

This Reference Access Offer (Version 2.0/2018) is made by

Celcom Timur (Sabah) Sdn, Bhd. (Company no.: 331030-A), a company incorporated in Malaysia and having its principal office at Lot 100, Block K, Lorong Plaza Permai 2, Alamesra, Sulaman–Coastal Highway, 88400 Kota Kinabalu, Sabah (“CT SABAH”)

on 31st July 2017

pursuant to The Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016 (“the Determination”).

WHEREAS:

- A. Subsection 5.3.3 of the Determination requires each Access Provider to prepare and maintain a Reference Access Offer (“RAO”) for each Facility and/or Service listed in the Access List Determination which such Access Provider provides to itself or third parties.
- B. This RAO is divided into two parts – the first outlines the procedures necessary to accept the RAO and enter into a RAO with CT SABAH; the second includes the minimum terms and conditions on which CT SABAH will enter into such an agreement with Access Seekers.

PART 1 – ACCEPTANCE PROCEDURE

1. CLARIFICATION ON RAO TERMS AND CONDITIONS

- 1.1 Before submitting an Access Request under clause 2.1, an Access Seeker may request a clarification regarding the RAO by submitting a request to CT SABAH.
- 1.2 CT SABAH shall provide its response within three (3) Business Days from the date of receipt of the request for clarification under clause 1.1.

2. ACCESS REQUEST

- 2.1 If an Access Seeker seeks access to the Facilities from CT SABAH, the Access Seeker shall submit an Access Request to CT SABAH with the following information:-
 - a. The name and contact details of the Access Seeker;

- b. Whether the Access Seeker wishes to accept CT SABAH's RAO, to negotiate amendments to the RAO, or to negotiate an Access Agreement on alternative terms;
- c. The information (if any) the Access Seeker reasonably requires CT SABAH to provide for the purposes of the negotiation;
- d. Two (2) copies of Non-Disclosure Agreement properly executed by the Access Seeker in the form provided in Attachment A;
- e. Preliminary information regarding the scale and scope of the access to the Facilities that the Access Seeker expects to acquire from CT SABAH;
- f. Relevant technical information relating to the interface standards of the equipment of the Access Seeker;
- g. Such other information as CT SABAH may reasonably request for the sole purpose of providing access to the Facilities.

2.2 The Access Seeker shall submit the Access Request in writing to:-

Celcom Timur (Sabah) Sdn, Bhd.
Lot 100, Block K, Lorong Plaza Permai 2, Alamesra,
Sulaman-Coastal Highway, 88400 Kota Kinabalu, Sabah

2.3 CT SABAH shall within ten (10) Business Days of receipt of an Access Request, respond to the Access Seeker in writing acknowledging receipt of the Access Request stating that:-

- a. If the Access Seeker is willing to accept a RAO from CT SABAH, CT SABAH will provide access to the Facilities in accordance with this RAO;
- b. If paragraph 2.3(a) above does not apply, CT SABAH is willing to proceed to negotiate amendments to the RAO or an Access Agreement on alternative terms;
- c. CT SABAH refuses the Access Request in accordance with subsection 5.4.10 of the Determination; or
- d. CT SABAH requires specified additional information to make a decision on the Access Request in accordance with paragraphs 5.4.7(a) to 5.4.7(c) of the Determination, and once such information is received from the Access Seeker, CT SABAH shall reconsider the Access Request and the ten (10) Business Days for CT SABAH to consider the

Access Request will recommence from the receipt of the information from the Access Seeker. CT SABAH shall provide a copy of its response to the Commission simultaneously with its response to the Access Seeker.

2.4 If CT SABAH responds that access to the Facilities will be provided in accordance with this RAO, CT SABAH shall, within ten (10) Business Days of such response, provide two (2) copies of the RAO Agreement executed by CT SABAH to the Access Seeker and one (1) copy of the executed Non-Disclosure Agreement returned by the Access Seeker that has also been properly executed by CT SABAH.

2.5 For the purpose of this RAO, an agreement entered into on the same terms and conditions to those in Part 2 of this RAO shall be referred to as a RAO Agreement.

2.6 If CT SABAH is willing to proceed with negotiation of the Access Request, CT SABAH will set out in its response to the Access Seeker a place, date and time, not later than fifteen (15) Business Days from the date of CT SABAH's response to commence negotiations and one (1) copy of the executed confidentiality agreement returned by the Access Seeker that has also been properly executed by CT SABAH.

2.7 If CT SABAH decides to refuse the Access Request, CT SABAH shall set out in its response to the Access Seeker:-

- a. The grounds on which CT SABAH refused the Access Request;
- b. The basis of CT SABAH'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, not later than seven (7) Business Days from the date of CT SABAH's response for the purpose of discussing the refusal of the Access Request.

2.8 If the parties have been unable to resolve any differences about validity of the Access Request and the Access Seeker disagrees with CT SABAH's refusal of the Access Request, either party may request resolution of the dispute in accordance with the Dispute Resolution Procedure.

3. REPRESENTATIONS AND WARRANTIES

3.1 By submitting a Access Request, the Access Seeker represents and warrants that:-

- a. It is the holder of a valid Network Facilities Provider licence and a valid Network Services Provider licence both issued under the Act; and
- b. It has power to enter into and observe its obligations under the RAO Agreement; and
- c. It has in full force and effect the authorisations necessary to enter into the RAO Agreement, observe obligations under it and allow it to be enforced; and
- d. Its obligations under the RAO Agreement are valid and binding and are enforceable against it in accordance with its terms; and
- e. The information provided by it to CT SABAH in its Access Request is complete, true and correct, and not misleading

3.2 CT SABAH represents and warrants that:-

- a. it has power to enter into and observe its obligations under the RAO Agreement;
- b. it has in full force and effect the authorisations necessary to enter into the RAO Agreement, observe obligations under it and allow it to be enforced; and
- c. its obligations under the RAO Agreement are valid and binding and are enforceable against it in accordance with its terms.

4. EFFECT OF VARIATION OF CT SABAH'S RAO

- 4.1 CT SABAH may amend or withdraw its RAO from time to time with the consent of the Commission.
- 4.2 Any amendments made by CT SABAH to this RAO will automatically form part of this RAO Agreement.

