



**OCK SETIA ENGINEERING SDN BHD**  
**(COMPANY NO. 528998-K)**

**Reference Access Offer**  
**(Version 3.0)**

**AS AT**

**15 JUNE 2023**

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## 1. CHAPTER 1 – INTRODUCTION, BACKGROUND AND SCOPE

### 1.1. Preliminary

- 1.1.1. This Reference Access Offer (“**RAO**”) is made by OCK SETIA ENGINEERING SDN. BHD. Sdn. Bhd. (Company No: 1172518-D), (“**OCKSE**”) a company incorporated under the laws of Malaysia and having its principal place of business at No. 18, Jalan Jurunilai U1/20, Seksyen U1, Hicom Glenmarie Industrial Park, 40150 Shah Alam, Selangor, pursuant to section 5.3.3 of the Commission Determination on the Mandatory Standard on Access Determination No. 1 of 2022 (“**MSA Determination**”).
- 1.1.2. OCKSE is a licensed operator under the Act and pursuant to its License, OCKSE may offer network facilities, network services and application services within Malaysia. Pursuant to Section 5.3.3 of the MSA Determination, OCKSE is obliged to prepare and maintain a Reference Access Offer in relation to Facilities or Services on the Access List Determination which OCKSE provides to itself or third parties.

### 1.2. MSA Determination Obligations

- 1.2.1. The MSA Determination sets out principles, indicative terms and conditions concerning access to Facilities and Services included in the Access List Determination and imposes obligations consistent with the principles of the Standard Access Obligations contained in section 149 of the Act that apply to Operators concerning various access issues which include:
  - a) Disclosure obligation (Section 5.3 of the MSA Determination);
  - b) Negotiation obligations (Section 5.4 of the MSA Determination);
  - c) Content obligations (where applicable, Section 5.5 to 5.19 of the MSA Determination); and
  - d) Service Specific Obligations
- 1.2.2. Disclosure Obligations

Pursuant to the Disclosure Obligations in Section 5.3 of the MSA Determination, OCKSE is required to:

  - a) prepare and maintain a RAO;
  - b) make the RAO available in paper form and on publicly accessible website;
  - c) follow prescribed procedures after acceptance of the RAO; and
  - d) follow prescribed procedures for amendment of the RAO.

## OCKSE'S RAO – CHAPTER 1

### 1.2.3. Negotiation Obligations

The negotiation obligations in Section 5.4 of the MSA Determination sets out the requirements and principles of negotiation where among others both Operators are required to:

- a) negotiate and co-operate in good faith and commercially reasonable manner;
- b) protect from disclosure any confidential information provided by one Operator to another; and
- c) use only such intellectual property and information provided by one Operator to another for purpose of providing access to the requested network services or facilities.

### 1.2.4. Content Obligations

Where relevant, the content obligations in Section 5.5 of the MSA Determination set out, amongst others, the following obligations of every Access Provider: -

- a) Forecasting;
- b) Ordering and Provisioning;
- c) Network Facilities Access and Co-location;
- d) Billing and Settlement;
- e) Operations and Maintenance;
- f) Term, suspension and termination;
- g) Churn; and
- h) Legal Boilerplates

### 1.2.5. Service Specific Obligations

Where relevant, the service specific obligations in Section 6 of the MSA Determination sets out, amongst others, the obligations of the following service specific applications:

- a) O&T Services;
- b) Interconnect Link Services;
- c) HSSB Network Services;
- d) Transmission Services;
- e) Infrastructure Sharing;
- f) Network Co-Location Services;
- g) Domestic Connectivity to International Services;
- h) Duct and Manhole Access;
- i) Digital Terrestrial Broadcasting Multiplexing Services;
- j) MVNO Access;
- k) Domestic Inter-Operator Roaming Services;

- l) 5G Services; and
- m) IP Transit Services;

#### 1.2.6. The role of Standard Access Obligations

- a) The standard access obligations facilitate the provision of access to the Facilities and Services listed in the Access List Determination to the Access Seekers so that OCKSE can provide network facilities, network services, and other facilities and/or services which facilitate the provision of network services or applications services, including content applications services.
- b) Section 149 of the Act specifies the terms and conditions upon which OCKSE must comply with the standard access obligations. Section 149(2) provides that the access provided by OCKSE shall be:
  - a) of at least the same or more favourable technical standard and quality as the technical standard and quality on the OCKSE's network facilities or network services; and
  - b) on an equitable and non-discriminatory basis

### 1.3. Scope

#### 1.3.1. OCKSE's RAO:

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

#### 1.3.2. Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to OCKSE's RAO.

#### 1.3.3. OCKSE's RAO are consistent with:

- a) the Standard Access Obligations ("**SAO**") stipulated under Section 4.1.1 of the MSA Determination and section 149 of the Act; and
- b) the principles of non-discrimination stipulated under Sections 4.1.5 and 4.1.6 of the MSA Determination.

#### 1.3.4. For the purposes of clarification, the terms and conditions of OCKSE's RAO is applicable to the Facilities or Services on the Access List Determination and which is relevant to the provisioning of facilities and services within OCKSE's licenses only. If the Access Seeker request Facilities or Services outside OCKSE's RAO, the terms and conditions for the provision of such Facilities or Services shall be negotiated and shall remain outside the scope of OCKSE's RAO.

### 1.4. Amendment to OCKSE's RAO

#### 1.4.1. If OCKSE proposes to amend a RAO, OCKSE shall, not less than twenty (20) Business Days before OCKSE 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 OCKSE's existing RAO; and
- b) all Access Seekers who has requested access to Facilities and/or Services under the existing OCKSE's RAO within the period of three (3) months prior to the making of such amendments, excluding any such Access Seeker who has already indicated that it does not wish to proceed with an Access Request.

For clarifications,

- a) Nothing in subsection 1.4.1 of this RAO prevents an Access Seeker from initiating a dispute in relation to an amendment to a RAO made by OCKSE under this subsection;
- b) 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 OCKSE and the Access Seeker; and
- c) 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 amendment to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favor of OCKSE.

## **OCKSE'S RAO – CHAPTER 1**

- 1.4.2 Upon expiry of the twenty (20) Business Days in subsection 1.4.1 of this RAO (or such longer period as OCKSE determines is necessary to finalize the amendments to its RAO), OCKSE will make available the amended RAO on OCKSE's publicly accessible website without delay (including updating its date and version number, both on the cover and on each page of the document) and provide the updated RAO to the Commission within ten (10) Business Days after being made available under this subsection 1.4.2.

### **1.5. Notice of Withdrawal, Replacement and Variation of OCKSE's RAO**

- 1.5.1. If the Commission revokes, varies or replaces the Access List Determination relating to the Facilities or Services listed on the Access List Determination under sections 146 or 147 of the Act and if OCKSE wishes to terminate or change the terms of the supply of those Facilities and/or Services, OCKSE may only do so in a manner that is consistent with the supply of that Facility and/or Service to itself, and provide notice to all Access Seekers to whom it is supplying Facilities or Services under OCKSE's RAO, of its intention to terminate or vary, to all Access Seekers to whom OCKSE is supplying that Facility and/or Service where the notice period must be no shorter than the period of time of giving the notice and the time which OCKSE is proposing to no longer provide the Facilities and/or Services to itself or twelve (12) months.

- 1.5.2. The notice to be provided by OCKSE under Section 1.5.1 of this RAO when the Commission varies, removes or replaces the Facilities and/or Services in the access list, must state; when the variation or replacement will come into effect, how the variation or replacement is likely to affect the Access Seeker and any alternative Facilities and/or Services that may be available to be provided by OCKSE to the Access Seeker and the terms and conditions on which such alternative arrangements are made available .

## **1.6. Availability**

- 1.6.1. OCKSE's RAO shall be made available to an Access Seeker on a publicly accessible website at [www.ock.com](http://www.ock.com).

## **1.7. Notices**

Any notices or communications in respect of OCK's RAO should be made in writing to:

Attention : Chief Operating Officer

Address : OCK SETIA ENGINEERING SDN. BHD. SDN. BHD.  
No. 18, Jalan Jurunilai, Jalan Jurunilai U1/20, Seksyen U1,  
Hicom, Glenmarie Industrial Park, 40150 Shah Alam,  
Selangor  
Telephone : +603 5565 9688  
Fax : +603 5565 9699



## 2. CHAPTER 2 – DEFINITIONS AND INTERPRETATIONS

### 2.1. Definitions

The following words have these meanings in this OCKSE's Reference Access Offer unless the contrary intention appears: -

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

**“Access Agreement”** means an agreement:

- a) entered into between OCKSE and the Access Seeker pursuant to this RAO; or
- b) which is commercially negotiated between the Operators, which terms and conditions shall not be less favorable than the terms and conditions guaranteed by the MSA.

**“Access Charge”** means a charge paid by the Access Seeker to OCKSE for accessing the Facilities and Services provided by OCKSE.

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

**“Access List Determination”** means the Commission Determination on Access List, Determination No.6 of 2021 which came into operation on 15 December 2021.

**“Access Provider”** means:-

- a) network facilities provider who owns or provides network facilities listed in the Access List; or
- b) network services provider who provides network services listed in the Access List;

who is a licensee as defined in the Act.

For the purpose of clarification, in this RAO the Access Provider is “OCKSE”.

**“Access Request”** means a request for access to Facilities or Services on the Access Service made by the Access Seeker to OCKSE and containing the information in Section 4.1.1 of this RAO and any additional information requested under Section 4.5.1(a) of this RAO.

**“Access Seeker”** means an Operator who:

- a) is a network facilities provider, network services provider, application service provider or content application service provider and who is a licensee as defined in the Act; and
- b) makes a written request for access to Facilities or Services listed in the Access Service.

**“Access Service”** means the network facilities and/or network services within the Access List provided by OCKSE and which is listed in Schedule B of this RAO.

**“Associated Tower Site”** means land owned, licensed, leased or tenanted by the Access Provider surrounding or on which the Designated Infrastructure is situated at or built on including space required for cable gantry connecting to the tower, or generator-set and space at the base of the Designated Infrastructure to install the Equipment thereat and includes the necessary right-of-way and permission to dig (subject to further commercial terms being agreed by the Operators (if any) and to space availability at the Site).

**“Bank Guarantee”** means the guarantee executed and to be granted to OCKSE on behalf of the Access Seeker by a bank approved by OCKSE and in a format acceptable by OCKSE pursuant to Section 4.3 of this RAO.

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

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

**“Business Day”** means a day (other than a Saturday and Sunday or public holiday) on which commercial banks are open for general banking business in Kuala Lumpur.

**“Charges”** means the sums payable by the Access Seeker to OCKSE for the provision of Access Service.

**“Commencement Date”** means the date on which the Operators enter into the Access Agreement or such other date as agreed between the Operators.

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

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

## OCKSE'S RAO – CHAPTER 2

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

**“Confidentiality Agreement”** means a Confidentiality agreement entered into between OCKSE and the Access Seeker in accordance with Section 5.3.8 of the MSA Determination which template is provided herein in Annexure I.

**“Creditworthiness Information”** means the information required by OCKSE to assess the creditworthiness of the Access Seeker which are more particularly described in Section 4.2 of this RAO and such other information as may be required from time to time.

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

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

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

**“Dispute Resolution Procedures”** means the procedures outlined in Annexure A of the MSA Determination.

**“Due Date”** means, in respect of an Invoice, thirty (30) days from the date of receipt of an Invoice.

**“Effective Date”** means the date on which the Access Agreement is duly registered with the Commission under Section 150 of the Act in its entirety (and such registration is notified in writing to the Operators)

**“Equipment”** means any equipment (whether hardware or software), or device which is part of or within the Network.

**“Facilities”** means network facilities and/or other facilities specified in this RAO which facilitate the provision of network services or applications services including content applications services.

**“Facilities Access”** in relation to the Access Service means a service for the provision of access to Facilities.

**“Force Majeure”** means an event or circumstance beyond the reasonable control of an Operator which affects the Operator's ability to perform its obligations under the Access Agreement.

**“Instrument”** means any lawful instrument which is issued by the Commission pursuant to the Act.

## OCKSE'S RAO – CHAPTER 2

**"Insurance Information"** means the insurance information required by OCKSE pursuant to Section 4.4.

**"Infrastructure Sharing"** means a Facility and/or Service which comprises the provision of physical access, which refers to the provision of space at the Designated Tower and/or Associated Tower Site to enable the Access Seeker to install and maintain its own equipment in accordance with Part 1 of Schedule B of the Terms and Conditions for Regulated Facilities and/or Services;

**"Invoice"** means the invoice for amounts due in respect of the supply of the Access Service(s) during a Billing Period.

**"Legislative Event"** means:

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

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

**"Manuals"** means the Technical and Implementation Manual, the Operations and Maintenance Manual and other manuals which the Operators establish pursuant to the Access Agreement.

**"Minimum Value"** for the purposes of calculating the Security Sum means a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over: -

- a) for Facilities and/or Services with a minimum period of access, the minimum period of access for those Facilities and/or Services; and
- b) for Facilities and/or Services without a minimum period of access, a single Billing Period for those Facilities and/or Services.

**"Minister"** means the Minister of Communications and Multimedia or, if different, the Minister administering the Act.

**"MSA Determination"** shall have the meaning assigned to it in subsection 1.1.1 of Chapter 1.

## OCKSE'S RAO – CHAPTER 2

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

**“Operators”** means OCKSE and the Access Seeker collectively.

**“Other Operator”** means either:

- a) OCKSE; or
- b) the Access Seeker, as the context requires.

