



WASILAH ENGINEERING SDN. BHD.
(713096-W)

REFERENCE ACCESS OFFER

RAO VER 4.0

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1. CHAPTER 1 - DEFINITIONS AND INTERPRETATIONS

1.1. Definitions

The following words have these meanings in this WASILAH ENGINEERING's Access Reference Document unless the contrary intention appears: -

"Act" means the Communications and Multimedia Act 1998.

"Access agreement" means an agreement:

- a) entered between WASILAH ENGINEERING 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 favourable than the terms and conditions guaranteed by the MSA.

"Access Charge" means a charge paid by the Access Seeker to WASILAH ENGINEERING for accessing the Facilities and Services provided by WASILAH ENGINEERING.

"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 "WASILAH ENGINEERING".

"Access Request" means a request for access to Facilities or Services on the Access Service made by the Access Seeker to WASILAH ENGINEERING and containing the information in Section 4.1.1 of Chapter 4 and any additional information requested under Section 4.5.1(a).

"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 WASILAH ENGINEERING and which is listed in Schedule B of this RAO.

"WASILAH ENGINEERING" means WASILAH ENGINEERING SDN BHD

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

“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 WASILAH ENGINEERING for the provision of Access Service.

“CMA” means Communications and Multimedia Act 1998 (Act 588)

“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.

“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 License(s).

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

“Creditworthiness Information” means the information required by WASILAH ENGINEERING to assess the creditworthiness of the Access Seeker which are more particularly described in Section 4.2 of WASILAH ENGINEERING’s 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 lodged with the Commission under Section 150 of the Act in its entirety.

“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.

“Insurance Information” means the insurance information required by WASILAH ENGINEERING pursuant to Section 4.4.

“Infrastructure Sharing” means a Facility and/or Service which comprises the following;

- a) Provision of physical access, which refers to the provision of space as specified networks facilities to enable an Access Seeker to install and maintain its own equipment; or
- b) Provision of access to in-building Common Antenna Systems and physical access to central equipment room.
- c) Specified network facilities include type of Towers and Associated Tower Sites (which include but not limited to billboard, public transit shelters, poles, traffic light poles, bridges and road gantries).
- d) Physical access includes power, environmental services (such as heat, light, and ventilation), security, site maintenance and access for the personnel of the Access Seeker.
- e) Provision of Space at Associated Tower Site includes space where the Access Seeker may place its cabin or outdoor equipment and space required for cable gantry connecting to the tower and generator set.

“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 WASILAH ENGINEERING 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 WASILAH ENGINEERING'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.

"License" means an individual license 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.

"MS Determination" shall have the meaning assigned to it in Section of Chapter 1.

"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 WASILAH ENGINEERING and the Access Seeker collectively. "Other Operator" means either:

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

"RAO" means References Access Offer "Regulatory Event" means:

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

"Review" means a review of the MSA Determination pursuant to Subsection 7.5 of the MSA Determination.

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

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

- a) in the form of a Bank Guarantee, deposited with WASILAH ENGINEERING 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.

1.2. Interpretation

In WASILAH ENGINEERING’s RAO except where the contrary intention appears.

- a) the singular includes the plural and vice versa; and
- 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 1965; and
- h) in relation to an Access Service for the carriage of a communication it refers to the carriage of a communication between the POIs/POPs along WASILAH ENGINEERING's Network but does not include any Communication for which the Access Service is provided with the assistance a third party's Facilities or Services; and
- i) headings are included for convenience and do not affect the interpretation of WASILAH ENGINEERING's RAO.

2. CHAPTER 2 - INTRODUCTION, BACKGROUND AND SCOPE

2.1. Preliminary

2.1.1. This Reference Access Offer (“RAO”) is made by WASILAH ENGINEERING SDN BHD. (Company No:713096-W), (“WASILAH ENGINEERING”) a company incorporated under the laws of Malaysia and having its principal place of business at 45-2, Jalan Equine 10F, Equine Park, Bandar Putra Permai, 43300 Seri Kembangan, Selangor Darul Ehsan, pursuant to the Commission

- i. Determination on the Access List (Determination No. 6 of 2021),
- ii. Determination on the Mandatory Standard on Access (Determination No. 1 of 2022)
- iii. Determination on the Mandatory Standard Access Pricing (Determination No.1 of 2023) to enable eligible licensees under the Communications and Multimedia Act 1998 to seek access to WASILAH ENGINEERING’S network facilities and/or network services.

2.1.2. WASILAH ENGINEERING is a licensed operator under the Act and pursuant to its License, WASILAH ENGINEERING may offer network facilities, network services and application services within Malaysia. Pursuant to Subsection 5.3.3 of the MSA Determination, WASILAH ENGINEERING is obliged to prepare and maintain a Reference Access Offer in relation to Facilities or Services on the Access List Determination, which WASILAH ENGINEERING provides to itself or third parties.

2.2. MSA Determination Obligations

2.2.1. 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 (Subsection 5.3 of the MSA Determination);
- b) Negotiation obligations (Subsection 5.4 of the MSA Determination); and
- c) Content obligation (where applicable, Subsection 5.5 to 5.19 of the MSA Determination).

2.2.2. Disclosure Obligations

Pursuant to the Disclosure Obligations in Subsection 5.3 of the MSA Determination, WASILAH ENGINEERING 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

2.2.3. Negotiation Obligations

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

2.2.3.1. **Timing:** If an Operator wishes to negotiate an Access Agreement with another Operator:

- a) both parties shall notify the Commission when the negotiations for the Access Agreement begin under this section of this RAO;
- b) both parties shall use their best endeavours to conclude the Access Agreement within:
 - i. where there is no Access Agreement in place between the Operators, four (4) months; or
 - ii. where there is already a commercial agreement or an Access Agreement in place between the Operators, three (3) months, after a written request by the Access Seeker to commence negotiations under subsection 5.4.6(d) of the MSA Determination and the Access Provider's response confirming it is willing to proceed to negotiate under subsection 5.4.7(b) of the MSA Determination;
- c) if the negotiations are not completed within the applicable timeframe specified under subsection 5.4.1(b) of the MSA Determination:
 - i. the parties may jointly apply to the Commission for an extension of time to negotiate and if the extension of time is not granted by the Commission, there shall be deemed to be a dispute between the parties and the Dispute Resolution Procedures shall take effect; or
 - ii. either party may initiate the Dispute Resolution Procedures; and
- d) if the Commission grants an extension of time under subsection 5.4.1(c)(i) of the MSA Determination, it may do so subject to such conditions as it specifies (such as an ongoing requirement to provide updates on negotiations at specified intervals and the right to reduce or extend any extension).

2.2.3.2. **Good faith:** An Operator shall co-operate, in good faith and in a commercially reasonable manner, in negotiating and implementing the terms of its Access Agreements. 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 Facilities and/or Services (such as refusing to provide particular forms of access that the Access Provider provides to itself); and
- c) avoiding unnecessary disputes and resolving disputes promptly and fairly.

2.2.3.3. **Confidentiality:** An Operator must protect from disclosure any Confidential Information provided by another Operator in the course of negotiating an Access Agreement and during the term of an Access Agreement in accordance with a confidentiality agreement prepared under subsection 5.3.8 of the MSA Determination.

2.2.3.4. **Intellectual Property:** An Operator shall only use such Intellectual Property and information provided by another Operator for the purposes of providing or acquiring access to requested Facilities and/or Services. An Operator must not use such Intellectual Property or information for the development or marketing of other communication services or Equipment by that Operator, its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest, or third parties.

2.2.3.5. **Access Request:** An Access Provider may require an Access Seeker to provide an Access Request to the Access Provider if:

- a) there is no Access Agreement in force between the Access Provider and the Access Seeker governing access to the Facilities and/or Services to which the Access Seeker seeks access; or
- b) there is such an Access Agreement, but:
 - i. the current term of that Access Agreement will expire or terminate within the next four (4) months; or
 - ii. the requested Facilities and/or Services are outside the scope of that agreement.

The Access Provider shall develop a process for desk/field studies and Service Qualifications that an Access Seeker may take up prior to entering into an Access Agreement

2.2.3.6. **Required information:** An Access Request must contain the following information:

- a) the name and contact details of the Access Seeker;
- b) the Facilities and/or Services in respect of which access is sought;
- c) a list of the relevant licences held by Access Seeker;
- d) whether the Access Seeker wishes to accept the Access Provider's RAO, to negotiate amendments to the RAO, or to negotiate an Access Agreement on alternative terms;
- e) the information (if any) the Access Seeker reasonably requires the Access Provider to provide for the purposes of the negotiations. The type of information which may be requested by the Access Seeker is described in, but not limited to, subsection 5.3.7 of the MSA Determination;

- f) two (2) copies of a confidentiality agreement properly executed by the Access Seeker in the form prescribed by the Access Provider in accordance with subsection 5.3.8 of the MSA Determination;
- g) preliminary information regarding the scale and scope of Facilities and/or Services that the Access Seeker expects to acquire from the Access Provider pursuant to the Access Request;
- h) relevant technical information relating to the interface standards of the Equipment of the Access Seeker;
- i) relevant information relating to the Access Seeker's Network and the functionality of its services, to the extent that the Access Seeker is aware that such information may affect the Access Provider's Network;
- j) creditworthiness information in accordance with the Access Provider's requirements, as set out in subsection 5.3.11 of the MSA Determination;
- k) assessed security (or, if applicable, confirmation of security provided) in accordance with the Access Provider's security requirements, as set out in subsection 5.3.9 of the MSA Determination;
- l) insurance information in accordance with the Access Provider's insurance requirements, as set out in subsection 5.3.10 of the MSA Determination; and
- m) such other information as the Access Provider may reasonably request for the sole purpose of providing access to the requested Facilities and/or Services

2.2.3.7. **Obligations upon receipt:** The Access Provider shall, within ten (10) Business Days of receipt of an Access Request, respond to the Access Seeker in writing acknowledging receipt of the Access Request and stating that:

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

The Access Provider must provide a copy of its response to the Commission at the same time that the Access Provider provides the response to the Access Seeker

- 2.2.3.8. **Acceptance response:** If the Access Provider responds that access will be provided in accordance with a RAO [as described in subsection 5.4.7(a) of the MSA Determination the Access Provider must, within ten (10) Business Days of such response, provide two copies of the RAO executed by the Access Provider to the Access Seeker and one (1) copy of the executed confidentiality agreement returned by the Access Seeker [in accordance with subsection 5.4.6(f) of the MSA Determination] that has also been properly executed by the Access Provider.
- 2.2.3.9. **Negotiation response:** If the Access Provider is willing to proceed with negotiation of the Access Request [as described in subsection 5.4.7(b) of the MSA Determination], the Access Provider must set out in its response to the Access Seeker:
- a) a place, date and time, not later than fifteen (15) Business Days from the date of the Access Provider's response, when the Access Provider's representative that is authorised to negotiate on an Access Agreement, will be available for an initial meeting with the Access Seeker's representative that is authorised to negotiate on the Access Agreement; and
 - b) one (1) copy of the executed confidentiality agreement returned by the Access Seeker [in accordance with subsection 5.4.6(f) of the MSA Determination] that has also been properly executed by the Access Provider.
- 2.2.3.10. **Refusal response:** If the Access Provider decides to refuse the Access Request [as described in subsection 5.4.7(c) of the MSA Determination], the Access Provider must set out in its response to the Access Seeker:
- a) the grounds in subsection 5.4.11 of the MSA Determination on which the Access Provider is relying;
 - b) the basis of the Access Provider's decision with sufficient particulars to enable the Access Seeker to make its own assessment about the applicability of the specified grounds of refusal; and
 - c) a place, date and time, not later than seven (7) Business Days from the date of the Access Provider's response, at which representatives of the Access Provider authorised to review the Access Provider's assessment of the Access Request will be available to meet with representatives of the Access Seeker, for the purpose of discussing the refusal of the Access Request. At this meeting, the Access Seeker may request the Access Provider to substantiate its reasons for refusal (and the Access Provider shall do so), and if access has been refused on the basis of the grounds in:
 - i. subsection 5.4.11(b) of the MSA Determination, the Access Provider must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker;
 - ii. subsection 5.4.11(d) of the MSA Determination, the Access Provider must identify when additional capacity or space is likely to be available; and

- iii. subsection 5.4.11(e) of the MSA Determination, the Access Provider 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 Facilities and/or Services, its reasons for the security requirement and why it considers such concern cannot be addressed through a security requirement under subsection 5.3.9 of the MSA Determination.

