCE DOCUMENT
PART 2: ACCESS LIST

Purpose:

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

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

- (1) Wholesale Local Leased Circuit Service
- (2) Duct and Manhole Access

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SETIA HARUMAN TECHNOLOGY SDN BHD
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ACCESS REFERENCE DOCUMENT
PART 3: FACILITY / SERVICE DESCRIPTION

1. General

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

2. Commercial and Technical Obligations

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

3. Facility / Service Description

3.1 Wholesale Local Leased Circuit Service

This part sets out the terms and conditions that are applicable to Wholesale Local Leased Circuit Service.

- 3.1.1 A Wholesale Local Leased Circuit Service is a Facility and/or Service for the carriage of communications by way of a private circuit between a Point of Interconnection (“POI”) at the Access Provider’s premises and an End User location or an Access Seeker Point of Presence (“POP”), available only at one end of a private circuit. The Wholesale Local Leased Circuit Service comprises transmission and switching, whether packet or circuit, at such transmission rates as may be agreed between the Access Provider and the Access Seeker on a permanent or virtual basis.

- 3.1.2 The functionalities of the Wholesale Local Leased Circuit Service include:

- (i) transmission and switching, whether packet or circuit;
- (ii) the signaling required to support the Interconnect Link Service or onward transmission via a Trunk Transmission Service provided by the same Access Provider; and
- (iii) a digital protocol including Internet Protocols.

Examples of technologies used in the Wholesale Local Leased Circuit Service would be Integrated Service Digital Network (“ISDN”), IP based networks and Ethernet interfaces.

3.2 **Duct and Manhole Access**

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

3.2.1 General Terms and Conditions for Duct and Manhole Access

- (a) Duct and Manhole Access is a Facility and/or Service that comprises the provision of physical access to:
 - (i). Lead-In Ducts and associated manholes;
 - (ii). Mainline Ducts and associated manholes in areas in which Access Provider has exclusive rights to develop or maintain duct and manhole infrastructure, whether or not in combination with other Facilities and Services; and
 - (iii). sub-ducts where there is no room for the Access Seeker to install its own sub-ducts.

- (b) Provision of physical access includes the provision of:
 - (i) space at specified network facilities to enable an Access Seeker to install and maintain its own lines, equipment and sub-ducts; and
 - (ii) access for the personnel of the Access Seeker.

- (c) Exclusive rights to develop or maintain duct and manhole infrastructure includes exclusive rights in contracts, arrangements or understandings between Access Provider and any person.

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SETIA HARUMAN TECHNOLOGY SDN BHD
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ACCESS REFERENCE DOCUMENT
PART 4 – PRINCIPLES OF ACCESS

1. Application of Access Provider’s ARD

1.1 Application of Access Provider’s ARD

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

1.1.1 Access Provider’s ARD applies only to the Access Facilities and/or Services listed in Part 2 of the Access Provider ARD.

1.1.2 The service description of the Access Facilities and/or Services is set out in Part 3 of the Access Provider ARD.

1.1.3 The charges and charging principles for the Access Facilities and/or Services is set out in Part 9 of Access Provider ARD.

1.2 Eligibility for Access to Facilities and/or Services

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

1.2.2 Consistent with Government policy and Determination by the Commission (and its predecessor), an Access Seeker may only request for access to any or all of the network facilities or network services listed in the Access List which are set out in Access Provider’s ARD where the Access Seeker has been granted (i) a network facilities provider License and/or (ii) a network service provider License and/or (iii) an applications service provider License and/or a content applications service provider License, and such Licenses are not limited or restricted from those detailed in the Communications and Multimedia (Licensing) Regulations 2000, as amended in any way:

- (a) by reference to the type of network facilities, network services and/or content applications services that can be provided; and
- (b) by geographical limitations to only specific area and/or areas in Malaysia to which the Access Seeker can provide such network facilities, network services and/or content applications services.

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

1.2.4 Consistent with Government policy and Determination by the Commissions (and its predecessor), where Access Provider provides the Access Seeker with access to the Facilities and/or Services pursuant to Section 1.2.1, the charges for the requested Facilities and/or Services shall be negotiated and mutually agreed between the Operators in the Access Agreement subject to any mandatory standard on access pricing determined by the Commission.

1.3 Standard Access Obligations

1.3.1 Access Provider shall, subject to Section 3.2, if requested to do so by an Access Seeker, supply the Access Service(s) to the Access Seeker on reasonable terms and conditions.

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

1.3.3 Principles of non-discrimination

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

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

1.3.3 Customer Principles

1.3.3.1 Access Provider shall observe and comply with the customer relationship principles set out in section 4.3 of the MSA Determination.

