
Chapter 1: Introduction, Background and Scope

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1.1 Preliminary

1.1.1 This Access Reference Document (ARD) is made by Celcom Timur (Sabah) Sdn Bhd (CT Sabah), Company No: 331030-A, a company incorporated under the laws of Malaysia and having its registered Office pursuant to section 5.3.2 of the Commission Determination on the Mandatory Standard on Access Determination No. 2 of 2005 ("MSA Determination").

1.1.2 This Access Reference Document is called CT Sabah's ARD.

1.1.3 This Access Reference Document is set out as follows:

- (a) Main Text of which consist of 5 Chapters
- (b) Confidentiality Agreement
- (c) Access Agreement Template

1.1.4 CT Sabah's ARD is to facilitate Access Seekers who wish to have access to CT Sabah's Facilities and/or Services listed in the Access List Determination and sets out the terms and conditions for access to CT Sabah's Facilities and/or Services listed in the Access List Determination.

1.2 Legislative Background

1.2.1 The Commission issued the MSA Determination, which came into operation on 1st July of 2005, following the issuance of the Ministerial Direction to Determine a Mandatory Standard on Access, Direction No. 2 of 2003.

1.2.2 MSA Determination Obligations

1.2.3 The MSA Determination sets out principles, indicative terms and conditions concerning access to Facilities and Services included in the Access List Determination and imposes obligations consistent with the principles of the Standard Access Obligations contained in section 149 of the Act that apply to Operators concerning various access issues which include:

- (a) Disclosure obligation (Section 5.3 of the MSA Determination);
- (b) Negotiation obligations (Section 5.4 of the MSA Determination); and
- (c) Content obligation (Section 5.5 to 5.19 of the MSA Determination).

1.2.4 Disclosure Obligations

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Pursuant to the Disclosure Obligations in Section 5.3 of the MSA Determination, CT Sabah is required to:-

- (a) prepare and maintain an Access Reference Document;
- (b) make the Access Reference Document available;
- (c) follow prescribed procedures after acceptance of the Access Reference Document; and
- (d) follow prescribed procedures for amendment of the Access Reference Document.

1.2.5 The role of Standard Access Obligations

1.2.5.1 Under sections 55 and 145 of the Act, the Commission may determine the list of facilities and services, which may be included in the access list. Accordingly the commission has issued the Commission Determination on Access List, Determination No. 1 of 2005 that came into force on 1st July 2005. Pursuant to section 149 of the Act, an Access Provider is required to comply with the standard access obligations in providing the Facilities and Services that are included in the Access List Determination.

1.2.5.2 The standard access obligations facilitate the provision of access to the Facilities and Services listed in the Access List Determination by Access Seekers in order that Access Providers can provide network facilities, network services, and other facilities and/or services which facilitate the provision of network services or applications services, including content applications services.

1.2.5.3 Section 149 of the Act specifies the terms and conditions upon which the Access Provider must comply with the standard access obligations. Section 149(2) provides that the access provided by the Access Provider shall be:

- (a) of at least the same or more favourable technical standard and quality as the technical standard and quality on the Access Provider's network facilities or network services; and
- (b) on an equitable and non-discriminatory basis.

1.2.5.4 The paraphrasing of any statutory provisions in this CT Sabah's ARD does not amount to any party agreeing to waive any of their rights under the paraphrased provisions and those statutory provisions continue to apply in full.

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1.3 Scope

1.3.1 CT Sabah is a licensed individual network facilities and network services provider under the Act. Pursuant to these licences, CT Sabah may offer network facilities and network services within the railway corridor of Malaysia and any adjacent area.

1.3.2 Pursuant to Section 5.3.2 of the MSA Determination, CT Sabah is obliged to prepare and maintain an Access Reference Document in relation to Facilities or Services on the Access List Determination which CT Sabah provides to itself or third parties.

1.3.3 CT Sabah's ARD:-

- (a) contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and
- (b) does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination.

1.3.4 Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to CT Sabah's ARD.

1.3.5 CT Sabah considers CT Sabah's ARD to be consistent with:-

- (a) the standard access obligations stipulated under Section 4.1.1 of the MSA Determination and section 149 of the Act; and
- (b) the principles of non-discrimination stipulated under Sections 4.1.5 and 4.1.6 of the MSA Determination.

