

ACCESS REFERENCE DOCUMENT

(With effect from 10 December 2015)

A. INTRODUCTION

EDOTCO MALAYSIA SDN BHD (formerly known as Celcom Services Sdn Bhd) (Company No. 148800-H) ("**EMSB**") is a licensed network facilities and services provider under the Communications and Multimedia Act 1998 ("**Act**") and the first entity of its kind dedicated to providing telecommunications operators with comprehensive infrastructure solutions and accompanying services. EMSB operates from its corporate premises at Level 30, Quill 7, Jalan Stesen Sentral 5, Kuala Lumpur Sentral, 50470 Kuala Lumpur.

This Access Reference Document ("**ARD**") is issued pursuant to the Malaysian Communications and Multimedia Commission Determination on Access List (Determination No. 2 of 2015), Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005 as amended by the Variation to the Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2009) and the Commission Determination on the Mandatory Standard on Access Pricing (Determination No. 1 of 2012).

This ARD is a reference aid that provides an outline of the main terms and conditions for a prospective Access Seeker intending to obtain Access Service(s) from EMSB and contains information that is reasonably necessary for the negotiation, conclusion and implementation of the provision of access as contemplated in the MSA Determination (but which are no means exhaustive, conclusive or that operate to exclude or substitute terms and conditions contained in the relevant Access Agreement).

In this ARD, any references to the contents of this ARD shall be referred to as "Paragraph"; and any references to the MSA Determination or the Act shall be referred to as "Section".

B. PRINCIPLES GOVERNING THIS ARD

This **ARD** shall be effective from the date of its publication until replaced or varied.

In the matter of this ARD, EMSB undertakes to comply with all relevant provisions of the MSA Determination, principally, adherence to:

- (i) **Negotiation Procedures** ▶ As set out in **Section 5.4.9 to 5.4.18** of the MSA Determination;
- (ii) **Standard Access Obligations** ▶ As outlined in Section 149 of the Act, inter alia, equitable and non-discriminatory access (per Section 149(2) of the Act) and customer relationship principles (per **Section 4.3** of the MSA Determination);
- (iii) **Amendments** ▶ EMSB may amend this ARD from time to time and EMSB shall within ten (10) Business Days of making any change to this ARD provide a copy of the amendments or an amended copy of this ARD to:
 - the Access Seeker who is being provided with access to the Access Service(s); and
 - the Access Seeker who has requested this ARD within the period of ninety (90) days prior to the making of such amendments, unless the Access Seeker has already indicated that it does not wish to proceed with an Access Request.

C. ACCOMPANYING DOCUMENTS

This ARD shall be read together with the following schedules and appendices, all of which collectively make up the entirety of the ARD

- SCHEDULE 1** ▶ Specimen Non-Disclosure Agreement to be executed between Access Seeker and EMSB

- SCHEDULE 2** ▶ Diagrammatic representation of the various components of the Access Service(s) provided by EMSB
- SCHEDULE 3** ▶ EMSB’s maintenance services obligations
- SCHEDULE 4** ▶ Applicable process flow governing the installation and replacement of equipment on Sites
- APPENDIX A** ▶ Specimen Access / Service Request Form
- APPENDIX B** ▶ Specimen Engagement Term Sheet
- APPENDIX C** ▶ Specimen Service Order Form
- APPENDIX D** ▶ Specimen Ready For Active Installation Notice

D. COMMUNICATION

Any communication in respect of this ARD should be made in writing to:

Attention: Legal & Regulatory

Address: Level 30, Axiata Tower,
9 Jalan Stesen Sentral 5,
Kuala Lumpur Sentral, 50470 Kuala Lumpur

E-mail: legal@edotcogroup.com

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions. The following words have these meanings in this EMSB Access Reference Document unless the contrary intention appears: -

- "Access Agreement"** : means the master infrastructure services agreement together with all schedules, appendices and addenda attached thereto (also known as MISA, for short) and the corresponding site agreement(s):
- (i) entered into between EMSB and the Access Seeker pursuant to this ARD; or
 - (ii) which is commercially negotiated between EMSB and the Access Seeker,
- whereby EMSB provides the requested Access Service(s) to the Access Seeker in accordance with the terms therein contained and registered with the Commission in accordance with Section 150 of the Act;
- "Access List"** : means the list of network facilities and network services determined from time to time by the Commission pursuant to Chapter 3 of Part VI of the Act;
- "Access Provider"** : means:
- (i) network facilities providers who own or provide network facilities listed in the Access List; or
 - (ii) network services providers who provide network services listed in the Access List;
- who is a licensee as defined in the Act. For the purposes of this ARD, the Access Provider is EMSB;
- "Access Request"** : means a request for access to the Access Service(s) made by the Access Seeker to EMSB and containing the information in **Paragraph 4.1 of this ARD.**