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PART 5 – ACCESS REQUEST PROCEDURES

1. Application for Access to Services

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

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

1.3 The Access Request must:

- (a) contain the name and contact details of the Access Seeker;
- (b) specify the Facilities and/or Services in respect of which access is sought;
- (c) indicate whether the Access Seeker wishes to accept Access Provider’s ARD or negotiate an Access Agreement;
- (d) contain the information (if any) as set out in section 5.3.6 of the MSA Determination that the Access Seeker reasonably requires Access Provider to provide for the purposes of the access negotiations;
- (e) contain two (2) copies of Confidentiality Agreement properly executed by the Access Seeker in the form prescribed by Access Provider;
- (f) specify forecasts of the capacity which the Access Seeker reasonably requires, having regard to Access Provider’s disclosed provisioning cycle and forecasting procedures;
- (g) provide the relevant information relating to the Access Seeker’s network and the functionality of its Services, to the extent that the Access Seeker is aware that such information may affect Access Provider’s Network;
- (h) contain confirmation that the Access Seeker is not currently being supplied with the requested Facilities and/or Services;
- (i) specify the type of communications licenses held by the Access Seeker and a copy of the license where a copy had not been previously provided;
- (j) contain creditworthiness information as set out in Section 1.2;
- (k) be accompanied by a security sum as set out in Section 1.3;
- (l) contain insurance information as set out in Section 1.4;
- (m) contain relevant technical information relating to the interface standards of the Access Seeker; and

(n) contain such other information that Access Provider may reasonably request.

1.4 Creditworthiness Information

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

(a) a letter, signed by the executive director of the Access Seeker, stating that the Access Seeker is not insolvent and is not under any external administration or under similar form of administration under any laws applicable to it in any jurisdiction;

(b) a copy of the Access Seeker's most recently published audited balance sheet and audited profit and loss statement; and

(c) such other information as may be reasonably requested by Access Provider provided that such information are information which are publicly available.

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

1.5 Security Sum

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

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

1.6 Insurance Information

1.6.1 Subject to Section 1.6.2, an Access Request shall be accompanied by the following insurances:

(a) Worker's Compensation and/or Social Security Insurance and/or Employer's Liability Insurance and/or other insurance with statutory limits as required by the laws of Malaysia to provide for payment to its employees or in connection with the work covered by the Access Agreement that may be entered and/or their dependents; and

(b) Comprehensive General Liability Insurance of an amount which is not in excess of Ringgit Malaysia Twenty Million (RM20,000,000) and not less than Ringgit Malaysia Five Million (RM 5,000,000) for any one claim or series of claims arising out of an accident or occurrence in connection with the Access Agreement that may be entered into resulting in bodily injury and/or personal injury including death and property damage of an Operator which shall arise

out of or in consequence of any acts of omissions of the Other Operator. Such policy shall include contractual liability.

1.6.2 For the purpose of clarification, the insurance provided by the Access Seeker pursuant to section 1.6.1 shall commensurate with the reasonable sum, which is to be agreed by Access Provider.

1.7 Processing of Access Request

1.7.1 Acknowledgement of Receipt of Access Request

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

(a) request for additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request. Access Provider shall comply with Section 5.4.16 of the MSA Determination when it requests for such additional information; or

(b) indicate whether it is willing to provide access to Facilities and/or Services in accordance with Access Provider's ARD.

Subject to the additional information being received by Access Provider within twenty (20) Business days from the date of request, Access Provider shall reconsider the Access Request in accordance with this Section 1.7.1 upon receipt of such additional information.

1.7.2 Non-refundable resource

1.7.2.1 In accordance with section 5.7.28 of the MSA Determination, Access Provider may charge an Access Seeker a one-off non-refundable resources charge (including processing fees and additional and non-routine processing fees) to be determined by reference to the costs incurred by Access Provider for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Facilities and/or Services for the purposes of interconnection.

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

additional and non-routine processing fee for undertaking such additional and non-routine work as additional resources are required to do the same.

