



ACODA TOWERS SDN BHD
(COMPANY NO. 886804-A)

REFERENCE ACCESS OFFER

(Version 1.0)
24 JUNE 2019

This Document Sets Out the Terms and Conditions
For Eligible CMA Licensees to Apply to ACODA Towers Sdn Bhd
For Access to Certain Access Services

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1. CHAPTER 1 – INTRODUCTION, BACKGROUND AND SCOPE

1.1. Preliminary

- 1.1.1. This Reference Access Offer (“**RAO**”) is made by ACODA TOWERS SDN. BHD. (Company No:886804-A), (“**ACODA**”) a company incorporated under the laws of Malaysia and having its principal place of business at 4807-1-16, CBD Perdana 2, Jalan Perdana, 63000 Cyberjaya, Selangor, pursuant to the Commission
- i. Determination on the Access List (Determination No. 2 of 2015),
 - ii. Determination on the Mandatory Standard on Access (Determination No 3 of 2016)
 - iii. Determination on the Mandatory Standard Access Pricing (Determination of No.1 of 2017) to enable eligible licensees under the Communications and Multimedia Act 1998 to seek access to ACODA’s network facilities and/or network services.
- 1.1.2. ACODA is a licensed operator under the Act and pursuant to its License, ACODA may offer network facilities, network services and application services within Malaysia. Pursuant to Section 5.3.3 of the MSA Determination, ACODA is obliged to prepare and maintain a Reference Access Offer in relation to Facilities or Services on the Access List Determination, which ACODA provides to itself or third parties.

1.2. MSA Determination Obligations

- 1.2.1. The MSA Determination sets out principles, indicative terms and conditions concerning access to Facilities and Services included in the Access List Determination and imposes obligations consistent with the principles of the Standard Access Obligations contained in section 149 of the Act that apply to Operators concerning various access issues which include:
- a) Disclosure obligation (Section 5.3 of the MSA Determination);
 - b) Negotiation obligations (Section 5.4 of the MSA Determination); and
 - c) Content obligation (where applicable, Section 5.5 to 5.19 of the MSA Determination).
- 1.2.2. Disclosure Obligations
- Pursuant to the Disclosure Obligations in Section 5.3 of the MSA Determination, ACODA is required to:
- a) prepare and maintain a RAO;
 - b) make the RAO available in paper form and on publicly accessible website;
 - c) follow prescribed procedures after acceptance of the RAO; and
 - d) follow prescribed procedures for amendment of the RAO.

1.2.3. Negotiation Obligations

The negotiation obligations in Section 5.4 of the MSA Determination sets out the requirements and principles of negotiation where among others both Operators are required to:

- a) negotiate and co-operate in good faith and commercially reasonable manner;
- b) protect from disclosure any confidential information provided by one Operator to another; and
- c) use only such intellectual property and information provided by one Operator to another for purpose of providing access to the requested network services or facilities.

1.2.4. Content Obligations

Where relevant, the content obligations in Section 5.5 of the MSA Determination set out among other the following obligations of every Access Provider: -

- a) Forecasting
- b) Ordering and Provisioning
- c) Network Facilities Access and Co-location
- d) Billing and Settlement
- e) Operations and Maintenance
- f) Term, suspension and termination

1.2.5. The role of Standard Access Obligations

- a) The standard access obligations facilitate the provision of access to the Facilities and Services listed in the Access List Determination to the Access Seekers so that ACODA can provide network facilities, network services, and other facilities and/or services which facilitate the provision of network services or applications services, including content applications services.
- b) Section 149 of the Act specifies the terms and conditions upon which ACODA must comply with the standard access obligations. Section 149(2) provides that the access provided by ACODA shall be:
 - i. of at least the same or more favorable technical standard and quality as the technical standard and quality on the ACODA's network facilities or network services; and
 - ii. on an equitable and non-discriminatory basis

1.3. Scope

1.3.1. ACODA's RAO:

- a) contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and

- b) does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination.
- 1.3.2. Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to ACODA's RAO.
- 1.3.3. ACODA's RAO are consistent with:
 - a) the standard access obligations stipulated under Section 4.1.1 of the MSA Determination and section 149 of the Act; and
 - b) the principles of non-discrimination stipulated under Sections 4.1.5 and 4.1.6 of the MSA Determination.
- 1.3.4. For the purposes of clarification, the terms and conditions of ACODA'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 ACODA's licenses only. If the Access Seeker requests Facilities or Services outside ACODA's RAO, the terms and conditions for the provision of such Facilities or Services shall be negotiated and shall remain outside the scope of ACODA's RAO.
- 1.3.5. It is hereby noted by the Access Seeker that this RAO is not a legally binding document but merely a reference document serves as a general outline 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 and shall not be deemed as an offer to enter into any legally binding contract.
- 1.3.6. Accordingly, the Access Seeker shall enter into a written and duly executed Access Agreement with the Access Provider in order to utilize such network facilities and/or network services. It is further noted by the Access Seeker that the terms and conditions of the Access Agreement between itself and the Access Provider which may be entered in the future may also be subject to the negotiations between the Access Seeker and the Access Provider which may in part deviate from the terms and conditions noted in this RAO.
- 1.3.7. Where relevant, the rights and obligations set out in the MSA shall be applicable to this RAO. However, any such deviation or alternatives agreed between the Access Provider and the Access Seeker shall not be of lesser terms than the minimum terms provided by the MSA.
- 1.3.8. The Access Provider may make changes to the RAO from time to time. The Access Seeker is advised to verify with the Access Provider that they have the current version of the RAO

1.4. Amendment to ACODA's RAO

- 1.4.1. ACODA shall, within twenty (20) Business Days of making any amendment to ACODA's RAO, provide a copy of the amendments, or an amended copy of ACODA's RAO before ACODA proposes to effect the changes to:
 - a) the Access Seeker who is being provided with access to Facilities or Services listed on the Access List Determination under ACODA's existing RAO; and

- b) the Access Seeker who has requested ACODA's RAO within the period of three (3) months prior to the making of such amendments, unless the Access Seeker has already indicated that it does not wish to proceed with an Access Request.

1.4.2. An amendment to ACODA's RAO will be deemed to alter the relevant terms and conditions of an Access Agreement which is based on ACODA's RAO.

For clarifications

- i. Nothing in subsection 5.4 of this RAO prevents an Access Seeker from initiating a dispute in relation to an amendment to RAO made by ACODA under this subsection;
- ii. where the terms and conditions of an Access Agreement are not identical to those in the existing EAO, an amendment to the RAO will not alter the terms of that Access Agreement except as agreed between ACODA and the Access Seeker; and
- iii. without prejudice to an Access Seekers' right to dispute a change to the RAO, where the terms and conditions of an Access Agreement are identical to those in the existing RAO, an amendment to the RAO will be deemed to alter the relevant terms and conditions of that Access Agreement. However, if the Access Seeker disputes the change to the existing RAO, no amendment to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favor of ACODA.

1.5. Notice of Withdrawal, Replacement and Variation of ACODA's RAO

- 1.5.1. 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, ACODA may, by giving written notice to all Access Seekers to whom it is supplying Facilities or Services under ACODA's RAO, withdraw or replace ACODA's RAO with effect from a date no earlier than the effective date of the Commission's revocation.
- 1.5.2. ACODA shall comply with Sections 7.4.2 and 7.4.3 of the MSA Determination where it withdraws or varies ACODA's RAO pursuant to Section 1.5.1.
- 1.5.3. In addition to Section 1.5.2 above, ACODA may give the Access Seekers to whom it is supplying Facilities and Services under ACODA's RAO a notice of a variation or replacement of ACODA's RAO to affect such variations that are necessary or appropriate in the event of:
 - a) the occurrence of a Legislative Event that materially affects the rights or obligations of ACODA under ACODA's RAO; or
 - b) the occurrence of a Regulatory Event that relates to ACODA; or

c) a review by the Commission of the MSA Determination pursuant to Section 7.5 of the MSA Determination.

1.5.4. Notwithstanding Sections 1.5.1, 1.5.2 and 1.5.3 above, ACODA may subject to Section 1.4 above, replace ACODA's RAO at any time.

1.6. Availability

1.6.1. ACODA's RAO shall be made available to an Access Seeker:

a) on written request, at ACODA's principal place of business at the address stated in paragraph 1.7 below; and

b) on a publicly accessible website at acoda.my

1.6.2. ACODA's RAO shall also be provided to the Commission within ten (10) Business Day after being made available under paragraph 1.5.1(b) above

1.6.3. Prior to the provision of ACODA's RAO to the Access Seeker, the Access Seeker may be required to enter into a Confidentiality Agreement as set out herein Annexure 1.

1.7. Notices

Any notices or communications in respect of ACODA's RAO should be made in writing to:

Attention : Director

Address : ACODA TOWERS SDN. BHD.
No 4807-1-16, CBD Perdana
2, Jalan Perdana, 63000
Cyberjaya, Selangor.

Telephone : +603 2727 7500

Fax : +603 2727 7508

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2. CHAPTER 2 – DEFINITIONS AND INTERPRETATIONS

2.1. Definitions

The following words have these meanings in this ACODA's Access Reference Document unless the contrary intention appears: -

"Act" means the Communications and Multimedia Act 1998.

"Access Agreement" means an agreement:

- a) entered into between ACODA and the Access Seeker pursuant to this RAO; or
- b) which is commercially negotiated between the Operators, which terms and conditions shall not be less favorable than the terms and conditions guaranteed by the MSA.

"Access Charge" means a charge paid by the Access Seeker to ACODA for accessing the Facilities and Services provided by ACODA.

"Access List" means the list of Facilities or Services determined by the Commission under section 146 of the Act.

"Access List Determination" means the Commission Determination on Access List, Determination No.2 of 2015 which came into operation on 1st September 2015.

