
Appendix 3 : General Terms and Conditions

GENERAL TERMS AND CONDITIONS**1. Term**

1.1 The term for the Access Agreement shall be no less than the minimum term of the Facilities or Services stipulated clause 1.2 below for which the Access Seeker is applying under this Access Agreement.

1.2 Term of Supply

1.2.1 Unless otherwise agreed, and subject to Access Provider not being able to provide access as a result of Force Majeure, the Access Seeker shall acquire access to individual Facilities and Services under an Access Agreement for a minimum period as follows:

<u>Network services/Network facilities</u>	<u>Minimum term</u>
Domestic Network Transmission Services	12 months
Infrastructure Sharing	3 years

1.3 The Access Agreement shall remain in force and effect for the term unless earlier terminated in accordance with the provisions of this Access Agreement.

2. Suspension

2.1 Access Provider may, by giving five (5) Business Days prior notice in writing to the Access Seeker including written reasons, suspend access to the Services of the Access Provider in any of the following circumstances: -

- (a) The Access Seeker's Facilities materially adversely affect the normal operation of the Access Provider's Network, or are a material threat to any person's safety;
- (b) The Access Seeker's Facilities or the supply of a Service pose an imminent threat to life or property of the Access Provider, its employees or contractors;
- (c) The Access Seeker's Facilities cause material physical or technical harm to any Facilities of the Access Provider or any other person;
- (d) Where the Access Seeker's has failed to pay Invoices in accordance with this agreement;
- (e) Where Force Majeure applies; or
- (f) The Access Seeker breaches any laws, regulations, rules or standards which has material adverse effect on the Access Provider or the provision by the Access Provider of Facilities and/or Services under this Agreement.

Appendix 3 : General Terms and Conditions

3. Termination

- 3.1 Access Provider may by prior written notice to the Access Seeker terminate this Access Agreement if any one of the following events occur: -
- (a) if the Access Seeker materially breach this Access Agreement and fails to remedy the breach within the thirty (30) days of written notice to remedy the breach from the Access Provider;
 - (b) if the Access Seeker has become a subject to a winding up order or 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;
 - (c) if a Force Majeure has continued for a period of more than 90 days.
- 3.2 Where Access Provider seeks to terminate this Agreement or suspend the Services provided to the Access Seeker pursuant to Clauses 3.1 and 2.1 respectively, Access Provider shall first notify the Commission in writing of the action it proposes to take and the reasons such action is appropriate. The Access Provider shall not terminate or suspend the Service until such time, and on such conditions, as the Commission may specify.

4. Consequences of Termination or Expiry

- 4.1 Termination or expiry of this Access Agreement for any reason does not:
- (a) affect any rights or obligations of the parties which by their nature survive termination or expiry, including clauses, 5 ("Liability and Indemnity"), 7 "Intellectual Property Rights") and 8 ("Confidentiality"); and
 - (b) waive any breach of this Access Agreement and is without prejudice to any rights, remedies, liabilities or obligations of either party which have accrued up to the date of termination or expiry, including the right of indemnity.
- 4.2 Upon the expiration or termination of this Agreement, whether by mutual agreement or arising out of Access Seeker's default, Access Seeker shall at its own cost and expense promptly disconnect and remove its equipment and any cable owned by Access Seeker from Access Provider's premise.
- 4.3 In the event the Agreement is earlier terminated prior to the expiry of the Term due to a breach or default on the part of Access Seeker, Access Seeker shall immediately fully settle all outstanding sums due and payable to CT Sabah up to the date of termination and within thirty (30) days on demand forthwith pay to CT Sabah the sum equivalent to the total Charges for Rental payable to CT Sabah for the remaining unexpired Term of the Service, plus all government tax (if any, Provided such government tax is legally required to be borne by Access Seeker) as agreed compensation and thereafter CT Sabah shall have

Appendix 3 : General Terms and Conditions

no further claims whatsoever against Access Seeker for early termination (save for other breaches by Access Seeker), failing which Access Seeker shall further be liable to pay CT Sabah interest on the sums outstanding at the rate provided in this Access Agreement, calculated from the due date to date of actual payment.