**“Regulatory Event”** means:

- a) the declaration, modification, variation or revocation of the MSA Determination;
- b) the giving of a lawful direction to OCKSE by the Commission relating to OCKSE's RAO; or
- c) the giving of a lawful direction to OCKSE by the Minister relating to OCKSE's RAO.

**“Review”** means a review of the MSA Determination pursuant to Section 7.5 of the MSA Determination.

**“RM”** means Ringgit Malaysia which shall be the monetary currency used in OCKSE's RAO unless otherwise provided.

**“Security Sum”** means the security:

- a) in the form of a Bank Guarantee, deposited with OCKSE for the supply of Access Services as listed in Schedule B; and
- b) which amount is equivalent to the Minimum Value.

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

**“Service Ordering Procedures”** means the procedures governing the forecasting, planning and ordering of relevant Access Services as set out in Part II of Schedule A of Technical and Operational Matters.

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

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

### 2.2. Interpretation

In OCKSE's RAO except where the contrary intention appears;

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

## **OCKSE'S RAO – CHAPTER 2**

- b) a document includes all amendments or supplements to that document, or replacements or novation of it; and
- c) a reference to a statute, ordinance, regulations, code or other law and other instruments under it, shall include any statute, ordinance, regulation, code and other law consolidating, amending, re-enacting or replacing of any of them from time to time relating thereto or in connection therewith; and
- d) a reference to a person includes a firm, body corporate, unincorporated association or an authority; and
- e) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; and
- f) if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the next Business Day and any reference to acts that have to be done or to be done by or on or before a particular day or Business day means by or on or before the close of business at 5.00pm on that particular day or Business Day; and
- g) a reference to a related body corporate of an Operator has the same meaning as in the Companies Act 2016; and
- h) headings are included for convenience and do not affect the interpretation of OCKSE's RAO.

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## **OCKSE'S RAO – CHAPTER 3**

### **3. CHAPTER 3 – PRINCIPLES OF ACCESS**

#### **3.1. Access Services**

This RAO applies only to the Access Service (s) listed and described in Schedule B of this RAO.

#### **3.2. Eligibility for Access of Services**

3.2.1. OCKSE shall at its discretion and in a manner consistent with the License(s) granted (and the license rights accorded therein) by the Minister to the Access Seeker, provide to the Access Seeker with access to Access Service (s) on reasonable terms and conditions as set out in this OCKSE's RAO.

3.2.2. For the purposes of clarification, consistent with Government policy and Determinations by the Commission (and its predecessor), an Access Seeker may only request for access to any or all of the Facilities or Services listed in the Access List as contained in OCKSE's RAO where the Access Seeker has been granted: -

- a) an individual network facilities provider license and/or;
- b) an individual network services provider license and/or;
- c) a content applications services provider license and/or
- d) an applications service provider license;

Provided that such request is made in writing by the Access Seeker to OCKSE.

#### **3.3. Standard Access Obligations**

##### **3.3.1. Access Terms and Conditions**

OCKSE shall, subject to Section 3.2 of this RAO, supply the Access Service(s) to the Access Seeker on reasonable terms and conditions.

##### **3.3.2. Principles of non-discrimination**

OCKSE shall treat an Access Seeker on a non-discriminatory basis as required by the Standard Access Obligations in relation to the supply of Access Service(s).

The access provided by OCKSE to the Access Seeker shall be consistent with:

- a) The principles set out in section 4.1.5 and 4.1.6 of the MSA Determination; and
- b) Section 149(2) of the Act.

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### **3.3.3. Customer Principles**

Where applicable OCKSE shall observe and comply with the customer relationship principles set out in Section 4.3 of the MSA Determination.

## **3.4. Negotiation Principles**

### **3.4.1. Intellectual Property**

An Operator shall only use such Intellectual Property and information provided by another Operator for the purposes of providing access to the Access Service(s). An Operator must not use such Intellectual Property or information for the development or marketing of other Communication Services or equipment by that Operator, its affiliates or third parties.

### **3.4.2. Good faith and Dispute Resolution**

Each party shall co-operate, in good faith and commercially reasonable manner, in negotiating and implementing the terms of the Access Agreement. This includes:

- a) acting promptly, honestly and not perversely, capriciously or irrationally
- b) avoiding the imposition of unreasonable restrictions or limitations on the provision of access to the Access Service(s) (such as refusing to provide particular forms of access that OCKSE provide to itself); and
- c) avoiding unnecessary dispute and use all reasonable endeavours to resolve any disputes promptly and fairly which arising from or in connection with OCKSE's RAO. If any dispute or difference of any kind shall arise between the parties in connection with or arising out of OCKSE's RAO, the Dispute Resolution Procedure in Annexure A of the MSA Determination shall be adhered to.

### **3.4.3. Confidentiality**

An Operator must protect from disclosure any Confidentiality information provided by another Operator given in the course of negotiating an Access Agreement or during the term of OCKSE's RAO in accordance with the Confidentiality Agreement signed between the parties.

### **3.4.4. Necessary Third Party Involvement Causing or Contributing To Non-compliance in Timeframe**

If:

- a) OCKSE fails to comply with a timeframe under this RAO; and



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- b) OCKSE considers such failure was caused or contributed to by necessary third party involvement or other matters reasonably outside OCKSE's control (for example, where approval from local or other authority is required);

OCKSE must notify the Commission of such non-compliance and such third party involvement, and provide contact details of such third party, to permit the Commission to investigate the non-compliance.

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## **OCKSE'S RAO – CHAPTER 4**

### **4. CHAPTER 4 – ACCESS REQUEST PROCEDURES**

#### **4.1. Application for Access to Services**

4.1.1. An Access Seeker shall request OCKSE to supply Access Service (s) to it by serving Access Request in writing setting out the information listed in below:

- a) the name and contact details of the Access Seeker,
- b) the Access Service (s) in respect of which access is sought
- c) whether the Access Seeker wishes to accept OCKSE's RAO, to negotiate amendment to the RAO or to negotiate an Access Agreement on alternative terms;
- d) the information (if any) the Access Seeker reasonably requires OCKSE to provide for the purposes of the access negotiations;
- e) contain two (2) copies of confidentiality agreement properly executed by the Access Seeker in the form prescribed by OCKSE as in Annexure 1 of this RAO;
- f) preliminary information regarding the scale and scope of Facilities and/or Services that the Access Seeker expects to acquire from OCKSE pursuant to Access Request;
- g) relevant technical information relating to the interface standards of the equipment of the Access Seeker
- h) relevant information relating to the Access Seeker and functionality of its Services, to the extent that Access Seeker is aware that such information may affect OCKSE Network;
- i) creditworthiness information in accordance with OCKSE requirement as set out in subsection 4.2 of this RAO;
- j) assessed security (or if applicable, confirmation of security provided) in accordance with OCKSE security requirement as set out in subsection 4.3 of this RAO;
- k) insurance information in accordance with OCKSE insurance requirement as set out in subsection 4.4 of this RAO; and
- l) such other information as OCKSE may reasonably request for the sole purpose of providing access to the requested Facilities and/or Services.

#### **4.2. Creditworthiness Information**

4.2.1. The Creditworthiness Information that is required to accompany an Access Request include but shall not be limited to:

- a) a letter, signed by the company secretary or duly authorized officer of the Access Seeker, stating that the Access Seeker is not insolvent and is not under any external administration or under similar form of administration under any laws applicable to it in any jurisdiction; and

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- b) a copy of the Access Seeker's most recently published audited balance sheet and audited profit and loss statement.

### 4.3. Security Sum

4.3.1. OCKSE shall ensure that the amount and type of security requirements imposed on the Access Seeker (if reasonably required) commensurate with a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over: -

- i. for Facilities and/or Services with a minimum period of access, the minimum period of access for those Facilities and/or Services; and
- ii. for Facilities and/or Services without a minimum period of access, a single Billing Period for those Facilities and/or Services;

in an access agreement.

c) the creditworthiness of the Access Seeker (including prior payment records of the Access Seeker); and

d) the security previously required by OCKSE (if any).

4.3.2. OCKSE must not impose a security requirement on an Access Seeker which:

- i. exceed a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the minimum period of access to Facilities and/or Service to be provided by OCKSE to the Access Seeker; or
- ii. is designed to, or has an effect of denying or delaying the Access Seeker's access to Facilities and/or Services

4.3.3. The Access Seeker shall provide the Security Sum to OCKSE in the form of Bank Guarantee.

4.3.4. OCKSE is not obliged to consider entering into an Access Agreement with the Access Seeker pursuant to OCKSE's RAO until the Access Seeker has amongst other things, provided (at the Access Seeker's costs) to OCKSE such Security Sum on terms and conditions reasonably acceptable to OCKSE.

4.3.5. If the Access Seeker fails to fulfill any conditions or commits a breach of its obligations under this RAO or the Access Agreement, OCKSE at its sole discretion has the right from time to time to call in all or part of the amount represented by the Security Sum.

## **OCKSE'S RAO – CHAPTER 4**

### **4.4. Insurance Information**

4.4.1. Subject to subsection 4.4.2 of this RAO, An Access Request shall be accompanied by the following insurances:

- a) Worker's Compensation and/or Social Security Insurance and/or Employer's Liability Insurance and/or other insurance with statutory limits as required by the laws of Malaysia to provide for payment to its employees or in connection with the work covered by the Access Agreement that may be entered and/or their dependents; and
- b) Comprehensive general Liability Insurance of an amount which is in excess of Ringgit Malaysia Twenty Million (RM20,000,000.00) for any one claim or series of claims arising out of an accident for occurrence in connection with the Access Agreement that may be entered into resulting in bodily injury and/or personal injury including death and property damage of an Operator which shall arise out of or in consequence of any acts of omissions of the Other Operator.

4.4.2. For the purpose of clarification, the insurance provided by the Access Seeker pursuant to subsection 4.4.1 of this RAO shall commensurate with the reasonable sum, which is to be agreed by OCKSE.

### **4.5. Processing of Access Request**

#### **4.5.1. Acknowledgement of Receipt of Access Request**

OCKSE shall within ten (10) Business Day of receipt of the Access Request inform the Access Seeker in writing that it has received the Access Request and:

- a) Subject to Section 5.4.16 of the MSA, request additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request; or
- b) Indicate whether it is willing to provide access to Access Service (s) under paragraph 4.8 of this RAO or if it is rejecting the Access Request in accordance to paragraph 4.7 of this RAO.

Subject to the additional information being received by OCKSE within twenty one (21) Business Days from the date of request, OCKSE shall reconsider the Access Request upon receipt of such additional information and the ten (10) Business Days for OCKSE to consider the Access Request will recommence from the receipt of the information from the Access Seeker.

#### **4.5.2. Non-refundable processing fee**

- a) OCKSE may charge a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request at the rates below in the Fee Schedule.

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### Fee Schedule

Item	Klang Valley (RM)	Outside Klang Valley (RM)
Non-Refundable Processing Fee	150.00	150.00
Additional and non-routine work	150.00	250.00
Resources charges	200.00	600.00
Total	500.00	1,000.00

Note:

- (a) Additional and/or non-routine work includes pre-site visits required by Access Seeker; and
- (b) Resources charges include providing man power during activities which are beyond the normal scopes of services provided for in the Access Agreement.

If the Access Seeker does not proceed with the Access Request accepted by OCKSE, the processing fee will not be refunded to the Access Seeker.

The processing fee at the rates in the Fee Schedule above will be set-off against the Charges for the requested Facilities and Services upon acceptance of the Access Request by OCKSE pursuant to paragraph 4.8 of this RAO.

#### 4.5.3. Resources charge

In accordance with subsection 5.7.28 of the MSA Determination OCKSE may charge an Access Seeker a resources charge to be determined by the rates set out in the Fee Schedule above for the allocation of manpower to enable the Access Seeker to test and provide new Access Service (s).

The Resources charge at the rates in the Fee Schedule above will be set-off against the Charges for the requested Facilities and Services upon acceptance of the Access Request by OCKSE pursuant to paragraph 4.8 of this RAO.

#### 4.5.4 Applicability

The non-refundable processing fee and the resources charge as set out in section 4.5.2 and section 4.5.3, respectively are applicable to the Infrastructure Sharing as set out in the definitions section in Section 2 of this RAO.

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### 4.6. Assessment of Access Request

#### 4.6.1 Grounds for Refusal

Without limiting any other grounds that may be relied upon under the Act, OCKSE may refuse to accept an Access Request for the supply of Access Service(s) and accordingly may refuse to supply that Access Service (s) to the Access Seeker for any of the following reasons:

- a) in OCKSE's reasonable opinion, the Access Seeker's Access Request was not made in good faith and OCKSE shall set out the basis on which the Access Request was not made in good faith;
- b) in OCKSE's reasonable opinion, the Access Request does not contain the information reasonably required by OCKSE's RAO provided that OCKSE has sought the information from the Access Seeker under subsection 4.5.1 of this RAO and has not received that information within twenty-one (21) Business Days of making such a request;
- c) OCKSE does not currently supply or provide access to the requested Access Service (s) to itself or to any third parties (in which case it shall identify any alternative facilities and/or services which it does provide to itself or to any third parties which may be acceptable substitutes), except where the Access Seeker compensates OCKSE for the original supply of access to such Access Service(s);
- d) It is not technically feasible to provide access to the requested Access Service(s);
- e) OCKSE has insufficient capacity or space to provide the requested Access Service(s);
- f) there are reasonable grounds in OCKSE's opinion to believe that the Access Seeker would fail, to make timely payment for the supply of the Access Service(s);
- g) relevant Access Service(s) and such concerns cannot be addressed through a security requirement in accordance with this RAO;
- h) there are reasonable grounds in OCKSE's opinion to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Access Service(s); or
- i) there are reasonable grounds for OCKSE to refuse access in the national interest.