"Access Provider" means: -

- a) network facilities provider who owns or provides network facilities listed in the Access List; or
- b) network services provider who provides network services listed in the Access List;

who is a licensee as defined in the Act.

For the purpose of clarification, in this RAO the Access Provider is "ACODA".

"Access Request" means a request for access to Facilities or Services on the Access Service made by the Access Seeker to ACODA and containing the information in Section 4.1.1 of Chapter 4 and any additional information requested under Section 4.5.1(a).

"Access Seeker" means an Operator who:

- a) is a network facilities provider, network services 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 Facilities or Services listed in the Access Service.

"Access Service" means the network facilities and/or network services within the

Access List provided by ACODA and which is listed in Schedule B of this RAO.

“ACODA” means ACODA TOWERS SDN BHD

“Bank Guarantee” means the guarantee executed and to be granted to ACODA on behalf of the Access Seeker by a bank approved by ACODA and in a format acceptable by ACODA pursuant to Section 4.3.

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

“Billing Period” means the period over which the supply of access to Facilities or Services is measured for the purposes of billing, which shall be no 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 public holiday) on which commercial banks are open for general banking business in Kuala Lumpur.

“Charges” means the sums payable by the Access Seeker to ACODA for the provision of Access Service.

“CMA” means Communications and Multimedia Act 1998 (Act 588)

“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 Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998.

“Communication” means any communication, whether between persons and persons, things and things, or persons or things in the form of sound, data, text, visual images, signals, or any other form or any combination of those forms and, where the context permits, includes an attempt to establish a communication.

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

“Confidentiality Agreement” means a Confidentiality agreement entered into between ACODA and the Access Seeker in accordance with Section 5.3.8 of the MSA Determination which template is provided herein in Annexure I.

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

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

“Determination” means any lawful determination made by the Commission

and/or the Minister, pursuant to Chapter 2 of Part V of the Act.

“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 Access Agreement is duly registered with the Commission under Section 150 of the Act in its entirety.

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

“Facilities” means network facilities and/or other facilities specified in this RAO which facilitate the provision of network services or applications services including content applications services.

“Facilities Access” in relation to the Access Service means a service for the provision of access to Facilities.

“Force Majeure” means an event or circumstance beyond the reasonable control of an Operator which affects the Operator’s ability to perform its obligations under the Access Agreement.

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

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

“Infrastructure Sharing” means a Facility and/or Service which comprises the provision of physical access, which refers to the provision of space at the Designated Tower and/or Associated Tower Site to enable the Access Seeker to install and maintain its own equipment in accordance with Part 1 of Schedule B of the Terms and Conditions for Regulated Facilities and/or Services;

“Invoice” means the invoice for amounts due in respect of the supply of the Access Service(s) during a Billing Period.

“Legislative Event” means:

- a) the enactment, amendment, replacement or repeal of the Act;

- b) the enactment, amendment, replacement or repeal of the rules promulgated pursuant to sections 104 and 105 of the Act in respect of mandatory standards;
- c) the registration, determination, promulgation, issue, amendment or replacement of any industry code with which ACODA is required or obliged to comply; and
- d) the making of a determination, direction or finding by the Commission, the Minister or a court of law that all or any part of ACODA's RAO contravenes any provision of any law, except to the extent that the making of such determination, direction or finding constitutes a Regulatory Event.

"License" means an individual license granted by the Minister pursuant to the Act for Communication Services.

"Manuals" means the Technical and Implementation Manual, the Operations and Maintenance Manual and other manuals which the Operators establish pursuant to the Access Agreement.

"Minimum Value" for the purposes of calculating the Security Sum means a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over: -

- i. for Facilities and/or Services with a minimum period of access, the minimum period of access for those Facilities and/or Services; and
- ii. For Facilities and/or Services without a minimum period of access, a single Billing Period for those Facilities and/or Services.

"Minister" means the Minister of Communications and Multimedia or, if different, the Minister administering the Act.

"MSA Determination" shall have the meaning assigned to it in subsection of Chapter 1.

"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 ACODA and the Access Seeker collectively.

"Other Operator" means either:

- a) ACODA; or
- b) the Access Seeker, as the context requires.

"RAO" means References Access Offer

"Regulatory Event" means:

- a) the declaration, modification, variation or revocation of the MSA Determination;

- b) the giving of a lawful direction to ACODA by the Commission relating to ACODA's RAO; or
- c) the giving of a lawful direction to ACODA by the Minister relating to ACODA's RAO.

“Review” means a review of the MSA Determination pursuant to Section 7.5 of the MSA Determination.

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

“Security Sum” means the security:

- a) in the form of a Bank Guarantee, deposited with ACODA for the supply of Access Services as listed in Schedule B; and
- b) which amount is equivalent to the Minimum Value.

“Services” means network services and/or other services listed in the Access List which facilitate the provision of network services or applications services, including content applications services.

“Service Ordering Procedures” means the procedures governing the forecasting, planning and ordering of relevant Access Services as set out in Part II of Schedule A of Technical and Operational Matters.

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

“Technical Specifications” means any technical parameters, specifications and procedures applicable to Interconnection of the Operators' Network and provision of Access Services documented in this RAO or any manuals referred to in the Access Agreement.

2.2. Interpretation

In ACODA's RAO except where the contrary intention appears;

- a) the singular includes the plural and vice versa; and
- b) a document includes all amendments or supplements to that document, or replacements or novation of it; and
- c) a reference to a 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
- d) a reference to a person includes a firm, body corporate, unincorporated association or an authority; and
- e) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; and

- f) 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 acts that have to be done or to be done by or on or before a particular day or Business day means by or on or before the close of business at 5.00pm on that particular day or Business Day; and
- g) a reference to a related body corporate of an Operator has the same meaning as in the Companies Act 1965; and
- h) in relation to an Access Service for the carriage of a communication it refers to the carriage of a communication between the POIs/POPs along ACODA's Network but does not include any Communication for which the Access Service is provided with the assistance a third party's Facilities or Services; and
- i) headings are included for convenience and do not affect the interpretation of ACODA's RAO.

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3. CHAPTER 3 – PRINCIPLES OF ACCESS

3.1. Access Services

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

3.2. Eligibility for Access of Services

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

3.2.2. For the purposes of clarification, consistent with Government policy and Determinations by the Commission (and its predecessor), an Access Seeker may only request for access to any or all of the Facilities or Services listed in the Access List as contained in ACODA'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 ACODA.

3.2.3. 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.

3.3. Standard Access Obligations

3.3.1. Access Terms and Conditions

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

3.3.2. Principles of non-discrimination

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

The access provided by ACODA 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

3.3.3. Customer Principles

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

3.4. Negotiation Principles

3.4.1. 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.

3.4.2. 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 ACODA provide to itself); and
- c) avoiding unnecessary dispute and use all reasonable endeavors to resolve any disputes promptly and fairly which arising from or in connection with ACODA's RAO. If any dispute or difference of any kind shall arise between the parties in connection with or arising out of ACODA'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 ACODA's RAO in accordance with the Confidentiality Agreement signed between the parties.

3.4.3. Necessary Third-Party Involvement Causing or Contributing to Non-compliance In Timeframe

If:

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

ACODA 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

4. CHAPTER 4 – ACCESS REQUEST PROCEDURES

4.1. Application for Access to Services

- 4.1.1. An Access Seeker shall request ACODA to supply Access Service (s) to it by serving Access Request in writing setting out the information listed in below:
- a) the name and contact details of the Access Seeker,
 - b) the Access Service (s) in respect of which access is sought
 - c) whether the Access Seeker wishes to accept ACODA's RAO, to negotiate amendment to the RAO or to negotiate an Access Agreement on alternative terms;
 - d) the information (if any) the Access Seeker reasonably requires ACODA to provide for the purposes of the access negotiations;
 - e) 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;
 - f) preliminary information regarding the scale and scope of Facilities and/or Services that the Access Seeker expects to acquire from ACODA pursuant to Access Request;
 - g) relevant technical information relating to the interface standards of the equipment of the Access Seeker
 - h) relevant information relating to the Access Seeker and functionality of its Services, to the extent that Access Seeker is aware that such information may affect ACODA Network;
 - i) creditworthiness information in accordance with ACODA requirement as set out in subsection 4.2;
 - j) assessed security (or if applicable, confirmation of security provided) in accordance with ACODA security requirement as set out in subsection 4.3;
 - k) insurance information in accordance with ACODA insurance requirement as set out in subsection 4.4; and
 - l) such other information as ACODA may reasonably request for the sole purpose of providing access to the requested Facilities and/or Services.

4.2. Creditworthiness Information

- 4.2.1. The Creditworthiness Information that is required to accompany an Access Request include but shall not be limited to:
- a) a letter, signed by the company secretary or duly authorized officer 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; and

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

4.3. Security Sum

4.3.1. ACODA shall ensure that the amount and type of security requirements imposed on the Access Seeker (if reasonably required) commensurate with: -

- a) a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over: -
 - i. for Facilities and/or Services with a minimum period of access, the minimum period of access for those Facilities and/or Services; and
 - ii. For Facilities and/or Services without a minimum period of access, a single Billing Period for those Facilities and/or Services;

in an access agreement.

- b) the creditworthiness of the Access Seeker (including prior payment records of the Access Seeker); and
- c) the security previously required by ACODA (if any).

4.3.2. ACODA must not impose a security requirement on an Access Seeker which:

- i. exceed a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the minimum period of access to Facilities and/or Service to be provided by ACODA to the Access Seeker; or
- ii. is designed to, or has an effect of denying or delaying the Access Seeker's access to Facilities and/or Services

4.3.3. The Access Seeker shall provide the Security Sum to ACODA in the form of Bank Guarantee.

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

4.3.5. If the Access Seeker fails to fulfill any conditions or commits a breach of its obligations under this RAO or the Access Agreement, ACODA at its sole discretion has the right from time to time to call in all or part of the amount represented by

the Security Sum.