PART 2 – REFERENCE ACCESS OFFER AGREEMENT

THIS CT SABAH REFERENCE ACCESS OFFER AGREEMENT (“this RAO Agreement”) is made on the date stated in Item 1, Appendix 1

between

Celcom Timur (Sabah) Sdn. Bhd. (Company No. 331030-A), a company incorporated in Malaysia under the Companies Act 1965 and having its principal office at Lot 100, Block K, Lorong Plaza Permai 2, Alamesra, Sulaman–Coastal Highway, 88400 Kota Kinabalu, Sabah (“CT Sabah”)

and

The Party stated in Item 2, Appendix 1, a company incorporated in Malaysia under the Companies Act 1965 and having its principal office at the Address stated in Item 3, Appendix 1 (“Access Seeker”).

CT Sabah and the Access Seeker shall be referred to as the “Party” individually and as the “Parties” collectively.

WHEREAS

- A. CT Sabah is a duly authorised and licensed provider of network services in Sabah.
- B. The Access Seeker is desirous of leasing the Service (as defined below) provided by CT Sabah and CT Sabah has agreed to lease the said Service to the Access Seeker in accordance with the terms and conditions as stated in this RAO Agreement.
- C. The Parties mutually agree to enter into this RAO Agreement to set out their mutual rights and obligations with respect to the provision of the Service subject to the terms and conditions in this RAO Agreement.

It is agreed as follows:

DEFINITIONS AND INTERPRETATIONS

Words and phrases used in this RAO Agreement which have specialised meanings for the purposes of this RAO Agreement shall have the following meanings save for where the context denotes the contrary:

“Agreement”	Means this Service Agreement, including the duly accepted and completed Application Form, all schedules, appendices, exhibits, amendments and supplements that may be entered into by the Parties from time to time;
“Acceptance Test”	Means all relevant end to end tests to be performed by CT Sabah in the presence of the Access Seeker’s technical team to ensure that the relevant Services is ready to be utilized by the Access Seeker in compliance with technical specification of International Telecommunication Unit (ITU-T) G.826 and in accordance with the procedures stated in Appendix 4 of this RAO Agreement;
“Application Form”	Means the Application Form as per the format in Appendix 2 which shall be issued by CT Sabah for the Access Seeker to accept the Services to be provided by CT Sabah in accordance with the terms and conditions set out in this RAO Agreement
“Business Day”	Means any day other than a Saturday, Sunday or public holiday in Sabah (whether gazetted or declared);
“Circuit”	Means the circuit for one link at one terminating station to the circuit at another terminating station, the point-to-point connectivity of the Services as listed in the Application Form which includes but not limited to any additional leased circuit requested by the Access Seeker (either from a new link or current leased link) from time to time.
“Certificate of Acceptance”	Means a certificate issued in accordance with clause 6 of this RAO Agreement;
“Change Order”	Has the meaning assigned to it in Clause 10.6;

“Change Order Procedures”	Means the procedures as set out in Clause 10 of this RAO Agreement;
“Confidential Information”	Means this RAO Agreement, appendices, schedules, drawings or any other documents attached and supplemented (its existence and terms), Personal Data and all know-how, trade secrets, methodology, processes, price sensitive information, Access Seeker information and any other type of information which includes, but is not limited to all communications, correspondence, memos, reports, reports, findings and any other form or type of information produced, generated, collated or stored, whether in oral, written or electronic format as a result of or arising out of this RAO Agreement;
“Commencement Date”	Means the date when the first Circuit is successfully commissioned by way of the acceptance of the Certificate of Acceptance by the Access Seeker in accordance with Clause 6.6 of this RAO Agreement;
“Extended Leasing Period”	Has the meaning assigned to it in Clause 3.1;
“Fees”	Means the Services fees including the Installation Fee payable by the Access Seeker to CT Sabah for the utilisation of the Services as stipulated in the relevant Application Form and based on the charges stated in Appendix 1 of this RAO Agreement;
“GST”	Means any goods and services tax imposed by Malaysian law after the effective date of this RAO Agreement;
“Installation Fee”	Means a one-time-charge fee stated in Appendix 1 for the installation of the Services;
“Internet Access”	Means internet access service via digital link;
“Initial Services Leasing Period”	Means the Initial Services Leasing Period stated in Item 4, Appendix 1, which shall commence from the Commencement Date for which the Access Seeker

	subscribes to the Services unless otherwise terminated in accordance with this RAO Agreement;
“Personal Data”	Means any information that relates directly or indirectly to an individual who can be identified from that information or from that and other information disclosed to or in the possession of CT Sabah including but not limited to a Access Seeker or employee of the Access Seeker;
“Rebate”	Means a rebate entitled by the Access Seeker calculated in accordance to Appendix 2 of this RAO Agreement in the event CT Sabah fails to meet the service availability of 99.5% per link per year for Internet service or 99.95% per link per year for leased line service;
“RFS Date”	Means the service date where the Service is ready for the Access Seeker’s utilisation which has been agreed by both Parties and as stipulated in the Application Form;
“Restoration Time”	Means the restoration time of each circuit which shall be in accordance Appendix 3;
“Right”	Means the right to utilise the Circuit granted by CT Sabah to the Access Seeker as per the terms and conditions in this RAO Agreement;
“Service Agreement”	Means this service agreement, including all appendices annexed to it;
“Service Availability”	Means the percentage of the availability of time with respect to a Circuit in a month which usage shall be calculated in accordance with the formula in Appendix 3 of this RAO Agreement;
“Services”	Means the bandwidth capacity or lease line circuits including but not limited to any additional services as maybe required by Access Seeker and/or provided by CT Sabah from time to time in accordance with this RAO Agreement; and

“Unavailable Time”	Means the duration or period of time of non-availability of the Circuit transmission due to faulty Circuit and/or any other related faults on the Circuit.
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Unless the context of this RAO Agreement otherwise requires:

