



**NAZA COMMUNICATIONS SDN BHD**

**REFERENCE ACCESS OFFER (“RAO”)**

**AS AT 15 MAY 2023**

## **CHAPTER 1 INTRODUCTION, BACKGROUND AND SCOPE**

### **1.1 Introduction**

This Reference Access Offer (“RAO”) is made by Naza Communications Sdn Bhd (Company no. 200901023533) (“NCSB”), a company incorporated in Malaysia with its business address at Ground Floor, NAZA Automall Lot 1, Jalan 51A/221, Seksyen 51A, 46100 Petaling Jaya, Selangor (“the Access Provider”). The Access Provider is a licensed individual network facilities provider under the Communications and Multimedia Act 1998 (“Act”).

The Reference Access Offer is hereby referred to as NCSB’s RAO pursuant to Section 5.3.3 of the Commission Determination on the Mandatory Standard of Access, Determination No.1 of 2022 (“MSA”).

The Commission has issued the MSA and this RAO is prepared in compliance to subsection 5.3.3 of the MSA.

### **1.2 Background And Scope**

1.2.1 This RAO:

- a) Contains terms and conditions which are consistent with the rights and obligations set out in the MSA; and
- b) Does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA.

1.2.2 This RAO sets out the terms and conditions on which the Access Provider shall provide the Access Service to an Access Seeker. This RAO is not an offer to enter into a legally binding contract but merely a reference document that details the terms and conditions on which the Access Provider is prepared to provide the Access Service to the Access Seeker by entering into an Access Agreement.

1.2.3 For services outside the scope of this RAO, the terms and conditions thereof shall be negotiated separately between the parties.

1.2.4 The Access Provider considers that this RAO is consistent with:

- a) The Standard Access Obligations stipulated under Section 4.1.1 of the MSA and section 149 of the Act; and
- b) The principle of non-discrimination stipulated under Sections 4.1.5 and 4.1.6 of the MSA.

1.2.5 Where relevant, the rights and obligations set out in the MSA shall be applicable to this RAO.

### **1.3 Amendment To NCSB’s RAO**

1.3.1 NCSB shall provide a copy of the amendments or an amended copy of NCSB’s RAO twenty (20) Business Days before NCSB 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 NCSB's existing RAO; and
- b) The Access Seeker who has requested NCSB'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.

1.3.2 An amendment to NCSB's RAO will be deemed to alter the relevant terms and conditions of an Access Agreement which is based on NCSB's RAO. For clarification:

- i. Nothing in subsection 5.4 of this RAO prevents an Access Seeker from initiating a dispute in relation to an amendment to the RAO made by NCSB under this subsection;
- ii. Where the terms and conditions of an Access Agreement are identical to those in the existing RAO, an amendment to the RAO will not alter the terms of that Access Agreement except as agreed between NCSB and the Access Seeker; and
- iii. Without prejudice to an Access Seeker's right to dispute a change to a RAO, where the terms and conditions of an Access Agreement are identical to those on 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 amendments to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favour of NCSB.

## 2 CHAPTER 2 DEFINITIONS AND INTERPRETATION

### 2.1 Definition

The following words have these meanings in this RAO unless the contrary intention appears:

**“Act”** means the Communications and Multimedia Act 1998 and any subsequent amendments thereto.

**“Access Agreement”** means an agreement:

- a) Entered into between the NCSB and the Access Seeker pursuant to this RAO; or
- b) Which is commercially negotiated between the Operators, which terms therein contained and registered with the Commission in accordance with Section 150 of the Act.

**“Access Charges”** means the sum payable under the Access Agreement and/or this RAO agreed by the Operators to be paid by the Access Seeker to the Access Provider for providing the Access Service.

**“Access List”** means the Commission Determination on Access List, Determination No. 6 of 2021 which came into operation on 15 December 2021 and which revoked the Commission Determination on Access List, Determination No.2 of 2015, and any subsequent amendments thereto which sets out a list of Facilities or Services determined by the Commission under section 146 of the Act.

**“Access Provider”** in this RAO means the Access Provider stated in the cover of this RAO who is a network facilities provider who owns or provides network facilities listed in the Access List and who is a licensee as defined in the Act. For the purpose of clarification, in this RAO the Access Provider is “NCSB”.

**“Access Request”** means a request for access to Facilities or Services on the Access List made by the Access Seeker to the Access Provider and containing the information in Section 4 hereof.

**“Access Seeker”** means an Operator who is a network facility provider, network services provider, application services provider or content application service provider and also is a licensee as defined in the Act who makes a written request for access to Facilities or Services, listed in the MSA.

**“Access Service”** means the network facilities specified in this RAO that are provided by the Access Provider to the Access Seeker pursuant to an Access Request and upon terms and conditions in the relevant Access Agreement.

**“Associated Tower Site”** means the land owned, leased or tenanted by the Access Provider surrounding or on which the Tower is situated at or built on including space at the base of the Tower to install Equipment thereat and includes the necessary right-of-way and permission to dig.

**“Bank Guarantee”** means the guarantee executed in favour of the Access Provider on behalf of the Access Seeker by a bank approved by the Access Provider in a format acceptable to the Access Provider.

**“Billing Dispute”** means the dispute of any 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 purpose of billing as contemplated under Chapter 6 hereof, 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 in states where Friday is observed as the weekly holiday, Friday and Saturday or a day which is lawfully observed as a national and/or state public holiday.

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

**“Commission”** means the Malaysian Communication and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998.

**“Communication”** means any communications, whether between persons and persons, things and things, or person 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.

**“Communication 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 confidential agreement entered into between the Operators in accordance with Section 5.3.8 of the MSA, a sample of which is enclosed as Annexure 2 hereof.

**“Creditworthiness Information”** means the information required by the Access Provider to assess the creditworthiness of the Access Seeker which is more particularly described in Clause 4(d) of this 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 by means of that Operator’s Facilities or Services.

**“Determination”** means any lawful determination made by the Commission, 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, unless otherwise agreed between the Operators.

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

**“Facility(ies)”** means network facilities and/or other facilities which facilitate the provision of network services or applications services including content applications service.

**“Handover Date”** means the date on which access to the Tower and Associated Tower Site is given to the Access Seeker for installation of the Equipment at that site.

**“Handover”** shall be construed accordingly.

**“High Priority Area”** means each of the following locations, facilities or areas:

- (a) Federal and State Government administration centres;
- (b) Transportation hubs, including MRT stations, airports, train stations;
- (c) Transportation lines or routes, including railways and highways;
- (d) High economic impact areas, including industrial parks and economic corridors;
- (e) Identified Government projects under RMK-12;
- (f) Jalinan Digital Negara (JENDELA) projects;
- (g) Areas identified by the Commission or Government as “high priority” for 5G deployment;
- (h) Any other location, facility or area where an Access Provider has been granted the exclusive right to install, supply access to, or maintain, any Facilities or Services.

**“Infrastructure Sharing”** means an Access Service which comprises the provision of physical access, which refers to the provision of space at specified Tower and Associated Tower Site to enable an Access Seeker to install and maintain its Equipment.

**“Insurance Requirement”** means the insurance requirement required by the Access Provider pursuant to clause 4.4 hereof.

**“Invoice”** means the invoice for amount due in respect of the supply of Access Service during a Billing Period.

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

**“Minimum Value”** for the purposes of calculating the Security Sum means the total estimated value of access to the requested Facilities and Services provided (based on the most recent amounts invoiced for those requested Facilities and Services) or to be provided by the Access Provider to the Access Seeker for a ninety (90) day period.

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

**“MSA”** means the Commission Determination on the Mandatory Standard of Access, Determination No.1 of 2022 which came into operation on 1 November 2022 and any subsequent amendments thereto.

**“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 the Access Provider and the Access Seeker collectively.

“**Other Operator**” means either the Access Provider or the Access Seeker, as the context requires.

“**Project**” means the procurement, design, construction, erection, installation, acceptance testing, project management, maintenance and renting and/or licensing of the Tower to be erected on the Associated Tower Site.

“**RAO**” means this RAO prepared and maintained by the Access Provider for each Facility and/or Service listed in the Access List which it provides to itself and the Licensees.

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

“**RM**” means Ringgit Malaysia which shall be the monetary currency used in this RAO unless otherwise provided.

“**Security Sum**” means the security either in the form of a Bank Guarantee or cash, provided or to be provided by the Access Seeker to the Access provider for the supply of the Access Service which amount is equivalent to the Minimum Value.

“**Services(s)**” means network services and/or other services, which facilitate the provision of network services or applications services, including content applications services.

“**Site License Offer**” or “**SLO**” shall mean the form set out in the Annexure 3 hereof executed by the Operators pursuant to this RAO and the Access Agreement.

“**SST**” means the Sales and Service Tax or whatsoever taxes called by whatever named charged by the Government of Malaysia for the supply of good and/or services provided hereunder.

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

“**Technical Proposal**” means the Technical Specifications proposed by an Access Seeker for a Tower and its Associated Tower Site.

“**Technical Specifications**” means any technical parameters, specifications and procedures applicable to a Tower and its Associated Tower Site.

“**Tower**” means the telecommunication tower belonging to the Access Provider to be utilised by the Access Seeker to install Equipment thereat.

## 2.2 Interpretation

In this RAO, except where the contrary intention appears:

- a) The singular includes the plural and vice versa;
- b) a document includes all amendments or supplements to that document, or replacements or novation of it;

- 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 relating thereto or in connection therewith;
- d) a reference to a person includes a firm, body corporate, unincorporated association or an authority;
- e) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- 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 before the close of business at 5.00pm on that particular day or Business Day;
- g) a reference to a related body corporate of an Operator has the same meaning as in the Companies Act 2016; and
- h) Headings are included for convenience and do not affect the interpretation of NCSB's RAO.

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### 3 PRINCIPLES OF ACCESS

#### 3.1 The Access Service

3.1.1 The Access Service provided by the Access Provider under this RAO are:

- a) Infrastructure Sharing whereby subject to the terms of the Access Agreement and/or the terms stated hereunder and the Access List, the Access Provider shall provide the Access Seeker space at its existing Tower and Associated Tower Site to enable the Access Seeker to install and maintain its Equipment.

3.1.2 NCSB shall if requested to do so by an Access Seeker, supply the Access Service to the Access Seeker on reasonable terms and conditions.

3.1.3 NCSB shall only provide Infrastructure Sharing service where:

- a) Access Request had been made by an Access Seeker to NCSB and the Access Provider has accepted the said Access Request;
- b) NCSB is the legal owner of the Tower;
- c) The Access Seeker has the appropriate License to operate the service for the purpose for which the Equipment is to be installed;
- d) There is spare capacity at the relevant Tower and Associated Tower Site;
- e) Any new installation by the Access Seeker will not exceed the structural loading of the relevant Tower;
- f) Access Agreement had been entered into between the Operators; and
- g) There are no circumstances disallowing NCSB from providing the Access Service.

3.1.3A NCSB shall only provide Infrastructure Sharing service where:

- a) Access Request had been made by an Access Seeker to NCSB and NCSB has accepted the said Access Request;
- b) NCSB is the legal owner of the Tower;
- c) The Access Seeker has the appropriate License to operate the service for the purpose for which the Equipment is to be installed;
- d) There is spare capacity at the relevant Tower and Associated Tower Site;
- e) Any new installation by the Access Seeker will not exceed the structural loading of the relevant Tower;
- f) Access Agreement had been entered into between the Operators; and
- g) There are no circumstances disallowing NCSB from providing the Access Service.