The Access Request Form is attached herein as **Appendix A**;

- "Access Seeker"** : means an operator who:
- (i) is a licensed network facilities provider, network services provider, application service provider and/or content application service provider under the Act; and
 - (ii) makes a written request for access to Access Service(s);
- "Access Seeker's Equipment"** : means any Equipment which belongs to Access Seeker or an Access Seeker's Affiliates at a Site;
- "Access Service(s)"** : means the network infrastructure and facilities as specified in **Paragraph 2** of this ARD that may be provided by EMSB to the Access Seeker pursuant to an Access Request and more particularly listed in **Schedule 2 of this ARD** and includes Site Space;
- "Access Service(s) Fee"** : means the Basic Access Service(s) Fee, Loading Charges, Operator Rental Charges, Operator Utility Charges or any other charges payable by the Access Seeker to EMSB under the Access Agreement;
- "Additional Charge"** : has the meaning assigned to such term in **Paragraph 5.7 of this ARD**;
- "Affiliates"** : means another person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person
- "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;
- "Commission"** : means the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998;
- "Confidential Information"** : means all information, know-how, ideas, concept, technology, processes, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of an Access Seeker but does not include:
- (i) information which is in or enters the public domain, other than by breach of the Receiving Party; or
 - (ii) information which is known to the Receiving Party on a non-confidential basis prior to disclosure pursuant to the Access Agreement; or
 - (iii) information which is or has been lawfully disclosed to the Receiving Party by a third party without an obligation of confidentiality; or
 - (iv) information which is required to be disclosed pursuant to any applicable laws, rules or regulations or direction of statutory or regulatory authority or stock exchange or required to be disclosed for the purpose of obtaining any shareholders' approval or pursuant to an order of a relevant court of law provided that:-
 - the Receiving Party, gives twenty four (24) hours' notice to the Disclosing Party of the particulars of the required disclosure; and
 - the Receiving Party provides the Disclosing Party with all assistance reasonable required by the disclosing operator (at the Disclosing Party's cost) to enable the Disclosing Party to take any steps available to it to prevent that disclosure or to ensure that it occurs subject to a reasonable obligation of confidence;
- "Determination"** : means any lawful determination made by the Commission and/or the Minister of Communications and Multimedia or, if different, the Minister administering the Act, pursuant to Chapter 2 of Part V of the Act;

- "Dispute Resolution Procedure"** : means the dispute resolution procedures outlined in **Annexure A** of the MSA Determination;
- "Equipment"** : means an Access Seeker's or a third party's equipment (including the equipment of any operator) used in the wireless business, located at a Site, including all wireless communications and transmission equipment using any technology (including cellular mobile GSM, DCS, CDMA, WCDMA, LTE, WiMAX, VSAT or otherwise or wireless communications in connection with a fixed line or data communication business), including radio frequency antennas, sectoral antennas, microwave dishes, other antennas (including VSAT, GPS, omni and WiMAX MIMO antennas), remote radio units (RRUs), Base Transceiver Station, microwave transmitters and receivers, and other wireless or landline network communications equipment, cable feeders, feeder ladders and cables relating thereto, and all foundation pads, clamps, brackets, hardware, appurtenances and other ancillaries relating to the foregoing, including to hold such equipment and any equipment used for monitoring, maintenance or access to such equipment.
- "Force Majeure"** : shall mean any of the following events or circumstances (provided such events or circumstances are not the result of an inability to make payment) that are beyond the reasonable control of the affected Party, to the extent that such events or circumstances delay or make impossible the performance by such Party of any of its duties and obligations or cause a Party to breach a representation, warranty or obligation under the Access Agreement: (i) any acts, orders, decisions or decrees of any Governmental Entity which materially affect such Party's ability to perform its obligations under the Access Agreement, (ii) enactments of, changes in or the enforcement of any Laws (including any changes in the application or interpretation thereof) that materially affect such Party's ability to perform its obligations under this ARD or any Access Agreement, (iii) acts of God, including, without limitation, volcanic activity, tornadoes, hurricanes, floods, sinkholes, landslides, earthquakes and tsunamis, (iv) major explosions and accidents, and (v) acts of war, terrorism, effects of nuclear radiation, insurrections, riots, the combined action of workers, political unrest and other acts of third parties and circumstances beyond a Party's reasonable control; provided that a "Force Majeure" shall not include any delays or failures of a Party caused by the following: (i) the acts of the other Party or its Representatives; (ii) the failure by the other Party or its Representatives to perform any acts required by the Access Agreement, or any other agreement between the Parties relating to the subject matter hereof or (iii) events that are reasonably foreseeable due to the geographical, historical, political, social or economic circumstances of Malaysia and the effect of such events on such Party's ability to perform its obligations under the Access Agreement could have been significantly mitigated or prevented through commercially reasonable actions.
- "Lock-in Period"** : means a period of ten (10) years from the relevant Site Commencement Date for each Site;
- "MSA Determination"** : means Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005 as amended by the Variation to the Commission Determination on the Mandatory Standard on Access [Determination No. 2 of 2009]) and/or as may be modified or varied by the Commission from time to time under Section 56 of the Act.
- "Operator Rental Charges"** : rental charges payable by an Access Seeker under the Access Agreement
- "Representatives"** : means with respect to EMSB or Access Seeker, all Affiliates of EMSB or Access Seeker and all directors, officers, partners, employees, agents, advisors, representatives, contractors or sub-contractors of EMSB or Access Seeker;
- "Site"** : means the definition of a site under the Access Agreement;