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

1.8 Assessment of Access Request

1.8.1 Reasons for Refusal

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

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

(b) in Access Provider's reasonable opinion, the Access Request does not contain the information reasonably required by Access Provider's ARD provided that Access Provider has sought the information from the Access Seeker under Section 1.7.1 of Access Provider's ARD and has not received that information within twenty (20) Business Days of making such a request;

(c) Access Provider does not currently supply or provide access to the requested Facilities and/or Services to itself or to any third parties, except where the Access Seeker compensates Access Provider for the supply of access to such Facilities and/or Services;

(d) it is not technically feasible to provide access to the requested Facilities and/or Services;

(e) Access Provider has insufficient capacity or space to provide the requested Facilities and/or Services;

(f) there are reasonable grounds in Access Provider's opinion to believe that the Access Seeker would fail to make timely payment for the supply of the relevant Facilities and/or Services;

(g) there are reasonable grounds in Access Provider's opinion to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities and/or Services;

(h) there are reasonable grounds for Access Provider to refuse access in the national interest; or

(j) the access is being sought to Facilities and/or Services which are not in the Access List Determination.

1.8.2 Determination of technical infeasibility

For the purpose of determining technical infeasibility in Section 1.8.1(d), the Operators shall comply with section 5.4.17 of the MSA Determination.

1.8.3 Determination of capacity constraints

For the purpose of determining capacity constraints in Section 1.8.1(e), the Operators shall comply with section 5.4.18 of the MSA Determination.

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

Examples of reasonable grounds for Access Provider's belief as mentioned in Section 1.8.1(f) include evidence that the Access Seeker is not in the reasonable opinion of Access Provider creditworthy.

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

Examples of reasonable grounds for Access Provider's belief as mentioned in Section 1.8.1(g) include repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to Facilities and/or Services have been provided (whether or not by Access Provider).

1.8.6 Assessment of Creditworthiness

1.8.6.1 In determining the creditworthiness of the Access Seeker, Access Provider may have regard to, but is not limited to the matters referred to in Section 1.4.

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

1.9 Notification of Rejection to the Access Seeker

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

(a) notify the Access Seeker in writing within ten (10) Business Days from receipt of the Access Request or additional information requested pursuant to Section 1.7.1, as the case may be;

(b) provide reasons for rejection under Section 1.8 to the Access Seeker;

(c) provide the basis for Access Provider's rejection of the Access Request; and

(d) indicate a date and time, not later seven (7) Business Days from the date of the notice of rejection, at which representatives of Access Provider will be available to meet with representatives of the Access Seeker to discuss the rejection of the Access Request. At this meeting, the Access Seeker may request Access Provider to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in Section 1.8.1(e), Access Provider must identify when additional capacity is likely to be available.

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

1.10 Acceptance of Access Request

1.10.1 In the event where Access Provider agrees to provide access to Facilities and/or Services to the Access Seeker in accordance with Access Provider's ARD, Access Provider shall within ten (10) Business Days of such respond under Section 1.7.1(b), provide the Access Seeker with two copies of the executed Model Access Agreement, for execution by the Access Seeker.

1.10.2 Where the Access Seeker wish to negotiate an Access Agreement, the Operators 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.

1.10.3 Access Provider will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Facilities and/or Services until:

(a) a Security Sum has been provided in accordance with Sections 4.1 and 4.3; and

(b) an Access Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with section 150 of the Act.

1.11 Fast Track Application Process

1.11.1 (a) The fast track application process set out in this Section 1.11 shall be applicable to the following Facilities and/or Services only:

- (i) Wholesale Local Leased Circuit Service;

1.11.1 (b) Where an Access Seeker requests for the Facilities and/or Services that is not listed in Section 1.11.1 (a) above in addition to a Fast Track Application Service, the fast track application process shall not be applicable and the Access Seeker shall be required to put in an Access Request for the requested Facilities and/or Services in accordance with Sections 1.3 to 1.10.

1.11.2 An Access Seeker is only eligible for the fast track application process if it fulfills the following criteria:

(a) the Access Seeker is duly licensed to provide the Facilities and/or Services for which access is sought;

(b) the access requirements of the Access Seeker do not in Access Provider's opinion, have a material impact on Access Provider's current level of network resources; and

(c) the Access Seeker is willing to accept the terms and conditions for the requested Facilities and/or Services as stipulated in the Model Access Agreement without negotiation.

1.11.3 Subject to Section 1.11.1, where an Access Seeker who is eligible for the fast track application process wishes to utilise the fast track application process, the Access Seeker shall:

(a) forward to Access Provider a duly completed and signed fast track application form which shall contain the following information:

- (i) the name and contact details of the Access Seeker; and
- (ii) the Service in respect of which access is sought;

(b) deposit a Fast Track Security Sum;

(c) pay a non-refundable processing fee to be determined by Access Provider for undertaking the necessary administrative work to process the fast track application; and

(d) lodge with Access Provider two (2) copies of the signed Access Agreement with suggested amendments to the technical matters (if any).