- 3.1.4 An Access Seeker may not request for access to Access Service where the requested Access Service is to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.
- 3.1.5 Consistent with Government policy and Determinations by the Commission (and its predecessor), where the Access Provider provides the Access Seeker with access to the Access Service, the Access Charges for the requested Access Service shall be negotiated between the Operators.
- 3.1.6 Infrastructure Sharing for Tower and Associated Tower Site shall be for a minimum period of three (3) years, unless mutually agreed between the Operators.
- 3.1.7 In the event the following information are not provided for in this RAO, NCSB shall provide an Access Seeker with the following information within ten (10) Business Days of its written request for the provision of access:
- a) Any supplementary details of Access Service offered by NCSB not included in the RAO, including details concerning all POIs and other locations (including sites deemed to be critical national information infrastructure and other secure sites) at which physical co-location, virtual co-location or in-span interconnection is available to Access Seeker;
  - b) Any supplementary access charges for Access Service not included in the RAO (for example, discounts for inferior service levels or surcharges for enhanced service levels).
  - c) All supplementary technical information relating to the Access Service which may be the subject of the Access Request, which are not included in the RAO, including but not limited to any physical and logical interfaces of its Network necessary to allow the development and deployment of communications services, value-added services and communications equipment that can interconnect to, and interoperate with the Access Provider's Network;
  - d) Supplementary details of the NCSB's operational processes and procedures not included in the RAO (e.g. regarding escorted access at sites deemed to be critical national information infrastructure or other secure sites);
  - e) Supplementary details of NCSB's provisioning cycles not included in the RAO and any impact such cycles may have upon an Access Request by the Access Seeker (e.g. capacity constraint);
  - f) Details of the NCSB's alternatives quality of service targets not included in the RAO and actual achievements of service targets in respect of the Access Service which may be the subject of the Access Request;
  - g) Any security requirements, insurance requirements and creditworthiness information required by the Access Provider under subsections 4.2, 4.3 and 4.4 of this RAO; and
  - h) The NCSB's reasons for failing to supply any of the information referred to in paragraph 3.1.8 (a) to 3.1.8 (g) of subsection 3.1.8 of this RAO.

- i) NCSB's description of the Access Service that may be supplied to the Access Seeker, such description to be consistent with the description (if applicable) of the Facilities' and Services on the register of Facilities and Services included in the Access List (as maintained by the Commission pursuant to Section 148 of the Act);
- j) The application forms required to be completed by the Access Seeker to apply for the Access Service;
- k) The Confidentiality Agreement required to be executed by the Access Seeker;
- l) The Access Provider's current Access Charges;
- m) Details of the basis for the Access Charges;
- n) Prior to the provision of information under subsection 3.1.8 of this RAO, NCSB may request the Access Seeker to enter into a confidentiality agreement in accordance with Annexure 2 of this RAO.

## 4 ACCESS REQUEST PROCEDURES

### 4.1 Access Request

- 4.1.1 NCSB may require an Access Seeker to provide an Access Request to NCSB if:
- a) There is no Access Agreement in force between NCSB and the Access Seeker governing access to Access Service to which the Access Seeker seeks access; or
  - b) There is such an Access Agreement but:
    - i. The current term of that Access Agreement will expire or terminate within the next four (4) months; or
    - ii. the requested Access Service are outside the scope of that agreement.
- 4.1.2 NCSB shall develop a process for field studies and Service Qualification that an Access Seeker may take up prior to entering into an Access Agreement.
- 4.1.3 Access Seeker shall request that NCSB is to supply the Access Service to it by serving an Access Request on NCSB.
- 4.1.4 The purpose of such Access Request is to provide NCSB with sufficient information to assess the Access Seeker's request for the supply of the Access Service.
- 4.1.5 The Access Request must contain the following information and/or items:
- a) The name and contact details of the Access Seeker;
  - b) The Access Service in respect of which access is sought;
  - c) A list of the relevant licences held by Access Seeker;
  - d) Whether the Access Seeker wishes to accept NCSB's RAO, to negotiate amendments to the RAO, or to negotiate an Access Agreement on alternatives terms;
  - e) The information (if any) the Access Seeker reasonably requires the Access Provider to provide for the purposes of the negotiations;
  - f) Two (2) copies of a Confidentiality Agreement properly executed;
  - g) Forecasts of the capacity the Access Seeker will reasonably require, having regard to the Access Provider's disclosed provisioning cycle and forecasting procedures;
  - h) Relevant technical information relating to the interface standards of the Access Seeker;
  - i) Relevant information relating to the Access Seeker's Network and the functionality of its Services, to the extent that the Access Seeker is aware that such information may affect the Access Provider's Network;

- j) Creditworthiness information in accordance with the Access Provider's requirements, as set out in Clause 4.2 hereof;
- k) The Security Sum;
- l) Insurance information in accordance with the Access Provider's insurance requirements, as set out in Clause 4.4 hereof;
- m) Contain the names of personnel(s) whom the Access Seeker nominates to represent the Access Seeker in access negotiation with the Access Provider and in respect of each of those personnel;
  - i. His or her contact details;
  - ii. His or her job title;
  - iii. State the identity of the negotiating team leader whom shall have the authority to make binding representations on behalf of the Access Seeker in relation to matters arising from the access negotiations (subject to final approval from the Access Seeker's Chief Executive Officer or Board of Directors, if required by the Access Seeker);
  - iv. A copy of the Technical Proposal;
  - v. A copy of the Access Seeker's License, if the same has not been deposited with the Access Provider; and
  - vi. Such other information as the Access Provider may reasonably require.

## **4.2 Creditworthiness Information**

- 4.2.1 The Creditworthiness Information that is required to accompany an Access Request includes but shall not be limited to:
  - a) A letter, signed by the executive director of the Access Seeker, stating that the Access Seeker is not insolvent and is not under any external administration or under similar form of administration under 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; and
  - c) Such other information as may be reasonably requested by the Access Provider provide that such information are information which are publicly available.
- 4.2.2 In determining the creditworthiness of the Access Seeker, NCSB may have regard to, but is not limited to the matters referred to in clause 4.1.5 (d) and the Access Provider shall not take into account amounts outstanding for Access Service previously provided by the Access Provider to the Access Seeker where, in accordance with the terms and conditions governing the provision of such Access Service, the Access Seeker is not required to pay such amounts to the Access Provider to the extent that there is a bona fide dispute in relation to the amounts outstanding by the Access

Seeker to the Access Provider and the Access Seeker is relying on such terms and conditions as basis for its non-payment.

### **4.3 Security Requirements**

- 4.3.1 NCSB shall not impose any security requirements on an Access Seeker unless NCSB determines, acting reasonably, that the Access Seeker presents a credit risk and that imposing the security requirement will materially reduce or remove that risk.
- 4.3.2 NCSB shall ensure that the amount and type of security requirements impose on the Access Seeker in the Access Provider's security policy, commensurate with:
- a) The commercially reasonable estimate of the charges that will be incurred by the Access Seeker over Facilities and/or Services with a minimum period of access to those Facilities and/or Services and 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 reasonably required by the Access Provider (if any)

And NCSB is not obliged to enter into an Access Agreement with the Access Seeker pursuant to this RAO until the Access Seeker has amongst other things, provided (at the Access Seeker's costs) to the Access Provider such Security Sum on terms and conditions reasonably to the Access Provider.

### **4.4 Insurance Requirements**

- 4.4.1 Subject to Clause 4.4.1, an Access shall be accompanied by the following insurances:
- a) Worker's Compensation and/or Social Security Insurance and/or Employer's Liability Insurance and/or other insurance with statutory limits as required by the laws of Malaysia to provide for payment to its employees employed or in connection with the work covered by the Access Agreement that may be entered into an/or other dependants; and
  - b) Public Liability Insurance of an amount which is not less than Ringgit Malaysia One Million (RM1,000,000.00) for any one claim or per accident or per occurrence in connection with the Access Agreement that may be entered into resulting bodily injury and/or personal injury including death and property damage of an Operator or its employees, agents and any third parties which shall arise out of or in consequence of any acts of omissions of the Other Operator. Such policy shall include contractual liability.
- 4.4.2 For the purpose of clarification, the insurance provided by the Access Seeker pursuant to Clause 4.4.1 shall commensurate with the reasonable sum which is to be agreed by the Access Provider.

### **4.5 Obligations Upon Receipt And Additional Information**

4.5.1 NCSB shall within ten (10) Business Days of receipt of an Access Request, respond to the Access Seeker in writing acknowledging receipt of the Access Request and stating that:

- a) If the Access Seeker is willing to accept this RAO from NCSB and NCSB is willing to provide access in accordance with this RAO:
- b) If Clause 4.5.1 (a) of this RAO does not apply, NCSB is willing to proceed to negotiate the amendments to the RAO or an Access Agreement on alternatives terms;
- c) NCSB refuses the Access Request in accordance with Clause 4.7 hereof; or
- d) NCSB requires specified additional information to make a decision on the Access Request and once that information is received from the Access Seeker, NCSB shall reconsider the Access Request in accordance with this Clause.

4.5.2 Subject to the additional information being received by NCSB within twenty (20) Business Days from the date of request, NCSB shall reconsider the Access Request upon receipt of such additional information.

#### **4.6 Non-Refundable Processing Fee**

4.6.1 NCSB may charge an Access Seeker a non-refundable processing fee of Ringgit Malaysia One Hundred Ringgit Malaysia Only (RM100.00) subject to a further changes by NCSB for undertaking the necessary administrative work to process the Access Request. In the event that additional and non-routine work is required in order to process the Access Request, the Access Provider may charge a separate fee for undertaking such additional work. If the Access Seeker does not proceed with an Access Request accepted by the Access Provider, the processing fee will not be refunded to the Access Seeker.

#### **4.7 Acceptance Response**

4.7.1 If NCSB responds that access will be provided in accordance with this RAO (as described in Clause 4.5.1(a)), NCSB shall within ten (10) Business Days of such response, provide two (2) copies at RAO executed by NCSB to the Access Seeker.

#### **4.8 Negotiation Obligation And Response**

4.8.1 If an Operator wishes to negotiate an Access Agreement with another Operator:

- a) Both parties shall notify the Commission when the negotiations for the Access Agreement begin under this subsection;
- b) Both parties shall use their best endeavours to conclude the Access Agreement within:
  - i. Where there is no Access Agreement in place between the Operators, four (4) months; or

- ii. Where there is already commercial agreement or an Access Agreement in place between the Operators, three (3) months, after a written request by the Access Seeker to commence negotiations under paragraph 4.1.5 (c) of this RAO and NCSB response confirming it is willing to proceed to negotiate under paragraph 4.5.1(b) of this RAO.
- c) If negotiations are not completed within four (4) months period:
- i. The parties may jointly apply to the Commission for an extension of time to negotiate and if the extension is not granted, the Operators are deemed to be in dispute and the Dispute Resolution Procedures in the MSA Determination shall take effect; or
  - ii. Either Operator may initiate the Dispute Resolution Procedures; and

4.8.2 If NCSB is willing to proceed with negotiation of the Access Request (as described in Clause 4.5.1(b), NCSB shall set out in such response to the Access Seeker:

4.8.3 Where the Access Seeker wish to negotiate an Access Agreement, the Operators shall comply with the requirements in Clause 4.8 of this RAO in negotiating and concluding an Access Agreement.

#### **4.9 Initial Meeting**

Unless otherwise agreed between the Operators, each Operator shall ensure that its representatives meet on the date notified pursuant to Clause 4.8 of this RAO and that such representatives.

- a) Agree on a timetable for the negotiations, including milestones and dates for subsequent meetings within the applicable timeframe for negotiations under Clause 4.8 of the RAO.
- b) Agree on negotiating procedures, including:
  - i. Calling and chairing meetings;
  - ii. Responsibility for keeping minutes of the meetings;
  - iii. Clearly defined pathways and timetables for escalation and resolution by each Operator of matters not agreed in the meetings;
  - iv. Procedures for consulting, and including in the negotiating process, relevant experts from each of the Operators; and
  - v. Procedures for preparing and exchanging position papers;
- c) Review the information requested and provided to date and identify information yet to be provide by each Operator; and
- d) Identify what technical investigations, if any, need to made and by whom such investigations should be made.