4.4. Insurance Information

4.4.1. Subject to subsection 4.4.2, 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) for any one claim or series of claims arising out of an accident for 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.

4.4.2. For the purpose of clarification, the insurance provided by the Access Seeker pursuant to subsection 4.4.1 shall commensurate with the reasonable sum, which is to be agreed by ACODA.

4.5. Processing of Access Request

4.5.1. Acknowledgement of Receipt of Access Request

ACODA shall within ten (10) Business Day of receipt of the Access Request inform the Access Seeker in writing that it has received the Access Request and:

- a) Subject to Section 5.4.16 of the MSA, 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 Access Service (s) under paragraph 4.8 or if it is rejecting the Access Request in accordance to paragraph 4.7.

Subject to the additional information being received by ACODA within twenty-one (21) Business Days from the date of request, ACODA shall reconsider the Access Request upon receipt of such additional information and the ten(10) Business Days for ACODA to consider the Access Request will recommence from the receipt of the information from the Access Seeker.

4.5.2. Non-refundable processing fee

- a) ACODA may charge 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 the requested Access

Service (s) that can be offered and made available by ACODA.

- c) The fee shall be as advised in writing by ACODA to the Access Request upon approval of the same.
- d) In the event that additional and non-routine work is required in order to process the Access Request, ACODA may charge a separate fee for undertaking such additional work. If the Access Seeker does not proceed with the Access Request accepted by ACODA, the processing fee will not be refunded to the Access Seeker.
- e) The processing fee will be set-off against the Charges for the requested Facilities and Services upon acceptance of the Access Request by ACODA pursuant to paragraph 4.8.

4.5.3. Resources charge

- a) In accordance with subsection 5.7.28 of the MSA Determination ACODA may charge an Access Seeker a resource charge to be determined by reference to the costs incurred by ACODA for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Access Service (s).
- b) The fee for the specific Access Services is set out in the Schedule C – Charges and Charging Principle of the RAO

4.6. **Assessment of Access Request**

4.6.1. Grounds for Refusal

Without limiting any other grounds that may be relied upon under the Act and Part 1 of Section B of this RAO, ACODA may refuse to accept an Access Request for the supply of Access Service(s) and accordingly may refuse to supply that Access Service (s) to the Access Seeker for any of the following reasons:

- a) in ACODA's reasonable opinion, the Access Seeker's Access Request was not made in good faith and ACODA shall set out the basis on which the Access Request was not made in good faith;
- b) in ACODA's reasonable opinion, the Access Request does not contain the information reasonably required by ACODA's RAO provided that ACODA has sought the information from the Access Seeker under subsection 4.5.1 of ACODA's RAO and has not received that information within twenty-one (21) Business Days of making such a request;
- c) ACODA does not currently supply or provide access to the requested Access Service (s) to itself or to any third parties (in which case it shall identify any alternative facilities and/or services which it does provide to itself or to any third parties which may be acceptable substitutes), except where the Access Seeker compensates ACODA for the original supply of access to such Access Service(s);

- d) It is not technically feasible to provide access to the requested Access Service(s);
- e) ACODA has insufficient capacity or space to provide the requested Access Service(s);
- f) there are reasonable grounds in ACODA's opinion to believe that the Access Seeker would fail, to make timely payment for the supply of the relevant Access Service(s) and such concern cannot be addressed through a security requirement in accordance with this RAO; or
- g) there are reasonable grounds in ACODA'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 Access Service(s); or
- h) there are reasonable grounds for ACODA to refuse access in the national interest.

4.6.2. Determination of technical infeasibility

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

4.6.3. Determination of capacity constraints

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

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

Example of reasonable grounds for ACODA's belief as mentioned in subsection 4.6.1 (f) includes evidence that the Access Seeker is not in the reasonable opinion of ACODA creditworthy.

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

Example of reasonable grounds for ACODA's belief as mentioned in subsection 4.6.1 (g) include repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to Network Facilities or Network Services have been provided.

4.7. Notification of Rejection to the Access seeker

4.7.1. Where ACODA rejects the Access Request, ACODA shall:

- a) provide grounds for rejection under Section 4.6.1 above to the Access Seeker;
- b) provide basis for ACODA's rejection of the Access Request with sufficient particular to enable the Access Seeker to make its own assessment about the

applicability of the specific ground of rejection; and

- c) indicate a date and time, not later seven (7) Business Days from the date of the notice of rejection, at which representatives of ACODA 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 ACODA to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in:

- i. subsection 4.6.1(e) of this RAO, ACODA must identify when additional capacity is likely to be available; and
- ii. subsection 4.6.1(f) of this RAO, ACODA must identify the form of security requirement which would satisfy its concern that the Access Seeker may fail to make timely payment for the requested Access Service(s), its reason for the security requirement and why it considers such concern cannot be addressed through a security requirement under Section 4.3 of this RAO

- 4.7.2. Where the Operators are unable to resolve their differences following the meeting held pursuant to subsection 4.7.1(c), either Operator may request resolution of the dispute in accordance with dispute resolution procedures in Annexure A of the MSA Determination.

4.8. Acceptance of Access Request

- 4.8.1. Where the Access Seeker is willing to accept RAO and ACODA agrees to provide access to Facilities or Services listed in the Access Service to the Access Seeker, ACODA shall within ten (10) Business Days of such response under subsection 4.5.1(b), provide the Access Seeker with two (2) copies of the executed RAO and one (1) copy of executed confidentiality agreement returned by the Access Seeker (in accordance with sub-section 4.1.1(e) of this RAO, that has also been properly executed by ACODA for execution by the Access Seeker.
- 4.8.2. Where the Access Seeker wish to negotiate an Access Agreement, the Operators shall comply with the requirements in Sections 5.4.2, 5.4.3, and 5.4.4 of the MSA Determination in negotiating and concluding an Access Agreement.
- 4.8.3. ACODA will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Access Service unless:
 - a) a Security Sum has been provided in accordance with Section 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.

4.9. Negotiations on Access Request

4.9.1. ACODA may proceed with negotiation on the Access Request with the Access Seeker if the Access Seeker is not willing to accept ACODA's RAO. ACODA shall set out in such response:

- a) a date and time not later than fifteen (15) Business Days from the date of the Access Seeker's response, at which ACODA's representatives

will be available for the initial meeting with the representatives of the Access Seeker.

- b) One copy of the executed Confidentiality Agreement returned by the Access seeker (in accordance with subsection 4.1.1 (e) that has also been properly executed by ACODA.

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5. CHAPTER 5 PROVISION OF INFORMATION

- 5.1. The obligations of each Operator to provide information to the Other Operator are subject to the MSA Determination and the requirements of confidentiality in the confidentiality agreement signed by the Operators.
- 5.2. 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.
- 5.3. To the extent permitted by Malaysian law and any relevant guidelines or customer service standards in force pursuant to the Operator's respective License conditions, the Operators will exchange information and otherwise cooperate in relation to the prevention and investigation of fraudulent use or misuse of the Operator's respective Communications Services and the theft of the Operator's provided terminal equipment.
- 5.4. Information provided under ACODA's RAO may only be used for the purpose for which it was given. Personal information about a Customer's credit worthiness, credit standing, credit history or credit capacity may only be used for the purposes permitted by, and in compliance with, Malaysian law.
- 5.5. Information required to be provided under ACODA'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 cooperate to resolve the providing Operator's reasonable concerns so that information exchange can be resumed as soon as possible.
- 5.6.
 - a) Subject to the Act and any subordinate legislation, nothing in the Access Agreement may be construed as requiring an Operator at any time to disclose to the Other Operator information which is at the date when the Access Agreement comes into force, the subject of a confidentiality obligation owed to a third person unless the third person consents to such disclosure. Where the consent of a third person is required, the Operator holding the information must use its reasonable endeavors to obtain the consent of that third person.
 - b) After the Access Agreement comes into force an Operator must use its best endeavors not to enter into any contract which would prevent it from making relevant information available to the Other Operator unless the contract includes a term which permits the contracting Operator to make the information available if directed to do so by the Commission.

6. CHAPTER 6 BILLING AND SETTLEMENT OBLIGATIONS

- 6.1. Where relevant, the billing and settlement obligations set out in Section 5.11 of the MSA Determination shall be applicable.
- 6.1.1. Invoices: ACODA shall use its best endeavors to issue to the Access Seeker an Invoice in writing or in electronic form (as requested by the Access Seeker) within one (1) month of the end of each Billing Cycle in accordance with subsection 6.1.3 of this Section for amounts due in respect of the supply of Facilities and/or Services during the relevant Billing Period.
- 6.1.2. Currency: Unless otherwise agreed by ACODA and Access Seeker in the RAO, ACODA shall state all Invoices in Ringgit Malaysia and payment shall be made by the Access Seeker in Ringgit Malaysia.
- 6.1.3. Billing Cycle: ACODA shall issue Invoices to the Access Seeker on monthly basis, except where a different Billing Cycle is agreed with the Access Seeker in the Access Agreement.
- 6.1.4. Billing Verification Information: ACODA shall provide, with each Invoice, such information as may be reasonably necessary for the Access Seeker to verify rates and charges contained in an Invoice.
- 6.1.5. Other Billing Information: An Operator must provide to any Operator information within its possession that is reasonably necessary to allow the other Operator to provide accurate and timely billing services to itself, other Operators and Customers.
- 6.1.6. Summarized Invoice and Billing Information: ACODA (where applicable) shall provide the Access Seeker, on written request, with an aggregated summary of billings for access to the Facilities and/or Services provided to the Access Seeker, in monthly tranches.
- 6.1.7. Billing Error: If an Operator discovers an error in an Invoice, it must promptly notify the other Operator. The Operator which made the error must make necessary adjustments to correct that error within one (1) month of notification.
- 6.1.8. Due Date: Subject to subsection 6.1.11 of this Section, Access Seeker shall make the payment in (1) one month from the date of receipt of an Invoice from ACODA.
- 6.1.9. Method of Payment: Access Seeker shall pay an Invoice by bank cheque or electronic funds transfer directly to an account nominated by ACODA.
- 6.1.10. No Set-Off: Unless otherwise agreed by ACODA and Access Seeker in the RAO, ACODA may not set-off Invoices except where the Access Seeker is in liquidation or at least three (3) Invoices have been issued and such Invoices have not been paid (excluding disputed amounts).