2.2.3.11. **Grounds for refusal:** Except where expressly permitted otherwise under the Act or subsection 6 of the MSA Determination, an Access Provider shall not refuse an Access Request, except on the grounds that:

- a) the Access Provider does not currently supply, or provide access to, the relevant Facilities and/or Services 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 the Access Provider for the original supply of access to Facilities and/or Services to the Access Seeker;
- b) the Access Seeker has not provided all of the information required to be provided in accordance with subsection 5.4.6 of the MSA Determination;
- c) it is not technically feasible to provide access to the Facilities and/or Services requested by the Access Seeker;
- d) subject to the MSA Determination, the Access Provider has insufficient capacity or space to provide the requested Facilities and/or Services;
- e) the Access Provider 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 the MSA Determination;
- f) there are reasonable grounds 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 Facilities and/or Services; or
- g) there are reasonable grounds for the Access Provider to refuse access in the national interest.

2.2.3.12. **Dispute resolution:** If, following the meeting between the parties required to be held pursuant to subsection 5.4.10(c) of the MSA Determination, for the purposes of discussing an Access Provider's refusal of an Access Request, the parties have been unable to resolve any differences about the validity of the Access Request and the Access Seeker disagrees with the Access Provider's refusal of the Access Request, either party may request resolution of the dispute in accordance with the Dispute Resolution Procedures.

- 2.2.3.13. **Initial meeting:** Unless otherwise agreed between the Operators, each Operator shall ensure that its representatives meet on the date notified pursuant to subsection 5.4.9(a) of the MSA Determination and that such representatives:
- a) agree on a timetable for the negotiations, including milestones and dates for subsequent meetings within the applicable timeframe for negotiations under subsection 5.4.1(b) of the MSA Determination;
 - b) agree on negotiating procedures, including:
 - i. calling and chairing meetings;
 - ii. responsibility for keeping minutes of the meetings;
 - iii. clearly defined pathways and timetables for escalation and resolution by each Operator of matters not agreed in the meetings;
 - iv. procedures for consulting, and including in the negotiating process, relevant experts from each of the Operators; and
 - v. procedures for preparing and exchanging position papers;
 - c) review the information requested and provided to date and identify information yet to be provided by each Operator; and
 - d) identify what technical investigations, if any, need to be made and by whom such investigations should be made.
- 2.2.3.14. **Facilities and services not specified in the Access List Determination:** If an Access Seeker wishes to obtain access to additional facilities and/or services that are not specified in the Access List Determination, then the requirements under subsection 5.4 of the MSA Determination may apply to any request for access to such additional facilities and/or services to the extent agreed by the parties.
- 2.2.3.15. **Additional matters:** An Access Provider shall not do, or threaten to do, anything that has the effect or likely effect of, any of the following:
- a) refuse to negotiate terms of access not related to price, for the reason that the rate, charge, charging principles or methodologies of access has not been agreed upon;
 - b) refuse to negotiate access to the Facilities and/or Services because the Access Seeker has not agreed to acquire access to other Facilities and/or Services or because the Access Seeker has not agreed to acquire a particular configuration, option or feature of a requested Facility and/or Service;
 - c) require an Access Seeker to enter into a confidentiality agreement the terms of which would preclude the disclosure of information requested by the Commission or required to be disclosed for the purposes of dispute resolution;
 - d) require an Access Seeker to warrant that an Access Agreement complies with all applicable laws;
 - e) refuse to include in any Access Agreement a provision permitting variation of the Access Agreement in the event of any change in rules, applicable laws or applicable regulations (including Commission decisions and determinations);

- f) make any negotiation conditional on the Access Seeker first obtaining any regulatory approval or consent;
- g) intentionally mislead or coerce an Access Seeker into reaching an agreement, which would not otherwise have been reached if not for the misleading act or coercion;
- h) intentionally obstruct or delay negotiations or any dispute resolution process;
- i) fail to nominate representatives who have sufficient authority and with sufficient availability to progress negotiations in a timely and efficient manner;
- j) fail to provide information that is necessary to conclude an Access Agreement including, without limitation:
 - i. information about the Access Provider's Network that the Access Seeker reasonably requires in identifying the network elements or network components to which it requires access; and
 - ii. information about the basis of the determination of rates, charges or fees.

2.2.3.16. **Non-permitted information:** Notwithstanding anything else in this RAO, an Access Provider shall not impose an obligation on an Access Seeker to provide any of the following information to the Access Provider (whether as a condition of the provision of further information or as a condition of assessing the Access Seeker's application, or at any other time):

- a) the Access Seeker's proposed service launch date (though the Access Provider may request the Access Seeker to specify any ready-for service dates which the Access Seeker requires from the Access Provider in respect of the requested Facilities and/or Services);
- b) details of the functionality of the Access Seeker's proposed service, except to the extent that such functionality may affect the Access Provider's Network;
- c) details of the Access Seeker's network rollout plans, except to the extent that such rollout plans relate to ready-for-service dates requested by the Access Seeker;
- d) details of the Access Seeker's current or proposed retail charges;
- e) details of the Access Seeker's marketing strategy or proposed client base;
- f) financial information relating to the Access Seeker's business, except to the extent that such information may be required pursuant to the creditworthiness requirements in subsection 5.3.11 of the MSA Determination;
- g) details of any other supply arrangements or Access Agreements to which the Access Seeker is or may be a party, except to the extent that such details are directly relevant to technical characteristics of the requested Facility and/or Service; or

- h) any other commercially sensitive information of the Access Seeker which is not strictly required by the Access Provider to supply a requested Facility and/or Service.

2.2.3.17. **Technical infeasibility:** For the purposes of subsection 5.4.11(c) of the MSA Determination, an Access Provider shall not refuse an Access Request on the grounds of technical infeasibility unless the Access Provider establishes that there are substantial 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 the Access Provider 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 the Access Provider 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 the Access Provider asserts that meeting the Access Request would have an adverse impact on network reliability, the Access Provider 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
- d) the Access Provider must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this subsection) improvements that would allow the Access Provider to meet the Access Request (in whole, or in part, and including for an interim period until any primary difficulties can be resolved)

2.2.3.18. **Capacity constraints:** An Access Provider may only refuse an Access Request on the ground that an Access Provider has insufficient capacity or space under subsection 5.4.11(d) of the MSA Determination where the Access Provider 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 the Access Provider 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, the Access Provider must promptly inform the Access Seeker and, if required by the Access Seeker, re-consider the Access

Request in accordance with the process set out in subsection 5.4 of the MSA Determination; and

- c) in the case of both subsection 5.4.18(a) and 5.4.18(b) of the MSA Determination, the Access Provider is unable to expand capacity to meet the requirements in the Access Seeker's Access Request

If the Access Provider considers that it has insufficient capacity or space under subsection 5.4.11(d) to meet the requirements in an Access Request for 5G Services, then the Access Provider must:

- d) increase capacity on its 5G RAN or take such other measures that may be reasonably necessary to accept the Access Seeker's Access Request;
- e) (e) keep the Access Seeker notified and updated regarding such measures; and
- f) (f) notify the Commission as soon as practicable of such insufficient capacity or space, together with reasons and the anticipated length of any delay in satisfying the requirements of the Access Request.

2.2.3.19. **Reporting on refusals:** If an Access Provider refuses an Access Request, it must notify the Commission within five (5) Business Days of that refusal together with an explanation of its reason for refusal under subsection 5.4.11 of the MSA Determination.

2.2.3.20. **Fast-track application and agreement:** Notwithstanding and as an alternative process to that set out in subsections 5.4.1 to 5.4.18 of the MSA Determination, an Access Provider shall make available a fast-track application and agreement process for Access Seekers based on the following principles:

- a) the fast-track process shall be limited to the criteria set out by the Access Provider in accordance with subsection 5.4.21 of the MSA Determination;
- b) the fast-track application form:
 - i. shall be limited to gathering information from the Access Seeker as set out in subsection 5.4.6(a) and 5.4.6(b) of the MSA Determination; and
 - ii. in respect of any requirement to provide security, shall set out a process for determining the required security sums under subsection 5.3.9 of the MSA Determination within five (5) Business Days of the Access Provider's receipt of a fast-track application.
- c) the Access Provider may only refuse the Access Seeker's fast-track application for the reasons set out in subsection 5.4.11(a), 5.4.11(e) or 5.4.11(f) of the MSA Determination
- d) the fast-track agreement between the Access Provider and the Access Seeker must be on the terms of the Access Provider's RAO; and
- e) within ten (10) Business Days of the Access Provider's receipt of a fast track application, the Access Provider must:

- i. provide the Access Seeker with two (2) copies of the RAO executed by the Access Provider, or a notice of refusal that sets out the grounds for refusal under subsection 5.4.20(c) of the MSA Determination (including the basis on which those grounds apply); and
- ii. provide the Commission with a copy of the response at the same time that it provides the response to the Access Seeker under subsection 5.4.20(e)(i) of the MSA Determination.

2.2.3.21. **Principles for setting up fast-track process:** The Access Provider shall set up, and publish on its publicly accessible website, the criteria on which Access Seekers will be eligible for the fast-track application and agreement process according to the following principles:

- a) the criteria must be determined and applied by the Access Provider on a non-discriminatory basis;
- b) the fast-track process may be limited to the supply of Facilities and/or Services to the extent that such supplies do not have a material impact on the Access Provider's current level of network resources; and
- c) the Facilities and/or Services which may be the subject of a fast track application may be limited to Fixed Network Termination Service, Mobile Network Termination Service, Transmission Services, Interconnect Link Service, and HSBB Network Services

2.2.3.22. **Form of negotiation:** Any meeting or negotiation under section 5.4 may take place in person, or virtually by conference call, video conference or using other communications technology with participants in one or more geographical places (or in a combined form).

2.2.4. Content Obligations

2.2.4.1. Where relevant, the content obligations in Subsection 5.5 of the MSA Determination set out among other 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

2.2.5. The role of Standard Access Obligations

2.2.5.1. 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 WASILAH ENGINEERING 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.

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

- i. of at least the same or more favorable technical standard and quality as the technical standard and quality on the WASILAH ENGINEERING's network facilities or network services; and
- ii. on an equitable and non-discriminatory basis

2.3. Scope

2.3.1. WASILAH ENGINEERING'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.

2.3.2. Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to WASILAH ENGINEERING's RAO.

2.3.3. WASILAH ENGINEERING's RAO are consistent with:

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

2.3.4. For the purposes of clarification, the terms and conditions of WASILAH ENGINEERING'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 WASILAH ENGINEERING's licenses only. If the Access Seeker requests Facilities or Services outside WASILAH ENGINEERING's RAO, the terms and conditions for the provision of such Facilities or Services shall be negotiated and shall remain outside the scope of WASILAH ENGINEERING's RAO.

2.3.5. It is hereby noted by the Access Seeker that this RAO is not a legally binding document but merely a reference document serves as a general outline highlighting the terms and conditions on which the Access Provider is prepared to provide its network facilities and/or network services to the Access Seeker and shall not be deemed as an offer to enter into any legally binding contract.

2.3.6. Accordingly, the Access Seeker shall enter into a written and duly executed Access Agreement with the Access Provider in order to utilize such network facilities and/or network services. It is further noted by the Access Seeker that the terms and conditions

of the Access Agreement between itself and the Access Provider which may be entered in the future may also be subject to the negotiations between the Access Seeker and the Access Provider which may in part deviate from the terms and conditions noted in this RAO.

2.3.7. Where relevant, the rights and obligations set out in the MSA shall be applicable to this RAO. However, any such deviation or alternatives agreed between the Access Provider and the Access Seeker shall not be of lesser terms than the minimum terms provided by the MSA.

2.3.8. The Access Provider may make changes to the RAO from time to time. The Access Seeker is advised to verify with the Access Provider that they have the current version of the RAO

2.4. Amendment RAO

2.4.1. WASILAH ENGINEERING shall, within thirty (30) Business Days of making any amendment to WASILAH ENGINEERING's RAO, provide a copy of the amendments, or an amended copy of WASILAH ENGINEERING's RAO before WASILAH ENGINEERING proposes to effect the changes to:

- a) the Access Seeker who is being provided with access to Facilities or Services listed on the Access List Determination under WASILAH ENGINEERING's existing RAO; and
- b) the Access Seeker who has requested WASILAH ENGINEERING's RAO within the period of three (3) months prior to the making of such amendments unless the Access Seeker has already indicated that it does not wish to proceed with an Access Request.