#### **4.10 Form of negotiation**



Any meeting or negotiation under section 5.4 may take place in person, or virtually by conference call, video conference or using other communications technology with participants in one or more geographical places (or in a combined form).

#### **4.11 Forecast Request**

NCSB may request an Access Seeker to provide, with sufficient level of details to enable the Access Provider to carry out network planning and provisioning, the following information (“**Forecast Information**”)

- a) The Facilities and/or Services in respect of which Forecasts are required;
- b) The total period of time covered by each Forecast, which period:
  - i. Be determined having regard to the Access Provider’s own planning and provisioning cycles and the forecasting requirements which apply to the Access Seeker’s own business units in using the relevant Facilities and/or Services; and
  - ii. Shall be the shorter of the period set out in clause 1a of Schedule A and the period of forecasting which the Access Provider provides to itself for network planning and provisioning purposes;
- c) The intervals or units of time to be used in making the Forecast, which shall be the shorter of the period set out in clause 1b of Schedule A and the intervals of time in which the Access Provider provides forecasting to itself;
- d) The network area or operational area to which Forecast shall relate, which area shall correspond to that which the Access Provider uses for its own network planning and provisioning;
- e) The frequency with which a Forecast must be updated or a further Forecast made in accordance with this RAO, which shall be the shorter of the period set out in clause 1c of Schedule A and the length of time after which the Access Provider provides itself with the updated or further Forecasts; and
- f) Such other information that the Access Provider reasonably requires in order to provide access to Facilities and/or Services requested by the Access Seeker (which shall not include any information that the Access Provider does not provide to itself in connection with forecasting for its own facilities and/or services).

#### **4.12 Forecast Provision**

NCSB may only require an Access Seeker to provide Forecasts in accordance with a Forecast Request no sooner than four (4) weeks after receipt of a Forecast Request.

#### **4.13 Use Of Forecast Information**

Forecast Information provided by the Access Seeker shall be treated by NCSB as Confidential Information of the Access Seeker and shall only be used by those personnel of NCSB whose role is within either:

- a) The NCSB’s wholesale of interconnection group; or

- b) That part of the network engineering group of NCSB responsible for interconnection or access.

For the purpose of responding to and planning for the Forecast and related Orders. NCSB must maintain records that indicate which persons are provided with access to Forecast Information and, on request from the Commission, provide a copy of such records certified by NCSB's Chief Executive Officer or Chief Operating Officer.

#### **4.14 Distribution Of Forecast Information**

NCSB may only distribute Forecast Information of an Access Seeker outside the groups of people referred to in Clause 4.12.1 of this RAO if:

- a) The Forecast Information of NCSB is aggregated with Forecasts provided by other Operators and the Access Provider's own requirement (so as to protect the confidentiality of the Forecast Information); and
- b) The Forecast Information or its use does not otherwise identify the Access Seeker, its services or its Customers in any manner.

#### **4.15 Time For Response**

4.15.1 NCSB must notify the Access Seeker within five (5) Business Days of receiving a Forecast whether or not NCSB considers the Forecast to be in compliance with the Forecast Request and:

- a) If NCSB considers that the Forecast does not comply with the Forecast Request, to specify in that notice the additional information which the Access Seeker is to provide to comply with the Forecast Request and NCSB will not require such information to be provided sooner than four (4) weeks after such a notice; or
- b) If NCSB considers that the Forecast does comply with the Forecast Request, to specify in that notice that the Forecast is provisionally accepted subject to verification of the details of the Forecast and the matters set out in paragraphs 4.15(a) to (d) of this RAO.

#### **4.16 Reasons For Rejection**

4.16.1 NCSB may only reject a Forecast following provisional acceptance where NCSB reasonably believes that the Forecast is inaccurate or, there is insufficient capacity having regards to:

- a) Total current usage of the Facilities and/or Services by NCSB and all Access Seekers;
- b) The current rate of growth of the Access Seeker's usage of the Facilities and/or Services; and

- c) The current rate of growth of total usage of the Facilities and/or Services by NCSB and all Access Seekers.

#### **4.17 Time For Acceptance Or Rejection**

4.17.1 NCSB must give notice of any acceptance or rejection (“Rejection Notice”) of a Forecast to the Access Seeker:

- a) Within fifteen (15) Business Days of receipt of the relevant Forecast; and
- b) Such Rejection Notice (if any) must specify:
  - (i) The grounds on which NCSB rejects the Forecast in accordance with subsection 4.15.1 of this RAO, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own reassessment of the Forecast; and
  - (ii) An offer to meet within five (5) Business Days of the Rejection Notice of the Forecast to discuss the reasons for rejection and alternative methods of compliance. The meeting shall take place between NCSB and Access Seeker if the offer is accepted by the Access Seeker.

#### **4.18 Reconsideration By Access Seeker**

4.18.1 NCSB must allow an Access Seeker to reconsider its Forecast following a Rejection Notice and allow Access Seeker, within twenty-one (21) Business Days of receipt of a Rejection Notice, either:

- a) To confirm its rejected Forecast, and explain why the Access Seeker considers that NCSB is obliged to accept the Forecast under this Standard; or
- b) To submit a new Forecast which the Access Seeker regards as meeting NCSB’s concerns.

4.18.2 NCSB shall reconsider any re-submitted or amended Forecast provided pursuant to Clause 4.17 of the RAO shall re-apply.

4.18.3 NCSB shall not seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an Access Seeker if the Forecast is not met by Access Seeker as set out in Clause 4.18 of this RAO.

#### **4.19 Recovery For Over-Forecasting**

4.19.1 NCSB shall not seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an Access Seeker if the Forecasts is not met by the Access Seeker unless:

- a) The relevant portion of the Forecast that was not met by the Access Seeker does not relate to a Non-Binding Forecast Period;
- b) Such costs and expenses were reasonably and necessarily incurred by NCSB;

- c) NCSB reasonably seeks to mitigate its loss (including through its own usage) provide NCSB shall not be required to do so for any greater period than the relevant Forecast period: and
- d) NCSB only recovers from the Access Seeker, seventy five percent (75%) of such costs and expenses which could not be mitigated under paragraph 4.18.1(b).

#### **4.20 Forecasting Obligation**

- 4.20.1 If NCSB acting reasonably will incur significant costs to ensure that access can be provide in accordance with a Forecast, NCSB may request the Access Seeker to confirm the relevant Forecast. Once confirmed, the Forecast is deemed to be an Order for the purposes of this RAO and Clause 4.11 of this RAO will apply.
- 4.20.2 Subject to Clause 4.10.1 of this RAO, NCSB shall not require an Access Seeker to provide Forecasts that are legally binding on the Access Seeker, except to the extent that NCSB is permitted to recover costs and expenses as set out in Subjection 4.15 of this RAO.
- 4.20.3 NCSB may request an Access Seeker to provide, with a sufficient level of detail to enable NCSB to carry out Network planning and provisioning, the following information ("Forecast Information") as set out in Subjection 5.6.6.of MSA.

#### **4.21 Ordering And Provisioning Obligations**

- 4.21.1 NCSB shall designate and notify an Access Seeker of one or more of the following:
  - a) A person to whom Orders to access to Facilities or Services are to be delivered.
  - b) A contact point of which Orders for access to Facilities or Services are to be delivered (such as an e-mail address) and
  - c) A mechanism where Orders for access to Facilities or Services can be made, provided that if such a mechanism is the only method which NCSB provides for the receipt of Orders for that Facility or Services, NCSB cannot require the Access Seeker to unreasonably invest in specialised the Operational Support System of the Operators.

#### **4.22 Use Of Ordering Information**

- 4.22.1 Ordering information provided by Access Seeker shall be treated by NCSB as Confidential Information of the Access Seeker and shall only be used by those persons within NCSB whose role is within:
  - a) NCSB's wholesale or interconnection group; and
  - b) That part of the network engineering of NCSB responsible for interconnection or access  
for the purpose of responding to and provisioning for the Order.

#### **4.23 Treatment Of Orders And Service Qualifications**

- 4.23.1 Treatment of orders and service qualification of NCSB shall:

- a) Establish a single queue for all Orders and Service Qualifications for a given type of Facility or Service, whether those Orders and Service Qualifications are required for itself or any Access Seekers;
- b) Give the equivalent priority to the handling of all Orders and Service Qualifications in each queue; and
- c) Otherwise treat all Orders and Service Qualifications in each queue in compliance with its queuing policy established Clause 4.39 of this RAO.

#### **4.24 Acknowledgment Of Receipt**

4.24.1 NCSB shall acknowledgment receipt of an Order for Facilities or Service, in writing (or any other material or electronic form as agreed by the parties, within the period specified in the Clause 2 of Schedule A for the purposes of this Clause 4.20).

#### **4.25 Notice Of Receipt**

4.25.1 NCSB must include in its Notice of Receipt the following information:

- a) The time and date of receipt of the Order;
- b) A list of any additional information reasonably required by the Access Provider from the Access Seeker to provision the Order.
- c) If the relevant Facilities and/or Services available to the Access Provider are below the capacity required to provide the relevant Facilities or Services to the Access Seeker, the NCSB shall inform the Access Seeker of the available capacity and timeframe for the fulfilment of the Order at the available capacity and (if relevant) with such augmentation as may be required to fulfil the Order as submitted;
- d) Whether NCSB needs to perform Service Qualification because information is not readily available to NCSB for example in its Operational Support Systems, together with the reasons for needing to undertake the Service Qualification; and
- e) The position of the Order in NCSB queue.

#### **4.26 Further Information**

NCSB shall allow the Access Seeker a period of up to ten (10) Business Days after a request for additional information under Clause 4.24 (b) of this RAO to provide NCSB with such information.

#### **4.27 Acceptance Obligation**

NCSB must use its reasonable efforts to accept and fulfil Orders from the Access Seeker for Facilities or Service which comply with a Forecast accepted by NCSB pursuant to Clause 3.10 of this RAO.

#### **4.28 Time For Acceptance Or Rejection**

NCSB shall notify the Access Seeker that an Order is accepted or rejected within:

- a) The specific timeframe in the Clause 3 of Schedule A for the purposes of the Clause 4.16 hereof; or
- b) The timeframe within which it accepts or rejects equivalent Orders for itself;

Whichever is shorter.

#### **4.29 Notice Of Acceptance**

NCSB's Notice of Acceptance to the Access Seeker must contain the following information:

- a) The delivery date or activation date (as applicable), which must be the date that is requested by the Access Seeker, or if that date cannot be met by NCSB, then no later than:
  - i. The indicative delivery timeframe or activation timeframe specified in the Clause 4 of Schedule A for the purpose of Clause 4.25; or
  - ii. The period of time taken by Access Provider to deliver, or activate, such Facilities or Services for itself.
- b) The date when civil works (if any) are intended to commence;
- c) The charges applicable to fulfil the Order, including without limitation additional works such as internal wiring, right of way, land rental, local authority permits and third-party deposits;
- d) Such information as is reasonably necessary for the Access Seeker to benefit from access to the Facilities or Services; and
- e) The validity period, which shall be a period that is not shorter than three (3) months commencing from the date of the Notice of Acceptance ("Validity Period").

#### **4.30 Access Seeker's Confirmation**

4.30.1 Access Seeker's confirmation of an Order is not required if NCSB accepts the Order without change. A change may include circumstances where delivery dates are delayed, estimated changes are exceeded a post-Order Service Qualification is required or any other matter that requires further information from the Access Seeker before NCSB can provide the Order.

