

**REFERENCE ACCESS OFFER
IN RESPECT OF
END-TO-END-TRANSMISSION SERVICE
MADE BY
TT DOTCOM SDN. BHD.**



Effective Date: 2 January 2019

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INTRODUCTION

1. This Referenced Access Offer (“**RAO**”) is issued by TT dotCom Sdn. Bhd. (Company No. 52371-A) (“**TTdC**” or “**Access Provider**”) as the access provider, for the provision of the End-to-End Transmission Service (“**E2E Transmission Service**”) as defined in the Access List and as more particularly described in Schedule 1 (referred to as “**Access Service**”), pursuant to and in accordance with the following regulatory instruments, issued by the Malaysian Communications and Multimedia Commission in accordance with sections 55 and 104(2) of the Communications and Multimedia Act 1998 (Act 588):
 - (a) Commission Determination on the Mandatory Standard on Access List (Determination No.2 of 2015) (“**Access List**”),
 - (b) Mandatory Standard on Access (Determination No.3 of 2016) (“**MSA**”),
 - (c) Commission Determination on the Mandatory Standard on Access Pricing (Determination No.1 of 2017) (“**MSAP**”).
2. TTdC is a licensed network facilities, network service and applications service provider under the Communications and Multimedia Act 1998 (“CMA”). TTdC operates its own network in Malaysia.
3. This RAO is a standing offer by Access Provider which sets out the full terms and conditions for a prospective access seeker intending to obtain this Access Service only from the Access Provider.
4. The effective date of this RAO is 2 January 2019.
5. Capitalized words have the meanings ascribed in this RAO including Section E or in this Access Determinations (as this case maybe).
6. This RAO is structured as follows:
 - (a) Section A – Scope & Application;
 - (b) Section B – Access Request Procedure;
 - (c) Section C – Access Negotiation Requested;
 - (d) Section D – Access Request Accepted/Rejected;
 - (e) Section E – Form of Access Agreement; and
 - (f) Section F – Terms of Access Agreement.

SECTION A: SCOPE AND APPLICATION

This Section specified the scope of the RAO, its application to the specified Access Services only and the eligible access seekers, including matters connected therewith.

A.1 Eligible Access Seeker

- 1.1 Only eligible access seekers may submit an Access Request and/or enter into an Access Agreement with TTdC.
- 1.2 An access seeker is an eligible access seeker if:
 - (a) it is a company incorporated under the laws of Malaysia;
 - (b) it holds the necessary licences issued under the CMA;
 - (c) such licences are still valid and subsisting; and
 - (d) no proceedings or actions are in place to suspend, revoke or cancel the licences.

A.2 Applicable Facilities/Services

- 2.1 This RAO is limited only to the provision of E2E Transmission Service (as defined in the Access List) and as more particularly described in Schedule 1 (Service Description) of this RAO to eligible access seekers only by TTdC (as Access Provider).
- 2.2 This RAO does not apply to any other facility or service other than as provided for in Clause 2.1 of Section A.2 above.
- 2.3 The service description of the Access Service is set out in Schedule 1 (Service Descriptions). Any service not in Schedule 1 (Service Description) is not subject to this RAO.

A.3 RAO Effective Date

- 3.1 All RAO will contain a version number and an effective date.
- 3.2 The RAO will be effective upon the date specified herein.
- 3.3 Previous versions of the RAO will not be applicable in respect of any Access Agreement signed between the Access Provider and Access Seeker after the date of the then current RAO.

A.4 Right to Amend RAO

- 4.1 TTdC may amend this RAO and shall, provide a copy of the amended RAO showing the amendments to the existing RAO to:
 - (a) all Access Seekers who are being provided with access to the Access Service under the prior RAO and who have entered into an Access Agreement but such Access Agreement is pending registration by the Commission; and
 - (b) all Access Seekers (other than any such access seekers who have since indicated that it does not wish to proceed with its Access Request) who have, within three (3) months prior to the making of such amendments, requested access to the Access Service under the prior RAO.
- 4.2 Such copy of the amended RAO is to be provided to the entitled Access Seekers as specified in Clause 4.1 of Section A, within twenty (20) Business Days before the date the changes to the RAO will become effective.
- 4.3 **Where Access Agreement exist**
 - 4.3.1 Where there is an executed and enforceable Access Agreement between TTdC and an Access Seeker, the terms and conditions of such Access Agreement will prevail over the terms in the amended RAO. Save for that no amendments made to the RAO will vary, modify or change the

SECTION A – SCOPE & APPLICATION

terms of an executed and enforceable Access Agreement unless agreed in writing by TTdC and Access Seeker.

4.3.2 Nothing herein obligates or is to be construed as obligating either Access Seeker or TTdC to agree to any amendment to an executed and enforceable Access Agreement when amendments are made to the RAO.

4.4 For the avoidance of doubt nothing in this RAO shall be construed as preventing an Access Seeker from initiating a bona fide dispute (pursuant to Exhibit F.28 of this RAO) in relation to an amendment to the RAO made by TTdC under this Section A.4 except if the amendments to the RAO does not apply to the Access Seeker.

A.5 Notification to MCMC

5.1 Within ten (10) Business Days after the amended RAO is published, TTdC will forward a copy thereof to the Commission.

A.6 Amended RAO coming into effect

6.1 If after the expiry of the twenty (20) Business Days referred to in clause 4.2 of Section A.4 above, no disagreement is received by TTdC from the Access Seeker, the Access Seeker will be deemed to have agreed to the amendments and the amended RAO shall come into force and effect on the day following the expiry date.

SECTION B: ACCESS REQUEST PROCEDURE

The following Section B provides for the procedures for making an access request, requesting for additional information and matters connected therewith.

B.1 Access Request

- 1.1 If an Access Seeker requires access to be provided by TTdC in respect of the Access Service, the Access Seeker shall complete and submit the Access Request Form to TTdC as specified in this RAO.
- 1.2 Access Seeker shall complete the Access Request Form, as set out in Exhibit B.1.2 and provide the necessary information and/or documents as specified therein.
- 1.3 The submission of an Access Request Form is required by the Access Seeker when:
 - (a) there is no Access Agreement in force between TTdC and the Access Seeker governing access to the Access Service specified in this RAO to which the Access Seeker seeks access; or
 - (b) there is such an Access Agreement, but either the current term of that Access Agreement will expire within the next six (6) months; or the requested Access Service are outside the scope of any other access agreement between the Parties.

B.2 Access Request Information Package

- 2.1 The Access Seeker shall provide the following documents as part of the Access Request Information Package:
 - (a) Access Seeker's Licences
 - (b) Creditworthiness Information (as specified in Section B.3 below)
 - (c) Company forms showing its incorporation, shareholder and directors (e.g. Form 44 and 49)
 - (d) List of Insurances Policies containing coverage amount, policy type and expiry date.
- 2.2 The documents provided as part of the Access Request Information Package must be certified.
- 2.3 If there are any commercially sensitive information, the Access Seeker may redact the same and provide the redacted version as part of the Access Request Information Package.

B.3 Creditworthiness Information

- 3.1 The Access Seeker is to provide the basic creditworthiness information to TTdC as part of the Access Request Information Package:
 - (a) A solvency statement issued pursuant to section 113 Companies Act 2016 which is not issued more than four (4) weeks prior to the date of Access Request Form, and which meets the solvency test in section 112 Companies Act 2016;
 - (b) A statement signed by the either two (2) executive directors or one executive director and the company secretary of the Access Seeker stating that the Access Seeker is not subject to any winding up petition, receivership or administration (judicial management or otherwise) under any laws applicable to it in any jurisdiction and that it is a going concern;
 - (c) A certified true copy of the Access Seeker's most recently published Audited Financial Report (which must not be more than 12 months old); and
 - (d) A certificate issued by the Access Seeker's financial officer providing its currently known Quick Ratio.

- 3.2 If in TTdC's reasonable opinion based on the information provided by the Access Seeker above, that the Access Seeker should provide a security deposit, the provisions in Clause 4.3 of Section F.4 of this RAO shall apply *mutatis mutandis*.

B.4 Executing Confidentiality Agreement

- 4.1 The Access Seeker shall execute the Confidentiality Agreement prescribed in Exhibit B.4 of this RAO.
- 4.2 The executed Confidentiality Agreement by the Access Seeker must be included in the Access Request Form.
- 4.3 No changes requested to the Confidentiality Agreement will be accepted by TTdC.

B.5 TTdC may request additional information

- 5.1 TTdC may request the Access Seeker to provide additional information as may reasonably require for the sole purpose of providing access to the Access Service, additional creditworthiness information from the Access Seeker, and other information as set out in Section D.2 of this RAO.
- 5.2 The Access Seeker shall provide the additional information requested within ten (10) Business Days to TTdC.
- 5.3 Should the Access Seeker fail, refuse or neglect to do so, the Access Seeker is deemed to have withdrawn its Access Request.
- 5.4 Notwithstanding Clause 5.3 above, a deemed withdrawal does not prevent or prejudice the Access Seeker from submitting a fresh Access Request to TTdC provided that such fresh Access Request is submitted after the expiry of a one (1) month grace period.

B.6 Access Seeker may request for additional information

- 6.1 If an Access Seeker has submitted an Access Request and has executed the prescribed Confidentiality Agreement, then the Access Seeker may request for additional information as specified in Clause 6.2 of Section B.6 below, from TTdC.
- 6.2 The Access Seeker's written request must be sufficiently detailed in order for TTdC to be able to furnish the information within the specified time period, including a summary of the Access Seeker's reasons for seeking such information.
- 6.3 If TTdC is of the reasonable opinion that the Access Seeker is undertaking a fishing expedition, TTdC will notify the Access Seeker of the same and treat the request for information as a dispute and refer such dispute to the Dispute Resolution Procedure set out in Exhibit F.28 of this RAO.
- 6.4 Pending the resolution of the dispute:
- (a) TTdC will not provide any information to the Access Seeker,
 - (b) the Access Seeker cannot withdraw its request for information pending resolution;
 - (c) all time periods to conclude the Access Agreement are suspended pending resolution of the dispute.
- 6.5 Within ten (10) Business Days of receipt of a valid and proper written request issued under this Clause 6.2 above, TTdC will commence the information gathering exercise to meet the request.
- 6.6 On or before the expiry of the ten (10) Business Days referred to in Clause 6.5 above, TTdC will provide to the Access Seeker the following:
- (a) any supplementary details of any other Facility and/or Service offered by TTdC not included in this RAO (other than other Facility and/or Service provided in TTdC's other referenced access offers), 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 Seekers (where relevant);
- (b) any supplementary access charges for access to Facilities and/or Services not included in the RAO, if applicable;
 - (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, TTdC's Network if relevant;
 - (d) supplementary details of TTdCs 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 constraints);
 - (e) any security requirements, insurance requirements and creditworthiness information (including a credit assessment form, if available) required by TTdC under this RAO; and
 - (f) TTdC's reasons for failing to supply any of the information referred to this RAO.
- 6.7 If TTdC requires additional time to provide the information requested, Access Seeker hereby grants TTdC an extension of time of ten (10) Business Days (“**First Extension**”). Should TTdC require further time to complete the information gathering exercise, TTdC may by written notice to the Access Seeker request for additional time (“**Second Extension**”) and if the Access Seeker agrees, the Access Seeker shall notify TTdC in writing. The duration of the Second Extension shall not be less than ten (10) Business Days. If the Access Seeker refuses to grant the Second Extension, the Access Seeker shall notify TTdC in writing of its decisions and the grounds for refusal. If TTdC does not agree with the grounds for refusal, TTdC may treat the refusal as a dispute and refer to the Dispute Resolution Procedure set out in Exhibit F.28 of this RAO.

B.7 Method of submitting Access Request form

- 7.1 The completed Access Request Form together with the Access Request Information Package must be signed by the authorised officer of the Access Seeker and sent by prepaid post or hand delivered to the Access Provider at the address specified below

TT dotcom Sdn Bhd,
No. 14, Jalan Majistret U1/26,
HICOM Glenmarie Industrial Park,
40150 Shah Alam, Selangor, Malaysia

Attention: **Head of Regulatory Affairs**

with a copy by e-mail to
Regulatory.My@time.com.my

- 7.2 The Access Request Information Package and Access Request Form received by email is for information purposes only and does not cause the time limited for doing any act as specified in this RAO to commence.

B.8 Prioritisation of Access Requests

- 8.1 On receipt of the Access Request, TTdC will acknowledge receipt of the same and return a duly acknowledged copy (with date/time stamp) to the Access Seeker.
- 8.2 All Access Requests from different Access Seekers for the same Access Service will be prioritized according to the receipt date/time stamp, and where there are 2 or more Access Seekers with the same date/time stamp then the prioritization will be according to the preliminary forecasted requirement (where the higher forecasted requirement will be first).

B.9 Incomplete Access Request

- 9.1 If the Access Request Form is in the reasonable opinion of TTdC incomplete, TTdC may either reject the same or return the same to Access Seeker for the Access Seeker to provide a complete Access Request Form.
- 9.2 Notwithstanding anything to the contrary, the time for TTdC to process an Access Request Form commences only when TTdC has received from the Access Seeker a fully completed Access Request Form.

SECTION C: ACCESS NEGOTIATION REQUESTED

This Section C details the access negotiation process and requirements to be adhered to by the Parties.

C.1 Access Negotiation Request

- 1.1 The Access Seeker may either accept the terms of the RAO that will form an Access Agreement or specify that it wishes to negotiate with TTdC the terms of the Access Agreement in the Access Request Form.
- 1.2 The selection is to be made at the point of time when the Access Request Form is submitted to TTdC and not subsequently. The Access Seeker cannot approbate and reprobate.
- 1.3 If the Access Seeker has indicated that it wishes to negotiate the terms of the Access Agreement, then TTdC may by notice in writing to the Access Seeker either (a) agree to the request to negotiate or (b) refuse to negotiate.
- 1.4 If TTdC agrees to the request of the Access Seeker to negotiate, then Sections C.2 to C.6 shall be applicable, TTdC will copy its agreement to negotiate to the Commission at the same time TTdC informs the Access Seeker.
- 1.5 For the avoidance of doubt, nothing herein or in the applicable regulatory instruments compels TTdC to agree to the Access Seeker's request to negotiate terms different from the terms set out in this RAO.
- 1.6 Notwithstanding anything to the contrary anywhere in this RAO, if Access Request is for bandwidth other than as specified in Schedule 2 Part 1, then the Access Seeker shall be deemed to have made a request to negotiate with TTdC the terms of the Access Agreement.

C.2 Negotiation Process

2.1 Joint Notification Requirement

- 2.1.1 As soon as reasonably practicable, Access Seeker shall prepare and submit to TTdC for TTdC's approval the joint notification to be submitted to the Commission when negotiation commences.
- 2.1.2 If TTdC agrees with the contents of the joint notification, TTdC shall sign and return the same to Access Seeker, and the Access Seeker shall execute the joint notification and deliver the same to the Commission.
- 2.1.3 Upon obtaining the acknowledgment of receipt from the Commission, the Access Seeker shall submit the same to TTdC, and only then will negotiations commence.

2.2 TTdC's Response

- 2.2.1 If TTdC is willing to proceed with negotiation as set out in the Access Request Form, TTdC must set out in its response to the Access Seeker:
 - (a) a place, date and time, not later than fifteen (15) Business Days from the date of TTdC's response, when TTdC's representative that is authorised to negotiate on an Access Agreement, will be available for an initial meeting with the Access Seeker's representative that is authorised to negotiate on the Access Agreement; and
 - (b) one (1) copy of the executed confidentiality agreement returned by the Access Seeker in accordance with this RAO, that has also been properly executed by TTdC.

2.3 Negotiation Duration

- 2.3.1 The duration to negotiate the terms of either a new Access Agreement must not exceed 4 months, or an existing Access Agreement must not exceed 3 months.
- 2.3.2 The negotiation durations stated above is based on Business Days.

2.4 Initial Meeting

- 2.4.1 Unless otherwise agreed between the Parties, each Party shall ensure that its representatives meet on the date notified pursuant to negotiation process:
- (a) agree on a timetable for the negotiations, including milestones and dates for subsequent meetings within the applicable timeframe for negotiations;
 - (b) agree on negotiating procedures, including:
 - (i) calling and chairing meetings;
 - (ii) responsibility for keeping minutes of the meetings;
 - (iii) the presentation of the issues lists by the Access Seeker prior to commencement of the negotiations;
 - (iv) clearly defined pathways and timetables for escalation and resolution by each Party of matters not agreed in the meetings;
 - (v) procedures for consulting, and including in the negotiating process, relevant experts from each of the Parties; and
 - (vi) procedures for preparing and exchanging position papers;
 - (c) review the information requested and provided to date and identify information yet to be provided by each Party; and
 - (d) identify what technical investigations, if any, need to be made and by whom such investigations should be made.

2.5 Subsequent meetings

- 2.5.1 Any subsequent meeting after the initial meeting shall be subject to the following:
- (a) All meetings are confidential, and will not be shared or disclosed to any third party unless expressly authorised;
 - (b) Parties shall take turns to chair the meeting at their respective offices and to prepare minutes of the meeting;
 - (c) Minutes of the meeting together with the additional information and decision made internally by either parties (if any), to be circulated to both parties prior to the subsequent meeting; and
 - (d) Any new issue and/or finding shall be circulated to both parties prior to the subsequent meeting to enable both parties to discuss internally before it could be discussed and/or negotiated during the subsequent meetings.
- 2.5.2 Any issue which is closed cannot be reopened by either Party, even when there is a change of personnel involved, unless otherwise agreed by the Party who is not requesting that the issue be reopened.

C.3 Negotiations to be done in good faith

- 3.1 The Access Seeker and TTdC shall co-operate, in good faith and in a commercially reasonable manner, in negotiating the terms of its Access Agreements, including
- (a) acting promptly, honestly, and not perversely, capriciously or irrationally;
 - (b) avoiding the imposition of unreasonable restrictions or limitations on the provision of access to Access Service; and
 - (c) avoiding unnecessary disputes and resolving disputes promptly and fairly.
- 3.2 Both Access Seeker and TTdC agree that they will act always in compliance with and give effect to the applicable regulatory instruments issued by the Minister or the Commission as the case may be, and in so doing must ensure that neither TTdC nor the Access Seeker acts or will act in contravention of such applicable regulatory instruments.