For clarification:

- i. nothing in in Section 2.4 of this RAO prevents an Access Seeker from initiating a dispute in relation to an amendment to a RAO made by an Access Provider under this subsection;
- ii. where the terms and conditions of an Access Agreement are not identical to those in the existing RAO, an amendment to the RAO will not alter the terms of that Access Agreement except as agreed between the Access Provider and Access Seeker; and
- iii. without prejudice to an Access Seeker's right to dispute a change to a 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. Upon expiry of the thirty (30) Business Day period referred this Section 2.4.1 of the RAO. However, if the Access Seeker disputes the change to the existing RAO within such thirty (30) Business Day period, no amendments to the Access Agreement will be deemed to

occur unless and until such dispute is resolved in favour of the Access Provider.

2.5. **Amended RAO:** Upon expiry of the thirty (30) Business Days in subsection in Section 2.4 of this RAO (or such longer period as the Access Provider determines is necessary to finalise the amendments to its RAO), the Access Provider will:

- a) make available the amended RAO on the Access Provider'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
- b) provide the updated RAO to the Commission before being made available under Section 2.5(a) of this RAO;

2.6. **Information disclosure:** An Access Provider must provide the following information to an Access Seeker within ten (10) Business Days of receipt of a written request from that Access Seeker for the provision of access (whether on the basis of a RAO):

- a) any supplementary access charges for access to Facilities and/or Services not included in the RAO (for example, discounts for inferior service levels or surcharges for enhanced service levels);
- b) all supplementary technical information relating to the Facilities and/or Services which may be the subject of the Access Request, which are not included in the RAO, including but not limited to any proof of concept (POC) information where available, physical and logical interfaces of the Access Provider's Network necessary to allow the development and deployment of communications services, value-added services and communications equipment that can interconnect to, and interoperate with, the Access Provider's Network;
- c) supplementary details of the Access Provider's operational processes and procedures not included in the RAO (e.g. regarding escorted access at sites deemed to be critical national information infrastructure or other secure sites);
- d) supplementary details of the Access Provider's provisioning cycles not included in the RAO and any impact such cycles may have upon an Access Request by the Access Seeker (e.g. capacity constraints);
- e) details of the Access Provider's alternative quality of service targets not included in the RAO and actual achievements of service targets in respect of the Facilities and/or Services which may be the subject of the Access Request;
- f) any security requirements, insurance requirements and creditworthiness information (including a credit assessment form, if available) required by the Access Provider under Section 4.3, 4.4, and 2.8 of this RAO; and
- g) the Access Provider's reasons for failing to supply any of the information referred to in Section 2.6 (a) to (h) of this RAO;

Prior to the provision of information under subsection 5.3.7 of the MSA Determination, the Access Provider may request the Access Seeker to enter into a confidentiality agreement in accordance with subsection 5.3.8 of the MSA Determination.

- 2.7. **Confidentiality Agreement:** An Access Provider's confidentiality agreement:
- a) shall be reciprocal;
 - b) shall be no broader than the confidentiality provisions in the Access Provider's RAO;
 - c) shall be no broader than necessary to protect the legitimate commercial interests of the Disclosing Party
 - d) shall include provisions prohibiting the Receiving Party from disclosing information to third parties or using information other than as necessary for the purposes of assessing a request for access; and
 - e) shall not prevent the disclosure of Confidential Information or other information to the Commission by the Receiving Party
- 2.8. **Creditworthiness information:** An Access Provider may only request creditworthiness information from an Access Seeker:
- a) if the Access Provider reasonably believes that the Access Seeker may not be able to meet any liabilities that may arise under an Access Agreement with the Access Seeker;
 - b) if the creditworthiness information sought is limited to information which is publicly available (on this basis, the Access Provider may request the Access Seeker to warrant that such information is accurate); and
 - c) to the extent commensurate with 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 Services in an Access Agreement.
- 2.9. **Notice of Withdrawal, Replacement and Variation of WASILAH ENGINEERING's RAO Availability**
- 2.9.1. If the Commission revokes, varies or replaces the Access List Determination relating to the Facilities or Services listed on the Access List Determination under Section 56 of the Act, WASILAH ENGINEERING may, by giving written notice to all Access Seekers to whom it is supplying Facilities or Services under WASILAH ENGINEERING's RAO, withdraw or replace WASILAH ENGINEERING's RAO with effect from a date no earlier than the effective date of the Commission's revocation.
- 2.9.2. WASILAH ENGINEERING shall comply with Subsections 7.4.2 and 7.4.3 of the MSA Determination where it withdraws or varies WASILAH ENGINEERING's RAO pursuant to Section 2.9.1.
- 2.9.3. In addition to Section 2.9.2 above, WASILAH ENGINEERING may give the Access Seekers to whom it is supplying Facilities and Services under WASILAH ENGINEERING's RAO a notice of a variation or replacement of WASILAH ENGINEERING's RAO to affect such variations that are necessary or appropriate in the event of:
- a) the occurrence of a Legislative Event that materially affects the rights or obligations of WASILAH ENGINEERING under WASILAH ENGINEERING's RAO; or
 - b) the occurrence of a Regulatory Event that relates to WASILAH ENGINEERING; or

- c) a review by the Commission of the MSA Determination pursuant to Subsection 7.5 of the MSA Determination.

Notwithstanding Section 2.9.1, 2.9.2 and 2.9.3 above, WASILAH ENGINEERING may subject to Section 2.5 above, replace WASILAH ENGINEERING's RAO at any time.

2.10. Availability

2.10.1. WASILAH ENGINEERING's RAO shall be made available to an Access Seeker:

- a) on written request, at WASILAH ENGINEERING's principal place of business at the address stated in section below; and
- b) on a publicly accessible website at <https://ewasilah.com.my/>

2.10.2. WASILAH ENGINEERING's RAO shall also be provided to the Commission within thirty (30) Business Day after being made available under section above

2.10.3. Prior to the provision of WASILAH ENGINEERING's RAO to the Access Seeker, the Access Seeker may be required to enter into a Confidentiality Agreement as set out herein Annexure 1

2.11. Notices

2.11.1. Any notices or communications in respect of WASILAH ENGINEERING's RAO should be made in writing to:

Attention	:	Director
Address	:	WASILAH ENGINEERING SDN BHD No. 45-2, Jalan Equine 10F, Equine Park, Bandar Putra Permai 43300 Seri Kembangan , Selangor Darul Ehsan
Telephone	:	+603 8958 0666 / 8958 9494
Fax	:	+603 8940 7557

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.

3.2. Eligibility for Access of Services

3.2.1. WASILAH ENGINEERING 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 WASILAH ENGINEERING'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 WASILAH ENGINEERING'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 WASILAH ENGINEERING.

3.2.3. An Access Seeker may not request for the Access Service (s) where the Access Service(s) are to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.

3.3. Standard Access Obligations

3.3.1. Access Terms and Conditions

WASILAH ENGINEERING shall subject to Section 3.2, supply the Access Service(s) to the Access Seeker on reasonable terms and conditions.

3.3.2. Principles of non-discrimination

WASILAH ENGINEERING 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 WASILAH ENGINEERING to the Access Seeker shall be consistent with:

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

3.3.3. Customer Principles

Where applicable WASILAH ENGINEERING shall observe and comply with the customer relationship principles set out in Subsection 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 WASILAH ENGINEERING 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 WASILAH ENGINEERING's RAO. If any dispute or difference of any kind shall arise between the parties in connection with or arising out of WASILAH ENGINEERING's RAO, the Dispute Resolution Procedure in Annexure A of the MSA Determination shall be adhered to

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 WASILAH ENGINEERING's RAO in accordance with the Confidentiality Agreement signed between the parties.

3.4.3. Necessary Third-Party Involvement Causing or Contributing to Non-compliance In Timeframe

If:

- a) WASILAH ENGINEERING fails to comply with a timeframe under this RAO; and
- b) WASILAH ENGINEERING considers such failure was caused or contributed to by necessary third-party involvement or other matters reasonably outside WASILAH ENGINEERING's control (for example, where approval from local or other authority is required)

WASILAH ENGINEERING 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

4. CHAPTER 4 - ACCESS REQUEST PROCEDURES

4.1. Application to Access to Services

4.1.1. An Access Seeker shall request WASILAH ENGINEERING 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 WASILAH ENGINEERING'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 WASILAH ENGINEERING to provide for the purposes of the access negotiations;
- e) two (2) copies of the Confidentiality and Non-Disclosure Agreement (in the form made available by the Access Provider) duly executed by the authorized persons;
- f) preliminary information regarding the scale and scope of Facilities and/or Services that the Access Seeker expects to acquire from WASILAH ENGINEERING 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 WASILAH ENGINEERING Network;
- i) creditworthiness information in accordance with WASILAH ENGINEERING requirement as set out in section 4.2 of this RAO;
- j) assessed security (or if applicable, confirmation of security provided) in accordance with WASILAH ENGINEERING security requirement as set out in section 4.3 of this RAO;
- k) insurance information in accordance with WASILAH ENGINEERING insurance requirement as set out in section 4.4 of this RAO; and
- l) such other information as WASILAH ENGINEERING 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
- b) a copy of the Access Seeker's most recently published audited balance sheet and audited profit and loss statement.

4.3. Security Requirements

- a) WASILAH ENGINEERING shall not impose any security requirement on an Access Seeker unless the Access Provider determines, acting reasonably, that the Access Seeker

presents a credit risk and that imposing the security requirement will materially reduce or remove that risk.

- b) WASILAH ENGINEERING shall ensure that the amount and type of any security requirements to be imposed on an Access Seeker is only imposed in the WASILAH ENGINEERING's security policy and is commensurate with:
- i. A commercially reasonable estimate of the charge that will be incurred by the Access Seeker over:
 - for Facilities and/or Services with a minimum period of access, the minimum period of access for those Facilities and/or Services; and
 - 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.

- ii. the creditworthiness of the Access Seeker (including prior payment records of the Access Seeker); and
 - iii. the security previously required by WASILAH ENGINEERING (if any).
- c) WASILAH ENGINEERING 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 WASILAH ENGINEERING 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

4.3.1. The Access Seeker shall provide the Security Sum to WASILAH ENGINEERING in the form of Bank Guarantee.

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

4.3.3. If the Access Seeker fails to fulfill any conditions or commits a breach of its obligations under this RAO or the Access Agreement, WASILAH ENGINEERING 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.

4.4. Insurance Requirements

4.4.1. Subject to section 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 not 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.
- c) The Access Seeker shall not be required to specifically list the WASILAH ENGINEERING's name as the beneficiary.

4.4.2. For the purpose of clarification, the insurance provided by the Access Seeker pursuant to section 4.4.1 shall commensurate with the reasonable sum, which is to be agreed by WASILAH ENGINEERING.

4.5. Processing of Access Request

4.5.1. Acknowledgement of Receipt of Access Request

WASILAH ENGINEERING 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 Subsection 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 Section 4.8 of this RAO or if it is rejecting the Access Request in accordance to Section 4.7 of this RAO.

Subject to the additional information being received by WASILAH ENGINEERING within twenty-one (21) Business Days from the date of request, WASILAH ENGINEERING shall reconsider the Access Request upon receipt of such additional information and the ten (10) Business Days for WASILAH ENGINEERING 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) WASILAH ENGINEERING may charge a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request.
- b) The non-refundable processing fee is only applicable to the requested Access Service (s) that can be offered and made available by WASILAH ENGINEERING.
- c) The fee shall be as advised in writing by WASILAH ENGINEERING to the Access Request upon approval of the same.
- d) In the event that additional and non-routine work is required in order to process the Access Request, WASILAH ENGINEERING may charge a separate fee for undertaking such additional work. If the Access Seeker does not proceed with the Access Request accepted by WASILAH ENGINEERING, the processing fee will not be refunded to the Access Seeker.

- e) The processing fee will be set-off against the Charges for the requested Facilities and Services upon acceptance of the Access Request by WASILAH ENGINEERING pursuant to Section 4.8 of this RAO.