- “Site Space”** : means with respect to any Site,
 (i) on an exclusive basis, certain space (whether as a single unit or in parts) on the Towers and certain ground space on the land comprising such Site, and
 (ii) on a non-exclusive basis, certain rights for cable runs, utilities and access for such Site, in each case as set forth in the Access Agreement for such Site;
- “Standard Configuration”** : has the meaning assigned to such term as defined in the Access Agreement;
- “Towers”** : means wireless communications towers (whether ground-based, rooftop, monopole, guyed-mast, self-supported or of any other type) and the related shelter or cabin located in Malaysia on the land comprising such Site and all related equipment, including conduit, vaults and pedestals, grounding and pole hardware, fencing and signage, provided that "Towers" shall not include Equipment;
- “Upgrade”** : means any upgrade or other variation (other than the variation stipulated under the Access Agreement) or modification to a Site which is beyond the Standard Configuration;
- “User”** : means a person, other than the Access Seeker, engaged in wireless business or otherwise that leases or agrees to lease space on a Site.

1.2 Interpretation. Unless the context of this ARD otherwise requires:

- 1.2.1 Words denoting the masculine gender shall include the feminine and neuter genders and vice versa.
- 1.2.2 Words denoting the singular number shall include the plural number and vice versa.
- 1.2.3 The headings on this ARD do not affect its interpretation.
- 1.2.4 References to any statute, rule, regulation, order, directive and such cognate references shall be construed as references to such statute, rule, regulation, order or directive as respectively amended or re-enacted or as their operation is modified by any other statute, rule, regulation, order or directive.
- 1.2.5 References to a document includes all amendments or supplements to, or replacements or novations of, that document.
- 1.2.6 References to a **"person"** includes any individual person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having a separate legal personality) and also include the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and permitted assigns.
- 1.2.7 References to a related body corporate of an Access Seeker have the same meaning ascribed to in the Companies Act 1965.
- 1.2.8 Unless the context otherwise requires, references to **"day"** or **"days"** shall mean a twenty four (24) hours period.
- 1.2.9 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 5.00 pm on that particular day or Business Day.

2. ACCESS SERVICE(S)

- 2.1 Scope.** This ARD applies to network facilities access and co-location services, either on existing Towers

owned/managed by EMSB or custom-built for Access Seekers for the purposes of installing and maintaining Equipment necessary for the provision of the Access Seeker's services. The Access Service(s) provided by EMSB includes the provision of physical space, power, environmental services (such as heat, light, ventilation and air-conditioning), Site maintenance and access for the personnel of the Access Seeker. EMSB shall comply with the maintenance services obligations set out in **Schedule 3 of this ARD**.

- 2.2 Third Parties.** EMSB may lease available Site Space to other, third-party Access Seekers and/or Users.
- 2.3 Access Register.** The Access Seeker must maintain a register of all persons entering EMSB's Site Space and the same must be made available for inspection by EMSB upon request.
- 2.4 Escort Service.** If required, EMSB shall provide escort service to an Access Seeker entering into a Site Space in accordance with **Section 5.13.4** of the MSA Determination.
- 2.5 Non-Discrimination.** EMSB shall allocate a space at each location where co-location is to be permitted in a non-discriminatory way. EMSB shall not reserve any Site Space other than for the needs of other operators who are currently occupying or have ordered space from EMSB.

3. SCOPE AND TERMS OF THE ACCESS AGREEMENT

- 3.1 Access Agreement.** The terms and conditions for the Access Service(s) shall be stipulated under the Access Agreement, which sets out the definitive rights, obligations and interests governing the relationship between EMSB and the Access Seeker.
- 3.2 Terms and Periods Under Access Agreement.** The Access Service(s) are designed to provide the best balance between the Access Seeker's costs and benefits over time, viz.:
 - 3.2.1 The Access Agreement shall commence from the date of its execution until terminated in accordance with its provisions;
 - 3.2.2 During the subsistence of the Access Agreement, each Site Agreement shall be valid for a term of fifteen (15) years (the "**Term**") commencing from the start date of the relevant Site Agreement, or such other date as agreed between the parties ("**Site Commencement Date**") unless terminated in accordance with the Access Agreement.
 - 3.2.3 The term will be extended for a single successive term ("**Renewal Term**") with the same terms and conditions as set out in the Access Agreement unless otherwise agreed by the Parties.
 - 3.2.4 Each Site Agreement is subject to a **Lock-in Period**, during which period termination will be subject to applicable liquidated damages in accordance with the Access Agreement.