#### 4.6.2. Determination of technical infeasibility

For the purposes determining grounds for refusal where OCKSE is entitled to refuse an Access Request by an Access Seeker, OCKSE shall not refuse an Access Request on the grounds of technical infeasibility unless OCKSE establishes that there are substantial

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technical or operational concerns preventing the fulfilment of the Access Request. Each of the following matters shall be taken into account in determining whether access is technically feasible: (a) economic, accounting, billing, space or site concerns shall be disregarded by OCKSE except that space or site concerns may be taken into account in circumstances where there is no possibility of expanding the space available on the relevant site; (b) any requirement for OCKSE to modify its facilities or Equipment in order to meet the Access Request will not, on its own, mean that the access is not technically feasible; (c) if OCKSE asserts that meeting the Access Request would have an adverse impact on network reliability, OCKSE must provide evidence that provision of the requested Facilities and/or Services would result in a specific and significant adverse impact on network reliability; and (e) OCKSE must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this Clause) improvements that would allow OCKSE to meet the Access Request (in whole, or in part, and including for an interim period until any primary difficulties can be resolved).

### 4.6.3. Determination of capacity constraints

OCKSE may only refuse an Access Request on the ground that OCKSE has insufficient capacity or space under section 4.6.1(e) above where OCKSE notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because the requisite capacity is –

- (a) already carrying traffic to full capacity or near full capacity; or
- (b) already reserved for future use by OCKSE or another Access Seeker, where such future use shall commence not later than six (6) months from the date of the Access Request. If the reserved capacity is not subsequently used by the reserving party within seven (7) months from the date of the Access Request, OCKSE must promptly inform the Access Seeker and, if required by the Access Seeker, re-consider the Access Request in accordance with the process on negotiation obligations set out in subsection 5.4 of the MSA Determination; and
- (c) in the case of both (a) and (b), OCKSE is unable to expand capacity to meet the requirements in the Access Seeker's Access Request.

### 4.6.4. Assessment of the Access Seeker's ability to pay for supply of relevant Facilities or Services listed in the Access List Determination

OCKSE may avail itself of this ground if the OCKSE has reasonable grounds to believe that the Access Seeker may fail to make timely payment for the requested Facilities and/or Services and such concern cannot be addressed through a security requirement in accordance with section 4.3 of this RAO.

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### **4.6.5. Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of relevant Facilities or Services listed in the Access List Determination.**

Example of reasonable grounds for OCKSE's belief as mentioned in subsection 4.6.1 (g) of this RAO include repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to Network Facilities or Network Services have been provided.

## **4.7. Notification of Rejection to the Access seeker**

### **4.7.1. Where OCKSE rejects the Access Request, OCKSE shall:**

- a) provide grounds for rejection under Section 4.6.1 of this RAO to the Access Seeker;
- b) provide basis for OCKSE's rejection of the Access Request with sufficient particular to enable the Access Seeker to make its own assessment about the applicability of the specific ground of rejection; and
- c) indicate a date and time, not later seven (7) Business Days from the date of the notice of rejection, at which representatives of OCKSE will be available to meet with representatives of the Access Seeker to discuss the rejection of the Access Request. At this meeting, the Access Seeker may request OCKSE to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in:
  - (a) subsection 4.6.1(e) of this RAO, OCKSE must identify when additional capacity is likely to be available; and
  - (b) subsection 4.6.1(f) of this RAO, OCKSE must identify the form of security requirement which would satisfy its concern that the Access Seeker may fail to make timely payment for the requested Access Service(s), its reason for the security requirement and why it considers such concern cannot be addressed through a security requirement under Section 4.3 of this RAO.

### **4.7.2. Where the Operators are unable to resolve their differences following the meeting held pursuant to subsection 4.7.1(c) of this RAO, either Operator may request resolution of the dispute in accordance with dispute resolution procedures in Annexure A of the MSA Determination.**

## **4.8. Acceptance of Access Request**

### **4.8.1. Where the Access Seeker is willing to accept RAO and OCKSE agrees to provide access to Facilities or Services listed in the Access Service to the Access Seeker, OCKSE shall within ten (10) Business Days of such response under subsection 4.5.1(b) of this RAO, provide the Access Seeker with two (2) copies of the executed RAO and one (1)**



copy of executed confidentiality agreement returned by the Access Seeker (in accordance with sub-section 4.1.1(e) of this RAO, that has also been properly executed by OCKSE for execution by the Access Seeker.

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- 4.8.2. Where the Access Seeker wish to negotiate an Access Agreement, the Operators shall comply with the requirements in Sections 5.4.2, 5.4.3, and 5.4.4 of the MSA Determination in negotiating and concluding an Access Agreement.
- 4.8.3. OCKSE will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Access Service unless:
- a) a Security Sum has been provided in accordance with Section 4.3 herein; and
  - b) an Access Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with section 150 of the Act.

#### **4.9. Negotiations on Access Request**

- 4.9.1. OCKSE may proceed with negotiation on the Access Request with the Access Seeker if the Access Seeker is not willing to accept OCKSE's RAO. OCKSE shall set out in such response:
1. a date and time not later than fifteen (15) Business Days from the date of the Access Seeker's response, at which OCKSE's representatives will be available for the initial meeting with the representatives of the Access Seeker.
  2. One (1) copy of the executed Confidentiality Agreement returned by the Access seeker (in accordance with subsection 4.1.1 (e) of this RAO) that has also been properly executed by OCKSE.

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**5. CHAPTER 5 PROVISION OF INFORMATION**

- 5.1. The obligations of each Operator to provide information to the Other Operator are subject to the MSA Determination and the requirements of confidentiality in the confidentiality agreement signed by the Operators.
- 5.2. An Operator must provide the Other Operator on a timely basis with all agreed information reasonably required to determine rates and charges to be billed by each Operator to the Other Operator or by each Operator to its Customers.
- 5.3. To the extent permitted by Malaysian law and any relevant guidelines or customer service standards in force pursuant to the Operator's respective Licence conditions, the Operators will exchange information and otherwise cooperate in relation to the prevention and investigation of fraudulent use or misuse of the Operator's respective Communications Services and the theft of the Operator's provided terminal equipment.
- 5.4. Information provided under OCKSE's RAO 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.
- 5.5. Information required to be provided under OCKSE's RAO need not be provided if the recipient Operator has not established security measures that are adequate to protect the confidentiality of the information. If the recipient Operator does not observe such security measures or any of the information is used by it 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.
- 5.6. a) Subject to the Act and any subordinate legislation, nothing in the Access Agreement may be construed as requiring an Operator at any time to disclose to the Other Operator information which is at the date when the Access 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 endeavors to obtain the consent of that third person.  
  
b) After the Access Agreement comes into force an Operator must use its best endeavors not to enter into any contract which would prevent it from making relevant 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.

**6. CHAPTER 6 BILLING AND SETTLEMENT OBLIGATIONS**

- 6.1. Where relevant, the billing and settlement obligations set out in Section 5.11 of the MSA Determination shall be applicable.
- 6.2. The Access Seeker shall pay OCKSE the Charges for the relevant Access Service(s) supplied by OCKSE to the Access Seeker, as specified in Access Agreement
- 6.3. The Operators shall bear and pay all taxes as required by Malaysian law that result from the implementation of the Access Agreement.
- 6.4. All payments must:
  - a) be paid on the Due Date unless otherwise agreed in writing by both Operators;
  - b) be paid by electronic transfer to OCKSE or exceptionally, by cheque to the nominated account(s) of OCKSE if agreed by OCKSE; and
  - c) must be accompanied by such information as is reasonably required by OCKSE to properly allocate payments received.
- 6.5. For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts to OCKSE as they become due and payable, nor does it constitute a waiver of OCKSE's right to suspend, disconnect, or terminate the relevant network facilities or network services due to non-payment of any sums due or payable to OCKSE.
- 6.6. (a) Subject to Section 7.5 of this RAO, in the event OCKSE elects to suspend or terminate the provisioning of relevant Access Service(s) to the Access Seeker, OCKSE shall have the right to use the Security Sum (together with any interest thereon) to set off any outstanding sum due and payable to OCKSE by the Access Seeker.  
  
(b) Subject to Section 6.7(a) of this RAO, upon termination of the Access Agreement, the Security Sum deposited with OCKSE or parts thereof, together with the interest thereon, (if any) shall be returned and/or refunded to the Access Seeker.
- 6.7. Where there is a Dispute (as hereinafter defined), the Operators shall comply with the dispute resolution procedures set out below:

**Dispute Resolution Procedures (“Annexure”)**

**1. Definitions**

- (a) Billing Dispute means the dispute of an Invoice issued by one party to the other party, which is made in good faith;

- (b) "Billing Dispute Notice" means the written notification made by one party to the other party in relation to a Billing Dispute in accordance with subsection 6.4 of this Annexure;
- (c) "Billing Dispute Notification Period" means the period after the date of receipt of an Invoice during which a Billing Dispute may be raised in relation to that Invoice, as specified in subsection 6.2 of this Annexure;
- (d) "Billing Representative" means a representative of the party appointed in accordance with the billing procedures set out in subsection 6.15 of this Annexure;
- (e) "Billing System" means a system to issue Invoices relating to charges payable by each party under an Access Agreement;
- (f) "Dispute" has the meaning given to it in subsection 2.1 of this Annexure;
- (g) "Technical Expert" has the meaning given to it in subsection 5.3 of this Annexure.

## 2. Introduction

2.1 Subject to subsection 2.2(b) of this Annexure, an Access Provider and an Access Seeker shall adopt and comply with these Dispute Resolution Procedures in relation to any dispute which may arise between an Access Seeker and an Access Provider in relation to or in connection with the supply of Facilities and/or Services to which this Standard applies ("Dispute").

2.2 The following dispute resolution mechanisms are discussed in this section:

(a) inter-party working groups; and

(b) subject to specific resolution of disputes, being:

- (i) technical disputes (which must follow the procedure set out in section 5 of this Annexure if they cannot be resolved through the application of the general dispute resolution provisions in sections 3 and 4 of this Annexure);
- (ii) Billing Disputes (as defined in subsection 1.1 of this Annexure), which must follow the procedures set out in section 6 of this Annexure; or
- (iii) any other types of disputes, which, if cannot be resolved through the application of the dispute resolution provisions in sections 3, 4 and 5 of this Annexure, must be referred to the Commission for resolution.

2.3 A Dispute shall first be attempted to be resolved by negotiation between the parties. If the parties to the Dispute cannot or otherwise fail to reach an agreement, the parties shall always be entitled to seek resolution of the Dispute by the Commission in accordance with section 151 of the Act, and the Commission will decide the dispute if it is satisfied that:

- (a) the parties will not reach agreement, or will not reach agreement in a reasonable time;
- (b) the notification of the Dispute is not trivial, frivolous or vexatious; and
- (c) the resolution of the Dispute would promote the objects in the Act.

An Access Provider shall not prevent the Access Seeker from notifying a Dispute to the Commission in accordance with the Act.

2.4 For clarification, unless stated otherwise, all references to sections, subsections and paragraphs in this Annexure are references to sections, subsections and paragraphs of this Annexure.

### 3. General

3.1 An Operator may not commence court proceedings relating to a Dispute which is the subject of these Dispute Resolution Procedures until it has complied with each applicable process in these Dispute Resolution Procedures, other than an application for urgent interlocutory relief. Nothing in this subsection shall be construed as ousting the jurisdiction of any court.

3.2 Both parties to a Dispute shall ensure that their representatives acting in relation to a Dispute are of sufficient seniority and have authority to settle a Dispute on their behalf. At the commencement of the Dispute Resolution Procedures, each party must notify the other party 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 the representative, a party may require that those matters be referred to more senior officers of that party who have authority to settle those matters.

3.3 During a Dispute and any dispute resolution process invoked in accordance with this Annexure, an Access Provider and Access Seeker must continue to fulfil their obligations under the Access Agreement between them.

3.4 Subject to subsection 3.5 of this Annexure, the parties to a Dispute shall exchange information of a type described in this Standard during the course of, and to facilitate, resolution of the Dispute.

3.5 Confidential Information of a party which is disclosed, and any other oral or written submissions made by a party or a party's representatives

during the course of any dispute resolution process will be subject to the confidentiality restrictions in relevant confidentiality provisions contained in the Confidentiality Agreement prepared in accordance with subsection 5.3.8 of MSA Determination.

- 3.6 A party must not use information obtained under subsection 3.4 of this Annexure or described in subsection 3.5 above for any purpose other than to resolve the Dispute.
- 3.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of a Dispute (including a Technical Expert or the Commission, in accordance with this Annexure) may decide not to determine the Dispute if the arbitrator considers that the Dispute is trivial, frivolous or vexatious or if there is insufficient evidence before the arbitrator to determine the Dispute.
- 3.8 The costs of the arbitration are to be shared equally between the parties, unless the arbitrator of the Dispute has decided not to determine the Dispute in accordance with subsection 3.7 above. If an arbitrator decides not to determine the Dispute, the party that initiated the Dispute must pay the other party's costs.