4.5.3. Resources charge

- a) In accordance with subsection 5.7.28 of the MSA Determination WASILAH ENGINEERING may charge an Access Seeker a resource charge to be determined by reference to the costs incurred by WASILAH ENGINEERING for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Access Service(s).
- b) The fee for the specific Access Services is set out in the Schedule C - Charges and Charging Principle of the RAO

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 and Part 1 of Section B of this RAO, WASILAH ENGINEERING 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 WASILAH ENGINEERING's reasonable opinion, the Access Seeker's Access Request was not made in good faith and WASILAH ENGINEERING shall set out the basis on which the Access Request was not made in good faith;
- b) in WASILAH ENGINEERING's reasonable opinion, the Access Request does not contain the information reasonably required by WASILAH ENGINEERING's RAO provided that WASILAH ENGINEERING has sought the information from the Access Seeker under section 4.5.1 of WASILAH ENGINEERING's RAO and has not received that information within twenty-one (21) Business Days of making such a request;
- c) WASILAH ENGINEERING 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 WASILAH ENGINEERING 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) WASILAH ENGINEERING has insufficient capacity or space to provide the requested Access Service(s);
- f) there are reasonable grounds in WASILAH ENGINEERING's opinion to believe that the Access Seeker would fail, to make timely payment for the supply of the relevant Access Service(s) and such concern cannot be addressed through a security requirement in accordance with this RAO; or
- g) there are reasonable grounds in WASILAH ENGINEERING'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

- h) there are reasonable grounds for WASILAH ENGINEERING to refuse access in the national interest.

4.6.2. Determination of capacity constraints

For the purpose of determining capacity constraints in section 4.6.1 (e), the Operators, where applicable shall comply with subsection 5.4.18 of the MSA Determination.

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

Example of reasonable grounds for WASILAH ENGINEERING's belief as mentioned in section 4.6.1 (f) includes evidence that the Access Seeker is not in the reasonable opinion of WASILAH ENGINEERING creditworthy.

4.6.4. 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 WASILAH ENGINEERING's belief as mentioned in section 4.6.1 (g) 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 WASILAH ENGINEERING rejects the Access Request, WASILAH ENGINEERING shall:

- a) provide grounds for rejection under section 4.6.1 above to the Access Seeker;
- b) provide basis for WASILAH ENGINEERING'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 WASILAH ENGINEERING 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 WASILAH ENGINEERING to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in:
 - i. Section 4.6.1(e) of this RAO, WASILAH ENGINEERING must identify when additional capacity is likely to be available; and
 - ii. Section 4.6.1(f) of this RAO, WASILAH ENGINEERING 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 section 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 WASILAH ENGINEERING agrees to provide access to Facilities or Services listed in the Access Service to the Access Seeker, WASILAH ENGINEERING shall within ten (10) Business Days of such response under section 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 section 4.1.1(e) of this RAO, that has also been properly executed by WASILAH ENGINEERING for execution by the Access Seeker.

4.8.2. Where the Access Seeker wish to negotiate an Access Agreement, the Operators shall comply with the requirements in subsections 5.4.2, 5.4.3, and 5.4.4 of the MSA Determination in negotiating and concluding an Access Agreement.

4.8.3. WASILAH ENGINEERING 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 of this RAO; and
- b) an Access Agreement has been executed between the Operators and the Access Agreement is lodged with the Commission in accordance with section 150 of the Act.

4.9. Negotiations on Access Request

4.9.1. WASILAH ENGINEERING may proceed with negotiation on the Access Request with the Access Seeker if the Access Seeker is not willing to accept WASILAH ENGINEERING's RAO. WASILAH ENGINEERING shall set out in such response:

- a) a date and time not later than fifteen (15) Business Days from the date of the Access Seeker's response, at which WASILAH ENGINEERING's representatives will be available for the initial meeting with the representatives of the Access Seeker.
- b) One copy of the executed Confidentiality Agreement returned by the Access seeker (in accordance with section 4.1.1 (e) that has also been properly executed by WASILAH ENGINEERING.

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 License 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 WASILAH ENGINEERING '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 WASILAH ENGINEERING '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.
 - 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 Subsection 5.11 of the MSA Determination shall be applicable.
- 6.1.1. **Invoices:** WASILAH ENGINEERING shall use its best endeavours to issue to the Access Seeker an Invoice in writing or in electronic form (as requested by the Access Seeker) within one (1) month of the end of each Billing Cycle in accordance with section 6.1.3 of this RAO for amounts due in respect of the supply of Facilities and/or Services during the relevant Billing Period.
- 6.1.2. **Currency:** Unless otherwise agreed by WASILAH ENGINEERING and Access Seeker in the RAO, WASILAH ENGINEERING shall state all Invoices in Ringgit Malaysia and payment shall be made by the Access Seeker in Ringgit Malaysia.
- 6.1.3. **Billing Cycle:** WASILAH ENGINEERING shall issue Invoices to the Access Seeker on monthly basis, except where a different Billing Cycle is agreed with the Access Seeker in the Access Agreement.
- 6.1.4. **Billing Verification Information:** WASILAH ENGINEERING shall provide, with each Invoice, such information as may be reasonably necessary for the Access Seeker to verify rates and charges contained in an Invoice.
- 6.1.5. **Other Billing Information:** An Operator must provide to any Operator information within its possession that is reasonably necessary to allow the other Operator to provide accurate and timely billing services to itself, other Operators and Customers.
- 6.1.6. **Summarized Invoice and Billing Information:** WASILAH ENGINEERING (where applicable) shall provide the Access Seeker, on written request, with an aggregated summary of billings for access to the Facilities and/or Services provided to the Access Seeker, in monthly tranches.
- 6.1.7. **Billing Error:** If an Operator discovers an error in an Invoice, it must promptly notify the other Operator. The Operator which made the error must make necessary adjustments to correct that error within one (1) month of notification.
- 6.1.8. **Due Date:** Subject to section 6.1.11 of this RAO, Access Seeker shall make the payment in (1) one month from the date of receipt of an Invoice from WASILAH ENGINEERING.
- 6.1.9. **Method of Payment:** Access Seeker shall pay an Invoice by bank cheque or electronic funds transfer directly to an account nominated by WASILAH ENGINEERING.
- 6.1.10. **No Set-Off:** Unless otherwise agreed by WASILAH ENGINEERING and Access Seeker in the RAO, WASILAH ENGINEERING may not set-off Invoices except

where the Access Seeker is in liquidation or at least three (3) Invoices have been issued and such Invoices have not been paid (excluding disputed amounts).

6.1.11. **Withholding of Disputed Amounts:** An Access Seeker is not allowed to withhold payment of any amount disputed.

- a) the Access Seeker notifies WASILAH ENGINEERING within fifteen (15) Business Days from the date of receipt of the Invoice of such dispute (unless otherwise agreed by WASILAH ENGINEERING and Access Seeker in the RAO); and
- b) the Access Seeker's notification specifies the information referred to in section of this RAO.

6.1.12. **Billing Disputes:** Access Seeker may dispute any amount in an Invoice if:

- a) in case of any other Facilities and/or Services, the Access Seeker notifies WASILAH ENGINEERING within thirty (30) Business Days after the date of receipt of such Invoice, provided that, in any case specified above, the Access Seeker's notification specifies the information referred to in section 6.1.13 of this RAO.

6.1.13. **Notification of Billing Dispute:** WASILAH ENGINEERING may require an Access Seeker to provide the following information when disputing any amount in an Invoice:

- a) the reasons for which the Invoice is disputed;
- b) the amount in dispute;
- c) details required to identify the relevant Invoice and charges in dispute including:
 - i. the account number;
 - ii. the Invoice reference number;
 - iii. the Invoice date;
 - iv. the Invoice amount; and
 - v. billing verification information; and
- d) evidence in the form of a report, indicating the relevant traffic data which is in dispute.

6.1.14. **Billing Dispute Resolution:** WASILAH ENGINEERING and an Access Seeker must comply with the Dispute Resolution Procedures applicable to Billing Disputes in Annexure A of the MSA.

6.1.15. **Interest:** Except for any amount in an Invoice being disputed by an Access Seeker in good faith in accordance with section 6.1.12 of this RAO, WASILAH ENGINEERING may charge interest on any amount outstanding from an Access Seeker from time to time, in respect of that overdue sum for the period beginning on its due date and ending on the date of the receipt of the overdue sum by WASILAH ENGINEERING. The interest that may be charged by WASILAH ENGINEERING shall be at the rate of two percent (2%) per annum above Malayan Banking Berhad's base rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than two (2) months will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad's base rate calculated from the due date until the date of receipt by WASILAH ENGINEERING of full payment. For clarification, WASILAH ENGINEERING shall not charge interest on an amount which is disputed by an Access Seeker in good faith.

6.1.16. **Backbilling:** Unless otherwise agreed by WASILAH ENGINEERING and Access Seeker in the RAO, WASILAH ENGINEERING may include omitted or miscalculated charges from an earlier Invoice in a later Invoice, or issue an Invoice for charges which have previously not been invoiced provided that WASILAH ENGINEERING is able to substantiate the charges to the Access Seeker and such inclusion, amendment or issuance is made within three (3) months from the end of the Billing Cycle in which the Facilities and/or Services were provided.

6.1.17. **Provisional Billing:** Where WASILAH ENGINEERING is unable to issue an Invoice within one (1) month after the end of the Billing Cycle in accordance with section 6.1.1 of this RAO, it may issue an Invoice to an Access Seeker for provisional amount, based on the last Invoice ("Provisional Invoice"). In such circumstances, WASILAH ENGINEERING may invoice the Access Seeker for a provisional amount for a period of not more than three (3) successive Billing Cycles, provided that the total provisional amount is no more than the average of the three (3) most recent Invoices. Where there have not been three (3) past Invoices for access to the relevant Facilities and/or Services, WASILAH ENGINEERING may issue a Provisional Invoice up to the full value of the amount based on the most recent Invoice. For clarification:

- a) If the actual amount for a particular Billing Period is higher than the amount stated in the Provisional Invoice for the Billing Period, then the Access Seeker will pay in full such difference (free of interest) within one (1) month from the receipt of Debit Note ("DN") to WASILAH ENGINEERING. The DN issued must be forwarded to the Access Seeker together with the relevant monthly statement of the actual interconnect usage.
- b) If the actual amount for a particular Billing Period is lower than the amount stated in the Provisional Invoice for the same Billing Period, WASILAH ENGINEERING will reimburse in full such difference free of interest by issuing a Credit Note ("CN") within one (1) month after the month in which the charges were incurred. Such CN must be forwarded to the Access Seeker together with the relevant monthly statement of the actual interconnect usage

- 6.1.18. **Adjustment Period:** Where a Provisional Invoice is issued by WASILAH ENGINEERING, within the next two (2) months or such other time period as may be agreed in the RAO ("Adjustment Period"), WASILAH ENGINEERING must issue an Invoice for the actual amount due for access to the relevant Facilities and/or Services. If that Invoice for the actual amount is not issued within the Adjustment Period, the Access Seeker shall treat the provisional amount as the actual amount. If the actual amount for a particular Billing Period is higher than the provisional amount for the Billing Period, then the Access Seeker will pay in full such difference (free of interest) within one (1) month from the receipt of the actual Invoice to WASILAH ENGINEERING. If the actual amount for a particular Billing Period is lower than the provisional amount for the Billing Period, then WASILAH ENGINEERING will reimburse in full such difference (free of interest) within one (1) month from the receipt of the actual Invoice to the Access Seeker.
- 6.2. The Access Seeker shall pay WASILAH ENGINEERING the Access Charges for the relevant Access Service(s) supplied by WASILAH ENGINEERING to the Access Seeker, as specified in Schedule C of this RAO.
- 6.3. **Terms of Payment**
- a) The Access Seeker must, subject to section 5.1.11 of this RAO, pay any amount due and owing to WASILAH ENGINEERING on the Due Date unless otherwise agreed in writing by both Operators.
 - b) The Access Seeker to whom any Facilities and/or Service is provided under this RAO must, subject to section 6.1.11 of this RAO, pay WASILAH ENGINEERING the applicable rates and charges, and on the terms and subsections set out or referred to, as the case may be, in this RAO.
- 6.4. All payments must:
- a) be paid on the Due Date unless otherwise agreed in writing by both Operators;
 - b) must be accompanied by such information as is reasonably required by WASILAH ENGINEERING to properly allocate payments received.
- 6.5. Where appropriate, any taxes (including goods and services tax), duties or other imposts (as at the date of this RAO or imposed after the date of this RAO) shall be added to all or any Access Charges under this RAO and be paid by the Access Seeker within sixty (60) Business Days from the date of such imposition.
- a) If at any time WASILAH ENGINEERING is required under the Goods and Services Tax Act 2014 ("GST Act") to impose any goods and services tax or any similar value added tax (collectively, referred to as "GST") for the provision of any Facilities or Services to the Access Seeker, then, for the avoidance of doubt, any amount payable by the Access Seeker under this RAO shall be deemed to be net of such GST and the Access Seeker shall be liable to pay to WASILAH ENGINEERING the GST in addition to such amounts payable.