- 4.4 Subject to express provision to the contrary, where:
- (a) a party suspends the supply of a Service or terminates any part of this Access Agreement under clause 3, then that party; or
 - (b) this Access Agreement has otherwise expired or terminated, then both parties, may set off any money due and payable to them by the other Party in relation to the supply of Services under this Access Agreement.

5. Liability and Indemnity

- 5.1 Each Party ("Defaulting Party") indemnifies the other Party against all damage to or destruction or loss of the property of the other party arising out of any act or omission of the Defaulting Party or its employee, servant or agent.
- 5.2 Each Party ("Defaulting Party") indemnifies the other Party against claims in respect of a death of or injury to the employee, servant or agent by:
- (a) a negligent act or omission; or
 - (b) an act or omission intended to cause the death or personal injury, by the Defaulting Party or its employee, servant or agent
- 5.3 Each party ("Defaulting Party") indemnifies the other party against:
- (a) claims in respect of a death of or injury to; or
 - (b) damage or destruction or loss of the property of, a third person or the employee, servant or agent of the third person that is caused by:
 - (c) a negligent act or omission; or
 - (d) an act or omission intended to cause the death or personal injury, by the Defaulting Party or its employee, servant or agent
- 5.4 The Access Seeker shall indemnify the Access Provider against all claims, loss, costs, expenses, demands and liabilities suffered or incurred by the Access Provider (including claims for defamation) arising from the reproduction, broadcast, use, transmission, communication or making available of any material (including data and information of any sort) by:
- (a) the Access Seeker using a Service; or
 - (b) a Customer of the Access Seeker using an application service supplied by the Access Seeker.

Appendix 3 : General Terms and Conditions

- 5.5 Except as otherwise expressly provided in this Access Agreement, a party has no liability to the other party for:
- (a) any consequential or indirect liability, loss, damage (including punitive damages), cost, charge, expense, or economic loss;
 - (b) any loss of profits goodwill or data;
 - (c) any act or omission of any third person; even if such loss is reasonably foreseeable or one Party has been informed by the other Party of the possibility of the party incurring the same.
- 5.6 Unless expressly set out in this Access Agreement, all representations, conditions and warranties including any implied warranty of merchantability implied warranty of fitness for a particular purpose, implied warranty of non-infringement and implied warranty arising out of the course of dealing, custom or usage of trade with respect to any Service provided by either Party are expressly excluded. The warranties expressly made in this Access Agreement are the only warranties made by each Party and will not be enlarged or diminished without that Party's approval.
- 5.7 A Party ("Innocent Party") must take all reasonable steps to minimise the loss it suffers or is likely to suffer as a result of an event giving rise to an indemnity under this clause 5. The other Party's liability is reduced to the extent that the Innocent Party fails to minimise its loss by taking those reasonable steps.
- 5.8 A Party ("Defaulting Party")'s liability to the other Party is reduced to the extent (if any) that the other Party causes or contributes to the loss. This reduction applies whether the Defaulting Party's liability is in contract, tort (including negligence), under any statute or otherwise.
- 5.9 Access Provider is not liable to the Access Seeker for claims brought by a Customer of the Access Seeker.

6. Insurance

- 6.1 The Access Seeker must maintain the following insurances for the term of this Access Agreement:-
- (a) Worker's compensation insurance, social security insurance, employer's liability insurance or other insurance within statutory limits required by law for the benefit of the party's employees (and their dependents) who are employed on or in connection with work done under this Access Agreement.
 - (b) Public liability insurance of a sufficient sum to cover its liability but shall not be more than RM20 million for any one claim or series of claims arising out of an accident or occurrence in connection with this Access Agreement.

