

This Reference Access Offer (Version 1.0/2021) is made by

Celcom Timur (Sabah) Sdn, Bhd. [Company no.: 199501001836 (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 26th March 2021

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. VARIATION OF CT SABAH'S RAO

4.1 If CT SABAH proposes to amend its RAO, CT SABAH must, no less than twenty (20) Business Days before CT SABAH proposes to effect the changes, provide a copy of the amended RAO showing the proposed changes to the existing RAO, to:

- (a) all Access Seekers who are being provided with access to Facilities and/or Services under the existing RAO; and
- (b) all Access Seekers who have requested access to Facilities and/or Services under the existing RAO within the period of three (3) months prior to the making of such amendments, excluding any such Access Seeker who has since indicated that it does not wish to proceed with its Access Request.

For clarification:

- i. nothing in this clause prevents an Access Seeker from initiating a dispute in relation to an amendment to the RAO made by CT SABAH;
- ii. where the terms and conditions of an Access Agreement are not identical to those in the existing RAO, an amendment to the RAO will not alter the terms of that Access Agreement except as agreed between CT SABAH and Access Seeker; and
- iii. without prejudice to an Access Seeker's right to dispute a change to the RAO, where the terms and conditions of an Access Agreement are identical to those in the existing RAO, an amendment to the RAO will be deemed to alter the relevant terms and conditions of that Access Agreement. However, if the Access Seeker disputes the change to the existing RAO, no amendments to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favour of CT SABAH.

4.2 Upon expiry of the twenty (20) Business Days in Clause 4.1 (or such longer period as CT SABAH determines is necessary to finalise the amendments to its RAO), CT SABAH will:

- (a) make available the amended RAO on their publicly accessible website without delay (including updating its date and version number, both on the cover and on each page of the document); and
- (b) provide the updated RAO to the Commission within ten (10) Business Days after being made available under Clause 4.2(a).

PART 2 – REFERENCE ACCESS OFFER AGREEMENT

ARTICLES OF AGREEMENT

THIS AGREEMENT is made on [REDACTED]

between

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

and

[REDACTED] (Company No. [REDACTED]), a company incorporated under the laws of Malaysia and having its registered office at [REDACTED] (“Access Seeker”) of the second part.

The Access Seeker and CT SABAH shall collectively be referred to as “Parties” and singularly as “Party”.

RECITALS:

- A. CT SABAH is licensed under the Communications and Multimedia Act 1998 (“the Act”) and pursuant to its licence, CT Sabah may offer network facilities and network services within Sabah and F.T. Labuan, Malaysia.
- B. The Access Seeker is 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. This Agreement sets out the terms and conditions on which Services are offered by CT SABAH to the Access Seeker subject to the scope of their respective licences. This Agreement is entered into pursuant to the Access List Determination, Mandatory Standard on Access (MSA) Determination and Mandatory Standard on Access Pricing (MSAP) Determination.

DEFINITIONS AND RULES OF INTERPRETATION

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

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Access Determination List	means the Commission Determination on Access List, Determination No.2 of 2015 which contains the list of network facilities and/or network services determined by the Commission from time to time pursuant to Chapter 3 of Part VI of the Act including any amendments thereto.
Act	the Communications and Multimedia Act 1998
Acceptance Test	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
Access Request	a request for access to Services made by the Access Seeker to CT SABAH
Agreement	means this agreement consisting of the documents set out in Clause 2 Documents to the Agreement below, including any modification, amendment or addition thereto as may be agreed in writing between the Operators from time to time
Billing Dispute	means the dispute of an Invoice prepared by an Operator to the other Operator which is made in good faith;
Billing Dispute Notice	means the written notification made by an Operator to the other Operator in relation to a Billing Dispute
Billing Period	means a one (1) calendar month period over which the supply of Facilities and/or Services is measured for the purposes of billing, unless otherwise agreed between the Operators
Billing Representative	means a representative of the Operator appointed in accordance with the billing procedures
Billing System	means a system to issue Invoices relating to Charges payable by each Operator under this Agreement
Broadband Termination Unit or BTU	means an access device that is capable of supporting multiple terminating equipment (TE) with multiple type of interfaces including but not limited to FE (RJ45), RJ11 and wireless via a single last mile connectivity
Business Day	any day other than a Saturday, Sunday or public holiday in Sabah (whether gazetted or declared)
Change Order	Change Order Procedure set out in this Clause 11 of this Agreement

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Charges	the sums payable by the Access Seeker to CT SABAH for the provision of Services as stipulated in the relevant Work Order(s) and based on the charges stated in <u>Annex II: Charges and Charging Principles</u>
Churn	means the processes which are required to be carried out by the Operators in relation to the provision of Services and transfer of Customers, whenever a Customer requests for a transfer from the Operator who has been providing the said Customer with one or more Services (Releasing Service Provider) to another Operator (Gaining Service Provider)
Churn Service	means the Service which the Customer requests a Gaining Service Provider to provide
Commission	the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998
Communication	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
Confidentiality Agreement	means a confidential agreement executed between the Access Seeker and CT SABAH, a copy of which is annexed in Annexure 2 of the General Terms and Conditions
Confidential Information	means the type of information as defined in the Confidentiality Agreement
Customer	means in relation to the Access Seeker, an end-user having a contractual relationship with the Access Seeker for the provision of communications services
Determination	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, thirty one (31) days from the date of receipt of an Invoice
Effective Date	means the date of this Agreement and the date the relevant portions of this Agreement requiring registration are duly registered with the Commission under section 150 of the Act

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End User	means a customer and final recipient of the service, and includes an ultimate retail Customer of the Access Seeker
Equipment	any equipment (whether hardware or software), or device which is part of or within the Network
Equivalence of Inputs	is a concept that describes CT SABAH providing to itself and to Access Seekers the same Facilities and Services on the same terms and conditions including at the same prices and service levels, using the same systems and processes and to the same timescales. For clarification, references to itself includes its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest
Facilities	means both Regulated Facilities and Non-Regulated Facilities
Forecast	means a forecast made by the the Access Seeker
Force Majeure	means any cause which is not reasonably within the control of the Operator affected, but not limited to, an act of God, industrial disputes of any kind, war declared or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, explosion of meteor, governmental restraint and expropriation
High Speed Broadband Network or HSBB Network	means the High Speed Broadband network built by CT SABAH that has the capability to provide bandwidth of at least 10 Mbps to the Access Seeker in areas to which High Speed Broadband services are currently rolled out or to be rolled out in the future including infrastructure upgrade e.g. ADSL to fiber, etc.
Intellectual Property	means all rights conferred under statute, common law and equity and in relation to trademarks, trade names, logos and get up, inventions, patents, designs, copyright, circuit layouts, Confidential Information, know-how and trade secrets and all rights and interests in them or licenses to use any of them
Interconnect Steering Group or ISG	means the inter-operator relations group established by the Access Seeker and CT SABAH
Invoice	the invoice for amounts due in respect of the provision of Services as stipulated in the relevant Work Order(s) in accordance with the terms and conditions of this Agreement

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IP or Internet Protocol	means network-layer (Layer 2) protocol, as defined by the Internet Engineering Task Force, that contains addressing information and some control information that enables packets to be routed
IP Based Convergence Services	means the provisioning of convergence services capable of providing three (3) components namely data, video and voice applications as virtual connections over a single high speed broadband connection
IP Based Enterprise Applications	means any IP based services provided by the Access Seeker to business enterprises including but not limited to Government, corporate and multinational companies, small medium industries and small medium enterprise in Malaysia. Examples of such applications include inter alia supply chain management applications, customer relationship management, business intelligence application, software-as-a-service, conferencing and enterprise resource planning
ITU-T	the Telecommunications Standardisation sector of the International Telecommunication Union (previously known as CCITT)
Jitter	means the difference between the actual Latency of a packet and a reference Latency for a packet population of interest. The reference Latency of a population of packets is the minimum Latency for the packets within the population of interest. Jitter is a statistical sample, measured over a packet population of interest
Latency	means the one-way time interval between the moment the first bit of a IP packet crosses an entry point of a network and the moment the last bit of the same packet crosses an exit point of the network dimensioned in time
Layer 2 HSBB Network Service	shall have the meaning ascribed in Section I of Part A of the Terms and Conditions for Regulated Facilities and/or Services
Licence	means an individual licence granted by the Minister pursuant to the Act for Communications Services
Minister	means the Minister of Communication and Multimedia Malaysia, or, if different, the Minister administering the Act
MSA Determination	means the Commission Determination on the Mandatory Standard on Access (Determination No. 3 of 2016) as

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	amended or superseded by the Commission from time to time
MSAP Determination	means the Commission Determination on the Mandatory Standard on Access Pricing (Determination No. 1 of 2017) as amended or superseded by the Commission from time to time
Notice of Acceptance	means CT SABAH's notice of acceptance of an Order provided to the Access Seeker (whether manual or via portal) pursuant to subsections 5.7.12 and 5.7.13 of MSA Determination
Notice of Receipt	means the acknowledgment of receipt of the Order from the Access Seeker (whether manual or via portal), as described in subsections 5.7.5 and 5.7.6 of MSA Determination
Operational Support System or OSS	means the interactive operational support system made available to the Access Seeker by CT SABAH to perform the functions required in respect of access to Facilities and/or Services including but not limited to the service fulfilment and service assurances operational support systems
Operator	Means either CT SABAH or the Access Seeker and Operators mean the parties to this Agreement collectively
Order	the Order which shall be issued by the Access Seeker to request for Services to be provided by CT SABAH via a designated system in accordance with the terms and conditions set out in this Agreement
Packet Loss	means the ratio of total lost IP packets to total transmitted packets in a population of interest. Total lost packet includes any delivered with errors or Latency greater than 3 seconds
QOS	means quality of service
QoS Class or Quality of Service Class	means a set of quality of service parameters as defined above as Latency, Jitter and Packet Loss, that are associated with Layer 2 connectivity
QOS Standards	means the QOS standards in respect of certain services set out in this Agreement
Reference Access Offer or RAO	means the reference access offer issued by CT SABAH pursuant to the Access List Determination, MSA Determination and MSAP Determination as modified from time to time

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Regulated Facilities and/or Services	<p>means:-</p> <p>(a) network facilities and/or other facilities that are listed in the Access List; and/or</p> <p>(b) network services and/or other services that are listed in the Access List,</p> <p>specified in this Agreement which facilitates the provision of network services or applications services including content applications services</p>
Residential Gateway or RG	means a manageable access device with auto configuration, multiple interface, multi-service perceiving, bears services of different types at the same time and connects a home's local area network to CT SABAH's BTU
Rebate	a rebate entitled by the Access Seeker calculated in accordance with <u>Annex IV: Service Level Assurance</u> of this Agreement in the event CT SABAH fails to fulfill the service level assurance
SAO or Standard Access Obligations	means the obligations which relate to access as referred to in section 149 of the Act
Services	the services provided/ to be provided by CT SABAH to the Access Seeker in accordance with this Agreement pursuant to the relevant Work Order(s) issued by the Access Seeker to CT SABAH
Service Gateway or SG	means, in relation to Layer 2 HSBB Network Services, an agreed location at CT SABAH's designated location which: <p>a) constitutes a point of demarcation between the Network of CT SABAH and the Access Seeker; and</p> <p>b) is at the point at which communication occurs between the High Speed Broadband Network and the Access Seeker's Network by an agreed method</p>
VLAN or Virtual Local Area Network	means a group of devices with a common set of requirements that communicate amongst themselves as if they were attached to the same physical connection regardless of their physical location

Unless the context of this Agreement otherwise requires:

(a) the singular includes the plural and vice versa;

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- (b) a document includes all amendments or supplements to that document, or replacements or novations of it;
- (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;
- (d) a reference to a person includes a firm, body corporate, unincorporated association or an authority;
- (e) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns;
- (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;
- (g) a reference to a related body corporate of an Operator has the same meaning as in the Companies Act 2016;
- (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; and
- (i) headings are included for convenience and do not affect the interpretation of this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. SCOPE OF THE AGREEMENT

- 1.1 In consideration of the mutual covenants herein contained, the Parties agree that the provision of Services shall be governed by the terms and conditions of this Agreement.
- 1.2 This Agreement shall commence and take effect on the Effective Date and shall continue in force and in effect unless terminated pursuant to the terms of this Agreement.

2. DOCUMENTS TO THE AGREEMENT

- 2.1 The following documents shall be deemed to form and be read and construed as an integral part of this Agreement:
 - (a) these Articles of Agreement;
 - (b) Terms and Conditions for Regulated Facilities and/or Services;

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- (c) the General Terms and Conditions and the Terms and Conditions for Technical Matters including all annexures, appendices and schedules referred to therein; and
- (d) the Definitions and Rules of Interpretation.

2.2 Unless expressly stated otherwise, the documents shall take precedence according to the order in which they are listed above.

3. SUPERSEDING AGREEMENT

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

4. SERVICES PROVIDED UNDER THIS AGREEMENT

4.1 CT SABAH will provide the Services described in Part A: Service Description to The Access Seeker pursuant to the contractual provisions of this Agreement.

4.2 The Services provided by CT SABAH under this Agreement shall be based on the charges and charging principles set out in the Part B: Charges and Charging Principles.

**GENERAL TERMS AND CONDITIONS
OF THIS AGREEMENT**

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CONDITION 1 - TERMS

1.1 This Agreement shall commence and take effect on the Effective Date and shall continue in force and in effect for a period of not less than **three (3) years** and be automatically renewed, unless terminated pursuant to the terms of this Agreement.

1.2 **Term of supply:** Unless otherwise agreed by CT SABAH and Access Seeker in an Access Agreement, and subject to CT SABAH not being able to provide access as a result of Force Majeure, CT SABAH shall only require the Access Seeker to acquire access to individual Facilities and/or Services under the Access Agreement for a minimum period as follows:

Facilities and/or Services	Minimum term
Access Services (e.g. originating and terminating access)	No minimum term
Access to Network Elements	Twelve (12) months
Transmission Services	Twelve (12) months
HSBB Network Services	Twelve (12) months
Network facilities access	Three (3) years

1.2 **Standard Access Obligations:** The Operators shall comply with **Condition 4.1.1** of the MSA Determination.

1.3 **Principles of Non-Discrimination:** The Operators shall comply with **Condition 4.1.5** and **Condition 4.1.6** of the MSA Determination.

1.4 **Application of non-discrimination principle:** The Operators shall comply with **Condition 4.2** of the MSA Determination.

1.5 **Customer Relationship Principles:** The Operators shall comply with **Condition 4.3.2** of the MSA Determination.

1.6 **No exclusivity and no restriction on resale:** The Operators shall comply with **Condition 4.4** of the MSA Determination.

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CONDITION 2 - PARAMETERS OF THE AGREEMENT

- 2.1 The scope of this Agreement is, unless otherwise specified in this Agreement, limited only to the provision of Facilities and/or Services.
- 2.2 For the avoidance of doubt, this Agreement is intended to apply only to the provision of Facilities and/or Services by CT SABAH to the Access Seeker.
- 2.3 The Operators hereby agree and acknowledge that this Agreement shall be effective and enforceable upon the date of this Agreement and/or the registration of the relevant portion of this Agreement (which requires registration) with the Commission pursuant to section 150 of the Act. The Operators hereby agree and acknowledge that those portions of this Agreement which do not require registration with the Commission, will not be lodged with the Commission for registration.
- 2.4 The Operators hereby agree and acknowledge that the provisions of the MSAP Determination will be applicable from the Effective Date of this Agreement.
- 2.5 Each Operator shall notify the other Operator as soon as possible of all correspondences from the Commission pertaining to the registration of this Agreement. In the event that the Commission refuses or fails to register this Agreement or part thereof, the Operators shall negotiate in good faith to decide on the next course of action to be undertaken by the Operators.

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CONDITION 3 - PROCEDURES FOR REQUESTING NEW FACILITIES AND SERVICES

3.1 Application for Access to New Facilities and/or Services

3.1.1 **Access Request:** The Operators shall comply with **Condition 5.4.5** of the MSA Determination.

3.1.2 **Required information:** The Operators shall comply with **Condition 5.4.6** of the MSA Determination.

3.1.3 **Information disclosure:** CT SABAH shall comply with **Condition 5.3.7** of the MSA Determination.

3.2 Processing of Access Request

3.2.1 **Obligations upon receipt:** CT SABAH shall comply with **Condition 5.4.7** of the MSA Determination.

3.2.2 **Non-permitted information:** CT SABAH shall comply with **Condition 5.4.16** of the MSA Determination.