4. ACCESS REQUEST

- 4.1 Application for Access.** An Access Seeker requesting Access Service(s) may do so by serving upon EMSB an Access/Service Request in writing in the form set forth in **Appendix A**, setting out the following (non-exhaustive) information:
 - 4.1.1 the information (if any) the Access Seeker reasonably requires the Access Provider to provide for the purposes of negotiations. The type of information to be requested by Access Seekers is in accordance with (but not limited to) **Section 5.3.6** of the MSA Determination;
 - 4.1.2 relevant technical information relating to the interface standards of the Access Seeker; and
 - 4.1.3 relevant information relating to the Access Seekers' network and the functionality of its Access Service(s), to the extent that the Access Seeker is aware that such information may affect EMSB's network.

4.2 Forecasting Obligation. EMSB may require, as a condition to providing Access Service(s) to the Access Seeker, that an Access Seeker provide EMSB with the following:-

- 4.2.1 a good faith indicative forecast of its requirements for Sites from EMSB at least forty five (45) days prior to each calendar quarter; and
- 4.2.2 a good faith indicative forecast of its requirements for temporary structures the likes of cell on wheels or mobile Base Transceiver Stations, RAMOs, rapid pole Sites and portable Base Transceiver Stations. The Access Seeker may from time to time, lease Site Space on such temporary structures from EMSB subject to applicable Access Service(s) Fees determined in accordance with EMSB's prevailing schedule of fees at least once every six (6) calendar months.

4.3 Non-Disclosure Agreement. The Non-Disclosure Agreement attached as **Schedule 1** hereto shall be executed by EMSB and the Access Seeker in duplicate prior to any discussion on an Access Request in accordance with **Section 5.3.7** of the MSA Determination.

4.4 Engagement Term Sheet. In the interests of expediting the provision of Access Service(s) to the Access Seeker, parties may record such preliminary terms as have been mutually agreed between them in the form and manner outlined in the prescribed Engagement Term Sheet attached hereto as **Appendix B**, which terms shall thereafter be incorporated into the definitive Access Agreement.

5. ACCESS SERVICE(S) FEE

5.1 Pricing. Prices for Access Service(s) stipulated under the Commission Determination on the Mandatory Standard on Access Pricing (Determination No. 1 of 2012) ("**Pricing Determination**") are governed by the relevant provisions in the Pricing Determination. All other services are offered on a commercially negotiated basis.

5.2 Payment. The Access Seeker shall pay EMSB the Access Service(s) Fee prescribed in the Access Agreement and Site Agreement for the relevant Access Service(s) supplied by EMSB to the Access Seeker, which shall be subject to the following:

- 5.2.1 Quarterly billing cycles, with Access Service(s) Fees for each quarter payable in advance in respect of each Site;
- 5.2.2 Invoices (aggregated, where Access Seeker has more than one Site) shall be issued within the first seven (7) Business Days of each calendar quarter ("**Quarterly Invoice**"); and
- 5.2.3 Each Quarterly Invoice is payable within forty five (45) days from the date of receipt of the invoice by the Access Seeker.

5.3 Contents of Quarterly Invoice. If applicable, each Quarterly Invoice shall include:-

- 5.3.1 any adjustments with respect to the prior quarter as a result of changes in the Standard Configuration requested by the Access Seeker and accepted by EMSB through the issuance of an Order in the form as set forth in **Appendix C of this ARD**, the number of Users at a Site or other charges permitted under the Access Agreement at a Site;
- 5.3.2 any adjustment required with respect to an Access Seeker's share of electricity and fuel costs under the Access Agreement ("**Operator Utility Charges**") in accordance with the provision under the Access Agreement;
- 5.3.3 any adjustment required for an invoice containing an error; and
- 5.3.4 any adjustment related to one or more Provisional Invoices (as defined below) provided with respect to one or more preceding calendar quarters.