C.4 Extension of Time

4.1 Request

- 4.1.1 If the negotiations cannot be completed within the specified timeframe in Clause 2.3 of Section C.2 above, then it is a condition precedent for the continuation of the negotiation process for both Access Seeker and TTdC to apply for an extension of time from the Commission, if the party wishing for the extension of time is:
- (a) the Access Seeker, then the Access Seeker shall inform TTdC in writing the basis for the Access Seeker's extension of time to complete the negotiation to conclude the Access Agreement and if TTdC agrees, TTdC shall sign the same and return to the Access Seeker; or
 - (b) TTdC, then TTdC shall inform the Access Seeker in writing the basis for TTdC's extension of time to complete the negotiation to conclude the Access Agreement and if Access Seeker agrees, Access Seeker shall sign and return the same to TTdC;

4.2 Extension of Time must be granted by the Commission

- 4.2.1 If the Parties require more time than specified in this RAO to conclude the Access Agreement, such additional time shall only be valid if granted by the Commission.
- 4.2.2 No Party can agree to extend the time limited for the completion of the negotiation.

4.3 Pending grant of extension of time by the Commission

- 4.3.1 Upon the issuance of the joint notification to the Commission until receipt of the decision of the Commission, all negotiations shall be suspended.
- 4.3.2 The negotiations shall resume only when the extension of time is granted by the Commission.

4.4 Refusal to grant extension is a dispute

- 4.4.1 If the extension of time requested is not granted by the Commission, there shall be deemed to be a dispute between TTdC and the Access Seeker and either party may initiate the Dispute Resolution Procedures set out in Exhibit F.28 of this RAO.

C.5 Dispute Resolution

- 5.1 If the Parties are unable to conclude the negotiation process within the time limited or within any extension of time that may be granted by the Commission or unable to arrive at an agreement as to the terms of the Access Agreement, then either TTdC or the Access Seeker may declare a dispute ("**Dispute Declaration**") exist and refer the same to the Dispute Resolution Procedures as set out in Exhibit F.28 of this RAO.
- 5.2 The Party that issues the Dispute Declaration, shall also specify the nature of the dispute that requires resolution or the question of law that requires decision.
- 5.3 If the Dispute Declaration issued by the Access Seeker, does not so specify then the Access Seeker shall be deemed to have withdrawn the dispute and abandon the Access Request.
- 5.4 For the avoidance of doubt, such an abandonment is without prejudice to the Access Seeker submitting a fresh Access Request to TTdC.

C.6 Cost of negotiations

- 6.1 As the negotiation is at the request of the Access Seeker, the Access Seeker shall pay the cost of TTdC's personnel including the cost of any external counsel, technical expert or otherwise in attending the negotiations, drafting clauses or changes to the Access Agreement including reviewing the same, drafting and reviewing minutes of meetings and all other matters incidental thereto..
- 6.2 The cost of any external party is the fees, expenses and applicable taxes charged to TTdC as evidenced by invoices issued by such external party to TTdC.

SECTION C: ACCESS NEGOTIATION

- 6.3 The cost of any TTdC personnel attending is based on the Resource Unit Charge as specified in Part 5 of Schedule 2 of this RAO, in attendance and as well as in preparation (pre and post negotiation session), including drafting any amendments to the Access Agreement and/or minutes of meetings. Payment of this costs by the Access Seeker to TTdC shall be made either on conclusion of the negotiation (i.e. when the negotiated Access Agreement is signed) or when a Dispute Declaration is issued.
- 6.5 TTdC is not obliged to pay and will not pay for any and all costs incurred by the Access Seeker in negotiating, preparing or drafting the Access Agreement incurred by the Access Seeker.

C.7 Unreasonableness

- 7.1 TTdC may refuse an Access Seeker's request to negotiate if the terms and conditions requested by the Access Seeker are not reasonable.
- 7.2 TTdC shall notify the Access Seeker if TTdC refuses to the negotiation request of the Access Seeker, and the Access Seeker may within five (5) Business Days from the date of the notice by TTdC withdraw its request to negotiate.
- 7.3 If Access Seeker withdraws its request to negotiate, the Access Seeker may submit a fresh Access Request after the lapse of not less than one (1) month from the date of notice issued by TTdC under Clause 7.2 above.
- 7.4 If TTdC does not agree to the Access Seeker's request to negotiate, such decision is not a dispute or difference that may be referred for resolution under the Dispute Resolution Procedure in Schedule 5 in this RAO nor is it a subject matter for determination by a Court or authority of competent jurisdiction.

SECTION D: ACCESS REQUEST ACCEPTED/REJECTED

This sets out the provisions applicable to an acceptance or a rejection of an Access Request by TTdC.

D.1 Access Seeker accepts RAO

- 1.1 If the Access Seeker accepts the RAO as indicated in the Access Request Form, the following provisions shall be applicable.
- 1.2 For the avoidance of doubt, the RAO can only be accepted by Access Seeker if the bandwidth required is as specified in Part 1 of Schedule 2.
- 1.3 TTdC will, unless Sections D.2 and/or D.3 of this RAO applies, provide in a written notice, to Access Seeker within ten (10) Business Days of receipt of the Access Request accepting the RAO:
 - (a) two (2) copies of the Access Agreement (as specified in Section E of this RAO) executed by TTdC to the Access Seeker and
 - (b) one (1) copy of the executed confidentiality agreement returned by the Access Seeker that has also been properly executed by TTdC;and copy such written notice to the Commission.

D.2 Additional Information Required

- 2.1 After receipt of the Access Request Form, TTdC may by written notice to the Access Seeker require:
 - (a) additional information or clarification to be provided by the Access Seeker, in respect of any matter set out in the Access Request to make a decision on the Access Request in accordance with this RAO, and copy the same notice to the Commission; and/or
 - (b) provision of acceptable security (as required under Clause 3.2 of Section B.3 of this RAO).
- 2.2 The Access Seeker shall as soon as reasonably practicable provide the additional information, clarifications and/or security as requested by TTdC and copy the same to the Commission.
- 2.3 Pending the receipt of the additional information, clarification and/or security, the status of the Access Request is that it is neither rejected nor accepted.
- 2.4 Once such additional information, clarification and/or security to be provided by the Access Seeker is received by TTdC, TTdC shall reconsider the Access Request and within ten (10) Business Days from date of receipt of the additional information and/or clarification, TTdC will either:
 - (a) issue two (2) copies of the Access Agreement, based on this RAO, duly executed by TTdC for execution by the Access Seeker, together with one (1) completed executed confidentiality agreement, with a copy of the written communication enclosing these documents sent to the Commission; or
 - (b) reject the Access Request (which shall be in accordance with Section D.3 below), and a copy thereof sent to the Commission.

D.3 Rejection of an Access Request

3.1 Right of rejection

- 3.1.1 TTdC may refuse an Access Request submitted by the Access Seeker upon the Rejection Grounds only.

3.1.2 A rejection of an Access Request shall be in writing (“**Rejection Notice**”) and sent by prepaid post to the Access Seeker with a copy by email. The rejection notice shall comply with Clause 3.3 of this Section D.3 below.

3.2 Rejection Grounds

The grounds upon which TTdC may reject or refuse an Access Request are as set out below:

- (a) TTdC does not currently supply, provide access to or has ceased supplying, the Access Service to itself or to any third parties;
- (b) the Access Seeker has not provided all of the information required to be provided in accordance with this RAO;
- (c) **Technical Infeasibility.** It is not technically feasible to provide access to the Access Service requested by the Access Seeker, where
 - (i) TTdC reasonably establishes that there are substantial technical or operational concerns preventing the fulfilment of the Access Request.
 - (ii) each of the following matters shall be taken into account in determining whether access is technically infeasible:
 - (1) economic, accounting, billing, space or site concerns shall be disregarded by TTdC 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;
 - (2) any requirement for TTdC to modify its facilities, Network or Equipment in order to meet the Access Request will not, on its own, mean that the access is not technically feasible but may mean that it is technically not feasible;
 - (3) if TTdC asserts that meeting the Access Request would have an adverse impact on network reliability, TTdC must provide evidence that provision of the requested Access Service would result in a specific and significant adverse impact on network reliability; and
 - (4) TTdC 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 TTdC to meet the Access Request (in whole, or in part, and including for an interim period until any primary difficulties can be resolved).
- (d) **Capacity constraints.** TTdC has insufficient capacity or space to provide the requested Access Service PROVIDED THAT TTdC notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because:
 - (i) it is already carrying traffic to full capacity or near full capacity; or
 - (ii) it is already reserved for future use by TTdC or another Access Seeker, where such future use shall commence not later than six (6) months from the date of the Access Request. However if the reserved capacity is not subsequently used by the reserving party within seven (7) months from the date of the Access Request, TTdC must promptly inform the Access Seeker and, if required by the Access Seeker, re-consider the Access Request in accordance with the process set out in this RAO; and
 - (iii) TTdC is unable to expand capacity to meet the requirements in the Access Seeker’s Access Request.
- (e) TTdC has reasonable grounds to believe that the Access Seeker may fail to make timely payment for the requested Access Service and such concern cannot be addressed through a security requirement in accordance with this RAO;
- (f) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Access Service;

SECTION D: ACCESS REQUEST ACCEPTED/REJECTED

- (g) there are reasonable grounds to believe that the Access Seeker would fail to comply with the provisions of the applicable Commission Determinations (as issued from time to time);
 - (h) there are other reasonable grounds for TTdC to refuse access including in the national interest;
 - (i) if the supply of the Access Service would not be reasonable; or supply of the Access Service would be reasonable, but the terms and conditions requested by the Access Seeker are not reasonable;
 - (j) the Access Request Form is incomplete.
- 3.3 The Rejection Notice to be issued by TTdC shall contain the following:
- (a) the grounds in Clause 3.2 above which are relied upon;
 - (b) the basis of TTdC's decision with sufficient particulars to enable the Access Seeker to make its own assessment about the applicability of the specified grounds of refusal; and
 - (c) a place, date and time, which shall not be later than seven (7) Business Days from the date of TTdC's Rejection Notice, when the authorised representatives of TTdC will be available to meet with authorised representatives of the Access Seeker.
- 3.4 Upon receipt of the Rejection Notice, the Access Seeker must within three (3) Business Days submit in writing the names of its authorised representatives and their designation and role to TTdC; and in default thereof the Access Seeker will be presumed to have agreed with the Rejection Notice.
- 3.5 When the Access Seeker and TTdC meet at the first meeting,
- (a) they shall discuss the refusal of the Access Request in good faith;
 - (b) at this meeting, the Access Seeker may request TTdC to substantiate its reasons for refusal;
 - (c) TTdC shall do its best to substantiate its reasons for refusal but if TTdC require more time to do so, the first meeting may be adjourned;
 - (d) The authorised representatives shall determine the process for addressing the refusal; and
 - (e) Where:
 - (i) TTdC must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker at the first meeting (if any);
 - (ii) TTdC must identify when additional capacity or space is likely to be available (if the ground of refusal is based on capacity constrained); and
 - (iii) TTdC must identify the form of security requirement which would satisfy its concern that the Access Seeker may fail to make timely payment for the requested Access Service, its reasons for the security requirement and why it considers such concern cannot be addressed through a security requirement under this RAO, if the ground for refusal is the lack of creditworthiness.

3.6 Dispute resolution

If, following the meeting between the Parties required to be held pursuant to this RAO, for the purposes of discussing TTdC's refusal of an Access Request, the Parties have been unable to resolve any differences about the validity of the Access Request and the Access Seeker disagrees with TTdC's refusal of the Access Request, either Party may request resolution of the dispute in accordance with the Dispute Resolution Procedures set out in Exhibit F.28 of this RAO.

D.4 Reporting to MCMC the Refusals

- 4.1 Any Rejection Notice issued by TTdC to the Access Seeker shall be provided to the Commission within five (5) Business Days of that refusal together with an explanation of its reason for refusal under this RAO.

D.5 Desk/Field Studies

- 5.1 If the Access Seeker requires a desk/field study to be undertaken in respect of the Access Service, the Access Seeker shall give a notice requesting TTdC undertake such desk/field study.
- 5.2 Upon receipt of the notice from the Access Seeker under this Section D.5, TTdC will provide an estimate of the total costs for undertaking the desk/field study, and the Access Seeker shall pay the amount as an advance payment of the total costs of the desk/field study, before the commencement of the desk/field study. The charges are as specified in Part 5 of Schedule 2 (Charges).
- 5.3 In undertaking the desk study TTdC will collate, review and assess already available information pertaining to the subject matter of the study that TTdC has in its possession.
- 5.4 In undertaking a field study, TTdC will do the following:
- (a) Conduct a visual and in-situ inspection of TTdC's external network facilities;
 - (b) Conduct a visual external inspection of other third party network facilities;
 - (c) If permitted by building managers, joint management boards, or building owners, to enter and inspect the status of TTdC's splitters within the building to ascertain the number of available ports at each existing splitter;
 - (d) Such other reasonable activities that are commonly undertaken by TTdC in carrying out a field study.
- 5.5 As soon as reasonably practicable, after completion of the desk/field study, TTdC will provide a copy of the report to the Access Seeker, and such report shall be kept confidential and restrict its access and use by the Access Seeker.
- 5.6 The Access Seeker shall pay any charges that have been incurred in the carrying out and completion of the desk/field study if the total costs exceeds the sums paid pursuant to Clause 5.2 of Section D.5 above.
- 5.7 Within ten (10) Business Days after receipt of the desk/field study report, the Access Seeker is to notify TTdC in writing as to whether it wishes to continue with its Access Request for the Access Service or withdraw and discontinue the same, and copy the same to the Commission. If the Access Seeker does not notify TTdC within the time limited for so doing, the Access Seeker is deemed to have withdrawn its Access Request.
- 5.8 If Access Seeker decides to withdraw its Access Request, the Access Seeker cannot submit an Access Request for the Access Service unless at least six (6) months have lapsed as there may be no changes in the result of the desk/field study.

SECTION E: FORM OF ACCESS AGREEMENT

E.1 Form of Access Agreement

1.1 The form of the Access Agreement is as set out in Exhibit E.

E.2 Definitions

2.1 Wherever in the RAO a word and/or phrase as set out below is used, such word or phrase shall have the meaning as ascribed to it, unless the context otherwise requires.

2.2 The following words in this RAO and/or in the Access Agreement (as the case may be) have the prescribed meanings unless the contrary intention appears:-

“Access Agreement” or “Agreement”	means an agreement entered into between Operators whereby TTdC provides the Access Service to an Access Seeker in accordance with the terms contained in such agreement;
“Access Determinations”	means collectively the MSA, the Access List and the MSAP;
“Access List”	means the Commission Determination on Access List Determination No.2 of 2015;
“Access Request Information Package”	means the information package referred to in Section B.2 of this RAO;
“Access Request”	means a request for access made by an Access Seeker in the form set out in Exhibit B.1.2 to this RAO;
“Access Seeker”	means a party who meet the eligibility requirements specified in Section A.1 of this RAO, and who makes an Access Request;
“Access Seeker’s POP or Point of Presence”	means a point at which an Access Seeker has established itself for the purpose of obtaining access to Facilities and/or Services;
“Access Service Period”	means a period of twelve (12) months only from the date of provisioning of the Access Service;
“Access Service Charges”	means charges as set out in Parts 1 and 2 of Schedule 2;
“Access Service Order” or “ASO”	means the order issued by the Access Seeker for the provision of the Access Service pursuant to the Agreement;
“Access Service”	means the End-to-End and NTP to POI Interconnection Service only, more particularly described in Schedule 1 (Service Description);
“Act” or “CMA”	means the Communications and Multimedia Act 1998.
“B2B”	means business to business;
“Billing Dispute”	means a dispute as to the billing more particularly specified in Clause 18.5 of the Agreement;

“Business Day”	means a day other than the following days: (a) a Saturday and Sunday; (b) in the states of Kelantan, Terengganu, Johor and Kedah, where Friday is observed as the weekly holiday, a Thursday and Friday; or (c) a day which is lawfully observed as a national public holiday throughout Malaysia;
“Call Communication”	has the meaning given to it in paragraph 3 of the Access List Determination;
“Capacity Allocation Policy”	is as specified in Schedule 5;
“Charges”	means collectively the various fees and charges that may be imposed on the Access Seeker under the terms of the Agreement and includes the Access Service Charges, additional charges and other charges as set out in Schedule 2;
“Commission”	means the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998;
“Confidential Information”	means all information, know how, ideas, concepts, technology, manufacturing processes, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of the Disclosing Party but does not include: (a) information which is or becomes part of the public domain (other than through any breach of an Access Agreement); (b) information rightfully received by the Receiving Party from a third person without a duty of confidentiality being owed to the third person, except where the Receiving Party has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the Disclosing Party; (c) information which has been independently developed by the Receiving Party; or (d) information required by law or the business rules of any stock exchange to be disclosed, provided that: the Receiving Party, gives twenty-four (24) hours’ notice to the Disclosing Party of the particulars of the required disclosure; and the Receiving Party provides the Disclosing Party with all assistance reasonably required by the Disclosing Operator (at the Disclosing Party’s cost) to enable the Disclosing Party to take any steps available to it to prevent that disclosure or to ensure that it occurs subject to a reasonable obligation of confidence;