3.3 Assessment of Access Request

3.3.1 **Grounds for refusal:** CT SABAH shall comply with **Condition 5.4.11** of the MSA Determination.

3.3.2 **Technical infeasibility:** CT SABAH shall comply with **Condition 5.4.17** of the MSA Determination.

3.3.3 **Capacity constraint:** CT SABAH shall comply with **Condition 5.4.18** of the MSA Determination.

3.4 Notification of Rejection to The Access Seeker

3.4.1 **Refusal response:** CT SABAH shall comply with **Condition 5.4.10** of the MSA Determination.

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3.5 Acceptance of Access Request

3.5.1 **Acceptance response:** CT SABAH shall comply with **Condition 5.4.8** of the MSA Determination.

3.6 Negotiation of Access Request

3.6.1 **Negotiation response:** CT SABAH shall comply with **Condition 5.4.9** of the MSA Determination.

3.6.2 **Initial meeting:** The Operators shall comply with **Condition 5.4.13** of the MSA determination.

3.7 Timing

3.7.1 The Operators shall comply with **Condition 5.4.1** of the MSA Determination

3.8 Good faith

3.8.1 The Operators shall comply with **Condition 5.4.2** of the MSA Determination.

3.8.2 CT SABAH shall comply with **Condition 5.4.15 (Additional matters)** of the MSA Determination

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CONDITION 4 - PROVISION OF INFORMATION

- 4.1 The obligations of each Operator to provide information to the other Operator are as set out in this Agreement or as otherwise agreed between the Operators and are subject to the requirements of confidentiality imposed by this Agreement.
- 4.2 Information provided under this Agreement may only be used for the purpose for which it was given. Personal information about a Customer's credit worthiness, credit standing, credit history or credit capacity may only be used for the purposes permitted by, and in compliance with, Malaysian law.
- 4.3 If any of the information is used by an Operator for any purpose other than the purpose for which it was given, the providing Operator may deny the recipient Operator further access to the information for the period during which the non-observance or non-conforming use continues on notice specifying the non-observance or non-conforming use. The Operators will cooperate to resolve the providing Operator's reasonable concerns so that information exchange can be resumed as soon as possible.
- 4.4 Subject to the Act and any subordinate legislation, nothing in this Agreement may be construed as requiring an Operator at any time to disclose to the other Operator information which is at the date when this Agreement comes into force, the subject of a confidentiality obligation owed to a third person unless the third person consents to such disclosure. Where the consent of a third person is required, the Operator holding the information must use its reasonable endeavours to obtain the consent of that third person.
- 4.5 After this Agreement comes into force an Operator must use its best endeavours not to enter into any contract which would prevent it from making information available to the other Operator unless the contract includes a term which permits the contracting Operator to make the information available if directed to do so by the Commission.
- 4.6 All communication information and such other relevant information must be kept by both Operators for a period of two (2) years unless otherwise agreed in writing for the purposes of verification and audit.
- 4.7 The Operators further agree that the information provided for the purpose of this Agreement shall be subject to the Confidentiality Agreement as set out in **Annexure 1**.

CONDITION 5 - BILLING AND SETTLEMENT

5.1 Billing

- 5.1.1 (a) In respect of any Charge due from an Operator, the invoicing Operator ("**Invoicing Operator**") shall raise the Invoice for amount due for the supply of Facilities and Services.
- (b) Unless otherwise agreed in writing, the Invoicing Operator shall invoice in writing or in electronic form (as requested by the Operator receiving the Invoice ("**Invoiced Operator**")), on an Operator to Operator basis, within thirty one (31) days from the end of the Billing Period for amounts due in respect of the supply of Facilities and Services during the Billing Period. The Invoicing Operator shall provide with each Invoice, such information as may be reasonably necessary for the Invoiced Operator to verify the rates and charges specified in the Invoice. In addition, the Invoiced Operator may request, in writing, for the billing report to be provided by the Invoicing Operator in an electronic format.
- (c) The Invoicing Operator shall provide the Invoiced Operator at the Invoiced Operator's written request, with an aggregated summary of billings for access to the Facilities and/or Services provided to the Invoiced Operator.
- (d) The Operators shall, from time to time, inform each other of the mailing address and the department to which the Invoice should be sent to and also their respective bank account details for the purposes of enabling the other Operator to make payment. All Invoices shall be delivered by hand or post (either registered mail or courier) or email.
- 5.1.2 (a) If the Invoicing Operator is unable to submit an Invoice for actual charges for any network facilities and/or network services supplied in a Billing Period, then the Invoicing Operator may issue to the Invoiced Operator an Invoice for a provisional amount ("**Provisional Amount**") based on the last Invoice provided that the amount of the Provisional Amount is no more than the average of the most recent three (3) Invoices. Where there have not been three (3) past Invoices for access to the Facilities and/or Services, the Invoicing Operator may issue a provisional Invoice up to the full value of the amount based on the most recent Invoice. The Invoiced Operator shall pay the Provisional Amount by the Due Date. The Provisional Amount will be adjusted in the next invoice or as soon as practicable but not later

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than sixty (60) days after the month in which the charges were incurred or such other time period as may be agreed in writing (“**Adjustment Period**”). If an adjustment is not made within the Adjustment Period, the Invoiced Operator shall treat the Provisional Amount as the actual Invoice.

- (b) The Invoicing Operator may invoice the Invoiced Operator for the Provisional Amount for a period of not more than three (3) successive Billing Periods.
- 5.1.3 (a) If the actual amount for a particular Billing Period is higher than the Provisional Amount for the Billing Period, then the Invoiced Operator will pay in full such difference (free of interest) within thirty one (31) days from the receipt of the invoice to the Invoicing Operator.
- (b) If the actual amount for a particular Billing Period is lower than the Provisional Amount for the same Billing Period, the Invoicing Operator will reimburse in full such difference free of interest within thirty one (31) days from the receipt of the invoice to the Invoiced Operator. Such payment must be forwarded to the Invoiced Operator together with the relevant monthly statement.
- 5.1.4 Subject to **Condition 13.4** below, where appropriate, any taxes (including goods and service tax, sales and service tax, as applicable), duties or other imposed (as at the date of this Agreement or imposed after the date of this Agreement) shall be added to all or any Charges under this Agreement and be paid by the Party responsible for making such payment.

5.2 Terms of Payment

- 5.2.1 (a) The Invoiced Operator must pay any amount due and owing to the Invoicing Operator on the Due Date unless otherwise agreed in writing by both Operators.
- (b) The Invoiced Operator to whom any Facilities and/or Service is provided under this Agreement must pay the Invoicing Operator the applicable rates and charges, and on the terms and conditions set out or referred to, as the case may be, in this Agreement.

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5.2.2 All payments:

- (a) must be paid by electronic transfer to the Invoicing Operator or by cheque to the nominated account(s) of the Invoicing Operator;
- (b) must be accompanied by such information which is reasonably required by the Invoicing Operator to properly allocate payments received, failing which the Invoicing Operator shall have the absolute discretion to allocate payments received to any amounts due and payable; and
- (c) unless otherwise agreed by the Operators, shall not be subject to any set-offs except where the Invoiced Operator is in liquidation or at least three (3) invoices have been issued and such Invoices have not been paid (excluding disputed amounts which an Operator is authorised to withhold in accordance with **Condition 11.6.5**).

5.2.3 All invoices shall be stated in Ringgit Malaysia and payment must be made in Ringgit Malaysia; and

5.2.4 It is hereby expressly agreed that the Invoicing Operator is entitled to the payment of interest without prejudice to any other rights of the Invoicing Operator. Interest on due and unpaid amounts is payable (as well as before judgment and after judgement) at the rate of two percent (2%) per annum above Malayan Banking Berhad Base Rate (BR) calculated daily from the Due Date until the date of actual payment. Payments which are overdue by more than sixty (60) days will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad BR (as well as before judgment and after judgement) calculated from the Due Date until the date of receipt by the Invoicing Operator of full payment. Further, the BR rate to be used shall be the published rate prevailing on the date of payment. For clarification, both Parties shall not charge interest on an amount which is disputed in good faith.

5.2.5 Where interest in respect of any due and unpaid amount is due to the Invoicing Operator under **Condition 5.2.4**, the Invoicing Operator may add the amount of such interest to its next invoice.

5.2.6 If the Invoicing Operator discovers an error in an invoice given to the Invoiced Operator under this **Condition 6**, it must notify the Invoiced Operator. The Invoicing Operator which made the error must make the necessary adjustment to

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correct that error (including adjusting any interest erroneously charged) in its next Invoice.

- 5.2.7 The Invoicing Operator may include omitted or miscalculated Charges from an Invoice at a later date provided that the Invoicing Operator is able to substantiate the Charges to the Invoiced Operator and the inclusion or amendment is made within three (3) months from the end of the Billing Period for the Facilities and Services provided. For the avoidance of doubt, in the event the Invoicing Operator fails, neglects, or omits to submit an omitted or miscalculated Charge in a later invoice, or fails, neglects or omits to submit an invoice for any Charges within the time period specified in this **Condition 5**, then the Operator shall be deemed to have waived and/or forfeited its right to make any further claims on the said omitted Charge.

5.3 Billing Disputes

- 5.3.1 Where there is a Billing Dispute, the Operators shall comply with the dispute resolution procedures in **Condition 11**.
- 5.3.2 For the avoidance of doubt, the Invoiced Operator shall not use the dispute resolution procedure in **Condition 11** to avoid or delay payment due to the Invoicing Operator where there is no genuine dispute.

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CONDITION 6 - TERMINATION AND SUSPENSION

- 6.1 This Agreement shall only take effect on the Effective Date and shall remain in force until the termination of this Agreement.
- 6.2 (a) An Operator ("**Notifying Operator**") may terminate this Agreement or part thereof if:
- (i) the other Operator ("**Defaulting Operator**") fails to remedy a breach (which is capable of remedy) of a material obligation under this Agreement (including but not limited to the events specified in **Condition 6.3(a)(iii) to (vi)**) within thirty (30) days of receiving a notice of breach from the Notifying Operator;
 - (ii) a winding up order has been made against the Defaulting Operator and the order remains or will remain in effect for a continuous period of ninety (90) days;
 - (iii) an order is made or an effective resolution is passed, for the reconstruction and amalgamation of the Defaulting Operator or otherwise under Section 366 to 368 of the Companies Act 2016 or any other similar action or proceeding under any other law and the order or resolution remains or will remain in effect for a continuous period of sixty (60) days;
 - (iv) a receiver, receiver and manager, official manager, provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the undertaking and property of the Defaulting Operator;
 - (v) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of the Defaulting Operator;
 - (vi) the Defaulting Operator fails to remedy breaches (which are capable of remedy) of any laws, regulations, rules or standards which has a material adverse effect on the Notifying Operator or this Agreement or the provision of Facilities and/or Services, within thirty (30) days of receiving a notice of breach from the Notifying Operator; or

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- (vii) a Force Majeure, substantially and adversely affecting the ability of an Operator to perform its obligations to the other Operator under this Agreement, continues for a consecutive period of ninety (90) days However, Notifying Operator may not give notice under this **Condition 6.2** unless the Notifying Operator has:
 - (A) negotiated or endeavoured to negotiate in good faith with the other Operator to remedy the Force Majeure with the purpose of amending the terms of this Agreement to enable this Agreement to remain in full force and effect notwithstanding such inability to so perform; and
 - (B) has failed to reach any agreement within thirty (30) days from the commencement of negotiations.
 - (b) Upon the occurrence of the events set out in **Condition 6.2** above or where a breach is incapable of remedy, and subject to the provision of **Condition 6.4** below, the Notifying Operator may terminate this Agreement by issuing a termination notice to the Defaulting Operator/other Operator (in the case of Force Majeure) and this Agreement shall terminate in accordance with the terms of the termination notice.
- 6.3 (a) The Notifying Operator may, without liability, suspend, to the extent necessary, access to its Facilities and/or Services where:
- (i) the Defaulting Operator fails to remedy a breach (which is capable of remedy) of a material obligation under this Agreement (including the failure to pay Invoices in accordance with this Agreement) within thirty (30) days of receiving a notice of breach from the Notifying Operator;
 - (ii) the Defaulting Operator fails to remedy breaches (which are capable of remedy) of any laws, regulations, rules or standards, which has a material adverse effect on the Notifying Operator or this Agreement or the provision of Facilities and/or Services, within thirty (30) days of receiving a notice of breach from the Notifying Operator;
 - (iii) the Defaulting Operator fails to remedy any fault or condition (which is capable of remedy) upon being notified, that causes the Defaulting Operator's network facilities to materially adversely

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affect the normal operation of the Notifying Operator's Network, or are a material threat to any person's safety;

- (iv) the Defaulting Operator fails to remedy any condition (which is capable of remedy) upon being notified, that causes the Defaulting Operator's network facilities or supply of a network service posing an imminent threat to life or property of the Notifying Operator's, its employees or contractors;
- (v) the Defaulting Operator fails to remedy any fault or condition (which is capable of remedy) upon being notified, in the Defaulting Operator's network facilities that cause material physical or technical harm to any network facilities of the Notifying Operator or any other person; or
- (vi) subject to **Condition 8**, where Force Majeure applies.

(b) Upon the occurrence of the events set out in **Condition 6.3** above or where a breach is incapable of remedy and subject to the provision of **Condition 6.4** below, the Notifying Operator may suspend access to its Facilities and/or Services by issuing a suspension notice and the suspension of access to the Notifying Operator's Facilities and/or Services shall take effect in accordance with the terms of the suspension notice.

(c) During the period of suspension, the Notifying Operator shall be entitled to charge the Defaulting Operator for all fixed periodic Charges in respect of the Facilities and/or Services provided that where a suspension is due to Force Majeure, the fixed periodic Charges for Services affected by the Force Majeure only will not be charged. The Defaulting Operator shall be solely responsible for any loss, costs, damages or expenses which the Defaulting Operator may incur or suffer during the period of suspension.

6.4 (a) Where the Notifying Operator seeks to terminate the Agreement (or part thereof) or suspend, to the extent necessary, access to Facilities and/or Services on any grounds including those specified in:-

- (i) **Conditions 6.2 (a)(i) to (vii)** with respect to termination; and/or
- (ii) **Conditions 6.3 (a)(i) to (vi)** with respect to suspension,

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the Notifying Operator shall first notify the Commission in writing of (“**Notice to the Commission**”) of the action that the Notifying Operator proposes to take and the reasons why it considers such action is appropriate. The Commission may invite the Defaulting Party to make submissions to the Commission regarding the proposed termination or suspension. The Notifying Operator:

- (A) shall only give effect to the proposed termination or suspension with the Commission’s written consent and subject to any time delay or conditions which the Commission may specify (if any). In this respect, the Commission shall respond to the Notifying Operator’s notice within ten (10) Business Days or such other period that the Commission considers reasonable;
 - (B) must not give effect to the proposed termination or suspension unless the Notifying Operator has received written consent from the Commission to such termination or suspension; and
 - (C) subject to such conditions and/or requirements for the Access Seeker to comply as maybe determined by CT SABAH including shall take all steps practicable to minimise disruptions and inconvenience to the Customers of The Access Seeker, including the provision of security requirements, the Access Seeker with a reasonable period to make alternative arrangements prior to the suspension or termination of the Access Agreement, or access to Facilities and/or Services provided under it.
- (b) If the Commission notifies the Notifying Operator that the Notifying Operator is permitted to:-
- (i) terminate this Agreement (or part thereof); or
 - (ii) suspend access to the Facilities and/or Services,

the Notifying Operator may, issue:

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- (A) a termination notice immediately to the Defaulting Operator (with a copy of the said notice to be provided to the Commission on the same day) and this Agreement shall terminate in accordance with the terms of the notice; or
- (B) a suspension notice, with reasons, to the Defaulting Operator
 - (1) immediately where the suspension is due to any of the events under **Condition 6.3(a)(iii)**(where it involves material threat to a person's safety), **Condition 6.3(iv) and Condition 6.3(a)(v)**; or
 - (2) with five (5) Business Days' notice where the suspension is due to events under **Condition 6.3(a)(i), Condition 6.3(a)(ii), Condition 6.3(a)(iii)**(where it does not involve material threat to a person's safety), **and/or Condition 6.3(a)(vi)**,

(with a copy of the said notice to be provided to the Commission on the same day) and the access to the Facilities and/or Services shall be suspended immediately or after the expiry of the five (5) Business Day period (as the case may be) in accordance with the terms of the notice.

