



KUB TELEKOMUNIKASI SDN BHD

Registration No. 199101019684 (230021-D)

REFERENCE ACCESS OFFER (RAO)

Issued pursuant to the Malaysian Communications and Multimedia Commission Determination on Access List, (Determination No. 2 of 2015) and the Malaysian Communications and Multimedia Commission Determination on Mandatory Standard on Access, (Determination No. 3 of 2016).

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1. Introduction, Background and Scope

1.1 Introduction

This **REFERENCE ACCESS OFFER (ROA)** is made by **KUB TELEKOMUNIKASI SDN. BHD. [Registration No 199101019684 (230021-D)]**, a company incorporated under the laws of Malaysia and having its registered address at Level 3A, Unit 1, Capital 3, Oasis Square, Ara Damansara, Jalan PJU 1A/7A, Petaling Jaya 47301 Selangor, Malaysia.

This REFERENCE ACCESS OFFER is hereby referred to as KUBTEL RAO.

1.2 Background

1.2.1 Following the issuance of Malaysian Communications and Multimedia Commission Determination on Access List, (Determination No. 1 of 2005) as varied by Variation To Commission Determination on Access List (Determination No. 1 of 2005), Determination No. 1 of 2009), the Malaysian Communications and Multimedia Commission Determination On Mandatory Standard On Access, Determination No. 2 of 2005 as varied by the Variation To The Commission Determination On Mandatory Standard On Access, (Determination No. 2 of 2005) (Determination No. 2 of 2009) and the Malaysian Communication and Multimedia Commission Determination on the Mandatory Standard on Access Pricing, Determination No. 1 of 2012 and the Commission Determination on the Access List, Determination No. 2 of 2015.

1.2.2 MSA Determination Obligations

- (a) The MSA Determination deals with access to network Facilities Services included in the Access List and sets out the obligations that apply to Access Seekers concerning various access issues which include:
 - (i) Disclosure obligations;
 - (ii) Negotiation obligations;
 - (iii) Content obligations;
 - (iv) Service Specific Obligations.
- (b) Disclosure obligations are as set out in Section 5.3 of the MSA Determination
- (c) Negotiation obligations are as set out in Section 5.4 of the MSA Determination
- (d) Content obligations are as set out in Section 5.5 of the MSA Determination

1.3 Scope of KUBTEL's RAO

- 1.3.1 KUBTEL is a licensed infrastructure sharing services provider under the Act. Pursuant to the licence, KUBTEL may offer infrastructure sharing infrastructure sharing, services within Malaysia
- 1.3.2 Pursuant to Section 5.3.2 of the MSA Determination, KUBTEL is obliged to prepare and maintain a REFERENCE ACCESS OFFER in relation to infrastructure sharing on the Access List which KUBTEL provides to itself or third parties.
- 1.3.3 KUBTEL's RAO:
- a) Contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and
 - b) Does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination.
- 1.3.4 Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to KUBTEL's RAO.
- 1.3.5 KUBTEL consider KUBTEL's RAO to be consistent with:
- a) The standard access obligations stipulated under Section 4.1.1 of the MSA Determination and Section 149 of the Act; and
 - b) The principals of the non-discrimination stipulated under section 4.1.5 and 4.1.6 of the MSA Determination.
- 1.3.6 For the purpose of clarification, this KUBTEL's ROA is not an offer to enter into a legally binding agreement. It is merely a reference document that indicates the terms and conditions on which KUBTEL is prepared to provide the infrastructure sharing as stipulated in the Access List to the Access Seeker by entering into an "Access Agreement".
- 1.3.7 KUBTEL's RAO has no effect on contractual agreements for the supply of facilities by KUBTEL to an Access Seeker prior to the Commencement Date unless and until such contractual agreement is subsequently agreed and/or renegotiated between the Access Seekers.
- 1.3.8 In addition for other Additional Services or services outside KUBTEL's RAO, the terms and conditions for the provision of such services shall remain outside the scope of KUBTEL's ROA and to be negotiated separately.
- 1.3.9 KUBTEL shall not refuse to enter into an Access Agreement with any Access Seeker on the terms of KUBTEL's RAO.
- 1.3.10 Subject to Section 4.6.1 of this RAO, KUBTEL shall be entitled to refuse to enter into an Access Agreement if:
- (a) the Access Seeker is deemed not to be agreeable with KUBTEL RAO;
- or

- (b) make unreasonable request or terms pursuant to Section 4.1.2, 4.1.3 and 4.1.4 of the MSA.

1.4 Amendments to KUBTEL RAO

- 1.4.1 KUBTEL shall, within twenty (20) Business Days of making any amendment to KUBTEL's RAO, provide a copy of the amendments, or an amended copy of KUBTEL's RAO before KUBTEL 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 KUBTEL's existing RAO; and
 - b) the Access Seeker who has requested KUBTEL's RAO 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.
- 1.4.2 An amendment to KUBTEL's RAO will be deemed to alter the relevant terms and conditions of an Access Agreement which is based on KUBTEL's RAO.
- 1.4.3 When RAO is being amended, KUBTEL shall upon expiry of the twenty (20) Business Days in subsection 1.4.1 (or such longer period as KUBTEL determines is necessary to finalise the amendments to its RAO), KUBTEL will:
 - (i) make available the amended RAO on the KUBTEL publicly accessible website without delay (including updating its date and version number, both on the cover and on each page of the document); and
 - (ii) provide the updated RAO to the Commission within twenty (20) Business Days after being available under paragraph 1.4.2(i).

