

Access Agreement Template

Appendix 3 : Access Agreement Template

Dated this day of 200...

Between

CELCOM TIMUR (SABAH) SDN BHD
(Company No:)

And

(insert Name of Company for Access Seeker)
(Compan y No.)

ACCESS AGREEMENT TEMPLATE

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ARTICLES OF AGREEMENT

THIS AGREEMENT is made the day of 200

BETWEEN:

- 1) Celcom Timur (Sabah) Sdn Bhd (Company No. 331030-A), a company incorporated under the laws of Malaysia and having its registered office at [Lot 100, Block K, Lorong Plaza Permai 2, Alamesra, Sulaman-Coastal Highway, 88400 Kota Kinabalu, Sabah](#) ("CT Sabah") of the first part;

AND

- 2) (*insert name of Company*)(**Company No.**), a company incorporated under the laws of Malaysia and having its registered office at ("Access Seeker") of the second part;

The Access Seeker and the Access Provider shall collectively be referred to as "Parties" and singularly as "Party"

RECITALS:

- A. CT Sabah is a licensed operator under the Act and pursuant to its Licence, CT Sabah may offer network facilities and network services within Sabah and F.T Labuan, Malaysia.
- B. The Access Seeker is a licensed operator under the Act and pursuant to its Licence, the Access Seeker may offer, as applicable, network facilities, network services and applications services within Malaysia.
- C. This Agreement sets out the terms and conditions on which Facilities and/or Services are offered by one Operator to the other Operator subject to the scope of their respective Licences. This Agreement is consistent with and entered into pursuant to CT Sabah's ARD, the Commission Determination on the Mandatory Standard on Access Pricing (Determination No. 1 of 2003) and the Commission's Determination on the Mandatory Standard on Access (Determination No.2 of 2005) ("**MSA Determination**").

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NOW IT IS HEREBY AGREED AS FOLLOWS:

1. SCOPE OF THE AGREEMENT

- 1.1 In consideration of the mutual covenants herein contained, the Parties agree that the provision of Facilities and/or Services shall be governed by the terms of this Agreement.
- 1.2 This Agreement shall commence and take effect on the Effective Date and shall continue in force and in effect for (insert number of years) years or until the expiry of all the Facilities or Services, which ever is later unless sooner terminated pursuant to the terms of this Agreement.

2. DOCUMENTS TO THE AGREEMENT

- 2.1 The following documents shall be deemed to form and be read and construed as an integral part of this Agreement:-
- (a) This Articles of Agreement;
 - (b) General Terms and Conditions to this Agreement
 - (c) Schedules on:-
 - (i) Schedule A - Forecast, Ordering and Provision Obligations
 - (ii) Schedule B - Billing and Settlement Obligations
 - (iii) Schedule C - Technical and Network Operational Obligations
 - (iv) Schedule D - The Definitions and Rules of Interpretation
 - (d) Annexes on:-
 - (i) Annexure I - List and Description of Facilities and Services
 - (ii) Annexure II - Charges and Charging Principles
 - (iii) Annexure III - Existing Points of Interface List
 - (iv) Annexure IV - Service Order Form
 - (v) Annexure V - Fault Handling Documents
- 2.2 Unless expressly stated otherwise, the documents shall take precedence according to the order in which they are listed above.
- 2.3 There is no order of precedence:-
- (i) Between the Schedules;
 - (ii) Between the Annexes; or
 - (iii) Applicable Service Term

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3. SUPERCEDING AGREEMENT

3.1 Save as otherwise stated herein, this Access Agreement shall supersede and replace all Agreements, arrangements or understandings between the Parties pertaining to the provision of the Facilities or Services from the Effective Date.

4. SERVICES PROVIDED UNDER THIS ACCESS AGREEMENT

4.1 The Access Provider will provide the Facilities and Services specified in the List and Description of Facilities and Services in Annexure I to the Access Seeker on:-

- (a) The General Terms and Conditions set out in this Access Agreement;
- (b) The Obligations set out in the Schedules; and
- (c) The relevant Applicable Service Term

4.2 The Facilities and Services provided by the Access Provider under this Access Agreement shall be based on the charges and charging principles set out in the Charges and Charging Principles - Annexure II.

4.3 The Access Provider shall treat the Access Seeker on a non-discriminatory basis as required by the Standard Access Obligations in relation to the provision of the Services

5. DEFINITIONS AND RULES OF INTERPRETATION

The definitions of words used in this Access Agreement and the rules of interpretation are set out in the Definitions and Rules of Interpretation – Schedule D.