- 6.1.11. Withholding of Disputed Amounts: An Access Seeker is not allowed to withhold payment of any amount disputed.
- a) the Access Seeker notifies ACODA within fifteen (15) Business Days from the date of receipt of the Invoice of such dispute (unless otherwise agreed by ACODA and Access Seeker in the RAO); and
 - b) the Access Seeker's notification specifies the information referred to in subsection 6.1.13 of this Section.
- 6.1.12. Billing Disputes: Access Seeker may dispute any amount in an Invoice if:
- a) in case of any other Facilities and/or Services, the Access Seeker notifies ACODA within thirty (30) Business Days after the date of receipt of such Invoice, provided that, in any case specified above, the Access Seeker's notification specifies the information referred to in subsection 6.1.13 of this Section.
- 6.1.13. Notification of Billing Dispute: ACODA may require an Access Seeker to provide the following information when disputing any amount in an Invoice:
- a) the reasons for which the Invoice is disputed;
 - b) the amount in dispute;
 - c) details required to identify the relevant Invoice and charges in dispute including:
 - i. the account number;
 - ii. the Invoice reference number;
 - iii. the Invoice date;
 - iv. the Invoice amount; and
 - v. billing verification information; and
 - d) evidence in the form of a report, indicating the relevant traffic data which is in dispute.
- 6.1.14. Billing Dispute Resolution: ACODA and an Access Seeker must comply with the Dispute Resolution Procedures applicable to Billing Disputes in Annexure A of the MSA.
- 6.1.15. Interest: Except for any amount in an Invoice being disputed by an Access Seeker in good faith in accordance with subsection 6.1.12 of this RAO, ACODA may charge

interest on any amount outstanding from an Access Seeker from time to time, in respect of that overdue sum for the period beginning on its due date and ending on the date of the receipt of the overdue sum by ACODA. The interest that may be charged by ACODA shall be at the rate of two percent (2%) per annum above Malayan Banking Berhad's base rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than two (2) months will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad's base rate calculated from the due date until the date of receipt by ACODA of full payment. For clarification, ACODA shall not charge interest on an amount which is disputed by an Access Seeker in good faith.

- 6.1.16. Backbilling: Unless otherwise agreed by ACODA and Access Seeker in the RAO, ACODA may include omitted or miscalculated charges from an earlier Invoice in a later Invoice, or issue an Invoice for charges which have previously not been invoiced provided that ACODA is able to substantiate the charges to the Access Seeker and such inclusion, amendment or issuance is made within three (3) months from the end of the Billing Cycle in which the Facilities and/or Services were provided.
- 6.1.17. Provisional Billing: Where ACODA is unable to issue an Invoice within one (1) month after the end of the Billing Cycle in accordance with subsection 6.1.1 of this Section, it may issue an Invoice to an Access Seeker for a provisional amount, based on the last Invoice ("Provisional Invoice"). In such circumstances, ACODA may invoice the Access Seeker for a provisional amount for a period of not more than three (3) successive Billing Cycles, provided that the total provisional amount is no more than the average of the three (3) most recent Invoices. Where there have not been three (3) past Invoices for access to the relevant Facilities and/or Services, ACODA may issue a Provisional Invoice up to the full value of the amount based on the most recent Invoice. For clarification:
- a) If the actual amount for a particular Billing Period is higher than the amount stated in the Provisional Invoice for the Billing Period, then the Access Seeker will pay in full such difference (free of interest) within one (1) month from the receipt of Debit Note ("DN") to ACODA. The DN issued must be forwarded to the Access Seeker together with the relevant monthly statement of the actual interconnect usage.
 - b) If the actual amount for a particular Billing Period is lower than the amount stated in the Provisional Invoice for the same Billing Period, ACODA will reimburse in full such difference free of interest by issuing a Credit Note ("CN") within one (1) month after the month in which the charges were incurred. Such CN must be forwarded to the Access Seeker together with the relevant monthly statement of the actual interconnect usage
- 6.1.18. Adjustment Period: Where a Provisional Invoice is issued by ACODA, within the next two (2) months or such other time period as may be agreed in the RAO ("Adjustment Period"), ACODA must issue an Invoice for the actual amount due for access to the relevant Facilities and/or Services. If that Invoice for the actual amount is not issued within the Adjustment Period, the Access Seeker shall treat

the provisional amount as the actual amount. If the actual amount for a particular Billing Period is higher than the provisional amount for the Billing Period, then the Access Seeker will pay in full such difference (free of interest) within one (1) month from the receipt of the actual Invoice to ACODA. If the actual amount for a particular Billing Period is lower than the provisional amount for the Billing Period, then ACODA will reimburse in full such difference (free of interest) within one (1) month from the receipt of the actual Invoice to the Access Seeker.

6.2. The Access Seeker shall pay ACODA the Access Charges for the relevant Access Service(s) supplied by ACODA to the Access Seeker, as specified in Schedule C of this RAO.

6.3. Terms of Payment

- a) The Access Seeker must, subject to subsection 5.1.11 of this Section, pay any amount due and owing to ACODA on the Due Date unless otherwise agreed in writing by both Operators.
- b) The Access Seeker to whom any Facilities and/or Service is provided under this RAO must, subject to subsection 6.1.11 of this Section, pay ACODA the applicable rates and charges, and on the terms and subsections set out or referred to, as the case may be, in this RAO.

6.4. All payments must:

- a) be paid on the Due Date unless otherwise agreed in writing by both Operators;
- b) must be accompanied by such information as is reasonably required by ACODA to properly allocate payments received.

6.5. Where appropriate, any taxes (including goods and services tax), duties or other imposts (as at the date of this RAO or imposed after the date of this RAO) shall be added to all or any Access Charges under this RAO and be paid by the Access Seeker within sixty (60) Business Days from the date of such imposition.

- a) If at any time ACODA is required under the Goods and Services Tax Act 2014 (“GST Act”) to impose any goods and services tax or any similar value added tax (collectively, referred to as “GST”) for the provision of any Facilities or Services to the Access Seeker, then, for the avoidance of doubt, any amount payable by the Access Seeker under this RAO shall be deemed to be net of such GST and the Access Seeker shall be liable to pay to ACODA the GST in addition to such amounts payable.
- b) ACODA must, as a pre to the payment of the GST under paragraph (a) above, give the Access Seeker a tax invoice complying with the requirements of the GST Act.
- c) If an adjustment arises in connection with a supply made under this RAO ACODA must give the Access Seeker a credit or debit not in accordance with GST Act

6.6. Security Sum

- a) For the purpose of clarification, the Security Sum does not relieve Access Seeker from its obligations to pay amounts to ACODA as they become due and payable, nor does it constitute a waiver of ACODA' right to suspend, disconnect, or terminate the relevant Facilities or Services due to non-payment of any sums due or payable to ACODA.
- b) ACODA may upon service of reasonable notice to the Access Seeker, call upon the Security Sum at any time after the Due Date (if payment has not been made by Access Seeker) or upon a breach of any of Access Seeker's obligation subject to the limitation on liability stipulated in Chapter 7 of this RAO (except for non-payment). For the avoidance of doubt, non-payment of any sum properly withheld in accordance with subsection 6.1.11 of this Section shall not be a basis for ACODA to call upon the Security Sum as stipulated herein.

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7. CHAPTER 7 –TERMINATION, SUSPENSION AND OTHER PROVISIONS

7.1. Term

The Operators shall enter into an Access Agreement for a term of no less than 10 years from the execution date of the said Access Agreement.

7.2. Termination

Subject to Section 7.5, ACODA may terminate an Access Agreement or part thereof if any of the circumstances referred to in Section 7.2(a), 7.2(b) or 7.2(c) below apply and ACODA has notified the Access Seeker of its intention to terminate the Access Agreement: -

- a) the Access Seeker has materially breached the Access Agreement and ACODA 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) ACODA 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 7.2 is in addition to the notice required under subsection 7.5 of this RAO

7.3. Change in Law

Where the continued operation of the Access Agreement or access to any Access Service(s) provided by ACODA is or will be unlawful (as a result of a legislative change), the Access Seeker and ACODA 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 ACODA 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, ACODA may terminate the provision of access to the relevant Access Service(s).

7.4. Suspension

Subject to Section 7.5, ACODA 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 ACODA to remedy such breach;
- b) the Access Seeker's Facilities materially adversely affect the normal operation of ACODA's Network or are a material threat to any person's safety;
- c) the Access Seeker's Facilities or the supply of Access Service(s) pose an imminent threat to life or property of ACODA, its employees or contractors;
- d) the Access Seeker's Facilities cause material physical or technical harm to any Facilities of ACODA 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 7.11, 7.12 and Section 4.3 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 ACODA or the provision by ACODA of Access Service(s) under the Access Agreement.

For the purposes of this Section 7.4, ACODA must provide the Access Seeker five (5) Business Days' notice in writing, including written reasons, prior to suspending access to any Access Service(s). ACODA shall forward to the Commission a copy of the notice of suspension at the same time as providing the notice of suspension to the Access Seeker. For clarification, a notice to be given under this subsection 7.4 is an addition to the notice required under subsection 7.5.