- (a) words denoting the masculine gender shall include the feminine and neuter genders and vice versa;
- (b) words denoting the singular number shall include the plural number and vice versa;
- (c) the headings on this RAO Agreement shall not be used in its interpretation;
- (d) the terms ‘hereof’, ‘hereto’ and similar words refer to this entire Agreement and not any particular clause, section, appendix, exhibit, schedule or any other subdivision of or to this RAO Agreement;
- (e) references to a “person” includes any individual person, partnership, firm, company, body corporate or corporation or organization;
- (f) any reference in this RAO Agreement to any statute or statutory provision shall be construed as including a reference to that statute or statutory provision as from time to time amended, modified, extended or re-enacted whether before or after the date of this RAO Agreement and to all statutory instruments, orders and regulations for the time being made pursuant to it or deriving validity from it;
- (g) Where any word or expression is defined in this RAO Agreement, the definition shall extend to all grammatical variations and cognate expressions of the word or expression so define;
- (h) Any technical term not specifically defined in this RAO Agreement shall be construed in accordance with the usage or definition commonly accepted by those in that profession in Malaysia; and
- (i) The words “law” and “laws” mean any present or future law and any constitution, decree, judgment, legislation, order, ordinance, statute, treaty, directive, by-law, rule or regulation as amended from time to time.

TERMS AND CONDITIONS

1. TERM

1.1 Term of Service Agreement

This Service Agreement shall be effective from the Effective Date stated in Item 5, Appendix 1, for a period stated in Item 4, Appendix 1 (“Term”) unless terminated in accordance with the terms and conditions of this RAO Agreement. However, this RAO

Agreement shall continue to remain in effect with respect to any Application Form already issued at the time of such termination until such Application Form is terminated or performance is completed. Termination of any individual Application Form shall not constitute termination of this RAO Agreement.

1.2 Extension of Service Agreement

The Access Seeker may extend the duration of this RAO Agreement for another period as stated in Item 6, Appendix 1, by giving notice at least thirty (30) days prior to the expiry of the Service Agreement and CT Sabah may include additional terms and conditions which shall be mutually agreed between Parties. If the Parties fail to conclude an agreement fourteen (14) days prior to the expiry of the Service Agreement, the Service Agreement shall terminate accordingly.

1.3 Services Leasing Period

The Services shall commence on the Commencement Date for the duration of the Initial Services Leasing Period unless terminated in accordance with the terms and conditions of this RAO Agreement.

2. THE SERVICES

- 2.1 CT Sabah agrees to supply, deliver, install and commission the relevant Services in accordance with the terms and conditions of this RAO Agreement.

3. RENEWAL OR EXTENSION OF SERVICES

- 3.1 In the event the Access Seeker is desirous of renewing or extending a current Services Leasing Period of an existing Services for a further period ("Extended Leasing Period"), Access Seeker shall notify CT Sabah at least thirty (30) days before the expiry of the current Services Lease Period ("Submission Date") stipulating the period of the Extended Leasing Period of the existing Services.
- 3.2 Upon receipt of confirmation on the Extended Leasing Period of the Services from the Access Seeker, CT Sabah shall send the completed Application Form with the agreed Extended Leasing Period for the Access Seeker's acceptance.
- 3.3 The renewal or extension of the Leasing Period shall be for a minimum duration of six (6) months. Renewal or extension of leased circuits for six months period will be charged 70% of the current Fees.

3.4 In the absence of an application for an Extended Leasing Period by the Access Seeker before or on the Submission Date, the existing leased Circuit shall be terminated at the end of the current Services Leasing Period, and CT Sabah shall, upon fourteen (14) Business Days' written notification to the Access Seeker be entitled during normal business hours on a Business Days to enter the premises of the Access Seeker to remove its own equipment and to disconnect the Services subject to the Access Seeker's written approval and with the presence of the Access Seeker's representatives. The Access Seeker shall remove its own equipment at its own costs.

4. CHARGES AND PAYMENT

4.1 All fees, charges and expenses payable by the Access Seeker shall be payable yearly in advance within forty-five (45) days from the receipt date of the undisputed invoice issued and duly verified by the Access Seeker.

4.2 All payments made pursuant to this RAO Agreement shall be made in Ringgit Malaysia (RM) including all taxes, dues and levies except GST.

4A. GOVERNMENT TAXES

4A.1 The Parties shall comply with all applicable tax legislation and regulations (including any changes) and shall pay, at its own expense, at such times when due and payable: all taxes, duties and fees imposed on and payable by either Party by reason of the performance of its obligations (including sales, service, goods and services taxes, withholding tax and customs duties); and all import/export license and import/export taxes and duties on services, equipment and supplies imported or exported for purposes of this RAO Agreement. The Parties shall co-operate with and assist each other in the compliance of any tax legislation and regulations (including any changes) and where applicable, application of tax exemption in respect of equipment and/or services supplied under this RAO Agreement.

4A.2 Goods and Service Tax ("GST")

(a) Unless specified to the contrary in this RAO Agreement, all prices or amounts payable are exclusive of GST on the Services and other supplies made under this RAO Agreement to the extent that they are taxable supplies within the meaning of the law applying to GST.

(b) If a Party ("**Provider**") makes a supply under or in connection with this RAO Agreement in respect of which GST is payable, the recipient of the supply

("Recipient") must pay to the Provider, an additional amount equal to the GST payable on the supply ("GST Amount") provided that the Provider:-

- (i) is duly licensed by the relevant government entity to collect GST;
 - (ii) provide a tax invoice which complies with the law applicable to GST to enable the Recipient to claim an input tax credit; and
 - (iii) provide to the Recipient information or documents that may be required to establish the liability for GST or to claim an input tax credit under the law applicable to GST.
- (c) If a Party must reimburse or indemnify another Party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other Party is entitled to for the loss, cost or expense, and then increased in accordance with Clause 4A.2(b).
- (d) If a payment is calculated by reference to or as a percentage of another amount, that payment will be calculated by reference to or as a specified percentage of the amount exclusive of GST.
- (e) Adjustments:
- (i) If the GST payable by a Provider on any supply made under or in connection with this RAO Agreement varies from the GST Amount paid or payable by the Recipient under Clause 4A.2(b) such that a further amount of GST is payable in relation to the supply or a refund or credit of GST obtained in relation to the supply, then the Provider will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient;
 - (ii) Any payment, credit or refund under this Clause is deemed to be a payment, credit or refund of the GST Amount payable under Clause 4A.2(b);
 - (iii) If an adjustment event occurs in relation to a supply, the Provider must issue an adjustment note to the Recipient in relation to that supply within 10 business days after becoming aware of the adjustment.
- (f) A Party need not make a payment for a taxable supply made under or in connection with this RAO Agreement until it receives a tax invoice for the supply to which the payment relates.