- b) WASILAH ENGINEERING must, as a pre to the payment of the GST under Section (a) above, give the Access Seeker a tax invoice complying with the requirements of the GST Act.
- c) If an adjustment arises in connection with a supply made under this RAO WASILAH ENGINEERING must give the Access Seeker a credit or debit not in accordance with GST Act

6.6. Security Sum

- a) For the purpose of clarification, the Security Sum does not relieve Access Seeker from its obligations to pay amounts to WASILAH ENGINEERING as they become due and payable, nor does it constitute a waiver of WASILAH ENGINEERING' right to suspend, disconnect, or terminate the relevant Facilities or Services due to non-payment of any sums due or payable to WASILAH ENGINEERING.
- b) WASILAH ENGINEERING may upon service of reasonable notice to the Access Seeker, call upon the Security Sum at any time after the Due Date (if payment has not been made by Access Seeker) or upon a breach of any of Access Seeker's obligation subject to the limitation on liability stipulated in Chapter 7 of this RAO (except for non-payment). For the avoidance of doubt, non-payment of any sum properly withheld in accordance with section 6.1.11 of this RAO shall not be a basis for WASILAH ENGINEERING to call upon the Security Sum as stipulated herein.

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 5 years from the execution date of the said Access Agreement.

7.2. Termination

Subject to Section 7.5, WASILAH ENGINEERING 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 WASILAH ENGINEERING has notified the Access Seeker of its intention to terminate the Access Agreement: -

- a) the Access Seeker has materially breached the Access Agreement and WASILAH ENGINEERING 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
- b) 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
- c) a Force Majeure has continued for a period of more than three (3) months.
- d) WASILAH ENGINEERING 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 section 7.2 is in addition to the notice required under section 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 WASILAH ENGINEERING is or will be unlawful (as a result of a legislative change), the Access Seeker and WASILAH ENGINEERING shall meet within 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 WASILAH ENGINEERING 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, WASILAH ENGINEERING may terminate the provision of access to the relevant Access Service(s).

7.4. Suspension

Subject to Section 7.5, WASILAH ENGINEERING 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 WASILAH ENGINEERING to remedy such breach;
- b) the Access Seeker's Facilities materially adversely affect the normal operation of WASILAH ENGINEERING'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 WASILAH ENGINEERING, its employees or contractors;
- d) the Access Seeker's Facilities cause material physical or technical harm to any Facilities of WASILAH ENGINEERING 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 section 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 WASILAH ENGINEERING or the provision by WASILAH ENGINEERING of Access Service(s) under the Access Agreement.

For the purposes of this Section 7.4, WASILAH ENGINEERING must provide the Access Seeker five (5) Business Days' notice in writing, including written reasons, prior to suspending access to any Access Service(s). WASILAH ENGINEERING 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 section 7.4 is an addition to the notice required under section 7.5 of this RAO.

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, WASILAH ENGINEERING must notify the Commission in writing of the action it proposes to take and the reasons why such action is appropriate. WASILAH ENGINEERING 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. WASILAH ENGINEERING:

- c) 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)

- d) must not give effect to the termination, suspension or material variation unless WASILAH ENGINEERING has received written consent from Commission to such termination, suspension or material variation; and
- e) 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 under it

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

WASILAH ENGINEERING 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:

- c) Charges invoiced in arrears and not yet paid; or
- d) Subject to Clause 7.11 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 WASILAH ENGINEERING not having to supply the Access Service to the extent that they have been terminated or suspended; and
 - ii. WASILAH ENGINEERING must use reasonable endeavor to mitigate its cost of termination or suspension and maximize cost savings under Section 7.7b(i) above.

7.8. Upfront charges refund

On termination of an Access Agreement or access to any Access Service(s) provided under it, WASILAH ENGINEERING 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 prorata basis) relate to the period after the date of effect of such termination.

7.9. Deposits and guarantees

Notwithstanding the obligation in section 7.8, WASILAH ENGINEERING 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 WASILAH ENGINEERING 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 WASILAH ENGINEERING as at the date of termination.

7.10. Intellectual Property Rights

The Operators agree not to use any patent, trademark, trade name, house mark, service mark, designs, copyright, database rights, knowhow 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 Section 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 constitute a material increase in the credit risk to the Operator for the purpose of Section 7.11(b) above.

7.12. Additional Security

For the purpose of section 7.11 above, an Operator may only request additional or substitute security from another Operator in manner consistent with section 4.3 of this RAO. If the other Operator was making a new Access Request under section 5.3 of this RAO

7.13. Force Majeure

7.13.1. 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.

7.13.2. 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 90 days from the date of the Affected Party’s written notification under Sectio7.2(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.

7.14. Review

7.14.1. 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 License 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 Sections (a) to (g) above affect this Agreement, the Operator 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.

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

7.15. Governing Law

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

7.16. 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.

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 WASILAH ENGINEERING RAO.
- 1.2. Where relevant, the forecasting obligations set out in Subsection 5.6 of the MSA Determination shall be applicable.

2. 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 a half yearly basis
- 2.3. The Access Seeker shall meet the requirements of forecasting process that enables WASILAH ENGINEERING to plan for the expected need for Access Service(s) in order to carry the forecasted traffic and conform to Grade of Service Standards.

3. Forecasting Obligations

- 3.1. **General** : Subject to subsections 5.6.3 and 5.6.4 of Mandatory Standard on Access, an Access Provider may require, as a condition of accepting Orders for access to Facilities/Services from an Access Seeker (but not as prerequisite for entering into an Access Agreement), that the Access Seeker provide to Facilities/Services in accordance with section 2 of this RAO.
- 3.2. **Prerequisite Information**: The Access Seeker may request preliminary information from the Access Provider about the availability and capacity of its Facilities/Services to the extent the Access Seeker such information to provide Forecasts.
- 3.3. **Confirmation of Forecast**: If an Access Provider, acting reasonably will incur significant cost to ensure that access can be provided in accordance with a Forecast (for example, because it will need to proactively augment its Network to provide access within the requested timeframes), the Access Provider may request the Access Seeker to confirm the relevant Forecast. Once confirmed, the Forecast is deemed to be an Order for the purposes of the MSA Determination, and section 3 of this RAO will apply.
- 3.4. **Alternative procedure**: An Access Provider and an Access Seeker may agree to an alternative forecasting and ordering procedure other than that set out in section 2 of this RAO as part on an Access Agreement. If agreement is reached about such matters, the Access Provider and Access Seeker will be bound by the terms of that alternative procedure and not section 2 of this RAO.
- 3.5. **Non-binding**: Subject to section 3.3 of this RAO, an Access Provider shall not require an Access Seeker to provide Forecast that are legally binding on the Access Seeker, except to the

extent that the Access Provider is permitted to recover costs and expenses as set out in section 3.16 of this RAO.

3.6. **Forecast request:** An Access Provider may request an Access Seeker to provide, with a sufficient level of detail to enable the Access Provide to carry out network planning and provisioning, the following information (“Forecast Information”).

- a) The Facilities in respect of which Forecasts are required;
- b) The total period of time covered by each Forecast, which period:
 - i. Shall be determined having regard to the Access Provider’s own planning and provisioning cycles and the forecasting requirements which apply to the Access Seeker’s own business units in using the relevant Facilities; and
- c) The intervals or units of time to be used in making the Forecast, which shall be the shorter of the period set out in the relevant Service Specific Obligations and the intervals of time in which the Access Provider provide forecasting to itself;
- e) The frequency with which the Forecast must be updated or a further Forecast made in accordance with the MSA Determination, which shall be the shorter of the period set out in the relevant Service Specific Obligations and the length of time after which the Access Provider provides itself with the updated or further Forecasts; and
- f) Such other information that the Access Provider reasonably requires in order to provide access to Facilities requested by the Access Seeker (which shall not include any information that the Access Provider does not provide to itself in connection with forecasting for its own facilities).

3.7. **Non-permitted information:** The Access Provider must not request an Access Seeker to provide a Forecast that contains:

- a) Any information that is or would allow the Access Provider to infer any non-permitted information listed under section 2.16 of this RAO; or
- b) Any information that identifies or would enable the identification if Customers or particular services of the Access Seeker.

3.8. **Forecast provision:** An Access Provider may only require an Access Seeker to provide Forecasts in accordance with a Forecast Request no sooner than four (4) weeks after receipt of a Forecast Request.

3.9. **Use of Forecast Information:** Forecast 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 personnel of the Access whose role is within either:

- a) The Access Provider’s wholesale or interconnection group; or

For the purposes of responding to and planning for the Forecast and related Orders. The Access Provider must maintain records that indicate which persons are provided with access to Forecast Information and, on request from the Commission, provide a copy of such records certified any the Access Provider's Chief Executive Officer or Chief Operating Officer.

3.10. **Distribution of Forecast Information:** An Access Provider may only distribute Forecast Information of an Access Seeker outside the groups of people referred to in section 3.9 of this RAO if:

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

3.11. **Time for response :** The Access Provide must identify the Access Seeker within five (5) Business Days of receiving a Forecast whether or not the Access Provider considers the Forecast to be in compliance with the Forecast Request and:

- a) if, the Access Provider considers that the Forecast does not comply with the Forecast Request, to specify in that notice the additional information which the Access Seeker is to provide to comply with the Forecast Request and the Access Provider will not require such information to be provided sooner than four (4) weeks after such a notice; or
- b) if, the Access Provider considers that the Forecast does not comply with the Forecast Request, to specify in that notice that the Forecast is provisionally accepted subject to verification of the details of the forecast and the matters set out in Sections 3.12(a) to 3.12(d) of this RAO.

3.12. **Reasons for rejection:** An Access Provider may only reject a Forecast following provisional acceptance where the Access Provide and all Access Seekers;

- a) total current usage of the Facilities by the Access Provider and all Access Seeker;
- b) the current rate of growth of the Access Seeker's usage of the Facilities;
- c) the current rate of growth of total usage of the Facilities by the Access Provider and all Access Seeker; and
- d) subject to section 3.27 and 3.28 of this RAO, the amount of capacity in the Facilities that the Access provider currently has available and can reasonably provision for the Access Seeker over the Forecast period, which must be at least equivalent to that which the Access Provider can reasonably provision for itself.

- 3.13. **Time for acceptance or rejection:** The Access Provider must give notice of any acceptance or rejection (“Rejection Notice”) of a Forecast to the Access Seeker:
- a) within fifteen (15) Business Days of receipt of the relevant Forecast; and
 - b) such Rejection Notice (if any) must specify:
 - i. the grounds on which the Access Provider rejects the Forecast referring to section 3.12 of the RAO, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Forecast; and
 - ii. an offer to meet within five (5) Business Days of the Rejection Notice of the Forecast to discuss the reasons for rejection and alternative methods of compliance. The meeting shall take place between the Access Provider and Access Seeker if the offer is accepted by the Access Seeker.
- 3.14. **Reconsideration by Access Seeker :** The Access Provider must allow an Access Seeker to reconsider its Forecast following a Rejection Notice and allow the Access Seeker, within twenty-one (21) Business Days of receipt of a Rejection Notice, either;
- a) to confirm its rejected Forecast, and explain why the Access Seeker considers that the Access Provider is obliged to accept the Forecast under this RAO; or
 - b) to submit the new Forecast which the Access Seeker regards as meeting the Access Provider’s concerns.
- 3.15. **Reconsideration by Access Provider:** The Access Provider shall reconsider any resubmitted or amended Forecast provided pursuant to section 3.14 of this RAO and sections 3.11 to 3.13 of this RAO shall re-apply.
- 3.16. **Recovery for over-forecasting:** An Access Provider shall not seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an Access Seeker if the Forecast is not met by the Access Seeker unless:
- a) such costs and expenses were reasonably and necessarily incurred by the Access Provider;
 - b) the Access Provider reasonably seeks to mitigate its loss (including through its own usage) provided the Access Provider shall not be required to do so for any greater period than the relevant Forecast period; and
 - c) the Access Provider only recovers from the Access Seeker, seventy-five percent (75%) of such costs and expenses which could not be mitigated under Section 3.16(b) above.
- 3.17. **Meeting Forecasts:** Subject to sections 3.11 to 3.13 of this RAO, an Access Provider must carry out network planning in order to enable Forecast to be met. If an Access Seeker

has confirmed a Forecast under section 2.3 of this RAO, it will be binding on the Access Seeker.