“Customer”	means in relation to an Operator, a person having a contractual relationship with the Operator for the provision of communications services;
“Disclosing Party”	means the party disclosing the Confidential Information;
“Dispute Resolution Procedures”	means the procedures set out in Exhibit F.28 of this RAO;
“Effective Date”	means the date on which the Access Agreement is duly registered in its entirety by the Commission pursuant to section 150 of the Act and all other conditions precedent specified in Section F are satisfied;
“End User Location”	Means the MDF or SDF room of building where the End User Premises is located;
End User Premises	Means the premises owned or tenanted by End User;
“Equipment”	means any equipment (whether hardware or software), or device which is part of or within the Network;
“Facilities”	means network facilities and/or other facilities which facilitate the provision of network services or applications services, including content applications services, as listed in the Access List Determination;
“Fixed Network”	means network facilities and/or network services comprising the public switched telephone network and/or networks based on Internet Protocols for the provision of communications by guided electromagnetic energy or by point-to-point unguided electromagnetic energy;
“Force Majeure”	means an event or circumstance beyond the reasonable control of TTdC which affects TTdC’s ability to perform its obligations under this RAO or under an Access Agreement;
“Government”	means the Government of Malaysia, a state government, a federal or state ministry, department or agency or body of such federal or state government (as the case may be);
“Insurance Policies”	Means the policies identified in Section F.5 of this RAO;
“Intellectual Property”	means all rights conferred under statute, common law and equity and in relation to trade marks, trade names, logos and get up, inventions, patents, designs, copyright, circuit layouts, Confidential Information, know-how and trade secrets and all rights and interest in them or licenses to use any of them;
“Internet Protocol”	has the meaning given to it in paragraph 3 of the Access List;
“MDF”	means Main Distribution Frame or similar facility;
“MSAP”	means Commission Determination on the Mandatory Standard on Access Pricing No.1 of 2017;
“MSQOS”	means the Commission Determination on the Mandatory Standard for Quality of Service No. 2 of 2016 and No 3 of 2009 issued by Commission (as may be applicable);
“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, and in relation

	to an Operator, means so much of the network as is owned or operated by the Operator;
“NTP”	means Network Transmission Point not being End User Locations or Access Seeker POPs, within the Access Provider’s network;
“Operational Support System” or “OSS”	means the interactive operational support system provided, or to be provided, by TTdC to the Access Seeker to perform the functions required in respect of access to Facilities and/or Services including but not limited to the service fulfilment and service assurances operational support system;
“Operator”	has the meaning given to it in paragraph 3 of the Access List Determination;
“Point of Interconnection” or “POI”	has the meaning given to it in paragraph 3 of the Access List;
“Point of Presence” or “POP”	has the meaning given to it in paragraph 3 of the Access List;
“Quick Ratio”	means the value expressed as a ratio of current assets divided by current liabilities of the Access Seeker;
“RAO”	means this Referenced Access Offer as issued by TTdC from time to time and published on its website;
“Receiving Party”	means the party receiving the Confidential Information;
“Standard Access Obligations” or “SAO”	means the obligations which relate to access as referred to in section 149 of the Act;
“Standard” or “MSA”	means the Mandatory Standard on Access as determined by the Commission in this Determination;
“Term”	means the period of three (3) years commencing from the date when the last condition precedent in the Agreement is satisfied;

E.3 Rules of Interpretation

3.1 In this RAO and the Access Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to, this RAO or other forms of legal instruments issued under the Act or the Access Agreement, includes any variation or replacement of any of them;
- (c) a reference to an annexure, schedule or exhibit is a reference to annexure, schedule or exhibit to this RAO and a reference to this RAO includes annexure, schedule or exhibit;
- (d) a reference to a Section is a reference to a section of this RAO and a reference to a paragraph is a reference to a paragraph in a Section in this RAO;
- (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments issued under them and consolidations, amendments, re-enactments or replacements of any of them;
- (f) the word “person” includes a firm, body corporate, unincorporated association or an authority;
- (g) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns;

SECTION E: FORM OF ACCESS AGREEMENT

- (h) all monetary amounts are expressed in Ringgit Malaysia;
 - (i) if the day on which the payment of money or the performance of an obligation falls due is not a Business Day, the due date or performance date shall be deemed to be the next Business Day;
 - (j) in computing a period of time, the day of receipt of the form, notice or request is to be ignored in accordance with the Interpretation Acts 1948 & 1967;
 - (k) a reference to a third person or a third party is a reference to a person who is not TTdC or the Access Seeker; and
 - (l) any capitalized term, word or expression, which is defined in:
 - (i) Clause 2.1 of Section E.2 of this RAO, has the meaning given to it therein;
 - (ii) the body of this RAO, has the meaning given to it therein; and
 - (iii) the Act, relevant subsidiary legislations made under it or the Access Determinations (collectively "**Statutory Rules**"), but not expressly defined herein, has the same meaning as in the Statutory Rules.
- 3.2 A definition provided in the Statutory Rules shall prevail over a definition provided in this RAO to the extent of any inconsistency.
- 3.3 In respect of the Access Service only a single Access Seeker is to be make an Access Request, regardless of whether the Access Seeker is a member of a group of companies, all of whom are Licensees.
- 3.4 For the avoidance of doubt, this RAO is intended to apply only to the provision of the Access Service by TTdC to the Access Seeker and in respect of related matters thereto and does not confer any benefits on third persons (regardless of whether such third parties are known or ought to have been known).

SECTION F: TERMS OF ACCESS AGREEMENT

The following are the applicable terms that will be incorporated into the Access Agreement for the Access Service.

F.1 Interpretations & Construction

- 1.1 The rules of interpretation and construction as set out in Section E.3 of the RAO shall be applicable in interpreting and construing the provisions and terms in the Agreement.
- 1.2 Any reference to "**writing**" or "**written**" means any method of reproducing words in a legible and non-transitory form (excluding, for the avoidance of doubt, email).
- 1.3 References to a "**company**" include any company, corporation or other body corporate wherever and however incorporated or established.
- 1.4 References to a "**person**" include any individual, company, partnership, joint venture, firm, association, trust, governmental or regulatory authority or other body or entity (whether or not having separate legal personality).
- 1.5 Reference to "**applicable law**" is a reference to any applicable constitution, law, by-law, statute, ordinance, code, rule, regulation, order, judgment or decree of any government, state or political subdivision thereof, courts, regulatory or semi-regulatory or administrative body.
- 1.6 The headings are inserted for convenience only and do not affect the construction of this Agreement.
- 1.7 References to any statute or statutory provision include a reference to that statute or statutory provision as amended, consolidated or replaced from time to time and include any subordinate legislation made under the relevant statute or statutory provision.
- 1.8 In the event any ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by all Parties, and no presumption or burden of proof will arise favouring or disfavouring any Party by virtue of the authorship of any provision of this Agreement.
- 1.9 Any construction or interpretation of the terms of the Agreement shall be based on the terms set out in the Agreement without reference to any extrinsic evidence to determine the intent of the Parties.

F.2 Service Description

- 2.1 The services to be provided by TTdC to the Access Seeker is as described in Schedule 1 (Service Description), and is for the Access Seeker's own use only, and not to be offered as an access service to third parties.
- 2.2 Provision of the Access Service is for the Access Service Period only.

F.3 Conditions Precedent

- 3.1 This Agreement is conditional upon the satisfaction or completion of all of the following:
 - (a) the registration of the duly stamped Agreement by the Commission pursuant to section 150 CMA;
 - (b) the furnishing of the Security Sum by Access Seeker (if required by TTdC);
 - (c) the furnishing of written confirmation of the insurances by Access Seeker;
 - (d) a duly stamped Confidentiality Agreement is submitted to TTdC; and
 - (e) the applicable stamp duty on the Agreement is duly paid.
- 3.2 Until all conditions precedent as set out in Clause 3.1 above is satisfied, the Agreement is not enforceable against either Party.

- 3.3 Upon these conditions precedent being satisfied, the Access Seeker shall notify TTdC of the same, and shall specify in such notice the date when each of the conditions were satisfied.
- 3.4 If TTdC does not agree with the dates specified, TTdC shall notify the Access Seeker of the same and the Parties shall meet to discuss in good faith the dates that the conditions precedent were in fact satisfied.

F.4 Security requirements

- 4.1 Unless a security deposit has been previously provided by Access Seeker pursuant to TTdC's request under clause 3.2 of Section B.3 of this RAO, if TTdC is of the reasonable opinion that a security deposit is warranted notwithstanding that the Access Seeker has provided the solvency statement as required under Section B.3 of the RAO, TTdC shall notify the Access Seeker that it requires the provision of a security deposit to TTdC.
- 4.2 The amount of such security deposit is equal to twelve (12) months of the Access Service Charges for the Access Service as determined by the Initial Forecast submitted by the Access Seeker ("**Security Sum**").
- 4.3 Upon such notice being issued, the Access Seeker shall:
- (a) Procure an irrevocable and on-demand bank guarantee from a reputable financial institution in Malaysia for an amount equal to the Security Sum (as may be acceptable to TTdC); or
 - (b) Procure such other form of security acceptable to TTdC for an amount equal to the Security Sum.

F.5 Insurance requirements

- 5.1 The Access Seeker shall provide written confirmation to TTdC that it has in force the following policies of insurance with total amount of RM20,000,000:
- (a) Workmen compensation and/or Employer's Liability Insurance;
 - (b) Comprehensive General Liability Insurance; and
 - (c) Public Liability Insurance.
- 5.2 The policies of insurance should include TTdC as a beneficiary therein and the cost of such addition shall be borne by the Access Seeker.
- 5.3 The policies of insurance shall be maintained throughout the Term and the Access Service Period.
- 5.4 On or before each anniversary of the date of the Agreement, the Access Seeker shall provide written confirmation that these policies of insurance are still valid and subsisting and all premiums due have been paid, together with written proof of payment of such premiums.

F.6 Access Service Ordering and Provisioning

6.1 Access Service Ordering Process

- 6.1.1 Before submitting an Access Service Order, Access Seeker must first provide TTdC with a Request for Provision of Access Services in the form set out in Form 4.1 of Schedule 4. TTdC may accept or reject this Request, and a rejection of this Request shall be pursuant to and/or in accordance with Section D.3 of this RAO.
- 6.1.2 All Access Service Orders must be in the form set out in Form 4.2 of Schedule 4, once the Request for Provision of Access Services is accepted by TTdC.
- 6.1.3 All ASOs shall be submitted by email in a scan copy with the original being sent to TTdC by prepaid post or by hand. If the method to submit ASOs changes due to the introduction of IT systems, (such as a web portal or B2B gateway), TTdC shall inform the Access Seeker who may either continue with the original process specified in Clause 6.1.3 or adopt the new method.

6.2 First & Subsequent Access Service Orders

- 6.2.1. The Access Seeker shall submit the First ASO no later than sixty (60) days after the conditions precedent are satisfied, and shall be for the Access Service Period. This Agreement shall automatically expire and be determined, without any procedures being taken, in the event that the First ASO has not been submitted within the time specified herein. Upon the deemed expiry or determination, the Access Seeker may submit a fresh Access Request provided that such Access Request is submitted after the expiry of not less than thirty (30) days.
- 6.2.2 The First ASO and all subsequent ASOs shall be in Form 4.1 as set out in Schedule 4 to this Agreement.
- 6.2.3 All subsequent ASOs shall be placed during the Term, Subject Always to Clause 22.3 of this Agreement.

6.3 Use of Access Service Order Information

- 6.3.1 **Use of ordering information:** All information provided in ASOs by the Access Seeker shall be deemed as “Confidential Information” of the Access Seeker and shall only be used by those persons within TTdC whose role is within:
- (a) TTdC’s wholesale or interconnection group;
 - (b) that part of the network engineering group of TTdC responsible for interconnection or access;
 - (c) TTdC’s regulatory affairs group.
- for the purpose of responding to and provisioning for the ASO.
- 6.3.2 TTdC may request such other and/or additional information that TTdC reasonably requires in order for it to assess the ASO submitted by the Access Seeker, provided that such information shall not include any information which:
- (a) TTdC does not require from itself for similar provisioning;
 - (b) identifies, or which enables the identification of, a Customer or services of the Access Seeker; or
 - (c) is non-permitted information under this RAO.
- 6.3.3 The Access Seeker shall provide the other and/or additional information requested by TTdC within ten (10) Business Days after the date of the request made by TTdC.

6.4 Acknowledging Receipt of Access Service Orders

- 6.4.1 **Acknowledgment of receipt.** TTdC shall acknowledge receipt of an ASO, in writing (“**Notice of Receipt**”), within two (2) Business Days.
- 6.4.2 **Notice of Receipt:** TTdC must include in its Notice of Receipt the following information:
- (a) the time and date of receipt of the ASO (or other evidence showing the same);
 - (b) a list of any additional information reasonably required by TTdC from the Access Seeker to clarify provision the ASO; and
 - (c) if the relevant Access Service available to TTdC are below the capacity required to provide the relevant Facilities and/or Services to the Access Seeker, TTdC shall inform the Access Seeker of the available capacity and timeframe for the fulfilment of the ASO at the available capacity and (if relevant) with such augmentation as may be required to fulfil the ASO as submitted; and
 - (d) whether TTdC needs to perform post-Order Service Qualification because information is not readily available to TTdC, together with the reasons for needing to undertake the post-Order Service Qualification; and
 - (e) the indicative position of the ASO in TTdC’s queue, as such ASO is subject to Clause 7.5 below.

6.5 Acceptance or Rejection of an Access Service Order

- 6.5.1 All Access Service Orders issued by Access Seeker may be either accepted or rejected by TTdC. TTdC will use its reasonable efforts to accept all ASOs from the Access Seeker for the Access Service which comply with a Forecast issued by Access Seeker and accepted by TTdC pursuant to Clause 6 in this Agreement.
- 6.5.2 TTdC must notify an Access Seeker that an Access Service Order is accepted or rejected within ten (10) Business Days after either:
- (a) the date of issue of the Notice of Receipt in respect of an ASO, where TTdC did not undertake any post-Order Service Qualification for that ASO; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification, where TTdC did undertake post-Order Service Qualification for that ASO.
- 6.5.3 **Notice of Rejection.** If TTdC notifies the Access Seeker that an ASO is rejected, such notice shall specify:
- (a) the grounds on which TTdC relies on to support the rejection of the ASO, 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 ASO;
 - (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 ASO to discuss the reasons for rejection and alternative methods of compliance; and
 - (c) whether TTdC would be able to accept the ASO in a modified form.
- 6.5.4 **Reasons for rejection:** TTdC may reject an ASO from an Access Seeker where:
- (a) any ground as specified in Section D.3.2 of this RAO applies;
 - (b) subject to this RAO, the ASO is in excess of agreed Forecast levels;
 - (c) the ASO or variation request duplicates an ASO awaiting fulfilment;
 - (d) the Access Seeker has not obtained the necessary related agreements from TTdC (e.g. regarding access to a new POI);
 - (e) 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 TTdC's satisfaction, acting reasonably (e.g. through a security requirement in accordance with this RAO); or
 - (f) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Access Service to ensure the integrity of a Network; or the safety of individuals working on, or using services supplied by means of, a Network or Equipment is protected, and such concern cannot be addressed to TTdC's reasonable satisfaction, through the application of reasonable security or escorted access requirements.
- 6.5.5 **Notice of Acceptance.** If TTdC accepts an ASO, it shall issue a notice of acceptance to the Access Seeker which shall 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 TTdC, then no later than the indicative delivery timeframe or activation timeframe specified in Schedule 3;
 - (b) the date when civil works (if any) are intended to commence;
 - (c) the charges applicable to fulfil the ASO;
 - (d) such information as is reasonably necessary for the Access Seeker to benefit from access to the Access Service (if any);
 - (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**"); and
 - (f) the confirmed position in TTdC's queue of the ASO.

- 6.5.6 Each ASO that is accepted by TTdC forms a separate and independent contract between the Access Seeker and TTdC which is governed by the terms of this Agreement, as the same is deemed to be incorporated by reference into the accepted ASO.
- 6.5.7 After receipt of the Notice of Acceptance issued by TTdC, the Access Seeker shall first submit the ASO to the stamp office and pay the requisite stamp duty thereof. The full stamp duty is borne by Access Seeker and not TTdC.
- 6.5.8 The Access Seeker shall provide a duplicate copy of the ASO duly stamped (as copy) together with the original copy of the ASO showing the full stamp duty thereon, to TTdC and TTdC shall commence installation and network provisioning work on the Business Day following the day of receipt of the stamped ASO.

6.6 Access Seeker's Confirmation

- 6.6.1 Upon the issuance of an ASO by the Access Seeker, the Access Seeker is deemed to have confirmed the ASO, but such issuance is subject to TTdC's acceptance or rejection as set out in Clause 6.5 above

6.7 Estimated Charges

- 6.7.1 If the Notice of Acceptance provided by TTdC contains estimates of charges based on a time and materials basis to undertake any additional works, post-Order Service Qualification:
- (a) TTdC agrees not to exceed the estimate unless TTdC provides the Access Seeker with a written notice prior to exceeding the estimate informing the Access Seeker:
 - (i) the estimate will likely be exceeded;
 - (ii) the reasons for exceeding the estimate; and
 - (iii) a further estimate of the charges for the work necessary to fulfil the ASO;
 - (b) where the actual cost incurred by TTdC exceeds an estimate or revised estimate for a specific scope of work provided by TTdC due to (i) information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker; or (ii) a change in the scope of work by the Access Seeker, the Access Seeker shall pay TTdC the actual cost incurred.
- 6.7.2 If within ten (10) Business Days from the date of the notice given by TTdC under Clause 6.7.1(a) above the revised estimate of the total charges exceeds the original estimate by more than ten percent (10%), the Access Seeker may withdraw the ASO without penalty.
- 6.7.3 Once the estimated and/or revised charges are accepted by Access Seeker the Access Seeker shall pay the actual charges incurred by TTdC up to the estimated amount or revised estimated amount.
- 6.7.4 TTdC shall only commence the work after the Access Seeker confirms in writing that it is agreeable to the estimate or revised estimate, and such confirmation is provided by the Access Seeker within the Validity Period. If Access Seeker is not agreeable, nor if there is no such confirmation within the Validity Period, then the Access Seeker may withdraw or is deemed to have withdrawn (as the case may be), without any penalty.
- 6.7.5 There shall be no cancellation, withdrawal or variation of the ASO once TTdC has commenced work pursuant to clause 6.7.4.

F.7 Provisioning of Access Service Order

7.1 Commencement of delivery timeframes:

- 7.1.1 The applicable provisioning timeframe for an ASO, as determined under this Agreement, shall commence from the Business Day following the day TTdC receives the stamped ASO from the Access Seeker.

7.2 Delivery dates

- 7.2.1 TTdC shall subject to Clause 7.1.1 above, deliver and provision the Access Service by the applicable time periods specified in Schedule 3 of this Agreement.
- 7.2.2 **Indicative activation timeframes:** Any activation date provided by TTdC is merely an indicative activation timeframe or date for the Access Service, and commences after the Business Day following the day TTdC receives the stamped ASO from the Access Seeker.
- 7.2.3 **Early delivery dates:** If TTdC, 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 Access Service at the earlier delivery date.