4.30.2 Where the Access Seeker's confirmation is required for NCSB to proceed with fulfilling an order as provided for under Clause 4.29.1 above, NCSB shall permit the Access Seeker to provide its confirmation within the Validity Period and shall not provision the Order until the confirmation is received. Upon receipt of such confirmation, NCSB shall fulfil the Order in accordance with the Notice of Acceptance.

#### **4.31 Estimated Charges**

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

- a) NCSB shall not exceed the estimate without providing the Access Seeker with a written notice prior to exceeding the estimate that:
  - i. The estimate will likely be exceeded;
  - ii. An explanation of the reasons for exceeding the estimate; and
  - iii. A further estimate of the charges for the work necessary to fulfil the Order.
- b) NCSB shall permit the Access Seeker to withdraw the Order without penalty within ten (10) Business Day of the notice given by the NCSB under Clause 4.30 (a) above if the revised estimate in that notice exceeds the original estimate by more than ten percent (10%);
- c) Where the actual cost incurred by NCSB exceeds an estimate or revised estimate for a specific scope of work provided by NCSB due to:
  - i. Information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker;
  - ii. A change in the scope of work by the Access Seeker;

The Access Seeker shall be obliged to pay NCSB for the actual cost incurred (but in no other circumstances); and

- d) NCSB shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised, whereby such confirmation is to be provided by the Access Seeker within the timeframe set out in Clause 4.28(e) or 4.30(b) of this RAO, as applicable.

#### **4.32 Reasons For Rejection**

NCSB may only reject an order from an Access Seeker where:

- a) Subject to Clause 4.15 of this RAO (as if references to 'Access Request' in that subsection were references to 'Order'), it is not technically feasible to provide access to the Facilities or Services requested by the Access Seeker;
- b) The Order or variation request duplicates an Order awaiting fulfilment;
- c) );
- d) There are reasonable grounds to believe that the Access Seeker would fail to a material extent, to comply with the terms and conditions of the Access Agreement and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through the application of a security requirement in accordance with this Standard); or
- e) There are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Facilities or Services to protect the integrity of a Network, or the safety of individuals working on, or using services supplied by means of a Network or Equipment and such concern cannot be addressed to the

NCSB's satisfaction, acting reasonably (e.g. through the application of reasonable security or escorted access requirements).

#### **4.33 Notice Of Rejection**

NCSB's notice of rejection of an Order to the Access Seeker must:

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

#### **4.34 Delivery Dates**

NCSB shall deliver the Order for the Facilities and/or Services by the delivery date or activation date (as applicable) as specified in the Notice of Acceptance or the extended delivery date (if any) as determined in accordance with Clause 4.36 of this RAO.

#### **4.35 Early Delivery Dates**

If NCSB in the normal course of business, is able to offer a delivery date earlier than the delivery date that would otherwise apply, it must advise the Access Seeker and, if requested by the Access Seeker, deliver access to the relevant Facilities or Services at the earlier delivery date.

#### **4.36 Delayed Delivery Dates**

Where there is a delay in the delivery of an Order, and:

- a) The delay is caused by NCSB or by a third party that is not acting under NCSB's direction or control:
  - i. NCSB shall notify the Access Seeker of the delay to the delivery date, together with the reasons for the delay, as soon as practicable after NCSB becomes aware of the possible delay;
  - ii. NCSB shall permit the Access Seeker to cancel the Order without penalty if the delay is longer than the equivalent time period for delivery of the Facility and/or Service; and
  - iii. The delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date; or
- b) Where the delay is caused by the Access Seeker:
  - i. NCSB shall notify the Access Seeker of the delay to the delivery date as soon as practicable after NCSB becomes aware of it:



- ii. NCSB and Access Seeker must work together minimise the delay; and
- iii. The delivery date shall be extended for a further period as reasonably necessary, and NCSB shall promptly notify the Access Seeker of the revised delivery date.

#### **4.37 Cancellation And Variation Of Orders**

NCSB shall allow an Access Seeker to cancel or vary an Order at any time subject to subsection 4.36 of this RAO.

#### **4.38 Cancellation Or Variation Penalty**

Any cancellation or variation penalty are applicable except MSA provides that cancellation of an Order is to be at no penalty:

- a) NCSB may imposed a charge for the cancellation or variation of the Order; and
- b) The charge which the Access Seeker is required to pay shall not exceed the lesser of the following amounts:
  - i. The sum of costs necessarily incurred by the Access Provider which is directly attributable to the cancellation or variation; or
  - ii. An amount equal to the sum of charges that would have been payable by the Access Seeker in the six (6) months immediately following the cancellation or variation had the Order not been cancelled or varied, and reduced to the extent that those costs have been mitigated, or would have been mitigated had the Access Provider used its best endeavours to do so.

#### **4.39 Queuing Policy**

NCSB shall establish and maintain a queuing Policy of first come first serve basis in which may requires Access Seeker to enter an Access Agreement. NCSB queuing policy shall in accordance to Clause 4.39 of this RAO;

- a) Shall be non-discriminatory;
- b) Shall be applied to Orders of all Access Seekers and Orders for itself for the same or similar Facilities and/or Services, and shall treat the Orders of Access Seekers or an equivalent basis to that which the Access Provider treats Orders for itself for the same or similar Facilities and/or Services; and
- c) Shall seek to maximise the efficiency of its ordering and provisioning process.

#### **4.40 Acceptance On Queue**

NCSB shall promptly notify an Access Seeker at the time of providing an acknowledgment of receipt of the Order under Clause 4.23 of the RAO (and as specified in the Notice of Receipt under Clause 4.2 of this RAO of their acceptance of, and position in NCSB's queue.

#### **4.41 Late Delivery**

If NCSB fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with Clause 4.36 (a)(iii) of this RAO, except where such failure has been caused solely by the Access Seeker's delay or a delay by a third party that is not acting under the Access Provider's direction or control (for example where a local authority or landowner delays providing necessary approvals for works to commence), the Access Provider shall, without limitation to any other rights the Access Seeker may have under this Clause of this RAO or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring charges payable for access to the Facilities and/or Services for the period of NCSB's delay, and the methodology and unit rates calculated in Access Seeker's delay or delay by a third party not acting under NCSB's direction or control, the Access Provider shall have the burden of demonstrating:

- a) That allegation; and
- b) That NCSB has done all things reasonably practicable to minimise or avoid such failure.

#### **4.42 Contractors under direction or control**

For clarity, any employees and contractors of the Access Provider shall be deemed to be acting under the direction or control of the Access Provider for the purposes of this Clause.

#### **4.43 Decommissioning Notice**

Except where NCSB is required to vacate a site where a Point of Interface is located, or any other Facility and/or Service which relies on NCSB use of that site, as a result of third party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, NCSB must provide no less than:

- a)
- b) Six (6) months' notice in writing to all relevant Access Seekers prior to the decommissioning of any Facilities and/or Services which rely on NCSB's use of that site.

Where an Access Provider is required to vacate the site as a result of a third-party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, NCSB must provide all relevant Access Seekers with as much notice as possible in relation to the matters in Clause 4.42 (a) and Clause 4.42(b).

#### **4.44 Alternative Arrangements**

Where NCSB notifies an Access Seeker of its intention to decommission any other Facilities and/or Services, shall provide to the Access Seeker access to alternative Facilities and/or Services on terms and conditions and at a recurring charge which are not disadvantageous to the Access Seeker, relative to the terms and conditions and recurring charge applicable in respect of the Facilities and/or Services that are proposed to be decommissioned, for a period that is not less than three (3) years from the date of decommissioning.

#### 4.45 Decommissioned Facilities And/Or Services Compensation:

Except where decommissioning is caused by Force Majeure, NCSB shall pay the Access Seeker's reasonable costs, necessarily incurred in:

- a) Moving the Access Seeker's Equipment from the decommissioned Facilities to alternative Facilities offered in accordance with paragraph 4.43(b) of this Standard; or
- b) Rearranging Equipment to connect to alternative Services offered in accordance with paragraph 4.43(b) of this RAO.

#### 4.46 Change Obligations

##### 4.46.1 Types Of Changes

The following kinds of proposed Changes may be within the scope of subsection 4.44.1 of RAO:

- a) Any change by the Notifying Operator to any technical specification or characteristic of the Facilities and/or Services to which the other Operator ("Recipient Operator") has access to, which will or might affect:
  - i. The Recipient Operator's Network; or
  - ii. The Recipient Operator's use of the Facilities and/or Services provided by the Notifying Operator.

**("Facility and/or Service Change")**

- b) Any change by the Notifying Operator's Network to any technical specification or characteristic of that Notifying Operator's Network which will or might affect the Recipient Operator's Network ("Other Network Change");
- c) Any change by the Notifying Operator to any of the Operational Support Systems used in inter-carrier processes, including without limitation;
  - i. The billing system;
  - ii. The ordering and provisioning systems; or
  - iii. The Customer's Churn process.

**("OSS Change"); and**

- d) Any enhancement by the Notifying Operator of the features, functions or capabilities of the Facilities and/or Services to which the Recipient Operator has access, which enhancement the Notifying Operator proposes to make available either:
  - i. To itself; or
  - ii. To any other Operator,

("Functionality Change"),  
(collectively, "Relevant Changes").

#### 4.47 Notification Of Change

If a Notifying Operator proposes to make a Relevant Change to its Network, services or procedures, the Notifying Operator shall provide the Recipient Operator with notice in writing (“Change Notice”) of:

- a) The nature, effect, technical details, potential impact on the Recipient Operator’s Network and the expected completion date of the proposed Relevant Change, described at a sufficient level or detail to enable the Recipient Operator to identify and begin planning such changes as may be necessary or desirable for the Recipient Operator to make its Network, services or procedure in consequence of the Relevant Change; and
- b) A date, which shall be no later than ten (10) Business Days from the date of the Change Notice, on which representatives of the Notifying Operator will be available to discuss with the representatives of the Recipient Operator, the proposed Relevant Change and the changes that may be necessary or desirable for the Recipient Operator to make to its Network, services or procedures in consequence of the Relevant Change,

as soon as reasonably practicable and, in any case, with not less than the relevant notice period set out in the table below:

<b>Relevant Change</b>	<b>Notice Period</b>
Other Network Change	Three (3) months
Facility or Service Change	Three (3) months
OSS Change	Three (3) months
Functionality Change	Three (3) months

#### **4.48 Post-Notification Procedures**

The Notifying Operator shall:

- a) Meet with the representatives of the Recipient Operator on the date set out in the Change Notice or as soon as practicable thereafter (but no later than the notice period set out in the table in Clause 4.45 of this RAO, for the purpose of discussing the Relevant Changes and any change that may be necessary or desirable for the Recipient Operator to make its Network services or procedures in consequence of the Relevant Changes;
- b) Provide any additional information reasonably requested by the Recipient Operator no later than ten (10) Business Days after the Recipient Operator’s request for such additional information; and
- c) Take reasonable account of concerns raised and proposal made by the Recipient Operator to minimise any adverse impact of the Relevant Changes on the Recipient Operator and revise the Change Notice accordingly.

#### **4.49 Testing**

A Notifying Operator shall, bearing its own costs in doing so:

- a) Co-operate with a Recipient Operator to develop procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Operators' respective Networks; and
- b) Jointly carry out testing with the Recipient Order in a timely manner, using its best endeavours to accommodate any timing requested by the Recipient Operator and, in any case, no less than twenty (20) Business Days before the Notifying Operator proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under Clause 4.49(a) above.