#### 4. Inter-party working group

- 4.1 In the first instance the Access Seeker and the Access Provider should attempt to resolve the Dispute between themselves.
- 4.2 The Access Provider and the Access Seeker shall establish a working group, or working groups, to fulfil the requirements of subsection 4.1 above. The working group shall comprise of representatives of the parties and be headed by a person who holds a position that is at least equivalent to the head of the Access Provider's Wholesale or Interconnection Group.
- 4.3 The Access Provider shall provide for subject areas to be dealt with by each working group, equal representation by the Access Seeker and the Access Provider, chairmanship and administrative functions of the working group to be shared equally and formal notification procedures to the working group.
- 4.4 The Access Provider and the Access Seeker shall use reasonable endeavours to attempt to settle the Dispute in the working group for a period of no longer than thirty (30) Business Days unless otherwise agreed by the parties, subject always to a party's right to seek urgent interlocutory relief.

#### 5. Use of a Technical Expert

- 5.1 A Dispute will only be referred to a Technical Expert if the provisions of section 5 of this Annexure have been complied with.

- 5.2 Once a Dispute is referred to a Technical Expert, it may not be referred back to any working group as contemplated under section 4 above.
- 5.3 The person to whom a technical dispute may be referred under this section 5 will be an expert appointed by agreement of the parties or, if the parties cannot agree, by the Commission, will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communications industry, need not be a Malaysian citizen or resident and will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interest ("Technical Expert").
- 5.4 If the parties fail to appoint a Technical Expert within ten (10) Business Days of the need to refer a Dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.
- 5.5 When relying on the services of a Technical Expert, the following dispute resolution procedures will apply to the Technical Expert where the parties will present written submissions to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and each party may respond to the other party's submission in writing within fifteen (15) Business Days from the date of the other party's submission.
- 5.6 At the request of either party and subject to the parties agreeing, or the Technical Expert deciding within five (5) Business Days of the last written submission, that the arbitration by the Technical Expert should be by documents only, a Technical Expert hearing will be held within fifteen (15) Business Days of the last written submission.
- 5.7 Should a Technical Expert hearing be held; each party will have the opportunity of making an oral submission. This process will be conducted in private.
- 5.8 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the parties) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.
- 5.9 The Technical Expert will not have the power to appoint any other experts.
- 5.10 The Technical Expert will deliver his or her award within fifteen (15) Business Days of the hearing or of the last written submission where the arbitration is by documents only.
- 5.11 Every Dispute referred to a Technical Expert will be considered separately so that time limits for each Dispute are complied with.
- 5.12 The Technical Expert's decision will be binding on the parties (in the absence of manifest error of fact or law).

## 6. Billing Dispute resolution

- 6.1 As outlined in the billing provisions of the MSA Determination at subsection 5.11, a party ("Invoicing Party") shall provide to the other party ("Invoiced Party") an Invoice in writing, or in such electronic form as may be agreed from time to time, for amounts due in respect of the supply of Facilities and/or Services during such Billing Cycle.
- 6.2 An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if:
- in case of any other Facilities and/or Services, the Invoiced Party notifies the Invoicing Party within thirty (30) Business Days after the date of receipt of such Invoice, provided that, in any case specified above, the Invoiced Party's Billing Dispute Notice specifies the information in accordance with subsection 6.4 of this Annexure.
- 6.3 A Billing Dispute may only arise where the Invoiced Party has reasonable grounds to believe that an error has arisen from one of the following circumstances:
- (a) the Invoicing Party's Billing System is, or has been, defective or inaccurate in respect of the recording of the calls which are the subject of the Dispute;
  - (b) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Party's Billing System;
  - (c) there is, or has been, a fraud perpetrated by the Invoicing Party; or
  - (d) the Invoicing Party has made some other error in respect of the recording of the calls or calculation of the charges which are the subject of the Billing Dispute.
- 6.4 A Billing Dispute Notice given under this section 6 must specify the reasons for which the Invoice is disputed, the amount in dispute, details required to identify the relevant Invoice and charges in dispute including the account number, the Invoice reference number, the Invoice date, the Invoice amount, billing verification information and evidence in the form of a report, indicating the relevant traffic data which is in dispute.
- 6.5 The Invoiced Party may withhold payment of amounts disputed in good faith in accordance with subsection 5.11.11 of the MSA Determination. If the Billing Dispute is resolved against the Invoiced Party, that Invoiced Party shall be required to pay interest at the rate specified in subsection 5.11.15 of MSA Determination on the amount payable.
- 6.6 Where the Invoiced Party has paid an amount and subsequently notifies the Invoicing Party of a Billing Dispute in relation to that amount within the Billing Dispute Notification Period, the Invoicing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount. Once the Billing Dispute is resolved, if the Invoicing Party is obliged to refund an amount to the Invoiced Party, interest will be payable on the refunded amount at the rate specified in



subsection 5.11.15 of MSA Determination. In such circumstances, interest will be payable from the date the Invoiced Party paid the disputed amount to the date of the refund by the Invoicing Party.

- 6.7 The parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this section 6.
- 6.8 If the parties are unable to resolve any Billing Dispute within one (1) month (or such other period as the parties may agree) from the date on which the Billing Dispute Notice is received, either party may seek the consent of the other party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other party is, however, under no obligation to agree to such extension.
- 6.9 To the extent that a Billing Dispute notified under this section involves a Billing Dispute with an international correspondent of the Invoicing Party, the Dispute Resolution Procedures shall be suspended for a reasonable period of time pending resolution of the Billing Dispute with that international correspondent. As a general rule, the period of suspension will not exceed four (4) months. However, the parties shall recognise that some Billing Disputes with international correspondents may take longer to resolve, in which case the Invoicing Party must promptly inform the Invoiced Party of the likely period required for resolution.
- 6.10 Once the negotiation period under subsection 6.8 of this Annexure (including any extension agreed) and any suspension period under subsection 6.9 of this Annexure have expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in subsection 6.11 of this Annexure ("Billing Dispute Escalation Procedure").
- 6.11 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this subsection 6.11 by notifying the Invoicing Party's Billing Representative. Both parties shall then appoint a designated representative who has authority to settle the Billing Dispute, and who is at a higher level of management than the persons with direct responsibility for administration of this Standard. The designated representatives shall meet as often as they reasonably deem necessary 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 party to the other party shall be honoured.
- 6.12 Once any Billing Dispute has been resolved to the parties' satisfaction, any sum to be paid or repaid shall be paid by the relevant party within ten (10) Business Days from the date of resolution of the Billing Dispute.
- 6.13 Although it shall be the good faith intention of the parties to use the above Billing Dispute Resolution Procedures to the fullest extent to try

to solve Billing Disputes, nothing in this Annexure shall prevent either party 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.

- 6.14 A party may request a joint investigation of Invoice discrepancies after that party has conducted a comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the parties must agree on the terms of the joint investigation, including the scope of the joint investigation, how the joint investigation will be conducted and the date by which the joint investigation must be concluded. The joint investigation may include the generation of test calls to the other party's Network.
- 6.15 Enquiries relating to billing, collecting and settlement arrangements or in relation to Network and operational issues may be directed to the Billing Representatives nominated by each party.
- 6.16 Either party may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- 6.17 If the Billing Dispute Escalation Procedure has been exhausted, either party may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the Act.

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### **7. CHAPTER 7 –TERMINATION, SUSPENSION AND OTHER PROVISIONS**

#### **7.1. Term**

The Operators shall enter into an Access Agreement for a term of no less than three (3) years from the execution date of the said Access Agreement.

#### **7.2. Termination**

Subject to Section 7.5 herein, OCKSE may terminate an Access Agreement or part thereof if any of the circumstances referred to in Section 7.2(a), 7.2(b) or 7.2(c) below apply and OCKSE has notified the Access Seeker of its intention to terminate the Access Agreement:

- d) the Access Seeker has materially breached the Access Agreement and OCKSE has notified the Access Seeker that it will terminate the said agreement in no less than one (1) month if the Access Seeker does not remedy its breach by the end of that period; or
- e) the Access Seeker is subject to a winding up order (whether compulsorily or voluntarily) or cease to trade in normal course of business or become insolvent or a receiving order has made against it or has entered into any agreement or composition with or assignment for the benefit of its creditors or the Access Seeker's assets are subject of any form distress or execution or any analogous insolvency event related to the Access Seeker has occurred in any jurisdiction ; or
- f) a Force Majeure has continued for a period of more than three (3) months, OCKSE shall forward to the Commission a copy of the notice of termination at the same time as providing the notice of termination to the Access Seeker. For clarifications, a notice to be given under this subsection 7.2 is in addition to the notice required under subsection 7.5 of this RAO.

#### **7.3. Change in Law**

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

#### **7.4. Suspension**

Subject to Section 7.5 herein, OCKSE may only suspend access to any Access Service(s) in the following circumstances:

- a) the Access Seeker is in breach of a material obligation and fails to remedy such breach within thirty (30) days of receiving written notice from OCKSE to remedy such breach;

## OCKSE'S RAO – CHAPTER 7

- b) the Access Seeker's Facilities materially adversely affect the normal operation of OCKSE's Network or are a material threat to any person's safety;
- c) the Access Seeker's Facilities or the supply of Access Service(s) pose an imminent threat to life or property of OCKSE, its employees or contractors;
- d) the Access Seeker's Facilities cause material physical or technical harm to any Facilities of OCKSE or any other person;
- e) where the Access Seeker has failed to pay Invoices in accordance with Chapter 6 of this RAO (and subject to any right that the Access Seeker has under Chapter 6 of this RAO to dispute any amount in an invoice);
- f) where the Access Seeker has failed to provide the new security amount under subsection 7.11, 7.12 and Section 4.3 of this RAO;
- g) where Force Majeure applies; or
- h) the Access Seeker breaches any laws, regulations, rules or standards which has a material adverse effect on OCKSE or the provision by OCKSE of Access Service(s) under the Access Agreement.

For the purposes of this Section 7.4, OCKSE must provide the Access Seeker five (5) Business Days' notice in writing, including written reasons, prior to suspending access to any Access Service(s). OCKSE shall forward to the Commission a copy of the notice of suspension at the same time as providing the notice of suspension to the Access Seeker. For clarification, a notice to be given under this subsection 7.4 is an addition to the notice required under subsection 7.5.

### 7.5. Notice

Prior to terminating or suspending or seeking to materially vary an Access Agreement or access to any Access Service(s) provided under it, OCKSE must notice the Commission in writing of the action it proposes to take and the reasons why such action is appropriate. OCKSE shall not terminate, suspend or seek to materially vary the Access Agreement or access to any Access Service(s) until such time and on such conditions, as the Commission may specify. OCKSE:

- a) Shall give effect to the proposed termination, suspension or material variation with Commission's written consent and subject to any time delay or any conditions which the Commission may specify (if any);
- b) must not give effect to the termination, suspension or material variation unless OCKSE has received written consent from Commission to such termination, suspension or material variation; and
- c) shall take all steps practicable to minimize disruption, inconvenience to the Customer to the Access Seeker, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the termination or suspension of the Access Agreement or access to the Access Service provided.

### **7.6. Undertakings**

If the parties to an Access Agreement adopt the terms and conditions specified in an undertaking that has been registered with the Commission in accordance with the Act, the parties must notify the Commission within five (5) Business Days of such adoption. In such circumstances, the terms and conditions of the Access Agreement will continue to be in force for the remainder of the term of that Access Agreement, even if the access undertaking is withdrawn or expires prior to the expiry of that term.

### **7.7. Post-termination fees**

OCKSE shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any Access Service(s) provided under it except:

- a) Charges invoiced in arrears and not yet paid; or
- b) Subject to Clause 7.9 of this Chapter 7, charges arising during an applicable minimum contractual period (as described in Section 7.1 above), provided that:
  - i. such charges must be reduced to reflect any cost savings from OCKSE not having to supply the Access Service to the extent that they have been terminated or suspended; and
  - ii. OCKSE must use reasonable endeavor to mitigate its cost of termination or suspension and maximize cost savings under paragraph 7.7(b)(i) above.

### **7.8. Upfront charges refund**

On termination of an Access Agreement or access to any Access Service(s) provided under it, OCKSE shall refund to the Access Seeker all amounts paid in advance to the extent that the amount (or part of the amount calculated on a pro-rata basis) relate to the period after the date of effect of such termination.

### **7.9. Deposits and guarantees**

Notwithstanding the obligation in subsection 7.8, OCKSE shall:

- a) within two (2) months of termination of the Access Agreement refund to the Access Seeker any deposit paid (without interest) provided all other amounts payable by the Access Seeker to OCKSE have been paid; and
- b) Immediately upon termination of the Access Agreement unconditionally waive any rights under any guarantees provided by the Access Seeker except in respect of amounts payable by the Access Seeker to OCKSE as at the date of termination.

### 7.10. Intellectual Property Rights

The Operators agree not to use any patent, trade mark, trade name, house mark, service mark, designs, copyright, database rights, know-how and any other type of intellectual property rights belonging to the Other Operator or any of its affiliates without the prior written consent of the Other Operator for purposes including but not limited to any advertising, publicity releases or sales presentations.

### 7.11. Security Review

An Operators shall only vary the amount and type of any security requirement imposed on another Operator:

- a) a maximum of once in any twelve (12) months period;
- b) if there is material increase in the credit risk to the Operator due to changes in either or both of the circumstances under paragraph 4.3.1(i) and 4.3.1(ii) of this RAO; and
- c) if the Operator determines, acting reasonably, that the variation will materially reduce or removed the increased of credit risk

If the amounts contained in invoices are disputed in good faith, this will constitutes a material increase in the credit risk to the Operator for the purpose of paragraph 7.11(b) above.

