
Schedule D : Definitions & Rules

Schedule D
Definitions and Rules of Interpretation

1. Definitions and Rules of Interpretation

1.1 The following words have these meanings in this Access Agreement unless the contrary intention appears: -

“**Act**” means the Communications and Multimedia Act 1998.

“**Access Charge**” means a charge paid by the Access Seeker to CT Sabah for accessing the Facilities and Services listed on the Access List Determination provided by CT Sabah.

“**Access List**” means the list of Facilities or Services determined by the Commission under Section 146 of the Act.

“**Access List Determination**” means the Commission Determination on Access List, Determination No. 2 of 2005 which came into operation on 1 July 2005.

“**ARD**” means the access reference document issued by the Access Provider pursuant to the MSA Determination and as modified from time to time.

“**Access Provider**” means an Operator who is:-

- (a) a network facilities provider who owns or operates the network facilities; or
- (b) a network services provider who provides network services; and
- (c) a licensee as defined in the Act; and to whom an Access Request has been provided or which is providing Facilities and/or Services to an Access Seeker under this Agreement. For the purposes of this Access Agreement, CT Sabah is the Access Provider.

“**Agreed Ready For Service Date**” means in respect of each Service, a date specified in the applicable Service Order by the Access Seeker and accepted by CT Sabah in the relevant Service Order that the Service shall be Ready For Service.

“**Access Request**” means a request for access to Facilities or Services on the Access List Determination made by the Access Seeker to CT Sabah and containing the information specified in the ARD.

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“Access Seeker” means an Operator who:

- (a) is a network facilities provider, network services provider, application service provider or content application service provider and who is a licensee as defined in the Act; and
- (b) makes a written request for access to Facilities or Services listed in the Access List Determination. For the purposes of this Access Agreement, the Access seeker is _____.

“Bank Guarantee” means the guarantee executed and to be granted to CT Sabah on behalf of the Access Seeker by a bank approved by the Access Provider pursuant to Section 4.3. of the CT Sabah’s ARD.

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

“Billing Period” means the period over which the supply of access to Facilities or Services is measured for the purposes of billing, which shall be no more than thirty one (31) days and in accordance with the relevant calendar month unless otherwise agreed between the Operators.

“Business Day” means a day other than a Saturday and Sunday or in states where Friday is observed as the weekly holiday, Thursday and Friday or a day which is lawfully observed as a national public holiday on the same day around Malaysia.

“Charges” means the sums payable by Access Seeker to the Access Provider for the provision of Facilities or Services listed in the Access List Determination.

“Commencement Date” means the date on which a Service commences as stated in the acceptance certificate or handover certificate, as the case may be, or such other date as agreed between the Operators.

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

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

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

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“Confidentiality Agreement” means a Confidentiality agreement entered into between CT Sabah and the Access Seeker in accordance with Section 5.3.7 of the MSA Determination.

“Creditworthiness Information” means the information required by CT Sabah to assess the creditworthiness of the Access Seeker and such other information as may be required from time to time.

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

“Determination” means any lawful determination made by the Commission and/or the Minister, pursuant to Chapter 2 of Part V of the Act.

“Direction” means any lawful direction made by the Commission pursuant to Chapter 1 of Part V of the Act.

“Due Date” means, in respect of an Invoice, a date no less than thirty one (31) days from the date of receipt of an Invoice.

“Effective Date” means the date on which the Access Agreement is made.

“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 listed in the Access List Determination which facilitate the provision of Network Services or applications services including content applications services.

“CT Sabah” means Celcom Timur (Sabah) Sdn Bhd and in this Access Agreement, is the Access Provider unless otherwise stated.

“CT Sabah’s ARD” means the access reference document issued by CT Sabah pursuant to the MSA Determination and as modified from time to time.

“Force Majeure” means an event or circumstance which is beyond the control of the Party including but not limited to force majeure acts of God, strikes, lockouts or labour disputes, riots, fire, insurrection, flood, explosions, wars, storms, earthquakes, accidents, acts of public enemy, rebellion, sabotage, vandalism, hostilities, or compliance with any law, rule, regulation or act of government or governmental agencies.

“Forecast” means a forecast made by the Access Seeker for supply of access to Services or Facilities over a certain period referred to in Section 1 Schedule A.

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“Handover Date” means the date wherein the Facility provided as an Infrastructure Sharing Service is handed over to the Service Seeker for its use and shall be the Commencement Date unless otherwise stated.

“Insurance Information” means the insurance information required by CT Sabah pursuant to the CT Sabah’s ARD.

“Interconnect Link” means a physical link connecting the Networks of two Operators.