#### **4.50 Testing Failure**

Subject to the Recipient Operator having co-operated with the Notifying Operator in relation to the conduct of tests under Clause 4.47 of this RAO, if such tests:

- a) Are not accepted by ten (10) Business Days prior to the date when the Notifying Operator proposes to effect the Relevant Changes; or
- b) Do not provide reasonably assurance of the continued proper operation and compatibility of the Operators' respective Networks, services and procedures, the Notifying Operator must postpone implementation of the Relevant Changes. The period of postponement will be the period necessary to allow Operators to repeat the steps in Clause 4.47 to 4.49 of this RAO.

#### **4.51 Technical Infeasibility**

NCSB shall not refuse an Access Request on the grounds of technical infeasibility unless the Access Provider establishes that there are substantial technical or operational concerns preventing the fulfilment of the Access Request. Each of the following matters shall be taken into account in determining whether access is technically feasible:

- a) Economic, accounting, billing, space or site concerns shall be disregarded by NCSB except that space or site concerns may be taken into account in circumstances where there is no possibility of expanding the space available on the relevant site;
- b) Any requirement for NCSB to modify its facilities or Equipment in order to meet the Access Request will not, on its own, mean that the access is not technically feasible;
- c) If NCSB asserts that meeting the Access Request would have an adverse impact on network reliability, NCSB must provide evidence that provision of the requested Facilities and/or Services would result in a specific and significant adverse impact on network reliability; and
- d) NCSB must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this subsection) improvements that would allow the NCSB to meet the Access Request (in whole, or in part, and including for an interim period until any primary difficulties can be resolved).

#### **4.52 Installation Of Equipment At Tower And Associated Tower Site**

- 4.52.1 Upon completion of Access Agreement, NCSB shall issue the SLO to the Access Seeker and allow access to the relevant Tower for the purpose of the Access Seeker installing the Equipment within fourteen (14) days from the receipt of the SLO.
- 4.52.2 The Access Seeker shall ensure that the Equipment installed at the Tower and/or the Associated Tower Site shall be as per the Technical Specifications.
- 4.52.3 On the Handover Date for the Tower, the Access Provider hereby agrees to provide a set of keys to the Access Seeker for the purpose of twenty-four (24) hour access to the respective Tower and the Associated Tower Site.

## 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 Customer.
- 5.3 To the extent permitted by Malaysian law and any relevant guidelines or customer service standards in force pursuant to the Operators respective Licence conditions, the Operators will exchange information and otherwise cooperate in relation to the prevention and investigation of fraudulent use or misuse of the Operator's respective Communications Services and the theft of the Operator's provided terminal equipment.
- 5.4 Information provided NCSB's RAO may only used for the purpose for which it was given. Personal information about a Customer's creditworthiness, credit standing and credit history or credit capability may only be used for the purposes permitted by, and in compliance with, Malaysian law.
- 5.5 Information required to be provided under NCSB'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-confirming 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 resume as soon as possible.
- a) Subject to the Act and any subordinate legislation, nothing in the Access Agreement may be construed as requiring an Operator at any time to disclose to the Other Operator information which is at the date when the Access Agreement comes into force, the subject of a confidentiality obligation owed to a third person unless the third person consents to such disclosure. Where the consent of a third person is required, the Operator holding the information must use its reasonable endeavours to obtain the consent of that third person.
  - b) After the Access Agreement comes into force an Operator must use its best endeavours not to enter into any contract which would prevent it from making 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 BILLING AND SETTLEMENT OBLIGATIONS**

### **6.1 Invoices**

An Access Provider shall use its best endeavours 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 6.2 of RAO for amounts due in respect of the supply of Facilities and/or Services during the relevant Billing Period.

### **6.2 Billing Cycle**

NCSB shall issue Invoices in accordance with the Billing Cycles specified in the Clause 5 of Schedule A, except where a different Billing Cycle is agreed with the Access Seeker in an Access Agreement.

### **6.3 Billing Verification Information**

NCSB 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.

### **6.4 Other Billing Information**

An Operator (NCSB or Access Seeker) must provide to any Operator (NCSB or Access Seeker) with which it interconnects, information within its possession that is reasonably necessary to allow the other Operator (NCSB or Access Seeker) to provide accurate and timely billing services to itself, other Operators and Customers.

### **6.5 Summarised Invoice and Billing Information**

- a) NCSB shall provide the Access Seeker, on written request, with and aggregated summary of billings for access to the Facilities and/or Services provided to the Access Seeker, in monthly tranches.
- b) The Access Seeker shall pay NCSB the Access Charges and the SST chargeable thereon for the Access Service supplied by NCSB to the Access Seeker, as specified in the Access Agreement. In any case, due to the nature of NCSB's business, the Access Charges shall be payable in Ringgit Malaysia in advance or before the seventh (7<sup>th</sup>) day of each calendar month whether or not an Invoice had been forwarded by NCSB to the Access Seeker. In the event, the Handover Date does not fall on the first (1<sup>st</sup>) day of the calendar month, the Access Charges for that calendar month shall be pro-rated accordingly.
- c) The Operators shall bear and pay all taxes as required by Malaysian law that result from the implementation of the Access Agreement.
- d) All payments must:
  - i. Be paid on the Due Date unless otherwise agreed in writing by both Operators;
  - ii. Be paid by electronic transfer to NCSB or exceptionally, by cheque to the nominated accounts(s) of NCSB if agreed by NCSB; and



- iii. Must be accompanied by such information as is reasonably required by NCSB to properly allocate the payments received.

## **6.6 Billing Error**

If an Operator (NCSB or Access Seeker) 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.

## **6.7 No Set-Off**

Unless otherwise agreed by NCSB and Access Seeker in an Access Agreement, NCSB 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).

## **6.8 Withholding Of Disputed Amounts**

NCSB shall allow an Access Seeker to withhold payment of any amount disputed in good faith by the Access Seeker if:

- a) The Access Seeker notifies NCSB within fifteen (15) Business Days from the date of receipt of the Invoice of such dispute (unless otherwise agreed by NCSB and Access Seeker in an Access Agreement); and
- b) The Access Seeker's notification specifies the information referred to in subsection 6.9 of RAO.

## **6.9 Billing Disputes**

NCSB shall allow an Access Seeker to dispute any amount in an Invoice if:

- a) In the case of domestic calls and interconnection, the Access Seeker notifies NCSB within thirty (30) Business Days after the date of receipt of such Invoice;
- b) In the case of outgoing an incoming international calls and interconnection, the Access Seeker notifies NCSB within six (6) months after the date of receipt of such Invoice; or
- c) In case of any other Facilities and/or Services, the Access Seeker notifies NCSB within thirty (30) Business Days after the date of receipt of such Invoice.

## **6.10 Notification Of Billing Dispute**

NCSB 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 is 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;
  - v. Billing verification information; and
- d) Evidence in the form of a report, indicating the relevant traffic data which is in dispute.

#### **6.11 Billing Dispute Resolution**

Where there is a Billing Dispute, the Operators shall comply with the dispute resolution procedures applicable to Billing Disputes.

#### **6.12 Interest**

Except for any amount in an Invoice being disputed by an Access Seeker in good faith in accordance with subsection 6.8 of RAO, NCSB 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 NCSB. The interest that may be charged by NCSB 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 NCSB of full payment. For clarification, NCSB shall not charge interest on an amount which is disputed by an Access Seeker in good faith.

#### **6.13 Backbilling**

Unless otherwise agreed by NCSB and Access Seeker in an Access Agreement, NCSB may include omitted or miscalculate charges from an earlier Invoice in later Invoice, or issue an Invoice for charges which have previously not been invoiced provided that NCSB 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 calls were made or in which other Facilities and/or Services were provided.

#### **6.14 Provisional Backbilling**

Where NCSB is unable to issue an Invoice within one (1) month after the end of the Billing Cycle in accordance with subsection 5.11.1 of this standard, it may issue an Invoice to an Access Seeker for provisional amount, based on the last Invoice ("Provisional Invoice"). In such circumstances, NCSB 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 not more than the average of the three (3) more recent Invoices. Where there have not been three (3) past Invoices for access to the relevant Facilities and/or Services, NCSB may issue a Provisional Invoice up to the full value of the amount based on the most recent Invoice.

#### **6.15 Adjustment Period**

Where a Provisional Invoice is issued by NCSB, within the next two (2) months or such other time period as may be agreed in the Access Agreement ("Adjustment Period"), NCSB must issue an Invoice for the actual amount due for access to the relevant

Facilities and/or Services. If that Invoice or 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 NCSB. If the actual amount for a particular Billing Period is lower than the provisional amount for the Billing Period, then NCSB will reimburse in full such difference (free of interest) within one (1) month from the receipt of the actual Invoice to the Access Seeker.

For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts to NCSB as and when they become due and payable, nor does it constitute a waiver of NCSB's right to suspend, disconnect or terminate the Access Service due to non-payment of any sums due or payable to NCSB.

**6.16** NCSB shall be entitled to revise the Security Sum in line with the following basis:

- a) A maximum of once in any twelve (12) month period;
- b) If there is a material increase in the credit risk to the Access Seeker due to changes in either or both of the circumstances under subsection 4.3.2(a) and (b) of this RAO;
- c) If the Access Seeker determines, acting reasonably, that the variation will materially reduce or remove the increased credit risk.

If amounts contained in Invoices are disputed in good faith, this will not constitute a material increase in the credit risk to the Access Seeker for the purposes of 6.15(b) above.

**6.17** Where the Security Sum is revised pursuant to Clause 6.16 above, the Access Seeker shall within five (5) Business Days from the written request of NCSB, deposit the new Security Sum to NCSB in the manner specified in Clause 4.5 hereof.

**6.18** In the event NCSB elects to suspend or terminate the provisioning of the Access Service to the Access Seeker, NCSB shall have the right to use the Security Sum (together with any interest thereon) to set off any outstanding sum due and payable to NCSB by the Access Seeker.

## **7 TERMINATION, SUSPENSION AND OTHER PROVISIONS**

### **7.1 Term**

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

### **7.2 Termination Circumstances**

7.2.1 Subject to Section 7.5, NCSB may terminate an Access Agreement or part thereof if any of the circumstances referred to in Section 7.2.1(a), (b) or (c) below apply and NCSB has notified the Access Seeker of its intention to terminate the Access Agreement:

- a) The Access Seeker has materially breached the Access Agreement and NCSB 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 of 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.

NCSB 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 clarification, a notice to be given under this subsection 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 NCSB is or will be unlawful (as a result of a legislative change), the Access Seeker and NCSB shall meet within five (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 NCSB 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, NCSB may terminate the provision of access to the relevant Access Service(s).

### **7.4 Suspension**

7.4.1 Subject to Section 7.5, NCSB 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 NCSB to remedy such breach;

- b) The Access Seeker's Facilities materially adversely affect the normal operation of NCSB'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 NCSB, its employees or contractors;
- d) The Access Seeker's Facilities cause material physical or technical harm to any Facilities of NCSB 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 NCSB or the provision by NCSB of Access Service(s) under the Access Agreement.

7.4.2 For the purposes of this Section 7.4, NCSB must provide the Access Seeker five (5) Business Days' notice in writing, including written reasons, prior to suspending access to any Access Services(s). NCSB 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

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

- 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 NCSB has received written consent from Commission to such termination, suspension or material variation; and
- c) Shall take all steps practicable to minimise 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 Post-Termination Fees**

- 7.6.1 NCSB shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any Access Service(ss) provided under it except:
- 7.6.2 Charges invoiced in arrears and not yet paid; or
- 7.6.3 Charges arising during an applicable minimum contractual period for such Network facilities access i.e. three (3) years (as described in Section 7.1 above) provided that:
- i. Such charges must be reduced to reflect any cost savings from NCSB not having to supply the Access Service to the extent that they have been terminated or suspended; and
  - ii. NCSB must use reasonable endeavours to mitigate its cost of termination or suspension and maximize cost savings under subsection 5.14.2 of MSA.