5. INSTALLATION OF THE SERVICES

- 5.1 CT Sabah shall be responsible for the supply, delivery, installation and commissioning of the Service and shall successfully perform the Acceptance Tests for the Service before or on the RFS Date.
- 5.2 The Access Seeker shall comply with CT Sabah's requirements to allocate sufficient space for the purposes of installing the Services. Such preparation and work shall include providing a conducive condition for the Services such as air-conditioning and power supply. All costs and expenses relating to the allocation of space and the preparation of the premises shall be borne solely by the Access Seeker.
- 5.3 The Access Seeker shall permit and assist to obtain reasonable access to the authorised employees and/or agents of CT Sabah at the Access Seeker's premises to enable CT Sabah to deliver, supply, install and commission the Services at each of the premises where the Services is to be located and utilised as required by the Access Seeker.
- 5.4 Irrespective of any cancellation made by the Access Seeker of an order of Services, the Access Seeker shall be obliged to pay for the Installation Fee with respect to the Services.

6. ACCEPTANCE TEST AND READY FOR SERVICE

- 6.1 Upon CT Sabah's acceptance of the Application Form duly executed, CT Sabah shall commence installation of the Services. Both the Access Seeker and CT Sabah may jointly conduct the Acceptance Test and CT Sabah shall issue the Certificate of Acceptance for the Access Seeker's acceptance indicating that the Services is ready to be fully commissioned.

7. SERVICE LEVEL

7.1 Service Level Availability

- 7.1.1 CT Sabah shall provide the Services in accordance with the Service Level Agreement ("SLA") as set out in **Appendix 3** (Service Availability). The SLA shall be the means to measure CT Sabah's performance in providing the Services to the Access Seeker.
- 7.1.2 CT Sabah shall report to the Access Seeker regarding any fault in CT Sabah's network and also regarding any interruptions on the Services as soon as CT Sabah is aware of

such failures. In the event the Access Seeker detects a fault or defect in the performance of the Services, the Access Seeker shall notify CT Sabah immediately to remedy the failures in accordance with **Appendix 4** (Fault Escalation Procedure).

7.2 Escalation Procedure

Upon detection and/or receiving notification of a fault or interruption report on the Service, CT Sabah shall rectify the network in accordance with the fault management, troubleshooting and escalation as set out in **Appendix 4** (Fault Escalation Procedure).

8. REPRESENTATIONS, WARRANTIES AND COVENANTS BY CT SABAH

8.1 CT Sabah represents, warrants and covenants with the Access Seeker that CT Sabah:

- (i) has the authority and power to enter into this RAO Agreement and this RAO Agreement constitutes valid and legally binding obligations of CT Sabah;
- (ii) shall not do or permit to be done anything which may infringe or violate any law or regulation pertaining to the provision of the Services and to be personally liable and responsible for any infringement or violation against such laws or regulations and to fully indemnify the Access Seeker;
- (iii) shall cause and ensure that its servants, agents, contractors and employees do not do or omit to do anything which may result in a loss by or claim against the Access Seeker by any third party arising directly as a result of such act or omission;
- (iv) shall use all reasonable efforts to cause and ensure that its employees, servants, agents and contractors shall not do or omit to do anything which may result in a loss by or claim against the Access Seeker by any third party;
- (v) shall upon receiving the report made by the Access Seeker, jointly conduct of test and inspections with the Access Seeker (as and when requested by CT Sabah) to determine the cause of the problem or breakdown;
- (vi) has at the time of entering into this RAO Agreement and maintain for the term of this RAO Agreement, all applicable licenses, permits, authorizations, grants or other government consents necessary to perform all its obligations under this RAO Agreement and offer the Service to the Access Seeker and comply with applicable law;

- (vii) shall inform in writing the Access Seeker's Network Operation Center of any substitute of CT Sabah's equipment with other equipment or any changes, adjustments or modification to CT Sabah's equipment after the installation of CT Sabah's equipment and its acceptance by the Access Seeker **provided that** such change shall not adversely affect Access Seeker's use of the Services and CT Sabah shall be further responsible for the interworking of CT Sabah's equipment with the Services;
- (viii) shall ensure that during the relevant term of the Services, the Services provided to the Access Seeker under each Application Form shall comply with the agreed technical specifications, the service quality as stated in **Appendix 3** (Service Availability) and/or the acceptable service quality in accordance with ITU-T standards. CT Sabah shall take all necessary steps according to the SLA to restore the Services to the proper standard of quality upon the Access Seeker's report concerning any degradation of the Service;s and
- (ix) shall appoint an account manager as a contact person to act on its behalf in all matters under this RAO Agreement

8A. REPRESENTATION, WARRANTIES AND COVENANTS BY ACCESS SEEKER

8A.1 The Access Seeker represents, warrants and covenants with CT Sabah that:

- (i) the Access Seeker has the authority and power to enter into this RAO Agreement and this RAO Agreement constitutes valid and legally binding obligations of the Access Seeker;
- (ii) the Access Seeker shall not do or permit to be done anything which may infringe or violate any laws or regulations pertaining to the use of the Services;
- (iii) the Access Seeker shall obtain and maintain, at its own expense, all licences, permissions, waivers or permits required to use the Services and shall comply with all applicable laws, regulations standards and codes;
- (iv) Neither the execution and performance by the Access Seeker of this RAO Agreement nor any transaction contemplated under this RAO Agreement will violate or constitute default in any respect any provision of:
 - (a) Its constitution or enabling documents, any indenture, constituent documents; or

- (b) Any law, decree, regulation or treaty or any judgement, ruling, order or decree of any governmental agency or any other document or agreement or any other document or agreement binding on it or its assets.
- (v) the Access Seeker shall take all reasonable steps to prevent fraudulent, improper or illegal use of the Service.