5.4 Provisional Invoice. Where EMSB is unable to issue the Quarterly Invoice to the Access Seeker during the

first seven (7) Business Day of a calendar quarter, EMSB may provide the Access Seeker with a provisional invoice ("**Provisional Invoice**") for one or more of the succeeding three (3) quarterly billing cycles for such Site affected. The Provisional Invoice shall be subject to the following:

- 5.4.1 The fees chargeable in a Provisional Invoice shall be the average amount of the Access Service(s) Fee contained in the preceding three (3) invoices for such Site (or if such Site has not yet been subject to three (3) quarterly invoices, the chargeable amount shall be the amount specified in the immediately preceding invoice and if such site has not been subject to any prior invoice, the chargeable amount shall be a reasonable good faith estimate of the Access Service(s) Fee to be applicable for such Site).
- 5.4.2 In the event that EMSB provides the Access Seeker with a Provisional Invoice for one or more calendar quarters for a Site, the succeeding Quarterly Invoice shall contain an adjustment to reflect any difference between the amount charged in the Provisional Invoice and the actual amount of Access Service(s) Fee properly accrued with respect to the periods to which such Provisional Invoices relate.

5.5 Invoicing Error. In the event that the Access Seeker believes that a Quarterly Invoice or Provisional Invoice contains an error, the Access Seeker may provide written notice explaining such error to EMSB, provided that the Access Seeker shall still be obligated to make payment of all amounts charged in good faith on such invoice pending due resolution. Upon receiving such notice of alleged invoicing error, EMSB shall within ten (10) Business Days from its receipt of such notice, review Access Seeker's complaint and notify the Access Seeker of its determination regarding the validity of such error and:

- 5.5.1 If EMSB agrees with the Access Seeker's determination that an invoice contains an error:-
 - (a) if Access Seeker has not yet paid the relevant Access Service(s) Fee and if reasonably practicable within the time remaining during the payment period for such invoice, EMSB shall provide the Access Seeker with a revised invoice correcting such error and the Access Seeker shall make payment on the revised invoice (instead of the original invoice) within the payment period; or
 - (b) if the Access Seeker has already made payment on the invoice found to contain error, EMSB shall on the next Quarterly Invoice, provide the Access Seeker with a RM-for-RM credit against the Access Service(s) Fees payable thereunder reflecting the discrepancy;
- 5.5.2 Alternatively, if EMSB disagrees with Access Seeker's determination that an invoice contains an error, such disagreement shall be resolved in accordance with the Dispute Resolution Procedure.

5.6 Late Invoice. In the event that EMSB, after issuing a Quarterly Invoice discovers that such invoice does not include certain Access Service(s) Fees properly accrued under the Access Agreement, EMSB shall still be entitled to charge such fees to the Access Seeker provided that such fees are included in the immediately succeeding Quarterly Invoice for the quarter after such fees accrued.

5.7 Fee Changes. In the event of change of Access Service(s) Fees or the applicable Operator Rental Charges (each an "**Additional Charge**"), EMSB shall within fourteen (14) days prior to the accrual of such Access Service(s) Fee and/or Additional Charge notify the Access Seeker of the same, whereupon such changes will be effective on:-

- 5.7.1 in the case of charges which are payable in respect of any Equipment in excess of the applicable Standard Configuration set out under the Access Agreement ("**Loading Charges**") where the Access Seeker installs, replaces or modifies Equipment, the day the Access Seeker receives EMSB's Ready for Active Installation Notice in the form set forth in **Appendix D** hereto ("**RFAI Notice**") or in the case of the Access Seeker removing Equipment from the Site Space, the following day of such removal;
- 5.7.2 in the case of another User leasing Site Space or terminating the lease of Site Space on a Site, on the day after the date on which such User's lease becomes effective or terminated, as applicable;
- 5.7.3 in the case of a change in or the commencement of Operator Rental Charges, the day such changed or new Operator Rental Charges accrue or no longer accrue.

5.8 Summary of Billings. The Access Seeker may from time to time request in writing that EMSB provide an

aggregate summary of all prior Quarterly Invoices provided by EMSB to Access Seeker under this Agreement.

5.9 Billing Disputes. In the event the Access Seeker disagrees with the amount or validity of the Access Service(s) Fee and/or the Additional Charge, the Access Seeker shall notify EMSB in writing within forty five (45) days of receiving EMSB's notice that such Access Service(s) Fee and/or Additional Charge will start to accrue ("**Fee Disagreement Notice Period**"). For the purposes of billing disputes:

- 5.9.1 EMSB may require an Access Seeker to provide the information stipulated in **Section 5.14.13** of the MSA Determination when disputing a Quarterly Invoice and/or Additional Charge.
- 5.9.2 If Access Seeker does not object to the amount or validity of such Access Service(s) Fee and/or Additional Charge within the Fee Disagreement Notice Period, the Access Seeker shall be deemed to accept that such Access Service(s) Fee and/or Additional Charge are valid.
- 5.9.3 If Access Seeker objects to the amount or validity of the Access Service(s) Fee and/or Additional Charge within the Fee Disagreement Notice Period, any disagreement regarding the amount or validity of the Access Service(s) Fee and/or Additional Charge shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.9.4 In the event of a disagreement regarding Access Service(s) Fee or Additional Charge, the Access Seeker shall first pay any undisputed amount within forty five (45) days from the date of the Quarterly Invoice.
- 5.9.5 Access Seeker shall be entitled to withhold payment of the amount disputed in good faith provided that the Access Seeker notifies EMSB within twenty one (21) days from the date of receipt of the disputed invoice.
- 5.9.6 Once the dispute has been resolved, the disputed amount, if any, shall be paid in full within fourteen (14) days from the date of resolution of the dispute, failing which any arrears remaining outstanding will be subject to the late payment sanctions prescribed below.