1.11.4 Access Provider may reject the Access Seeker's fast track application for the reasons set out in Sections 1.8.1(c), (f) and (g).

1.11.5 Where Access Provider accepts the Access Seeker's fast track application, Access Provider:

(a) may impose a one-off resource charge for allocation of manpower and other resources in accordance with Section 1.7.2; and

(b) shall, within ten (10) Business Days of receipt of the fast track application, execute the Access Agreement.

1.11.6 Access Provider will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Facilities and/or Services until

(a) a Fast Track Security Sum has been provided in accordance with Section 1.11.3; and

(b) an Access Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with section 150 of the Act.

1.11.7 If the Access Seeker wishes to obtain the Fast Track Application Facilities and/or Services but is not agreeable to the terms and conditions of the Model Access Agreement, Access Provider is not obliged to process the fast track application further and the Access Seeker shall be required to put in a new Access Request in accordance with Sections 1.3 to 1.10.

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SETIA HARUMAN TECHNOLOGY SDN BHD
(“ACCESS PROVIDER”)
ACCESS REFERENCE DOCUMENT
PART 6: BILLING AND SETTLEMENT

1.0 Billing and payment

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

2.1 Billing

- 2.1 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.
- 2.2 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 Day’s notice.
- 2.3
- 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 trenches, an aggregated summary of billings for Services provided to the Access Seeker. (However, the Access Provider is not obliged to meet the request retrospectively.
- 2.4
- a. If the Access Provider is unable to obtain information required to determine the Charges that apply during a Billing Period, the Access Provider may determine the Charges on a provisional basis (“Provisional Charges”) and issue the Bill based on the Provisional Charges the Provisional Charges must be clearly identified in the Bill.

- b. The amount of the Provisional Charges must not exceed:
 - i. the average amount of the Charges that were billed in respect of the relevant Service in the recent three Bills; or
 - ii. if there have not been three Bills in respect of those Charges, the amount of the Charges that were billed in the most recent Bill in respect of the relevant Service.
- c. An adjustment to reflect the actual Charges incurred must be made in a subsequent Bill, as soon as practicable but no later than 3 months after the calendar month in which the Services were provided.
 - i. If an adjustment is not made within 3 months after the calendar month in which the services were provided, the Access Seeker may treat the Provisional Charges as the actual Charges.
 - ii. No interest is payable in respect of an adjustment, whether:
 - A. By the Access Seeker (even if the actual Charges incurred are higher than the Provisional Charges); or
 - B. By the Access Provider (even if the actual Charges incurred are lower than the Provisional Charges).
- d. the Access Provider must not determine Charges on a provisional basis for more than three successive Billing Periods without the consent of the Access Seeker.

2.5

- a. The Access Provider must bill all Charges within 3 months from the calendar month in which the Services were provided. The Access Seeker is not obliged to pay Charges that are billed after this timeframe except otherwise agreed.
- b. The Access Provider may include omitted or miscalculated Charges from a bill in a later Bill, provided that:
 - i. the Access Provider is able to substantiate the Charges to the Access Seeker; and
 - ii. the inclusion is made:
 - A. 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
 - B. If not original Bill was issued, within 3 months from the calendar month in which the Services were provided.

- 2.6 If either party discovers an error in a Bill, that Party must notify the other Party.
- a. If the parties agree, the Party who made the error must reissue the Bill free of error.
 - b. If not, the Party who made the error must correct that error in the next Bill.

3.0 Payment

3.1 The Access Seeker must pay the amount due and owing by the Due Date.

3.2

- a. Bills must be paid by the Access Seeker in Ringgit Malaysia by one of the following method:
 - i. electronic funds transfer to the Bank Account designated by the Access Provider which shall be specified by the Access Provider in writing; or
 - ii. by bank cheque to the Bank Account designated by the Access Provider which shall be specified by the Access Provider in writing, for the purpose of this sub-clause, the Access Provider shall have the sole discretion to determine the primary method of Bill payment to be complied with by the Access Seeker and the Access Provider shall notify the Access Seeker of the same. The primary method of Bill payment shall be complied with by the Access Seeker at all times unless it is not possible to do so in which case, the Access Seeker must notify the Access Provider within one (1) day after the Bill payment is made using the secondary method.
- b. Payment of an amount is received:
 - i. if payment is by electronic funds transfer – when the amount is shown as having been deposited in the Bank Account; and
 - ii. if payment is by bank cheque – when the cheque is received by the Access Provider, and the bank cheque is cleared and funds are deposited in the Bank Account
- c. On the day a payment is made, the Access Seeker must send the Access Provider a statement specifying the details of the Bill in respect of which the payment is made (“Remittance Advice”).
- d. If a Remittance Advice is not provided, the Access Provider may allocate the payment to any amount payable to the Access Provider by the Access Seeker which is not the subject of Billing Dispute. The Access Provider must notify the Access Seeker of any such allocation.