9. THIRD PARTY'S EQUIPMENT

- 9.1 Except with prior written consent of CT Sabah, the Access Seeker shall not connect a third party's equipment to the Services or any part thereof.
- 9.2 In the event the Access Seeker connect a third party's equipment without prior written consent, CT Sabah shall not be liable for any damage which may arise from the said connection of such third party's equipment. In such situation, the warranties given by CT Sabah with regard to the quality, accuracy and transmission of the Services shall not apply.

10. RIGHT OF ACCESS

- 10.1 The Access Seeker grants to CT Sabah, its servants or agents the consent to enter into the Access Seeker's premises for the sole purpose to carry out such works which includes, but not be limited to, civil, mechanical and electrical works necessary to supply, install, service, upgrade and maintain the Services PROVIDED ALWAYS that at least seven (7) Business Days' written notice has been given to the Access Seeker and shall subject to the Access Seeker's written approval and issuance of work permit to CT Sabah. CT Sabah may give a shorter notice in the event of any critical failure which adversely affects the Services.
- 10.2 Subject to CT Sabah's compliance with Clause 10.1 above, CT Sabah shall not be held responsible for any service outage and/or downtime if CT Sabah, its servant and/or agent is not granted access into the Access Seeker's premises to carry out works which includes but not be limited to civil, mechanical and electrical works, necessary to install, service or maintain the Services and such service outage and/or downtime shall not be included in the calculation of rebate under Appendix 3.

11. CHANGE/RELOCATION OF SERVICES

- 11.1 Either Party may at any time formally request in writing any changes or additions to or omissions from any Application Form issued (including, without limitation, any

changes to the Services and any changes to the Fees agreed as a consequence thereof)("Changes"). The Change Order Procedure set out in this Clause 10 shall apply to any such change or addition or omission, which is requested by either Party.

11.2 If Access Seeker shall require a relocation, change or addition to or omission from any Application Form issued, it shall notify the CT Sabah of such requirement in writing specifying in as much detail as the Access Seeker reasonably believes is practicable, the nature of the change or addition to or omission it requires and, to the extent known, any other parameters which it considers desirable should apply in relation to such addition, change or omission.

11.3 If CT Sabah shall consider a change or addition to or omission from any Application Form issued, it shall make an outline proposal for consideration by the Access Seeker (which the Access Seeker shall not be obliged to pursue). Such outline proposal shall specify in as much detail as CT Sabah reasonably believes is practicable, the nature of the change or addition to or omission it requires and state all factors known to CT Sabah which the Access Seeker might reasonably consider to be material in deciding whether to request CT Sabah to develop the proposal further.

11.4 Within ten (10) business days (or such other period as may be mutually agreed upon) of:

- a) receiving such a notification from the Access Seeker as referred to in Clause 11.2; or
- b) receiving a notice from the Access Seeker indicating that the Access Seeker wishes to pursue further any outline proposal made by CT Sabah in a notification as referred to in Clause 11.3;

CT Sabah shall provide the Access Seeker a written proposal of its estimate of all consequential changes to the Access Seeker's Application Form issued, including without limitation any changes to the Services or RFS Date that is reasonably necessary to accommodate such change, addition or omission. In the case of Clause 11.2 CT Sabah shall in addition advise the Access Seeker of the technical feasibility of such a change, addition or omission.

For any change requiring additional work by CT Sabah or relocation, CT Sabah will give the Access Seeker in writing CT Sabah's estimate of the cost to the Access Seeker of the proposed change or addition or any changes required to the RFS Date.

11.5 The proposal, with any revisions which may have been agreed, will be submitted by CT Sabah to the Access Seeker who shall consider such proposed changes, additions or omissions and either:

- a) Accept or confirm the proposed changes or additions or omissions;
- b) Decide not to implement the proposed changes or additions or omission; or
- c) Require the proposed changes or additions or omissions to be modified (in which case CT Sabah shall produce a modified proposal to which the procedure in Clause 11.4 shall apply).

11.6 Any changes or additions or omissions which are agreed pursuant to the above procedures shall be recorded in writing as a Change Order and signed by authorised representatives of both Parties within fourteen (14) Business Days of the Access Seeker giving notice to CT Sabah that it wishes to proceed with the proposal. CT Sabah shall have no obligation to commence work in connection with any change or addition or omission to any Application Form issued, and the Access Seeker shall have no obligation to make any payment in respect of any such change or addition until the Change Order has been fully agreed and signed, including any amendment to the Fees, the timing of payment of the same and/or scheduled impact of the change or addition on the RFS Date. Where the change in question involves an omission or reduction of scope of work proposed by the Access Seeker, CT Sabah shall not, without the Access Seeker' prior written consent, be entitled to proceed with the same until either the proposal has been withdrawn or it has been included in a Change Order.

An instruction by the Access Seeker requiring CT Sabah to comply with its obligations under this RAO Agreement or arising from a breach by CT Sabah of its obligations shall not under any circumstances constitute a change, addition or omission for the purposes of this Clause 11.

12. VACATION OF PREMISES

12.1 If the Access Seeker intends to vacate the premises where the Telecommunication Services is installed, the Access Seeker shall immediately notify CT Sabah of its intention thereof, whereupon CT Sabah shall disconnect and remove the Services and all of its related equipment. The Access Seeker shall at its own costs remove its own equipment under this Clause and retain it for safekeeping without affecting the Access Seeker's rights and liabilities under this RAO Agreement.

13. WARRANTIES AS TO THE SERVICES

13.1 CT Sabah warrants in respect of the Services that:

- (a) the Service Availability shall be in accordance with Appendix 3. In the event that CT Sabah fails to warrant the Service Availability in accordance with Appendix 3, the Access Seeker shall be entitled to Rebate as stipulated in the said Appendix 3.
- (b) the Services installed by CT Sabah shall be fit for the purposes for which it has been installed.
- (c) Notwithstanding clause 13.1 (a), CT Sabah shall as soon as practicable investigate any breach of warranty set out in this RAO Agreement and shall remedy the same free of charge by:-
 - (i) carrying out such repairs, modifications or alterations to the Services; and/or
 - (ii) replacing the Services or any parts of the equipment thereof.
- (d) CT Sabah shall perform periodic preventive maintenance for all the transmission, fibre optics and other supporting equipment, which form part of the Services.
- (e) CT Sabah shall perform corrective maintenance if any such equipment fails.
- (f) CT Sabah shall abide by the escalation procedure as set out in Appendix 3.