7.3 Completion of Delivery of Access Service

- 7.3.1 TTdC shall undertake the necessary and appropriate tests that it does for itself to determine that the Access Service are ready for use.
- 7.3.2 Upon completion of the test, TTdC will notify the Access Seeker that the Access Service are ready for use, and specifying the provisioning completion date and the date of commencement of the Access Service Period for the Access Service.
- 7.3.3 When TTdC undertakes the above testing of the Access Service, the Access Seeker shall fully cooperate with TTdC and provide relevant personnel to attend and be present during such test (subject to TTdC's prior written agreement).
- 7.3.4 **Delayed delivery dates:** If the provisioning of an ASO is delayed beyond the applicable time periods specified in Schedule 3, and:
- (a) the delay is solely caused by TTdC:
 - (i) TTdC shall notify the Access Seeker of the delay to the delivery date, together with the reasons for the delay, as soon as practicable after TTdC becomes aware of the possible delay;
 - (ii) TTdC shall permit the Access Seeker to cancel the ASO without penalty if the delay is longer than the equivalent time period for the delivery of the Facility and/or Service; and
 - (iii) the delivery date shall be extended for a further period as reasonably necessary, and TTdC shall promptly notify the Access Seeker of the revised delivery date; or
 - (b) the delay is caused or contributed by the Access Seeker:
 - (i) TTdC shall notify the Access Seeker of the delay to the delivery date as soon as practicable after TTdC becomes aware of it;
 - (ii) TTdC and Access Seeker must work together to minimise the effect of the delays; and
 - (iii) the delivery date shall be extended for a further period as reasonably necessary, and TTdC shall promptly notify the Access Seeker of the revised delivery date; and
 - (iv) TTdC shall have the burden of demonstrating that allegations; and that TTdC has done all things reasonably practicable to minimize or avoid such failure.
 - (c) the delay is caused by events or circumstances beyond the reasonable control of TTdC or the Access Seeker:
 - (i) TTdC shall notify the Access Seeker of the delay and the causes;
 - (ii) TTdC and the Access Seeker must work together to minimize the effect of the delays;

- (iii) the delivery date shall be extended by such period as may be reasonably necessary for TTdC to complete the provisioning works, as notified by TTdC to the Access Seeker.

7.3.5 **Late delivery rebate.** If TTdC fails to meet the delivery date or any extended delivery date notified to the Access Seeker, except where such delays are caused or contributed by the Access Seeker's delay, actions or omissions, or where such delays are caused or contributed by acts or omissions of third parties including Government or local authorities:

- (a) TTdC shall without limitation to any other rights the Access Seeker may have under this Agreement or at law, provide a rebate to the Access Seeker; and
- (b) The rebate shall be for an amount equivalent to the HSBB Day Rate multiplied by the number of Business Days of TTdC's delay.

Provided always that the Access Seeker will only be charged a ratable proportion of the monthly recurring charge from the actual activation date of the Access Services to end of the month in which activation was undertaken, and that the maximum sum provided in the rebate is equal to twenty (20) Business Days.

7.4 Third Party Involvement Causing or Contributing To Non-Compliance

7.4.1 If (a) TTdC fails to comply with a timeframe under this Agreement; and (b) TTdC considers that such failure was caused or contributed to by necessary third party involvement or other matters reasonably outside TTdC's control (for example, where approval from local or other authority is required), TTdC must notify the Access Seeker with a copy to the Commission of such non-compliance and such third party involvement, and provide the contact details of such third party, to permit the Commission to investigate the non-compliance.

7.3.2 Upon notifying the Commission as per Clause 7.4.1 above, the time to complete the provisioning or activation shall be at large.

F.8 Cancellation & Variation of Orders

8.1 Cancellation and variation of ASOs

8.1.1 The Access Seeker may cancel or vary an ASO at any time except where work has commenced by TTdC and/or where Clause 8.2 applies.

8.2 ASO Cancellation Penalty

8.2.1 Except where this Agreement expressly provides that a cancellation of an ASO by the Access Seeker is to be without any penalty, the Access Seeker shall pay a sum to TTdC as pre-agreed compensation for any cancellation, or variation of an ASO and such sum shall be the lesser of the following amounts:

- (a) the sum of wasted expenditure (being costs, expenses and charges necessarily incurred by TTdC which is directly attributable to the ASO and is wasted due to its cancellation or variation) less any reasonable mitigation of those wasted expenditure; or
- (b) an amount equal to the sum of the monthly recurring charges that would have been payable by the Access Seeker in the six (6) months immediately following the cancellation or variation had the ASO not been cancelled or varied, and such value is then reduced to the extent that those costs have been mitigated, or would have been, mitigated had TTdC used its best endeavours to do so.

F.9 Capacity Constraints & Limitation of Use

9.1 ASO in excess of Forecast

- 9.1.1 Notwithstanding anything to the contrary, TTdC must use its reasonable efforts to provide sufficient capacity to enable TTdC to accept and fulfil the ASOs from the Access Seeker for Access Service which are in excess of the relevant Forecast.
- 9.1.2 TTdC is only required to do so if, after meeting the Forecast requirements of other access seekers and itself, there is available capacity to meet the excess capacity of the Access Seeker or TTdC could readily upgrade existing capacity.
- 9.1.3 TTdC shall allocate the available capacity on a non-discriminatory basis to meet the over Forecast requirements of all other access seekers, the Access Seekers and itself.
- 9.1.4 TTdC is not required to supply Access Service in excess of the Forecast if, despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of Access Service provided to all other access seekers and/or itself.

9.2 Required extra capacity

TTdC may require an Access Seeker to procure such additional capacity on the Access Seeker's side of the Network to the extent that TTdC, in good faith and reasonably, estimates that the Operators may require additional capacity to meet demand and a failure by the Access Seeker to procure that additional capacity may cause an adverse impact on the operation of TTdC's Network. Where the Access Seeker fails to so procure additional capacity and the demand exceeds the capacity on the Access Seeker's Network, TTdC must notify the Access Seeker in writing, and the Access Seeker and TTdC must meet no later than five (5) Business Days after receipt of the notice from TTdC to attempt to identify alternative sources of capacity. If the matter cannot be resolved within ten (10) Business Days of the date of that meeting, TTdC may bar or block calls or traffic to the Access Seeker's Network to the extent necessary to minimise congestion within TTdC's Network.

9.3 Constrained capacity

If TTdC reasonably believes that the capacity in any part of the Access Service required by:

- (a) the Access Seeker pursuant to the relevant Forecasts and/or ASOs;
- (b) other access seekers, pursuant to their relevant Forecasts and/or ASOs; and
- (c) TTdC, for the purposes of its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest,

would, in aggregate, exceed the capacity which TTdC will be in a position to be able to provide, TTdC shall:

- (d) notify the Access Seeker and all other access seekers to whom relevant capacity is supplied; and
- (e) allocate the available capacity between itself, the Access Seeker and other access seekers of this Access Service in accordance with TTdC's Capacity Allocation Policy set out in Clause 9.4.

9.4 Capacity Allocation Policy

- 9.4.1 If TTdC claims that it has insufficient capacity to meet an Access Seeker's Forecasts or ASOs, TTdC shall maintain a Capacity Allocation Policy, which:
- (a) shall be disclosed, free of charge, to each Access Seeker upon entry into an Access Agreement, the Commission upon the Effective Date, to both Access Seekers with whom TTdC has an Access Agreement and the Commission each time it is amended, and any other Operator on request;
 - (b) shall set out the principles in accordance with which TTdC shall determine how to allocate capacity between itself (including its related bodies corporate) and any other Operator or Operators, in circumstances where the amount of capacity available is less

than the aggregate of capacity required by TTdC, its related bodies corporate and the other Operator or Operators; and

- (c) shall:
 - (i) be fair and reasonable;
 - (ii) be consistent, so far as practicable, with TTdC's general duty of non-discrimination in accordance with subsection 149(2) of the Act;
 - (iii) treat the requirements of the Access Seeker and third parties on an equivalent basis to TTdC's own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest; and
 - (iv) allocate the available capacity in the relevant Facilities and/or Services in proportion to each Operator's Forecast and/or Order requirements.
- (d) shall set out TTdC's plans to expand their capacity over time (if any), where such information must be provided to Access Seekers on a non-discriminatory basis in terms of its content and frequency of updates.

9.4.2 All ASOs are subject to the capacity allocation policy as set out in Schedule 5.

9.5 Policies affecting Access Service

9.5.1 The Access Seeker may use capacity installed in connection with the provision of the Access Service to be used, to the extent technically feasible, in connection with another network service, and the Access Seeker is to notify TTdC of its intention to do so, and if TTdC objects because it is technically not feasible, then the Access Seeker shall not use such capacity.

9.5.2 Access Service Orders issued by the Access Seeker is subject to the queuing policy set out in Schedule 5.

F.10 Proof-of-Concept

10.1 If the Access Seeker requires a proof-of-concept to be undertaken before issuing an Access Service Order, it shall first notify TTdC of such requirement together with sufficient details and information necessary for TTdC to design the proof of concept.

10.2 As soon as reasonably practicable, TTdC shall inform the Access Seeker that the proof of concept can be undertaken, the proposed dates, and the applicable charges payable by Access Seeker.

10.3 Upon agreement of the Access Seeker to the carrying out of the proof of concept and the applicable charges, the charges shall be paid by the Access Seeker prior to the commencement of the proof of concept.

10.4 Pending the completion of the proof of concept, neither a forecast, an ASO nor any other order that may be required to be issued under this Agreement, is to be issued by the Access Seeker, and if so issued the time limited for accepting or rejecting the same shall not commence until after the completion of the proof of concept.

F.11 Technical Obligations

11.1 Compliance: Operators shall adhere to the relevant guidelines issued by the Commission from time to time to the extent that they have not been expressly revoked and are not inconsistent with any technical obligations set out in this Agreement, and Access Seeker is to comply with all TTdC's technical requirements or instructions.

11.2 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's 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.

- 11.3 Technical Standards:** An Operator must comply with any applicable technical standard adopted by the Commission under Chapter 3 of Part VII of the Act.
- 11.4 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.
- 11.5 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 11.4(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.

F.12 Operations and Maintenance Obligations

12.1 O&M Responsibilities

- 12.1.1 Each Operator shall be responsible for the operations and maintenance of its own facilities, network and services.
- 12.1.2 **Planned maintenance:** If TTdC intends to undertake any planned maintenance which may affect an Access Seeker’s Network, the Access Service, TTdC will:
- (a) provide the Access Seeker with at least ten (10) Business Days’ notice of the planned maintenance;
 - (b) use its reasonable endeavours to minimise any disruption to the Access Service, and if the Access Seeker and TTdC agree that it is practicable to provide alternative routing at no additional cost to the Access Seeker, TTdC shall do so upon such agreement PROVIDED THAT any agreement shall not delay the carrying out of the planned maintenance by TTdC; and
 - (c) undertake the planned maintenance within windows of time that have the least effect on TTdC’s and the Access Seeker’s Customers.
- 12.1.3 **Emergency maintenance:** If an Operator needs to undertake emergency maintenance (“**Maintenance Operator**”) which may affect the other Operator’s Network, the Maintenance Operator must, if it is able to:
- (a) provide at least twenty-four (24) hours’ notice of the emergency 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 rerouting.

12.2 Fault Reporting & Rectification

- 12.2.1 **Fault reporting service:** Each Operator shall establish and maintain a fault reporting service that allows its Customers who are directly connected to the Network of that Operator and to whom that Operator supplies Access Service to report faults relating to any Network, Facility

and/or Service. The Access Seeker must report all interconnection and access outages that relate to Networks, Access Service to TTdC's relevant fault reporting and rectification service.

12.2.2 In order to have a proper fault reporting mechanism and process, the Parties shall within sixty (60) days after the Agreement is effective, TTdC shall provide to the Access Seeker a fault reporting and rectification manual for the comment, feedback and agreement of the Access Seeker. Before the expiry of the sixty (60) day period, the Parties shall agree on the applicable fault reporting and rectification manual which shall be applicable as between the Parties in respect of the Access Service.

12.2.3 The principles to be incorporated into the said manual shall be as follows:

- (a) An Operator shall perform fault reporting and identification on a non-discriminatory basis; and
- (b) An Operator shall treat the faults reported by another Operator on an equivalent basis as it treats the faults reported by itself.

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

12.2.5 **Hours of fault reporting and rectification:** The Operators shall maintain a twenty-four (24) hours a day, seven (7) days a week fault reporting and rectification service.

12.3 Customer Notification

12.3.1 The Access Seeker will advise all of its directly connected Customers to report all faults to the fault reporting service provided by the Access Seeker and not to TTdC. If notwithstanding such advice, the Access Seeker's Customer reports a fault to TTdC, then Clause 13.3.2 shall apply and TTdC shall charge the Access Seeker twenty percent (20%) of the Resource Unit Charge specified in Schedule 3.

12.3.2 **Cross-referrals:** If a Customer reports a fault to an Operator:

- (a) when the Customer is directly connected to another Operator; or
- (b) which clearly relates to a Network, Facility and/or Service of another Operator,
- (c) the Operator which receives the report shall promptly inform the other Operator of the reported fault.

12.4 Network Fault Rectification

12.4.1 **Network fault responsibility:** The Operator in whose Network the fault occurs is responsible for rectifying it and restoring services including for the purpose of restoring the supply of the Access Service which are used in another Operator's Network.

12.4.2 **Major inter—working faults:** If a major fault occurs which affects communication that crosses or would cross both Operators' Networks, initial responsibility for identifying the fault rests with the Operator who first becomes aware of the fault.

12.4.3 **Faults affecting other Networks or Equipment:** If an 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 the first-mentioned Operator to rectify the identified faults and restore the service; and
- (c) the outcome of those actions.

12.4.4 **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.

12.4.5 Fault rectification: Each Operator shall rectify faults on a non-discriminatory basis.

12.5 Routine Testing

The Operators shall conduct interconnection service tests at agreed annual intervals to ensure the maintenance of interconnection services at agreed services levels in accordance with standards as agreed by both parties or such other standards as may be determined by the Commission, the details of which are set out in the manual prepared pursuant to Clause 12.2.2 above.

F.13 Charges & Billing

13.1 Charges

13.1.1 The applicable Charges and the charging principles are as set out in Schedule 2 to this Agreement.

13.1.2 All Charges are exclusive of applicable Sales and/or Service Tax, goods and services tax or value-added tax as may be imposed by any written law on the Access Service, and which will be borne by the Access Seeker.

13.1.3 The currency of the applicable Charges in this Agreement is Ringgit Malaysia.

13.2 Billing & Billing cycle

13.2.1 Invoices: TTdC shall use its best endeavours to issue on a monthly basis to the Access Seeker an invoice in writing or in electronic form (if so requested by the Access Seeker) within one (1) month after the end of the monthly billing cycle for the Charges due pursuant to orders placed by Access Seeker.

13.2.2 Billing Cycle: For the purposes of this Agreement, the billing cycle for this Access Service is monthly.

13.2.3 Provisional billing: Where TTdC is unable to issue an invoice within one (1) month after the end of the billing cycle in accordance with this Agreement, it may issue an invoice to an Access Seeker for a provisional amount, based on the last invoice ("Provisional invoice"). In such circumstances, TTdC may invoice the Access Seeker for a provisional amount for a period of not more than three (3) successive billing cycles, provided that the total provisional amount is no more than the average of the three (3) most recent Invoices. Where there have not been three (3) past invoices for access to the Access Service, TTdC may issue a Provisional invoice up to the full value of the amount based on the most recent invoice.

13.3 Billing Information

13.3.1 **Billing verification information:** TTdC 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.

13.3.2 Summarised Invoice and billing information: TTdC shall provide the Access Seeker, on written request, with an aggregated summary of billings for access to the Facilities and/or Services provided to the Access Seeker, in monthly tranches PROVIDED THAT the Access Seeker pays the additional charge for the provision of such information.

13.4 Billing Errors

13.4.1 If the Access Seeker discovers an error in an Invoice, it must not later than five (5) Business Days notify TTdC in writing. If TTdC agrees that an error was made, TTdC will make the necessary adjustments to correct that error within one (1) month of the Access Seeker's written notification, and re-issue a fresh Invoice to the Access Seeker.

13.4.2 If TTdC discovers an error in an invoice issued, TTdC will notify the Access Seeker as soon as it has made the discovery and issue an invoice correcting the errors in the earlier invoices (notwithstanding that the Access Seeker may have paid the earlier invoices).

13.4.3 If correction results in either:

- (a) an amount that is less than the total amount paid by the Access Seeker, then TTdC may off-set the excess against the next Invoice; or
- (b) an amount that is more than the total amount paid by the Access Seeker, then Access Seeker shall pay the shortfall within fifteen (15) days of the Invoice.

13.4.4 Backbilling: TTdC may include omitted or miscalculated Charges from an earlier invoice in a later invoice, or issue an Invoice for Charges which have previously not been invoiced provided that TTdC is able to substantiate the Charges to the Access Seeker and such inclusion, amendment or issuance is made within six (6) months from the end of the end of the Access Service Period or BTU Service Period (as the case may be).

13.5 Billing Disputes

- 13.5.1 An Access Seeker may dispute any amount in an invoice if the Access Seeker notifies TTdC within thirty (30) Business Days after the date of receipt of such invoice, and the Access Seeker specifies in its notification to TTdC the amount disputed, the reasons for disputing the amount and provide documentary records supporting the reasons.
- 13.5.2 If upon receipt of the dispute notice by TTdC, TTdC may either agree with the dispute and propose to correct the same by reissuing a corrected invoice to the Access Seeker or disagree with the dispute raised. In either case, TTdC may inform the Access Seeker of its decision.
- 13.5.3 If TTdC disagrees with the dispute raised by the Access Seeker, such a billing dispute will be resolved in accordance with the Dispute Resolution Procedures set out in Exhibit F.28 of this RAO.

