
Appendix 2 : Confidentiality Agreement

**APPENDIX 2
Confidentiality Agreement**

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT is made this day of 200

BETWEEN

Celcom Timur (Sabah) Sdn Bhd (331030-A) a company incorporated under the laws of Malaysia and having its principal place of business at Lot 100, Block K, Lorong Plaza Permai 2, Alamesra, Sulaman-Coastal Highway, 88400 Kota Kinabalu, Sabah (hereinafter referred to as "**CT Sabah**") of the first part;

AND

[] (**Co. No.** _____) a company incorporated under the laws of Malaysia and having its principal place of business at [.....] (hereinafter referred to as "**Access Seeker**") of the second part.

CT Sabah and _____ are hereinafter collectively referred to as the "**Parties**", and individually as a "**Party**".

WHEREAS: -

1. CT Sabah is a licensed Network Facilities and Network Services Provider under the Communications and Multimedia Act 1998 (the Act) and may offer communication services within Malaysia.
2. Access Seeker is a licensed Network Facilities, Network Services, Application Service and/or Content Application Service Provider under the Act and may offer communication services within Malaysia.
3. Pursuant to the Malaysian Communications and Multimedia Commission determination on the Commission Determination on Mandatory Standard on Access, Determination No. 2 of 2005 ("Standard"), the Parties herein govern their relationship inter se on the Confidentiality and disclosure of Confidentiality Information to each other for purposes of discussion negotiations and analyses concerning access to CT Sabah's network and/or services and contemplates execution of an Access Agreement in accordance to CT Sabah's Access Reference Document in which the Parties may disclose information to each other.

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4. The purpose of this Confidentiality Agreement is to set forth a private and Confidentiality manner to proceed with negotiations and discussions between the Parties and to enable the Parties to disclose in confidence such information as is necessary so as to enable the Parties to make informed decisions.

NOW THIS AGREEMENT WITNESSETH as follows: -

In consideration of the mutual covenants and promises herein contained and pursuant to the

Recitals herein, the parties HEREBY AGREE TO ENTER INTO THIS CONFIDENTIALITY AGREEMENT upon the following terms and conditions: -

1. Definition

“Confidentiality Information” means any information, technical data, or know-how including, but not limited to, that which relates to research, product plans, product, services, customers, markets, software, developments, inventions, process, designs, drawings, engineering, hardware and software configuration information, marketing or finance or any form of the concept, business plans as well as the works thereof which Confidentiality Information is designed in writing to be Confidentiality or proprietary or if given orally, is confirmed promptly in writing as having been disclose as Confidentiality or proprietary.

“Disclosing Party” means the Party from whom the Confidentiality Information originates and is disclosed to the Recipient Party.

“Recipient Party” means the Party to whom the Confidentiality Information is given or disclosed.

2. Non – Disclosure Of Confidentiality Information

- a) The Recipient Party agrees not to use any Confidentiality Information disclosed to it by the Disclosing Party for its own use or any purpose except to carry out discussion concerning, and the undertaking of any business relationship between the Parties.
- b) The Recipient Party will not disclose Confidentiality Information of the Disclosing Party to third parties or the employees of the Recipient Party except employees who are required to have the information in order to carry out the discussion of the contemplated business and then only to the extent necessary to enable them to perform such duties.
- c) The Recipient Party will have or has had employees to whom Confidentiality Information of the Disclosing Party is disclosed or who have access to Confidentiality Information of the Recipient Party sign a Confidentiality Agreement in content substantially similar to this Agreement and will promptly notify the Disclosing Party in writing of the names of each employees upon the request of the Disclosing Party at any time.

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- d) The Recipient Party agrees that it will take reasonable measures to protect the secrecy of and avoid disclosure or use of Confidentiality Information of the Disclosing Party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized hereunder to have any such information, which measures shall include the highest degree of care that the Recipient Party utilize to protect its own Confidentiality Information of a similar nature. This shall include but not limited to, restricting visitors to the premises where elements of the Confidentiality Information are present or are in use so far as is necessary to minimize disclosure of all elements of the Confidentiality Information.
- e) The Recipient Party agrees to notify the Disclosing Party in writing of any misuse or misappropriation of Confidentiality Information of the Disclosing Party, which may come to the Recipient Party's attention.
- f) Each party hereto agrees to cause all written materials relating to or containing Confidentiality Information, including all correspondence, reports and notes and all copies, reproductions, reprints and translations thereof, to be plainly marked " Private and Confidentiality" to indicate the secret and Confidentiality nature thereof and to prevent the unauthorized use or reproduction thereof.