3.3

- a. The Access Provider may charge the Access Seeker interest calculated in the manner specified in the MSA on any overdue amount as follow;
 - i. the entire Bill amount, if the bill is not in dispute; or
 - ii. the entire Bill amount, if the Bill is in dispute but the Billing Dispute Notice was not submitted to the Access Provider within the time period specified in clause 3.5 or does not meet the requirements of clause 4.5 of this Section.
- b. If the Bill is in dispute and upon resolution of the dispute, the disputed amount determined to be valid (“Overbilled Amount”):
 - i. is more than the amount previously withheld by the Access Seeker, the Access Provider shall refund the Access Seeker the difference (“Refundable Difference”) calculated by deducting the amount withheld by the Access Seeker from the Overbilled Amount. The Access Provider shall pay interest on the Refundable Difference.
 - A. Interest on the Refundable Difference payable by the Access Provider shall be calculated:-
 - a.a from (and including) the day the Access Seeker had paid the Refundable Difference was refunded to the Access Seeker; and
 - a.b at the interest rate specified in the MSA
 - ii. is less than the amount previously withheld by the Access Seeker, the Access Seeker shall pay the Access Provider the difference (“Payable Difference”) calculated by deducting the Overbilled Amount from the amount withheld by the Access Seeker. The Access Seeker shall pay interest on the payable Difference.
 - A. Interest on the Payable Difference payable by the Access Seeker shall be calculated:-
 - a.a from (and including) the original due date of the Bill to (but excluding) the day the Access Seeker pays the Payable Difference; and
 - a.b at the interest rate specified in the MSA.
 - c. Where the Access Seeker has paid the Bill but subsequently notifies the Access Seeker of a Billing Dispute in relation to that Bill within the Billing Dispute Notification Period, the Access Provider is not obliged to refund the sum paid or part thereof until the Billing Dispute is resolved.

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

3.5

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

3.6 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 3.3 above.

4.0 Billing Dispute Resolution

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

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

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

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

- a. if the Billing Dispute relates to Charges – within 30 days of the Bill Date;
- b. the Access Provider is not obliged to accept a Billing Dispute Notice that is submitted outside the Billing Dispute Notification Period specified in this clause 4.3.

- 4.4 For the avoidance of doubt and notwithstanding clauses 4.1 and 4.3 of this Section, the Access Seeker may only withhold payment of a Bill as provided for in clause 3.5 of this Section.
- 4.5 The Billing Dispute Notice must specify:
- a. the reason for the Billing Dispute;
 - b. the amount in dispute; and
 - c. details required to identify the relevant Bill and Charges in dispute including:
 - i. the Access Seeker's account number;
 - ii. the Bill reference number;
 - iii. the Bill date;
 - iv. the Bill amount; and
 - v. billing verification information; and
 - d. evidence to substantiate the Billing Dispute, including (where applicable) the Access Seeker's outgoing traffic report, indicating the relevant traffic data that is in dispute.
- 4.6 The parties must use reasonable endeavors to resolve any Billing Dispute promptly and in any event within:
- a. 30 days from the date on which the Billing Dispute Notice is received; or
 - b. such longer period as requested by one party (giving reason for that request) and agreed to by the other party, ("Negotiation Period").
- For clarification between the parties, the Access Provider is not obliged to refund any of the disputed amounts until the Billing Dispute is resolved in accordance with sub-clause 3.3(c) of this Section. In the event the Billing Dispute is resolved under the Billing Dispute Resolution, any amount to be paid or refunded by the relevant Party shall follow the procedures set by sub-clauses 3.3(b) and 3.6 of this Section.
- 4.7 To the extent a Billing Dispute notified under this clause involves a dispute with an 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.
- 4.8
- 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 party are unable to resolve any Billing Disputes within 30 days from any date as might be agreed under sub-clause 4.6, 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.
- 4.9 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.