5.10 Consequences of Late Payment. In the event that the Access Seeker does not pay the applicable Access Service(s) Fee by the relevant due date, the following shall occur:

- 5.10.1 Upon the lapse of forty five (45) days from the issuance of the relevant invoice, EMSB shall be entitled to charge interest on the outstanding overdue amount, commencing from the day following the due date until the date of actual receipt of payment in full by EMSB from the Access Seeker at the rate of:-
 - (a) one per centum (1%) per annum above the Malayan Banking Berhad Base Lending Rate calculated daily for payment which are overdue by less than sixty (60) days; and/or
 - (b) two per centum (2%) per annum above the Malayan Banking Berhad Base Lending Rate calculated daily for payment which are overdue by more than sixty (60) days.
- 5.10.2 Additionally, EMSB shall, following such forty five (45) day period of non-payment or incomplete payment of an invoice, be entitled to suspend the utility supply and Access Seeker's use of any generator at such affected Site provided that prior to such suspension, EMSB has served a notice of such suspension on the Commission and that the date and conditions of such suspension has been approved in writing by the Commission.
- 5.10.3 If the invoice amounts remain outstanding seventy five (75) days after the due date, EMSB shall be permitted to terminate the Access Agreement in accordance with this ARD.

5.11 Taxes. Where any service tax, goods and services tax (GST) or similar taxes payable in the future under the applicable laws in Malaysia or consumption-based tax is applicable on any goods or services supplied under the Access Agreement, the Access Seeker shall pay for the taxes so charged under each invoice.

5.12 Miscellaneous Payment Provisions. No fees, costs or expenses, including any pass-through costs or expenses, other than Access Service(s) Fees, shall be payable by the Access Seeker to EMSB under the Access

Agreement, except as agreed in writing in the Access Agreement. Payments due from one party to the other shall, unless expressly agreed otherwise, be made via wire transfer to a pre-determined bank account notified in writing from time to time by the relevant payee party.

6. INSTALLATION REPLACEMENT AND MODIFICATION OF EQUIPMENT AT THE SITE

6.1 Installation and Replacement of Equipment on Site. Subject to the terms of the Access Agreement, the Access Seeker may:

6.1.1 use and install, replace or modify authorized Equipment at any Site within its Site Space not exceeding the Standard Configuration in accordance with the procedures specified in **Schedule 4 of this ARD**;

6.1.2 use and install, replace or modify authorized Equipment at any Site owned by EMSB outside of its then existing Site Space, subject to Site availability and applicable Loading Charges if such Equipment exceeds the Standard Configuration;

6.2 Unauthorised Equipment Installation. EMSB shall have the right to require the Access Seeker to remove any Equipment installed at the Site in the event the Access Seeker fails to follow the procedures set forth under the Access Agreement.

6.3 Upgrades. The Access Seeker may, at its discretion, request that an Upgrade be carried out at the Site provided that the Access Seeker shall be required to pay for any capital expenditure incurred in making such an Upgrade in accordance with the schedule of fees under the Access Agreement.

6.4 Access. EMSB shall allow an Access Seeker, its employees and Representatives to physically access the Sites for the purpose of installing, replacing, modifying, maintaining or removing the Access Seeker's Equipment, twenty-four (24) hours a day, seven (7) days a week subject to prior written notice:

6.4.1 of at least ten (10) Business Days (in the event of planned maintenance);

6.4.2 as soon as practicable but no later than twenty four (24) hours (in the event of emergency).

6.5 Access Covenants. In accessing a Site, the Access Seeker shall:

6.5.1 Ensure that Access Seeker's Representatives who are formally authorized to access each Site within a specific region maintain a valid form of identification together with any written authorization from EMSB, which must both be made available for inspection by EMSB's Representatives at such Site, upon request;

6.5.2 In the case of Site access for planned maintenance activities and emergency access, the Access Seeker shall use reasonable efforts to minimize any disruptions to its network and other Users' network; and where practical and agreed between Access Seeker and other Users at a Site, provide alternative network routing or carriage at the Access Seeker's expense;

6.5.3 The Access Seeker and its Representatives shall indemnify and keep EMSB indemnified against any losses, claims, proceedings, damages suffered by EMSB and any third party as a consequence of access by the Access Seeker and/or its Representatives.