“Interconnection” means interconnection:

- (a) of the Access Seeker’s Network to CT Sabah’s Network, for the purposes of the Access Seeker accessing Services from CT Sabah in relation to a Communication;
- (b) of CT Sabah’s Network to the Access Seeker’s Network, for the purpose of CT Sabah providing Services to the Access Seeker in relation to a Communication; via a POI and using agreed interfaces and signaling systems.

“Interconnect Steering Group” or **“ISG”** means the inter-operator relations group established by the Operators.

“Invoice” means the invoice for amounts due in respect of the supply of requested Facilities or Services listed in the Access List Determination during a Billing Period.

“ITU-T” means the Telecommunications Standardisation sector of the International Telecommunication Union (previously known as CCITT).

“Legislative Event” means:

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

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“**Licence**” means an individual licence granted by the Minister pursuant to the Act for Communication Services.

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

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

“**Network**” means network facilities and/or network services comprising a system, or a series of systems that carries or is capable of carrying communications by means of guided or unguided electromagnetic energy or both.

“**Network Capacity**” means equipment and facilities required to be installed in CT Sabah’s Network for use in the provision of one or more Access Services but does not include Interconnect Link.

“**Network Conditioning**” means the conditioning, equipping and installation of facilities at CT Sabah’s Network to enable the provision of one or more Access Services.

“**Operators**” means CT Sabah and the Access Seeker collectively.

“**Order**” means the official request submitted by the Access Seeker to the Access Provider for the Services or Facilities listed in Annexure I pursuant to this Access Agreement in accordance to the procedures set out in Schedule A.

“**Other Operator**” means either:

- (a) CT Sabah; or
- (b) the Access Seeker,

as the context requires.

“**Point of Interconnect**” or “**POI**” means any technically feasible point which demarcates the Operators’ respective Networks (collectively referred to as the Interconnecting Networks) and is the point at which communication is transferred between the Interconnecting Networks. An example of POI is MyIX; and

“**Point of Presence or “POP**” means a point at which an Access Seeker has established itself for the purposes of obtaining access to Facilities or Services.

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“QOS” means quality of Service.

“QOS standards” means the QOS standards in respect of certain services set out in the appropriate Manual to the Access Agreement.

“Ready For Service” means that the applicable Facility or Service is ready for use, in accordance with the Access Agreement.

“Ready For Service Date” - means in respect of each Facility or Service the date on which the Facility or Service is Ready For Service or, if earlier, the date on which Access Seeker first makes use of such Facility or Service.

“Regulatory Event” means:

- (a) the declaration, modification, variation or revocation of the MSA Determination;
- (b) the giving of a lawful direction to CT Sabah by the Commission relating to this Access Agreement; or
- (c) the giving of a lawful direction to CT Sabah by the Minister relating to this Access Agreement.

“Rejection Notice” means a notice of rejection from CT Sabah in relation to a forecast which is more particularly described in Paragraph 2.5.2 of Schedule A.

“Review” means a review of the MSA Determination pursuant to Section 6.5 of the MSA Determination.

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

“Security Sum” means the security:

- (a) either in the form of a Bank Guarantee or cash, deposited with CT Sabah for the supply of Facilities or Services; and
- (b) which amount is equivalent to the Minimum Value.

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

“Service Ordering Procedures” means the procedures governing the forecasting, planning and ordering of relevant Facilities and Services listed in the Access List Determination as set out in Section 2 of Schedule A.

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

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

“**Term**” means the contracted period for the provision of a Service as stipulated in the Service Order Form between the Operators. In this Access Agreement except where the contrary intention appears;

- (a) the singular includes the plural and vice versa; and
- (b) a document includes all amendments or supplements to that document, or replacements or novations of it; and
- (c) a reference to a statute, ordinance, regulations, code or other law and other instruments under it, shall include any statute, ordinance, regulation, code and other law consolidating, amending, re-enacting or replacing of any of them from time to time relating thereto or in connection therewith; and
- (d) a reference to a person includes a firm, body corporate, unincorporated association or an authority; and
- (e) a reference to a person includes the person’s executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; and
- (f) if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the next Business Day and any reference to acts that have to be done or to be done by or on or before a particular day or Business day means by or on or before the close of business at 5.00pm on that particular day or Business Day; and
- (g) a reference to a related body corporate of an Operator has the same meaning as in the Companies Act 1965; and
- (h) in relation to an Access Service for the carriage of a communication it refers to the carriage of a communication between the POI/POPs along CT Sabah’s Network but does not include any Communication for which the Access Service is provided with the assistance a third party’s Facilities or Services; and
- (i) headings are included for convenience and do not affect the interpretation of this Access Agreement.