1.3.6 For the purposes of clarification, the terms and conditions of CT Sabah's ARD is applicable to the Facilities or Services on the Access List Determination and which is relevant to the provisioning of facilities and services within CT Sabah's licenses only. If the Access Seeker requests Facilities or Services outside CT Sabah's ARD, the terms and conditions for the provision of such Facilities or Services shall remain outside the scope of CT Sabah's ARD.

1.3.7 If an Access Seeker requests CT Sabah to provide it with Facilities or Services other than on the terms and conditions contained in CT Sabah's ARD, CT Sabah and the Access Seeker will:-

- (a) negotiate in good faith in relation to such terms and conditions; and
- (b) enter into and conduct negotiations in a timely manner.

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1.4 Additional Services

1.4.1 In addition, the Operators are free to consider CT Sabah's ARD when negotiating the terms and conditions for the supply of other Facilities or Services that are not listed in the Access List.

1.5 Making the Access Reference Document

1.5.1 CT Sabah's ARD has no effect on contractual arrangements for the supply of Facilities and Services by CT Sabah to an Access Seeker prior to the Commencement Date unless such contractual arrangement is subsequently renegotiated and agreed between the Operators.

1.6 Commencement and Duration of the Access Reference Document

1.6.1 CT Sabah's ARD comes into force and takes effect immediately from the date referred to in **Section 1.1** and continues until the earlier to occur of:-

- (a) the expiry of the ARD Term; or
- (b) a Review; or
- (c) withdrawal in accordance with this CT Sabah's ARD.

1.6.2 Amendment to CT Sabah's ARD

1.6.2.1 CT Sabah shall, within ten (10) Business Days of making any amendment to CT Sabah's ARD, provide a copy of the amendments, or an amended copy of CT Sabah's ARD to:-

- (a) the Access Seeker who is being provided with access to Facilities or Services listed on the Access List Determination under CT Sabah's ARD; and
- (b) the Access Seeker who has requested CT Sabah's ARD within the period of ninety (90) days prior to the making of such amendments, unless the Access Seeker has already indicated that it does not wish to proceed with an Access Request.

1.6.2.2 An amendment to CT Sabah's ARD will be deemed to alter the relevant terms and conditions of an Access Agreement which is based on CT Sabah's ARD.

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1.6.3 Notice of Withdrawal, Replacement and Variation of CT Sabah's ARD

1.6.3.1 If the Commission revokes, varies or replaces the Access List Determination relating to the Facilities or Services listed on the Access List Determination under section 56 of the Act, CT Sabah may, by giving written notice to all Access Seekers to whom it is supplying Facilities or Services under CT Sabah's ARD, withdraw or replace CT Sabah's ARD with effect from a date no earlier than the effective date of the Commission's revocation.

1.6.3.2 CT Sabah shall comply with Sections 6.4.2 and 6.4.3 of the MSA Determination where it withdraws or varies CT Sabah's ARD pursuant to Section 1.5.3.1.

1.6.3.3 In addition to Section 1.5.1 above, CT Sabah may give the Access Seekers to whom it is supplying Facilities and Services under CT Sabah's ARD a notice of a variation or replacement of CT Sabah's ARD to effect such variations that are necessary or appropriate in the event of:-

- (a) the occurrence of a Legislative Event that materially affects the rights or obligations of CT Sabah under CT Sabah's ARD; or
- (b) the occurrence of a Regulatory Event that relates to CT Sabah; or
- (c) a review by the Commission of the MSA Determination pursuant to Section 6.5 of the MSA Determination.

1.6.3.4 Notwithstanding Sections 1.5.3.1, 1.5.3.2 and 1.5.3.3 above, CT Sabah may subject to Section 1.5.2 above, replace CT Sabah's ARD at any time.

1.6.4 Availability 15.4.1 Subject to Section 1.5.4.2, CT Sabah's ARD shall be made available to an Access Seeker:-

- (a) on written request, at CT Sabah's principal place of business; and
- (b) on a publicly assessable website. 15.4.2 Prior to the provision of CT Sabah's ARD to the Access Seeker, the Access Seeker shall be required to enter into a Confidentiality Agreement as set herein.