- 6.5 The issuance of a suspension notice shall not in any way prejudice or prevent the Notifying Operator from exercising its right to issue a termination notice under **Condition 6.2**.
- 6.6 In the event the Notifying Operator suspends access to Facilities and/or Services by reason of the Defaulting Operator's failures set out in **Condition 6.3**, the Notifying Operator must reinstate access to Facilities and/or Services upon the Defaulting Operator remedying its failure or the direction of the Commission. Reconnection fee shall be imposed due to suspension of the Facilities and/or Services.
- 6.7 Notwithstanding **Condition 6.4**, in the event that:-
 - (a) an Operator's Licence(s) is terminated and the Operator is not immediately granted another Licence(s) of that type (where a License of that type or another Licence is required); or

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- (b) there are any changes in law or regulation which renders this Agreement or access to any Facilities and/or Services unlawful,

the Agreement or part thereof shall terminate in so far as the Agreement or part thereof is affected by the termination of an Operator's Licence(s) or change in law or regulation. However, other obligations under this Agreement which are not affected by such events shall remain in force. The Operators shall meet within five (5) Business Days of the affected Operator notifying the other Operator of the events specified in paragraphs (a) or (b) above, review the Agreement to ascertain whether access to the Facilities and/or Services are lawful and may be provided on different terms which are mutually agreeable by both Operators.

- 6.8 Notwithstanding anything to the contrary, in the event an Operator breaches any of its obligations under this Agreement, the other Operator shall, without prejudice to any of its rights and remedies under this Agreement and under law, have the absolute discretion to immediately seek urgent interlocutory action which shall include but not be limited to:-

- (a) preventing such further breaches from occurring;
- (b) preventing the continuation of the said breach; and/or
- (c) requiring the Operator in breach to comply with their obligations under this Agreement,

without the necessity of first exercising any of its rights herein. For the avoidance of doubt, **Conditions 6.2, 6.3, 6.4 and 11** shall not preclude the other Operator from immediately seeking urgent interlocutory action under this Condition.

- 6.9 If, after the termination or expiry of this Agreement in whole or in part:

- (a) an Operator ("**requesting Operator**") gives the other Operator written notice requesting the other Operator to carry out necessary disconnection works and to return any equipment or facilities of the requesting Operator or a third person installed by or for the requesting Operator; and
- (b) the other Operator has failed to comply with the request, the requesting Operator may enter the premises of the other Operator on reasonable notice for the purposes of carrying out any necessary disconnection works

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and repossessing any such equipment and facilities. The other Operator on whose premises such equipment or facilities were installed is responsible for compensating the requesting Operator for any such equipment or facility which is not delivered up in good condition (fair wear and tear excepted) and for making good all the damage to the requesting Operator's premises, if the equipment or facilities of the other Operator are in the requesting Operator's premises or under the requesting Operator's care. The other Operator shall indemnify the requesting Operator in respect of any damage thereby caused to the premises, equipment and facilities of or under the care of the requesting Operator.

6.10 Upon termination of this Agreement or part thereof, CT SABAH shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any Facilities and/or Services provided under it except:

- a) charges invoiced in arrears and not yet paid; or
- b) charges arising during an applicable minimum contractual period of twelve (12) months provided that:
 - i. Such charges must be reduced to reflect any cost savings to CT SABAH from not having to supply the Facilities and/or Services to the extent that they have been terminated or suspended; and
 - ii. CT SABAH must use reasonable endeavours to mitigate its cost of termination or suspension and maximise cost savings under Condition 6.10(b)I above.

Where the provision of Services is terminated due to Force Majeure, the minimum charge for Services affected by the Force Majeure shall not be applicable.

6.11 Termination or expiry of this Agreement, in whole or in part, does not operate as a waiver of any breach by an Operator of any of its provisions and is without prejudice to any rights, liabilities or obligations of any Operator which have accrued up to the date of the termination or expiry, including a right of indemnity.

6.12 **Upfront charges refund:** On termination of this Agreement or access to any Facilities and/or Services provided under it, CT SABAH shall refund to the Access Seeker all amounts paid in advance to the extent that the amount (or part of the

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amount calculated on a pro-rata basis) relate to the period after the date of effect of such termination.

6.13 **Deposits and guarantees:** Notwithstanding the obligation in Clause 6.12, CT SABAH shall:

(a) within two (2) months of termination of this Agreement refund to the Access Seeker any deposit paid provided all other amounts payable by the Access Seeker to CT SABAH have been paid; and

(b) immediately upon termination of this Agreement unconditionally waive any rights under any guarantees provided by the Access Seeker except in respect of amounts payable by the Access Seeker to CT SABAH as at the date of termination.

CONDITION 7 - FORCE MAJEURE

7.1 No Breach

No Party shall be in breach of its obligations under this 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 catthe Access Seekerphe 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 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.

7.2 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.

7.3 Termination due to Force Majeure

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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 Agreement may be terminated by mutual agreement upon notification to MCMC.

7.4 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.

CONDITION 8 - LIABILITY AND INDEMNITY

8.1 General Principle

8.1.1 Save to the extent that another provision of this Agreement expressly provides for (or expressly excludes or limits) a remedy, a liability or a form of compensation in relation to an act, omission or event, this **Condition 8** shall regulate the liability (whether arising in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach or any other cause) of an Operator to the other Operator under and in relation to this Agreement and in relation to any act, omission or event relating to or arising out of this Agreement.

8.2 Insurance

8.2.1 Parties shall procure and maintain at its own cost during the performance of this Agreement the relevant insurance(s) to ensure fulfillment of Parties' respective obligations under this Agreement.

8.3 Damage to Property

8.3.1 Either Operator ("**defaulting Operator**") shall indemnify and hold the other Operator safe and harmless from and against all costs, expenses and claims relating to damage to or destruction or loss of all or any property beneficially and/or absolutely owned by the other Operator arising out of any act or omission of the defaulting Operator, its servants or agent in so far as such damage, destruction or loss arises out of or in the course of or by reason of the carrying out any works for or in relation to the interconnection or providing the communications services.

8.4 Death and Personal Injury

8.4.1 Subject to **Condition 8.6.4**, the defaulting Operator shall be absolutely liable for, and hereby indemnifies the other Operator from and against all costs, expenses and claims in respect of all injuries to, including the death of any and all employees of the other Operator arising out of any act or omission of the defaulting Operator, its servants or agent.

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8.5 Third Person Indemnity

8.5.1 Subject to **Condition 8.6.4**, the defaulting Operator shall indemnify and hold the other Operator safe and harmless from and against all costs, expenses and claims in respect of:-

- (a) all injuries to, including death of; and/or
- (b) loss of or damage to property of,

third parties arising out of or in connection with or in the course of or by reason of the defaulting Operator's breach or when due to any acts, omission or default of the defaulting Operator, its servants and/or agents in the carrying out of any works for or in relation to the interconnection or in providing the communications services.

8.6 Liability

8.6.1 Neither Operator excludes liability for death or personal injury attributable to its own negligence or the negligence of its servants and agents.

8.6.2 Subject to **Conditions 9.4 and 8.5**, an Operator shall not be liable to the other Operator or any other third party and shall not indemnify the other Operator for any claims, proceedings or actions brought or made by a third party against the other Operator, howsoever arising, including but not limited to:

- (a) the lack of or loss or interruption or any delays to access, interconnection transmission or otherwise; and
- (b) any claims, proceedings or actions brought or made against the other Operator by any person pursuant to a contractual relationship with the other Operator.

8.6.3 Notwithstanding **Conditions 8.3.1 and 8.5.1**, an Operator shall not be liable for damage to property due to hacking and the transmission of malicious codes and/or programs by third parties (other than its employees, agents, servants, contractors and/or other persons under its control) provided that presently available security solutions and anti-virus solutions have been put in place by the Operator.

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8.6.4 In no event will either Operator's liability under this Agreement exceed Ringgit Malaysia Twenty Million (RM 20,000,000) only per event for any accident or occurrence in connection with this Agreement save that the limitation of liability set out in this **Condition 8.6.4** shall not apply to fraud by that Operator and/or amounts due and payable under an Invoice.

8.7 Exclusion of Warranties

8.7.1 Except as expressly set out in this Agreement, all representations, conditions and warranties (whether express or implied, statutory or otherwise) including but not limited to 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 Operator are expressly negated and excluded. The warranties set forth in this Agreement are the only warranties made by each Operator and will not be enlarged or diminished without that Operator's approval.

8.7.2 In no event will either Operator be liable to the other Operator or any other person for indirect loss of profits, loss of business, use of data or special, exemplary, indirect, incidental, consequential or punitive damages of any kind for any reason, including, without limitation, the breach of this Agreement or any termination of this Agreement, whether such liability is asserted on the basis of contract, tort (including negligence and strict liability) or otherwise, even if either Operator has been advised of the possibility of such damages. The essential purpose of this provision is to limit the potential liability of each Operator arising out of this Agreement.

CONDITION 9 - INTELLECTUAL PROPERTY RIGHTS

- 9.1 All right, title and interest in and to any:
- (a) Intellectual Property (in relation to matters which are the subject of this Agreement) developed or to be developed vests in the Operator who developed that Intellectual Property or for whom that Intellectual Property was developed by a third person; and
 - (b) improvements to or adaptations, versions or modifications of Intellectual Property (in relation to matters which are the subject of this Agreement) vest in the Operator who developed that Intellectual Property or on behalf of whom that Intellectual Property was developed.
- 9.2 The Operators will negotiate arrangements (including in respect of title) concerning Intellectual Property jointly developed in the course of performing or otherwise in connection with this Agreement.
- 9.3 Each Operator shall licence to the other Operator on a royalty-free basis, all Intellectual Property rights necessary for the on-going operation of this Agreement and the inter-operability of the Operators' Networks but shall be subject to any relevant third party licences. The Operators agree that such Intellectual Property rights accorded to them shall only be used for purposes of this Agreement unless otherwise agreed in writing.
- 9.4 Each Operator ("**Indemnifying Operator**") indemnifies the other Operator ("**Innocent Operator**") against all liability or loss arising directly from, and all reasonable costs, charges and expenses incurred by the Innocent Operator in connection with any claim, action, suit or demand alleging infringement of the rights of a third party arising from use by the Innocent Operator of Intellectual Property disclosed or licensed by the Indemnifying Operator under this Agreement. This indemnification will represent the only remedy and form of compensation available to the Innocent Operator in relation to the infringement of Intellectual Property licensed or disclosed by the Indemnifying Operator under this Agreement.
- 9.5 An Operator shall only use such Intellectual Property and information provided by another Operator for the purposes of providing or acquiring access to requested Facilities and/or Services. An Operator must not use such Intellectual Property or information for the development or marketing of other

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communication services or Equipment by that Operator, its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest, or third parties.

CONDITION 10 - CONFIDENTIALITY OBLIGATION

10.1 Each Operator shall keep confidential all Confidential Information of the other Operator which:

- (a) is disclosed, communicated or delivered to it by an Operator pursuant to this Agreement; or
- (b) comes to its knowledge or into its possession in connection with this Agreement,

in accordance with the Confidentiality Agreement.

10.2 The Operators agree that the terms and conditions of this Agreement shall be kept confidential in accordance with the Confidentiality Agreement as included in **Annexure 1**.

CONDITION 11 - DISPUTE RESOLUTION PROCESS

11.1. Introduction

11.1.1 Subject to **Condition 11.2.3**, CT SABAH and the Access Seeker shall adopt and comply with this dispute resolution procedure in relation to any dispute which may arise between the Access Seeker and CT SABAH in relation to or in connection with the supply of any Facilities and/or Services and/or in relation to the terms and conditions of this Agreement (“**Access Dispute**”).

11.1.2 The following dispute resolution mechanisms are governed by this Condition:

- (a) inter-party working groups;
- (b) Interconnect Steering Group; and
- (c) specific resolution of disputes, being:
 - (i) technical disputes (which must follow the procedures set out in **Condition 11.5** if they cannot be resolved through the application of the general dispute resolution provisions in **Conditions 11.2, 11.3 and 11.4**);
 - (ii) Billing Disputes, which must follow the procedures set out in **Condition 11.6**; or
 - (iii) any other types of disputes which, if cannot be resolved through the application of the general dispute resolution provisions in **Conditions 11.2, 11.3 and 11.4**, must be referred to the Commission for resolution.

11.1.3 A dispute between the Operators regarding any matter dealt with under this Agreement shall first be attempted to be resolved by good faith negotiation between the Operators in accordance with this Agreement. If the Operators to the Dispute cannot or otherwise fail to reach an agreement, the Operators shall always be entitled to seek resolution of the Dispute by the Commission in accordance with Section 151 of the Act.

11.1.4 All disputes referred to the Commission pursuant to this Agreement shall be dealt with in accordance with the Act. Where the decision of the Commission is appealed

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in the Appeals Tribunal under the Act, the decision of the Appeals Tribunal shall be final and binding subject always to the right of judicial review contained in the Act.

11.2 General

11.2.1 Until expiry of the dispute resolution procedures set out herein, an Operator may not commence court proceedings relating to that dispute, other than an application for urgent interlocutory relief. Nothing in this **Condition 11.2.1** shall be construed as ousting the jurisdiction of any court.

11.2.2 An Operator shall ensure that its representatives acting in relation to a dispute are of sufficient seniority and have authority to settle an access dispute on behalf of the Operator. At the commencement of the dispute resolution procedure, each Operator must notify the other Operator of the scope of the authority of each of their representatives. If in the course of the dispute resolution procedures it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to a representative, an Operator may require that those matters be referred to more senior officers of that Operator who have authority to settle those matters.

11.2.3 During a dispute and any dispute resolution process invoked in accordance with this **Condition 11**, CT SABAH and The Access Seeker must continue to fulfill their obligations under this Agreement between themselves.

11.2.4 Subject to **Condition 11.2.5**, the Operators shall exchange information of a type described in this Agreement during the course of, and to facilitate, resolution of such a dispute.

11.2.5 Confidential information of an Operator which is disclosed, and any other oral or written submissions made by an Operator or an Operator's representatives during the course of any dispute resolution process will be subject to the confidentiality restrictions contained in the Confidentiality Agreement and this Agreement.

11.2.6 An Operator must not use information obtained under **Condition 11.2.4** or described in **Condition 11.2.5** for any purpose other than to resolve the dispute.

11.2.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of a dispute (including a Technical Expert (as hereinafter defined) or the Commission, in accordance with this **Condition 11**) may decide not to determine the dispute if the arbitrator

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considers that the dispute is trivial, frivolous or vexatious, or if there is insufficient evidence before the arbitrator to determine the dispute.

11.2.8 The costs of the arbitration are to be shared equally between the Operators, unless the arbitrator of the dispute has decided not to determine the dispute in accordance with **Condition 11.2.7**. If an arbitrator decides not to determine the dispute, the Operator that initiated the dispute must pay the costs of the arbitration including the other Operator's costs thereto.

11.3 Inter-Party Working group

11.3.1 In the first instance, the Operator raising a dispute must inform the other Operator in writing and the Access Seeker and CT SABAH should attempt to resolve the Access Dispute between themselves in good faith.

11.3.2 CT SABAH and the Access Seeker shall establish a working group, or working groups, to fulfill the requirements set out in **Condition 11.3.1**. The working group shall be comprised of representatives of the Operators, and be headed by a person who holds a position that is at least equivalent to the head of the wholesale or interconnection group.

11.3.3 The Operators shall provide for:

- (a) subject areas to be dealt with by each working group;
- (b) equal representation by the Access Seeker and CT SABAH;
- (c) chairmanship and administrative functions of the working group which is to be shared equally; and
- (d) formal notification procedures to the working group.

11.3.4 CT SABAH and the Access Seeker shall use reasonable endeavors to attempt to settle an Access Dispute in the working group level for a period of no longer than thirty (30) Business Days unless otherwise agreed by the parties, subject always to an Operator's right to obtain relief in court.

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11.4 Interconnection Steering Group

11.4.1 In the event that the Operators cannot resolve the dispute between themselves within the time specified in **Condition 11.3.4**, or after any agreed time extension has expired, either Operator may give ten (10) Business Days written notice (“**Notice Period**”) to the other Operator stating its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice Period, then either Operator may notify the other Operator (“**Receiving Operator**”) that it wishes to refer the issue to the Interconnect Steering Group (**ISG**). In such an event, the Parties shall promptly form a committee comprising the ISG with an equal number of appropriate representatives from each Operator.

11.4.2 The ISG to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Operator of a notice under **Condition 11.4.1**. If the ISG fails to meet or has not been formed within ten (10) Business Days of the receipt by the Receiving Operator of a notice of escalation of the Dispute, either Operator may refer the dispute to a Technical Expert (in accordance with **Condition 11.5**) or to the Commission for resolution in accordance with **Conditions 11.4.3(a)** or **(b)**, respectively.