6. SECURITY SUM

6.1 The Access Seeker must deposit with the CT Sabah, on or before the execution of this Access Agreement, a Security Sum of Ringgit Malaysia _____ (RM _____) as security for performance of the Access Seeker's obligations under the Access Agreement and the observance by the Access Seeker of all stipulations, clauses and obligations on the part of the Access Seeker contained in this Access Agreement. For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts to CT Sabah as they become due and payable, nor does it constitute a waiver of the CT Sabah's right to suspend, disconnect, or terminate the relevant Facilities or Services due to non-payment of any sums due or payable to CT Sabah.

6.2 The Security Sum may be in the form of cash or bank guarantee and shall be provided on terms and conditions acceptable to CT Sabah.

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- 6.3 (a) CT Sabah shall be entitled, from time to time, to revise the Security Sum in any of the following event:-
- (i) where, in the reasonable opinion of CT Sabah, the amount of the Security Sum is less than the Minimum Value calculated over a ninety (90) day period determined by CT Sabah;
 - (ii) where, in the opinion of CT Sabah, there is a material change in circumstances in relation to the Access Seeker's creditworthiness. In such cases, CT Sabah may request for additional security in addition to the Minimum Value to sufficiently and reasonably mitigate its risk in providing the Facilities and Services to the Access Seeker. For clarification, material change in circumstances includes, but is not limited to, failure to pay on the Due Date in respect of three (3) Invoices rendered in the preceding six (6) months, so long as those amounts have not been disputed in good faith; and/or
 - (iii) upon the provisioning of new or additional Facilities or Services to the Access Seeker, to ensure that the Security Sum is equivalent to the Minimum Value after taking into consideration the estimated value of new or additional Facilities or Services provided or to be provided over a ninety (90) day period.
- (b) Where the amount of the Security Sum is, at any time, less than the Minimum Value (including when a demand has been made by CT Sabah) calculated over a ninety (90) day period determined by CT Sabah, the Access Seeker shall within thirty (30) days from the written request of CT Sabah, deposit a new security equivalent to the Minimum Value.

7. LEGAL "BOILERPLATE"

- 7.1 Each Party must, at its own expense, on the request of the other, do everything reasonably necessary to give effect to this Access Agreement and the transactions contemplated by it including:
- (a) the execution of documents;
 - (b) the use of all reasonable endeavours to cause relevant third parties to do likewise;
 - (c) the timely performance of all obligations under this Access Agreement; and
 - (d) the registration of this Access Agreement under the Act.
- 7.2 Either Party may apply to the Commission for registration of this Access Agreement and any variation to this Access Agreement under the Act. Each Operator shall notify the other Operator as soon as possible of all

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correspondences from the Commission pertaining to the registration of this Agreement. In the event that the Commission refuses or fails to register this Agreement or part thereof, the Operators shall negotiate in good faith to decide on the next course of action to be undertaken by the Operators.

- 7.3 This Access Agreement is based on CT Sabah's ARD. CT Sabah may at any time and at its sole discretion amend its ARD and the amendments to the ARD shall be incorporated into the Access Agreement in the following manner:
- (a) CT Sabah will notify the Access Seeker in writing of the amendments ("Amendment Notice") within 10 Business Days after the amendments are made. The Amendment Notice shall specify:
 - (i) the amendments to the ARD; and
 - (ii) the manner in which the amendments are to be incorporated into the Access Agreement.
 - (b) Once the Amendment Notice takes effect, CT Sabah shall notify the Access Seeker to confirm the variation to this Access Agreement. Any delay in giving such notice shall not invalidate the variation.
 - (c) For the purpose of clarification, the varied Access Agreement shall only take effect upon lodgement and registration with the Commission in accordance with section 150 of the Act.
- 7.4 Each Party shall comply with any binding directive made by the regulatory authority.

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

SIGNED by)
as authorised representative for)
_____SDN BHD)

(Company No.))

in the presence of:)

)
)
)

.....)

Signature of Witness

)

.....)

Name of witness (block letters)) By executing this Agreement the

) signatory warrants that the

.....) signatory is duly authorised

to execute this Agreement

NRIC No. of witness) on behalf of

) (Company No.)

.....)

Occupation of witness)

SIGNED by)
as authorised representative for)
_____SDN BHD)

(Company No.))

in the presence of:)

)
)
)

.....)

Signature of Witness

)

.....)

Name of witness (block letters)) By executing this Agreement the

) signatory warrants that the

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) (Company No.)

.....)

Occupation of witness)