### 7.12. Force Majeure

7.12.1. If a Party (“Affected Party”) is prevented from performing any of its material obligations under this Agreement (but shall not include any of the Customer’s payment obligations) by reason of Force Majeure, it must immediately notify the other Party (“Other Party”) in writing of the circumstances constituting the event of Force Majeure and must keep the Other Party regularly informed of the progress in resolving the event of Force Majeure and use all reasonable steps to minimize the adverse effects of the event of Force Majeure on the performance of its obligations under this Agreement.

7.12.2. If the delay in performance or non-performance of the Affected Party’s obligations due to the event of Force Majeure is continuous for a period of ninety (90) days from the date of the Affected Party’s written notification under Section 7.2(c), then either Party shall have the right to terminate this Agreement with immediate effect and neither Party shall have any claim against the other in respect of such termination save for antecedent breaches. Provided that if the terminating Party is OCKSE, OCKSE shall first inform the Commission by way of a notice in writing on the action of which OCKSE proposes to take and the reasons why such action is appropriate. OCKSE may send forthwith a notice of termination to the Access Seeker and the copy of the same shall be forwarded to

the Commission simultaneously, subject always to the term that such termination will only be effective upon receipt of the Commission's written consent on the proposed termination and subject to any time delay or conditions which the Commission may specify (if any).

### **7.13. Review**

#### **7.13.1. 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;
- c) there are any amendment, changes or modifications to the Act, its subsidiary legislation and the instruments issued thereunder, including but not limited to the Access Pricing Determination and the MSA Determination and the Access List , 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.

7.13.2. The obligation to negotiate set out in Conditions 7.14.1 commences promptly after delivery of a notice from one (1) Operator to the other Operator setting out in reasonable detail, the amendments sought.

### **7.14. Governing Law**

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

### **7.15. Assignment**

Neither party shall be entitled to assign, transfer or novate any of its rights, obligations or liabilities without the prior written consent of the other party.

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## OCKSE'S RAO – SCHEDULE A

### SCHEDULE A

#### TECHNICAL AND OPERATIONAL MATTERS

##### PART I - FORECASTING

###### 1. General

- 1.1. Part I of Schedule A sets out forecasting procedures that are applicable only in relation to the provision of Access Services listed in the OCKSE RAO.
- 1.2. Where relevant, the forecasting obligations set out in Section 5.6 of the MSA Determination shall be applicable.

###### a) Forecasting Requirements

- 2.1. The Access Seeker is required to provide forecast for the Infrastructure Sharing Service
- 2.2. The Access Seeker shall provide a forecast on an annual basis and reviewed on an annual basis
- 2.3. The Access Seeker shall meet the requirements of forecasting process that enables OCKSE to plan for the expected need for Access Service(s) in order to carry the forecasted traffic and conform to Grade of Service Standards.

##### PART II - ORDERING AND PROVISIONING

###### i. General

- 1.1. Part II of Schedule A sets out ordering and provisioning procedures that are applicable only in relation to the provision of Access Services listed in the OCKSE RAO.
- 1.2. Where relevant, the ordering and provisioning obligations set out in Section 5.7 of the MSA Determination shall be applicable.
- 1.3 **Contact Point of Mechanism:** The Access Provider shall designate and notify an Access Seeker of one or more of the following: a person to whom Orders for access to Facilities and/or Services are to be delivered; a contact point to which Orders for access to Facilities and/or Services are to be delivered (such as an e-mail address); and a mechanism where Orders for access to Facilities and/or Services can be made, provided that if such a mechanism is the only method which the Access Provider provides for the receipt of Orders for that Facility and/or Service, the Access Provider cannot require the Access Seeker to unreasonably invest in specialised technology or systems.

## OCKSE'S RAO – SCHEDULE A

- 1.4 **Order content:** Prior to access being provided, an Access Provider may require an Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. An Access Provider may request an Access Seeker to provide, at a level of detail (sufficient for planning and provisioning), the following information in an Order for access to Facilities and/or Services which includes the Facilities and/or Services to which access is requested, a requested date and time for delivery, the location of the points of delivery, Equipment of the Access Seeker to be used in connection with the Order, to the extent it may adversely affect the Access Provider's Network; and such other information that the Access Provider reasonably requires in order for it to provision access to the Facilities and/or Services as requested by the Access Seeker, provided that such information shall not include any information which the Access Provider does not require from itself for similar provisioning, identifies, or which enables the identification of, a Customer or services of the Access Seeker or is non-permitted information under subsection 5.4.16 of the MSA Determination.
- 1.5 **Use of ordering information:** Ordering information provided by the Access Seeker shall be treated by an Access Provider as Confidential Information of the Access Seeker and shall only be used by those persons within the Access Provider whose role is within the Access Provider's wholesale group and that part of the network engineering group of the Access Provider responsible for interconnection or access, for the purpose of responding to and provisioning for the Order.
- 1.6 **Acknowledgment of receipt:** An Access Provider shall acknowledge receipt of an Order for Facilities and/or Services, in writing (or any other material or electronic form as agreed by the parties), within the two (2) business days from the date of receipt of an Order for Facilities and/or Services.
- 1.7 **Notice of Receipt:** The Access Provider must include in its Notice of Receipt the following information which is the time and date of receipt of the Order, a list of any additional information reasonably required by the Access Provider from the Access Seeker to provision the Order, if the relevant Facilities and/or Services available to the Access Provider are below the capacity required to provide the relevant Facilities and/or Services to the Access Seeker, the Access Provider shall inform the Access Seeker of the available capacity and timeframe for the fulfilment of the Order at the available capacity and (if relevant) with such augmentation as may be required to fulfil the Order as submitted, whether the Access Provider needs to perform post-Order Service Qualification because information is not readily available to the Access Provider, together with the reasons for needing to undertake the Service Qualification and the position of the Order in the Access Provider's queue.
- 1.8 **Further information:** The Access Provider shall allow the Access Seeker a period of up to ten (10) Business Days after a request for additional information to provide the Access Provider with such information.

## OCKSE'S RAO – SCHEDULE A

- 1.9 **Withdrawal of Order following Service Qualifications:** An Access Provider shall permit an Access Seeker to withdraw its Order without penalty (irrespective of whether the Access Provider has accepted the Order or not) before the earlier of; ten (10) Business Days after the Access Seeker receives the result of a Service Qualification and; one (1) Business Day before the Access Provider 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 the Access Provider, which may be in the form of a Notice of Acceptance if civil works is to occur after the Access Provider has accepted the Order.
- 2.0 **Acceptance obligation:** An Access Provider must use its reasonable efforts to accept and fulfil Orders from the Access Seeker for Facilities and/or Services which comply with a Forecast accepted by the Access Provider pursuant to subsection 5.6 of the MSA Determination.
- 2.1 **Time for acceptance or rejection:** The Access Provider must notify the Access Seeker within fourteen (14) days of receiving an Order that an Order is accepted or rejected within the specified timeframe in the Service Specific Obligations; or the timeframe within which it accepts or rejects equivalent Orders for itself; whichever is shorter. If the Access Provider notifies the Access Seeker that an Order is rejected, the Access Provider must advise the Access Seeker whether the Access Provider would be able to accept the Order in a modified form.
- 2.2 **Notice of Acceptance:** An Access Provider's Notice of Acceptance to the Access Seeker must contain the following information which is; (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 the Access Provider, then no later than the indicative delivery timeframe or activation timeframe specified in the Service Specific Obligations or the period of time taken by the Access Provider 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 fulfil the Order; (d) such information as is reasonably necessary for the Access Seeker to benefit from access to the Facilities and/or Services; and (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").

For avoidance of doubt, the following are the indicative delivery timeframe stated above:

Order type	Indicative delivery timeframes
All Orders involving augmentation of capacity on existing Facilities and	Forty (40) Business Days

infrastructure relevant to the Services that are subject of the Order	
All Orders involving the provision of new Facilities and infrastructure relevant to the Services that are subject of the Order	One Hundred Twenty (120) Business Days

2.3 **Access Seeker's confirmation:** The Access Seeker's confirmation of an Order is not required if the Access Provider accepts the Order without change. A change may include circumstances where delivery 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 the Access Provider can proceed with the Order. Where the Access Seeker's confirmation is required for the Access Provider to proceed with fulfilling an Order as provided for under the aforementioned, the Access Provider 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, the Access Provider shall fulfil the Order in accordance with the Notice of Acceptance.

2.4 **Estimated charges:** If the Notice of Acceptance provided by the Access Provider contains estimates of charges (e.g. based on time and materials):

- a. the Access Provider shall not exceed the estimate without providing the Access Seeker with a written notice prior to exceeding the estimate that the estimate will likely be exceeded; an explanation of the reasons for exceeding the estimate; and a further estimate of the charges for the work necessary to fulfil the Order;
- b. the Access Provider shall permit the Access Seeker to withdraw the Order without penalty within ten (10) Business Days of the notice given by the Access Provider under the paragraph above if the revised estimate in that notice exceeds the original estimate by more than ten percent (10%);
- c. where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope of work provided by the Access Provider due to information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker; or a change in the scope of work by the Access Seeker, the Access Seeker shall be obliged to pay the Access Provider for the actual cost incurred (but in no other circumstances); and
- d. the Access Provider shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate, whereby such confirmation is to be provided by the Access Seeker within the timeframe set out in sections 2.2(e) or 2.4(b) of this Part II, as applicable.

## OCKSE'S RAO – SCHEDULE A

- 2.5 **Reasons for rejection:** An Access Provider may only reject an Order from an Access Seeker where; (a) subject to subsection 5.4.17 of the MSA Determination, (as if references to “Access Request” in that subsection were references to “Order”), it is not technically feasible to provide access to the Facilities and/or Services requested by the Access Seeker; (b) subject to compliance with subsections 5.7.31 and 5.7.32 of the MSA Determination, the Access Provider has insufficient capacity to provide the requested Facilities and/or Services; (c) subject to subsection 5.7.19 of the MSA Determination, the Order is in excess of the agreed Forecast levels; (d) the Order or variation request duplicates an Order awaiting fulfilment; (e) the Access Seeker has not obtained the necessary related agreements from the Access Provider; (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 the Access Agreement and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g. through the application of a security requirement in accordance with this Standard); 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 the Access Provider's satisfaction, acting reasonably (e.g. through the application of reasonable security or escorted access requirements).
- 2.6 **Notice of rejection:** An Access Provider's notice of rejection of an Order to the Access Seeker must: set out the grounds on which the Access Provider 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 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 reasons for rejection and alternative methods of compliance.
- 2.8 **Delivery dates:** The Access Provider 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 section 2.10 of this Part II.
- 2.9 **Early delivery dates:** If the Access Provider, in the normal course of business, is able to offer a delivery date earlier than the delivery date that would otherwise apply, it 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.
- 2.10 **Delayed delivery dates:** Where there is a delay in the delivery of an Order, and the delay is caused by the Access Provider, the Access Provider shall notify the Access Seeker of the delay to the delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay; the Access Provider shall permit the Access Seeker to cancel the Order without penalty if the delay is longer than the equivalent time period

## OCKSE'S RAO – SCHEDULE A

for delivery of the Facility and/or Service; and the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date. Where the delay is caused by the Access Seeker, the Access Provider shall notify the Access Seeker of the delay to the delivery date as soon as practicable after the Access Provider becomes aware of it, the Access Provider and Access Seeker must work together to minimize the delay; and the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date.

- 2.11 **Cancellation and variation of Orders:** An Access Provider shall allow an Access Seeker to cancel or vary an Order at any time subject to section 2.12 of this Part II.
- 2.12 **Cancellation or variation penalty:** Except where this RAO provides that cancellation of an Order is to be at no penalty the Access Provider may impose a charge for the cancellation or variation of the Order and the charge which the Access Seeker is required to pay shall not exceed the lesser of the sum of costs necessarily incurred by the Access Provider which is directly attributable to the cancellation or variation or 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 Access Provider used its best endeavours to do so.
- 2.13 **Testing and provisioning:** An Access Provider shall co-operate with the Access Seeker in relation to the testing and provisioning of ordered Facilities and/or Services and treat an Access Seeker's testing and provisioning on an equivalent basis to that which the Access Provider treats testing and provisioning for itself.
- 2.14 **Queuing policy:** An Access Provider shall establish and maintain a queuing policy for each Facility and/or Service, which shall be non-discriminatory, shall be applied to Orders and Service Qualifications of all Access Seekers 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 Access Seekers on an equivalent basis to that which the Access Provider treats Orders and Service Qualifications for itself for the same or similar Facilities and/or Services and shall seek to maximise the efficiency of its ordering and provisioning process.
- 2.15 **Acceptance on queue:** An Access Provider shall promptly notify an Access Seeker at the time of providing an acknowledgment of receipt of the Order under section 1.6 of this Part II (and as specified in the Notice of Receipt under section 1.7 of this Part II), of their acceptance of, and position in, the Access Provider's queue.
- 2.16 **Constrained capacity:** If an Access Provider reasonably believes that the capacity in any Facilities and/or Services required by the Access Seeker pursuant to the relevant Forecast and/or Order, other Access Seekers, pursuant to their relevant Forecasts and/or Orders

## OCKSE'S RAO – SCHEDULE A

and the Access Provider, for the 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 the Access Provider will be in a position to be able to provide, the Access Provider must notify all Access Seekers to whom relevant capacity is supplied and allocate the available capacity between itself, the Access Seeker and other Access Seekers in accordance with the Access Provider's Capacity Allocation Policy.