14 INDEMNITY AND LIMITATION OF LIABILITY

14.1 Each Party, at its expense, shall indemnify, defend and hold harmless the other Party and its directors, officers, employees, subcontractors, affiliates and subsidiaries ("**Representatives**") against any and all claims, demands, and judgments for liability, costs or expenses resulting from losses or damage to real or tangible property or for bodily injury and death to any person or infringement of intellectual property rights of any third party ("**Losses**") due to any act or omission, arising out of, or in connection with this RAO Agreement.

14.2 Without prejudice to the generality of clause 14.1, the indemnifying Party shall pay all costs and damages that any Court awards against the other Party in respect of which the indemnity in clause 14.1 applies including reasonable legal costs as a result of such claim PROVIDED THAT:-

- (a) The Party seeking indemnification (“**Indemnified Party**”) shall give prompt written notice in accordance with Clause 19, to the other Party of any applicable claims; and
- (b) The Indemnifying Party shall have the right to control the defense through counsel of its choosing; and
- (c) The Indemnified Party makes no admission of liability without the Indemnifying Party’s prior written consent; and
- (d) The Indemnified Party agrees to cooperate as reasonably requested by the Indemnifying Party.
- (e) Both Parties reserve their rights to separately defend against any actions not involving the negligence or wilful misconduct of the Indemnifying Party or its Representatives.

14.3 Each Party acknowledges that any claim or claims which it may have against the other Party pursuant to this RAO Agreement shall, irrespective of any legal theory or legal ground, be limited to the maximum aggregate sum being the total value of the Fees payable by Access Seeker under this RAO Agreement. PROVIDED THAT subject to clause 14.2 nothing in this RAO Agreement shall exclude or limit liability in respect of-

- (a) any claim made for death or personal injury of any person to the extent caused by the negligence or acts or omissions of the Indemnifying Party or (only where this indemnity is being relied upon by the Access Seeker) includes CT Sabah’s personnel (contract or otherwise) in relation to the provision of the Services;
- (b) any Gross Negligence, intentional or wilful act, default or omission of CT Sabah or any CT Sabah’s employees or contractors. “Gross Negligence” for the purpose of clause 14 shall mean any act, default or omission in reckless disregard of the obvious duty of care;
- (c) breach of Confidential Information;
- (d) infringement of Intellectual Property Rights;
- (e) any claim made for damage to property; and
- (f) fraud.

15. FORCE MAJEURE

15.1 No Breach

No Party shall be in breach of its obligations under this RAO Agreement if it is unable to perform or fulfil any of its obligations as a result of the occurrence of an event of Force Majeure. The expression “Force Majeure” means an act, omission or circumstance relied on

by one Party as a force majeure event and over which that Party could not reasonably have exercised control including but not limited to:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection, military or usurped power, civil war, terrorism;
- (b) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste, from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) natural catastrophe including but not limited to earthquakes, floods, subsidence, lightning or any operation of the forces of nature against which an experienced contractor could not reasonably have been expected to take effective precautions;
- (e) riot and disorders, strike, lockout, labour unrest or other industrial disturbances (affecting the performance of this RAO Agreement) which are not the fault of the Party claiming force majeure, which causes, or can reasonably be expected to cause, either Party to fail to comply with its obligations; or
- (f) compliance with any law, rule, regulation or act of government or governmental agencies and any other similar events not within the control of either Party.

15.2 Notice of Force Majeure Event

The affected Party shall use all reasonable diligence and means to remove or eliminate the event of Force Majeure as quickly as possible and shall as soon as practicable after the occurrence of the event of Force Majeure give the other Party written notice of the occurrence and the expected duration of the same and if reasonably foreseeable the expected resumption date.

15.3 Termination due to Force Majeure

If any Party considers the event of Force Majeure to be of such severity or to be continuing for a period of three (3) months and that Party is unable to perform any of its obligations, then under such circumstances, this RAO Agreement may be terminated by mutual agreement.

15.4 No Excuse

No event of Force Majeure shall excuse one Party from making payment to the other for work performed or services rendered prior to the occurrence of the event of Force Majeure.

CT Sabah shall refund the Fees paid in advance by the Access Seeker for the unutilised term of the Services from the occurrence of the event of Force Majeure.

16. TERMINATION

16.1 Without prejudice to any right or remedy a Party may have against the other for breach or non-performance of this RAO Agreement, either Party may at any time with written notice to the other suspend the performance of or terminate this Service Agreement or any Application Form or part thereof duly accepted and completed Application Form or part thereof with immediate effect if any one or more of the following events shall occur:-

- (a) if the other Party shall commit a material breach of this RAO Agreement and shall fail to remedy such breach (if capable of being remedied) within thirty (30) days after the other Party's receipt of written notice from the non-defaulting Party specifying the nature of the breach;
- (b) if any Party shall become insolvent or go into liquidation whether compulsorily or voluntarily except for the purpose of a bona fide amalgamation or reconstruction;
- (c) if any Party shall have a receiver appointed over any of its assets or undertaking;
- (d) if any distress, execution, sequestration or other process shall be issued against any property of the defaulting Party and is not settled within thirty (30) days,
- (e) if any Party shall cease or threaten to cease to carry on the whole or any substantial part of its business other than in the course of a bona fide reconstruction or amalgamation;
- (f) if the other Party shall infringe or violate any law or regulation pertaining to the lease and/or use of the Services and that Party shall fail to remedy the infringement or violation within the time frame stipulated by the relevant authority.

Notwithstanding any other provision of this RAO Agreement, the Access Seeker may terminate this Service Agreement or any duly accepted and completed Application Form for convenience by giving CT Sabah not less than two (2) months notice in writing of such an intention. Where an Application Form is terminated during its Initial or Extended Services Leasing Period, Access Seeker shall pay the remaining Fees payable for the remaining unexpired Initial or Extended Services Leasing Period. Payment of such costs by the Access Seeker shall be in full and final settlement of any and all claims by CT Sabah in respect of the termination and represents the Access Seeker's total liability to CT Sabah whether at law, in equity or under contract.