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SETIA HARUMAN TECHNOLOGY SDN BHD
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PART 7 – TERM, TERMINATION, AND SUSPENSION

1.1 Term

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

1.2 Term of Supply

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

Facilities and/or Services	Minimum Term
Wholesale Local Leased Circuit Service	12 months
Duct and Manhole Access	36 months

1.3 Termination Circumstances:

Subject to Section 7.4, Access Provider may terminate an Access Agreement or part thereof if any of the circumstances referred below apply and Access Provider has notified the Access Seeker of its intention to terminate the Access Agreement:-

(a) the Access Seeker has materially breached the Access Agreement and Access Provider has notified the Access Seeker that it will terminate the said agreement in no less than thirty (30) days if the Access Seeker has not remedy its breach by the end of that period; or

(b) the Access Seeker is subject to a winding up Order; or

(c) a Force Majeure has continued for a period of more than 90 days.

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

1.4 Changes In Law:

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

1.5 Suspension Circumstances

Subject to Section 7.6, Access Provider may only suspend access to any Facilities and/or Services in the following circumstances:

(a) the Access Seeker is in breach of a material obligation and fails to remedy such breach within 30 days (or 7 days for breach of payment obligations) of receiving written notice from Access Provider to remedy such breach;

(b) the Access Seeker's Facilities materially adversely affect the normal operation of Access Provider's Network or are a material threat to any person's safety;

(c) the Access Seeker's Facilities or the supply of Facilities and/or Services pose an imminent threat to life or property of Access Provider, its employees or contractors;

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

(e) where the Access Seeker has failed to pay Bills or Invoices in accordance with Part 6 of this ARD and/or Section 5.14 of the MSA Determination;

(f) where Force Majeure applies; or

(g) the Access Seeker breaches any laws, regulations, rules or standards which has a material adverse effect on Access Provider or the provision by Access Provider of Facilities and/or Services under the Access Agreement.

For the purposes of this Section 7.5, Access Provider must provide the Access Seeker five (5) Business Days notice in writing, including written reasons, prior to suspending access to any Facilities and/or Services.

1.6 Post-Termination Fees

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

- (a) Charges invoiced in arrears and not yet paid; or
- (b) Charges arising during an applicable minimum contractual period (as described in section 7.2 above).

1.7 Upfront Charges Refund

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

1.8 Deposits And Guarantees

Notwithstanding the obligation in Section 7.7, Access Provider shall:

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

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(“ACCESS PROVIDER”)
ACCESS REFERENCE DOCUMENT
PART 8: DISPUTE RESOLUTION PROCEDURE

1. General

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

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

1.3 Subject to subsection 1.5 below, Access Provider and an Access Seeker will adopt and comply with this Dispute Resolution Procedure in relation to any dispute which may arise in respect of or in connection with the supply of Facilities and/or Services to which the Access Agreement applies (“Access Agreement Disputes”).

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

a) Inter-party working group (IPWG). Resolution of any dispute between the parties will first be attempted through negotiation between the parties by means of an inter-party working group as defined in and which will be set up pursuant to section 2 of this Section.

b) Interconnect Steering Group (ISG). In the event the parties cannot resolve the dispute within the time provided in section 2, or after any extension of time has expired, then either party may refer the issue to the Interconnect Steering Group (“ISG”) in accordance with section 3.

c) Technical Expert or Commission. If the ISG does not resolve a dispute within the time specified in section 3, either party may:

i) refer any technical dispute to a Technical Expert in accordance with section 4 of this Section; or

ii) refer the dispute to the Commission under section 151 of the Act for final resolution.

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

i) parties cannot reach agreement, or will not reach an agreement in a reasonable time;

ii) notification of the dispute is not trivial, frivolous or vexation; and

iii) resolution of the dispute would promote the objects in the Act.

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

1.6 Court Proceedings.

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

1.7 Representatives.

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

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

1.7.2 If in the course of the Dispute Resolution Procedure it is identified that the matters for resolution are outside the initial term of reference for which authority was given to a representative, a party may require that those matters be referred to more senior officers of that party with the authority to settle those matters.

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

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

1.10 Subject to Chapter 7 of Part V of the Act, an arbitrator appointed under this Dispute Resolution Procedure (including a Technical Expert or the Commission) may decide not to determine the dispute if the arbitrator considers the dispute trivial, frivolous or vexatious, or if there is insufficient evidence to determine the dispute. In such a case, the arbitrator will, within five (5) Business Days of receiving the reference to arbitration inform the parties in writing, of his decision. The parties will thereafter be entitled to pursue their dispute by litigation.

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

2. Inter-party Working Group (“IPWG”)

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

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

- a) clear terms of reference, the decision making process, timelines and manner of documenting and reporting of the discussions, negotiations and outcome or decisions agreed on depending on the nature and urgency or time by which the dispute must be resolved;
- b) equal representation by Access Provider and the Access Seeker in the working group(s);
- c) chairmanship and administrative functions of the working group(s) to be shared equally;
- d) formal notification procedures to the working group.