7.5. Notice

Prior to terminating or suspending or seeking to materially vary an Access Agreement or access to any Access Service(s) provided under it, ACODA must notify the Commission in writing of the action it proposes to take and the reasons why such action is appropriate. ACODA 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. ACODA:

- 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 ACODA 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

7.6. Undertakings

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

7.7. Post-termination fees

ACODA 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 7.11 of this Chapter 7, charges arising during an applicable minimum contractual period (as described in Section 7.1 above), provided that:
 - i. such charges must be reduced to reflect any cost savings from ACODA not having to supply the Access Service to the extent that they have been terminated or suspended; and
 - ii. ACODA must use reasonable endeavor to mitigate its cost of termination or suspension and maximize cost savings under paragraph 7.7b(i) above.

7.8. Upfront charges refund

On termination of an Access Agreement or access to any Access Service(s) provided under it, ACODA 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 prorata basis) relate to the period after the date of effect of such termination.

7.9. Deposits and guarantees

Notwithstanding the obligation in subsection 7.8, ACODA 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 ACODA 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 ACODA as at the date of termination.

7.10. Intellectual Property Rights

The Operators agree not to use any patent, trade mark, trade name, house mark, service mark, designs, copyright, database rights, knowhow 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.

7.11. 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.

7.12. Additional Security

For the purpose of subsection 7.11 above, an Operator may only 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

7.13. Force Majeure

7.13.1. 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.

7.13.2. 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.

7.14. Review

7.14.1. If: -

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

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

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

7.15. Governing Law

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

7.16. Assignment

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

SCHEDULE A**TECHNICAL AND OPERATIONAL MATTERS****PART I -FORECASTING****1. General**

- 1.1. Part I of Schedule A sets out forecasting procedures that are applicable only in relation to the provision of Access Services listed in the ACODA RAO.
- 1.2. Where relevant, the forecasting obligations set out in Section 5.6 of the MSA Determination shall be applicable.

2. Forecasting Requirements

- 2.1. The Access Seeker is required to provide forecast for the Infrastructure Sharing Service
- 2.2. The Access Seeker shall provide a forecast on an annual basis and reviewed on a half yearly basis
- 2.3. The Access Seeker shall meet the requirements of forecasting process that enables ACODA to plan for the expected need for Access Service(s) in order to carry the forecasted traffic and conform to Grade of Service Standards.

PART II -ORDERING AND PROVISIONING**1. General**

- 1.1. Part II of Schedule A sets out ordering and provisioning procedures that are applicable only in relation to the provision of Access Services listed in the ACODA RAO.
- 1.2. Where relevant, the ordering and provisioning obligations set out in Section 5.7 of the MSA Determination shall be applicable.

2. Ordering Procedures

- 2.1. Subject to Section 2.2, the Operators may place firm orders for Interconnect Link Capacity from time to time in line with the quantity indicated in the first year forecast.
- 2.2. The Access Seeker shall ensure that the order contains enough information to enable ACODA to assess and fulfil the order.
- 2.3. When an order is placed, the Access Seeker should give ACODA a priority list, allowing for progressive delivery and setting out its preferred order of delivery.

PART III- OPERATIONS AND MAINTENANCE

1. General

- 1.1. Part III of Schedule A sets out the operations and maintenance procedures that are applicable in relation to the provision of Interconnection Services as listed in the ACODA RAO.
- 1.2. Where relevant, the operations and maintenance obligations set out in Section 5.12 of the MSA Determination shall be applicable.

2. Operations and Maintenance Standard

- 2.1. The Operators shall ensure that the operations and maintenance standards and procedures used in the respective network do not adversely affect the operations of each other's Networks.
- 2.2. Each operator shall be responsible for the operations and maintenance of its own network facilities and network services.

3. Maintenance Procedures and Practices

- 3.1. Each operator shall on its own establish the recommended maintenance procedures for maintaining and servicing its own network facilities and network services.

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SCHEDULE B

SERVICE DESCRIPTION

PART 1 – INFRASTRUCTURE SHARING

1. General

- 1.1. Part 1 of Schedule B sets out the terms and conditions which are applicable to Infrastructure Sharing.
- 1.2. Where relevant, service specific obligations set out in subsection 6.8 of the MSA Determination shall be applicable.

2. Pre-Requisites for Applying for Infrastructure Sharing

- 2.1. ACODA shall not be obliged to provide to the Access Seeker Infrastructure Sharing for the Designated and/or Associated Tower Sites, as the case may be, unless:
 - 2.1.1. ACODA:
 - a) is the legal owner of the Designated Tower and the land on which the Designated Tower resides; or
 - b) has exclusive rights of use of the land pursuant to a lease or tenancy agreement on which the Designated Tower resides and the Access Provider has been granted the requisite approval by the owner or landlord of said land to permit the Access Seeker to use the said land in accordance with the terms herein contained;
 - 2.1.2. the Access Seeker has the appropriate license under the Act and its subsidiary legislation to operate the service for the purpose for which the equipment is to be installed and other approvals from relevant authority, where required;
 - 2.1.3. the Access Seeker has first obtained the approval from a third party to use its tower where the tower structure of the third party resides in the Access Provider's compound; and
 - 2.1.4. there is sufficient space.

3. Infrastructure Sharing

- 3.1. ACODA agrees to provide Infrastructure Sharing at the designated tower or associated tower sites ("Designated Tower or Associated Tower Sites") to the Access Seeker in accordance with the terms of this Agreement including the relevant Terms and Conditions for Technical Matters and the terms and conditions of this Part 1 of Schedule B.
- 3.2. Where third party towers are located on the ACODA's premises, Infrastructure Sharing by ACODA shall be limited to providing support services at Associated Tower Sites for use at

the Associated Tower Sites and Designated Tower.

- 3.3. The list of the Designated Tower and Associated Tower Sites offered by ACODA is set out in Appendix 1 in this Schedule B Part 1 and the Access Seeker may be obtained the details and latest site list from the ACODA upon written request.

3.4. Duration of Infrastructure Sharing

- 3.4.1. Infrastructure Sharing at a Designated Tower or Associated Tower Site, agreed between the Operators, shall be for a fixed period of ten (10) years.
- 3.4.2. The term of the Infrastructure Sharing shall commence on the date (“Start Date”):
- a) ACODA agrees to make available for physical possession the shared space (“Shared Space”) at the Designated Tower or Associated Tower Site; or
 - b) the Access Seeker takes physical possession of the Shared Space at the Designated Tower or Associated Tower Site,
- whichever is the earlier.

4. Access Seeker’s Obligations

4.1. Utilities

- 4.1.1. The Access Seeker shall be responsible to apply for its own individual meter and power supply to the Shared Space and shall be further responsible for and bear the cost of all electricity utilized by the Access Seeker at the Shared Space.
- 4.1.2. In the event that the Access Seeker’s application to the relevant authority for an individual meter is not successful, the Access Seeker may:
- a) subject to the ACODA’s prior written approval, utilize the electricity supplied to ACODA at that premises;
 - b) ACODA will, subject to the Access Seeker reaching a prior agreement as to applicable cost and charges, make available the utilities where such utilities are within the control of ACODA and ACODA has capacity to provide.
 - c) where ACODA is not able to provide the electricity supply to the Access Seeker, the Access Seeker shall be entitled to bring and install its own generator at the Shared Space at the Designated Tower or Associated Tower Site.

4.2. To Permit ACODA to Enter and View Condition

- 4.2.1. The Access Seeker shall permit the ACODA and his agents, servants and contractors, to enter the portion of the Shared Space under the possession of the Access Seeker which has been enclosed or secured or otherwise not accessible by ACODA (“Secured Shared Space”) at such reasonable times for the purpose of viewing the state and condition thereof or for any other reasonable purpose PROVIDED ALWAYS that the Access Seeker is given a two (2) Business Days prior

written notice. The Access Seeker may at its discretion assign an escort to be present at all times during the time of inspection provided that if the escort is not present within a reasonable time, ACODA shall not be prevented from entering the Secured Shared Space without an escort.

- 4.2.2. Notwithstanding Condition 4.2.1, ACODA shall in the event of an emergency be entitled upon the provision of an advance verbal notice (which shall be followed by a written notice within twenty-four (24) hours) be entitled to enter the said Secured Shared Space and take reasonable actions as the circumstances dictate to address the emergency situation.

4.3. Use of Shared Space

- 4.3.1. The Access Seeker shall only use the Shared Space for the sole purpose of providing its Communication Services and shall not do or permit to be done any act or thing which is illegal or may become a nuisance or give reasonable cause for complaint from the owner or any of the other access seekers in ACODA's Designated Tower or Associated Tower Site or any other buildings adjoining the tower or associated tower site.
- 4.3.2. If the Access Seeker has not complied with Condition 4.3.1, the Access Seeker shall take the necessary rectification or remedial action to address any legitimate complaints made by ACODA or other access seekers in the Designated Tower or Associated Tower Site.
- 4.3.3. The Access Seeker's right to use the Shared Space and the right of access does not entitle the Access Seeker to any proprietary rights or interest whether under statute, common law, equity or any theory of law in any building, land, fixture, other structure or in or to the Designated Tower or Associated Tower Sites save for the Access Seeker's own equipment.
- 4.3.4. Where the Designated Tower or Associated Tower Sites is owned or controlled by a third party ("Infrastructure Site Owner") and the Access Provider's use of the Designated Tower or Associated Tower Sites is pursuant to a tenancy or lease, the Access Provider shall be under no obligation to seek any renewal of the term of the tenancy or lease. The Access Seeker agrees that it shall not seek a tenancy or lease or license to the Designated Tower or Associated Tower Sites from the Infrastructure Site Owner unless ACODA signifies in writing that it is no longer interested in the use of the Designated Tower or Associated Tower Sites or ACODA does not renew or take a lease or tenancy or license of the Designated Tower or Associated Tower Site within six (6) months from the date of expiry.

4.4. Storage

The Access Seeker shall not permit to be kept on the Shared Space or any part thereof:

- a) any materials the storage of which may contravene any ordinance, statute, regulation or by-law;
 - b) any materials the storage of which an increased rate of insurance is usually required;
- or

- c) any explosive, combustible or radioactive substances except for fuel in the generator set.