**2.17 Capacity Allocation Policy:** If the Access Provider claims or is likely to claim that it has insufficient capacity to meet an Access Seeker's Forecasts or Orders, the Access Provider shall maintain a Capacity Allocation Policy, which shall be disclosed, free of charge, to each Access Seeker upon entry into an Access Agreement, the Commission upon the Effective Date, to both Access Seekers with whom the Access Provider has an Access Agreement and the Commission each time it is amended, and any other Operator on request, shall set out the principles in accordance with which the Access Provider 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 Operator, in circumstances where the amount of capacity available is less than the aggregate of capacity required by the Access Provider's own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest, and the other Operator shall be fair and reasonable, be consistent, so far as practicable, with the Access Provider's general duty of non-discrimination in accordance with subsection 149(2) of the Act, treat the requirements of all Access Seekers on an equivalent basis to the requirements of Access Provider's own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest and allocate the available capacity in the relevant Facilities and/or Services in proportion to each Operator's Forecast and/or Order requirements and shall set out the Access Provider's plans to expand their capacity over time (if any), where such information must be provided to Access Seekers on a non-discriminatory basis in terms of its content and frequency of updates.

**2.18 Late delivery:** If an Access Provider fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with section 2.10 of this Part II, except where such failure has been caused solely by the Access Seeker's delay or a lack of authorisation by a third party, the Access Provider shall, without limitation to any other rights the Access Seeker may have under subsection 5.7 of the MSA Determination or law, provide a rebate to the affected Access Seeker. If the Access Provider is solely at fault, Access Provider shall pay the Access Seeker of the Designated Tower or Associated Tower Site as liquidated damages in the sum of Ringgit Malaysia Five Hundred (RM500-00) per day, subject to a maximum of Ringgit Malaysia Ten Thousand (RM10,000-00) only per Designated Tower or Associated Tower Site. If the Access Provider alleges that a failure has been caused solely by the Access Seeker's delay or a lack of authorisation by a third party, the Access Provider shall have the burden of demonstrating that allegation; and that the

## **OCKSE'S RAO – SCHEDULE A**

Access Provider has done all things reasonably practicable to minimise or avoid such failure.

### **i. Ordering Procedures**

- 2.1. Subject to Section 2.2, the Operators may place firm orders for Services.
- 2.2. The Access Seeker shall ensure that the order contains enough information to enable OCKSE to assess and fulfil the order.
- 2.3. When an order is placed, the Access Seeker should give OCKSE a priority list, allowing for progressive delivery and setting out its preferred order of delivery.

## **PART III- OPERATIONS AND MAINTENANCE (not applicable)**

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## **OCKSE'S RAO – SCHEDULE B**

### **SCHEDULE B**

#### **SERVICE DESCRIPTION**

#### **PART 1 – INFRASTRUCTURE SHARING**

##### **1. General**

- 1.1. Part 1 of Schedule B sets out the terms and conditions which are applicable to Infrastructure Sharing.
- 1.2. Where relevant, service specific obligations set out in subsection 6.8 of the MSA Determination shall be applicable.

##### **2. Pre-Requisites for Applying for Infrastructure Sharing**

- 2.1. OCKSE shall not be obliged to provide to the Access Seeker Infrastructure Sharing for the Designated and/or Associated Tower Sites, as the case may be, unless:
  - 2.1.1. OCKSE:
    - a) is the legal owner of the Designated Tower and the land on which the Designated Tower resides; or
    - b) has exclusive rights of use of the land pursuant to a lease or tenancy agreement on which the Designated Tower resides and the Access Provider has been granted the requisite approval by the owner or landlord of said land to permit the Access Seeker to use the said land in accordance with the terms herein contained;
  - 2.1.2. the Access Seeker has the appropriate license under the Act and its subsidiary legislation to operate the service for the purpose for which the equipment is to be installed and other approvals from relevant authority, where required;
  - 2.1.3. there is sufficient space.

##### **3. Infrastructure Sharing**

- 3.1. OCKSE agrees to provide Infrastructure Sharing at the designated tower ("**Designated Tower or Associated Tower Sites**") to the Access Seeker in accordance with the terms of this Agreement including the relevant Terms and Conditions for Technical Matters and the terms and conditions of this Part 1 of Schedule B.

## OCKSE'S RAO – SCHEDULE B

3.2. The list of the Designated Tower and Associated Tower Sites may be obtained from the OCKSE upon written request.

### 3.3. Duration of Infrastructure Sharing

3.3.1. Infrastructure Sharing at a Designated Tower or Associated Tower Site, agreed between the Operators, shall be for a fixed period of three (3) years unless a lesser period is stipulated by OCKSE (where OCKSE's right to use the land on which the Designated Tower or Associated Tower Site is located is less than three (3) years) and may be further renewed subject to the mutual agreement of the Operators. The Access Seeker shall within six (6) months prior to the expiry of the term of the Infrastructure Sharing notify OCKSE in writing as to whether or not it wishes to renew the term of the Infrastructure Sharing.

3.3.2. The term of the Infrastructure Sharing shall commence on the date ("**Start Date**"):

- a) OCKSE agrees to make available for physical possession the shared space ("Shared Space") at the Designated Tower or Associated Tower Site; or
- b) the Access Seeker takes physical possession of the Shared Space at the Designated Tower or Associated Tower Site, whichever is the earlier.

## 4. **Access Seeker's Obligations**

### 4.1. Utilities

4.1.1. The Access Seeker shall be responsible to apply for its own individual meter and power supply to the Shared Space and shall be further responsible for and bear the cost of all electricity utilised by the Access Seeker at the Shared Space.

4.1.2. In the event that the Access Seeker's application to the relevant authority for an individual meter is not successful, the Access Seeker may:

- a) subject to the OCKSE's prior written approval, utilise the electricity supplied to OCKSE at that premises provided that:
  - i. OCKSE is of the opinion that the electricity power load is sufficient to be shared with the Access Seeker and other access seekers within its tower or associated tower site; and
  - ii. the Access Seeker reimburse OCKSE for all electricity charges utilised (and any additional charges for back-up power) by the Access Seeker at the Shared Space, the charges of which are set out in Part 1 of Schedule C; or

## OCKSE'S RAO – SCHEDULE B

- b) where OCKSE is not able to provide the electricity supply to the Access Seeker, the Access Seeker shall be entitled to bring and install its own generator at the Shared Space at the Designated Tower or Associated Tower Site.

### 4.2. To Permit OCKSE to Enter and View Condition

- 4.2.1. The Access Seeker shall permit the OCKSE and his agents, servants and contractors, to enter the portion of the Shared Space under the possession of the Access Seeker which has been enclosed or secured or otherwise not accessible by OCKSE ("**Secured Shared Space**") at such reasonable times for the purpose of viewing the state and condition thereof or for any other reasonable purpose PROVIDED ALWAYS that the Access Seeker is given a two (2) Business Days prior written notice. The Access Seeker may at its discretion assign an escort to be present at all times during the time of inspection provided that if the escort is not present within a reasonable time, OCKSE shall not be prevented from entering the Secured Shared Space without an escort.
- 4.2.2. Notwithstanding Condition 4.2.1, OCKSE shall in the event of an emergency be entitled upon the provision of an advance verbal notice (which shall be followed by a written notice within twenty four (24) hours) be entitled to enter the said Secured Shared Space and take reasonable actions as the circumstances dictate to address the emergency situation.

### 4.3. Use of Shared Space

- 4.3.1. The Access Seeker shall only use the Shared Space for the sole purpose of providing its Communication Services and shall not do or permit to be done any act or thing which is illegal or may become a nuisance or give reasonable cause for complaint from the owner or any of the other access seekers in OCKSE's Designated Tower or Associated Tower Site or any other buildings adjoining the tower or associated tower site.
- 4.3.2. If the Access Seeker has not complied with Condition 4.3.1, the Access Seeker shall take the necessary rectification or remedial action to address any legitimate complaints made by OCKSE or other access seekers in the Designated Tower or Associated Tower Site.
- 4.3.3. The Access Seeker's right to use the Shared Space and the right of access does not entitle the Access Seeker to any proprietary rights or interest whether under statute, common law, equity or any theory of law in any building, land, fixture, other structure or in or to the Designated Tower or Associated Tower Sites save for the Access Seeker's own equipment.

## **OCKSE'S RAO – SCHEDULE B**

4.3.4 Owner unless OCKSE signifies in writing that it is no longer interested in the use of the Designated Tower or Associated Tower Sites or OCKSE does not renew or take a lease or tenancy or licence of the Designated Tower or Associated Tower Site within six (6) months from the date of expiry.

### **4.4. Storage**

The Access Seeker shall not permit to be kept on the Shared Space or any part thereof:

- a) any materials the storage of which may contravene any ordinance, statute, regulation or by-law;
- b) any materials the storage of which an increased rate of insurance is usually required; or
- c) any explosive, combustible or radioactive substances except for fuel in the generator set.

### **4.5. Increase in Premium**

The Access Seeker shall not do or permit to be done anything which would render the insurance policy or policies with respect to OCKSE's Designated Tower or Associated Tower Site on which the Shared Space is located void or voidable or whereby the premium of the said policy or policies may be increased. In the event of an increase in premium or other expenses on renewal of such policy of policies due to a breach or non-observance of this condition by the Access Seeker, the Access Seeker undertakes to repay all sums paid by OCKSE including the expenses incurred thereto.

### **4.6. Repairs**

4.6.1. In the event of any damage caused to the Shared Space by the Access Seeker, the Access Seeker shall, at its own cost and expense, restore and to forthwith make good within a reasonable time any replacement and/or repair (fair wear and tear excepted) as specified in the notice in writing given by OCKSE to the Access Seeker specifying therein all necessary replacements and/or repairs to be effected as may be commensurate with the extent of the damage.

4.6.2. If the Access Seeker fails to effect the replacements and/or repairs within the time period stipulated in the notice (which period must be a reasonable time), OCKSE may, whether or not together with its workmen, enter the Shared Space and make all necessary replacements and/or repairs to the plant, facilities and equipment. The costs for all such necessary replacements and/or repairs shall be a debt due from the Access Seeker and shall be recoverable by OCKSE save where the replacements and/or repairs were due to the natural failure of the structure or due to the Access Provider.

## OCKSE'S RAO – SCHEDULE B

### 4.7. Tenantable Condition

The Access Seeker shall keep the Shared Space and the interior thereof including the flooring and interior plaster or other surface material or rendering on walls or ceilings and OCKSE's fixtures thereon including doors, windows, glass shutters, locks, fastenings, electric wires, installations and fittings for electricity supply and other fixtures and additions and other goods therein including the items specifically attached thereto, if any, in good and tenantable repair and condition (reasonable wear and tear excepted).

### 4.8. Consents, Licenses and Approvals

4.8.1. The Access Seeker shall be fully responsible to obtain all relevant consents, permits, approvals and licenses from third parties and governmental authorities or agencies to carry out/provide its Communications Services at the Shared Space including operating and using all equipment, systems, cables, links and devices.

4.8.2. The Access Seeker shall further observe and comply with all relevant laws, by-laws, rules and regulations affecting the Access Seeker which are now in force or which may hereafter be enacted.

4.8.3. The Access Seeker shall further observe and perform and cause all its employees, independent contractors, agents or invitees to observe and perform all rules and regulations made applicable to OCKSE, including but not limited to land and building by-laws, rules and regulations, which are equally applicable to all Access Seekers from time to time and notified to the Access Seeker in writing Provided Always that OCKSE shall not be liable to the Access Seeker in any way for violation of the rules and regulations by any person including the Access Seeker or its employees, independent contractors, agents or invitees save where OCKSE has been negligent.

### 4.9. Installation of Equipment

4.9.1. The Access Seeker shall ensure that all equipment, system or devices on the Shared Space shall:

- a) be type-approved and comply with all relevant laws and regulations;
- b) not cause any frequency interference to any other access seekers' equipment or services provided in or around the Shared Space. Where the Access Seeker's equipment causes frequency interference to the other access seekers' equipment or services provided in or around the Shared Space, the Access Seeker shall immediately (and in any event no longer than twenty-four (24) hours after the date of the Access Provider's notice) take all such necessary steps to stop any such interference;

## OCKSE'S RAO – SCHEDULE B

- c) be electromagnetically compatible in accordance with the prescribed standards and shall not cause electromagnetic interference to any other access seekers' equipment or services provided in or around the Shared Space. Where the Access Seeker's equipment causes electromagnetic interference to other access seekers' equipment or services provided in or around the Shared Space, the Access Seeker shall immediately (and in any event no longer than twenty-four (24) hours) take all such necessary steps to stop any such interference; and/or
- d) not be connected to any equipment belonging to OCKSE without the written consent from OCKSE.

Provided that in Clause 4.9.1 (b) and (c), if OCKSE ascertains that the source of the interference cannot be located within twenty-four (24) hours after the date of the Access Provider's notice, both OCKSE and the Access Seeker shall meet as soon as possible, and in any case, within twenty-four (24) hours of notice by OCKSE and jointly examine each other's Network, network facilities, network services or Equipment to locate the source of the interference.