6.6 No Interference By Access Seeker's Equipment. EMSB and the Access Seeker shall comply with any applicable technical standard(s) adopted by the Commission under Chapter 3 of Part VII of the Act and adhere to all relevant guidelines issued by the Commission from time to time. The Access Seeker shall also take all reasonable measures including not to permit any third party to do anything which may cause interference to the operation or use of the Site by other Users and to ensure that the interconnection does not cause physical or technical harm to the other operators' networks provided that such other operator's Equipment was and is being installed, maintained and operated according to standard industry practices and applicable contracts with EMSB. Notwithstanding the foregoing:

6.6.1 In the event of interference which EMSB determines is caused by the Access Seeker's Equipment interfering with the operation of another User's Equipment, authorized frequency spectrum and/or signal

strength, EMSB shall notify the Access Seeker of such determination (the "**Interference Determination**");

- 6.6.2 If the Access Seeker disputes the Interference Determination, the Access Seeker shall notify EMSB of such dispute within twenty four (24) hours of receiving the Interference Determination (the "**Interference Dispute**"). The Interference Dispute shall be resolved in accordance with Dispute Resolution Procedure;
- 6.6.3 In the event the Access Seeker accepts the Interference Determination, the Access Seeker shall take all steps necessary to eliminate the interference, within twenty four (24) hours of receiving the Interference Determination, failing which EMSB and the Access Seeker shall meet within the next twenty four (24) hours to jointly examine each other's Equipment to locate the source of interference.
- 6.6.4 EMSB shall have the right to require Access Seeker to turn off all or part of the relevant Access Seeker's Equipment and only turn on such Equipment from 12:00 a.m. until 6:00 a.m. in order to test whether such interference continues or has been satisfactorily eliminated.

7. ASSIGNMENT, SUB-LETTING, INSURANCE, LIMITATION OF LIABILITIES AND INDEMNIFICATION

7.1 Assignment. Either party shall be entitled to assign, transfer or novate any of their rights, obligations and interest under the Access Agreement to its respective Affiliates with due written notice to the other party, but shall NOT be entitled to do so to any other person, entity or non-Affiliate without the prior written consent of the other party.

7.2 Sub-letting. The Access Seeker is not allowed to sublet its Site Space at any Site under the Access Agreement.

7.3 Insurance. The Access Seeker shall at its own cost and expense take out and maintain sufficient and comprehensive general liability insurance covering its Equipment and worker's compensation, social security, employer's liability for any prospective claim or series of claims arising out of an accident or occurrence in connection with the Access Agreement for the duration of the Term and shall survive the expiration or termination of the Access Agreement until the [last of] Access Seeker's Equipment is removed from the respective Site. EMSB and the Access Seeker must promptly notify the other in writing of any claim and any event associated with the Access Agreement which is likely to give rise to a claim against the insurance effected by EMSB and the Access Seeker, and provide such further information to the other party (as the case may be) in relation to the claim or event as the other party may reasonably require. Each party shall bear the risk of loss of, or damage to, its respective property during the term of the Access Agreement.

7.4 Limitation of Liabilities. Excluding instances of fraud and to the extent permitted by applicable law, the maximum liability of the Access Seeker or EMSB for any breach or default under the Access Agreement, whether provided under law, equity, statute or under the Access Agreement, shall not exceed an amount equivalent to twelve months' cumulative Access Service(s) Fees for the Site giving rise to such breach or default. Neither EMSB nor the Access Seeker shall be responsible for any losses or damages due to an event of Force Majeure.

7.5 Indemnification. The Access Seeker and EMSB agree to indemnify and hold each other harmless from any and all claims for losses arising out of the negligence or willful misconduct, breach of warranties and covenants under the Access Agreement and/or this ARD as finally determined and attributed to the Access Seeker or EMSB (as the case may be) in respect of the Site in accordance with the Dispute Resolution Procedure prescribed herein.

8. TERMINATION, SUSPENSION & OTHER PROVISIONS

8.1 Termination of Access Agreement. Subject to the approval of the Commission, either party may, upon three (3) months' written notification to the other party, terminate this Access Agreement in the event of any of the following circumstances:

- 8.1.1 Material (and unrectified) breach of the terms of the Access Agreement; or
- 8.1.2 No Site Agreement remains in effect; or

8.1.3 A party is subject to a winding up order.

8.2 Mutual Termination. Notwithstanding the above, EMSB and /or the Access Seeker may mutually terminate the Access Agreement in writing.