4.5. Increase in Premium

The Access Seeker shall not do or permit to be done anything which would render the insurance policy or policies with respect to ACODA's Designated Tower or Associated Tower Site on which the Shared Space is located void or voidable or whereby the premium of the said policy or policies may be increased. In the event of an increase in premium or other expenses on renewal of such policy of policies due to a breach or non-observance of this condition by the Access Seeker, the Access Seeker undertakes to repay all sums paid by ACODA including the expenses incurred thereto.

4.6. Repairs

- 4.6.1. In the event of any damage caused to the Shared Space by the Access Seeker, the Access Seeker shall, at its own cost and expense, restore and to forthwith make good within a reasonable time any replacement and/or repair (fair wear and tear excepted) as specified in the notice in writing given by ACODA to the Access Seeker specifying therein all necessary replacements and/or repairs to be affected as may be commensurate with the extent of the damage.
- 4.6.2. If the Access Seeker fails to affect the replacements and/or repairs within the time period stipulated in the notice (which period must be a reasonable time), ACODA may, whether or not together with its workmen, enter the Shared Space and make all necessary replacements and/or repairs to the plant, facilities and equipment. The costs for all such necessary replacements and/or repairs shall be a debt due from the Access Seeker and shall be recoverable by ACODA save where the replacements and/or repairs were due to the natural failure of the structure or due to the Access Provider.

4.7. Tenantable Condition

The Access Seeker shall keep the Shared Space and the interior thereof including the flooring and interior plaster or other surface material or rendering on walls or ceilings and ACODA's fixtures thereon including doors, windows, glass shutters, locks, fastenings, electric wires, installations and fittings for electricity supply and other fixtures and additions and other goods therein including the items specifically attached thereto, if any, in good and tenantable repair and condition (reasonable wear and tear excepted).

4.8. Consents, Licenses and Approvals

- 4.8.1. The Access Seeker shall be fully responsible to obtain all relevant consents, permits, approvals and licenses from third parties and governmental authorities or agencies to carry out/provide its Communications Services at the Shared Space including operating and using all equipment, systems, cables, links and devices.
- 4.8.2. The Access Seeker shall further observe and comply with all relevant laws, by-laws, rules and regulations affecting the Access Seeker which are now in force or which may hereafter be enacted.

- 4.8.3. The Access Seeker shall further observe and perform and cause all its employees, independent contractors, agents or invitees to observe and perform all rules and regulations made by ACODA (and which rules and regulations equally apply to all access seekers) from time to time and notified to the Access Seeker in writing Provided Always that ACODA shall not be liable to the Access Seeker in any way for violation of the rules and regulations by any person including the Access Seeker or its employees, independent contractors, agents or invitees save where ACODA has been negligent.

4.9. Installation of Equipment

- 4.9.1. The Access Seeker shall ensure that all equipment, system or devices on the Shared Space shall:
- a) be type-approved and comply with all relevant laws and regulations;
 - b) not cause any frequency interference to any other access seekers' equipment or services provided in or around the Shared Space. Where the Access Seeker's equipment causes frequency interference to the other access seekers' equipment or services provided in or around the Shared Space, the Access Seeker shall immediately (and in any event no longer than 24 hours) take all such necessary steps to stop any such interference;
 - c) be electromagnetically compatible in accordance with the prescribed standards and shall not cause electromagnetic interference to any other access seekers' equipment or services provided in or around the Shared Space. Where the Access Seeker's equipment causes electromagnetic interference to other access seekers' equipment or services provided in or around the Shared Space, the Access Seeker shall immediately (and in any event no longer than 24 hours) take all such necessary steps to stop any such interference; and/or
 - d) not be connected to any equipment belonging to ACODA without the written consent from ACODA.
- 4.9.2. In the event that:
- a) the Access Seeker fails to fulfil its obligations under this Condition 4.9.1; or
 - b) the equipment, system or devices of the Access Seeker is or poses an imminent threat or danger to the public health and safety or the Access Provider and/or other access seeker's facilities, equipment, device or system,
- ACODA may direct the Access Seeker to take such remedial action as may be necessary to remedy such breaches including temporary shutting down of the equipment, system or devices.
- 4.9.3. The Access Seeker shall only be permitted to install its equipment, system and/or devices (which shall include any equipment, system and/or devices leased or hired to be used solely for its Communications Services) on the Shared Space for the provision of its Communications Services and shall not be permitted to install any other operator's equipment, system and/or devices on the Shared Space without the prior written approval of ACODA.

- 4.9.4. The Access Seeker shall not damage, tamper, modify, alter or handle any equipment, system or devices belonging to ACODA or any other access seeker in the Shared Space without the prior written approval of ACODA and/or the other access seeker.
- 4.9.5. The Access Seeker is responsible for insuring its equipment and shall purchase the necessary insurances when carrying out any works including installation works on ACODA's Designated Tower or Associated Tower Sites. In particular, the Access Seeker shall obtain or procure an Erection All Risks insurance against all risks of physical loss or damage to the Access Seeker's work whereby ACODA is a named insured (either solely or jointly) in the insurance policy and the insurance shall be in the amount which is sufficient to insure the full value of the works carried out by the Access Seeker.

4.10. Installation of Electrical Points and Plumbing Connection

The Access Seeker shall install any electrical sockets, plugs or electrical power points or electrical motor or engine or appliances or make any additional plumbing connections on or to the Shared Space after obtaining the written consent of ACODA.

4.11. Safety and Health and Security Procedures

- 4.11.1. 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. Any failure to comply with OSHA by the Access Seeker shall be rectified immediately and if required by ACODA, the Access Seeker shall comply with all actions specified by ACODA including to cease or suspend work or to disconnect their Equipment from the power supply or source.
- 4.11.2. 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 ACODA within twenty-four (24) hours from the time of the occurrence.
- 4.11.3. The Access Seeker shall comply and cause its employees, agents and contractors to comply with all guidelines, rules and regulations issued by ACODA, if any (and which guidelines, rules and regulations equally apply to all access seekers) 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 undertake all such necessary measures to prevent unauthorized access to the Shared Space.

4.12. Sub-letting and Assignment

The Access Seeker shall not sub-let, assign or part with the possession of the Shared Space without the prior written approval of ACODA. Where ACODA allows the Access

Seeker to sub-let the Shared Space, the Access Seeker shall be fully responsible for the acts and omission of its sub-lessee and shall ensure that its sub-lessee complies with all the Access Seeker's obligations with respect to the Shared Space under this Agreement.

4.13. Maintenance of Equipment

- 4.13.1. The Access Seeker shall be responsible for the operation and maintenance of its Equipment, system and/or devices at the Shared Space.
- 4.13.2. ACODA shall not be responsible for any damage to the Access Seeker's Equipment, system and/or devices at the Shared Space caused by fire, water leakage, air-conditioning/mechanical ventilation failure, power fluctuation/interruption and/or by any other causes or reasons unless due to ACODA's negligence.
- 4.13.3. In the operation and maintenance of the Equipment, systems and/or devices at the Shared Space, the Access Seeker must:
- a) take such other action as a reasonably prudent Access Seeker would in operating and maintaining its Equipment, systems and/or devices;
 - b) keep the Shared Space in a tidy and safe condition at all times; and
 - c) ensure that flammable or toxic material is not left in or around the Shared Space following maintenance and/or other operations.
- 4.13.4. If a fault, defect or problem with the Access Seeker's Equipment, systems and/or devices at the Shared Space causes or may cause damage to the Shared Space and/or to ACODA's and other access seeker's equipment and/or facilities, the Access Seeker must notify
- ACODA in writing as soon as practicable and repair the fault, defect or problem or take other appropriate corrective action immediately to ACODA's satisfaction.
- 4.13.5. If the Access Seeker detects a fault, defect or problem in the Shared Space, it must notify ACODA as soon as possible.

5. ACODA's Obligations

5.1. Exclusive Possession

The Access Seeker recognizes that it does not have exclusive possession of the Shared Space since ACODA occupies the Shared Space and may sub-let or intend to sub-let the Shared Space to other parties. However, the ACODA agrees that it shall not tamper or handle any or interfere with equipment, system or devices belonging to the Assess Seeker at the Shared Space for the duration of the Infrastructure Sharing unless an emergency situation arises and immediate notice has been given to the Access Seeker.

5.2. Payment of Quit Rents, Rates and Taxes

ACODA will pay all quit rents, rates (save for utilities), taxes, assessments which are or

may hereafter be charged upon the Shared Space. Any increase in quit rent, assessment, taxes or rates on the Shared Space after the date hereof shall be borne between ACODA and all access seekers in proportion to their usage of space.

5.3. Physical access

- (a) Subject to Condition 5.3(b), the Access Provider shall allow an Access Seeker, its employees and contractors to physically access the Access Provider's network facilities/premises for the purpose of installing, commissioning, modifying, maintaining, repairing, decommissioning and/or removing its Equipment, twenty-four (24) hours a day seven (7) days a week, provided always, the Access Provider is given five (5) Business Days prior written notice.
- (b) Where access to the Access Provider's network facilities/premises is required for emergency maintenance and repairs, the Access Seeker shall provide the Access Provider with a verbal notice on the day access is required and a facsimile confirmation within twenty-four (24) hours.
- (c) Notwithstanding Condition 5.3(a) and 5.3(b) above, access to the Access Provider's network facilities/premises shall at all times be subject to the terms and conditions of the respective tenancy agreement which shall be made known to the Access Seeker by the Access Provider at the time of fulfillment of an Order.

5.4. Escorts

If the Access Provider determines that it is necessary to have an escort present when employees or contractors wish to enter onto the Access Provider's property, the Access Provider shall:

- (a) make such escort service available at all times during ordinary business hours;
- (b) have such escort service on call (with no longer than a thirty (30) minute response time to attend at the Access Provider's property) outside ordinary business hours; and
- (c) bear the costs of such escort service.