4.9.2. In the event that:

- a) the Access Seeker fails to fulfil its obligations under Condition 4.9.1 above; or
- b) the equipment, system or devices of the Access Seeker is or poses an imminent threat or danger to the public health and safety or the Access Provider and/or other access seeker's facilities, equipment, device or system,

OCKSE may direct the Access Seeker to take such remedial action as may be necessary to remedy such breaches including temporary shutting down of the equipment, system or devices.

4.9.3. The Access Seeker shall only be permitted to install its equipment, system and/or devices (which shall include any equipment, system and/or devices leased or hired to be used solely for its Communications Services) on the Shared Space for the provision of its Communications Services and shall not be permitted to install any other operator's equipment, system and/or devices on the Shared Space without the prior written approval of OCKSE.

4.9.4. The Access Seeker shall not damage, tamper, modify, alter or handle any equipment, system or devices belonging to OCKSE or any other access seeker in the Shared Space without the prior written approval of OCKSE and/or the other access seeker.

4.9.5. The Access Seeker is responsible for insuring its equipment and shall purchase the necessary insurances when carrying out any works including installation works on OCKSE's

## OCKSE'S RAO – SCHEDULE B

Designated Tower or Associated Tower Sites. In particular, the Access Seeker shall obtain or procure a comprehensive general liability insurance not exceeding Ringgit Malaysia Twenty Million (RM20,000,000.00) for any one claim or series of claims arising out of an occurrence in connection with the Access Agreement that may be entered into whereby OCKSE is a named insured (either solely or jointly) in the insurance policy. In addition, the Access Seeker shall also procure insurance for workers' compensation, social security, employers' liability insurance and insurance within Malaysian statutory limits in respect of its employees in connection with the work covered by the Access Agreement that may be entered into.

### 4.10. Installation of Electrical Points and Plumbing Connection

The Access Seeker shall install any electrical sockets, plugs or electrical power points or electrical motor or engine or appliances or make any additional plumbing connections on or to the Shared Space after obtaining the written consent of OCKSE.

### 4.11. Safety and Health and Security Procedures

4.11.1. The Access Seeker and Access Provider shall comply with the provisions and requirements of the Occupational Safety and Health Act 1994 ("OSHA"). These provisions include the usage of personal protective equipment such as safety helmet, safety boots, safety goggles and other safety gadgets as prescribed by OSHA. Any failure to comply with OSHA by the Access Seeker shall be rectified immediately and if required by OCKSE, the Access Seeker shall comply with all actions specified by OCKSE including to cease or suspend work or to disconnect their Equipment from the power supply or source.

4.11.2. The Access Seeker shall exercise due care in the execution of their work so as to prevent accidents and are required to report any incidents including but not limited to accidents as a result of their works to OCKSE within twenty-four (24) hours from the time of the occurrence.

4.11.3. The Access Seeker shall comply and cause its employees, agents and contractors to comply with all guidelines, rules and regulations issued by OCKSE, if any (and which guidelines, rules and regulations equally apply to all access seekers) from time to time on site access and security procedures with respect to access to and use of the Shared Space. Further the Access Seeker shall undertake all such necessary measures to prevent unauthorised access to the Shared Space.

## **OCKSE'S RAO – SCHEDULE B**

### **4.12. Sub-letting and Assignment**

The Access Seeker shall not sub-let, assign or part with the possession of the Shared Space without the prior written approval of OCKSE. Where OCKSE allows the Access Seeker to sub-let the Shared Space, the Access Seeker shall be fully responsible for the acts and omission of its sub-lessee and shall ensure that its sub-lessee complies with all the Access Seeker's obligations with respect to the Shared Space under this Agreement.

### **4.13. Maintenance of Equipment**

4.13.1. The Access Seeker shall be responsible for the operation and maintenance of its Equipment, system and/or devices at the Shared Space.

4.13.2. OCKSE shall not be responsible for any damage to the Access Seeker's Equipment, system and/or devices at the Shared Space caused by fire, water leakage, air-conditioning/mechanical ventilation failure, power fluctuation/interruption and/or by any other causes or reasons unless due to OCKSE's negligence.

4.13.3. In the operation and maintenance of the Equipment, systems and/or devices at the Shared Space, the Access Seeker must:

- a) take such other action as a reasonably prudent Access Seeker would in operating and maintaining its Equipment, systems and/or devices;
- b) keep the Shared Space in a tidy and safe condition at all times; and
- c) ensure that flammable or toxic material is not left in or around the Shared Space following maintenance and/or other operations.

4.13.4. If a fault, defect or problem with the Access Seeker's Equipment, systems and/or devices at the Shared Space causes or may cause damage to the Shared Space and/or to OCKSE's and other access seeker's equipment and/or facilities, the Access Seeker must notify OCKSE in writing as soon as practicable and repair the fault, defect or problem or take other appropriate corrective action immediately to OCKSE's satisfaction.

4.13.5. If the Access Seeker detects a fault, defect or problem in the Shared Space, it must notify OCKSE as soon as possible.



## OCKSE'S RAO – SCHEDULE B

### 5. OCKSE's Obligations

#### 5.1. Exclusive Possession

The Access Seeker recognises that it does not have exclusive possession of the Shared Space since OCKSE occupies the Shared Space and may sub-let or intend to sub-let the Shared Space to other parties. However, the OCKSE agrees that it shall not tamper or handle any or interfere with equipment, system or devices belonging to the Assess Seeker at the Shared Space for the duration of the Infrastructure Sharing unless an emergency situation arises and immediate notice has been given to the Access Seeker.

#### 5.2. Payment of Quit Rents, Rates and Taxes

OCKSE will pay all quit rents, rates (save for utilities), taxes, assessments which are or may hereafter be charged upon the Shared Space. Any increase in quit rent, assessment, taxes or rates on the Shared Space after the date hereof shall be borne between OCKSE and all access seekers in proportion to their usage of space.

#### 5.3. OCKSE's Covenant

##### 5.3.1. In the event that:

- a) OCKSE is required by the relevant authorities to dismantle the infrastructure on the Designated Tower or Associated Tower Site; or
- b) any government or State authority or owner/landlord of the land on which the Designated Tower resides, requires OCKSE to vacate the land on which the Designated Tower resides for whatsoever reason, such that the Access Seeker is not able to install its equipment, system or devices thereon or to provide its Communication Services in the Shared Space, the Access Seeker and/or OCKSE may, notwithstanding the minimum term, terminate the Infrastructure Sharing at Shared Space without liability. The Operators agree that the remedies set out in this Condition 5.3 shall be the only remedy against OCKSE and OCKSE shall not be liable to the Access Seeker for any damages, costs and/or expenses including but not limited to the costs of dismantling and removing the Access Seeker's equipment, system or devices. However, OCKSE will use its reasonable endeavours to offer the Access Seeker other suitable Designated Tower or Associated Tower Sites subject to availability and upon terms and conditions and at a recurring charge not disadvantageous to the Access Seeker in respect of the Facilities that is proposed to be decommissioned, for a period not less than three (3) years from the date of decommissioning. OCKSE must provide all relevant Access Seekers with as much notice as possible.

## **OCKSE'S RAO – SCHEDULE B**

5.3.2. Where OCKSE is required by any governmental authority or agency or any state backed company to sell or dispose the Designated Tower to the governmental authority or its nominated person or entity, OCKSE must provide all relevant Access Seekers with as much notice as possible. In addition, OCKSE will use its endeavours (but does not guarantee that it will be able) to sell the Designated Tower subject to any existing rights of the Access Seeker to use the Shared Space on the Designated Tower and upon terms and conditions and at a recurring charge not disadvantageous to the Access Seeker in respect of the Designated Towers that is proposed to be sold or disposed, for a period not less than three (3) years from the date of sale or disposal. However, where the third party purchaser requires that the Access Seeker vacate the Shared Space prior to the sale of the Designated Tower, the Access Seeker shall dismantle its equipment, system and devices and vacate the Shared Space prior to the sale of the said Designated Tower to the third party unless a separate arrangement is reached between the Access Seeker and the third party purchaser. OCKSE shall use its reasonable endeavour (but does not guarantee that it will be able) to procure from third party purchaser adequate time for the Access Seeker to dismantle its equipment, system and devices. Any advance payment will be refunded on a prorated basis by issuing a credit note. The Operators agree that the Access Seeker and/or OCKSE may, notwithstanding the minimum term, terminate the Infrastructure Sharing at Shared Space without liability. The Operators agree that the remedies set out in this Condition 5.3 shall be the only remedy against OCKSE and OCKSE shall not be liable to the Access Seeker for any damages, costs and/or expenses including but not limited to the costs of dismantling and removing the Access Seeker's equipment, system or devices.

## **6. Vacating the Shared Space**

- 6.1. The Access Seeker shall on the expiration or termination of the Infrastructure Sharing at each Shared Space, at its own cost and expense, remove all its equipment, system and devices which may have been installed by the Access Seeker and to peaceably and quietly yield up the Shared Space to OCKSE with all OCKSE's fixtures and additions thereto in good and tenantable repair and condition in accordance with the covenants herein contained.
- 6.2. The Access Seeker shall be given:
  - 6.2.1. a grace period of ten (10) Business Days effective from the expiry or termination of the Infrastructure Sharing at the Shared Space; or

## **OCKSE'S RAO – SCHEDULE B**

6.2.2. where the Designated Tower is to be dismantled or OCKSE is to vacate the land on which the Designated Tower resides in accordance with Conditions 5.3.1 and 5.3.2, such reasonable grace period as may be specified by OCKSE taking into consideration the time lines provided by the relevant authorities or the owner of the land / landlord (including any extension obtained from the relevant authorities or the owner of the land / landlord) to the Access Provider to dismantle the Designated Tower or to vacate the said land provided always that the Access Seeker must vacate the Shared Space earlier than the stipulated time line provided to the OCKSE to enable OCKSE to comply with the requisite time lines, to vacate the Shared Space, during which no monthly rental will be charged by OCKSE. Should the equipment, system or devices not be removed within the grace period, OCKSE shall have the right to:

charge for the use of the Shared Space at the rate of two (2) times the current rental or the cost of reinstatement as debt due and payable; and

without any liability to the Access Seeker, dispose of the equipment, system or devices in such manner as OCKSE deems fit with a one (1) month's written notice. If the Access Seeker fails to settle any debt due for the use of the Shared Space, OCKSE shall have a lien on the equipment, system or devices and is entitled to retain such equipment, system or devices or to sell the equipment system or devices at any price in such manner as it deems fit for payment of any such debt and the cost of sale shall be borne by the Access Seeker. OCKSE shall be entitled to set off the proceeds from the sale of the equipment, system or devices against any and all debts due by the Access Seeker to OCKSE.

## **7. Utilities and ancillary services:**

7.1 The Access Provider must, where the relevant utilities and ancillary services are within the Access Provider's control, ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access to the same extent that the Access Provider provides to itself, including but not limited to:

- (a) access to roads;
- (b) access to land;
- (c) power, including the provision of back-up power;
- (d) environmental services (including but not limited to heat, light, ventilation and air-conditioning, fire protection);
- (e) security, taking care to ensure that its agents, representatives or subcontractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft; and
- (f) site maintenance.

## **OCKSE'S RAO – SCHEDULE B**

- 7.2 The utility and ancillary costs in respect of the network facilities as contemplated in Section 7.1 shall be apportioned (in accordance with fair and equitable principles) between the Access Provider and all Access Seekers at the relevant location.

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## OCKSE'S RAO – SCHEDULE C

### SCHEDULE C

#### CHARGES AND CHARGING PRINCIPLE

##### PART 1 – INFRASTRUCTURE SHARING

###### 1. General

1.1. Part 1 of Schedule C sets out the charges and the charging principles which would be applicable to Infrastructure Sharing Services.

###### 2. Charges and Charging Principles

###### Charges and charging principle for on-ground structure

Item	Site Type	UOM	Monthly Rental Rate up to 10 years License Term (RM)		
			Single Operator	2 Sharing Operators	3 Sh Operators
1	Tower, 76m	Per Site/Month	8100-9100	5000-6000	3500-4500
2	Tower, 60m	Per Site/Month	7200-8200	4500-5500	3100-4100
3	Tower, 45m	Per Site/Month	5500-6500	3500-4500	2500-3500
4	Monopole, 45m	Per Site/Month	6800-7800	4250-5250	2900-3900
5	Monopole, 30m	Per Site/Month	5700-6700	3550-4550	2600-3600
6	Monopole Tree, 45m	Per Site/Month	7300-8300	4600-5600	3300-4300
7	Monopole Tree, 30m	Per Site/Month	6000-7000	3800-4800	2700-3700
8	Lamp Pole, 30m	Per Site/Month	4500-5500	3300-4300	2700-3700
9	Lamp Pole, 24m	Per Site/Month	4200-5200	3000-4000	2500-3500

## **OCKSE'S RAO – ANNEXURE I**

### **ANNEXURE I**

#### **NON-DISCLOSURE AGREEMENT**

**THIS NON-DISCLOSURE AGREEMENT (“Agreement”)** is made on this day of  
**BETWEEN**

**OCK SETIA ENGINEERING SDN. BHD. SDN BHD (Company No. 1172518-D)**, a company incorporated under the laws of Malaysia and having its principle of business at No. 18, Jalan Jurunilai U1/20, Seksyen U1, Hicom Glenmarie Industrial Park, 40150 Shah Alam, Selangor.

(hereinafter referred to as “**OCKSE**”) of the first part; **AND**

[ ] (**Company No: [ ]**) a company incorporated under the laws of Malaysia and having its registered office at [ ] (hereinafter referred to as “the Company”) of the last part.