## **7.7 Upfront Charges Refund**

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

## **7.8 Deposit And Guarantees**

Notwithstanding the obligations in subsection 7.7, NCSB 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 NCSB 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 NCSB as at the date of termination.

## **7.9 Complete Charges**

Each Operator shall specify all charges in an Access Agreement and shall not attempt to recover any other costs, expenses or charges which are not specified in the Access Agreement except where such work is to be done on a time and material basis in which case NCSB shall do such work in accordance with a quotation agreed with the Access Seeker as set out in this standard.

## **7.10 Intellectual Property Rights**

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

### **7.11 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.

### **7.12 Review**

An Operator shall specify in an Access Agreement prepared by it that Access Agreement shall be reviewed where:

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

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

The obligation to negotiate set out in Conditions 7.12.1 commences promptly after delivery of a notice from one Operator to the other Operator setting out in reasonable detail, the amendments sought.

### **7.13 Costs And Expense**

Each Operator shall bear its own costs and expenses in relation to the preparation, negotiation and execution of an Access Agreement to which they are parties.

### **7.14 Applicable Laws**

An Operator shall include a provision in all Access Agreements prepared by its which provides that the Access Agreement will be governed by the laws of Malaysia and that

Operators will comply with all applicable directions issued by the Malaysia regulatory authorities.

## **8 OPERATION AND MAINTENANCE OBLIGATIONS**

### **8.1 Operations And Maintenance Responsibility**

Each Operator shall be responsible for the operations and maintenance of its own facilities and services.

### **8.2 Fault Reporting Service**

Each Operator shall establish and maintain a fault reporting service that allows Customers who are directly connected to the Network of the Operator and to whom that Operator supplies Facilities and/or Services (inter alia) to report faults relating to any Network, Facility and/or Service.

### **8.3 Customer Notification**

Each Operator will advise all of its directly connected Customer to report all faults to the fault reporting service described in Clause 8.2 of this section.

### **8.4 Non-Discriminatory Fault Reporting And Identification**

- a) Perform fault reporting and identification on a non-discriminatory basis; and
- b) Treat the faults reported by another Operator on an equivalent basis as it treats the faults reported by itself.

### **8.5 Faults Affecting Other Networks Or Equipment**

If any Operator identifies a fault occurring in its Network or with its network facilities which may have an adverse effect on another Operator's Network, network facilities, network services or Equipment, the first-mentioned Operator must promptly inform the other Operator of:

- a) The existence of the fault;
- b) The actions being taken by first-mentioned Operator to rectify the identified faults and restore the service; and
- c) The outcome of those actions.

### **8.6 Bear Own Costs**

Each Operator is responsible for establishing and maintaining a fault reporting service at its own costs irrespective of the location of the fault.

### **8.7 Fault Priority**

Each Operator shall give priority to faults in the following order:

- a) The highest service loss impact in terms of the number of Customers affected;



- b) Those which have been reported on previous occasions and have re-occurred; and
- c) All other faults.

### **8.8 Fault Rectification**

Each Operator shall rectify faults on a non-discriminatory basis.

### **8.9 Emergency Maintenance**

If a Maintenance Operator needs to undertake emergency maintenance which may affect the other Operator's Network, the Maintenance Operator must, if it is able to:

- a) Provide at least twenty-four(24) hour notice of the planned maintenance;
- b) Use its reasonable endeavours to minimise any disruption to the carriage of communications that crosses or would cross both Operators' Networks, and which are caused by the maintenance or re-routing; and
- c) Where NCSB agree that it is practicable, provide alternative routing or carriage at no additional cost to the other Operator.

### **8.10 Hours Of Fault Reporting And Rectification**

NCSB shall maintain twenty-four (24) hours a day, seven (7) days a week fault reporting and rectification service.

### **8.11 Prevention Of Technical Harm**

An Operator must take reasonable measures to ensure that interconnection and access do not cause physical or technical harm to the other Operator Network, which measures shall be no less robust than the measures which the Operator takes in respect of new facilities or Equipment incorporated into its own Network.

### **8.12 No Interference**

An Operator must not do anything, or knowingly permit any third person to do anything, in relation to Network, network facilities, network services or Equipment which:

- a) Causes interference; or
- b) Materially obstructs, interrupts or impedes the continuous use or operation of the Network, network facilities, network services or Equipment of another Operator.

### **8.13 Notice Of Interference And Rectification**

If an Operator notifies ("Notifying Operator") another Operator that the other Operator's Network, network facilities, network services or Equipment is causing interference to the Notifying Operator's Network, network facilities, network services or Equipment:

- a) The other Operator shall rectify the situation as soon as possible, and in any case, within twenty-four (24) hours of receiving notice from the Notifying Operator, so that no interference is caused; or
- b) If the other Operator is not able to locate the source of the interference within twenty-four (24) hours under Clause 13 (a) above, the other Operator shall promptly notify the Notifying Operator, and both Operators shall meet as soon as possible, and in any case, within twenty-four (24) hours of such notice and jointly examine each other's Network, network facilities, network services or Equipment to locate the source of the interference.

## SCHEDULE A

### SERVICE DESCRIPTION

#### INFRASTRUCTURE SHARING

##### 1. FORECASTS

For the purposes of Clause 4.10 of this RAO, NCSB shall only request Forecasts where:

- a) The maximum period of time covered by Forecasts regarding Infrastructure Sharing is one (1) year;
- b) The minimum intervals or units of time to be used in Forecasts regarding Infrastructure Sharing is one (1) year; and
- c) The maximum frequency to update or to make further Forecasts regarding Infrastructure Sharing is once a year.

##### 2. ACKNOWLEDGMENT OF RECEIPT

For the purposes of Clause 4.20 of this RAO, NCSB shall acknowledge receipt of each Order for Infrastructure Sharing within two (2) Business Days.

##### 3. TIME FOR ACCEPTANCE OR REJECTION

Subject to any shorter timeframe required under Clause 4.24 of this RAO, NCSB must notify an Access Seeker that an Order for Infrastructure Sharing is accepted or rejected within ten (10) Business Days after:

- a) Issuing the Notice of Receipt in respect of the Order, where NCSB did not undertake any post-Order Service Qualification for that Order under Clause 4.19 of this RAO.

##### 4. INDICATIVE DELIVERY TIMEFRAME

For the purposes of Clause 4.25(a)(i) of this RAO, the indicative delivery timeframe for Infrastructure Sharing is:

- (a) For ground-based towers and new sites, ninety (90) Business Days; and
- (b) For Common Antenna Systems in High Priority Areas:
  - i. Which are existing Common Antenna Systems, forty (40) Business Days; and
  - ii. Which are new Common Antenna Systems, one hundred and twenty (120) Business Days;
- (c) For fixed telecommunication poles, ten (10) Business Days; and
- (d) For all other structures (including street furniture), forty (40) Business Days.

For clarification, the indicative delivery timeframe in this Clause commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with

this RAO. NCSB shall provide progress updates of the site delivery to an Access Seeker on a monthly basis.

## **5. BILLING CYCLE**

For the purposes of Clause 6.1 of this RAO, between the Operators, the Billing Cycle for Infrastructure Sharing will be one (1) year in advance for the first year and quarterly (or such other mutually agreed period) in advance for subsequent years.

## **6. PHYSICAL ACCESS**

Where required to fulfil an Order for Infrastructure Sharing or for the Access Seeker to perform operations or maintenance activities, NCSB shall allow an Access Seeker, its nominated employees and/or contractors to physically access NCSB's network facilities and the Access Seeker's Equipment, and to have physical control over the Access Seeker's Equipment located at such network facilities, at equivalent times and in accordance with equivalent processes and procedures as are applicable to itself.

## **7. NOMINATED PERSONNEL**

The employees and/or contractors nominated by the Access Seeker under Clause 6, Clause 7 and Clause 8 of Schedule A will be reasonable, having regard to:

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

## **8. ESCORTS**

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

- a) Bear the costs of such escort service;
- b) Subject to Clause 6 of Schedule A of this RAO, provide immediate physical access to the Access Seeker for emergency maintenance requests, twenty-four (24) hours a day, seven (7) days a week;
- c) Subject to Clause 8(d) of Schedule A of this RAO, provide physical access at the time requested by an Access Seeker for planned maintenance requests on the shorter of:
  - i. Two (2) Business Days' notice for manned sites and five (5) Business Days' notice for unmanned sites; and
  - ii. The period of notice which it requires from itself when providing itself with physical access for planned maintenance;

- d) For both planned and emergency maintenance requests at unmanned sites only, have its escort arrive within the shorter of:
- i. Thirty (30) minutes of time required by the Access Seeker pursuant to Clause 8(b) of Schedule A of this RAO (as applicable) plus a reasonable window to allow for travel time (which must be estimated in an operations and maintenance manual given to the Access Seeker, or estimated at the time of responding to the Access Seeker's physical access request); and
  - ii. The period of time it requires for its escorts to arrive for planned and emergency maintenance at unmanned sites.

## **9. ABSENCE OF ESCORT**

For the purposes of Clause 6 of Schedule A of this RAO, if an escort does not arrive at NCSB's property within the timeframe specified in Clause 8 of Schedule A of this RAO, the Access Seeker's nominated employees and/or contractors may proceed to enter NCSB's property without an escort.

## **10. SITE REGISTER**

The Access Seeker must establish and maintain a register of all persons who visit NCSB's property on the Access Seeker's behalf, which must be made available for inspection by NCSB, upon request.

## **11. UTILITIES AND ANCILLARY SERVICES**

NCSB must, where the relevant utilities and ancillary services are within NCSB's control, ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access to the same extent that NCSB provides to itself, including but not limited to:

- a) Access to roads;
- b) Access to land;
- c) Power, including the provision of back-up power;
- d) Environmental services (including but not limited to heat, light, ventilation and air-conditioning, fire protection);
- e) Security, taking care to ensure that its agents, representatives or sub-contractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft; and
- f) Site maintenance.

## **12. COST**

The utility and ancillary costs in respect of the network facilities as contemplated in Clause 11 of Schedule A of this RAO shall be apportioned (in accordance with fair and equitable principles) between NCSB and all Access Seekers at the relevant location.

### 13. AUGMENTATION OF COMMON ANTENNA SYSTEMS

NCSB shall use all reasonable endeavours to augment in-building Common Antenna Systems to the extent required to enable NCSB to supply access to such in-building Common Antenna Systems on request by an Access Seeker.

### 14. REPORTING

NCSB shall notify the Commission in writing of any specified network facilities (as that term is used in the description of the Infrastructure Sharing Service) that support, or have the capability to support, the installation of mobile network equipment along, or in close proximity to:

- (a) A street;
- (b) A road;
- (c) A path;
- (d) A railway corridor;
- (e) A park; or
- (f) Such other outdoor area that may be accessed by members of the public;

Including but not limited to billboards, public transit shelters, poles, traffic light poles, bridges and road gantries.

### 15. MAINTENANCE AND RECTIFICATION:

NCSB shall:

- (a) Ensure that it maintains in reasonable working condition all fixed telecommunications poles which comprise specified network facilities (as that term is used in the description of the Infrastructure Sharing Service), subject to paragraph 13(b) herein; and
- (b) Or notice by an Access Seeker, or upon otherwise becoming aware, that any fixed telecommunications pole does not comply with paragraph 13(a), perform within forty (40) Business Days such activities as required to rectify such non-compliance.