3. Exemption from Non – Disclosure

The obligation imposed upon the Parties herein shall not apply to information which:-

- a) is in the possession of the Receiving Party at the time of disclosure as shown by the Recipient Party's files and records immediately prior to the time of disclosure; or
- b) prior or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of the Recipient Party; or
- c) is approved by the Disclosing Party, in writing, for release ; or
- d) is independently developed by the Recipient Party; or
- e) is required by law or by order of a court of competent jurisdiction or by any rule, direction or regulation of any regulatory or governmental authority to be disclosed, provided always that, to the extent permitted by law, prior to any such disclosure being made, the Receiving Party shall notify and consult with the Disclosing Party as to the proposed form, nature and purpose of the disclosure and shall make reasonable effort to protect the Confidentiality Information in connection with such disclosure;

4. Return of Materials

Any materials or documents containing Confidentiality Information, which have been furnished by the Disclosing Party to the Recipient Party, shall remain the property of the Disclosing Party and upon request by the Disclosing Party shall be returned to the Disclosing Party or destroyed, together with any copies thereof, at the option and instruction of the Disclosing Party or be promptly returned, accompanied by all copies of such documentation, after the business possibility has been rejected or concluded .

5. Patent or Copyright Infringement

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Nothing in this Agreement is intended to grant any right to the Recipient Party under any patent or copyright, nor shall this Agreement grant the Recipient Party any right in or to the Disclosing Party's Confidentiality Information except solely for the purposes of determining whether to enter into the proposed business relationship with the Disclosing Party.

6. Term

This Confidentiality Agreement shall be in effect for a period of one (1) year from the date of signing hereof unless otherwise extended by mutual agreement in writing. Notwithstanding the period of this Agreement, the commitments of the Recipient Party under Clause 2, 3, 4 and 5 shall survive any termination of discussions between the Parties, and shall continue without limitation of time unless and until any of the Parties hereto can reasonably demonstrate the Confidentiality Information has entered the public domain and not as a result of its own default.

7. Governing law

This Agreement shall be governed by, construed and enforced in accordance with the laws of Malaysia and shall be binding upon the Parties hereto in Malaysia and worldwide. The Malaysian Courts shall have exclusive jurisdiction to hear and determine all actions and proceeding arising out of the Agreement and the Recipient Party hereby submits to the jurisdiction of the Malaysian Courts for the purpose of any such actions and proceedings.

8. Remedies

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

9. Successors

This Agreement shall be binding upon and ensure for the benefit of the undersigned Parties, their successors and permitted assigns, provided that Confidentiality Information of the Disclosing Party may not be assigned without the prior written consent of the Disclosing Party.

10. Notices

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Any notices or other written communication by each Party shall be sent by prepaid post, telex facsimile to the respective address specified herein or to such other address as the Parties may notify each from time to time.

11. Headings to the Clauses

Headings to the Clauses are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

12. Variations

No variation, modification or alteration of any provisions of this Confidentiality Agreement shall be effective unless made with the prior written agreement of the Parties.

13. Cost

Each of the Parties shall bear its own respective costs associated with the purpose of this Confidentiality Agreement.

14. Third Parties

This Confidentiality Agreement is intended solely for the benefit of the Parties hereto, and nothing contained in this Confidentiality Agreement shall be construed to create any duty to, standard of care with reference to, or rights in, any person not a signatory to this Confidentiality Agreement. This Confidentiality Agreement shall not confer any right, claim, or cause of action whatsoever on any person not a signatory to this Confidentiality Agreement.

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

SIGNED by
For and on behalf of

Celcom Timur (Sabah) Sdn Bhd (331030-A)

Name : _____

Designation : _____

In the presence of: -

Name: _____

Designation: _____

SIGNED by
For and on behalf of

[] ()

Name: _____

Designation: _____

In the presence of: -

Name: _____

Designation: _____

This is the signing page between CT Sabah Sdn Bhd and [] for the Confidentiality Agreement