F.14 Payment Terms

- 14.1 Method of payment.** The Access Seeker shall pay an Invoice to TTdC within thirty (30) days from the date of the Invoice either by way of bank cheque or electronic funds transfer directly to an account nominated by TTdC as specified in the Invoice. For the avoidance of doubt, an Invoice is deemed paid when TTdC receives the full sum stated in the Invoice in immediately available funds, free and clear from any and all charges as specified in Clause 14.2 below,.
- 14.2 All bank charges, costs, fees, commissions and expenses in remitting payment to TTdC shall be borne by the Access Seeker such that the invoiced amount is received in full by TTdC.
- 14.3 No set-off:** Neither the Access Seeker nor TTdC may set off against any Invoice due from the Access Seeker to TTdC any sum due from TTdC to the Access Seeker under this Agreement or any other agreement except if liquidation proceedings have commenced against the Access Seeker, at least three (3) Invoices have been issued and such Invoices have not been paid (other than if the amounts in such Invoices are subject to a bona fide dispute), or where Clause 9.2 applies.
- 14.4 Withholding of disputed amounts:** If Clause 14.5 above applies, TTdC shall allow an Access Seeker to withhold payment of any amount disputed in good faith by the Access Seeker.
- 14.5 Interest:** Except for any amount in an Invoice being disputed by an Access Seeker in good faith in accordance with this Agreement, TTdC 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 in full by TTdC. The interest that may be charged by TTdC shall be at the rate of two percent (2%) per annum above Malayan Banking Berhad's base rate calculated on a daily rest, 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 on a daily rest, from the due date until the date of receipt by TTdC of full payment. For clarification, TTdC shall not charge interest on an amount which is disputed by an Access Seeker in good faith, other than once the dispute is resolved in favour of TTdC, the Access Seeker shall pay the sum within five (5) Business Days failing which interest shall be charged at the rate of three percent (3%) per annum above Malayan Banking Berhad's base rate calculated on a daily rest, from the due date until the date of receipt by TTdC of full payment.

F.15 Customer Principles

- 15.1 TTdC and the Access Seeker acknowledge and accept that they recognise and will act consistently with the customer relationship principles as set out in Section 4.3.2 of the MSA, which is deemed incorporated herein.

F.16 Term of Agreement

- 16.1 This Agreement is for the Term, and will expire on the last day of the Term.
- 16.2 Not less than one-hundred and eighty (180) days before the expiry of the Term, the Access Seeker must notify TTdC that it wishes to renew the Agreement, and accordingly the Access Seeker shall submit a new Access Request pursuant to the terms of TTdC's then currently published RAO (if any).
- 16.3 Nothing in this Agreement or under any law implies a right to renew the Term of the Agreement.
- 16.4 On the expiry of the Agreement (a) no new Access Service Orders may be placed by the Access Seeker, (b) if any ASO that has been placed but not provisioned shall automatically expire and (c) all Access Service under any existing ASOs shall continue until the expiry of that Orders' respective Access Service Period (subject to Clause 19 below).
- 16.5 If the Access Seeker wishes to negotiate the terms of a renewed access agreement, the Access Seeker shall comply with the provisions in Section C of this RAO.

F.17 Service Periods

17.1 Initial Access Service Period

- 17.1.1 The Access Service Period for an Access Service Order for the Access Service shall commence from the date the ASO is provisioned by TTdC.

17.2 Renewals of Access Service Periods

- 17.2.1 The Access Service Period for an Access Service Order is automatically and is deemed renewed by the Access Seeker unless the Access Seeker gives not less than sixty (60) days prior notice before the expiry of the ASO.
- 17.2.2 The first renewal of the Access Service Period is for the same duration, and is deemed to be as if the original Access Service Period for that ASO was double the length of time.
- 17.2.3 The second renewal of the Access Service Period is for the same duration as the Access Service Period provided that the Access Seeker has given TTdC not less than sixty (60) days prior notice of renewal of that ASO.

17.3 Time to place last Access Service Orders

- 17.3.1 The Access Seeker must place its last Access Service Order not less than ninety (90) days before the expiry of the Agreement. Any Access Service Order placed by the Access Seeker after that period, shall not be provisioned by TTdC.

17.4 Survival of Access Service Orders

- 17.4.1 If the Agreement expires before the Access Service Period of the ASOs expire, such ASOs will continue till the end of their respective Access Service Periods, and the Access Seeker shall continue to be liable and perform its obligations under this Agreement as if the Agreement had not expired.
- 17.4.2 The Access Service governed by an ASO shall expire on the expiry of the Access Service Period of that ASO unless renewed in accordance with Clause 17.2 above.

F.18 Suspension of Access Service Orders

- 18.1 Subject to this Agreement, TTdC may only suspend the Access Service if:

- (a) the Access Seeker's facilities materially and adversely affect the normal operation of TTdC's Network, or are a material threat to any person's safety;
 - (b) the Access Seeker's facilities or the supply of services pose an imminent threat to life or property of TTdC, its employees or contractors;
 - (c) the Access Seeker's facilities cause material, physical or technical harm to any facilities of TTdC or any other person;
 - (d) where the Access Seeker has failed to pay invoices in accordance with Clause 19, unless the Access Seeker has exercised its right to dispute an invoice in accordance with the terms in this Agreement;
 - (e) where the Access Seeker has failed to provide the new security amount as required under this Agreement;
 - (f) the Access Seeker breaches any laws, regulations, rules or standards which has a material and adverse effect on TTdC or the provision by TTdC of Facilities and/or Services under this Access Agreement;
 - (g) the Access Seeker (its servants or agents) have had complaints made against them for unruly or inappropriate behaviour by persons within the Customer's premises; or
 - (h) where Force Majeure Event occurs.
- 18.2 Prior to suspending the Access Service, TTdC shall provide the Access Seeker with five (5) Business Days' prior written notice of its intention to suspend, and such notice shall contain the reasons.
- 18.3 A copy of the said notice shall be forwarded by TTdC to the Commission.
- 18.4 On the expiry of the said five (5) Business Days, the Access Service shall be suspended.
- 18.5 Notwithstanding that the Order is suspended, the Access Service Period will not be extended by the period of that the Access Service was suspended, and the Access Seeker shall still pay invoices issued by TTdC for the Access Service ordered.
- 18.6 No reinstatement charge is payable by the Access Seeker except where the suspension of the Access Service is due to grounds (a) to (g) of Clause 19.1 above, whereupon the reinstatement of the suspended Access Service is subject to the Access Seeker paying TTdC a reinstatement charge specified in Part 4 of Schedule 2.

F.19 Termination of Agreement

19.1 Grounds for Termination

- 19.1.1 TTdC may only terminate this Agreement and/or an Order if any of the circumstances referred to below apply:
- (a) the Access Seeker has materially breached the Agreement and TTdC has notified the Access Seeker that it will terminate this Agreement and/or the Order if the Access Seeker has not remedied its breach within one (1) month from the date of the notice, and the Access Seeker has failed to remedy its breach in accordance with such a notification;
 - (b) the Access Seeker has become subject to a winding up order (whether compulsorily or voluntarily) or ceases to trade in the normal course of business or becomes insolvent or a receiving order is 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.

19.1.2 If TTdC decides to terminate this Agreement and/or an Order pursuant to Clause 19.1.1 above, TTdC shall notify the Access Seeker in writing of its decision, together with the grounds thereof, and forward to the Commission a copy thereof.

19.2 Change in law

19.2.1 Where continued operation of the Agreement, the Orders or access to the Access Service, or any Network, facilities and/or services, is or will be unlawful (as a result of a legislative change), the Access Seeker and TTdC must meet within five (5) Business Days of becoming aware of the relevant change in law to review whether access to the Access Service may be provided by TTdC on different terms and conditions (which are acceptable to the Access Seeker).

19.2.2 If the parties cannot agree to the provision of access on different terms and conditions, TTdC may terminate the Agreement and the provision of the Access Service under all Orders.

19.3 Special Notification to Commission

19.3.1 Prior to terminating, suspending, or seeking to materially vary the Agreement or access to any Facilities and/or Services provided under it, TTdC must notify the Commission in writing of the action TTdC proposes to take and the reasons why it considers such action is appropriate.

19.3.2 The Commission may invite any affected Access Seeker to make submissions to the Commission regarding the proposed termination, suspension or material variation.

19.3.3 TTdC:

- (a) shall only give effect to the proposed termination, suspension or material variation with the Commission's written consent and subject to any time delay or conditions which the Commission may specify (if any). The Commission will endeavour to respond to TTdC's notice within ten (10) Business Days or such other period that the Commission considers is reasonable;
- (b) must not give effect to the proposed termination, suspension or material variation unless TTdC has received written consent from the Commission to such termination, suspension or material variation; and
- (c) shall take all steps practicable to minimise disruptions and inconvenience to the Customers of the Access Seeker, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the suspension or termination of the Access Agreement, or access to Facilities and/or Services provided under it.
- (d) may act to terminate, suspend or materially vary the Agreement (if the material variation has prior thereto been agreed to by the Access Seeker in writing) if there is no decision by the Commission within the ten (10) Business Days, in order to protect its interest and/or minimize its financial exposure and losses considering that TTdC's parent company is a company listed on the Bursa Malaysia and is subject to the Listing Requirements.

F.20 Termination of Access Service Order

20.1 Without prejudice to any other right or remedy, TTdC may immediately terminate an Access Service Order if:

- (a) after the expiry of fourteen (14) days of a demand for payment by TTdC for any outstanding invoices or charges in arrears has been issued, the Access Seeker has failed, neglected and/or refused to pay the sum demanded together with late payment interests;
- (b) Access Seeker is in breach of the Agreement or any material term in this Agreement and has not remedied the same to the reasonable satisfaction of TTdC by the date specified in a prior written notice issued by TTdC, which date shall not be less than thirty (30) days;

- (c) TTdC is in receipt of a direction, order or notice issued by an appropriate authority (being MCMC, PDRM or the Government of Malaysia, as the case may be) either requiring TTdC to terminate the provision of the order to the Access Seeker, suspend the Access Service or declaring that the use of the Access Service is contrary to the Applicable Law.
- 20.2 **Termination for Force Majeure.** If a Force Majeure Event occurs for 30 continuous days, then either Party may in writing terminate the affected ASO without any liability to the other Party.
- 20.3 **Termination by Access Seeker.** The Access Seeker may terminate an Access Service Order if it provides TTdC with not less than ninety (90) days prior notice, but the Access Seeker shall pay TTdC the charges for both the remainder of the Access Service Period (which is deemed to be a genuine pre-estimate of TTdC's losses).

F.21 Consequences of Termination

- 21.1 TTdC shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to the Access Service provided under it except:
- (a) charges that are in arrears (whether invoiced or not) but which are not paid; and
 - (b) the charges for the balance of the Access Service Period, provided that:
 - (i) such charges must be reduced to reflect any cost savings to TTdC from not having to supply the Access Service (if any);
 - (ii) the charges must include such charges that were incurred by TTdC because of Orders placed by Access Seeker (such as payment liability to third party suppliers, manufacturers or vendors); and
 - (ii) TTdC must use reasonable endeavours to mitigate its costs of termination or suspension and maximise cost savings.
- 21.2 **Upfront charges refund:** On termination of the Agreement or termination of an Order, TTdC shall refund to the Access Seeker all amounts paid in advance to the extent that the amount (or part of the amount calculated on a pro—rata basis) relate to the period after the date of effect of such termination.
- 21.3 **Deposits and guarantees:** TTdC shall within two (2) months of termination of the Agreement refund to the Access Seeker the Security Sum provided by the Access Seeker PROVIDED ALWAYS THAT all other amounts due and/or payable by the Access Seeker to TTdC have been paid in full; and immediately upon termination of the Agreement unconditionally waive any rights under any guarantees provided by the Access Seeker except in respect of amounts payable by the Access Seeker to TTdC as at the date of termination.
- 21.4 If Access Seeker terminates any Order pursuant to any specific provision in the Access Agreement that grant the Access Seeker a specific right to terminate due to a breach by TTdC, the Access Seeker will pay all Charges that are in arrears and/or outstanding up to the date of termination.
- 21.5 Regardless of the Party terminating the Order, the Access Service shall ceased to be provided by TTdC on the date of termination.

F.22 Dispute Resolution

- 22.1 All disputes and differences between the Parties arising out of, in connection with or related to this Agreement or any Orders shall be resolved in accordance with the Dispute Resolution Procedure as set out in Exhibit F.28 of this RAO.
- 22.2 No Party shall refer a dispute or difference to the Courts except as permitted by Exhibit F.28 of this RAO.

F.23 Miscellaneous

23.1 Compliance with laws

The Parties shall comply with all applicable laws, regulations and all subsidiary instruments issued from time to time by the Commission or the Ministry pursuant to the Act.

23.2 Good Faith and Exclusivity

Each Party will act in good faith in relation to the other with regard to all matters relating to or contemplated by the Access Agreement. The parties acknowledge that nothing in the Access Agreement will prevent, limit or restrict in any way whatsoever either party from supplying any facilities and/or service to any person by means of such party's Network.

23.3 Partial Invalidity

If any term or condition of the Agreement is found to be illegal, invalid or unenforceable in any respect under any applicable law, then the remainder of the Agreement or the application of such term or condition to other situations or circumstances shall not be affected, and the parties agree to amend the Agreement to reflect the correct intention of the parties and/or the directions of the Commission (where applicable) to the extent permissible by such applicable law.

23.4 Assignment

Neither Party shall assign this Agreement, any ASO to any other person, unless the prior express written agreement of the other Party is first obtained.

23.5 Agreement to be reviewed

23.5.1 This Agreement shall be reviewed when either of the following events occur:

- (a) the Minister issues a direction or determination relating to its subject matter;
- (b) the Commission issues a direction or determination relating to its subject-matter;
- (c) the CMA or the Standard is amended in relation to its subject matter;
- (d) by agreement between the Parties;
- (e) a condition of either Party's license is amended or deleted or a new condition is imposed.

(either one of the above events shall be referred to as a "Review Event").

23.5.2 Review Process.

- (a) If a Review Event occurs, either Party may notify the other Party that the Agreement will be reviewed.
- (b) The review shall be undertaken and completed as soon as possible.
- (c) Upon completion of the review, TTdC shall submit to the Access Seeker a copy of the agreement duly marked up with the amendments or modifications or variations clearly identified.
- (d) The Access Seeker shall revert with its comments and suggested changes (if any), using proper track change function in a word processing software.
- (e) TTdC, on receipt of the Access Seeker's comments and suggested changes, may either agree or disagree or proposed further changes thereto.

23.5.3 Effect of Review.

- (a) If the Parties agree to the amendments, modifications or variations to the Agreement, then the Parties shall execute an amendment thereto which shall be submitted for registration by the Commission.

- (b) If the Parties are unable to agree to the amendments, modifications or variations, then TTdC may terminate the Agreement including the provision of the Access Service pursuant to Section 5.14.4 MSA.

23.6 Intellectual Property Rights

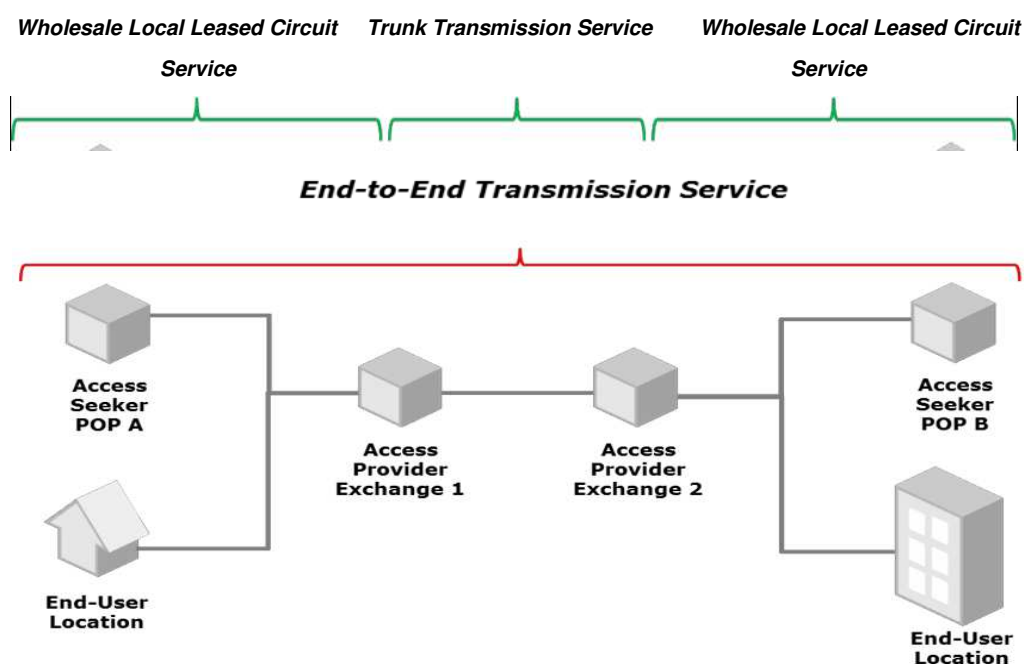
- 23.6.1 Each Party shall license to the other party for the Term of the Agreement and on a royalty-free basis, all Intellectual Property rights necessary for the proper operation of the Agreement and the inter-operability of each party's Networks, subject to the permissions granted by the relevant third party licensors.
- 23.6.2 Except as otherwise expressly provided in the Agreement, all intellectual property rights, including trade secrets if any, shall remain in the ownership of the person creating or commissioning the same and nothing in the Agreement shall confer or be deemed to confer on either Party any rights or licenses in the intellectual property of the other Party or of any third party.
- 23.6.3 Without prejudice to Clause 23.6.2, neither Party shall be entitled to use any trademarks or service marks (whether registered or not) of the other Party in any document, material or any medium (including digital medium), without the prior written consent of the other Party.
- 23.6.4 The Parties will negotiate arrangements (including in respect of title) concerning intellectual property jointly developed in the course of the performance of the Agreement or otherwise in connection with the Agreement.

SCHEDULE 1 - SERVICE DESCRIPTIONS

A. Introduction

1. The Access Services comprise (i) E2E Transmission Service with (ii) TTdC's NTP to TTdC's POI Connection service.

Below is the diagram of End-To-End Transmission service as per the Mandatory Standard on Access List, Determination 2 of 2015 ("Access List")



The End-To-End Transmission comprises two Wholesale Local Leased Circuit Services and the Trunk Transmission Service in the core network.

TTdC's network architecture is different as in TTdC network there is a connection from TTdC's NTP to TTdC's POI at both side between the WLLC and Trunk Transmission at TTdC's core network. Therefore, additional charge is applicable for the connection from TTdC's NTP and TTdC's POI for both sides which is not regulated under the MSAP.

2. The E2E Transmission service with TTdC's NTP to TTdC's POI Connection service is a facility and/or service for the carriage of communications between:
 - (a) Two End User Locations;
 - (b) Between two Access Seeker Points of Presences; or
 - (c) Between one End User Location and one Access Seeker Point of Presence,
 via such network interfaces at such transmission rate as maybe agreed between TTdC and Access Seeker on a permanent or virtual basis.