11.4.3 If the ISG does not resolve the dispute within twenty (20) Business Days after it first meets to review that dispute under **Condition 11.4.2**, either Operator may:

- (a) to the extent the issues in dispute are technical in nature, refer any technical dispute to a Technical Expert in accordance with **Condition 11.5**;
or
- (b) refer the dispute to the Commission for final arbitration.

11.5 Use of a Technical Expert

11.5.1 A dispute will only be referred to a Technical Expert if the provisions in **Conditions 11.3 and 11.4** have been complied with.

11.5.2 Once a dispute is referred to a Technical Expert, it may not be referred back to a Working Group or ISG.

11.5.3 The person to whom a technical dispute may be referred under this section:

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- (a) will be an expert appointed by agreement of the Operators or, if the Operators cannot agree, by the Commission;
- (b) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communication industry;
- (c) need not be a Malaysian citizen or resident; and
- (d) will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict or interest,

(“**Technical Expert.**”).

11.5.4 If the Operators fail to appoint a Technical Expert within ten (10) Business Days of the notice to refer a dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.

11.5.5 When relying on the services of a Technical Expert, the following procedures will apply to the dispute resolution procedure of the Technical Expert:

- (a) the Operators will present written submission to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and
- (b) each Operator may respond to the other Operator’s submission in writing within fifteen (15) Business Days from the date of the other Operator’s submission.

11.5.6 A Technical Expert hearing will be within fifteen (15) Business Days of the last written submission unless:

- (a) an Operator requests for and the other Operator agrees that the use of the Technical Expert be by documents only; or
- (b) failing agreement of the Operators, the Technical Expert decides within five (5) Business Days of the last written submission that the use of the Technical Expert be by documents only.

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- 11.5.7 Should a Technical Expert hearing procedure be held, each Operator will have the opportunity of making an oral submission. This process will be conducted in private.
- 11.5.8 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Operators) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.
- 11.5.9 The Technical Expert will not have the power to appoint any other experts.
- 11.5.10 The Technical Expert will deliver his award within fifteen (15) Business Days of the conclusion of the hearing or of the last written submission where the arbitration is by documents only. A failure to comply with the time frame in this **Condition 11.5.10** does not invalidate the Technical Expert's award.
- 11.5.11 Every dispute referred to a Technical Expert will be considered separately so that time limits for each dispute are complied with.
- 11.5.12 The Technical Expert's decision will be final and binding on the Operators (in the absence of manifest error of fact or law).

11.6 Billing dispute resolution

- 11.6.1 An Invoicing Operator shall allow the Invoiced Operator to dispute an Invoice prepared by the Invoicing Operator if the Invoiced Operator notifies the Invoicing Operator in writing within thirty (30) Business Days after the date of receipt of such Invoice. If the Invoiced Operator fails to dispute an Invoice within the specified time period above, the Invoiced Operator is deemed to have accepted the Invoice.
- 11.6.2 All Billing Dispute Notices given under this **Condition 11.6** must specify;
- (a) the detailed reasons for which the Invoiced Operator disputes the Invoice;
 - (b) the amount in dispute;
 - (c) details required to identify the relevant Invoice and charges in dispute including:

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- (i) the account number;
- (ii) the Invoice reference number;
- (iii) the Invoice date;
- (iv) the Invoice amount; and
- (v) billing verification information;

11.6.3 Subject to **Condition 11.6.4**, an Operator is obliged to pay the amount stated in the Invoice by the Due Date even if it disputes the amount of the Invoice. If the amounts paid to date for the period pending settlement of the Dispute is higher than the amounts payable, then the Invoicing Operator will pay in full such difference and interest, calculated in accordance with **Condition 5.2.4**, within fourteen (14) days from the date of settlement of Dispute, as documented by the Operators or such other date as agreed between the Operators. The interest shall be payable by the relevant Operator from the payment date of the disputed amount to the date of actual payment of the differential amount.

11.6.4 Notwithstanding **Condition 11.6.3**, if the Operators are not able to settle a Billing Dispute within the time periods specified in **Condition 11.6.6**, an Operator may withhold payment of amounts disputed in good faith for all subsequent Invoices issued by the Invoicing Operator. The Operators agree that disputed amounts withheld in good faith at the Due Date shall not be subject to late payment interest provided that if the dispute is resolved between the Operators in writing against the Invoiced Operator, then the Invoiced Operator shall pay interest (calculated in accordance with **Condition 5.2.4**) on the outstanding amounts due to the Invoicing Operator. The interest shall be payable within fourteen (14) days from the settlement of the Dispute, as documented by the Operators or such other date as agreed between the Operators. Interest shall be calculated from the Due Date until date of actual payment of the outstanding amount.

11.6.5 The Operators agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this **Condition 11.6**.

11.6.6 If the Operators are unable to resolve any Billing Dispute within ninety (90) calendar days (or such other period as the Operators may agree) from the date on which the Billing Dispute Notice is received, either Operator may seek the consent of the other Operator to extend the period for resolution of the Billing Dispute

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stating the exceptional reasons for such extension. The other Operator is, however, under no obligation to agree to such extension.

- 11.6.7 Once the negotiation period under **Condition 11.6.6** has expired, the Billing Dispute may be referred to the procedure described in **Condition 11.6.8** ("**Billing Dispute Escalation Procedure**").
- 11.6.8 The Operator may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this **Condition 11.6.8** by notifying the other Operator's Billing Representative. Each of the Operators shall then appoint a designated representative that has authority to settle the Billing Dispute, and that is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives however all reasonable requests for relevant information made by one Operator to the other Operator shall be honored.
- 11.6.9 Although it is the good faith intention of the Parties to use the billing dispute resolution procedures to the fullest extent to try to solve Billing Disputes, nothing in this Agreement shall prevent either Operator from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- 11.6.10 Enquiries relating to billing, collecting and settlement arrangements or in relation to Network and operation issues may be directed to the Billing Representatives nominated by each Operator. The Billing Representatives nominated by each Operator shall be their Billing Representative at the ISG meetings.
- 11.6.11 Either Operator may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- 11.6.12 If the Operators are unable to resolve any Billing Dispute after exhausting the Billing Dispute Escalation Procedure, either Operator may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the CMA.

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CONDITION 12 - NOTICES

12.1 A notice, invoice, approval, consent, request or other communication in connection with this Agreement:

- (a) must be in writing;
- (b) must be left at the address of the addressee, or sent by ordinary post, registered post or licensed courier to the address of the addressee or sent by facsimile (to be followed by post) to the facsimile number of the addressee which is set out below or if the addressee notifies another address or facsimile number then to that address or facsimile number; and
- (c) if intended for or originating from the Access Seeker shall be addressed to or issued by the Access Seeker, as the case may be.

The address and facsimile number of each Operator is:

CT SABAH:

Attention: The Chief Executive Officer
Address: Celcom Timur (Sabah) Sdn Bhd
Lot 100, Block K, Lorong Plaza Permai 2
Alamesra, Sulaman-Coastal Highway
88400 Kota Kinabalu
Sabah
Facsimile: 088 - 484 993
Email:

THE ACCESS SEEKER:

Attention:

Address:

Facsimile:

Email:

12.2 A notice, invoice, approval, consent, request or other communication takes effect from the time it is received unless a later time is specified in it.

12.3 A notice, invoice, approval, consent, request or other communication is, in the absence of contrary evidence, deemed to be received:

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- (a) in the case of A.R registered post, on the third Business Day after posting;
and
- (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicated that the facsimile was sent in its entirety to the facsimile number of the recipient. 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;
- (c) in the case of an email, upon transmission of the email provided there is no notification of error or failure in transmission is received by the sender, if sent before and
- (d) in the case of a communication left at the address of the addressee or licensed courier, at the time the communication was so left.

12.4 Notwithstanding anything to the contrary in this **Condition 12.4**, notification by way of email shall not be applicable to or valid with respect to any legal notices, claims, demands, suits, actions and/or proceedings.

CONDITION 13 - GENERAL PROVISIONS

13.1 Waiver

13.1.1 A provision of or right under this Agreement may not be waived except in writing signed by the non-defaulting Operator or Operators to be bound.

13.1.2 Unless otherwise stated herein, no failure or delay on the part of any Operator in exercising any rights hereunder shall operate as a waiver thereof nor shall any single or partial exercise of such right preclude any other or further exercise of any other right hereunder provided however that nothing in this condition shall extend time or be construed to extend time for the performance of any right or obligation under this Agreement if a time period is imposed for the performance of such right or obligation.

13.1.3 Knowledge or acquiescence by any Operator of, or in, breach of any of the provisions of this Agreement shall not operate as, or be deemed to be, a waiver of such provision and, notwithstanding such knowledge or acquiescence, such Operator shall remain entitled to exercise the rights and remedies under this Agreement, and at law, and to require strict performance of all of the provisions of this Agreement.

13.2 No Partnership

The relationship of the Operators to this Agreement is one of independent contractors only. Nothing in this Agreement is to be construed as creating an agency, partnership, association, trust or joint venture between the Operators. Each Operator is responsible only for its obligations as set out in this Agreement.

13.3 Assignment

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.

13.4 Variation, Change in Law and Review of Agreement

13.4.1 Variation

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- (a) A variation of any part of this Agreement is valid if, and only if, made between and in writing subscribed by the Operators and that the variation in respect of Regulated Facilities and Services is registered with the Commission in accordance with the Act.
- (b) Subject to **Condition 13.4.1(a)**, where the Operators agree to materially vary the Agreement or access to its Facilities and/or Services, the Operators shall inform the Commission in writing of the action the Operators proposes to take and the reasons why such action is appropriate. This Agreement or access to Facilities and/or Services shall not be varied until such reasonable time and on such reasonable conditions as the Commission may legally specify.
- (c) In this **Condition 13.4.1**, a reference to a variation includes a reference to an addition, deletion, amendment, modification, alteration or other variation.

13.4.2 Change in Law

Where continued operation of this Agreement or Access to any Facilities or Services provided under this Agreement is or will be unlawful (as a result of a legislative change), the Access Seeker and CT SABAH must hold a discussion 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 CT SABAH 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, CT SABAH may terminate the provision of access to the relevant Facilities or Services.

13.4.3 Review

13.4.3.1 Subject to **Condition 13.4.3.2**, if:-

- (a) the Minister issues a direction or determination relating to the subject matter of this Agreement;
- (b) the Commission issues a direction or determination relating to the subject matter of this Agreement;

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- (c) there are any amendment, changes or modifications to the Act, its subsidiary legislation and the instruments issued there under including but not limited to the MSA Determination, the Access List Determination and the Ministerial Direction on Access Pricing which relates to the subject matter of this Agreement;
- (d) enactment of new laws and regulations which relates to the subject matter of this Agreement;
- (e) the registration, determination, promulgation, issue, amendment or replacement of any industry code with which an Operator is required or obliged to comply;
- (f) if a condition of an Operator's Licence is amended or deleted or a new condition is imposed which relates to this Agreement; or
- (g) by agreement of each of the Operators,

the Operators agree to review the Agreement as soon as practicable in good faith. Where the changes referred to in **paragraphs (a) to (g)** above affect this Agreement, the Operators shall negotiate, as soon as practicable and in good faith, such amendments to this Agreement as are necessary or appropriate to ensure compliance with such changes.

13.4.3.2 The obligation to negotiate set out in **Conditions 13.4.3.1** commences promptly after delivery of a notice from one Operator to the other Operator setting out in reasonable detail, the amendments sought.

13.5 Entire Contract

This Agreement and the Annexes 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.

13.6 Severability

13.6.1 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.

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13.6.2 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.

13.7 Time of Essence

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

13.8 Language of Agreement

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

13.9 Successors

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

13.10 Governing Law

13.10.1 This Agreement and the transactions contemplated by it are governed by the laws of Malaysia.

13.10.2 In the event of:

- (a) an Operator seeking urgent interlocutory relief in respect of any matter; or
- (b) an Operator seeking relief in respect of the other Operator failing to comply with the dispute resolution process set out in **Condition 11**; or
- (c) an Operator seeking relief in respect of a manifest error or mistake of law of the arbitrator (be it the Technical Expert or the Commission), established by the Operators pursuant to any dispute resolution procedures agreed in writing,

each Operator irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of Malaysia for such relief.

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13.11 Survival of Clauses

Clauses in this Agreement, which by their nature should survive the termination of this Agreement including but not limited to clauses concerning liability and indemnity and confidentiality of this Agreement, shall survive the termination of this Agreement for whatsoever reason.

13.12 Costs and Expenses

The Operators agree to bear their own legal, registration and other costs incurred in relation to the preparation, negotiation and execution of this Agreement and all documents contemplated by it (except where this Agreement or those other documents expressly provides to the contrary). The stamp duty in respect of this Agreement shall be borne by the Access Seeker.

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IN WITNESS WHEREOF the Parties have hereunto set their hands the date first above written.

SIGNED by)
as authorised representative for)
Celcom Timur (Sabah) Sdn. Bhd.)
[Company No.: 199501001836 (331030-A)])
in the presence of:)

Name:
Designation:

.....
Name:
Designation:

SIGNED by)
as authorised representative for)
.....)
[Company No.: (.....)])
in the presence of:)

Name:
Designation:

.....
Name:
Designation:

TERMS AND CONDITIONS FOR TECHNICAL MATTERS

SECTION I – OPERATIONAL PROCEDURES

- 1.1 The Operators shall comply with the operational procedures and methods, to be agreed in writing between the Operators within thirty one (31) days from the date of this Agreement or such other date to be mutually agreed between the Operators, in relation to:
- (i) the planning and provisioning of the relevant Facilities or Services;
 - (ii) the management of the relevant Facilities or Services including:
 - (A) QOS indicators, reporting on performance in terms of those indicators and determining the appropriate action to be taken in the event that service quality falls below the agreed indicator levels;
 - (B) Network operations in the event of Network failure, congestion and blockage; and
 - (C) ensuring that the Operators' Networks are adequately protected from harm;
 - (iii) test procedures and other technical and operational matters relating to the provision of Facilities or Services by CT SABAH to The Access Seeker;
 - (iv) the handling of Customer operations; and
 - (v) such other matters as the Operators may agree.
- 1.2 Where relevant, the detailed procedures and/or contents pertaining to matters set out in **Sections II to VI** shall be documented.
- 1.3 In the event of any inconsistency between the agreed operational procedures and the terms of this Agreement, the terms of this Agreement shall prevail.

SECTION II - FORECASTING

1. General

1.1 **Section II** sets out forecasting terms and procedures that are applicable in relation to the provision of Facilities and/or Services.

2. Forecasting Obligations

2.1 Forecasting Requirements

2.1.1A Notwithstanding the procedures set out in this **Section II** pertaining to a Forecast Request, The Access Seeker shall provide the following Forecast for calendar year 2020 onwards for the following Facilities and/or Services:

(a) Layer 2 HSBB Network Services with QoS

CT SABAH agree that The Access Seeker shall not be precluded from submitting an Order under **Section III** for a particular Facilities and/or Services if The Access Seeker does not provide a Forecast for the same under this **Section II**.

2.1.1B The Forecast required in **paragraphs (a) of Condition 2.1.1A** above, shall be in accordance with the following:

Facilities and/or Services	Maximum Period	Minimum Interval	Maximum Frequency
Layer 2 HSBB Network Service	3 years	3 months	3 months
End-to-End Transmission Service	3 years	3 months	3 months

2.1.2 (a) The information required by CT SABAH for the Forecast in **Condition 2.1.1A**, shall be as set out in **Condition 2.2**.

(b) For clarification, the Operators agree that all Forecast submitted prior to 1 July 2019 with respect to the Facilities and/or Services stipulated in **Condition 2.1.1A(a)** shall continue to apply in accordance with the terms of this Agreement.

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2.1.3 The Access Seeker may request preliminary information from CT SABAH about the availability and capacity of its Facilities and/or Services to the extent the Access Seeker requires such information to provide Forecasts.

2.2 Forecast request

CT SABAH may request the Access Seeker to provide, with a sufficient level of detail to enable CT SABAH to carry out its Network planning in the format that to be mutually be agreed by the Operators ("**Forecast Request**").

2.3 Forecast Provision

CT SABAH may only require the Access Seeker to provide Forecasts in accordance with a Forecast Request:

- (a) no sooner than four (4) weeks after receipt of a Forecast Request; and
- (b) until such time as CT SABAH notifies the Access Seeker in writing that it withdraws the relevant Forecast Request.