8.3 Termination of Site Agreement during Lock-in Period. If a Site Agreement is terminated within the Lock-In Period, the Access Seeker shall have the option to either continue to pay the Access Service(s) Fee as if the Access Agreement had not been terminated until the end of Lock-In Period, or pay liquidated damages in accordance with the Access Agreement. No penalty shall apply for termination arising from a "**Mandatory Relocation Event**", which event may be any one of the following:

8.3.1 where EMSB's right to occupy the land or building owned, leased or subleased by EMSB for the purpose of locating Towers or Equipment thereupon for a Site expires, is terminated or not renewed at any time following execution of a Site Agreement; or

8.3.2 if the affected Site including the land comprising such Site and Tower is destroyed or damaged by fire or any other cause rendering it unfit for occupation and use; or

8.3.3 the Access Seeker is unable to resolve or eliminate interference, to the reasonable satisfaction of EMSB, within thirty (30) days of Access Seeker being issued Interference Determination; or

8.3.4 if any buildings, structures or works of any nature or kind whatsoever are erected in the vicinity of the Site which screen, shield or interfere with the signals transmitted or received by the Access Seeker's Equipment; or

8.3.5 if height of the structure is required by the Department of Civil Aviation ("**DCA**") to be reduced which substantially deteriorates the quality of signals transmitted or received by the Access Seeker's Equipment; or

8.3.6 if a Force Majeure event occurs over a consecutive period of ninety (90) days rendering impossible or impractical the continued provision of Access Service(s) to a given Site.

8.4 Change In Law. In the event that the Access Service(s) offered by EMSB is or will be unlawful (due to Change in Law), the Access Seeker and EMSB shall meet within five (5) Business Days from the date of written notice from either party to review whether access to the relevant Access Service(s) may be provided by EMSB on different terms and conditions (which are acceptable to the Access Seeker) failing which EMSB has the right to terminate the provision of Access to the Access Seeker.

8.5 Suspension. EMSB may only suspend access to any Access Service(s) in accordance with **Section 5.17.5** of the MSA Determination.

8.6 Approval by Commission. Prior to terminating or suspending any Access Service(s) provided to the Access Seeker, EMSB must inform the Commission in writing of the action EMSB proposes to take and the reason why such action is appropriate. The termination or suspension shall not take effect until such time and on such conditions as the Commission may specify.

8.7 Recoverable Charges upon Termination or Suspension. EMSB may only recover the charges invoiced in arrears and not yet paid by the Access Seeker and charges to be paid if termination occurs within the Lock-In Period.

8.8 Decommissioning Obligations. In the event that an Access Seeker terminates the Access Agreement for the Site prior to the expiration of the Lock-in Period for such Site, the Access Seeker shall reimburse EMSB for the reasonable costs incurred by EMSB in using a third-party contractor to decommission such Site.

9. DISPUTE RESOLUTION

9.1 Dispute Resolution Procedure. The Dispute Resolution Procedure outlined in **Annexure A** of the MSA Determination shall apply to any dispute, controversy or claim arising out of or in connection with this ARD or

the Access Agreement, including the existence, interpretation, performance, termination or validity thereof or any dispute regarding non-contractual obligations arising out of or relating to it ("**Dispute**"). EMSB and the Access Seeker agree to comply with the Dispute Resolution Procedure.

9.2 Arbitration. In the event that the Dispute Resolution Procedure had been fully exhausted but EMSB and/or the Access Seeker is/are not satisfied with the determination of the dispute under the Dispute Resolution Procedure, the Access Provider and/or the Access Seeker may submit such dispute for arbitration to the Kuala Lumpur Regional Centre for Arbitration ("**KLRC**") in accordance with Arbitration Rules in force at the time ("**Arbitration Rules**").

10. MISCELLANEOUS PROVISIONS

10.1 Confidential Information. EMSB and the Access Seeker agree that, the party receiving any Confidential Information (the "**Receiving Party**") shall keep in confidence and shall not disclose to any person or entity any of the Confidential Information disclosed by the party disclosing such Confidential Information (the "**Disclosing Party**"), except as otherwise provided by the terms and conditions of the Access Agreement.

10.2 Survivability. The provisions of this Paragraph shall survive the Access Agreement and shall remain in full force and effect for a period of two (2) years after the termination or expiration of the Access Agreement, as the case may be.

10.3 Governing Law. This ARD shall be governed by and construed in accordance with the laws of Malaysia.

10.4 Notices. All notices, demands and other communications required or permitted to be given or made hereunder shall be deemed received by a party if transmitted by hand or email addressed to the intended recipient thereof at such address as may be notified and at such form or manner as may be mutually agreed by the parties.

10.5 Infrastructure Sharing Steering Group. The Access Seeker shall appoint a Representative to an infrastructure steering group (or such other working groups as may be agreed upon with other Access Seeker) to be set up by EMSB to manage the smooth and timely implementation of the terms and conditions of the Access Agreement.

10.6 Prevailing Effect. This ARD shall, from the date of its publication, prevail over and supersede all prior ARDs.

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