B. Access Service

B.1 Access Service

1. The Access Service shall be supplied to the Access Seeker as follows:
 - (a) A minimum of 2 routes to enable the Access Seeker to comply with Mandatory Standard for Quality of Service (Digital Leased Line Service) Determination No. 3 of 2009 (“MSQOS”) on annual service availability of 99.90% of the time over a 12 months period.
 - (b) Notwithstanding anything to contrary, all bandwidth selected by Access Seeker shall always be adequate and/or enable the standards as stipulated in the MSQOS or any subsequent amendments, variations or modifications thereto, to be adhered to by TTdC and/or the Access Seeker. For the avoidance of doubt, no QoS selection may be made if such selection may adversely impact or affect the compliance with the applicable MSQOS.
 - (c) The Access Service herein provided by TTdC to Access Seeker must (a) be consistent with the rights and obligations set out in any applicable MSQOS; and (b) not contain any terms and conditions which are inconsistent with the rights and obligations set out in any applicable MSQOS.
2. The Access Service acquired by an Access Seeker shall be only used for the provision of an Access Seeker’s services to itself and its End Users.
3. Access Service is only available within Peninsular Malaysia only. TTdC does not offer Access Service in Sabah or Sarawak nor between Peninsular Malaysia and Sabah or Sarawak.

SCHEDULE 2 – CHARGES AND CHARGING PRINCIPLES**Part 1 – Charges for E2E Transmission Service**

The following are the applicable charges payable by the Access Seeker to TTdC, in respect of E2E Transmission Service:

1.1 Monthly Recurring Charge for E2E Transmission Service only:

- (i) E2E Transmission Service mandated prices only apply to just E2E Transmission Service as follow:

Bandwidth Required	Ringgit Malaysia per month		
	2018	2019	2020
Within Peninsular Malaysia			
1 Mbps	105	106	108
10 Mbps	1,353	1,302	1,256
100 Mbps	2,130	2,000	1,895
200 Mbps	2,993	2,775	2,606
500 Mbps	5,582	5,102	4,737
750 Mbps	7,739	7,041	6,512
1 Gbps	10,103	9,166	8,459
3 Gbps	28,406	25,660	23,597
5 Gbps	46,078	41,543	38,144
Installation (non-recurring charge)	5,110	5,365	5,633

- (ii) The charges are applicable in the year when the order is placed and not when the service is provisioned. For example, if the order is placed in December 2018, but the service is provisioned in Jan 2019, the applicable charges are the 2018 charges and not the 2019 charges.
- (iii) Renewals of existing orders will be subject to the same recurring charge as applicable at the date the original order was first placed.
- (iv) A subsequent year's recurring charge is applicable in respect of new Orders placed in that year only.

Part 2 – TTdC's NTP to TTdC's POI Connection Service Charges

2.1 To complete the Access Service, the Access Seeker must acquire two set of TTdC's NTP to TTdC's POI Connection Services from the NTPs in TTdC's Network up to the pre-designated POIs, which will be at a place determined by TTdC for the Access Seeker to interconnect its fibre with that of TTdC's NTP to TTdC's POI Connection Service which must be technically compatible with TTdC's fibre specifications; and

2.2 As this TTdC's NTP to TTdC's POI Connection Service, does not fall strictly within the definitions of Trunk Transmission Service, End to End Transmission Service or Wholesale Local Lease Circuit Service, TTdC nevertheless offers to provide this TTdC's NTP to TTdC's POI Connection Service at the following prices:

	Ringgit Malaysia per month		
	2018	2019	2020
Within Peninsular Malaysia			
10 Mbps	86	78	71
100 Mbps	863	776	710
200 Mbps	1,726	1,551	1,421
500 Mbps	4,314	3,878	3,552
750 Mbps	6,472	5,817	5,327
1 Gbps	8,836	7,942	7,273
3 Gbps	26,508	23,825	21,820
5 Gbps	44,180	39,709	36,367
Installation (non-recurring charge)	426	447	469
* for copper networks only			

- (i) these charges are only for the bandwidth bands as specified above. Bandwidth outside the bandwidth bands is to be commercially agreed.
- (ii) the charges are applicable in the year when the ASO is placed and not when the service is provisioned. For example, if the ASO is placed in December 2018, but the service is provisioned in Jan 2019, the applicable charges are the 2018 charges and not the 2019 charges.
- (iii) renewal of existing ASOs will be subject to the same charges as applicable at the date the original ASO was first placed.
- (iv) a subsequent year's charge is applicable in respect of new ASOs placed in that year.

Part 3 – Additional Charges

- 3.1 The following are the applicable additional charges payable by the Access Seeker to TTdC if so incurred.

For any new upgrading of capacity and building of additional infrastructure, additional charge shall apply.	
Additional/Removal of Service	RM 2,500 for each Access Seeker POP/EUL
Bandwidth Upgrade/Downgrade to end customer	RM 500 for each request
Access Seeker POP/EUL Reconfiguration, Upgrade, Downgrade, Decommission (at Access Seeker's request)	RM 2,500 for each Access Seeker POP/EUL
Access Seeker POP/EUL Reconnection	RM 500 for each POI
Site Visit Charge	50% of the Resource Unit Charge
Appointment Deferment	RM 200 for each deferment
Termination charge:	

<p>(a) Installation works has not commenced; or (b) Installation works has commenced but has stopped before completion by order of Access Seeker</p>	<p>(a) RM 200 for each Access Seeker POP/EUL; (b) Actual installation charges and/or any direct cost associated with the installation, demobilization cost, making good or preserving any unfinished works</p>
Engineering service	Based on Resource Unit Charge in Section 2.2 below.
Additional fiber wiring charges and/or replacement of fiber	RM 50 for 5 meters or part thereof
Request to provide summarised Invoice and billing information	RM500 per request
Access Seeker POP/EUL Reactivation	RM200 per Access Seeker POP/EUL reactivation
Access Seeker's request TTdC to suspend, disconnect or deactivate Access Seeker POP/EUL	RM200 per request per Access Seeker POP/EUL

Part 4 – Resource Unit Charge.

4.1 The Resource Unit Charge is a charge of manpower deployed by TTdC on a time and material basis.

4.2 TTdC:

- (a) may charge the Access Seeker a one-off fee, to be determined by reference to the costs incurred by TTdC, for allocation of manpower and other resources to enable TTdC to test and provide a new Facilities and/or Services. This charge is based on the Resource Unit Charge as specified below.
- (b) The Resource Unit Charge is set out below:

	2018	2019	2020
Man-Day Unit Rate	RM1,160	RM1,334	RM1,534

This Resource Unit Charge is based on TTdC's annual cost of remuneration, emoluments, statutory contributions, administration expenses and other expenses plus a margin divided by the total number of employees and divided further by 226 working days.

- (c) The methodology for calculating the applicable charge to the Access Seeker is as follows:
 - (i) Total number of man-days is ascertained, based on total amount of hours spent by the number of people deployed. 1 man-day is equal to an 6 hour duration.

Illustration:

If 5 people were deployed and each worked 3 hours. The total time spent is 5 x 3 = 15 man-hours, and the total man-days is 15/6 = 1.875 man-days.

SCHEDULE 2 – CHARGES & CHARGING PRINCIPLES

- (ii) The total man-days will be rounded up to the next nearest full man-day.

Illustration:

1.875 man-days is rounded up to 2 man-days.

- (iii) the total resource charge is unit rate multiplied by man-days.

Illustration:

2 man-days x Resource Unit Charge of RM1 160 = RM2,320

Part 5 – Desk/Field Study Charges

- 5.1 These are the charges for TTdC to undertake a desk or field study. The scope is specified in Section F of the RAO.
- 5.2 The charges payable for desk study is the Resource Charge specified in Part 5 of this Schedule 2 multiplied by the number of mandays undertaken.
- 5.3 The charges payable for field study is the Resource Charge specified in Part 5 of this Schedule 2 multiplied by the number of mandays undertaken.

SCHEDULE 3 – MANDATED TIMELINES

The following are the mandated timelines for TTdC to adhere to in provisioning the Access Service:

3.1 Service Assurance Timeline

As per the, MS QoS for Digital Leased Line service (Determination No. 3 of 2009), the annual service availability shall be as follow:

- (a) For domestic leased line service, the customer must be able to stay connected to the internet and/or another office where the dedicated network path exists, for at least 99.90% of the time over a 12 month period;

When measuring the annual service availability, non-availability of service due to the following reasons may be excluded from annual service availability over the 12 month period:

- (a) Faulty customer equipment;
- (b) Network facility damaged by third parties;
- (c) Fault due to other service providers;
- (d) Customer premises inaccessible;
- (e) Damage to network facility due to force majeure;
- (f) Faulty customer infrastructure or internal wiring;
- (g) Request for deferment of service restoration by customer; or
- (h) Planned maintenance work for the purpose of upgrading or maintaining the network system, the customers are informed in advance of such maintenance work.

The measurement of the standard on annual service availability is described by the ratio:

$$\frac{(\text{Total operational hour over a 12 month period} - \text{Total downtime over a 12 month period}) \times 100\%}{\text{Total operational hours over the 12 month period}}$$

3.2 Fault Rectification Timelines

The priority levels of the different fault types and the response time, and rectification timeframe is set out below:

Each Operator shall respond to and rectify faults within the lesser of:

- (a) timeframes for the response timeframes, progress update frequencies and rectification timeframes as set out in the table below;
- (b) timeframes which will result in compliance by all affected Operators with any applicable mandatory standards that apply to service availability and restoration; and
- (c) timeframes equivalent to that which TTdC provides to itself.

Priority Level	Fault Types (examples)	Response Timeframe	Progress Update Frequency	Rectification Timeframe
Level 1	1. Major switch outage 2. Transmission bearer total outage 3. Route blocking > 30% 4. Major signaling problem 5. Major routing issues 6. Fraudulent calls	Within one (1) hour	Within one (1) hour	Four (4) hours

Level 2	1. Minor switch outage 2. Minor routing issue 3. Minor signaling problems 4. Route blocking 10%-30% 5. Cross line and silent calls 6. Mobile number portability issues	Within four (4) hour	Within four (4) hours	Twenty-four (24) hours
Level 3	1. Faults affecting single or small number of Customers 2. Route blocking <10%	Within twenty-four (24) hours	Within twenty-four (24) hours	Seventy-two (72) hours
Level 4	1. Remote congestion 2. External Technical Irregularities (“ETI”) 3. Other performance related issues	Within forty-eight (48) hours	Within forty-eight (48) hours	Ten (10) Business Days

Explanatory Notes:

- (a) All faults reported shall be ascribed with a ‘Priority Level’ as set out in the table above for response and rectification purposes and the Operators involved shall cooperate with one another to achieve the given target timeframes targets corresponding to the severity of the fault reported as set out in that table.
- (b) The “Fault Types’ listed in the table above are only examples of possible types of faults. Operators are required to categorise all faults by reference to the specified ‘Priority Levels’, ‘Response Timeframes’ and ‘Rectification Timeframes’.
- (c) ‘Response Timeframe’ refers to the timeframe for the Operator whose Network, Facility and/or Service is faulty to respond to and appropriately attend to the fault. ‘Response Timeframes’ are to be measured from either the time the fault is notified by the other Operator or from the time when the Operator first becomes aware of the fault, whichever is the earlier.
- (d) ‘Progress Update Frequency’ refers to the frequency to update the other Operator until the fault is rectified.
- (e) ‘Rectification Timeframe’ refers to the time taken by the Operator to rectify a faulty Network, Facility and/or Service and is determined by the period between the reporting of a fault to the relevant fault reporting service of the Operator and the rectification of the fault on a permanent or temporary basis (provided that if rectified on a temporary basis, the Operator must continue attempting to achieve a permanent rectification without delay).

3.3 Indicative Delivery Timeframe

The indicative delivery timeframe for Access Services is:

- (a) If no new network facilities are required to supply the Access Services, twenty (20) Business Days; or
- (b) If new network facilities are required to supply the Access Services, sixty (60) Business Days.

For clarification, the delivery timeframe commences from the notice of Acceptance or confirmation of the ASO in accordance with this RAO.

SCHEDULE 4 – APPLICABLE FORMS REFERRED IN SECTION F

The following are the applicable forms:

- 4.1 Request for the Provisioning of Access Service Form
- 4.2 Access Service Order form

Form 4.1 Request for the Provisioning of Access Service Form

This is the form that the Access Seeker is to use when it wishes to request for the Provisioning of Access Service once the Access Agreement is enforceable.

REQUEST FOR THE PROVISIONING OF ACCESS SERVICE FORM

This is the request for Provisioning of Access Service submitted to TTdC by

Access Seeker: [name of Access Seeker]

Access Agreement: [Ref. No and Date]

Dated: [Click here to enter text.](#)

To:

TT dotCom Sdn Bhd
No. 14, Jalan Majistret U1/26,
HICOM Glenmarie Industrial Park
40150 Shah Alam

Original by Post/Copy by Email
regulatory.my@time.com.my

Attention: **Head of Regulatory Affairs**

We, the Access Seeker, request for the provisioning of the End-to-End Transmission Service as follows:

From End User Location/ Access Seeker POP located at []

To End User Location/ Access Seeker POP located at []

For [] Mbps/Gbps.

Expected delivery date: []

Issued by the above named Access Seeker to TTdC on the date specified below by its authorised officer.

Name of Authorised Officer:
Designation:
Date

Affix Company Stamp here

Form 4.2 Access Service Order Form

This is the form that the Access Seeker is to use when it wishes to request the ordering of the Access Service once the Access Agreement is enforceable.

ACCESS SERVICE ORDER FORM

This is the Access Service Order submitted to TTdC by [name of Access Seeker]

Dated: [Click here to enter text.](#)

To:

TT dotCom Sdn Bhd
 No. 14, Jalan Majistret U1/26,
 HICOM Glenmarie Industrial Park
 40150 Shah Alam

Original by Post/Copy by Email
Regulatory.MY@time.com.my

Attention: **Head of Regulatory Affairs**

PART A (To be completed by Access Seeker)

Document/Information	
1	<p>The name and contact details of the Access Seeker;</p> <p>Access Agreement Date & Reference ID: _____</p> <p>Access Seeker's Name: _____</p> <p>Co. Reg. Number: _____</p> <p>Address: _____ _____</p> <p>Telephone No: _____</p> <p>Facsimile No: _____</p> <p>Nominated Authorised Personnel Details:</p> <p>Name: _____</p> <p>Designation: _____</p> <p>NRIC/Passport: _____</p> <p>Telephone No: _____</p> <p>Facsimile No: _____</p> <p>E-mail Address: _____</p>
2	<p>Access Service the subject of this Order:</p> <p><input type="checkbox"/> E2E Transmission Service and TTdC's NTP to TTdC's POI Connection Service</p> <p>_____ Mbps/Gbps</p>

PART B (To be completed by TTdC)

<input type="checkbox"/> ASO is accepted	
<input type="checkbox"/> Indicative Delivery Date (per Clause 8.2.2) is _____ <input type="checkbox"/> Date when civil works intended to commence: _____ <input type="checkbox"/> Validity Period: months from (date) <input type="checkbox"/> AS position in the queue: <input type="checkbox"/> ASO duration is 12 months from actual delivery date.	<input type="checkbox"/> Charges applicable to the Access Service
<input type="checkbox"/> post-Order Service Qualification: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> any other work required: <input type="checkbox"/> Yes <input type="checkbox"/> No <i>(if yes, to specify)</i>	<input type="checkbox"/> Estimated of charges for any other work or post-Order Service Qualification: <i>(specify)</i>

<input type="checkbox"/> ASO is rejected	<input type="checkbox"/> Further information required
<input type="checkbox"/> The ground(s) as specified in Section D.3.2 of Section D of the RAO <input type="checkbox"/> ASO is in excess of the agreed Forecast <input type="checkbox"/> duplicates an earlier or previous ASO waiting fulfilment <input type="checkbox"/> AS has not obtained the necessary related agreements from TTdC <input type="checkbox"/> AS will fail to a material extent to comply with the terms of the Agreement <input type="checkbox"/> AS will fail to ensure the integrity of a Network, safety of individuals working on or using the services supplied by means of a Network or Equipment or a Network or Equipment is not protected and cannot be addressed by reasonable security or escort services. <i>If additional documents are to be attached, please do so and mark it accordingly.</i>	<i>Specify</i>
<input type="checkbox"/> TTdC offers to meet the Access Seeker on _____ at _____ o'clock at _____	

Signed by authorised officer of TTdC : _____

Designation: _____

Date: _____

PART C (To be completed by Access Seeker)

PART C TO BE COMPLETED BY ACCESS SEEKER UPON RECEIPT OF ACCEPTED ASO BEARING SIGNATURE OF TTDC.

We the Access Seeker by our authorised officer, accepts and agrees to the ASO the details of which are specified above and which forms an independent contract between TTdC and Access Seeker.

Signed by authorised officer of Access Seeker : _____

Designation: _____

Date: _____

SCHEDULE 5 – TTdC’s APPLICABLE POLICIES

Part 1 Capacity Allocation Policy

1. The following capacity allocation policy shall apply for allocating the available capacity related to provisioning of Layer 2 HSBB Network service with QoS in proportion to each Operator’s Forecast and/or ASO requirements.
2. TTdC’s Capacity Allocation Policy is as follows:
 - 2.1 All Access Request and/or Access Service Order from access seekers for acquiring of Layer 2 HSBB Network Service and related transmission service shall be subjected to the following capacity allocation policy:
 - (a) 60% current capacity is used by TTdC’s own divisions and/or subsidiaries.
 - (b) 20% current capacity is used by TTdC’s partners and/or other entities in which it has a direct or indirect equity, contractual or other interest and any other Operator.
 - (c) 10% current capacity is to cater for the next 12 months expansion/expanding plan of TTdC own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest.
 - (d) 10% current capacity will be available to cater for Access Seekers’ Access Request and/or Access Service Orders.
 - 2.2 TTdC shall notify the Access Seekers by responding to the Access Request and/or Access Service Order.
3. TTdC may set out its plans to expand capacity over time, where such information will be published from time to time or notified to the Access Seeker (as the case may be).
4. This capacity allocation policy may be amended from time to time, and such amendment is not an amendment to the RAO.