Appendix 3 : General Terms and Conditions

7. Intellectual Property Rights

- 7.1 A Party must not use name, logo or trademark of the other Party.
- 7.2 Any Intellectual Property in the documents (present and future) comprising this Access Agreement is owned by the Access Provider.
- 7.3 All rights, titles and interest in:-
- (a) any Intellectual Property vests in the Party who developed that Intellectual Property or for whom that the Intellectual Property was developed; and
 - (b) improvements to or adaptations, versions or modifications of the Intellectual Property vests in the Party who developed that Intellectual Property or for whom that Intellectual Property was developed.
- 7.4 The Parties will negotiate arrangements concerning Intellectual Property that is jointly developed in the course of performing or otherwise in connection with this Access Agreement.
- 7.5 A Party ("Owner") may take steps and proceedings to protect its Intellectual Property rights and the other Party must render all reasonable assistance in connection with those steps or proceedings at the request and expense of the Owner.
- 7.6
- (a) Each Party gives the other Party a non-exclusive royalty free license for the fixed Service term in respect of the relevant Service to use all its Intellectual Property rights as are necessary for the purposes of this Access Agreement including the inter-operability of the Party's Networks, subject to third person licenses.
 - (b) Unless this Access Agreement expressly provides otherwise, neither Party warrants to the other Party that:-
 - (i) it is the beneficial owner of its Intellectual Property rights;
 - (ii) it has the right to give other party a license to use its Intellectual Property rights; or
 - (iii) the other Party's use of its Intellectual Property rights does not infringe the Intellectual Property rights of any person.

Appendix 3 : General Terms and Conditions

8. Confidentiality

Each Party shall, whilst this Agreement is in force and thereafter, keep and procure and ensure that its employees, servants, agents, contractors or its related corporations or affiliates keep in strict confidence any information that it has acquired or may acquire from the other Party hereto or has access to and shall not without the prior written consent of the other use such information in any way or manner for any purposes except for such information:-

- 8.1 which is already known to that Party at the time when such information was disclosed to that Party;
- 8.2 which is publicly known without any fault of that Party or its related corporations or affiliates; which is legally acquired from third parties by that Party;
- 8.3 which is legally acquired from third parties by that Party; or
- 8.4 which is required to be disclosed pursuant to any applicable law or to any regulations or guidelines by the relevant authorities.

9. Notices

Any notice or other communication, including, but not limited to any request, demand consent or approval to or by a Party under this Agreement:-

(a) must be in writing and in English addressed to the address shown below:-

(i) **If to Access Provider,**

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

Telephone No : 088 – 484 999

Facsimile No : 088 – 484 993

(ii) **If to Access Seeker,**

Attn: _____

Telephone No : **03** - _____

Facsimile No : **03** - _____

Appendix 3 : General Terms and Conditions

- (b) is deemed to be duly given by the sender and received by or served on the addressee:-
 - (i) if by delivery , in person or by cable, when delivered to the addressee subject to written acknowledgement of receipt;
 - (ii) if by post, three (3) Business Days from and including the date of posting;
 - (iii) if by facsimile transmission, when received by the addressee as shown by the facsimile transmission report. But if receipt is on a day which is not a Business Day or is after 4.00 p.m. (addressee's time) it is deemed to be duly given on the next Business Day.

10. Non-Waiver

- 10.1 Waiver of any breach or provision of, or any default under, this Agreement must be in writing and signed by the Party granting the waiver.

11. Further Assurance

- 11.1 Each Party shall take all such steps, execute all such documents and do all such acts and things as may be reasonably required by the other Party to give effect to any of the transactions contemplated by this Agreement.

12. No Partnership

- 12.1 Nothing contained in or relating to this Agreement shall be or deemed to constitute a partnership or agency relationship between the Parties hereto.

13. Assignment

- 13.1 Neither Party may assign, sell, convey, transfer or otherwise dispose of any part or all of its rights, interest and/or obligations under this Agreement to any person or entity without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

14. Amendments

- 14.1 A variation or an amendment of any term of this Agreement must be mutually consented to in writing and signed by the Parties hereto.