PART II - ORDERING AND PROVISIONING

1. General

1.1. Part II of Schedule A sets out ordering and provisioning procedures that are applicable

- a) only in relation to the provision of Access Services listed in the WASILAH ENGINEERING RAO.

1.2. Where relevant, the ordering and provisioning obligations set out in Subsection 5.7 of the MSA Determination shall be applicable.

2. Ordering Procedures

2.1. **Contact point or mechanism:** The Access Provider shall designate and notify the Access Seeker of one or more of the following;

- a) a person to whom Orders for access to facilities and/or Services are to be delivered;
- b) a contact point to which Orders for access to Facilities and/or Services are to be delivered (such as an e-mail address); and
- c) a mechanism where Orders for access to Facilities and/or Services can be made (such as a web portal or B2B gateway), provided that if such a mechanism is the only method which the WASILAH ENGINEERING provides for the receipt of Orders for that Facility and/or Service, WASILAH ENGINEERING cannot require the Access Seeker to unreasonably invest in specialised technology or systems (such as an automated interface between the Operational Support Systems of the Operators).

2.2. **Order content:** Prior to access being provided, an Access Provider may require as 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 the level of detail (sufficient for planning and provisioning), the following information in an Order for access to Facilities and/or Services:

- a) The Facilities and/or Services to which access is requested
- b) A requested date and time for delivery
- c) The location of the point of delivery
- d) 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
- e) 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, provide that such information shall not include any information which:
 - i. The Access Provider does not require from itself for similar provisioning;

- ii. Identifies, or which enables the identification of a Customer or services of the Access Seeker; or
 - iii. Is non-permitted information under subsection 5.4.16 of MSA.
- 2.3. **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:
- a) the Access Provider's wholesale or interconnection group; and
 - b) that part of the network engineering group of the Access Provider responsible for interconnection or access, or the purpose of responding to and provisioning for the Order.
- 2.4. **Treatment of Orders and Services Qualifications:** An Access Provider shall:
- a) established a single queue for all Orders for a given type of Facility and/or Service, whether those Orders are required for itself or any Access Seekers;
 - b) give the equivalent priority to the handling of all Orders in each queue.
- 2.5. **Acknowledgement of receipt:** An Access Provider shall acknowledged 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 period specified in the Service Specific Obligations for the purpose of the section 2.5 of this RAO.
- 2.6. **Notice of Receipt:** The Access Provider must include in its Notice of Receipt the following information:
- a) the time and date of receipt of the Order;
 - b) a list of any additional information reasonably required by the Access Provider from the Access Seeker to provision the Order;
 - c) 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 (if relevant) with such augmentation as may be required to fulfil the Order as submitted;
 - d) whether the Access Provider needs to perform post-Order Service Qualification because information is not readily available to the Access Provider, fo example in its Operational Support Systems, together with the reasons for needing to undertake the Service Qualification; and
 - e) the position of the Order in the Access Provider's queue

2.7. **Further information:** Access Provider shall allow the Access Seeker a period of up to ten (10) Business Days after a request for additional information under Section 2.6(b) of this RAO to provide the Access Provider with such information.

2.8. 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:

One (1) Business Days before the Access Provider commences civil works to provision of Order (where the civil works are required to provision the Facility 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 Acceptance if civil works is to occur after the Access Provider has accepted the order.

2.9. **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 section 3 of Part 1-Forecasting of this RAO.

2.10. **Time for acceptance or rejection:** The Access Provider must notify the Access Seeker that an Order is accepted or rejected within:

- a) the specified timeframe in the Service Specific Obligations for the purposes of this section 2.10; or
- b) 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 to notify the rejection and acknowledge in writing (or any other materials or electronic form as agreed by the parties).

2.11. **Notice of Acceptance:** An Access Provider's Notice of Acceptance to the Access Seeker must contain the following information:

- a) the delivery date or activation date (as applicable), which must be the date that is requested by the Access Seeker, or, if that date cannot be met by the Access Provider, then no later than:
 - i. the indicative delivery timeframe or activation timeframe to Access Seeker; or
 - ii. the period of the time taken by Access Provider to deliver, or active, such Facilities and/or Service 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, including without limitation additional works such as internal wiring, right of way, land rental, local authority permits and third-party deposits;

- 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”).

2.12. **Commencement of delivery timeframes:** The applicable delivery timeframe for an Order, as determined under Section 2.11(a) of this RAO, shall commence from:

- a) where the Access Seeker’s confirmation of an Order is required under section 2.13 of this RAO, the date the Access Seeker confirms the Order in accordance with that subsection; and
- b) in any other case, from the start of the Validity Period.

2.13. **Access Seeker’s confirmation:**

- a) 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 Services Qualification is required or any other matter that requires further confirmation from the Access Seeker before the Access Provider can proceed with order.
- b) Where the Access Seeker’s confirmation is required for the Access Provider to proceed with fulfilling an Order as provided for under Section 2.13(a) above, 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.

2.14. **Estimated charges:** If the Notice of Acceptance 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:
 - i. the estimate will likely be exceeded
 - ii. an explanation of the reasons for exceeding the estimate: and
 - iii. a further estimate of the charge for 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 Section 2.14(a) above if the revised estimate in that notice exceeds the original estimated 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 or work provided by the Access Provider due to;

- i. information or facts provided by the Access Provider which are inaccurate or erroneous or not disclosed by the Access seeker
- ii. 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 2.11(e) or 2.14(b) of this RAO, as applicable.

2.15. **Reason of rejections:** An Access Provider may only reject an order from an Access Seeker where:

- a) subject to section 4.6.2 of Chapter 4 of this RAO (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;

Determination of technical infeasibility

For the purpose of determining technical infeasibility in section 4.6.1(d), the Operators shall comply with Subsection 5.4.17 of the MSA Determination

- b) subject to compliance with subsections 5.7.31 and 5.7.32 of MSA, the Access Provider has insufficient capacity to provide the requested Facilities and/or Services;
- c) subject to section 2.17 of this RAO, 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 the MSA Determination); 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).

- 2.16. **Notice of rejection:** An Access Provider's notice of rejection of an Order to the Access Seeker must:
- a) 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
 - b) 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.
- 2.17. **Order in excess of Forecast:** Notwithstanding Section 2.15(b) of this RAO, an Access Provider must use its reasonable efforts to provide sufficient capacity to enable the Access Provider to accept and fulfil Orders from an Access Facilities and/or Services, which are in excess of the relevant Forecast. The Access Provider is only required to do so if, after meeting the Forecast requirements of other Access Seekers and itself, there is available capacity, or the Access Provider could readily upgrade existing capacity. The Access Provider shall allocate the available capacity on a non-discriminatory basis to meet the over Forecast requirements of all Access Seekers and itself. An Access Provider is not required to supply Facilities and/or Services in excess of the Forecast if, despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in quality of Facilities and/or Services provided to all Access Seeker and/or itself.
- 2.18. **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 2.20 of this RAO.
- 2.19. **Early Delivery Date:** 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 or both at the earlier delivery date.
- 2.20. **Delayed delivery dates:** Where there is a delay in the delivery of an Order, and:
- a) the delay is caused by Access Provider
 - i. 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;
 - ii. the Access Provider shall permit the Access Seeker to cancel the Order without penalty but to provide notification of cancelation if the delay is longer than equivalent time period for delivery of the Facility and/or Service; and
 - iii. the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date; or

- b) where the delay is caused by the Access Seeker:
 - i. the Access 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;
 - ii. the Access Provider and Access seeker must work together to minimise the delay; and
 - iii. the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date.

2.21. **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 2.22 of this RAO with notice in writing or any other materials or electronic form as agreed by the parties.

2.22. **Cancellation or variation penalty:** Except where this RAO provides that cancellation of an Order is to be at no penalty:

- a) the Access Provider may impose a charge for the cancellation or variation of the Order; and
- b) the charge which the Access Seeker is required to pay shall not exceed the lesser of the following amounts:
 - i. the sum of costs necessarily incurred by the Access Provider which is directly attribute to the cancellation or variation; or
 - ii. an amount equal to the sum of charges that would have been payable by the Access Seeker in the six (6) months immediately following the cancellation or variation had the Order not been cancelled or varied,

and reduced to the extent that those costs have been mitigated, or would have been mitigated had the Access Provider used its best endeavours to do so.

2.23. **Testing and provisioning:** An Access Provider:

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

2.24. **Queuing Policy:** An Access Provider shall establish and demonstrate and maintain a queuing policy system for each Facility and/or Service, which:

- a) Shall be non-discriminatory;
- b) Shall be applied to Orders of all Access Seekers for itself for the same or similar Facilities and/or Services, and shall treat the Orders of Access Seeker on an equivalent basis to that which the Access Provider treats its own Orders for the same or similar Facilities and/or Services; and

- c) Shall seek to maximise the efficiency of its ordering and provisioning process.
- 2.25. **Acceptance on queue:** An Access Provider shall promptly notify an Access Seeker at the time of providing an acknowledgement of receipt of the Order under Section 2.5 of this RAO (and as specified in the Notice of Receipt under Section 2.6 of this RAO), of their acceptance of, and position in, the Access Provider's queue.
- 2.26. **Capacity Allocation Policy:** If the Access Provider claims or is likely to claim that it has insufficient capacity to meet an Access Seeker's Forecast or Orders, the Access Provider shall maintain a Capacity Allocation Policy, which:
- a) 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, any other Operator on request;
 - b) 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 other Operator;
 - c) Shall;
 - i. be fair and reasonable;
 - ii. be consistent, so far as practicable, with the Access Provider's general duty of non-discrimination in accordance with section 149(2) of the Act;
 - iii. 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
 - iv. allocate the available capacity in the relevant Facilities and/or Services in proportion to each Operator's Forecast and/or Order requirements, and
 - d) shall set out 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 frequent of updates.
- 2.27. **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 2.20(a) iii of this RAO, except where such failure has been caused solely by the Access Seeker's delay or a lack of the authorisation by a third party and the Access Provider shall have the burden of demonstrating, the Access Provider shall notifies the Access Seeker that if an Order is

rejected, and/or the Access Provider must advise the Access Seeker whether the Access Provider would be able to accept the order in a modified form.

- 2.28. **Contractors under direction or control:** For clarity, any employees and contractors of the Access Provider shall be deemed to be acting under the direction or control of the Access Provider for the purposes of Part II – Ordering and Provisioning.

PART III - DECOMMISSIONING OBLIGATIONS

1. **Decommissioning notice:** Except where an Access Provider is required to vacate a site Facility and/or Service which relies on the Access Provider's use of that site, as a result of a third party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, an Access Provider must provide no less than:
 - a) six (6) months' notice in writing to all relevant Access Seeker prior to the decommissioning of any Facilities and/or Services which rely in the Access Provider's use of that site.

Where an Access Provider is required to vacate the site as a result of a third party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, the Access Provider must provide all relevant Access Seekers with as much as possible in relation to the matters in Sections 1(a) above.

2. **Co-operation:** An Access Provider must co-operate and negotiate with all relevant Access Seekers in relation to the timetable for decommissioning of the relevant Facilities and/or Services.
3. **Alternative arrangements:** An Access Provider which notifies and Access Seeker of its intention:
 - a) to decommission any other Facilities and/or Services, shall provide to the Access Seeker access to alternative Facilities and/or Services on terms and conditions and at a recurring charge which are not disadvantageous to the Access Seeker, relative to the terms and conditions and recurring charge applicable in respect of the Facilities and/or Services that are proposed to be decommissioned, for a period that is not less than five (5) years from the date of commissioning.
4. **Decommissioned Facilities and/or Services compensation:** Except where decommissioning is cause by Force Majeure, an Access Provider shall pay the Access Seeker's reasonable costs, necessarily incurred in:
 - a) moving the Access Seeker's Equipment from the decommissioned Facilities to alternative Facilities offered in accordance with Section 3(a) of this RAO; or
 - b) re-arranging Equipment to connect to alternative Services offered in accordance with Section 3(a) of this RAO.