### 16. SERVICE ASSURANCE TARGETS FOR INFRASTRUCTURE TARGET:

Severity	Service Definition	Fault Type	Response Time	Progress update	Temporary Restoration Time	Rectification Time	Incident Report Issuance
Level 1	Hub Site	Outage caused by fault of AC power supply system level 1 owned by NCSB Outage caused by power issue at landlord/building	1 hour	Every 1 hour	4 hours	48 hours	48 hours

		Outage caused by CME Issues Outage due to flooding					
Level 2	End Sites	Outage caused by fault of AC power supply system owned by NCSB Outage caused by power issue at landlord/building Outage caused by CME Issues Outage due to flooding	1 hour	Every 2 hours	4 hours	7 Business Days	5 Business Days
Level 3	No Service Affecting Fault	Issues related to power system asset belonging to NCSB, landlord/building site access or CME issues	1 hours	Every 24 hours	24 hours	14 Business Days	N/A

- i. All faults reported shall be ascribed with a Severity Level set out above and Parties shall cooperate with one another to achieve Rectification Times based on the severity of the fault reported.
- ii. "Progress Update Frequency" means the frequency at which the Access Seeker may call NCSB for restoring the fault to obtain a verbal or written progress update.
- iii. "Response Time" refers to the time for NCSB to respond to the fault and is measured from the time the fault is reported by the Access Seeker to NCSB.
- iv. "Rectification Time" refers to the time for NCSB to rectify a fault and is determined by the period the reporting of a fault by the Access Seeker to the Access Provider and the rectification of the fault on a permanent basis.
- v. "Temporary Restoration Time" refers to the time for the Access Provider to temporarily rectify a fault and is determined by the period between the reporting of a fault by the Access Seeker to the Access Provider and the rectification of the fault on a temporary basis.

## 17. REBATES

If NCSB is unable to provide the Service due to negligence on its part (e.g. poorly designed structure or platform that does not function properly, the Access Provider failed to pay rental to its landlord on time, the Access Provider failed to provide site access), without limiting the Access Provider's obligation to provide any applicable rebates, affected Access Seekers are entitled to a rebate for not meeting the Service

Assurance Target, which shall at a minimum reflect the rental amount paid or to be paid by the Access Seeker to the Access Provider for the period of site downtime.

## **18. GROUNDS FOR REFUSAL**

In addition to the grounds for refusal, an Access Provider may, based on reasonable safety and security reasons, refuse an Order Request to fixed telecommunications pole being utilised for critical government services, including in connection with government agencies, the military or the police.

## **19. CAPACITY ALLOCATION POLICY**

NCSB's Capacity Allocation Policy for Infrastructure Sharing Services shall set out the principles to be applied on an equivalent basis between itself and other Access Seekers, where:

- (a) NCSB has already taken steps to optimise space by using the current available technology, including removing any unused cables;
- (b) NCSB shall determine the available space only after considering:
  - i. The requirements for Infrastructure Sharing Services for NCSB's then existing maintenance purpose;
  - ii. The reservation of the Infrastructure Sharing Services for future use by the Access Provider or another Access Seeker, applicable on an equivalent basis for six (6) months, upon receipt of an Order; and
  - iii. The structural integrity of the infrastructure to safely accommodate additional capacity; and
- (c) The allocation of available space shall be:
  - i. On a first-come, first served basis;
  - ii. Applicable to reserved capacity that is not used by either NCSB or an Access Seeker within the seven (7) months from the date of the Order; and
  - iii. To the extent possible, based on efficient allocation principles to minimise space wastage.



## ANNEXURE 1

### DISPUTE RESOLUTION PROCEDURES

#### 1. Definitions

1.1 In the Dispute Resolution Procedures set out in this Annexure 1:

- (a) “**Billing Dispute**” means the dispute of an Invoice issued by one party to the other party which is made in good faith;
- (b) “**Billing Dispute Notice**” means the written notification made by one party to the other party in relation to a Billing Dispute in accordance with subsection 6.4 of this Annexure 1;
- (c) “**Billing Dispute Notification Period**” means the period after the date of receipt of an Invoice during which a Billing Dispute may be raised in relation to that Invoice, as specified in subsection 6.2. of this Annexure 1;
- (d) “**Billing Representative**” means a representative of the party appointed in accordance with subsection 7.15 of this Annexure 1;
- (e) “**Billing System**” means a system to issue Invoices relating to charges payable by each party under an Access Agreement;
- (f) “**Dispute**” has the meaning given to it in subsection 2.1. of this Annexure; and
- (g) “**Technical Expert**” has the meaning give to it in subsection 6.3. of this Annexure.

#### 2. Introduction

2.1 Subject to subsection 2.2(c) of this Annexure, NCSB and an Access Seeker shall adopt and comply with these Dispute Resolution Procedures in relation to any dispute which may arise between an Access Seeker and NCSB in relation to or in connection with the supply of Facilities and/or Services to which this Standard applies (“**Dispute**”).

2.2 The following dispute resolution mechanisms are discussed in this section:

- (a) Inter-party working groups; and
- (b) Subject to specific resolution of disputes, being:
  - (i) Technical disputes (which must follow the procedures set out in section 4 of this Annexure 1 if they cannot be resolved through the application of the general dispute resolution provisions in section 3 of this Annexure 1; or
  - (ii) Billing Disputes (as defined in subsection 1.1. of this Annexure), which must follow the procedures set out in section 6 of this Annexure; or
  - (iii) Any other types of disputes, which, if cannot be resolved through the application of the general dispute resolution provisions in section 3 of this Annexure, must be referred to the Commission for resolution.

2.3 A Dispute shall first be attempted to be resolved by negotiation between the Parties. If the Parties to the Dispute cannot or otherwise failed to reach any an agreement, the Parties shall always be entitled to seek resolution of the Dispute by the Commission in accordance with section 151 of the Act, and the Commission will decide the dispute if it is satisfied that:

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

NCSB shall not prevent the Access Seeker from notifying a Dispute to the Commission in accordance with the Act.

### 3. General

3.1 An Operator may not commence court proceedings relating to a Dispute which is the subject of these Dispute Resolution Procedures until it has complied with each applicable process in these Dispute Resolution Procedures, other than an application for urgent interlocutory relief. Nothing in this subsection shall be construed as ousting the jurisdiction of any court.

3.2 Both Parties to a Dispute shall ensure that their representatives acting in relation to a Dispute are of sufficient seniority and have authority to settle a Dispute on their behalf. At the commencement of the Dispute Resolution Procedures, each party must notify the other party the scope of the authority of each of their representatives. If, in the course of the Dispute Resolution Procedures, it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to the representative, a party may require that those matters be referred to more senior officers of that party who have authority to settle those matters.

3.3 During a Dispute and any dispute resolution process invoked in accordance with this Annexure 1, NCSB and the Access Seeker must continue to fulfil their obligations under the Access Agreement between them.

3.4 Subject to subsection 3.5 of this Annexure 1 below, the Parties to a Dispute shall exchange information of a type described in this RAO during the course of, and to facilitate, resolute of the Dispute.

3.5 Confidential Information of a party which is disclosed, and any other oral or written submissions made by a party or a party's representatives during the course of any dispute resolution process will be subject to the confidentiality restrictions in relevant confidentiality provisions contained in the Confidentiality Agreement prepared in accordance with Annexure 2 below.

3.6 A party must not use information obtained under subsection 3.4 of this Annexure 1 or described in subsection 3.5 above for any purpose other than to resolve the Dispute.

3.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of a Dispute (including a Technical Expert or the Commission, in accordance with this Annexure) may decide not to determine the Dispute if the arbitrator considers that the Dispute is trivial,

frivolous or vexatious, or if there is insufficient evidence before the arbitrator to determine the Dispute.

3.8 The costs of the arbitration are to be shared equally between the parties, unless the arbitrator of the Dispute has decided not to determine the Dispute in accordance with subsection 3.7 above. If an arbitrator decides not to determine the Dispute, the party that initiated the Dispute must pay the other party's costs.

#### **4. Inter-party working group**

4.1 In the first instance the Access Seeker and the Access Provider should attempt to resolve the Dispute between themselves.

4.2 NCSB and the Access Seeker shall establish a working group or working groups, to fulfil the requirements of subsection 4.1. above. The working group shall comprise of representatives of the Parties, and be headed by a person who holds a position that is at least equivalent to the head of NCSB'S Wholesale Group.

4.3 NCSB shall provide for:

- (a) Subject areas to be dealt with by each working group;
- (b) Equal representation by the Access Seeker and NCSB;
- (c) Chairmanship and administrative functions of the working group to be shared equally; and
- (d) Formal notification procedures to the working group.

4.4 NCSB and the Access Seeker shall use reasonable endeavours to attempt to settle the Dispute in the working group for a period of no longer than thirty (30) Business Days unless otherwise agreed by the Parties, subject always to a party's right to seek urgent interlocutory relief.

#### **5. Use of Technical Expert**

5.1 A Dispute will only be referred to a Technical Expert if the provisions of section 4 of this Annexure 1 have been complied.

5.2 Once a Dispute is referred to a Technical Expert, it may not be referred back to a working group.

5.3 The person to whom a technical dispute may be referred under this section 5:

- (a) Will be an expert appointed by agreement of the Parties or, if the Parties cannot agree, by the Commission;
- (b) Will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communications industry;
- (c) Need not be a Malaysian citizen or resident; and

- (d) Will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interests.  
 (“**Technical Expert**”)

5.4 If the Parties fail to appoint a Technical Expert within ten (10) Business Days of the need to refer a Dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.

5.5 When relying on the services of a Technical Expert, the following dispute resolution procedures will apply to the Technical Expert:

- (a) The Parties will present written submissions to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and
- (b) Each party may respond to the other party’s submission in writing within fifteen (15) Business Days from the date of the other party’s submission.

5.6 At the request of either party and subject to the parties agreeing, or the Technical Expert deciding within five (5) Business Days of the last written submission, that the arbitration by the Technical Expert should be by documents only, a Technical Expert hearing will be held within fifteen (15) Business Days of the last written submission.

5.7 Should a Technical Expert hearing be held, each party will have the opportunity of making an oral submission. This process will be conducted in private.

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

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

5.10 The Technical Expert will deliver his or her award within fifteen (15) Business Days of the hearing or of the last written submission where the arbitration is by documents only.

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

5.12 The Technical Expert’s decision will be binding on the Parties (in the absence of manifest error in fact or law).

## 6. **Billing Dispute Resolution**

6.1 As outlined in the billing provisions of this RAO at Chapter 6, a party (“**Invoicing Party**”) shall provide to the other party (“**Invoiced Party**”) an Invoice in writing, or in such electronic form as may be agreed from time to time, for amounts due in respect of the supply of Facilities and/or Services during such Billing Cycle.

6.2 An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party (in the case of any other Facilities and/or Services per subsection 7.2 of Annexure A of the MSA), the Invoiced Party notifies the Invoicing Party within thirty Business Days after the date of receipt of such Invoice,

Provided that, in any case specified above, the Invoiced Party's Billing Dispute Notice specifies the information in accordance with subsection 7.4. of this Annexure 1.

6.3 A Billing Dispute may only arise where the Invoiced Party has reasonable grounds to believe that an error has arisen from one of the following circumstances:

- (a) The Invoicing Party's Billing System is, or has been, defective or inaccurate in respect of the recording of the calls which are subject of the Dispute;
- (b) There is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Party's Billing System;
- (c) There is, or has been, a fraud perpetrated by the Invoicing Party; or
- (d) The Invoicing Party has made some other error in respect of the recording of the calls or calculation of the charges which are the subject of the Billing Dispute.

6.4 A Billing Dispute given under this section must specify the following:

- (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.

6.5 The Invoiced Party may withhold payment of amounts disputed in good faith in accordance with subsection 6.7 of this RAO. If the Billing Dispute is resolved against the Invoiced Party, that Invoiced Party shall be required to pay interest at the rate specified in subsection 6.11 of this RAO on the amount payable.