Part 2 Queuing Policy

1. The following queuing policy shall apply in respect of the provisioning of the Access Service, procuring the BTU devices and Installation of the BTU.
2. TTdC operates a manual non-digital form of queuing system.
3. Access Service Queuing Policy:
 - 3.1 All ASOs received from the Access Seeker and other access seekers for this Access Service shall be subjected to the following queuing policy:
 - (a) There is a “first in time” rule whereby all ASOs will be date/time stamped to determine when the ASO is received by the designated person within TTdC;
 - (b) In order to be efficient, all ASOs in the same calendar period will be grouped together and the fulfilment of the ASO will be according to the value of the ASO to TTdC, where the largest value will be provisioned first; and
 - (c) Where two or more ASO are of the same value, then the first in time rule will apply.
 - 3.2 TTdC may add, amend, vary or modify Article 3 by publishing its queuing policy on its website from time to time in accordance with the Standard.
 - 3.3 TTdC shall notify the Access Seeker at the time of providing the acknowledgment of receipt of the ASO under this Agreement, of their position in TTdC’s queue.

EXHIBIT B.1.2 – ACCESS REQUEST FORM

ACCESS REQUEST FORM

This is the Access Request submitted to TTdC by [name of Access Seeker]

Dated: [Click here to enter text.](#)

To:

TT dotCom Sdn Bhd
 No. 14, Jalan Majistret U1/26,
 HICOM Glenmarie Industrial Park
 40150 Shah Alam

Original by Post/Copy by Email
regulatory.my@time.com.my

Attention: **Head of Regulatory Affairs**

	Document/Information	Yes/No
1.	<p>The name and contact details of the Access Seeker;</p> <p>Company Name: _____</p> <p>Company Number: _____</p> <p>Registered Address: _____ _____</p> <p>Telephone No: _____</p> <p>Facsimile No: _____</p> <p>Certified True Copy of the following document:</p> <p>a) Form 44 - Notice of Situation Of Registered Office And Of Office Hours And Particulars Of Changes.</p> <p>b) Form 49 - Return Giving Particulars In Register Of Directors, Managers And Secretaries And Changes Of Particulars.</p> <p>c) Type of Licences in possession according to Communications and Multimedia Act 1998</p> <p>i) _____</p> <p>ii) _____</p> <p>iii) _____</p> <p>iv) _____</p> <p>d) List of insurance policies containing coverage amount, policy type and expiry date.</p>	

	<p>Nominated Authorised Personnel Details:</p> <p>Name: _____</p> <p>Designation: _____</p> <p>NRIC/Passport: _____</p> <p>Telephone No: _____</p> <p>Facsimile No: _____</p> <p>E-mail Address: _____</p> <p>Signature: _____</p>	
2.	<p>Facility/Service of Required Access to:</p> <p><input type="checkbox"/> E2E Transmission service with TTdC's NTP to TTdC's POI Connection Service</p> <p>Preliminary forecast capacity of service gateway and the forecast information as specified in Section F.8 of RAO.</p> <p>Year 1: _____ Mbps/Gbps</p> <p>Year 2: _____ Mbps/Gbps</p> <p>Year 3: _____ Mbps/Gbps</p> <p>Point A (_____) to Point B (_____)</p>	
3.	<p>Negotiate or Accept:</p> <p>Access Seeker wishes to:</p> <p><input type="checkbox"/> accept TTdC's RAO;</p> <p><input type="checkbox"/> negotiate amendments to the RAO;</p> <p><input type="checkbox"/> negotiate an Access Agreement on alternative terms. If you wish to negotiate please issue an additional document as specified in Section C of the RAO.</p>	
4.	<p>List down in sufficient detail the information (if any) the Access Seeker reasonably requires the Access Provider to provide for the purposes of the negotiations.</p>	
5.	<p>Two (2) copies of a Confidentiality Agreement properly executed by the Access Seeker in the form prescribed by TTdC in accordance with this RAO;</p>	
6.	<p>Relevant technical information relating to the interface standards of the Equipment of the Access Seeker;</p>	
7.	<p>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 TTdC's Network;</p>	
8.	<p>Creditworthiness information in accordance with TTdCs requirements, as set out below:</p> <p>(a) Solvency Statement issued pursuant to the Companies Act 2016; and</p>	

EXHIBIT B.1.2 – ACCESS REQUEST FORM

	(b) Certified True Copy of the Access Seeker's most recently published Audited Financial Report.	
	(c) A certificate issued by its financial officer providing its currently known Quick Ratio.	

Issued by the abovenamed Access Seeker to TTdC on the date specified below by its authorised officer.

Name of Authorised Officer:
Designation:
Date:

Affix Company Stamp here

EXHIBIT F.28 – DISPUTE RESOLUTION PROCEDURE

The following sets out the Dispute Resolution Procedure:

28. DISPUTE RESOLUTION PROCEDURES

28.1 Introduction

- (a) Subject to Clause 28.2(c) of this Exhibit F.28, the Access Provider and the Access Seeker agrees that any and all disputes and differences arising out of, related to, and/or in connection with the Access Agreement (“**Dispute**”) shall be resolved by the adoption of this Dispute Resolution Procedure.
- (b) The following dispute resolution mechanisms are governed by this Exhibit F.28.
 - (i) inter-party working groups;
 - (ii) Interconnect Steering Group; and
 - (iii) subject to specific resolution of Disputes, being:
 - (A) technical disputes (which must follow the procedures set out in Subsection 28.5 of this Access Agreement if they cannot be resolved through the application of the general dispute resolution provisions in Subsections 28.2, 28.3 and 28.4 of this Access Agreement);
 - (B) Billing Disputes, which must follow the procedures set out in Subsection 28.6 of this Access Agreement; or
 - (C) any other types of disputes which, if cannot be resolved through the application of the general dispute resolution provisions in Subsections 28.2, 28.3 and 28.4 of this Access Agreement, must be referred to the Commission for resolution.
- (c) A Dispute shall first be attempted to be resolved by negotiation between the Operators, and if such resolution cannot be achieved then either Operator may initiate the Dispute Resolution Procedure set out herein.
- (d) If the Dispute is cannot to be resolved by Operators, the Operators may seek the resolution of the Dispute by the Commission in accordance with Section 151 of the CMA, and the Commission will decide the Dispute if it is satisfied that:
 - (i) the Operators will not reach agreement, or will not reach agreement in a reasonable time;
 - (ii) the notification of the Dispute is not trivial, frivolous or vexatious; and
 - (i) the resolution of the Dispute would promote the objects in the CMA.
- (e) The Access Provider shall not prevent the Access Seeker from notifying a Dispute to the Commission in accordance with the MSA.

28.2 General

- (a) An Operator may not commence court proceedings relating to a Dispute in 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 28.2(a) of this Access Agreement shall be construed as ousting the jurisdiction of any court.
- (b) Both Operators shall ensure that their representatives acting in relation to a Dispute are of sufficient seniority and have authority to settle a Dispute on behalf of the Operator. At the commencement of the Dispute Resolution Procedure, each Operator must notify the other Operator of 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 a representative, an Operator may require that those matters be

referred to more senior officers of that Operator who have authority to settle those matters.

- (c) During a Dispute and any dispute resolution process invoked in accordance with this Section 28 of this Access Agreement, the Access Provider and Access Seeker must continue to fulfil their obligations under this Access Agreement between themselves.
- (d) Subject to Subsection 28.2(e) of this Access Agreement, the Operators shall exchange information of a type described in this Access Agreement during the course of, and to facilitate, resolution of such Dispute.
- (e) Confidential information of an Operator which is disclosed, and any other oral or written submissions made by an Operator or an Operator's representatives during the course of any dispute resolution process will be subject to the confidentiality restrictions contained in the confidentiality agreement and this Access Agreement.
- (f) An Operator must not use information obtained under Subsection 28.2(d) of this Access Agreement or described in Subsection 28.2(e) of this Access Agreement for any purpose other than to resolve the Dispute.
- (g) Subject to Chapter 7 of Part V of the CMA, an arbitrator of a Dispute (including a Technical Expert or the Commission, in accordance with this Section 28 of this Access Agreement) 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.
- (h) The costs of the arbitration are to be shared equally between the Operators, unless the arbitrator of the Dispute has decided not to determine the Dispute in accordance with Subsection 28.2(g) of this Access Agreement. If an arbitrator decides not to determine the Dispute, the Operator that initiated the Dispute must pay the costs of the arbitration.

28.3 Inter-Party Working Group

- (a) In the first instance, the Access Seeker and the Access Provider should attempt to resolve the Dispute between themselves.
- (b) The Access Provider and Access Seeker shall establish a working group, or working groups, to fulfil the requirements set out in Subsection 28.3(a) of this Access Agreement. The working group shall comprise of representatives of the Operators, and be headed by a person who holds a position that is at least equivalent to the head of the Access Provider's Wholesale or Interconnection Group.
- (c) The Access Provider shall provide for:
 - (i) subject areas dealt with by each working group;
 - (ii) equal representation by the Access Seeker and the Access Provider;
 - (iii) chairmanship and administrative functions of the working group which is to be shared equally; and
 - (iv) formal notification procedures to the working group.
- (d) The Access Provider and the Access Seeker shall use reasonable endeavors to attempt to settle the Dispute in the working group for a period of no longer than 30 Business Days unless otherwise agreed by the Parties,, subject always to an Operator's right to seek urgent interlocutory relief in court as set out in Subsection 21.2(b) of this Access Agreement.

28.4 Interconnect Steering Group

- (a) In the event that the Operators cannot resolve the Dispute between themselves within the time specified in Subsection 28.3(d) of this Access Agreement, or after any agreed time extension has expired, either Operator may give 10 Business Days written notice ("Notice Period") to the other Operator stating its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice Period, then either Operator may notify the other Operator ("Receiving Operator") that it wishes to refer the issue to the Interconnect Steering Group ("ISG").

In such an event, the Operators shall promptly form a committee comprising the ISG with an equal number of appropriate representatives from each Operator.

- (b) The ISG to which an issue has been raised will meet within 10 Business Days of the receipt by the Receiving Operator of a notice under Subsection 28.4(a) of this Access Agreement. If the ISG fails to meet or has not been formed within 10 Business Days of the receipt by the Receiving Operator of the notice, either Operator may refer the Dispute to a Technical Expert (in accordance with Subsection 28.5 of this Access Agreement) or to the Commission for arbitration.
- (c) If the ISG does not resolve the Dispute within 20 Business Days after it first meets to review that Dispute under Subsection 28.4(b) of this Access Agreement, either Operator may refer the Dispute:
 - (i) to the extent the issues in the Dispute are technical in nature, to a Technical Expert in accordance with Subsection 28.5 of this Access Agreement; or
 - (ii) to the Commission for final arbitration.

28.5 Use of a Technical Expert

- (a) A Dispute will only be referred to a Technical Expert if the provisions in Subsections 28.2, 28.3 and 28.4 of this Access Agreement have been complied with.
- (b) Once a Dispute is referred to a Technical Expert, it may not be referred back to a working group or ISG.
- (c) The Technical Expert:
 - (i) will be an expert appointed by agreement of the Operators or, if the Operators cannot agree, by the Commission;
 - (ii) will have the appropriate qualifications and experience to arbitrate the Dispute, including knowledge of the communication industry;
 - (iii) need not be a Malaysian citizen or resident; and
 - (iv) will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interest,("Technical Expert").
- (d) If the Operators fail to appoint a Technical Expert within 10 Business Days of the need to refer a Dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.
- (e) When relying on the services of a Technical Expert, the following dispute resolution procedures will apply to the Technical Expert:
 - (i) the Operators will present written submission to the Technical Expert and each other within 15 Business Days of the appointment of the Technical Expert; and
 - (ii) each Operator may respond to the other Operator's submission in writing within 15 Business Days from the date of the other Operator's submission.
- (f) At the request of either Operator and subject to the Operators agreeing, or the Technical Expert deciding within 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 15 Business Days of the last written submission.
- (g) Should a Technical Expert hearing be held, each Operator will have the opportunity of making an oral submission. This process will be conducted in private.
- (h) The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Operators) but in any case, the Technical Expert's hearing will last no longer than 3 Business Days.
- (i) The Technical Expert will not have the power to appoint any other experts.

- (j) The Technical Expert will deliver his or her award within 15 Business Days of the hearing or of the last written submission where the arbitration is by documents only.
- (k) Every dispute referred to a Technical Expert will be considered separately so that time limits for each Dispute are complied with.
- (l) The Technical Expert's decision will be final and binding on the Operators (in the absence of manifest error of fact or law).

28.6 Billing dispute resolution

- (a) As outlined in the billing provisions of this Access Agreement, an Operator ("the Invoicing Party") shall provide to the other Operator ("the 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.
- (b) An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if:
 - (i) in the case of domestic calls and Interconnection, the Invoiced Party notifies the Invoicing Party within 30 Business Days after the date of receipt of such Invoice;
 - (ii) in the case of outgoing and incoming international calls and Interconnection, the Invoiced Party notifies the Invoicing Party within 6 months after the date of receipt of such Invoice; and
 - (iii) in case of any other Facilities and Services, the Invoiced Party notifies the Invoicing Party within 30 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 28.6(d) of this Access Agreement.

- (c) 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:
 - (i) the Invoicing Party's Billing System is, or has been, defective or inaccurate in respect of the recording of calls which are the subject of the Dispute;
 - (ii) there is, or has been, a fraud perpetrated by the Invoicing Party;
 - (iii) the Access Provider has made some other error in respect of the recording of the calls or calculation of the Charges which are subject to the Billing Dispute; or
 - (iv) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoicing Party's Billing System.
- (d) All Billing Dispute notices ("Billing Dispute Notices") given under this Subsection 28.6 of this Access Agreement must specify:
 - (i) the reasons for which the Invoice is disputed;
 - (ii) the amount in dispute;
 - (iii) details required to identify the relevant Invoice and Charges in dispute including:
 - (A) the account number;
 - (B) the Invoice reference number;
 - (C) the Invoice date;
 - (D) the Invoice amount; and
 - (E) billing verification information, and

- (iv) evidence in the form of a report, indicating the relevant traffic data which is in dispute.
- (e) The Operators agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this Subsection 28.6 of this Access Agreement.
- (f) If the Operators are unable to resolve any Billing Dispute within 1 month (or such other period as the Operators may agree) from the date on which the Billing Dispute Notice is received, either Operator may seek the consent of the other Operator to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other Operator is, however, under no obligation to agree to such extension.
- (g) The Operators acknowledge that it is their common intent and objective to improve the dispute resolution process and for this purpose agree to form a committee within 3 months from the date of this Access Agreement to review the dispute resolution process. The reviews are to be conducted at such intervals to be determined by the committee and any changes to the process shall be documented in a supplemental agreement to this Access Agreement or a separate document.
- (h) To the extent that a Billing Dispute notified under this Subsection 28.6 of this Access Agreement 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 4 months. However, the Operators 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.
- (i) Once the negotiation period under Subsection 28.6(f) of this Access Agreement (including any extension agreed) and any suspension period under Subsection 28.6(h) of this Access Agreement have expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in Subsection 28.6(j) of this Access Agreement (“Billing Dispute Escalation Procedure”).
- (j) The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this Subsection 28.6(j) of this Access Agreement by notifying the Invoicing Party’s billing representative. Both Operators shall then appoint a designated representative (“Billing 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 Access Agreement. 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 Operator to the other Operator shall be honoured.
- (k) Once a Billing Dispute has been resolved, any sum to be paid or repaid shall be paid by the relevant Operator within 10 Business Days from the date of the resolution of the Billing Dispute. The Invoiced Party may withhold payment of amounts disputed in good faith in accordance with Subsection 9.5 of this Access Agreement. If the Billing Dispute is resolved against the Invoiced Party, the Invoiced Party shall pay interest on the amounts the subject of the Billing Dispute, at the rate specified in Subsection 9.7 of this Access Agreement on the amount payable. 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 the 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 9.7 of this Access Agreement. 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.

- (l) Although it shall be the good faith intention of the Operators to use the Billing Dispute Resolution Procedures to the fullest extent to try to solve Billing Disputes, nothing in this Access Agreement shall prevent either Operator from pursuing any other remedy in Law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- (m) An Operator may request a joint investigation of Invoice discrepancies after that Operator has conducted comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the Operators must agree the terms of the joint investigation, including:
 - (i) the scope of the joint investigation;
 - (ii) how the joint investigation will be conducted; and
 - (iii) the date by which the joint investigation must be concluded.

The joint investigation may include the generation of test Call Communications to the other Operator's Network.

- (n) 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 Operator.
- (o) Either Operator may at any time nominate another Billing Representative, provided that 10 Business Days prior notification of such appointment is given.¹
- (p) 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 CMA.

¹ MSA 7.16 Annex A

EXHIBIT E – ACCESS AGREEMENT

THIS ACCESS AGREEMENT is made the _____ day of _____ 20____

BETWEEN:

(1) **TT dotCom Sdn Bhd (Company No 52371-A)**, a company incorporated under the laws of Malaysia and having its registered office at Level 4, No. 14, Jalan Majistret U1/26, HICOM Glenmarie Industrial Park, 40150 Shah Alam, Selangor Darul Ehsan ("**TTdC**" or "**Access Provider**").

AND

(2) [**Name of ACCESS SEEKER**] (Company No. _____), a company incorporated under the laws of Malaysia and having its registered office at _____ of the other part ("**Access Seeker**").

WHEREAS:

- (1) The Access Seeker has requested for Access Service via the Access Request Form dated [insert date], and has agreed to the terms of the provision of such an access service as set out in the Reference Access Offer dated [] (version ID: [insert]).
- (2) TTdC is prepared to provide Access Service subject to the terms and conditions of this Access Agreement.
- (3) This Agreement sets out the terms and conditions on which the Access Service is offered by TTdC to the Access Seeker subject to the scope of their respective Licences.
- (4) The Access Agreement is valued at [insert value of the Access Service].
- (5) This Agreement is entered into pursuant to the Commission's Determination on the Mandatory Standard on Access Pricing (Determination No. 1 of 2017) ("Access Pricing Determination"), the Commission Determination on Access List (Determination No. 2 of 2015) ("Access List Determination") and the Commission's Determination on the Mandatory Standard on Access (Determination No. 3 of 2016) ("MSA Determination").

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Incorporation.