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. WASILAH ENGINEERING 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. WASILAH ENGINEERING:
 - 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. the Access Seeker has first obtained the approval from a third party to use its tower where the tower structure of the third party resides in the Access Provider's compound; and
 - 2.1.4. there is sufficient space.

3. Infrastructure Sharing

- 3.1. WASILAH ENGINEERING agrees to provide Infrastructure Sharing at the designated tower or associated tower sites ("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.
- 3.2. Where third party towers are located on the WASILAH ENGINEERING's premises, Infrastructure Sharing by WASILAH ENGINEERING shall be limited to providing support services at Associated Tower Sites for use at the Associated Tower Sites and Designated Tower.

3.3. The list of the Designated Tower and Associated Tower Sites offered by WASILAH ENGINEERING is set out in Appendix 1 in this Schedule B Part 1 and the Access Seeker may be obtained the details and latest site list from the WASILAH ENGINEERING upon written request.

3.4. Duration of Infrastructure Sharing

3.4.1. Infrastructure Sharing at a Designated Tower or Associated Tower Site, agreed between the Operators, shall be for a fixed period of five (5) years.

3.4.2. The term of the Infrastructure Sharing shall commence on the date (“Start Date”):

- a) WASILAH ENGINEERING 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.

3.5. Infrastructure Sharing Forecast

The Access Seeker must submit a forecast to Access Provider for the required Infrastructure Sharing on a yearly basis where:

- a) the maximum period of time covered by Forecasts regarding Infrastructure Sharing is one (1) year;
- b) the minimum intervals or units of time to be used in Forecasts regarding Infrastructure Sharing is one (1) year; and
- c) the maximum frequency to update or to make further Forecasts regarding Infrastructure Sharing is once a year.

3.6. Acknowledge Receipts

Access Provider shall acknowledge receipt of each Order for Infrastructure Sharing within two (2) Business Days.

3.7. Time for Acceptance or Rejection

Access Provider shall notify an Access Seeker that an Order for Infrastructure Sharing is accepted or rejected within ten (10) Business Days after:

- a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order; or
- b) Providing the Access Seeker with the results of post-Order Service Qualification, where Access Provider has undertaken post-Order Service Qualification for that Order

3.8. Indicative delivery timeframe

For Infrastructure Sharing is ninety (90) Business Days from the Notice of Acceptance under or confirmation of the Order (as applicable) in accordance with section of this RAO.

3.9. Billing Cycle

Billing Cycle for Infrastructure Sharing will be one (1) year in advance for the first year and quarterly in advance for subsequent years.

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 utilized 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 WASILAH ENGINEERING's prior written approval, utilize the electricity supplied to WASILAH ENGINEERING at that premises;
- b) WASILAH ENGINEERING will, subject to the Access Seeker reaching a prior agreement as to applicable cost and charges, make available the utilities where such utilities are within the control of WASILAH ENGINEERING and WASILAH ENGINEERING has capacity to provide.
- c) where WASILAH ENGINEERING 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 WASILAH ENGINEERING to Enter and View Condition

4.2.1. The Access Seeker shall permit the WASILAH ENGINEERING 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 WASILAH ENGINEERING ("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, WASILAH ENGINEERING shall not be prevented from entering the Secured Shared Space without an escort.

4.2.2. Notwithstanding Condition 4.2.1, WASILAH ENGINEERING 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 WASILAH ENGINEERING'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 WASILAH ENGINEERING 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.

4.3.4. Where the Designated Tower or Associated Tower Sites is owned or controlled by a third party ("Infrastructure Site Owner") and the Access Provider's use of the Designated Tower or Associated Tower Sites is pursuant to a tenancy or lease, the Access Provider shall be under no obligation to seek any renewal of the term of the tenancy or lease. The Access Seeker agrees that it shall not seek a tenancy or lease or license to the Designated Tower or Associated Tower Sites from the Infrastructure Site Owner unless WASILAH ENGINEERING signifies in writing that it is no longer interested in the use of the Designated Tower or Associated Tower Sites or WASILAH ENGINEERING does not renew or take a lease or tenancy or license 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 WASILAH ENGINEERING'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 WASILAH ENGINEERING 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 WASILAH ENGINEERING to the Access Seeker specifying therein all necessary replacements and/or repairs to be affected as may be commensurate with the extent of the damage.

4.6.2. If the Access Seeker fails to affect the replacements and/or repairs within the time period stipulated in the notice (which period must be a reasonable time), WASILAH ENGINEERING 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 WASILAH ENGINEERING save where the replacements and/or repairs were due to the natural failure of the structure or due to the Access Provider.

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 WASILAH ENGINEERING'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 there to, 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 by WASILAH ENGINEERING (and which rules and regulations equally apply to all access seekers) from time to time and notified to the Access Seeker in writing. Always that WASILAH ENGINEERING 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 WASILAH ENGINEERING 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 24 hours) take all such necessary steps to stop any such interference;
- 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 24 hours) take all such necessary steps to stop any such interference; and/or
- d) not be connected to any equipment belonging to WASILAH ENGINEERING without the written consent from WASILAH ENGINEERING.

4.9.2. In the event that:

- a) the Access Seeker fails to fulfil its obligations under this Condition 4.9.1; 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,

WASILAH ENGINEERING 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 WASILAH ENGINEERING.

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

4.9.5. The Access Seeker is responsible for ensuring its equipment and shall purchase the necessary insurances when carrying out any works including installation works on WASILAH ENGINEERING's Designated Tower or Associated Tower Sites. In particular, the Access Seeker shall obtain or procure an Erection All Risks insurance against all risks of physical loss or damage to the Access Seeker's work whereby WASILAH ENGINEERING is a named insured (either solely or jointly) in the insurance policy and the insurance shall be in the amount which is sufficient to insure the full value of the works carried out by the Access Seeker.

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 WASILAH ENGINEERING.

4.11. **Safety and Health and Security Procedures**

4.11.1. The Access Seeker 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 WASILAH ENGINEERING, the Access Seeker shall comply with all actions specified by WASILAH ENGINEERING 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 WASILAH ENGINEERING 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 WASILAH ENGINEERING, 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 unauthorized access to the Shared Space.

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 WASILAH ENGINEERING. Where WASILAH ENGINEERING 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. WASILAH ENGINEERING 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 WASILAH ENGINEERING'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 WASILAH ENGINEERING's and other access seeker's equipment and/or facilities, the Access Seeker must notify

WASILAH ENGINEERING in writing as soon as practicable and repair the fault, defector problem or take other appropriate corrective action immediately to WASILAH ENGINEERING's satisfaction.

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

5. WASILAH ENGINEERING's Obligations

5.1. Exclusive Possession

The Access Seeker recognizes that it does not have exclusive possession of the Shared Space since WASILAH ENGINEERING occupies the Shared Space and may sub-let or intend to sub-let the Shared Space to other parties. However, the WASILAH ENGINEERING 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

WASILAH ENGINEERING 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 WASILAH ENGINEERING and all access seekers in proportion to their usage of space.

5.3. Physical access

- a) Subject to Condition 5.3(b), the Access Provider shall allow an Access Seeker, its employees and contractors to physically access the Access Provider's network facilities/premises for the purpose of installing, commissioning, modifying, maintaining, repairing, decommissioning and/or removing its Equipment, twenty-four (24) hours a day seven (7) days a week, provided always, the Access Provider is given five (5) Business Days prior written notice.
- b) Where access to the Access Provider's network facilities/premises is required for emergency maintenance and repairs, the Access Seeker shall provide the Access Provider with a verbal notice on the day access is required and a facsimile confirmation within twenty-four (24) hours.
- c) Notwithstanding Condition 5.3(a) and 5.3(b) above, access to the Access Provider's network facilities/premises shall at all times be subject to the terms and conditions of the respective tenancy agreement which shall be made known to the Access Seeker by the Access Provider at the time of fulfilment of an Order.

5.4. Escorts

If the Access Provider determines that it is necessary to have an escort present when employees or contractors wish to enter onto the Access Provider's property, the Access Provider shall:

- a) make such escort service available at all times during ordinary business hours;
- b) have such escort service on call (with no longer than a thirty (30) minute response
- c) time to attend at the Access Provider's property) outside ordinary business hours;
- and
- d) bear the costs of such escort service.

5.5. Absence of escort

5.5.1. For the purposes of Condition 5.4, if an escort does not arrive at the Access Provider's property within 30 minutes or any time mutually agreed of the scheduled

commencement of the visit by the Access Seeker, the Access Seeker's staff may proceed to enter the Access Provider's property without an escort subject to the terms and conditions of any tenancy agreement.

5.5.2.If the tenancy agreement requires that the Access Seeker be escorted by the Access Provider in order to gain physical access to the Access Provider's Network Facilities, the Access Provider shall escort the Access Seeker.

5.6. WASILAH ENGINEERING's Covenant

5.6.1.In the event that:

- a) WASILAH ENGINEERING 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 WASILAH ENGINEERING 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 WASILAH ENGINEERING 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 WASILAH ENGINEERING and WASILAH ENGINEERING 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, WASILAH ENGINEERING will use its reasonable endeavours to offer the Access Seeker other suitable Designated Tower or Associated Tower Sites subject to availability.

5.6.2. Where WASILAH ENGINEERING 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, WASILAH ENGINEERING 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. 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 un-less a separate arrangement is reached between the Access Seeker and the third-party purchaser. WASILAH ENGINEERING 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 pro- rated basis by issuing a credit note. The Operators agree that the Access Seeker and/or WASILAH ENGINEERING 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 WASILAH ENGINEERING and WASILAH ENGINEERING 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 WASILAH ENGINEERING with all WASILAH ENGINEERING '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

6.2.2. where the Designated Tower is to be dismantled or WASILAH ENGINEERING 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 WASILAH ENGINEERING 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 timeline provided to the WASILAH ENGINEERING to enable WASILAH ENGINEERING to comply with the requisite time lines, to vacate the Shared Space, during which no monthly rental will be charged by WASILAH ENGINEERING. Should the equipment, system or devices not be removed within the grace period, WASILAH ENGINEERING shall have the right to:

- a) 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
- b) without any liability to the Access Seeker, dispose of the equipment, system or devices in such manner as WASILAH ENGINEERING 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, WASILAH ENGINEERING 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. WASILAH ENGINEERING 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 WASILAH ENGINEERING.

7. Site Register

The Access Seeker shall establish and maintain a register of all persons who visit the Access Provider's property on the Access Seeker's behalf, which must be made available for inspection by the Access Provider, upon request.

8. Utilities and ancillary services

The Access Provider shall, 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 lands;
- 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 to its agents, representatives or sub-contractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft; and
- f) Site maintenance

9. Cost

The utility and ancillary cost in respect of network facilities as contemplated in section 9 as above shall be apportioned (in accordance with fair and equitable principles) between the Access Provider and all Access Seekers at the relevant location.

10. Maintenance and rectification:

- 10.1. ensure that it maintains in reasonable working condition all fixed telecommunications poles which comprise specified network facilities (as that term is used in the description of the Infrastructure Sharing Service), subject to Section 10.2 and
- 10.2. on notice by an Access Seeker, or upon otherwise becoming aware, that any fixed telecommunications pole does not comply with Section 10.1, perform within forty (40) Business Days such activities as required to rectify such non-compliance.