2.4 Use of Forecast Information

Forecast information provided by the Access Seeker shall be treated by CT SABAH as the Confidential Information of the Access Seeker and shall only be used by CT SABAH whose role is within either:

- (a) CT SABAH's wholesale group; or
- (b) that part of the network engineering group of CT SABAH responsible for interconnection or access,

for the purpose of responding to and planning for the Forecast. CT SABAH must maintain records that indicate which persons are provided with access to Forecast information and, on request from the Commission, provide a copy of such records certified by the authorised representative of CT SABAH.

2.5 Distribution of Forecast Information

CT SABAH may only distribute Forecast Information of the Access Seeker outside the groups of people referred to in **Condition 2.4** if:

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- (a) the Forecast information of the Access Seeker is aggregated with Forecasts provided by other operators and CT SABAH's own requirements (so as to protect the confidentiality of the Forecast Information); and
- (b) the Forecast Information or its use does not otherwise identify the Access Seeker, its services or its customers in any manner.

2.6 Compliance with Forecast Request

2.6.1 CT SABAH must notify the Access Seeker within five (5) Business Days of receiving the Forecast if CT SABAH considers that:

- (a) the Forecast complies with the Forecast Request or the information required under **Conditions 2.1.1A and 2.1.1B** ("**Notice of Compliance**");
- (b) the Forecast does not comply with the Forecast Request or the information required under **Conditions 2.1.1 A and 2.1.1B**; or
- (c) CT SABAH requires further information as may be reasonably required to assess the Forecast.

2.6.2 Where the Forecast does not comply with the Forecast Request or the information required under **Conditions 2.1.1 A and 2.1.1B** or where CT SABAH requires further information, The Access Seeker shall within four (4) weeks from the receipt of the notice of non-compliance of the Forecast from CT SABAH, re-submit the Forecast for CT SABAH's consideration in accordance with **Condition 2.6.1**.

2.7 Preliminary Study

If the Forecast is compliant with the Forecast Request, CT SABAH will conduct a preliminary study for the purposes of determining whether or not the Forecast is acceptable to CT SABAH ("**Preliminary Study**") unless CT SABAH determines that the same is not necessary. The Preliminary Study may comprise of, but is not limited to the following:

- (a) site visits and/or surveys;
- (b) testing of infrastructures, if necessary;
- (c) capacity checking; and/or

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(d) technical feasibility study.

2.8 Completion of Preliminary Study or Service Qualifications

CT SABAH shall complete the Preliminary Study in respect of a Forecast within the timeline setup in the table below:

Facilities and/or Services	Completion of Preliminary Study
Layer 2 HSBB Network Services with QoS	Within thirty (30) days (subject to an extension of time as mutually agreed between the Operators - the agreement to which the Access Seeker shall not unreasonably withhold) of Notice of Compliance or the time within which CT SABAH performs and notifies the result of an equivalent Preliminary Study or Service Qualification undertaken for itself.
Other Facilities and Services	Within thirty (30) days (subject to an extension of time as mutually agreed between the Operators - the agreement to which the Access Seeker shall not unreasonably withhold) of Notice of Compliance.

2.9 Acceptance or Rejection of the Forecast

2.9.1 Within five (5) Business Days (subject to an extension of time as mutually agreed between the Operators) of the completion of the Preliminary Study, CT SABAH shall inform the Access Seeker in writing whether it:-

- (a) accepts the Forecast; or
- (b) rejects the Forecast.

2.9.2 Where CT SABAH rejects the Forecast, such notice of rejection must specify:

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- (a) the grounds on which CT SABAH rejects the Forecast in accordance with **Condition 2.10**, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Forecast;
- (b) where possible, propose modifications or alternatives to the Forecast submitted by the Access Seeker which CT SABAH is able to accept and fulfill; and
- (c) offer to meet within five (5) Business Days of the notice of rejection of the Forecast to discuss the reasons for rejection and alternative methods of compliance ("**Rejection Notice**"). The meeting shall take place between CT SABAH and the Access Seeker if the offer is accepted by the Access Seeker.

2.10 Reasons for rejection

2.10.1 CT SABAH may reject a Forecast where CT SABAH reasonably believes that the Forecast is inaccurate or there is insufficient capacity, having regards to:

- (a) total current usage of the Services or Facilities;
- (b) the current rate of growth of the Access Seeker's usage of the Services or Facilities;
- (c) the current rate of growth of total usage of the Services or Facilities; and
- (d) subject to **Condition 2.31 and 2.32 of Section III Terms and Conditions for Technical Matters**, the amount of capacity in the Services or Facilities that CT SABAH currently has available and can reasonably provision for the Access Seeker over the Forecast period, which must be at least equivalent to that which CT SABAH can reasonably provision for itself.

2.10.2 In addition to **Condition 2.10.1**, CT SABAH may only reject a Forecast from The Access Seeker where:

- (a) CT SABAH discovers that it is not able to provide the Facilities and/or Services following the completion of the Preliminary Study (wherein the basis of rejection will be provided by CT SABAH);

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- (b) the delivery of the Facilities and/or Services Forecasted by the Access Seeker is required within a period shorter than the indicative minimum timeframe specified in **Condition 2.13 of Section III**;
- (c) subject to **Condition 3.5.2 of the General Terms and Conditions**, it is not technically feasible to provide access to the Services or Facilities request by the Access Seeker;
- (d) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions of this Agreement; or
- (e) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Facilities and/or Services to protect the integrity of a Network or the safety of individuals working on, or using services supplied by means of, a Network or Equipment.

2.11 Reconsideration by The Access Seeker

2.11.1 Where CT SABAH issues a Rejection Notice to The Access Seeker, the Access Seeker shall, within twenty one (21) Business Days from the receipt of the Rejection Notice or such other period as may be mutually agreed in writing either:

- (a) accept the CT SABAH's proposed modifications or alternative to the Access Seeker' Forecast; or
- (b) to submit a new Forecast which the Access Seeker regards as meeting CT SABAH's concerns; or
- (c) negotiate and mutually agree with CT SABAH on further amendments to the CT SABAH's proposed modifications or alternative to the Access Seeker' Forecast.

2.11.2 Upon the amended Forecast being mutually agreed by the Operators, the Access Seeker may issue a written notice to CT SABAH confirming its acceptance of the amended Forecast. If the Access Seeker decides to accept the amended Forecast, such written notice must be issued within three (3) Business Days from the expiry of the said twenty one (21) Business Days or such other period as may be mutually agreed in writing.

SECTION III – ORDERING AND PROVISIONING

1. General

- 1.1 **Section III** sets out ordering and provisioning terms and procedures that are applicable in relation to the provision of Facilities and/or Services.
- 1.2 For existing Facilities and/or Services utilized by the Access Seeker as at the Effective Date, the Access Seeker is not required to submit an Order for the same as an Order is deemed to have been placed.

2. Ordering and Provisioning Obligations

2.1 Contact Point

- 2.1.1 Orders for access to Facilities and Services (excluding Layer 2 HSBB Network Service with QoS) are to be delivered to the personnel of CT SABAH and CT SABAH shall notify the Access Seeker in writing from time to time of any change to the designated persons. However, with respect to Orders for Layer 2 HSBB Network Service with QoS, Orders may be submitted through a portal designated by CT SABAH.
- 2.1.2 Provided that if such a mechanism is the only method which CT SABAH provides for the receipt of Orders for that Facility and/or Service, CT SABAH cannot require the Access Seeker to unreasonably invest in specialized technology or systems (such as an automated interface between the Operational Support Systems of the Operators) unless mutually agreed by the Operators.

2.2 Order Content

- 2.2.1 The Access Seeker may place firm Orders for Facilities and/or Services from time to time.
- 2.2.2 Prior to access being provided, CT SABAH may require the Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. CT SABAH may request the Access Seeker to provide, at a level of detail (sufficient for planning provisioning), the following in an Order for access to Facilities and/or Services:
- (a) the Facilities or Services or both to which access is requested;

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- (b) a requested time for delivery;
- (c) the detailed address of the location of the points of delivery and location maps, if necessary;
- (d) Equipment of the Access Seeker to be used in connection with the Order;
- (e) the configuration of the requested Facilities and/or Services;
- (f) contact person and telephone number;
- (g) such other information that CT SABAH reasonably requires in order for it to plan for the provision of access to the Services or Facilities as requested by the Access Seeker, provided that such information shall not include any information which:
 - (i) CT SABAH does not require from itself for similar provisioning;
 - (ii) identifies, or which enables the identification of, a Customer or services of the Access Seeker unless otherwise mutually agreed by both Parties; or
 - (iii) is non-permitted information under **Condition 3.4.3, General Terms and Conditions** of this Agreement.

2.2.3 When the Order is placed, the Access Seeker must give CT SABAH a priority list, allowing for progressive delivery and setting out its preferred order of delivery.

2.3 Use of Ordering Information

Ordering information provided by the Access Seeker shall be treated by CT SABAH as the Confidential Information of the Access Seeker and shall only be used by those persons within CT SABAH whose role is within:

- (a) CT SABAH's wholesale group; and
- (b) that part of the Network engineering group of CT SABAH responsible for interconnection;

for the purpose of responding to and provisioning for the Order.

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2.4 Treatment for Orders and Service Qualifications

CT SABAH will give the same priority to the handling of Orders from the Access Seeker and any Service Qualifications (hereinafter defined) that may be required for the Access Seeker as it gives to its own orders and Service Qualifications and any orders and Service Qualifications that may be required for Customers who are similarly situated to the Access Seeker in all relevant respects.

2.5 Acknowledgement of Receipt

CT SABAH will acknowledge receipt of the Order, in writing (or any other material or electronic form agreed by the parties), with the timelines set out below:

<i>Facilities and/or Service</i>	<i>Acknowledgment Timelines</i>
Layer 2 HSBB Network Service with QoS	One (1) Business Day from the date of receipt of the Order
End-to-End Transmission Service	Two (2) Business Days from the date of receipt of the Order

2.6 Notice of Receipt

2.6.1 CT SABAH must include in its Notice of Receipt the following information:

- (a) the time and date of receipt of the Order;
- (b) a list of any additional information reasonably required by CT SABAH from the Access Seeker to provision the Order;
- (c) if the relevant Facilities and/or Services available to CT SABAH are below the capacity required to provide the relevant Facilities and/or Services to the Access Seeker, CT SABAH shall inform the Access Seeker of the available capacity and timeframe for the fulfillment of the Order at the available capacity and (if relevant) with such augmentation as may be required to fulfill the Order as submitted; and
- (d) whether CT SABAH needs to perform post-Order Service Qualification because information is not readily available to CT SABAH, for example in its Operational Support Systems, together with the reasons for needing to undertake the Service Qualification and whether CT SABAH needs to obtain

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the requisite way leave and/or governmental authority approval to perform the post-Order Service Qualification; and

- (e) the position of the Order in CT SABAH's queue.

2.7 Further Information

The Access Seeker has a period of up to ten (10) Business Days after a request for additional information to provide CT SABAH with such additional reasonable information that is reasonably necessary to clarify an Order.

2.8 Post-Order Service Qualifications

2.8.1 CT SABAH shall make Service Qualifications available to the Access Seeker prior to placing Orders if such pre-Order Service Qualifications are undertaken for a given Facility and/or Service by CT SABAH for itself. CT SABAH will only require post-Order Service Qualifications if:

- (a) no pre-Order Services Qualification has been completed in accordance with the process to be developed under **Condition 3 of the General Terms and Conditions**;
- (b) CT SABAH reasonably requires information from such post-Order Service Qualifications which is not readily available, for example in its Operational Support Systems; and
- (c) CT SABAH notifies the Access Seeker that the post-Order Service Qualifications are necessary (together with the reasons for needing to take such Service Qualifications) at the time of providing (and as specified in) CT SABAH's Notice of Receipt under **Condition 2.6** or, if further information has been requested under **Condition 2.7**, within two (2) Business Days after the expiry of the period in **Condition 2.7**.

For clarification, the Access Seeker may also seek the consent of CT SABAH to perform a Service Qualification on its own, and such consent must not be unreasonably withheld.

2.9 Commencement and Completion of Service Qualifications

CT SABAH shall commence a Service Qualification on the date of issuing a Notice of Receipt (or where governmental approval is required to perform the Service

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Qualification, on the date such approval has been granted) and complete and notify the Access Seeker of the result of any Service Qualification within the shorter of:

- (a) fifteen (15) Business Days after the date of the Notice of Receipt (or where governmental approval is required, on the date such approval has been granted); and
- (b) the time within which CT SABAH performs and notifies the result of an equivalent Service Qualification undertaken for itself.

2.10 Withdrawal of Order following Service Qualifications

Subject to such reasonable charge as may be imposed by CT SABAH (based on necessary cost incurred by CT SABAH), CT SABAH shall permit the Access Seeker to withdraw its Order (irrespective of whether CT SABAH has accepted the Order or not) before the earlier of:

- (a) ten (10) Business Days after The Access Seeker receives the result of a Service Qualification under **Condition 2.9**; and
- (b) one (1) Business Day before CT SABAH commences civil works to provision the Order (where the civil works are required to provision the Facility and/or Service within the delivery timeframe specified in the Notice of Acceptance), and any civil works to be conducted must be subject to the issuance of a notice in writing by CT SABAH, which may be in the form of a Notice of Acceptance if civil works is to occur after CT SABAH has accepted the Order,

2.11 Acceptance Obligation

CT SABAH must use its reasonable efforts to accept and fulfil Orders from the Access Seeker for Services and Facilities which comply with a Forecast accepted by CT SABAH pursuant to **Section II**.

2.12 Time for Acceptance/Rejection

2.12.1 CT SABAH must notify the Access Seeker that the Order is accepted or rejected by or within the shorter of:

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- (a) the timeframe within which it accepts or rejects equivalent Orders for itself; or
- (b) the specified timeframe set out below for the purposes of this **Condition 2.12**:

Type of Facilities and/or Services	Timeframe
Layer 2 HSBB Network Service with QoS	<p>One (1) Business Days after:</p> <ul style="list-style-type: none"> (a) issuing the notice of receipt of the Order, where there is no post Order Service Qualification; or (b) providing the Access Seeker with the result of post-Order Service Qualification, where there is post-Order Service Qualification
End-to-End Transmission Service	<p>Ten (10) Business Days after:</p> <ul style="list-style-type: none"> (a) issuing the Notice of Receipt in respect of the Order, where CT SABAH does not undertake any post-Order Service Qualification; or (b) providing the Access Seeker with the result of post-Order Service Qualification.

2.12.2 If CT SABAH notifies the Access Seeker that an Order is rejected, CT SABAH must advise the Access Seeker whether CT SABAH would be able to accept the Order in a modified form.

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2.13 Notice of Acceptance

2.13.1 CT SABAH's Notice of Acceptance to the Access Seeker must contain the following information:

- (a) the delivery date or activation date (as applicable), which must be the date that is requested by the Access Seeker, or if that date cannot be met by CT SABAH, then no later than:
 - (i) the indicative delivery timeframe or activation timeframe set out below for the purpose of this **Condition 2.13.1**; or

Type of Facilities and/or Services	Timeframe
Layer 2 HSBB Network Service with QoS	(1) Five (5) Business Days including the date of the BTU installation appointment, in respect of a premises on a street that is connected to the High Speed Broadband Network; or (2) up to Twenty (20) Business Days including the date of BTU installation appointment, in other cases

- (ii) the period of time taken by CT SABAH to deliver, or activate, such Facilities and/or Services for itself,

whichever is shorter;

- (b) the date when civil works (if any) are intended to commence;
- (c) the charges applicable to the fulfill the Order;
- (d) such information as is reasonably necessary for the Access Seeker to benefit from access to the Facilities and/or Services; and

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- (e) the validity period, which shall be a period that is not shorter than three (3) months commencing from the date of the Notice of Acceptance (“Validity Period”)

2.14 Commencement of delivery timeframes

2.14.1 The applicable delivery timeframe for an Order, as determined under **Condition 2.13(a)**, shall commence from the following date, as applicable:

- (a) where the Access Seeker’ confirmation of an Order is required under **Condition 2.15**, the date The Access Seeker confirms the Order in accordance with **Condition 2.15**;
- (b) where the Access Seeker’s confirmation of an Order is not required under **Condition 2.15**, from the start of Validity Period; or
- (c) where way-leave and/or governmental authority approval is required in relation to an Order, the date on which last of the requisite way-leave and/or governmental authority approval has been obtained.

CT SABAH is not required to commence work on an Order unless and until all requisite way-leave and/or governmental authority approval has been obtained. CT SABAH will inform the Access Seeker of the requisite way-leave and/or governmental authority approvals which CT SABAH is required to obtain to commence the Order.