5.5. Absence of escort

- 5.5.1. For the purposes of Condition 5.4, if an escort does not arrive at the Access Provider's property within 30 minutes or any time mutually agreed of the scheduled commencement of the visit by the Access Seeker, the Access Seeker's staff may proceed to enter the Access Provider's property without an escort subject to the terms and conditions of any tenancy agreement.
- 5.5.2. If the tenancy agreement requires that the Access Seeker be escorted by the Access Provider in order to gain physical access to the Access Provider's Network Facilities, the Access Provider shall escort the Access Seeker.

5.6. ACODA's Covenant

5.6.1. In the event that:

- a) ACODA is required by the relevant authorities to dismantle the infrastructure on the Designated Tower or Associated Tower Site; or
- b) any government or State authority or owner/landlord of the land on which the Designated Tower resides, requires ACODA to vacate the land on which the Designated Tower resides for whatsoever reason,

such that the Access Seeker is not able to install its equipment, system or devices thereon or to provide its Communication Services in the Shared Space, the Access Seeker and/or ACODA may, notwithstanding the minimum term, terminate the Infrastructure Sharing at Shared Space without liability. The Operators agree that the remedies set out in this Condition 5.3 shall be the only remedy against ACODA and ACODA shall not be liable to the Access Seeker for any damages, costs and/or expenses including but not limited to the costs of dismantling and removing the Access Seeker's equipment, system or devices. However, ACODA will use its reasonable endeavors to offer the Access Seeker other suitable Designated Tower or Associated Tower Sites subject to availability.

- 5.6.2. Where ACODA is required by any governmental authority or agency or any state backed company to sell or dispose the Designated Tower to the governmental authority or its nominated person or entity, ACODA will use its endeavors (but does not guarantee that it will be able) to sell the Designated Tower subject to any existing rights of the Access Seeker to use the Shared Space on the Designated Tower. However, where the third-party purchaser requires that the Access Seeker vacate the Shared Space prior to the sale of the Designated Tower, the Access Seeker shall dismantle its equipment, system and devices and vacate the Shared Space prior to the sale of the said Designated Tower to the third party unless a separate arrangement is reached between the Access Seeker and the third party purchaser. ACODA shall use its reasonable endeavor (but does not guarantee that it will be able) to procure from third party purchaser adequate time for the Access Seeker to dismantle its equipment, system and devices. Any advance payment will be refunded on a pro-rated basis by issuing a credit note. The Operators agree that the Access Seeker and/or ACODA may, notwithstanding the minimum term, terminate the Infrastructure Sharing at Shared Space without liability. The Operators agree that the remedies set out in this Condition 5.3 shall be the only remedy against ACODA and ACODA shall not be liable to the Access Seeker for any damages, costs and/or expenses including but not limited to the costs of dismantling and removing the Access Seeker's equipment, system or devices.

6. Vacating the Shared Space

- 6.1. The Access Seeker shall on the expiration or termination of the Infrastructure Sharing at each Shared Space, at its own cost and expense, remove all its equipment, system and devices which may have been installed by the Access Seeker and to peaceably and quietly yield up the Shared Space to ACODA with all ACODA's fixtures and additions thereto in good and tenable repair and condition in accordance with the covenants herein

contained.

6.2. The Access Seeker shall be given:

- 6.2.1. a grace period of ten (10) Business Days effective from the expiry or termination of the Infrastructure Sharing at the Shared Space; or
- 6.2.2. where the Designated Tower is to be dismantled or ACODA is to vacate the land on which the Designated Tower resides in accordance with Conditions 5.3.1 and 5.3.2, such reasonable grace period as may be specified by ACODA taking into consideration the time lines provided by the relevant authorities or the owner of the land / landlord (including any extension obtained from the relevant authorities or the owner of the land / landlord) to the Access Provider to dismantle the Designated Tower or to vacate the said land provided always that the Access Seeker must vacate the Shared Space earlier than the stipulated time line provided to the ACODA to enable ACODA to comply with the requisite time lines, to vacate the Shared Space, during which no monthly rental will be charged by ACODA. Should the equipment, system or devices not be removed within the grace period, ACODA shall have the right to:
 - a) charge for the use of the Shared Space at the rate of two (2) times the current rental or the cost of reinstatement as debt due and payable; and
 - b) without any liability to the Access Seeker, dispose of the equipment, system or devices in such manner as ACODA deems fit with a one (1) month's written notice. If the Access Seeker fails to settle any debt due for the use of the Shared Space, ACODA shall have a lien on the equipment, system or devices and is entitled to retain such equipment, system or devices or to sell the equipment system or devices at any price in such manner as it deems fit for payment of any such debt and the cost of sale shall be borne by the Access Seeker. ACODA shall be entitled to set off the proceeds from the sale of the equipment, system or devices against any and all debts due by the Access Seeker to ACODA.

SCHEDULE C

CHARGES AND CHARGING PRINCIPLE

PART 1 – INFRASTRUCTURE SHARING

1. General

1.1. Part 1 of Schedule C sets out the charges and the charging principles which would be applicable to Infrastructure Sharing Services.

2. Charges and Charging Principles

2.1. Infrastructure Sharing provided by ACODA shall, only to the extent necessary, be subject to the Charges listed in Table A and Table B below. For the purposes of clarification, all other Infrastructure Sharing Services not listed in Table A and Table B below are negotiated charges

Table A: One Time Charges

Type of	Location	Charges (RM)
Site Acquisition and Technical Site Survey & Report	West Malaysia	4,500
	East Malaysia	6,500
	Island/Highland	5,500 – 7,500
Site Supervision Work	Applicable to all locations	Generally, not required. If required by ACODA due to safety/or security reason, a fee at a mutually agreed price will be imposed

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Table B: Charges and charging principle for on-ground infrastructure

Item	Site Type	Unit of Measurement	Monthly Rental Rate up to 10 years License Term (RM)		
			Single Operator	2 Sharing Operators	3 Sharing Operators
1	Tower, 45m	Per Site/Month	5,500-6,500	3,500-4,500	2,500-3,500
2	Monopole, 45m	Per Site/Month	7,800-8,800	5,250-6,250	3,900-4,900
3	Monopole, 24m/30m	Per Site/Month	5,900-6,900	3,850-4,850	2,800-3,800
4	Lamp Pole, 24m/30m	Per Site/Month	4500-5500	3300-4300	2700-3700
5	Lamp Pole, 18m	Per Site/Month	3,200-4,200	3,000-4,000	2,000-3,000

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APPENDIX 1

List of ACODA's Infrastructure Sharing Sites

No	Stat	Area
1	SELANGOR	Subang Jaya
		Kuala Kubu Baru
		Shah Alam
2	NEGERI SEMBILAN	Nilai
		Seremban
3	SABAH	Keningau

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ANNEXURE I

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made on _____ this day
of _____

BETWEEN

AOCDA TOWERS SDN BHD (Company No. 886804-A), a company incorporated under the laws of Malaysia and having its principle of business at 4807-1-16, CBD Perdana 2, Jalan Perdana, 63000 Cyberjaya, Selangor (hereinafter referred to as **“ACODA”**) of the first part;

AND

[] (**Company No: []**) a company incorporated under the laws of Malaysia and having its registered office at [] (hereinafter referred to as **“the Company”**) of the last part.

ACODA and the Company shall be referred to individually as a **“Party”** and collectively as **“Parties”**.

RECITALS

WHEREAS:

- a) ACODA holds NFP individual license, NSP individual license under the Communications and Multimedia Act 1998 and is authorized to provide access to certain network facilities and network services under its individual licenses.
- b) The Company holds an [] individual and class licenses under the Communications and Multimedia Act 1998 and is authorized to provide access to certain network facilities, network services and/or application services under its individual or class licenses..
- c) ACODA and the Company are considering a proposal for the interconnection of their networks and the provision of agreed access services (**“Project”**).
- d) For the purpose of the Project, it will be necessary and/or desirable for the Parties to disclose to each other various Confidential Information and the Parties have provided and will further provide information including but not limited to financial information, trade secrets and proprietary know how for the purpose of or in connection with the Project.

- e) The Parties hereby agree to enter into this Agreement to regulate their intention and understanding with respect to maintaining and preserving all Confidential Information that are to be disclosed and which transpired between the Parties in relation to the Project subject to the terms and conditions hereinafter appearing.

NOW THIS AGREEMENT WITNESSETH as follows:

1. DEFINITION

“Confidential Information”

The Parties hereby agree that for the purposes of this Agreement, Confidential Information shall mean and include:

a) information of whatever nature relating to the Disclosing Party which is obtained by the Receiving Party and/or its Representatives in written, pictorial or oral form from or pursuant to discussions, negotiations and/or correspondences with any of the Representatives of the Disclosing Party;

a) information of whatever nature relating to the business of the Disclosing Party obtained by observation during visits to the Disclosing Party’s premises.

b) analysis, compilations, studies and other documents prepared by the Receiving Party, its officers, employees, agents or professional advisers which contain or otherwise reflect or are generated from the information specified (a) and (b) above; and

c) all information made available by the Disclosing Party to the Receiving Party in connection with directly or indirectly to this Agreement and the fact that discussions, negotiations and/or correspondences are taking, or have taken place in respect of the Contract or any of the terms, conditions or other facts with respect to any other offer.

Without limiting the generality of the foregoing, the expression Confidential Information shall also include all facts, data, specifications, drawings, reports, accounts, expressions of views, board papers, processes, formulae, matters of a technical nature, research and development information, business records, notes, products, know-how, trade secret, secret information, engineering, manufacturing, planning, employee details or other

	or in any other form disclosed and/or supplied by the Disclosing Party to the Receiving Party;
“Disclosing Party”	means the Party from whom the Confidential Information originates and is disclosed to the Receiving Party;
“Government Agency”	means any federal, state, municipal or local government or regulatory department, body, political subdivision, commission, instrumentality, agency, ministry, court, judicial or administrative body, taxing agency or other agency having jurisdiction over either Party or the Contract;
“Project”	has the meaning ascribed in Recital (C);
“Receiving Party”	means the Party to whom the Confidential is given or disclosed; and
“Representatives”	mean the directors, officers, employees, affiliates, agents and representatives including without limitation financiers, brokers, advisors, lawyers and accountants.

2. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION

- 2.1. In consideration of the disclosure of the Confidential Information by the Disclosing Party or any third party on behalf of the Disclosing Party to the Receiving Party, the Receiving Party undertakes:
- a) to maintain the Confidential Information in strict confidence and to use it only for the purpose of or in connection of the Project;
 - b) not to use any Confidential Information disclosed to it by the Disclosing Party for its own use or any other purpose or in a manner detrimental or competitive to the Disclosing Party;
 - c) to disclose the Confidential Information only to such of its Representatives who have a need to know or whose services are reasonably required in connection with the Project and further, where disclosure is made to its Representatives, such disclosure is made on their written undertaking to comply with the confidentiality obligations in this Agreement;
 - d) to promptly notify the Disclosing Party in writing of the names of the Representatives involved in the Project upon request being made by Disclosing Party at any given time;
 - e) to apply no lesser security measures and degree of care to the Confidential

Information than those which it applies to its own confidential or proprietary information and the Receiving Party further undertakes to provide adequate protection of such Confidential Information from unauthorized access, copying or use;

- f) not to copy reproduce and/or reduce to writing or any form of recording the Confidential Information or any part thereof except as may be reasonably necessary for the Project; and
- g) not to remove any documents, files, records, correspondence, notes or other papers (including copies) of the Confidential Information from the Disclosing Party' premises, save and except with the written permission of an authorized Representative of the Disclosing Party and shall promptly return all such documents, files, records, correspondence, notes or other papers (including copies) of the Confidential Information to the Disclosing Party upon request by the Disclosing Party or on the completion of the Project.

2.2. Each Party agrees and undertakes with the other that it shall not without the prior written consent of the other Party disclose to any person (other than its Representatives and only on a need to know basis) the fact that the Confidential Information exists or has been made available, that it is in negotiations, discussions and consultation with the other Party in regard to the Proposal or any other proposal or transaction involving the other Party, or that discussions or negotiations are taking or have taken place concerning the Project or any term, condition or other fact relating to the Project or such discussions or negotiations, including, without limitation, the status thereof.

2.3. The obligations imposed upon the Parties herein shall not apply to information which:

- a) is in the possession of the Receiving Party at the time of disclosure as shown by the Receiving Party's use or files and records prior to the time of disclosure; or
- b) prior or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any breach of this Agreement by the Receiving Party; or
- c) is approved in writing for release by the Disclosing Party; or
- d) is independently developed by the Receiving Party; or
- e) is disclosed pursuant to a requirement or request of a Government Agency or law but only to the extent so ordered.

3. RETURN OF MATERIALS

3.1 The Receiving Party shall immediately return to the Disclosing Party (or destroy, where delivery is not physically possible) all Confidential Information held by it or which is under its control, and all notes, calculations or summaries or other material derived or produced partly or wholly from any of the Confidential Information and any or all computer records

(including copies, reproductions and recordings of them) derived or produced partly or wholly from any of the Confidential Information and shall, if requested by the Disclosing Party, provide to the Disclosing Party an undertaking from a duly authorized officer of the Receiving Party that to his personal knowledge all such records have been delivered, erased or destroyed in the following circumstances:-

- a) when the Confidential Information is no longer required for the Project;
- b) on the demand of the Disclosing Party if the Receiving Party is in breach of this Agreement;
- c) if ordered by a court; or
- d) at the expiration of the period (if any) during or for which the Disclosing Party has agreed that the Receiving Party may have or continue to receive the Confidential Information.

4. DISCLAIMER AND WARRANTY

- 4.1 The Disclosing Party reserves all rights in its Confidential Information and no rights or obligations other than those expressly provided by this Agreement are granted or are to be implied from this Agreement. On receipt of a written request from the Disclosing Party, the Receiving Party shall, at its own cost and expense, forthwith return to the Disclosing Party or destroy (and in the latter case confirm the destruction in writing) all Confidential Information including all Confidential Information contained in original documents or copies of documents and all copies made, if any. In addition, any computer disk, or any other information stored on computer or any documents prepared by the Receiving Party or its Representatives which incorporate any of the Confidential Information shall be destroyed or returned to the Disclosing Party or dealt with as the Disclosing Party may direct.
- 4.2 The Disclosing Party warrants that it is lawfully entitled to disclose its Confidential Information to the other Party and to authorize the other Party to use the same for the Purpose and that the Confidential Information has not been provided in breach of any arrangement with third parties.
- 4.3 The Disclosing Party does not represent nor warrant that the Confidential Information disclosed shall be accurate and complete at the time of disclosure.

5. PATENT OR COPYRIGHT INFRINGEMENT

Nothing in this Agreement is intended to grant any rights to the Receiving Party under any patent or copyright, nor shall this Agreement grant the Receiving Party any rights in or to the Disclosing Party's Confidential Information except for the limited right to review such Contract as provided herein.

6. REMEDIES

- 6.1. The rights, powers and remedies provided in this Agreement are cumulative and do not exclude the rights, powers or remedies provided by law and equity independently of this Agreement.

- 6.2. The Receiving Party agrees that the obligations of the Receiving Party provided herein are necessary and reasonable in order to protect the Disclosing Party and its business and that the Receiving Party acknowledges that damages are not a sufficient remedy for any breach of this Agreement and that the Disclosing Party is entitled to seek specific performance or preliminary or permanent injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Receiving Party or its Representatives, in addition to any other remedies available at law or equity including but not limited to any claim for damages or loss **PROVIDED THAT** any losses which are not reasonably foreseeable but which the Receiving Party shall have been duly informed in writing by the Disclosing Party of the possibility of such losses occurring shall also be recoverable.
- 6.3. The Receiving Party hereby consents to the institution of proceedings for such relief by the Disclosing Party and the grant of any such relief by a competent court of law.
- 6.4. In the event of litigation relating to the matters contained herein, if a court of competent jurisdiction determines in a final, non-appealable order that this Agreement has been breached by the Receiving Party or its Representatives, the Receiving Party shall reimburse the Disclosing Party for all costs and expenses (including without limitation, legal fees and expenses) incurred in connection with all such litigation.

7. CONFIDENTIALITY

Each Party agrees to keep the existence and nature of this Agreement confidential and not to use the same or the name of the other Party in any advertisement or other disclosure with regard to this Agreement without the prior written consent of the other Party.

8. PERIOD OF OBLIGATION

The obligation of the Receiving Party in respect of disclosure and use of the Confidential Information acquired from Disclosing Party shall continue and survive the expiry and/or termination of this Agreement.

9. NOTICES

- 9.1. All notices under this Agreement shall be in writing and shall be sent personally by hand or by facsimile or electronically or registered or recorded delivery post to the Party being served at its address as specified hereunder or such other address of which such Party shall have given notice as aforesaid, and marked for attention of that Party's signatory of this Agreement. Unless the contrary shall be proved each such notice or communication shall be deemed to have been given or made and delivered:
- a) if by letter, seventy-two (72) hours after posting; or
 - b) if by hand or by courier, when delivered, or
 - c) if by facsimile transmission, one (1) hour after its transmission if such time is during business hours in the place of its receipt or, if it is not, on the opening of business on the next succeeding business day in the place of its receipt Provided

That the sender has an answerback confirmation and print-out copy of the transmission report generated by the facsimile machine from which such notice was sent that the document has been successfully transmitted

9.2. The correspondence address and facsimile number of the Parties are as follows: -

ACODA TOWERS SDN BHD

Attention : Director

Address : 4807-1-16,
CBD Perdana 2,
Jalan Perdana,
63000 Cyberjaya, Selangor

Telephone No. :+603 2727 7500

Facsimile No. :+603 2727 7508

[COMPANY NAME]

Address: []

Telephone No.: []

Facsimile No. : []

Attention : []

10. SUCCESSORS BOUND

This Agreement shall be binding on the successors-in-title and permitted assigns of the Parties.

11. NON-ASSIGNMENT

This Agreement is personal to the Parties and shall not be assigned or otherwise transferred in whole or in part by the Parties unless with the prior written consent of the other Party.

12. WAIVER

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by any Party of breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provisions.

13. APPLICABLE LAW AND JURISDICTION

The laws of Malaysia shall be applied to this Agreement and each Party agrees to submit to the exclusive jurisdiction of the Malaysian courts.

14. TIME

Time wherever mentioned in this Agreement shall be of the essence.

15. NO OBLIGATION

This Agreement does not restrict either Party from developing new or improved products or services, and marketing the same. Nothing in this Agreement shall be construed as an obligation by either Party to enter into any contract, agreement or other business relationship with any other party.

16. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement and understanding among the Parties with respect to the Confidential Information and supersedes all previous agreements, understandings and undertakings between them relating to it.

17. AMENDMENT

No amendment, variation, modification, replacement or alteration of any terms and conditions set forth in this Agreement shall be effective unless it is made in writing and mutually agreed and consented by all the Parties.

18. SEVERABILITY

Any provision of this Agreement which is invalid or unenforceable by law shall be effective to the extent of such invalidity or unenforceability only without affecting the remaining provisions thereof. Notwithstanding the foregoing, the Parties shall there upon negotiate in good faith in order to agree to the terms of mutually satisfactory provisions to be substituted for the provisions which are found to be void and unenforceable by applicable law.

19. COSTS

- 19.1. Each Party shall bear its own costs and expenses arising out of the preparation and execution of this Agreement.
- 19.2. Stamp duty shall be borne by the Company.

20. NON-PUBLICITY

No Party shall disclose to any third party the existence or contents of this Agreement, or the