16.2 Parties agree that if the Access Seeker requires a swap or relocation of the Services pursuant to Clause 11, such relocation of the Services shall not be considered a termination of the Services for the purpose of this RAO Agreement.

16.3 Consequences of Termination

16.3.1 Upon termination in accordance with the terms of this RAO Agreement:

16.3.2 The Access Seeker shall at its own cost and expense promptly disconnect and remove its equipment and any cables owned by the Access Seeker and connected to the Services;

16.3.3 CT Sabah shall take immediate steps to bring the Services to a closure in an orderly manner on the termination date;

16.3.4 The Access Seeker shall surrender the bandwidth capacities, cables, equipment owned and provided by CT Sabah pursuant to this RAO Agreement (fair wear and tear excepted) provided always seven (7) Business Days written notice has been given;

16.3.5 Upon termination of an Application Form by the Access Seeker for CT Sabah breach or default, the Access Seeker shall have the right (to be exercised by notice in writing given to CT Sabah) to retain, subject to payment of a fair and reasonable proportion of the Fees, such Services as the Access Seeker nominates, and which has been supplied pursuant to that Application Form.

16.4 Save as provided otherwise, the termination of this Service Agreement or Application Form shall not affect nor prejudice the accrued rights or remedies of either Party under this RAO Agreement, or in law and equity.

17 CONFIDENTIAL INFORMATION

17.1 Obligation of Confidentiality

Except as provided in this Clause, the receiving Party of such Confidential Information agrees to treat the same as strictly confidential and shall not divulge to any person, firm, corporation, association or entity, for any purpose whatsoever, Confidential Information so received, except for the purpose of this RAO Agreement. Such Confidential Information may be disclosed only to such of the employees, consultants and contractors of the receiving

Party who reasonably require access to such information for the purpose for which it was disclosed and who have secrecy obligations to the receiving Party.

17.2 Exclusion of Confidentiality

There is no obligation upon either Party with respect to any portion of such information that:

- a) was known to the receiving Party prior to its receipt from the other Party;
- b) is now or which (through no act of default of the receiving Party) becomes generally known;
- c) is supplied to the receiving Party by a third party which the receiving Party in good faith believes is free to make such disclosure and without restriction on disclosure;
- d) is disclosed by the disclosing Party to a third party generally, without restriction on disclosure;
- e) is independently developed by the receiving Party without the use of any Confidential Information provided by the disclosing Party; and
- f) 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 or any other relevant authority, to be disclosed, provided always that, to the extent permitted by law, before such disclosure is made, the receiving Party shall notify and consult with the disclosing Party as to the form, nature and purpose of the disclosure and the disclosing Party may seek a protective order or other appropriate remedy. If no such protective order or other remedy is obtained, or the disclosing Party waives compliance with this clause, the receiving Party shall furnish only that portion of Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurance that such Confidential Information will be kept confidential.

17.3 Survival of Obligation

The obligation of confidentiality set out in this Clause shall survive the termination or expiration of this RAO Agreement.

18. DISPUTE RESOLUTION AND ARBITRATION

18.1 Amicable Settlement

Any dispute, controversy or claim arising out of or in relation to this RAO Agreement, or the breach, termination or invalidity shall be settled, insofar as it is possible, by mutual consultation and consent.

18.2 Arbitration

If the Parties are unable to reach mutual consent within thirty (30) days after the notice by either Party of dispute, the question shall be settled by arbitration under the rules of the Kuala Lumpur Regional Centre for Arbitration by one arbitrator appointed in accordance with such rules. The arbitration shall be held in Kuala Lumpur. The award of the arbitrators shall be final and binding upon the Parties and may be enforced by the benefiting Party against the other Party against whom the award is made or against its assets wherever situated.

18.3 Continuation of Obligations

Notwithstanding the existence of any dispute or negotiation at any time, CT Sabah shall continue with the performance of the Services, which are not subject to dispute, in accordance with the terms and conditions of this RAO Agreement.

19. NOTICE

19.1 Service of Notices

All notices to be given under this RAO Agreement shall be in writing and sent by registered post or courier or by hand delivery or by facsimile transmission. Notice shall be deemed to have been served:-

- a) If hand delivered or courier, on delivery;
- b) If posted, five (5) working days after the date of posting; or
- c) If sent by facsimile, when the sender's facsimile generates a message confirming successful transmission.

The address for the delivery of notices and bills to each Party and the respective telephone and facsimile numbers are as follows:

a) If to CT Sabah:

Address : Lot 100, Block K, Lorong Plaza Permai 2
Alamesra, Sulaman-Coastal Highway
88400 Kota Kinabalu
Sabah
Facsimile No. : 088 – 484 993
Tel No. : 088 – 484 999
Attention : Fadhli Abdul Hamid, Chief Executive Officer

b) If to the Access Seeker: (Refer to Item 7, Appendix 1)

19.2 Changes in Address for Notices

Either Party may, however, from time to time, by written notice sent or delivered in the manner provided above, specify a different address for notices to it, and any such change of address shall take effect upon such other Party's receipt of said notice.

20. LANGUAGE AND GOVERNING LAW OF AGREEMENT

20.1 Ruling Language

The language of this RAO Agreement shall be English and this RAO Agreement shall be construed, interpreted and administered in, and all correspondence between the Parties shall be in English.

20.2 Governing Law

This RAO Agreement shall be governed by and construed in accordance with the laws of Malaysia.

20.3 Regulatory Events and Regulations

This RAO Agreement is made expressly subject to all present and future valid orders, approvals, directives and regulations of any regulatory body having jurisdiction over the subject matter and to the laws of the Malaysia. In the event that this RAO Agreement, or any of its provisions, shall be found contrary to or in conflict with any such order, rule, regulation, directive or law, the Parties shall negotiate, as soon as practicable and in good faith such amendments to this RAO Agreement or such provision to the extent necessary to

comply with any such order, rule, regulation, directive or law in such a way as is consistent with the form, intent or purpose of this RAO Agreement.