2.14.2 Where a delay in the delivery of an Order is caused by the Access Seeker or by any government authority or agency or third party (not within the control of the Operators), the delivery date specified in the confirmed Order or indicative delivery time set out above shall be extended for a further period as may be reasonably required by CT SABAH.

2.14.3 Where an Order has been confirmed by the Access Seeker in accordance with **Condition 2.15**, The Access Seeker may request for a change in the delivery dates of the Facilities and/or Services Ordered subject to CT SABAH first agreeing in writing to the same.

2.15 The Access Seeker Confirmation

2.15.1 The Access Seeker’s confirmation of an Order is not required if CT SABAH accepts the Order without change. A change may include circumstances where delivery

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dates are delayed, estimated charges are exceeded, a post-Order Service Qualification is required or any other matter that requires further confirmation from the Access Seeker before CT SABAH can proceed with the Order.

2.15.2 Where the Access Seeker's confirmation is required for CT SABAH to proceed with fulfilling an Order as provided for under **Condition 2.15.1** above, CT SABAH shall permit the Access Seeker to provide its confirmation within the Validity Period and shall not provision the Order until the confirmation is received. Upon receipt of such confirmation, CT SABAH shall fulfill the Order in accordance with the Notice of Acceptance subject to **Condition 2.15.3**.

2.15.3 Notwithstanding anything to the contrary, in the event the necessary:

- (a) governmental authority or agency's approval; and/or
- (b) way-leave from third parties,

to fulfil the Order is not obtained, within six (6) months from the date of the Access Seeker's confirmation of the Order pursuant to **Condition 2.15**, either Operator may, without liability, cancel the Order at any time by giving written notice to the other Operator.

2.16 Estimated Charges

2.16.1 If the notice of acceptance provided by CT SABAH under **Condition 2.13** contains estimates of charges (e.g. based on time and materials) for a specific scope of works:

- (a) CT SABAH shall not exceed the estimate without providing the Access Seeker with written notice prior to exceeding the estimate that:
 - (i) the estimate will likely be exceeded;
 - (ii) an explanation of the reasons for exceeding the estimate; and
 - (iii) a further estimate of the charges for the work necessary to fulfil the Order
- (b) The Access Seeker may withdraw the Order without penalty within ten (10) Business Days of the notice given by CT SABAH under **Condition**

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2.16.1(a) if the revised estimate in that notice exceeds the original estimate by more than ten percent (10%).

2.16.2 CT SABAH shall not be obliged to commence work until the Access Seeker has confirmed in writing that the Access Seeker is agreeable to the estimate or revised estimate for a specific scope of work provided by CT SABAH.

2.17 Reasons for Rejection

2.17.1 CT SABAH may only reject an Order from the Access Seeker where:

- (a) subject to **Condition 3.5.2 of the General Terms and Conditions**, it is not technically feasible to provide access to the Services or Facilities requested by the Access Seeker;
- (b) subject to **Condition 3.5.3 of the General Terms and Conditions**, CT SABAH has insufficient capacity and/or space to provide the requested Services or Facilities;
- (c) subject to **Condition 2.19**, the Order is in excess of agreed Forecast levels;
- (d) the Order or variation request duplicates an Order awaiting fulfillment;
- (e) the Access Seeker has not obtained the necessary related agreements from CT SABAH;
- (f) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions of this Agreement and such concern cannot be addressed to CT SABAH's satisfaction, acting reasonably; or
- (g) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Facilities and/or Services to protect the integrity of a Network or the safety of individuals working on, or using services supplied by means of, a Network or Equipment and such concern cannot be addressed to CT SABAH's satisfaction, acting reasonably.

2.18 Notice of Rejection

2.18.1 CT SABAH's notice of rejection of an Order to the Access Seeker must:

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- (a) set out the ground(s) on which CT SABAH rejects the Order, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Order; and
- (b) if necessary, offer to meet, and meet if the offer is accepted by the Access Seeker, within five (5) Business Days of the notice of rejection of the Order to discuss the reason(s) for rejection and alternative methods of compliance.

2.19 Order in Excess of Forecast

CT SABAH must use its reasonable efforts to provide sufficient capacity to enable CT SABAH to accept and fulfil Orders from the Access Seeker for Services and/or Facilities or both which are in excess of the relevant Forecast. CT SABAH is only required to do so if, after meeting the Forecast requirements of other access seekers and itself, there is available capacity or CT SABAH could readily upgrade existing capacity. CT SABAH shall allocate the available capacity on a non-discriminatory basis to meet the over Forecast requirements of all access seekers and itself, other Operators and its own business units. CT SABAH is not required to supply Services and/or Facilities in excess of Forecast, if despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of Facilities and/or Services provided to all access seekers and/or itself. For clarification when carrying out its obligations under this **Condition 2.19**, CT SABAH may have regard to its obligations under **Condition 3.5.3 of the General Terms and Conditions**.

2.20 Other Uses

CT SABAH shall permit capacity installed in connection with the provision of a network service to be used, to the extent technically feasible, in connection with another network service, as mutually agreed between both parties.

2.21 Delivery Dates

Subject to **Condition 2.14**, CT SABAH shall deliver the Order for the Facilities and/or Services by the delivery date or activation date (as applicable) as specified in the Notice of Acceptance or the extended delivery date (if any) as determined in accordance with **Condition 2.22**.

2.21A Early delivery dates: If CT SABAH, in the normal course of business, is able to offer a delivery date earlier than the delivery date that would otherwise apply, it

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must advise the Access Seeker and, if requested by the Access Seeker, deliver access to the relevant Facilities and/or Services at the earlier delivery date.

2.22 Delayed Delivery Dates

2.22.1 When there is a delay in the delivery of an Order, and:

- (a) the delay is caused by CT SABAH:
 - (i) CT SABAH shall notify the Access Seeker of the delay to the delivery date, together with the reasons for the delay, as soon as practicable after CT SABAH becomes aware of the possible delay;
 - (ii) CT SABAH shall permit the Access Seeker to cancel the Order without penalty if the delay is longer than the equivalent time period for delivery of the Facility and/or Service; and
 - (iii) the delivery date shall be extended for a further period as reasonably necessary, and CT SABAH shall promptly notify the Access Seeker of the revised delivery date; or
- (b) where the delay is caused by the Access Seeker:
 - (i) The Access Seeker shall notify CT SABAH of the delay to the delivery date as soon as practicable after the Access Seeker becomes aware of it;
 - (ii) CT SABAH and the Access Seeker must work together to minimise the delay; and
 - (iii) the delivery date shall be extended for a further period as reasonably necessary, and CT SABAH shall promptly notify the Access Seeker of the revised delivery date.

2.23 Cancellation and Variation of Orders

2.23.1 Subject to **Condition 2.24**, the Access Seeker may cancel or vary an Order at any time provided that CT SABAH has not issued any purchase orders for any work in relation to the Order. Where a purchase order has been issued, CT SABAH shall provide, subject to any confidentiality requirements, a copy of the relevant purchase order.

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2.23.2 If the Access Seeker wishes to change an Order already issued but not yet implemented, then the Access Seeker should issue a formal amendment to the original Order indicating:

- (a) original order reference number;
- (b) original route, quantity, locations and ready for testing date;
- (c) new requirements; and
- (d) Order identified as "Amendment".

2.23.3 CT SABAH will then respond to whether the changes can be accommodated in the original time scale or propose a new ready for testing date.

2.24 Cancellation Charges

2.24.1 Except where provided in this Agreement that cancellation of an Order is to be at no penalty,

- (a) CT SABAH may impose a charge for the cancellation or variation of the Order; and
- (b) the charge which the Access Seeker is required to pay shall not exceed the lesser of the following amounts:
 - (i) the sum of costs necessarily incurred by CT SABAH which is directly attributable to the cancellation or variation; or
 - (ii) an amount equal to the sum of charges that would have been payable by the Access Seeker in the six (6) months immediately following the cancellation or variation had the Order not been cancelled or varied, and reduced to the extent that those costs have been mitigated, or would have been mitigated had the CT SABAH used its best endeavours to do so.

2.24.2 Where a cancellation charge is payable, the Access Seeker may opt to withdraw the cancellation and proceed with the Order.

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2.25 Testing and Provisioning

2.25.1 CT SABAH shall:

- (a) co-operate with the Access Seeker in relation to the testing and provisioning of ordered Services and/or Facilities; and
- (b) treat the Access Seeker' testing and provisioning on an equivalent basis to that which CT SABAH treats testing and provisioning for itself.

2.26 Queuing Policy

2.26.1 CT SABAH shall establish and maintain a queuing policy for each Facility and/or Service which:

- (a) shall be non-discriminatory;
- (b) shall be applied to Orders and Service Qualifications of the Access Seeker and Orders and Service Qualifications for itself for the same or similar Facilities and/or Services, and shall treat the Orders and Service Qualifications of the Access Seeker on an equivalent basis to that which CT SABAH treats Orders and Service Qualifications for itself for the same or similar Facilities and/or Services; and
- (c) shall seek to maximise the efficiency of its ordering and provisioning process.

2.27 Acceptance on Queue

CT SABAH shall promptly notify the Access Seeker, at the time of providing an acknowledgement of receipt of the Order under **Condition 2.5**, of their acceptance.

2.28 Constrained Capacity

2.28.1 If CT SABAH reasonably believes that the capacity in any Facilities and/or Services required by:

- (a) The Access Seeker pursuant to the relevant Forecast and/or Order;

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- (b) other access seekers, pursuant to their relevant Forecasts and/or Order; and
- (c) CT SABAH, for its own purposes of its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest,

would, in aggregate, exceed the capacity which CT SABAH will be in a position to be able to provide, CT SABAH must:

- (i) notify the Access Seeker and other persons to whom relevant capacity is supplied; and
- (ii) allocate the available capacity between itself, the Access Seeker and other access seekers in accordance with CT SABAH's Capacity Allocation Policy.

CT SABAH, where possible, will also indicate when extra capacity is likely to be made available to the Access Seeker.

2.29 Capacity Allocation Policy

2.29.1 If CT SABAH claims or is likely to claim that it has insufficient capacity to meet the Access Seeker's Forecasts or Orders, CT SABAH shall maintain a Capacity Allocation Policy, which:

- (a) shall on request be disclosed, free of charge, to the Access Seeker upon entry into the Access Agreement, and each time it is amended;
- (b) shall set out the principles in accordance with which CT SABAH shall determine how to allocate capacity between its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest and any other Operators;
- (c) shall:
 - (i) be fair and reasonable;
 - (ii) be consistent, so far as practicable, with CT SABAH's general duty of non-discrimination in accordance with subsection 149(2) of the Act;

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- (iii) treat the requirements of the Access Seeker on an equivalent basis to the requirements of CT SABAH's own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest; and
 - (iv) allocate the available capacity in the relevant Facilities and/or Services in proportion to each Operator's Forecast and/or Order requirements; and
- (d) shall set out CT SABAH's plans to expand their capacity over time (if any), where such information must be provided to the Access Seeker on a non-discriminatory basis in terms of its content and frequency of updates.

2.30 Late Delivery

2.30.1 If CT SABAH fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with **Condition 2.22**, except where such failure has been caused solely by the Access Seeker's delay, caused by a delay or lack of authorization by governmental and/or regulatory bodies and/or caused by a third party, that CT SABAH shall, without limitation to any other rights the Access Seeker may have under this Agreement or law, provide a rebate to the Access Seeker. The rebate shall be for an amount equivalent to the recurring charges payable for access to the Facilities and/or Services for the period of CT SABAH's delay. The rebates may only be used by the Access Seeker for future Invoices for the same Service or Facility only. If CT SABAH alleges that a failure has been caused solely by the Access Seeker's delay or lack of authorisation by a third party, CT SABAH shall have the burden of demonstrating:

- (a) that allegation; and
- (b) that CT SABAH has done all things reasonably practicable to minimise or avoid such failure.

2.31 Resource Charge

2.31.1 CT SABAH may charge the Access Seeker a one-off fee, to be determined by reference to the costs incurred by CT SABAH, for allocation of manpower and other resources to enable CT SABAH to test and fulfil an Order for new Facilities and/or Services, provided that such one-off fee is justified by CT SABAH to the Access Seeker as necessary for CT SABAH to provide the requested Facilities and/or Services; and

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2.31.2 must specify the methodology and unit costs for calculating any fees under Condition 2.31.1 above.

SECTION IV – NETWORK CHANGE

1. General

- 1.1 **Section IV** sets out the network change terms and procedures that are applicable in relation to the provision of Facilities and/or Services.

2. Network Change Obligations

2.1 Scope

This **Condition 2** applies where an Operator proposes to implement a Network Change of a type referred to in **Condition 2.2** which necessitates a change in the hardware or software (including interface software) of the other Operator's Network in Order to ensure the continued proper operation and compatibility of the Operator's respective Networks, services and procedures.

2.2 Types of Changes

The following types of proposed Network Changes are within the scope of **Condition 2.1**:

- (a) any change by the Operator proposing to make the change ("**Notifying Operator**") to any technical specification of the interconnection interface between their respective Networks ("**Interface Change**");
- (b) any change by the Notifying Operator to any technical specification or characteristic of the Facilities and/or Services to which the other Operator ("**Recipient Operator**") has access which will or might affect:
 - (i) the Recipient Operator's Network;
 - (ii) the Recipient Operator's use of the Facilities or Services provided by the Notifying Operator ("**Facility and/or Service Change**");
- (c) any change by the Notifying Operator to any technical specification or characteristic of that Notifying Operator's Network which will or might affect the Recipient Operator's Network ("**Network Change**");
- (d) any change by the Notifying Operator to any of the operational support systems used inter-operator processes, including without limitation:

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- (i) the billing system;
 - (ii) the Ordering and provisioning systems; or
 - (iii) the Customer Transfer process, (“**OSS Change**”); and
- (e) any enhancement by the Notifying Operator of the feature, functions or capabilities of the Facilities or Services to which the Recipient Operator has access, which enhancement the Notifying Operator proposes to make available either:
- (i) to itself; or
 - (ii) to any other Operator (“**Functionality Change**”).
- (collectively, “**Relevant Changes**”).

2.3 Notification of change

2.3.1 If a Notifying Operator proposed to make a Relevant Change to its Network, services or procedures, the Notifying Operator shall provide the Recipient Operator with notice in writing (“**Change Notice**”) of:

- (a) the nature, effect, technical details and potential impact on the Recipient Operator’s Network and the expected completion date of the proposed Relevant Change, described at a sufficient level of detail to enable the other Operator to identify and begin planning such changes as may be necessary or desirable for the Recipient Operator to make to its Network, services or procedures in consequence of the Relevant Change; and
- (b) a date, which shall be no later than ten (10) Business Day from the date of the notice under this Condition, on which representatives of the Notifying Operator will be available to discuss with representatives of the Recipient Operator the proposed Relevant Change and the changes that may be necessary or desirable for the Recipient Operator to make to its network, services or procedures in consequence of the Relevant Change,

as soon as reasonably practicable and, in any event with not less than the relevant notice period set out in the table below:

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Relevant Change:	Notice period:
Interface Change	3 Months
Network Change	3 Months
Service Change	3 Months
OSS Change	3 Months
Functionality Change	3 Months

2.4 Post-notification procedures

2.4.1 The Notifying Operator shall:

- (a) meet with representatives of the Recipient Operator in the date set out in the Change Notice or as soon as practicable thereafter (but no later than the notice period set out in the table in **Condition 2.3**), for the purpose of discussing the Relevant Change and any changes that may be necessary or desirable for the Recipient Operator to make to its Network, services or procedures in consequence of the Relevant Changes;
- (b) provide any additional information reasonably requested by the Recipient Operator no later than ten (10) Business Days after the Recipient Operator's request for such additional information; and
- (c) take reasonable account of concerns raised and proposal made by the Recipient Operator to minimize any adverse impact of the Relevant Changes on the Recipient Operator and revise the Change Notice accordingly.

2.5 Testing

2.5.1 The Notifying Party shall, bearing its own costs in doing so:

- (a) co-operate with a Recipient Operator to develop procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Operators' respective Networks;

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- (b) jointly carry out testing with the Recipient Operator in a timely manner using its best endeavours to accommodate any timing requested by the Recipient Operator and, in any case, no less than twenty (20) Business Days before the Notifying Operator proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under **Condition 2.5.1(a)**.