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

2.4 In default of Access Provider providing for the process contemplated in subsection 2.2 above, the process will be as follows:

- a) each working group will consist of an equal number of representatives from each party. Such representatives must have, or be able to expeditiously obtain the knowledge and information regarding all aspects (for example technical, financial, commercial, regulatory) necessary for resolution of the dispute;
- b) one of the representatives in the working group will be a person who holds a position at least equivalent to the General Manager of Access Provider;
- c) the working group will meet as often and for as long as is necessary to resolve the Access Dispute by the time by which the dispute must be resolved subject always to the time-limit of forty five (45) days referred to in subsection 2.3 above;
- d) the working group will meet at a convenient and practical location. Each party will bear the costs of its participation in such meetings;
- e) all discussions, outcomes and decisions made at every meeting of the working group will be recorded and minutes of each meeting will be produced for circulation to the representatives of the working group concerned. The representatives of the working group can decide among themselves who records and produces the minutes of the meetings;
- f) regardless of whether the Access Dispute is resolved by the working group, the working group will produce a report of the final outcome or decision of the working group which will be signed by each party's representative in the working group. Each party is entitled to a copy of the report.

2.5 The process in subsection 2.4 may be amended by mutual agreement of the Parties to suit the requirements of the Access Dispute.

3. Interconnect Steering Group (“ISG”)

3.1 If the parties cannot resolve the Access Dispute within the Inter-party working group within the stipulated time, or after the expiry of any extension of time agreed on, either party may give ten (10) Business Days written notice (“Notice Period”) to the other party stating its intention to escalate the issue and outlining the details of the issue.

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

3.3 If an Access Dispute is referred to an ISG under subsection 3.2, the ISG will meet within ten (10) Business Days of the receipt by the Receiving Party of a Referral Notice. In default of the ISG meeting within the stipulated time of ten (10) Business Days, either party may refer the dispute to a Technical Expert in accordance with section 4 of this Schedule or to the Commission for arbitration.

3.4 If the ISG have not resolved an Access Dispute within twenty (20) Business Days after it first meets to review that Access Dispute under subsection 3.3, either party may:

- a) refer any technical dispute to a Technical Expert in accordance with section 4 of this Schedule; or
- b) refer the dispute to the Commission for final arbitration.

4. Technical Expert

4.1 An Access Dispute can only be referred to a Technical Expert if the provisions of section 3 have been complied with.

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

4.3 The Technical Expert:

- a) will be an expert appointed by agreement of the parties or, if the parties cannot agree within ten (10) Business Days, by the Commission;
- b) will have the appropriate qualifications and experience to arbitrate the Access Dispute, including knowledge of the communications industry;
- c) need not be a Malaysian citizen or resident; and

d) will not be an officer, director or employee of a telecommunication company or otherwise have a potential for conflict of interest.

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

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

a) the parties will deliver written submissions setting out their positions together with supporting evidence to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and

b) each party may respond to the other party's submission in writing within fifteen (15) Business Days from the date of receipt of the other party's written submission.

4.6 Unless otherwise agreed by the parties and either party requesting the Technical Expert or if the Technical Expert decides within five (5) Business Days of the receipt of the last written submission, that the arbitration by the Technical Expert be by documents only, the Technical Expert shall convene a hearing (where both parties may attend and witnesses produced) within fifteen (15) Business Days of the delivery of the last written submission.

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

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

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

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

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

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

5. Billing Dispute Resolution

Billing Dispute Resolution is described in section 4 of Part 6.

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PART 9: CHARGES AND CHARGING PRINCIPLES

1. General

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

2. Type Of Charges

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

Type of Facilities and/or Services	Type of Charges	Description	Billing Cycle
Wholesale Local Leased Circuit Service	One-Time Charge	Installation	Post Activation
	Recurring Charges	Rental	Monthly
Duct and Manhole Access	One-Time Charge	Installation	Post Activation
	Recurring Charges	Rental	Monthly

2.1 Charges And Charging Principles of Wholesale Local Leased Circuit Service

The Charging principles for the Wholesale Local Leased Circuit Service shall comprise of:

- (a) Wholesale Local Leased Circuit Service supplied by Access Provider shall be subjected to the commercial rental charges (“the Charges”) listed in Table 1 below.
- (b) In relation to Wholesale Local Leased Circuit Service the rate of charge for the Charges shall comprise of:
 - (i) Physical interconnection from Access Provider service node up to

POI facing the Access Seeker Network and a ‘tail’ from Access Provider service node up to the Access Seeker’s Customer Premise (“Tail segment”).