21. SEVERABILITY

The invalidity or unenforceability of any portion or terms and conditions of this RAO Agreement shall in no way affect the validity or enforceability of any other portion or terms and conditions. Any invalid or unenforceable portion or terms and conditions shall be deemed severed from this RAO Agreement, and the Access Seeker and CT Sabah shall negotiate in good faith to agree to a similar portion or terms and conditions which legally sets forth the original intent of the Parties, and the balance of this RAO Agreement shall be construed and enforced as if this RAO Agreement did not contain such invalid or unenforceable terms and conditions.

22. WAIVER

Knowledge or acquiescence by any Party, of or in any breach of any of the conditions or covenants, shall not operate as or be deemed to be waiver of such conditions or covenants or any of them, and notwithstanding such knowledge or acquiescence, any Party shall be entitled to exercise its respective rights under this RAO Agreement, and to require strict performance by the other of the terms and conditions. Any waiver by any Party of a breach of this RAO Agreement on the part of other Party shall not constitute a precedent as to any subsequent breach on the part of such other Party.

23. SUCCESSORS AND ASSIGNS

This RAO Agreement shall be binding upon the permitted assigns and successors-in-title of the Parties and shall endure for the benefit of the successors in title and permitted assigns of each of the Parties. It is further provided that this RAO Agreement shall not be discharged or in any way affected by any change in the composition or identity of the Parties by amalgamation, reconstruction or otherwise.

24. AMENDMENT

No amendment or other variation of this RAO Agreement shall be binding unless the same is duly affected by an instrument in writing signed by the Parties and expressed to be for the purpose of such amendments.

25. COSTS, EXPENSES AND STAMP DUTY

Save as otherwise provided in this RAO Agreement, all costs and expenses incurred by or on behalf of the Parties to this RAO Agreement including all fees of solicitors employed by either of the Parties in connection with the negotiation, preparation, execution and completion of this RAO Agreement shall be borne solely by the Party who shall have incurred the same and the other Party shall have no liability in respect of such costs and expenses. The stamp duty payable in respect of this RAO Agreement shall be born and paid by the Access Seeker.

26. ENTIRE AGREEMENT

This RAO Agreement including all appendices constitutes the entire agreement between the Parties with respect to the matters contained in this RAO Agreement, supersedes any and all previous agreements and understandings between the Parties with respect to such matters and binds and inures to the benefit of the Parties, their successors and assigns.

27. FURTHER ASSURANCE

The Parties shall do all acts and things and sign and execute all documents and deeds requisite for the purpose of implementing and giving valid effect to the terms of this RAO Agreement and the full benefits.

28. REMEDY

Any remedy or right conferred upon either of the Parties for breach of this RAO Agreement (including the right to rescission) shall be in addition to and without prejudice to all other rights and remedies available to it at law.

29. COMPLIANCE

The Parties shall comply and ensure compliance by all its employees, agents and servants with all laws, rules, regulations and policy requirements of any governmental authority and agency as may be from time to time be in force in Malaysia.

30. ASSIGNMENT

A Party shall not assign or transfer this RAO Agreement without the prior written consent of the other Party which consent shall not be unreasonably withheld except that the Access

Seeker reserves the right to assign this RAO Agreement to the Access Seeker's financiers as security for any credit facilities granted to the Access Seeker by written notice to CT Sabah.

31. SURVIVAL OF CLAUSES

Clauses in this RAO Agreement, which by their nature should survive the termination of this RAO Agreement including but not limited to Clause 14 (Indemnity and Limitation of Liability) and 17 (Confidentiality) of this Service Agreement, shall survive the termination of this RAO Agreement for whatsoever reason.

32. HEADINGS

The paragraph and Clause headings of this RAO Agreement are for convenience of reference only and are not intended to restrict, affect or influence the interpretation or construction of provisions of such Clause.

33. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

Notwithstanding any other provisions to the contrary in this RAO Agreement, each Party shall have the total ownership and exclusive proprietary right of all its own hardware and software which that Party developed, supplied, used and/or delivered for the Services including all modifications or enhancement done during the term of this RAO Agreement.

34. TIME OF ESSENCE

Time for the performance of the obligations under this RAO Agreement, whenever stated in this RAO Agreement, shall be of the essence.

For and on behalf of CT Sabah

Signed by

Name :
Designation :
NRIC No :

Witnessed by

Name :
Designation :
NRIC No :

For and on behalf of the Access Seeker

Signed by

Name :
Designation :
NRIC No :

Witnessed by

Name :
Designation :
NRIC No :

SERVICE DESCRIPTION

END-TO-END TRANSMISSION SERVICE

1. The End-to-End Transmission Service is a Facility and/or Service for the carriage of communications between:
 - (i) two End User locations;
 - (ii) between two Access Seeker Points of Presence; or
 - (iii) between one End User location and one Access Seeker Point of Presence,via such network interfaces at such transmission rates as may be agreed between the Access Provider and the Access Seeker on a permanent or virtual basis.
2. Network interfaces may use any technology as may be agreed between the Access Provider and the Access Seeker including, for example, Ethernet interfaces.
3. The functionalities of the End-to-End Transmission Service include:
 - (i) transmission and switching, whether packet or circuit;
 - (ii) the signalling required to support the technology or to provide a service;
 - (iii) termination at either end by a port, router, network termination unit, switch, submarine cable landing centre or earth station; and
 - (iv) a digital protocol including Internet Protocols.
4. The End-to-End Transmission Service may be for the carriage of communications which comprise a content applications service.

CHARGES AND CHARGING PRINCIPLE

1. The Charges for End-To-End Transmission Service will be as stated in the Commission Determination on the Mandatory Standard on Access Pricing (Determination No. 1 of 2012 and as amended by Determination No. 1 of 2017) ("MSAP") as stated below:

	Ringgit Malaysia per month		
	2018	2019	2020
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

2. Notwithstanding the above, in the event the service to be provided to the Access Seeker exceeds the minimum requirement for applicability of charges for End-to-End Transmission Service as stated in the MSAP, CT SABAH and that Access Seeker may proceed with provision of service via a commercial agreement, subject to an agreement between CT SABAH and that Access Seeker on the applicable charges.