2.6 Testing failure

2.6.1 Subject to the Recipient Operator having co-operated with the Notifying Operator in relation to the conduct of tests under **Condition 2.5**, if such tests:

- (a) are not accepted by ten (10) Business Days prior to the date when the Notifying Operator proposes to effect the Relevant Changes; or
- (b) do not provide reasonable assurance of the continued proper operation and compatibility of the Operators' respective Networks, services and procedures,

the Notifying Party must postpone implementation of the Relevant Changes. The period of postponement will be for a period until a successful solution is implemented but such period shall not be shorter than the period necessary to allow the Operators to repeat the steps in **Conditions 2.3 to 2.5**.

SECTION V- OPERATIONS AND MAINTENANCE

1. General

1.1 **Section V** sets out the operations and maintenance terms and procedures that are applicable in relation to the provision of Facilities and/or Services.

2. Operations and Maintenance Obligations

2.1 Operations & Maintenance Standard & Procedure

2.1.1 The Operators shall take such reasonable steps within its respective Networks to facilitate end-to-end connection of communications across each other's Network in accordance with agreed operations and maintenance standards.

2.1.2 Where this Agreement and the documents referred to in **Section I** do not cover any operations and maintenance standards, the Operators may use ITU-T standards.

2.1.3 The Operators shall ensure that the operations and maintenance standards and procedures used in the respective Network do not adversely affect the operations of each other's Networks.

2.1.4 Each Operator shall be responsible for the operations and maintenance of its own Facilities and Services.

2.1.5 Each Operator shall on its own establish the recommended maintenance procedures for maintaining and servicing its own Facilities and Services.

2.1.6 The Operators will take all necessary precautions to avoid causing damage to the equipment and premises of the other Operator when such facilities are placed in the same co-located space.

2.2 Fault reporting systems & Fault Management

2.2.1 The Operators will co-operate to enable each other to meet the terms of their respective Licences and to fulfill their obligations under the Agreement and to provide communications services to their Customers.

2.2.2 The Operators will manage their Networks to minimise disruption to services and, in the event of interruption or failure of any service, will restore those services in accordance with the target times set out in **Condition 2.12**.

- 2.2.3 Each Operator shall establish and maintain a fault reporting service that allows Customers who are directly connected to the Network of that Operator and to whom that Operator supplies services (inter alia), to report faults relating to any Network or support system.
- 2.2.4 Each Operator must manage, notify and correct faults arising in its Network which affect the provision of any communications service by the other Operator:
- (a) as it would in the ordinary course for similar faults affecting the provision of communications services by it;
 - (b) in accordance with the fault notification procedures and the principles of priority of repair of faults documented in this **Section V** and the documents referred to in **Section I**; and
 - (c) in accordance with any service quality standards mutually agreed and/or determined by the Commission.
- 2.2.5 Each Operator will use its best endeavour to determine faults on its own Network and establish the nature of the fault by carrying out thorough tests on its Network. If such tests prove that the fault is genuine and not residing on its own Network, then the Operator will report this fault to the other Operator's fault reporting centre.

2.3 Customer notification

The Operators will advise all of its Customers to report all faults to its own fault reporting service. If the fault concerns the service of the other Operator, the Operator may promptly inform the other Operator's Network Operation Centre ("NOC") of the reported fault.

2.4 Cross-referrals

2.4.1 If a Customer reports a fault to an Operator:

- (a) when the Customer is directly connected to another Operator; and
- (b) which clearly relates to a Network or support system of another Operator,

that Operator must promptly inform the other Operator of the reported fault, or refer that Customer to the other Operator's fault reporting service.

2.5 Network fault responsibility

- 2.5.1 The Operator in whose Network the fault occurs is responsible for rectifying it and restoring services including for the purpose of restoring the supply of Facilities and/or Services (such as End-to-End Transmission Services or Layer 2 HSBB Network Services with QoS) which are used in another Operator's Network.
- 2.5.2 Each Operator will be responsible for its own fault management escalation procedures and shall offer full assistance for interconnection faults.
- 2.5.3 Where an Operator ("**First Operator**") notifies the other Operator that there is a fault in Facilities and/or Services provided by the other Operator and the other Operator discovers upon investigation that the fault is due to a fault in the First Operator's Network or the Customer premises equipment of the First Operator's Customer, the other Operator shall be entitled to charge the First Operator reasonable cost incurred for investigating and attending to such fault report/notification. The other Operator shall provide evidence that the faults resides in the First Operator's Network or the customer premises equipment of the other Operator's Customer.

2.6 Transmission service faults

The Operator that supplies transmission services is responsible for maintaining and repairing that transmission service, notwithstanding that the transmission service may be used in the other Operator's Network.

2.7 Major inter-working faults

If a major fault occurs which affects a communication that crosses or is to cross both Operator's Networks, initial responsibility for identifying the fault rests with the Operator who first becomes aware of the fault.

2.8 Faults affecting other Networks or Equipment

If an Operator identifies a fault occurring in its Network or with its network facilities which may have an adverse effect on the other Operator's Network, network facilities, network services or Equipment, the first-mentioned Operator must promptly inform the other Operator of:

- (a) the existence of the fault;
- (b) the actions being taken by the first mentioned Operator to restore service and to further identify and rectify the fault; and

(c) the outcome of those actions.

2.9 Bear own costs

Each Operator is responsible for establishing and maintaining a fault reporting service at its own cost irrespective of the location of the fault.

2.10 Fault priority

Each Operator shall give priority to faults in the following order:

- (a) the highest service loss impact in terms of the number of Customers affected;
- (b) those which have been reported on previous occasions and have re-occurred; and
- (a) all other faults.

2.11 Fault rectification

Each Operator shall rectify faults on a non-discriminatory basis and on a first come first serve basis where the priority level is the same in accordance with the target times set out in **Condition 2.12**.

2.12 Target times

Each Operator shall respond to and rectify faults within the lesser of:

- (a) timeframes set out in a relevant service specific obligation under Part A, Terms and Conditions for Regulated Facilities and/or Services of this Agreement or, if there is no such timeframe, the response timeframes, progress update frequencies and rectification timeframes set out in the table below;
- (b) timeframes which will result in compliance by all affected Operators with any applicable mandatory standards that apply to service availability and restoration; and
- (c) timeframes equivalent to that which CT SABAH provides to itself.

Priority Level	Fault Types (examples)	Response Time	Progress Update Frequency	Rectification Timeframe
Level 1	1. Major switch outage 2. Transmission bearer total outage 3. Route blocking > 30% 4. Major signaling problem > 50% per route basis 5. Major routing issues	Within 1 hour	Every 1 hour	4 hours
Level 2	1. Minor switch outage 2. Minor routing issue 3. Minor signaling problems 4. Route blocking 10% - 30%	Within 4 hours	Every 4 hours	24 hours
Level 3	1. Faults affecting single or small number of Customers 2. Route blocking <10%	Within 24 hours	Every 24 hours	72 hours
Level 4	1. Remote Congestion 2. External Technical Irregularities (ETI) 3. Other performance related issues	Within 48 hours	Every 48 hours	14 days

Explanatory Notes to Condition 2.12:

- (a) All faults reported shall be ascribed with a “**Priority Level**” as set out in the above table for response, progress update frequency and rectification purposes and the Operators involved shall cooperate with one another to achieve the given time targets based on the severity of the fault reported.
- (b) Some of the common “**Fault Types**” are listed as example in the above table.
- (c) “**Response Time**” refers to the time for the Operator whose Network or service is faulty to respond to and appropriately attend to the fault. Response Times are to be measured from either the time the fault is notified by The Access Seeker or from the time when CT SABAH first becomes aware of the Fault, whichever is the earlier.

- (d) “**Rectification Time**” refers to the time taken by the Operator to rectify a faulty service and is determined by the period between the reporting of a fault to the respective interconnect fault reporting centre (IFRC) of the Operator and the rectification of the faulty service.
- (e) “**Progress Update Frequency**” means the frequency at which the affected Operator may call the Operator responsible for restoring the fault to obtain a verbal progress update.
- (f) The Restoration Time shall be measured each month as “**Mean Time to Restore**” or “**MTTR**” and means the average Restoration Time it takes to restore a fault over a twelve (12) month rolling period.

The MTTR shall be discussed for tracking purposes at service review meetings.

2.13 Planned maintenance

2.13.1 If an Operator (“**Maintenance Operator**”) intends to undertake planned maintenance which may affect the other Operator’s Network, Facilities and/or Services, the Maintenance Operator must:

- (a) provide at least the greater of the time which it notifies its own Customers and ten (10) Business Days notice of the planned maintenance;
- (b) use its reasonable endeavours to minimise any disruption to the carriage of communications that crosses or would cross both Operators’ Networks, and which are caused by the maintenance or re-routing; and
- (c) where the Operators agree that it is practicable, provide alternative routing or carriage at no additional cost to the other Operator.

2.13.2 Where the planned maintenance is not restored to full service within the expected duration, the additional outage time shall be regarded as unplanned maintenance occasioned by a planned maintenance and the procedure dealing with unplanned outage shall apply. The initial notice of the unplanned outage may be given verbally provided that it is followed by a written notice as soon as possible but no later than twenty four (24) hours after the verbal notice.

2.14 Planned maintenance windows

An Operator shall undertake planned maintenance within windows of time agreed with other Operator, and where the windows of time for such planned maintenance have the least effect on end-users.

2.15 Emergency maintenance

2.15.1 If the Maintenance Operator needs to undertake emergency maintenance which may affect the other Operator's network, the Maintenance Operator must:

- (a) provide at least twenty-four (24) hours' notice of the emergency maintenance. In such case, the Maintenance Operator shall provide verbal notification upon sending the written notice;
- (b) use its reasonable endeavours to minimize any disruption to the carriage of communications which cross or are to cross both Operator's Networks, and which are caused by the maintenance or re-routing; and
- (c) where practicable and agreed by the Operators, provide alternative routing or carriage at no additional cost to the other Operator.

2.16 Hours of fault and rectification

Both Operators shall maintain a twenty-four (24) hours a day, seven (7) days a week Network Operation Centre to which all faults relevant to the proper functioning of the Facilities and/or Services and complaints are reported.

2.17 Complaints Handling

The Operators must report all interconnection and access outages that relate to Networks, Facilities and/or Services to the other Operator relevant fault reporting and rectification service.

3. Network Monitoring

3.1 Each Operator is responsible for monitoring of alarms belonging to its own Network.

3.2 The Operators shall ensure that either Operator's Network which may affect traffic is subject to a Network alarm management system and monitor in a way that is consistent with the Operator's internal operation and maintenance procedures.

3.3 The Operators may, where required, exchange records of circuit utilization or congestion report and call connection performance over the interface at regular intervals to ensure that service over the interface be maintained at satisfactory levels.

4. Service Review

4.1 The Operators shall hold meetings monthly or mutually agreed intervals to review the performance of interconnection between the Operator's Network and mutually exchanged operational information. In addition, the Operators shall discuss at the meetings, any other inter-working issue that arise. The information provided in such reports is confidential information and subject to the confidentiality obligations under this Agreement.

5. Maintenance of Equipment and/or Shared Sites

5.1 Each Operator shall be responsible for *inter alia*:

- (a) maintaining its Equipment in good working condition;
- (b) maintaining the Equipment and/or shared sites in a tidy and safe condition;
- (c) ensuring that combustible material is not left in or around shared sites following maintenance works or other operations; and
- (d) take such other action as a reasonable prudent operator of such Equipment would take.

6. Business Contingency Plan

6.1 The Operators agree to discuss terms and conditions pertaining to business contingency plan for purposes of catering for major unplanned outages affecting either or both Operators' Networks.

SECTION VI – OTHER TECHNICAL MATTERS

1. General

- 1.1 **Section VI** sets out the other technical matters and procedures that are applicable in relation to the provision of Facilities and Services.

2. Technical Obligations

2.1 Compliance

The Operators shall adhere to the relevant guidelines issued by the Commission from time to time to the extent that they have not been expressly revoked or are not inconsistent with any technical obligations set out in the MSA Determination.

2.2 Prevention of technical harm and interference

- 2.2.1 Each Operator is responsible for the safe operation of its Network and must take all reasonable and necessary steps to ensure that its Network, its Network operations and implementation of the Agreement:

- (a) do not endanger the safety or health of the officers, employees, contractors, agents or Customers of the other Operator; and
- (b) do not damage, interfere with or cause any deterioration in the operation or impedes or interrupts the continuous use of the other Operator's Network.

which measures shall be no less robust than the measures which the Operator takes in respect of new facilities or Equipment incorporated into its own Network.

- 2.2.2 Each Operator and must not do anything, or knowingly permit any third person to do anything, in relation to Network, network facilities, network services or Equipment which:

- (a) cause interference to the communication services provided by the other Operator; or
- (b) materially obstructs, interrupts or impedes the continuous use or operation of, the Network, network facilities, network services or Equipment of another Operator.

2.3 Prohibition of tampering and modification

2.3.1 An Operator must not modify, or take any action which would have the effect of modifying the operation of the Network of the other Operator or take any action with respect to the other Operator's Network without the other Operator's permission.

2.4 Notice of interference and rectification

If an Operator ("**Notifying Operator**") notifies another Operator that the other Operator's network, network facilities, network services or Equipment is causing interference to the Notifying Operator's network, network facilities, network services or Equipment:

- (a) the other Operator shall rectify the situation as soon as possible, and in any case, within twenty four (24) hours of receiving notice from the Notifying Operator, so that no interference is caused; or
- (b) if the other Operator is not able to locate the source of the interference within twenty four (24) hours under **Condition 2.4(a)**, the other Operator shall promptly notify the Notifying Operator, and both Operators shall meet as soon as possible, and in any case, within twenty four (24) hours of such notice and jointly examine each other's network, network facilities, network services or Equipment to locate the source of the Interference.

SECTION VII – POINT OF INTERFACE PROCEDURES

1.1 Interconnection

Each Operator shall interconnect and keep its Network interconnected with the Network of another Operator in accordance with the terms of an Access Agreement with that Operator.

1.2 Point of Interface locations

(a) Subject to Condition 6.9.31 of the MSA Determination, CT SABAH shall publish on its publicly accessible website and keep updated a list of the general locations and technically feasible points:

- i. at which physical co-location is available;
- ii. in respect of which virtual co-location is available; and
- iii. in respect of which in-span interconnection is available,

on and from the date of publication for the following twelve (12) months.

(b) CT SABAH shall ensure that network co-location at each POI is offered to the Access Seeker in accordance with Condition 6.9 of the MSA Determination.

1.3 Access Seeker requested Point of Interface

CT SABAH shall reasonably consider a request by an Access Seeker to interconnect at a point other than that specified under subsection 1.2 of this Condition. CT SABAH shall promptly notify the Access Seeker whether it accepts or refuses a request by an Access Seeker under this Condition, and provide the Access Seeker with reasons if it refuses the Access Seeker's request.

1.4 Network responsibility

Each Operator is responsible for the provisioning and maintenance of Facilities (including those Facilities which form part of the interconnection links and the transmission equipment) on its side of the Point of Interface.

1.5 Third party Point of Interface

CT SABAH shall permit an Access Seeker to nominate a Point of Interface of a third party for the purposes of interconnection and access between CT SABAH and the Access Seeker, provided that the Access Seeker remains responsible for the costs of such interconnection and access, and for the third party's act and omissions at the Point of Interface.

1.6 Point of Interface factors

When determining which locations are to be listed under paragraph 1.2(a) of this Condition, or when determining a request under Condition 1.3 of this Condition, CT SABAH must have regard to each of the following:

- (a) CT SABAH shall offer (but shall not require) POI and co-location for every Closed Number Area throughout Malaysia in which CT SABAH has network facilities;
- (b) in addition to offering POI and co-location in accordance with paragraph 1.6(a) above, CT SABAH shall offer interconnection and co-location at each other technically feasible point;
- (c) CT SABAH shall offer physical co-location in at least one POI location for every Closed Number Area throughout Malaysia in which CT SABAH has network facilities, but may additionally offer other forms of co-location in relation to a particular location (e.g. virtual co-location);
- (d) CT SABAH shall not reserve space other than current needs for itself, future needs for itself [calculated by use of a reasonably projected rate of growth over two (2) years] and the needs of other Access Seekers who are currently occupying or have ordered additional space from CT SABAH; and
- (e) any possible re-arrangement of the configuration of its Equipment to eliminate space inefficiencies.

TERMS AND CONDITIONS FOR REGULATED FACILITIES AND/OR SERVICES

PART A - SERVICE DESCRIPTION

SECTION I - LAYER 2 HSBB NETWORK SERVICE WITH QOS

1. General

- 1.1 This Section I sets out the terms and conditions which are applicable to Layer 2 HSBB Network Services with Quality of Service (QoS).
- 1.2 CT SABAH shall provide all the necessary infrastructure on and relating to Layer 2 HSBB Network Service with QoS to enable the Access Seeker conduct FUT/POC over a period of 2 months from the date of commissioning of the Layer 2 HSBB Network Services without any charges to the Access Seeker.