1.1 The terms and conditions of this Agreement are as set out in Sections E.2 and E.3 and Section F of the RAO (Document Reference ID: TTDC/RAO/2018/002 (Rev. 3.0) Date: 1 November 2018) is incorporated into and shall form an integral part of this Access Agreement.

1.2 The list of Exhibits and Schedules to the RAO that are deemed incorporated into and forms part of this Agreement, is specified in Annexure A hereto.

2. **Provision of Services.** The provision of Access Service shall be governed by the terms and conditions of this Agreement.

3. **Conflict.** In the event there is a conflict between the terms and conditions of the RAO and this Agreement, the terms and conditions of this Agreement shall prevail. Further if the RAO is amended, and this Agreement is enforceable between TTdC and the Access Seeker, the terms and conditions of this Agreement will prevail over the terms in the amended RAO, unless agreed in writing by TTdC and Access Seeker and if Clause 29.5 in Section F of the RAO applies.

4. **Representations and Warranties.** By executing this Agreement the Party represents and warrants that the named signatory is duly authorised to execute this Access Agreement for and on behalf of the Party.

5. **Assignment.** Neither Party may assign or transfer any of its rights and benefits under this Access Agreement except with the prior written consent of the other Party, which consent will not be unreasonably withheld.

6. **Entire agreement.** As between the Parties, the Agreement constitute the whole agreement between the Parties and supersedes any previous arrangements or agreements between them relating to the Access Service. The Parties confirm that they have not entered into the Agreement on the basis of any representation, warranty, undertaking or any other statements whatsoever not expressly incorporated into the Agreement. The Parties agree, to the extent permitted by applicable law, that the only right and remedy in relation to breach of any warranty in this Agreement will be for contractual damages.
7. **Severance and validity.** If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, such provision will be deemed to be severed from this Agreement and the Parties will use all reasonable endeavours to replace such provision with one having an effect as close as possible to the deficient provision. The remaining provisions will remain in full force in that jurisdiction and all provisions will continue in full force in any other jurisdiction.
8. **Variations.** No variation of this Agreement will be effective unless in writing and signed by or on behalf of the Parties.
9. **Remedies and waivers.**
 - (a) No waiver of any right under this Agreement will be effective unless in writing. Unless expressly stated otherwise a waiver will be effective only in the circumstances for which it is given.
 - (b) No delay or omission by either Party in exercising any right or remedy provided by law or under this Agreement will constitute a waiver of such right or remedy.
 - (c) The single or partial exercise of a right or remedy under this Agreement will not preclude any other nor restrict any further exercise of any such right or remedy.
 - (d) The rights and remedies provided in this Agreement are cumulative and do not exclude any rights or remedies provided by law except as otherwise expressly provided.
10. **Costs and expenses.** Except as provided otherwise, each Party will pay its own costs and expenses in connection with the negotiation, preparation and performance of this Agreement, but the Access Seeker shall pay the stamp duty due on this Agreement and in each and every order issued hereunder.
11. **Notices.** Any notice or other communication to be given under this Agreement, including for the service of proceedings arising out of or in connection with this Agreement, shall be delivered in writing to the registered office of the Party as set out above.
12. **Governing law and jurisdiction.** This Agreement including any non-contractual obligations arising out of or in connection with this Agreement is governed by and will be construed in accordance with laws of Malaysia.
13. **Entire Agreement.** The Access Agreement will represent the entire understanding between the parties in respect of the provision of network facilities and/or network services dealt with thereunder.
14. The Access Agreement, supercedes all previous understandings, commitments, agreements or representations whatsoever, whether oral or written, in relation to the subject matter of the Access Agreement.

Executed as an Access Agreement by the Parties on the date specified above.

**Signed by authorised officer of the Access
Provider, TT dotCom Sdn Bhd (Co. No: 52371-
A)**

**Signed by the authorised officer of the
Access Seeker, [Name] (Co. No:)**

Name:

Designation:

NRIC:

Date:

In the presence of:

Name:

Designation:

NRIC:

Date:

In the presence of:

Name:

Designation:

NRIC:

Date:

Name:

Designation:

NRIC:

Date:

Annexure A

The following Exhibits & Schedules in the RAO are deemed incorporated into and read as part of Annexure A to the Access Agreement.

- (1) Exhibit F.28 (Dispute Resolution Process)
- (2) Schedule 1 (Charges & Charging Principles)
- (3) Schedule 2 (Service Description)
- (4) Schedule 3 (Mandated Timelines)
- (5) Schedule 4 (Forms)
- (6) Schedule 5 (Applicable Policies)

MUTUAL NON-DISCLOSURE AGREEMENT

EXHIBIT F – CONFIDENTIALITY AGREEMENT

The following is the confidentiality agreement to be executed by the Access Seeker.

COMPANY: TT DOTCOM SDN BHD	ACCESS SEEKER (“AS”):
COMPANY REG. NO: 52371-A	REG. NO :
ADDRESS: Level 4, No 14, Jalan Majistret U1/26, Hicom Glenmarie Industrial Park,	ADDRESS :
CITY: SHAH ALAM STATE: SELANGOR POST CODE: 40150 COUNTRY: MALAYSIA	CITY: STATE: POST CODE: COUNTRY:

This Mutual Non-Disclosure Agreement ("Agreement") is made by the above named Parties in order that the Parties may exchange confidential information in furtherance of the Business Purpose set forth below.

BUSINESS PURPOSE (tick one)

- For the acquisition of Access Service from Company pursuant to the Company's RAO.
- For the work scope to be agreed with respect to a project
- Other (*insert*) [Click here to enter text.](#)

THE CONFIDENTIALITY TERMS AND CONDITIONS ATTACHED ARE INCORPORATED INTO THIS AGREEMENT AND WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COUNTRY SPECIFIED BELOW.

GOVERNING LAW: Laws of Malaysia. **Duration of the Agreement** is thirty six (36) months from the Effective Date ("Term"), subject to Clause 4 herein. Notices shall be sent to the respective Party's address as specified above and to persons named below:

If to COMPANY Attention: Chief Executive Officer	If to AS Attention:
Copy to: General Counsel (Legal Regulatory Affairs) Fax: +603-5032 6100 Email: general.counsel@time.com.my	Copy to: Fax: Email:

Company and AS agree to be bound by this Non-Disclosure Agreement (with the attached Confidentiality Terms and Conditions), effective as of the latest date a Party executes this Agreement ("Effective Date").	
Signed by COMPANY by its authorised officer:	Signed by AS by its authorised officer:
_____	_____
Name: Click here to enter text. _____ (Please Print)	Name: Click here to enter text. _____ (Please Print)
Title: Click here to enter text. _____	Title: Click here to enter text. _____
Date: Click here to enter text. _____	Date: Click here to enter text. _____

CONFIDENTIALITY TERMS AND CONDITIONS

1. **Confidentiality.** Each Party will:
 - (a) hold all Confidential Information in confidence and shall use the same means it uses to protect its own confidential information, but in any event not less than reasonable means, to prevent the disclosure and protect the confidentiality of information, whether oral or written, communicated to it by the Disclosing Party in connection with the Business Purpose. For the avoidance of doubt, the Receiving Party's efforts shall be at least as great as the precautions it takes to protect its own confidential information from disclosure to third parties;
 - (b) use the Disclosing Party's Confidential Information only in connection with the Business Purpose;
 - (c) limit the disclosure of the Confidential Information to its Representatives who have a "need to know" of such Confidential Information, and who shall have, prior to such disclosure, agreed to keep such information confidential and comply with the requirements of this Agreement. Where the disclosure by the Receiving Party is to third party consultants and/or advisors, the Receiving Party shall procure that such third parties enter into an agreement similar to this Agreement. The Receiving Party shall in any event be responsible or liable for any disclosure of Confidential Information or breach of the requirements of this Agreement by any of its Representatives save where the Receiving Party is able to show that it has taken all reasonable and prudent measures to require its Representatives to comply with the Receiving Party's obligations under this Agreement. Save and except as aforementioned, the Receiving Party shall not disclose or otherwise provide any Confidential Information to any third party without the prior written consent of the Disclosing Party; and
 - (d) notwithstanding any provision herein, determine in its sole discretion what Confidential Information it shall disclose to the other Party, and nothing contained herein shall oblige any Party to disclose any Confidential Information requested by the other Party; and
 - (e) neither copy nor use the Confidential Information except in relation to discussions for evaluation of the Business Purpose and/or finalisation of the details relating to the Business Purpose nor sell, disclose, reverse engineer, de-compile or disassemble any Confidential Information.

The Parties agree that confidentiality obligations set out herein shall equally apply to any Confidential Information that is disclosed to a Receiving Party prior to the Effective Date.
2. **Exclusions.** Confidential Information will not include information which **(a)** was or becomes generally available to the public or is in the public domain other than as a result of disclosure by the Receiving Party or its Representatives to the public or any third party in violation of this Agreement, **(b)** becomes available to the Receiving Party from a source other than the Disclosing Party, provided that the Receiving Party has no reason to believe that such source is itself bound by a confidentiality or nondisclosure agreement with the Disclosing Party or otherwise prohibited from disclosing such Confidential Information by a legal, contractual or fiduciary obligation, **(c)** was rightfully in the Receiving Party's possession prior to receipt from the Disclosing Party, **(d)** is independently developed by the Receiving Party without the use of the Disclosing Party's Confidential Information and that the Receiving Party can demonstrate the same by written records, **(e)** is required to be disclosed by the Receiving Party by a governmental agency or law, so long as the Receiving Party provides the Disclosing Party with written notice of the required disclosure promptly upon receipt of notice of the required disclosure so that the Disclosing Party has an opportunity to review and comment on the proposed disclosure and if it wishes to do so (at its own cost), seek to defend, limit or protect against such disclosure, and the Receiving Party will disclose only that portion of the Confidential Information which is required to be disclosed. Nothing in this Clause will in any way prevent or unreasonably delay the obligation of the Receiving Party to comply with the said disclosure requirements; or **(f)** is authorised by the Disclosing Party to be disclosed.
3. **Oral Disclosure.** Any Confidential Information that is disclosed orally shall be subject to the confidentiality obligations by the Receiving Party if it is reasonably understood from the nature of the information that such disclosure should be treated as confidential, if the Receiving Party ought reasonably to have known that such information ought to be treated as confidential or if the Disclosing Party orally specifies that such information is being disclosed in confidence.
4. **Duration of Confidentiality.** Except as otherwise expressly agreed in writing by the parties, with respect to any particular Confidential Information, the Receiving Party's obligations under this Agreement shall be for the Term plus twelve (12) months from either the expiry of the Term or termination of the Agreement (whichever is earlier).

5. **Notification.** The Receiving Party agrees to promptly notify the Disclosing Party upon discovery of any unauthorised use or disclosure of the Confidential Information caused by the Receiving Party and its Representatives and take reasonable steps to regain possession of the Confidential Information and prevent such further unauthorized actions or other breach of this Agreement.
6. **Right to Terminate.** The provision of Confidential Information and discussions held in connection with the Business Purpose will not prevent either Party from pursuing similar discussions or transactions with third parties, or obligate either Party to continue discussions with the other Party or to take, continue or forego any action relating to the Business Purpose. Any proposals, estimates or forecasts provided by either Party to the other Party will not constitute commitments. Either Party may terminate discussions regarding the Business Purpose at any time, without any liability or obligation whatsoever, except as expressly set forth in this Agreement. Either Party may terminate this Agreement by giving the other Party thirty (30) days prior written notice.
7. **Return of Confidential Information.** The Receiving Party shall within ten (10) days from either the termination or expiry of this Agreement or the written request of the Disclosing Party, return all Confidential Information to the Disclosing Party and either delete such electronic records from all computer files and cause its Representatives to do the same or certify in writing that all electronic records thereof have been deleted or destroyed. Either Party may return the other Party's Confidential Information, or any part thereof, at any time, but the Receiving Party may retain one (1) archival copy of the Confidential Information that it may use **only** in case of a dispute concerning this Agreement.
8. **Third Party Information.** Either Party's Confidential Information may include information which belongs to a third party. In such event, such third party will be a third party beneficiary of this Agreement. Except as provided in the preceding sentence, this Agreement does not confer any rights or remedies upon any person or entity not a Party to this Agreement.
9. **Remedies.** Upon any actual or threatened breach of this Agreement by the Receiving Party or its Representatives, which will diminish the value of the proprietary interests in the Confidential Information, the Receiving Party acknowledges that damages may not be a sufficient or adequate remedy and accordingly the Disclosing Party may seek specific performance or injunctive relief (as appropriate) against such breach, in addition to any other rights or remedies which such Party may have at law or in equity.
10. **No Licence.** Nothing contained in this Agreement will be construed as granting or conferring any rights by license or otherwise in either Party's Confidential Information, except for the use of such Confidential Information as expressly provided in this Agreement.
11. **Public announcements.** Neither Party will make or issue, or cause to be made or issued, any announcement or statement regarding the Business Purpose for dissemination to the general public or any third party without the prior written consent of the other Party.
12. **Insider Trading Information.** If the Receiving Party is AS, then AS acknowledges that as a result of its receipt of the Confidential Information it may be, or be treated as being, an "insider" (as defined by section 188 of the Capital Markets and Services Act 2007 (Act 671)) or in possession of "information" as defined by section 183 of the Capital Markets and Services Act 2007 (Act 671), and that such Confidential Information may be treated as either having or would tend to have a material effect on the price or value of the Disclosing Party's or its parent company's securities. Accordingly **AS** is aware of and agrees to comply with Malaysian securities law in relation to such "information", and it will procure that its "associated person" (as defined in Act 671) similarly do so, in particular it will not directly and/or indirectly procure, acquire, dispose or enter into an agreement to procure, acquire or dispose the publicly traded stocks and shares of the Disclosing Party or its parent company.
13. **No Warranties or Further Rights.** All Confidential Information disclosed under this Agreement is provided on an "as is" basis. Neither Party makes any representation or warranty, express or implied, with respect to any of its Confidential Information, including the accuracy, completeness or suitability for use of such Confidential Information or the non-infringement of Intellectual Property rights or any other rights of third parties. The Disclosing Party represents that it has the right to disclose the Confidential Information.
14. **No obligation to enter further agreements.** Neither Party is obliged nor committed to enter into any further agreement with the other Party and/or any third party(s) by reason of the execution of this Agreement or the disclosure, evaluation or inspection of Confidential Information. Any agreement for such a business relationship shall be at the discretion of the Parties and shall be evidenced by separate written agreement(s) executed by the Parties.

15. **Miscellaneous.** (a) Neither Party will act or have authority to act as an agent of the other Party for any purpose whatsoever. (b) This Agreement will be binding on Company and AS and their successors and assigns, but neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party. (c) This Agreement sets forth the entire understanding of the Parties with respect to the subject matter of this Agreement. (d) This Agreement may be modified only by a written instrument executed by the Parties. (e) Nothing in this Agreement shall preclude a Party from making, using, marketing, licensing or selling any independently developed technology, product or material, whether similar or related to the Confidential Information disclosed under this Agreement, provided the Party has not done so in breach of this Agreement. (f) Either Party may enter into any transaction with any third party in respect of the matters contemplated under this Agreement. (g) In the event of the invalidity of any provision of this Agreement, the Parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, and further agree to substitute for such invalid provision a valid provision that most closely approximates the intent and economic effect of the invalid provision. (h) Any failure by either Party to enforce strict performance by the other Party of any provision herein shall not constitute a waiver of the right to subsequently enforce such provision or any other provision of this Agreement. No single or partial exercise of any right or remedy shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy available. (i) Each Party shall bear its own solicitor's costs and costs of preparing, negotiating and executing this Agreement. (j) *The Receiving Party will not transfer, directly or indirectly, any product, technical data or software furnished hereunder or the direct product of such technical data or software to any country for which an export license or other governmental approval applicable to the Receiving Party is required without first obtaining such license or approval.* (k) Any notices to be given shall be in writing and shall be addressed as provided in above and if so addressed shall be considered as validly served if sent by personal delivery, upon delivery at the address of the relevant Party; if sent by prepaid mail, three (3) working days (excluding Saturday, Sunday and public holidays) after despatch; or if sent by facsimile, at the time of despatch of the facsimile provided that the sender's transmission report shows that the entire transmission has been received by the recipient without error, provided that any facsimile sent and received after the close of business (i.e. 1700 hours) at the city of the Receiving Party as set out above, shall be considered as validly served only on the immediate following working day. (l) Either Party may notify the other in writing of a change to its name, relevant address, addressee, facsimile number or email address as specified in this Agreement and such change shall only be effective on the date specified or if no date then 7 days after receipt. (m) This Agreement may be signed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.
16. **Definitions.** Unless the context otherwise requires, the following words and expressions shall have the following meanings:
- (a) **"Confidential Information"** means all information, labelled as 'Confidential', 'Commercial In Confidence', 'P&C' or with other similar phrases or words, in any and all mediums (whether oral, written or otherwise), including without limitation, data, technology, know-how, inventions, discoveries, designs, processes, formulations, models, equipment, algorithms, software programs, interfaces, documents, ideas, and concepts, specifications, information concerning research and development work, trade and/or business secrets, current, planned or proposed products, marketing and/or business plans, forecasts, projections and analyses, financial information and prices, customer information, site information and Intellectual Property. (b) **"Affiliate"** means with respect to either Party, any company which is now or during the Term of this Agreement, directly or indirectly, through one or more intermediaries, controlling or is controlled by, or is under common control with, such Party. For these purposes, "control" of any company shall mean the ownership of, or the power to direct the voting of, more than fifty percent (50%) of the common stock or other equity interests having ordinary voting power for the election of directors (or persons performing comparable functions) of such company. **"Disclosing Party"** : means the Party and its Affiliates disclosing the Confidential Information or from whom the Confidential Information originates. (c) **"Effective Date"** means the latest date that this Agreement is executed by a Party. (d) **"Intellectual Property"** includes patents, trademarks, service marks, rights in designs, trade names, trade dress, copyrights, industrial designs and topography rights, whether or not any of them are registered, and including applications for registration of any of them, and rights under licences and consents in relation to any of them and all forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world. (e) **"Party"** means Company or AS (as the case may be) and Parties shall mean Company and AS collectively. (f) **"Receiving Party"** means the Party and its Affiliates to whom the Confidential Information is disclosed or given. (g) **"Representatives"** with respect to either Party, means any employee, director or officer, or consultant and/or advisor who is either employed under a contract of employment, or is engaged under a contract of service, by that Party.