6.6 Where the Invoiced Party has paid an amount and subsequently notifies the Invoicing Party of a Billing Dispute in relation to that amount within the Billing Dispute Notification Period, the Invoicing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount. Once the Billing Dispute is resolved, if the Invoicing Party is obliged to refund an amount to the Invoiced Party, interest will be payable on the refunded amount at the rate specified in subsection 6.11 of this RAO. In such circumstances, interest will be payable from the date the Invoiced Party paid the disputed amount to the date of the refund by the Invoicing Party.

6.7 The parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this section.

6.8 If the parties are unable to resolve any Billing Dispute within one (1) month (or such other period as the parties may agree) from the date on which the Billing Dispute Notice

is received, either party may seek the consent of the other party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other party is, however, under no obligation to agree to such extension.

6.9 To the extent that a Billing Dispute notified under this section involves a Billing Dispute with an international correspondent of the Invoicing Party, the Dispute Resolution Procedures shall be suspended for a reasonable period of time pending resolution of the Billing Dispute with that international correspondent. As a general rule, the period of suspension will not exceed four (4) months. However, the parties shall recognize that some Billing Disputes with international correspondents may take longer to resolve, in which case the Invoicing Party must promptly inform the Invoiced Party of the likely period required for resolution.

6.10 Once the negotiation period under subsection 6.8 of this Annexure 1 (including any extensions agreed) and any suspension period under subsection 6.9 of this Annexure 1 has expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in subsection 6.11 of this Annexure (“**Billing Dispute Escalation Procedure**”)

6.11 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this subsection 7.11 by notifying the Invoicing Party’s Billing Representative. Both parties shall then appoint a designated representative who has authority to settle the Billing Dispute, and who is at a higher level of management than the persons with direct responsibility for administration of this RAO. The designated representatives shall meet as often as they reasonably deem necessary to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one party to the other party shall be honoured.

6.12 Once any Billing Dispute has been resolved to the parties’ satisfaction, any sum to be paid or repaid shall be paid by the relevant party within ten (10) Business Days from the date of resolution of the Billing Dispute.

6.13 Although it shall be the good faith intention of the parties to use the above Billing Dispute Resolution Procedures to the fullest extent to try to solve the Billing Disputes, nothing in this Annexure shall prevent either party from pursuing other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.

6.14 A party may request a joint investigation of Invoice discrepancies after that party has conducted a comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the parties must agree on the terms of the joint investigation, including:

(a) The scope of the joint investigation;

(b) How the joint investigation will be conducted; and

(c) The date by which the joint investigation must be concluded.

The joint investigation may include the generation of test calls to the other party’s Network.

- 6.15 Enquiries relating to billing, collecting and settlement arrangements or in relation to Network and operational issues may be directed to the Billing Representatives nominated by each party.
- 6.16 Either party may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- 6.17 If the Billing Dispute Escalation procedure has been exhausted, either party may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the Act.

## ANNEXURE 2

(Template of Confidentiality Agreement)

### CONFIDENTIALITY AGREEMENT

This AGREEMENT is made on

BETWEEN

NAZA COMMUNICATIONS SDN BHD (Company No: 200901023533) (“NCSB”), a company incorporated in Malaysia with its business address at Ground Floor, NAZA Automall Lot 1, Jalan 51A/221, Seksyen 51A, 46100 Petaling Jaya, Selangor (“the Access Provider”) of the one part;

AND

(Hereinafter referred to as “Access Seeker”) of the other part.

WHEREAS:

- A. The Access Provider is a licensed individual network facilities provided under the Communications and Multimedia Act 1998. Pursuant thereto, the Access Provider may offer network facilities in all states in Malaysia.
- B. The parties are discussing certain matters thereby necessitating the exchange of information for the purpose of determining their respective interests in establishing a business relationship between them.
- C. The parties wish to defend their rights with respect to the said information and to protect the confidentiality thereof and proprietary features contained therein.

NOW THIS AGREEMENT WITNESSETH as follows:

#### 1. Definition

“Confidential Information” means all oral or written information of any kind, whether in printed or electronic formal, including but not limited to technical information, data or know-how which relates to research, product plans, product, services, customers, markets, software, developments, inventions, inventions, process, designs, drawings, engineering, hardware and software configuration information, marketing or finance or any form of business plans whether or not labelled as “Confidential” and submitted by one party to the other party during the discussions and/or meetings, which Confidential Information is designated in writing to be confidential or proprietary or if given orally, is confirmed promptly in writing as having been disclose as confidential or proprietary.

“Disclosing Party” means the party from whom the Confidential information originates and is disclosed to the Recipient.



“Recipient” means the party to whom the Confidential Information is given or disclosed.

2. Non-Disclosure of Confidential Information:

- a. The Recipient agrees not to use any Confidential Information disclosed to it by the Disclosing Party for its own use or for any purpose except to carry out discussions concerning and the undertaking of any business relationship between the two.
- b. The Recipient will not disclose any Confidential Information of the Disclosing Party to third parties or to employees or agents of the Recipient except employees and/or agents who are required to have the information in order to carry out the discussion of the contemplated business.
- c. The Recipient agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the Disclosing Party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized hereunder to have any such information, which measures shall include the highest degree of care that the Recipient utilize to protect its own Confidential Information of a similar nature.
- d. The Recipient agrees to notify the Disclosing Party in writing of any misuse or misappropriation of Confidential Information of the Disclosing Party which may come to the Recipient’s attention.

3. Information excluded from Confidentiality

The obligation imposed upon either party herein shall not apply to information which:

- i. is in the possession of the Recipient at the time of disclosure as shown by the Recipient’s files and records immediately prior to the time of disclosure; or
- ii. prior or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of the Recipient; or
- iii. is approved in writing by the Disclosing Party for release; or
- iv. is independently developed by the Recipient; or
- v. is disclosed to a third party pursuant to written authorization from the Disclosing Party; or
- vi. is received from a third party without similar restrictions as against the Receiving Party; or
- vii. is disclosed pursuant to a requirement or request of a Government agency, but only to the extent so ordered.

4. No Commitment

Nothing in this Agreement imposes on either party an obligation to enter into any agreement or transaction.

5. Return of Materials

Any materials or documents which have been furnished by the Disclosing Party to the Recipient will be promptly returned, accompanied by all copies of such documentation, after the business possibility has been rejected or concluded.

#### 6. Patent or Copyright Infringement

Nothing in this Agreement is intended to grant any rights to the Recipient under any patent or copyright nor shall this Agreement grant the Recipient any rights in or to the Disclosing Party's Confidential Information which was given solely for the purpose of determining whether to enter into the proposed business relationship with the Disclosing Party.

#### 7. Term

The foregoing commitments of the Recipient shall survive any termination of discussions between the parties and shall continue for a period of two (2) years following the date of this Agreement.

#### 8. Miscellaneous

This Agreement shall be binding upon and for the benefit of the undersigned parties, their successors and assignees, provided that the Confidential Information of the Disclosing Party may not be assigned without the prior written consent of the Disclosing Party. Failure to enforce any provision of this Agreement shall constitute a waiver of any term hereof.

#### 9. Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of Malaysia and shall be binding upon the parties hereto in Malaysia and worldwide. The courts of Malaysia shall have exclusive jurisdiction to hear and determine all actions and proceedings arising out of this Agreement and the Recipient hereby submits to the jurisdiction of the courts of Malaysia for the purposes of any such actions and proceedings.

#### 10. Remedies

The Recipient agrees that the obligations of the Recipient provided herein are necessary and reasonable in order to protect the Disclosing Party and its business and the Recipient expressly agrees that monetary damages would be inadequate to compensate the Disclosing Party for any breach by the Recipient of its covenants and agreement set forth herein. Accordingly, the Recipient agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the Disclosing Party and that in addition to any other remedies that may be available, in law, in equity or otherwise, the Disclosing Party shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the Recipient without the necessity of providing actual damages.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first above written.

SIGNED by )  
For and on behalf of )  
The Access Provider )  
In the presence of )

SIGNED by )  
For and on behalf of )  
The Access Seeker )  
In the presence of )

**ANNEXURE 3**  
**SITE LICENSE OFFER (“SLO”)**

Ref:

Date:

**SITE LICENSE OFFER**

This Site License Offer (SLO) is issued pursuant to the Access Provider’s Reference Access Offer (“RAO”) and the Access Agreement entered into between the Access Provider and the Access Seeker stated herein:

1.	Access Provider ID		Access Seeker ID	
	Latitude		Longitude	
	Site Name			
	Address			
	Structure Height			
	Current Site User Configuration			

2. Equipment proposed by Access Seeker:

Omni Antenna	
RF Panel Antenna	
Tx Antenna	
Cabin Space	
Genset Space	

3.	License Term:	From		Expiry	
	Further License Term:	From		Expiry	
	License Fee (Monthly):	RM			
	Security Deposit:	RM			

4. Commencement of Date of License:

5. Terms and Conditions:

- i. The issuance of this SLO is subject to the terms and conditions stipulated in the Access Provider’s RAO and the Access Agreement entered into between the parties.

- ii. Possession of Site is upon payment of Security Deposit and one (1) month License Fee in advance.
- iii. All Equipment to be installed within the Site boundary.
- iv. Access Seeker shall be liable for damages caused to existing equipment on Site at the time when the Access Seeker's works/installation are in progress.
- v. Other additional terms and conditions, if any, as agreed between the parties.

IN WITNESS WHEREOF, the undersigned have through their duly authorized representatives signed this SLO on the day and year written below.

For and on behalf of  
The Access Seeker

For and on behalf of  
the Access Provider

Date:  
Name:  
Designation:  
Company Chop:

Date:  
Name:  
Designation:  
Company Chop:

## ANNEXURE 4

### ACCESS CHARGES

- a. The following rates shall be utilized as indicative/estimated rates for access to telecommunication structures to an Access Seeker to install its Equipment thereat (this is subject to any agreement between the Access Seeker and NCSB as may be agreed):

Structure Height	UOM	1 Way	2 Way	3 Way
Street Pole, 18m	Per site/ month	4300-4700	-	-
Lamp Pole, 24m	Per site/ month	4500-5000	3000-4000	2200-3200
Lamp Pole, 30m	Per site/ month	4600-5500	3100-4100	2500-3500
Monopole, 30m	Per site/ month	5000-6000	3500-4500	2600-3600
Monopole, 45m	Per site/ month	6700-7200	4000-5000	3500-4500
Tower, 60m	Per site/ month	7100-8200	4300-5300	3300-4300
Tower, 76m	Per site/ month	8000-9000	5000-6000	3500-4500

- i. The rates as agreed between the Access Provider and the Access Seeker, which will be prescribed in the Access Agreement are exclusive of SST levied by the Government which SST shall be payable by the Access Seeker to the Access Provider.
- ii. The rates as agreed between the Access Provider and the Access Seeker, which will be prescribed in the Access Agreement are for the license term of minimum seven (7) years but if the Access Seeker intends to take a license of a site for a longer period than 10 years, a lesser rate may be agreed by the Access Provider.
- iii. Subject always to the availability of space in the Associated Tower Site and the loading of the Tower, an Access Seeker may upon agreement by the Access Provider be allowed to install three (3) RF antennas and one (1) microwave antenna/dish with a maximum diameter of 0.6 meters or 1.2 meters (depending on the Tower) per Associated Tower Site and may be provided land space for a cabin not more than 3.6 meters in diameter. In any case, the Equipment to be allowed per Tower and Associated Tower Site shall be upon agreement of the parties.
- iv. In the event of late delivery of Facilities and/or Services by NCSB to the Access Seeker, in accordance to 4.16 of this RAO, NCSB shall pay to the Access Seeker as agreed liquidated damages in the sum of minimum Ringgit Malaysia Five Hundred (RM500.00) per access per day, subject to maximum of Ringgit Malaysia Fifteen Thousand (RM15,000.00) only per access and mutually agreed by both parties in the Access Agreement.