- (ii) Two port segments comprising of a port at Access Provider service node facing the Access Seeker Network and another port at Access Provider service node serving the Access Seeker’s Customer Premise
- (c) The charges for Tail segment and Ports are as per mandated by MCMC based on the following factors:
 - (i) Capacity of the Bandwidth Services;
 - (ii) Geographical location of the link in the Service; and
 - (iii) Cable length required for the link in the Service
- (d) The Charges for the tail and port segment facing the Access Seeker Network will be charged separately from the port and tail facing the Access Seeker Customer Premise.
- (e) For the purposes of clarification and avoidance of doubt, all the other Wholesale Local Leased Circuit Service charges not listed in Table 1 below (if any) are negotiated charges on commercial basis.

Table 1: Commercial Rental Charges for Wholesale Local Leased Circuit Service for Peninsular Malaysia

For Peninsular Malaysia: Tail Segment 2 Mbps	2015 – 2017
	<i>Ringgit Malaysia per year per circuit</i>
Installation (non-recurring charge)	318.69
Port (per year)	3,512.82
Tail segment (per km)	1,647.78

For Peninsular Malaysia: Tail Segment 34 Mbps	2015 – 2017
	<i>Ringgit Malaysia per year per circuit</i>
Installation (non-recurring charge)	1,613.35
Port (per year)	17,783.64
Tail segment (per km)	8,341.91

For Peninsular Malaysia: Tail Segment 155 Mbps	2015 – 2017 <i>Ringgit Malaysia per year per circuit</i>
Installation (non-recurring charge)	3,596.74
Port (per year)	39,646.26
Tail segment (per km)	18,597.18

2.2 Charges And Charging Principles of Duct and Manhole Access

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

Duct and Manhole Access	One-Time Charge (“OTC”) or Non Recurring Charges (“NRC”)	Recurring Charges
<i>Description</i>	<i>Ringgit Malaysia (RM)</i>	<i>Ringgit Malaysia (RM) per kilometer per year</i>
Rental of sub-duct	5,000	50,000

- 2.3 The recurring Charges including rental charges shall commence to be payable from the date Service is provided, and shall be paid according to the Billing Period elected by the Access Seeker in the Service Order Form and payments shall be made in advance on or before the payment periods.
- 2.4 In relation to the Charges, Access Seeker shall also be liable to pay any government taxes (including goods and services tax, GST) relevant to the Service provided it is legally required to be paid by the Access Seeker and utility charges imposed (if any) on utilization of the Service. Where applicable such taxes shall be added to the invoice and shall be paid to Access Provider at the same time as the relevant invoice is settled in accordance with Section 2.1 above.
- 2.5 In relation to the One-Time Charges (“OTC”) or Non Recurring Charges (“NRC”) for each Service, Access Seeker shall pay the Charges no later than the Ready For Service (“RFS”) Date, Service Activation Date or Handover Date, whichever is relevant.
- 2.6 All amounts payable by Access Seeker pursuant hereto shall be paid in full free and clear of all bank or transfer charges imposed by the Access Seeker bank(s) to such account(s) as Access Provider may by notice to Access Seeker designate without reduction for any deduction or withholding for or

on account of any tax, duty or other charge of whatever nature imposed by any taxing authority. If Access Seeker is required by law to make any deduction or withholding from any payment hereunder, Access Seeker shall pay such additional amount to Access Provider so that after such deduction or withholding the net amount received by Access Provider will be not less than the amount Access Provider would have received had such deduction or withholding not been required. Access Seeker shall make the required deduction or withholding, shall pay the amount so deducted or withheld to the relevant governmental authority and shall promptly provide Access Provider with evidence of such payment.

- 2.7 Any type of Charges chargeable to the Access Seeker shall be determined and made known to the Access Seeker before the commencement of the Service and shall not be changed for the duration of the Service period unless mutually agreed between the Access Seeker and Access Provider or unless provided otherwise in the Access Agreement.
- 2.8 Any unregulated Facilities and/or Services rates that Access Provider will offer to the Access Seeker will be provided to the Access Seeker upon written request to Access Provider.

3. Charging Principle on One- Time Charges

One-Time Charges (“OTC”) or Non Recurring Charges (“NRC”) are installation charges, interconnect charges, supervision and administrative charges which may be charged to the Access Seeker in relation to the Service provided to the Access Seeker and such charges may vary from case to case depending on the extend and complexity of the work involved for the installation and interconnection related thereto.

4. Charging Principle For Service Outside Access Provider’s Existing Network Topology

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

5. Cancellation Charges

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