OCKSE and the Company shall be referred to individually as a “Party” and collectively as “Parties”.

#### **RECITALS**

#### **WHEREAS:**

- a) OCKSE holds NFP individual licence, NSP individual licence and ASP licence under the Communications and Multimedia Act 1998 and is authorized to provide access to certain network facilities and network services under its individual licences.
- b) The Company holds an [ ] individual and class licences under the Communications and Multimedia Act 1998 and is authorized to provide access to certain network facilities, network services and/or application services under its individual or class licences.
- c) OCKSE and the Company are considering a proposal for the interconnection of their networks and the provision of agreed access services (“Project”).
- d) For the purpose of the Project, it will be necessary and/or desirable for the Parties to disclose to each other various Confidential Information and the Parties have provided and will further provide information including but not limited to financial information, trade secrets and proprietary know how for the purpose of or in connection with the Project.
- e) The Parties hereby agree to enter into this Agreement to regulate their intention and understanding with respect to maintaining and preserving all

Confidential Information that are to be disclosed and which transpired between the Parties in relation to the Project subject to the terms and conditions hereinafter appearing.

**NOW THIS AGREEMENT WITNESSETH** as follows:

**1. DEFINITION**

**“Confidential Information”** The Parties hereby agree that for the purposes of this Agreement, Confidential Information shall mean and include:

- (a) information of whatever nature relating to the Disclosing Party which is obtained by the Receiving Party and/or its Representatives in written, pictorial or oral form from or pursuant to discussions, negotiations and/or correspondences with any of the Representatives of the Disclosing Party;
- (b) information of whatever nature relating to the business of the Disclosing Party obtained by observation during visits to the Disclosing Party's premises;
- (c) analysis, compilations, studies and other documents prepared by the Receiving Party, its officers, employees, agents or professional advisers which contain or otherwise reflect or are generated from the information specified (a) and (b) above; and
- (d) all information made available by the Disclosing Party to the Receiving Party in connection with directly or indirectly to this Agreement and the fact that discussions, negotiations and/or correspondences are taking, or have taken place in respect of the Contract or any of the terms, conditions or other facts with respect to any other offer.

Without limiting the generality of the foregoing, the expression Confidential Information shall also include all facts, data, specifications, drawings, reports, accounts, expressions of views, board papers, processes, formulae, matters of a technical nature, research and development information, business records, notes, products, know-how, trade secret, secret information, engineering, manufacturing, planning, employee details or other documents and things whether written, oral, electronic or in any other form disclosed and/or supplied by the Disclosing Party to the Receiving Party;

## OCKSE'S RAO – ANNEXURE I

<b>“Disclosing Party”</b>	means the Party from whom the Confidential Information originates and is disclosed to the Receiving Party;
<b>“Government Agency”</b>	means any federal, state, municipal or local government or regulatory department, body, political subdivision, commission, instrumentality, agency, ministry, court, judicial or administrative body, taxing agency or other agency having jurisdiction over either Party or the Contract;
<b>“Project”</b>	has the meaning ascribed in Recital (C);
<b>“Receiving Party”</b>	means the Party to whom the Confidential is given or disclosed; and
<b>“Representatives”</b>	mean the directors, officers, employees, affiliates, agents and representatives including without limitation financiers, brokers, advisors, lawyers and accountants.

## 2. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION

2.1. In consideration of the disclosure of the Confidential Information by the Disclosing Party or any third party on behalf of the Disclosing Party to the Receiving Party, the Receiving Party undertakes:

- a) to maintain the Confidential Information in strict confidence and to use it only for the purpose of or in connection of the Project;
- b) not to use any Confidential Information disclosed to it by the Disclosing Party for its own use or any other purpose or in a manner detrimental or competitive to the Disclosing Party;
- c) to disclose the Confidential Information only to such of its Representatives who have a need to know or whose services are reasonably required in connection with the Project and further, where disclosure is made to its Representatives, such disclosure is made on their written undertaking to comply with the confidentiality obligations in this Agreement;
- d) to promptly notify the Disclosing Party in writing of the names of the Representatives involved in the Project upon request being made by Disclosing Party at any given time;
- e) to apply no lesser security measures and degree of care to the Confidential Information than those which it applies to its own confidential or proprietary information and the Receiving Party further undertakes to provide adequate protection of such Confidential Information from unauthorised access, copying or use;



- f) not to copy reproduce and/or reduce to writing or any form of recording the Confidential Information or any part thereof except as may be reasonably necessary for the Project; and
  - g) not to remove any documents, files, records, correspondence, notes or other papers (including copies) of the Confidential Information from the Disclosing Party's premises, save and except with the written permission of an authorised Representative of the Disclosing Party and shall promptly return all such documents, files, records, correspondence, notes or other papers (including copies) of the Confidential Information to the Disclosing Party upon request by the Disclosing Party or on the completion of the Project.
- 2.2. Each Party agrees and undertakes with the other that it shall not without the prior written consent of the other Party disclose to any person (other than its Representatives and only on a need to know basis) the fact that the Confidential Information exists or has been made available, that it is in negotiations, discussions and consultation with the other Party in regard to the Proposal or any other proposal or transaction involving the other Party, or that discussions or negotiations are taking or have taken place concerning the Project or any term, condition or other fact relating to the Project or such discussions or negotiations, including, without limitation, the status thereof.
- 2.3. The obligations imposed upon the Parties herein shall not apply to information which:
- a) is in the possession of the Receiving Party at the time of disclosure as shown by the Receiving Party's use or files and records prior to the time of disclosure; or
  - b) prior or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any breach of this Agreement by the Receiving Party; or
  - c) is approved in writing for release by the Disclosing Party; or
  - d) is independently developed by the Receiving Party; or
  - e) is disclosed pursuant to a requirement or request of a Government Agency or law but only to the extent so ordered.

### **3. RETURN OF MATERIALS**

- 3.1 The Receiving Party shall immediately return to the Disclosing Party (or destroy, where delivery is not physically possible) all Confidential Information held by it or which is under its control, and all notes, calculations or summaries or other material derived or produced partly or wholly from any of the Confidential Information and any or all computer records (including copies, reproductions and recordings of them) derived or produced partly or wholly from any of the Confidential Information and shall, if requested by the Disclosing Party, provide to the Disclosing Party an undertaking from a duly authorised officer of the Receiving Party that to his personal knowledge all

such records have been delivered, erased or destroyed in the following circumstances:-

- a) when the Confidential Information is no longer required for the Project;
- b) on the demand of the Disclosing Party if the Receiving Party is in breach of this Agreement;
- c) if ordered by a court; or
- d) at the expiration of the period (if any) during or for which the Disclosing Party has agreed that the Receiving Party may have or continue to receive the Confidential Information.

#### **4. DISCLAIMER AND WARRANTY**

4.1 The Disclosing Party reserves all rights in its Confidential Information and no rights or obligations other than those expressly provided by this Agreement are granted or are to be implied from this Agreement. On receipt of a written request from the Disclosing Party, the Receiving Party shall, at its own cost and expense, forthwith return to the Disclosing Party or destroy (and in the latter case confirm the destruction in writing) all Confidential Information including all Confidential Information contained in original documents or copies of documents and all copies made, if any. In addition, any computer disk, or any other information stored on computer or any documents prepared by the Receiving Party or its Representatives which incorporate any of the Confidential Information shall be destroyed or returned to the Disclosing Party or dealt with as the Disclosing Party may direct.

4.2 The Disclosing Party warrants that it is lawfully entitled to disclose its Confidential Information to the other Party and to authorise the other Party to use the same for the Purpose and that the Confidential Information has not been provided in breach of any arrangement with third parties.

4.3 The Disclosing Party does not represent nor warrant that the Confidential Information disclosed shall be accurate and complete at the time of disclosure.

#### **5. PATENT OR COPYRIGHT INFRINGEMENT**

Nothing in this Agreement is intended to grant any rights to the Receiving Party under any patent or copyright, nor shall this Agreement grant the Receiving Party any rights in or to the Disclosing Party's Confidential Information except for the limited right to review such Contract as provided herein.

#### **6. REMEDIES**

6.1. The rights, powers and remedies provided in this Agreement are cumulative and do not exclude the rights, powers or remedies provided by law and equity independently of this Agreement.

## **OCKSE'S RAO – ANNEXURE I**

- 6.2. The Receiving Party agrees that the obligations of the Receiving Party provided herein are necessary and reasonable in order to protect the Disclosing Party and its business and that the Receiving Party acknowledges that damages are not a sufficient remedy for any breach of this Agreement and that the Disclosing Party is entitled to seek specific performance or preliminary or permanent injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Receiving Party or its Representatives, in addition to any other remedies available at law or equity including but not limited to any claim for damages or loss **PROVIDED THAT** any losses which are not reasonably foreseeable but which the Receiving Party shall have been duly informed in writing by the Disclosing Party of the possibility of such losses occurring shall also be recoverable.
- 6.3. The Receiving Party hereby consents to the institution of proceedings for such relief by the Disclosing Party and the grant of any such relief by a competent court of law.
- 6.4. In the event of litigation relating to the matters contained herein, if a court of competent jurisdiction determines in a final, non-appealable order that this Agreement has been breached by the Receiving Party or its Representatives, the Receiving Party shall reimburse the Disclosing Party for all costs and expenses (including without limitation, legal fees and expenses) incurred in connection with all such litigation.

## **7. CONFIDENTIALITY**

Each Party agrees to keep the existence and nature of this Agreement confidential and not to use the same or the name of the other Party in any advertisement or other disclosure with regard to this Agreement without the prior written consent of the other Party.

## **8. PERIOD OF OBLIGATION**

The obligation of the Receiving Party in respect of disclosure and use of the Confidential Information acquired from Disclosing Party shall continue and survive the expiry and/or termination of this Agreement.

## **9. NOTICES**

- 9.1. All notices under this Agreement shall be in writing and shall be sent personally by hand or by facsimile or electronically or registered or recorded delivery post to the Party being served at its address as specified hereunder or such other address of which such Party shall have given notice as aforesaid, and marked for attention of that Party's signatory of this Agreement. Unless the contrary shall be proved each such notice or communication shall be deemed to have been given or made and delivered:

## **OCKSE'S RAO – ANNEXURE I**

- a) if by letter, seventy two (72) hours after posting; or
- b) if by hand or by courier, when delivered, or
- c) if by facsimile transmission, one (1) hour after its transmission if such time is during business hours in the place of its receipt or, if it is not, on the opening of business on the next succeeding business day in the place of its receipt.

Provided That the sender has an answerback confirmation and print-out copy of the transmission report generated by the facsimile machine from which such notice was sent that the document has been successfully transmitted.

9.2. The correspondence address and facsimile number of the Parties are as follows:-

OCK SETIA ENGINEERING SDN. BHD. Sdn. Bhd.

Address	:	No. 18, Jalan Jurunilai U1/20 Hicom Glenmarie Industrial Park 40150 Shah Alam, Selangor.
Telephone No.	:	+603 5565 9688
Facsimile No.	:	+603 5565 9699
Attention	:	Director

### **10. SUCCESSORS BOUND**

This Agreement shall be binding on the successors-in-title and permitted assigns of the Parties.

### **11. NON-ASSIGNMENT**

This Agreement is personal to the Parties and shall not be assigned or otherwise transferred in whole or in part by the Parties unless with the prior written consent of the other Party.

### **12. WAIVER**

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by any Party of breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provisions.

### **13. APPLICABLE LAW AND JURISDICTION**

The laws of Malaysia shall be applied to this Agreement and each Party agrees to submit to the exclusive jurisdiction of the Malaysian courts.

## **OCKSE'S RAO – ANNEXURE I**

### **14. TIME**

Time wherever mentioned in this Agreement shall be of the essence.

### **15. NO OBLIGATION**

This Agreement does not restrict either Party from developing new or improved products or services, and marketing the same. Nothing in this Agreement shall be construed as an obligation by either Party to enter into any contract, agreement or other business relationship with any other party.

### **16. ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement and understanding among the Parties with respect to the Confidential Information and supersedes all previous agreements, understandings and undertakings between them relating to it.

### **17. AMENDMENT**

No amendment, variation, modification, replacement or alteration of any terms and conditions set forth in this Agreement shall be effective unless it is made in writing and mutually agreed and consented by all the Parties.

### **18. SEVERABILITY**

Any provision of this Agreement which is invalid or unenforceable by law shall be effective to the extent of such invalidity or unenforceability only without affecting the remaining provisions thereof. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree to the terms of mutually satisfactory provisions to be substituted for the provisions which are found to be void and unenforceable by applicable law.

### **19. COSTS**

19.1. Each Party shall bear its own costs and expenses arising out of the preparation and execution of this Agreement.

19.2. Stamp duty shall be borne by the Company.

### **20. NON-PUBLICITY**

No Party shall disclose to any third party the existence or contents of this Agreement, or the fact that the Parties are discussing the subject covered by this Agreement.

### **21. HEADINGS**

The headings used in this Agreement are for reference purposes only and shall not be construed as part of this Agreement.

**OCKSE'S RAO – ANNEXURE I**

**IN THE WITNESS WHEREOF** the Parties hereto have hereunto set their hands on the day and year first above written.

SIGNED by  
for and on behalf of  
**OCK Setia Engineering**  
**Sdn. Bhd. (Company No. 528998-K)** in  
the presence of:-

SIGNED by  
for and on behalf of [ ] (**Company [ ]**) in the presence of :-

Name: )  
NRIC No: )  
Designation: )

.....