2. General Terms and Conditions

- 2.1 The Layer 2 HSBB Network Service with QoS is an access and transmission Facility and/or Service for the provision of Layer 2 connectivity for the carriage of certain communications, being data in digital form and conforming to Internet Protocols, between customer equipment at an End Users' premises and a POI at the mutually agreed location, where in respect of the service:
- (a) the customer equipment is directly connected to CT SABAH High-Speed Broadband Network;
 - (b) The Access Seeker selects the bit rate;
 - (c) The Access Seeker selects the QoS Class; and
 - (d) The Access Seeker assigns the Customer with an IP address.

The Network Diagram will be as set out under Diagram 1.

- 2.2 The Layer 2 HSBB Network Service with QoS includes shared splitting services, interfaces to operational support systems and network information.

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- 2.3 Nothing in this service description is intended to limit:
- (a) subject to FAT (Fiber Access Terminal) availability, the number of concurrent Layer 2 HSBB Network Services with QoS acquired by the Access Seeker from CT SABAH associated with a single Customer; or
 - (b) the number of Layer 2 HSBB Network Service with QoS that may be acquired by the Access Seeker, either in a single location or at multiple locations (or permit CT SABAH to require the Access Seeker to acquire any minimum or maximum number of HSBB Network Services, either in a single location or at multiple locations), as condition of CT SABAH supplying the Layer 2 HSBB Network Service with QoS.
- 2.4 The Layer 2 HSBB Network Service with QoS shall be supplied to the Access Seeker as follows:
- (a) at the speeds which are capable of providing the bit rates as selected by the Access Seeker;
 - (b) in accordance with the QoS Class as selected by the Access Seeker.
- 2.5 CT SABAH shall only request Forecasts where:
- (a) the maximum period of time covered by the Forecasts regarding Layer 2 HSBB Network Service with QoS is three (3) years;
 - (c) the minimum intervals or units of time to be used in Forecast regarding Layer 2 HSBB Network Service with QoS is three (3) months; and
 - (d) the maximum frequency to update or to make further Forecasts regarding Layer 2 HSBB Network Service with QoS is once every three (3) months.
- 2.6 CT SABAH shall acknowledge receipt of each Order for Layer 2 HSBB Network Service with QoS within one (1) Business Day.

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Part A – Section I

- 2.7 CT SABAH shall commence a Service Qualification on the date of issuing a Notice of Receipt and complete and notify the Access Seeker of the result of any post-Order Service Qualification within the shorter of:
- (a) five (5) Business Days after the commencement of the post-Order Service Qualification; and
 - (b) the time within which CT SABAH performs and notifies the result of an equivalent post-Order Service Qualification undertaken for itself.

CT SABAH shall only require post-Order Service Qualification to be requested in respect of the premises on a street that is not connected to Layer 2 HSBB Network Service with QoS.

- 2.8 CT SABAH must notify the Access Seeker that an Order for Layer 2 HSBB Network Service with QoS is accepted or rejected within one (1) Business Day after:
- (a) issuing the Notice of Receipt in respect of the Order, where CT SABAH did not undertake any post-Order Service Qualification for that Order; or
 - (b) providing the Access Seeker with the result of post-Order Service Qualification, where CT SABAH has undertaken post-Order Service Qualification for that Order.

- 2.9 the indicative activation timeframe for Layer 2 HSBB Network Service with QoS is:
- (a) in respect of a premises on a street that is connected to Layer 2 HSBB Network Service with QoS, five (5) Business Days including the date of the Broadband Termination Unit (“BTU”) installation appointment; or
 - (b) otherwise, up to twenty (20) Business Days including the date of the BTU installation appointment.

CT SABAH will perform activations within the shorter of the timeframe specified in this **Subsection 2.9**, the time within which the CT SABAH performs activations for itself and the time which would permit the Access Seeker or downstream operator to comply with the Commission Determination on the Mandatory Standards for Quality

of Service (Wired Broadband Access Service), Determination No. 2 of 2016 including such modification or variation as may be determined by the Commission from time to time. For clarification, the indicative activation timeframe in this **Subsection 2.9** commences from the Notice of Acceptance or confirmation of the Order.

2.10 The Billing Period for Layer 2 HSBB Network Service with QoS will be monthly as set out in Annex II: Charges and Charging Principles.

2.11 The Access Seeker shall pay to CT SABAH for Layer 2 HSBB Network Service with QoS stated in this Part A: Service Description provided by CT SABAH, Charges in accordance with the applicable provisions set out in Part B: Charges and Charging Principles.

3. Service fulfillment timeline

3.1 CT SABAH shall work together with the Access Seeker to comply with the obligations on service fulfillment timelines as stated under **Condition 6.6.13** of the **MSA Determination**.

4. Service assurance timeline

4.1 CT SABAH shall work together with the Access Seeker to comply with the obligations on service assurance timelines as stated under **Condition 6.6.14** of the **MSA Determination**.

5. Equivalence of Inputs

5.1 CT SABAH must

- (a) provide Layer 2 HSBB Network Service on an Equivalence of Inputs basis to the Access Seeker, including the product, speed tiers, speed, price, timeframes, service level performance and terms and conditions that are equivalent to what it provides to itself;
- (b) provide access to Operational Support Systems for Layer 2 HSBB Network Service with QoS to the Access Seeker that are equivalent to what it provides to itself; and

- (c) ensure that the Access Seeker is able to use Layer 2 HSBB Network Service with QoS, the OSS, the systems and processes that are used by CT SABAH in the same way and with the same degree of reliability, performance, accuracy and up-to-date information as it provides to itself.

6. Modularity

- 6.1 CT SABAH must provide Layer 2 HSBB Network Service on a modular and unbundled basis so that the Access Seeker does not have to acquire network components, Facilities and/or Services that are not required for Layer 2 HSBB Network Service with QoS to be provided.

7. Mandatory Standard on QoS

- 7.1 The terms and conditions for Layer 2 HSBB Network Services with QoS in this Agreement shall:
 - (a) contain only terms and conditions which are consistent with the rights and obligations set out in any applicable mandatory standard on QoS; and
 - (b) not contain any terms and conditions which are inconsistent with the rights and obligations set out in any applicable mandatory standard on QoS.

8. Churn Obligations

- 8.1 The Releasing Service Provider must not object to the Access Service Provider implementing any Customer's Churn request, where such request is received by the Access Provider from a Gaining Service Provider.
- 8.2 Except where the Releasing Service Provider and the Access Service Provider are the same person, the Gaining Service Provider must notify the Releasing Service Provider of each proposed Churn prior to forwarding a Transfer Request to the Access Service Provider.
- 8.3 Within two (2) Business Days of receipt by the Releasing Service Provider of the notice from the Gaining Service Provider under Condition 8.2 above, the Releasing

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Part A – Section I

Service Provider must advise the Gaining Service Provider if it believes, on reasonable grounds, that the Transfer Request is invalid because.

- (a) the Transfer Request resulted from a processing error; or
- (b) the Transfer Request was incomplete (for reasons including that the Customer or their agent did not execute the Transfer Form;

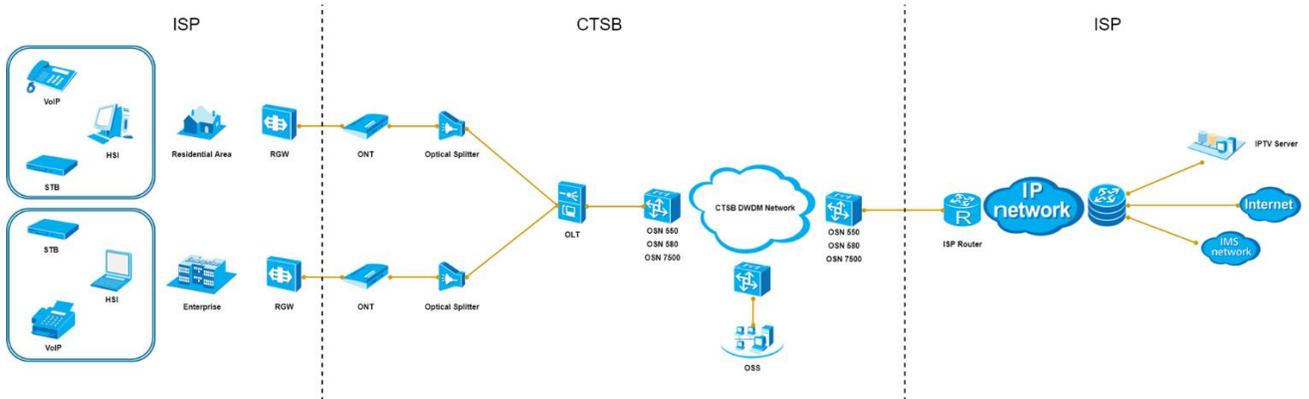
For clarification, if no notice is provided under this subsection, the Gaining Service Provider may forward the Transfer Request to the Access Service Provider (where the Access Service Provider is a different person to the Releasing Service Provider).

- 8.4 If a notification is made under Condition 8.3 above, the Releasing Service provider must provide the Gaining Service Provider with evidence upon which the notification is based. In such circumstances, the Releasing Service Provider and the Gaining Service Provider must take immediate action to rectify the invalid Churn in accordance with the Customer's wishes. If the Customer wishes to proceed with the transfer to the Gaining Service Provider, and the Gaining Service Provider provides the Releasing Service Provider with a Transfer Form, the Transfer Request may be provided to the Access Service Provider immediately.
- 8.5 Within two (2) Business Days after the receipt of a Transfer Request, the Access Service provider must implement the Churn and advise each of the Gaining Service Provider and the Releasing Service Provider that the transfer has been completed.
- 8.6 An Access Service Provider must facilitate and implement Churns between Operators in accordance with the obligations specified in this Condition 8, even if the Access Service Provider is not the Releasing Service provider or the Gaining Service Provider.
- 8.7 Unless otherwise specifically provided in this Agreement, the Access Service Provider and the Releasing Service provider must not use information disclosed for the purposes of Churn (including information contained in a Transfer Request or a Transfer Form) for other purposes. In particular, the Access Service Provider and the Releasing Service Provider must handle information disclosed for the purposes of a Churn as a Confidential Information of the Gaining Service Provider, and must not use such information in connection with marketing to, or offering services to, a Customer.

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8.8 If a Service is subject to a Churn, a Releasing Service Provider or an Access Service Provider (acting as an Access Provider for the purposes of this Agreement) must not refuse an Access Request on the ground that the Releasing Service Provider is currently using the Service Specified in the Access Request.

Diagram 1:



The Point Of Interconnect “POI” is at

TERMS AND CONDITIONS FOR REGULATED FACILITIES AND/OR SERVICES

PART A: SERVICE DESCRIPTION

SECTION II: END-TO-END TRANSMISSION SERVICES

1. General

1.1 This Section II sets out the terms and conditions which are applicable to End-to-End Transmission Service.

2. General Terms and Conditions

2.1 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 CT SABAH and the Access Seeker on a permanent or virtual basis.

2.2 Network interfaces may use any technology as may be agreed between CT SABAH and the Access Seeker including, for example, Ethernet interfaces.

2.3 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.

2.4 The End-to-End Transmission Service may be for the carriage of communications which comprise a content applications service.

2.5 CT SABAH shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding End-to-End Transmission Services is three (3) years;

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Part A – Section II

- (b) the minimum intervals or units of time to be used in Forecasts regarding End-to-End Transmission Services is three (3) months; and
 - (c) the maximum frequency to update or to make further Forecasts regarding End-to-End Transmission Services is three (3) months.
- 2.6 For the purposes of Condition 2.5 of Section III, Terms and Conditions for Technical Matters CT SABAH shall acknowledge receipt of each Order for an End-to-End Transmission Service within two (2) Business Days.
- 2.7 Subject to any shorter timeframe required under Condition 2.12 of Section III, Terms and Conditions for Technical Matters, CT SABAH must notify an Access Seeker that an Order for an End-to-End Transmission Service is accepted or rejected within ten (10) Business Days after:
- (c) issuing the Notice of Receipt in respect of the Order, where CT SABAH does not undertake any post-Order Service Qualification for that Order under Condition 2.8 of Section III, Terms and Conditions for Technical Matters; or
 - (d) providing the Access Seeker with the result of post-Order Service Qualification under Condition 2.9 of Section III, Terms and Conditions for Technical Matters, where CT SABAH has undertaken post-Order Service Qualification for that Order under Condition 2.8 of Section III, Terms and Conditions for Technical Matters.
- 2.8 For the purposes of paragraph 2.13.1(a)i of Section III, Terms and Conditions for Technical Matters, the indicative delivery timeframe for End-to-End Transmission Services is:
- (a) if no new network facilities are required to supply the End-to-End Transmission Services, twenty (20) Business Days; or
 - (b) if new network facilities are required to supply the End-to-End Transmission Services, sixty (60) Business Days.

For clarification, the indicative delivery timeframe in this Condition commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with Condition 2.14 of Section III, Terms and Conditions for Technical Matters.

- 2.9 The Billing Cycle for End-to-End Transmission Services will be quarterly.

PART B - CHARGES AND CHARGING PRINCIPLES

SECTION I - LAYER 2 HSBB NETWORK SERVICE WITH QOS

1. General

1.1 This Part B Section I sets out the charges and charging principles which would be applicable to the Layer 2 HSBB Network Services with QoS.

2. Charges and Charging Principles

2.1 The Layer 2 HSBB Network Service with QoS supplied by CT SABAH shall be subjected to the Charges listed in Table A and Table B below, which are exclusive of any tax.

2.2 The Billing Period for Layer 2 HSBB Network Service with QoS will be issued twice per month.

2.3 For the purposes of clarification, all the other HSBB Network Service not listed in Table below is negotiated charges.

Layer 2 HSBB Network Service with Quality of Service

Table 1: One-time Charges

Installation	1 January 2019 until 31 December 2019	1 January 2020 until a new MSAP Determination takes effect *
Broadband termination unit port (non-recurring charge)	461	485
Service gateway (non- recurring charge)	447	469

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** Subject to mutual agreement of Parties and pending a new MSAP Determination, the one-time installation charges may be reviewed post 31 December 2020.*

Table 2: Recurring Charges

	1 January 2020 until a new MSAP Determination takes effect
Broadband termination unit port (RM per port per month)	45
Layer 2 service gateway (includes Data, VOIP and TR-069) (RM per month):	
500 Mbps	1,268
750 Mbps	1,902
1 Gbps	2,597
3 Gbps	7,791
5 Gbps	12,985
10 Gbps	25,970
20 Gbps	51,940
50 Gbps	129,850
100 Gbps	259,701
200 Gbps	519,402
500 Gbps	1,298,504

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Note: Minimum order capacity is 3Gbps for year 1. SG rates inclusive of HSI, VOBB and TR-069 services. IPTV will be treated as different service.

Table 3: Maintenance at customer premise

Description	Price (RM)	Commencement of right to charge
On Site Troubleshooting		
Meeting customer/ inspection/ reset/ reconfiguration/collection of devices/ splice cable and replacement of RGW	70	Per successful visit
Replacement of BTU	250	Per replacement **
Dismantle existing cable and pull new cable (Customer Side)	300	Upon service provisioning**
Pulling new cable per meter (Material)	9	Upon service provisioning calculated on actual length in meter **

*** The charges are only applicable if the rectification work was performed due to customer's fault or the Access Seeker's request e.g. in situation where the customer has damaged the cable and CT SABAH needs to replace the whole cable (at customer side) with a new one. This situation only applies if solely due to customer's fault. However, in cases where the customer not willing to pay, CT SABAH will request solution from the Access Seeker whether or not to replace the cable (replacement is chargeable to the Access Seeker).*

Table 4: System platform

Description	Price (RM)	Commencement of right to charge
Integration with the Access Seeker's Portal	As mutually agreed by the Parties based on actual cost	Special order from the Access Seeker to integrate with CT SABAH Portal.

PART B - CHARGES AND CHARGING PRINCIPLES
SECTION II: END-TO-END TRANSMISSION SERVICES

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 2017) (“MSAP”) as stated below:

	Ringgit Malaysia per month
	1 January 2020 until a new MSAP Determination takes effect
1 Mbps	108
10 Mbps	1,256
100 Mbps	1,895
200 Mbps	2,606
500 Mbps	4,737
750 Mbps	6,512
1 Gbps	8,459
3 Gbps	23,597
5 Gbps	38,144
Installation (Non-recurring Charge)	5,633