11. Service Assurance Targets for Infrastructure Target

Severity	Service Definition	Fault Type (Including but not limited)	Fault Type (Including but not limited)	Progress Update Frequency	Temporary Restoration Time	Rectification Time	Incident Report (RCA) Issuance
Level 1	Hub Sites (a site with more than 5 child sites)	<ul style="list-style-type: none"> • Outage caused by fault of AC power supply system owned by Access Provider • Outage caused by power issue at landlord/building • Outage caused by CME issues • Outage due to flooding 	1 hour	Every 1 hour	4 hours	48 hours	48 hours
Level 2	End Sites (Site that is not a Hub Site)	<ul style="list-style-type: none"> • Outage caused by fault of AC power supply system owned by Access Provider • Outage caused by power issue at landlord/building • Outage caused by CME issues • Outage due to flooding 	1 hour	Every 2 hour	4 hours	7 Business Days	5 Business Days
Level 3	No Service Affecting Fault	<ul style="list-style-type: none"> • Issues related to power system asset belonging to Access Provider, landlord/building site access or CME issues 	1 hour	Every 24 hour	24 hours	14 Business Days	N/A

- i. All faults reported shall be ascribed with a Severity Level set out above and Parties shall cooperate with one another to achieve Rectification Times based on the severity of the fault reported
 - ii. "Progress Update Frequency" means the frequency at which the Access Seeker may call the Access Provider for restoring the fault to obtain a verbal or written progress update.
 - iii. "Response Time" refers to the time for the Access Provider to respond to the fault and is measured from the time the fault is reported by the Access Seeker to the Access Provider.
 - iv. "Rectification Time" refers to the time for the Access Provider to rectify a fault and is determined by the period the reporting of a fault by the Access Seeker to the Access Provider and the rectification of the fault on a permanent basis
 - v. "Temporary Restoration Time" refers to the time for the Access Provider to temporarily rectify a fault and is determined by the period between the reporting of a fault by the Access Seeker to the Access Provider and the rectification of the fault on a temporary basis.
- 12. Rebates :** If the Access Provider is unable to provide the Service due to negligence on its part (e.g., poorly designed structure or platform that does not function properly, the Access Provider failed to pay rental to its landlord on time, the Access Provider failed to provide site access), without limiting the Access Provider's obligation to provide any applicable rebates under Section 2.27 of this RAO, affected Access Seekers are entitled to a rebate for not meeting the Service Assurance Target under Section 11 above, which shall at a minimum reflect the rental amount paid or to be paid by the Access Seeker to the Access Provider for the period of site downtime
- 13. Ground for Refusal:** In addition to the grounds for refusal in Section 2.2.3.11 of this RAO, an Access Provider may, based on reasonable safety and security reasons, refuse an Order Request to fixed telecommunication poles being utilised for critical government services, including in connection with government agencies, the military or the police.
- 14. Capacity Allocation Policy :** In addition to Section 2.26 of this RAO, the Access Provider's Capacity Allocation Policy for Infrastructure Sharing Services shall set out the principles to be applied on an equivalent basis between itself and other Access Seekers, where:
- a) the Access Provider has already taken steps to optimise space by using the current available technology, including removing any unused cables;
 - b) the Access Provider shall determine the available space only after considering:
 - i. the requirements for Infrastructure Sharing Services for the Access Provider's then existing maintenance purpose;
 - ii. the reservation of the Infrastructure Sharing Service for future use by the Access Provider or another Access Seeker, applicable on an equivalent basis for six (6) months, upon receipt of an Order; and

- iii. the structural integrity of the infrastructure to safely accommodate additional capacity; and
- c) the allocation of available space shall be:
 - i. on a first-come, first-served basis;
 - ii. applicable to reserved capacity that is not used by either the Access Provider or an Access Seeker within the seven (7) months from the date of the Order; and
 - iii. to the extent possible, based on efficient allocation principles to minimise space wastage

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
 - 2.1. Infrastructure Sharing provided by WASILAH ENGINEERING shall, only to the extent necessary, be subject to the Charges listed in Table A and Table B below. For the purposes of clarification, all other Infrastructure Sharing Services not listed in Table A below are negotiated charges

Table A : Charges and charging principle for on ground infrastructure.

ITEM	STRUCTURE TYPE	UOM	Monthly Rental Rate Up to 10 Years License Term (RM)		
			1 OPERATOR	2 OPERATORS	3 OPERATORS
1	Tower, 76m	Per Site/Month	9,450 – 9,500	8,000 – 8,500	4,400 – 5,200
2	Tower, 60m	Per Site/Month	8,500 – 9,000	7,500 – 8,000	4,100 – 4,800
3	Tower, 45m	Per Site/Month	5,500 – 6,500	5,500 – 6,000	3,000 – 3,500
4	Monopole, 45m	Per Site/Month	7,000 – 7,500	5,500 – 6,250	4,200 – 5,000
5	Monopole, 30m	Per Site/Month	6,000 – 6,900	4,000 – 4,850	3,500 – 4,000
6	Monopole, 24m	Per Site/Month	N/A	N/A	N/A
7	Monopole Tree, 45m	Per Site/Month	7,500 – 8,000	6,000 – 6,500	5,000 – 5,500
8	Monopole Tree, 30m	Per Site/Month	6,000 – 6,500	4,500 – 5,000	4,000 – 4,500
9	Lamp Pole, 30m	Per Site/Month	5,000 – 5,500	4,000 – 4,500	3,000 – 3,500
10	Lamp Pole 24m	Per Site/Month	4,000 – 4,500	3,000 – 3,500	2,500 – 3,000
11	Lamp Pole / Streetlight Pole, 18m	Per Site/Month	3,000 – 3,500	N/A	N/A

APPENDIX 1

INFRASTRUCTURE SHARING SITE

No	Site Name	Address	Structure Type	Lat	Long	Status	Land Title
1	Bandar Puchong Jaya	Jalan Bandar Puchong Jaya	Lampole 30m	3.059358	101.622257	Tower Build	Local Council
2	Jalan Syed Putra	Jln Robson, Persiaran Syed Putra, Seksyen 94	Lampole 24m/30m	3.12380556	101.683972	Pre-Consult	Local Council
3	Jln Raja Musa	Jln Raja Musa, Kg Raja Musa, Pekan Bukit Talang, Sel	Lampole 24m/30m	3.40691667	101.319972	Pre-Consult	Local Council
4	Tmn Puncak Jalil	Jln Puj 9/17, Tmn Puncak Jalil, Bandar Putra Permai, Sel	Lampole 24m/30m	3.03807	101.68149	Pre-Consult	Local Council
5	Sebahagian Jalan Sabah/Jalan Semenanjung	Kl	Lampole 24m/30m	3.1773	101.7129	Site Survey	Local Council
6	Taman Desa Kundang	Gombak	Lampole 24m/30m	3.3009	101.53	Site Survey	Local Council
7	Persiaran Setia Makmur	Bukit Raja	Lampole 24m/30m	3.136	101.4755	Site Survey	Local Council
8	Ampang Pecah	Kuala Kubu	Lampole 24m/30m	3.56044	101.63393	Site Survey	Local Council
9	Bandar Country Homes Rawang	Gombak	Lampole 24m/30m	3.3222	101.524	Site Survey	Local Council
10	Persiaran As Salam	7, Persiaran As Salam Bukit Beruntung, 48300 Rawang	Lampole 24m/30m	3.4045278	101.558545	Ls/Si	Local Council
11	Bandar Tasik Puteri	18 Jln 3/42, Bandar Tasik Puteri Rawang	Lampole 24m/30m	3.2768832	101.498838	Site Survey	Local Council
12	Jalan Anggerik 3	Jalan Anggerik 3, Bandar Bukit Beruntung , 48300	Lampole 24m/30m	3.2768832	101.567996	Ls/Si	Local Council

REFERENCE ACCESS OFFER

WASILAH ENGINEERING SDN BHD

No	Site Name	Address	Structure Type	Lat	Long	Status	Land Title
13	Kg Catin	Wasilah Global Auto Sdn Bhd, 11570, 88, Kg Catin 28400, Mentakab	Lampole 45m	3.48207	102.35469	Site Survey	Private, Own By Wasilah
14	Sg Long	Jalan Wira Height 1, Bandar Sungai Long 43000	Lampole 24m/30m	3.039781	101.804543	Ls/Si	Local Council
15	Kg. Padang Jawa	Jalan Tegas, 40200 Shah Alam, Selangor	Lampole 24m/30m	3.047833	101.492583	Site Survey	Local Council
16	Jln Sg. Batu	28, Jalan Sungai Batu 6/Ku6, Kampung Sungai Puloh, 42100 Klang, Selangor	Lampole 24m/30m	3.08895	101.402641	Site Survey	Local Council
17	Country Heights	Jade Hills, 43000 Seri Kembangan, Selangor	Lampole 24m/30m	2.992111	101.750611	Site Survey	Local Council
18	Taman Bukit Rawang Jaya	Setapak, Selangor	Lampole 24m/30m	3.330875	101.750611	Site Survey	Local Council
19	Bandar Baru Selayang 3	Jalan Mutiara 3/6, 68100 Batu Caves, Selangor	Lampole 24m/30m	3.262401	101.67178	Site Survey	Local Council
20	Bandar Tasik Puteri	Jalan Lembah Hijau 11, Bandar Tasik Puteri, 48000 Rawang, Selangor	Lampole 24m/30m	3.278858	101.470547	Site Survey	Local Council
21	Bandar Country Home 2	Jalan Kb 3, Bandar Country Homes, 48000 Rawang, Selangor	Lampole 24m/30m	3.327826	101.524713	Site Survey	Local Council
22	Jalan Kiambangsari	Serendah Selangor	Lampole 24m/30m	3.382924	101.528834	Site Survey	Local Council
23	Jalan Rampaisari	Cempakasari, 48000 Rawang, Selangor	Lampole 24m/30m	3.376048	101.528834	Site Survey	Local Council
24	Jalan Cemerlang	Banting, 42700 Banting, Selangor	Lampole 24m/30m	2.814742	101.509165	Site Survey	Local Council

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WASILAH ENGINEERING SDN BHD

25	Taman Wawasan	Ampang, Selangor	Lampole 24m/30m	3.142027	101.771837	Assr	Local Council
No	Site Name	Address	Structure Type	Lat	Long	Status	Land Title
26	Taman Lembah Maju	Ampang, Selangor	Lampole 24m/30m	3.124858	101.758568	Assr	Local Council
27	Lengkuk Keluli Taman Perindustrian	Shah Alam, Selangor	Lampole 24m/30m	3.072353	101.479511	Assr	Local Council
28	Jalan Tabla	Shah Alam, Selangor	Lampole 24m/30m	3.022104	101.547358	Assr	Local Council
29	Jalan Sungai Besar	Shah Alam, Selangor	Lampole 24m/30m	3.032332	101.558061	Assr	Local Council

ANNEXURE I

NON-DISCLOSURE AGREEMENT

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

BETWEEN

WASILAH ENGINEERING SDN BHD (Company No 713096-W), a company incorporated under the laws of Malaysia and having its principle of business at No 45-1, 45-2, 45-3, Jalan Equine 10F, Equine Park, Bandar Putra Permai, 43300 Seri Kembangan, Selangor (hereinafter referred to as **“WASILAH ENGINEERING”**) 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.

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

RECITALS

WHEREAS:

- a) WASILAH ENGINEERING holds NFP individual license, NSP individual license under the Communications and Multimedia Act 1998 and is authorized to provide access to certain network facilities and network services under its individual licenses.
- b) The Company holds an [] individual and class licenses 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 licenses..
- c) WASILAH ENGINEERING 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;

“Disclosing Party”

means the Party from whom the Confidential Information originates and is disclosed to the Receiving Party;

“Government Agency”

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;

“Project”	has the meaning ascribed in Recital (C);
“Receiving Party”	means the Party to whom the Confidential is given or disclosed; and
“Representatives”	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 unauthorized 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' premises, save and except with the written permission of an authorized 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 authorized 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 authorize 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

- a) 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.
- b) 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.

- c) 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.
- d) 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

a) 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:

- 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

b) The correspondence address and facsimile number of the Parties are as follows: -

WASILAH ENGINEERING SDN BHD

Attention : Director
Address : No 45-1, 45-2, 45-3, Jalan Equine 10F, Equine Park,
Bandar Putra Permai, 43300 Seri Kembangan, Selangor
Telephone No. : +603 8959 0666/ 9494
Facsimile No. : +603 8940 7557

[COMPANY NAME]

Address: : []
Telephone No : []
Facsimile No. : []
Attention : []

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.

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 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 there upon 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

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

- b) 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.

REFERENCE ACCESS OFFER
WASILAH ENGINEERING SDN BHD

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)

WASILAH ENGINEERING SDN. BHD)

(Company No. 713096-W))

in the presence of:)

)

)

Name)

Designation)

)

)

Name)

(Witness))

NRIC No :)

)

SIGNED by

For and on behalf of [])

(Company []) in)

the presence of :-)

)

)

Name)

Designation)

)

)

Name)

(Witness))

NRIC No :)

)