15. Entire Contract

- 15.1 This Agreement and the Schedules hereto contain the entire agreement and understanding of the Parties hereto with respect to the subject matter herein and supersedes all prior understandings and representations between the Parties hereto.

Appendix 3 : General Terms and Conditions

16. Severability

- 16.1 Any provision of, or the application of any provision of this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- 16.2 Any provision of or the application of any provision of this Agreement, which is void, illegal or unenforceable, does not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

17. Time of Essence

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

18. Regulatory / Legislative Event and Registration of Access Agreement

- 18.1 If a Regulatory Event or Legislative Event occurs, which makes it necessary for variations to be made to the Access Agreement or which a Party considers reasonably necessary or desirable to review or make amendments to this Access Agreement, both Parties must enter in good faith negotiations to review and vary the Access Agreement.
- 18.2 Each Party shall at its own expense do everything reasonably necessary to give effect to the Access Agreement and the transactions contemplate by it including the execution of documents, the use of reasonable endeavours to cause relevant third persons to do likewise, the timely performance of all obligations under this Access Agreement and registering the Access Agreement under the Act.
- 18.3 Either Party may apply to the Commission for registration of the Access Agreement and any variation to the Access Agreement.

19. Change in Law

- 19.1 Where continued operation of the Access Agreement or Access to any Facilities or Services provided under is or will be unlawful (as a result of a legislative change), the Access Seeker and Access Provider must meet within five (5) Business Days of becoming aware of the relevant change in law to review whether access to the relevant Facilities or Services may be provided by Access Provider on different terms and conditions (which are acceptable to the Access Seeker). If the Parties cannot agree to the provision of access on different terms and conditions, Access Provider may terminate the provision of access to the relevant Facilities or Services.

Appendix 3 : General Terms and Conditions

20. Dispute Resolution

20.1 All disputes, controversies or differences which may arise between the Parties hereto in respect of this Agreement shall be settled amicably through negotiations and mutual consideration.

20.2 If the Parties shall fail to resolve any dispute, controversy of differences arising out of this Agreement or anything incidental thereto or out of the refusal to perform the whole or any part thereof in the manner herein set out, then the same shall be resolved in accordance to the relevant provisions of the Dispute Resolution Procedure in Annexure A of the MSA Determination.

21. Interconnect Steering Group

21.1 Consistent with the requirements of the MSA Determination, the Parties shall form the Interconnect Steering Group ("ISG") to manage the smooth and timely implementation of the terms and conditions of the Access Agreement.

22. Successors

22.1 This Agreement shall be binding upon and ensure for the benefit of the successors and permitted assigns of the Parties hereto.

23. Governing Law

23.1 This Agreement shall be governed by and construed in accordance with the laws of Malaysia and the Parties hereto hereby agree to submit to the exclusive jurisdiction of the Courts of Malaysia and the both Parties shall comply with all applicable directions issued by Malaysian regulatory authorities.

24. Review

24.1 This Access Agreement shall be reviewed if:-

- (a) the Minister issues a direction or determination relating to and affecting the Facilities or Service;
- (b) the Commission issues a direction or determination relating to and affecting the Facilities or Service;
- (c) the Act or the MSA Determination is amended in relation to the Facilities or Service and affecting the provisioning thereof;
- (d) by agreement of each of the Parties; or
- (e) a condition of the Operator's license is amended or deleted or a new condition is imposed thereby affecting the provisioning of the Facilities or Service.

Appendix 3 : General Terms and Conditions

25. Costs

- 25.1 Each Party shall be responsible for its own legal costs incurred in relation to the preparation of this Agreement. Stamp duty in respect of this Agreement will be borne by Access Seeker and Access Seeker shall be responsible for ensuring that this Agreement is duly stamped and the cost thereof.