For clarifications:

- (i) Nothing in subsection 5.4 of this RAO prevents an Access Seeker from initiating a dispute in relation to an amendment to RAO made by KUBTEL under this subsection;
- (ii) where the terms and conditions of an Access Agreement are not identical to those in the existing EAO, an amendment to the RAO will not alter the terms of that Access Agreement except as agreed between KUBTEL and the Access Seeker; and
- (iii) without prejudice to an Access Seekers' right to dispute a change to the RAO, where the terms and conditions of an Access Agreement are identical to those in the existing RAO, an amendment to the RAO will be deemed to alter the relevant terms and conditions of that Access Agreement. However, if the Access Seeker disputes the change to the existing RAO, no amendment to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favour of KUBTEL.

1.5 Notice of Withdrawal, Replacement and Variation of KUBTEL RAO

- 1.5.1 If the Commission revokes, varies or replaces the Access List Determination relating to the infrastructure sharing in accordance to the Access List under Section 56 of the Act, KUBTEL may, by giving written notice to all Access Seekers to whom it is supplying infrastructure sharing under KUBTEL's RAO, withdraw or replace KUBTEL's RAO with effect from a date no earlier than the effective date of the Commission's revocation, variation or replacement.
- 1.5.2 KUBTEL shall comply with Section 6.4.2 and 6.4.3 of the MSA Determination where it is given written notice pursuant to Section 1.5.1 above.
- 1.5.3 In addition to Section 1.5.2 above, KUBTEL may give the Access Seekers to whom it is supplying infrastructure sharing services under KUBTEL's RAO to effect 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 KUBTEL under KUBTEL's RAO; or
 - b) the occurrence of a Regulatory Event that relates too KUBTEL; or
 - c) a review by the Commission of the MSA Determination pursuant to Section 6.5 of the MSA Determination.
- 1.5.4 Notwithstanding Section 1.5.1, 1.5.2 and 1.5.3 above, KUBTEL may subject to Section 1.4 above, replace KUBTEL's RAO at any time.

1.6 Availability

- 1.6.1 KUBTEL's RAO shall be made available to an Access Seeker:
- a) on written request, at KUBTEL's principle place of business; and
 - b) on a publicly accessible website at www.kubtel.com
- 1.6.2 Prior to the provision of KUBTEL's RAO to the Access Seekers, the Access Seekers shall be required to enter into a Confidentiality Agreement which shall be made separately.

2. Definition and Interpretation

The following words have these meanings in this KUBTEL's RAO unless the contrary intention appears:-

"Act" means the Communications and Multimedia Act 1998

"Access Agreement" means

(a) a Model Access Agreement or

(b) an agreement which is commercially negotiated between the Operators based on the AAT.

Whereby KUBTEL provides requested facilities or services listed in the access list determination 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 Charge" means a charge paid by the Access Seeker to KUBTEL for accessing the Facilities and/or Services listed on the access List Determination provided by KUBTEL.

"Access List" means the list of Infrastructure sharing determined by the Commission under Section 146 of the Act.

"Access List Determination" means the Commission Determination on Access List, Determination No. 1 of 2005; which came into operation on 1st July 2005 read together with the Variation to Commission Determination on Access List (Determination No. 1 of 2005), Determination No. 1 of 2009 and Determination No.2 of 2015 which came into force on 1 st September 2015.

"RAO Term" means the period of three years from the date set out in Section 1.1 or such other period as may be specified by KUBTEL from time to time.

"Access Request" means a request for access to Infrastructure sharing on the Access List Determination made by the Access seeker to KUBTEL and containing the information in Section 4.1.3.

"Access Seeker" means an Access Seeker who;

a) is a network facilities provider, network service 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 the Infrastructure sharing listed in the Access List Determination.

"Associated tower sites" is the space surrounding the tower where the Access Seeker may place its cabin or outdoor support equipment including space required for cable gantry connecting to the tower and generator-set.

"Bank Guarantee" means the guarantee executed and to be granted to KUBTEL on behalf of the Access Seeker by a bank approved by KUBTEL pursuant to Section 4.3

“Billing Dispute” means the dispute of an invoice prepared by an Access Seeker to the Other Access Seeker 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 as contemplated in Chapter 6, which shall be 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 in states where Friday is observed as the weekly holiday, Thursday and Friday or a day which is lawfully observed as a national public holiday on the same day around Malaysia;

“Charges” means the sums payable by the Access Seeker to KUBTEL for the provision of Infrastructure sharing listed in the Access List Determination.

“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 Communication and Multimedia Commission established under the Malaysian Communication and Multimedia Commission Act 1998.

“Communication” means any communication, whether between persons and person, things and things, or persons or things in the form of sound, data, text, visual image, signals, or any other form or any combination of those forms and, where the context permits, includes a Communication Attempt.

“Communication Information” means information in respect of Communications made during the Billing Period which may be required by KUBTEL and to be specified for each Facility or service provided under Chapter 6 (Billing & Settlement).

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

“Confidentiality Agreement” means a confidential agreement entered into between the Operators in accordance with Section 5.3.8 of the MSA Determination.

“Creditworthiness Information” means the information required by KUBTEL to assess the creditworthiness of the Access Seeker which is more particularly described in Section 4.2 of KUBTEL’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 the Act.

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

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

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

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

“Infrastructure sharing” means infrastructure sharing and/or other infrastructure sharing which facilitate the provision of network services.

“Handover Date” means the date on which access to be the Infrastructure as endorsed by a Certificate of Acceptance hereunder is given to the Access Seeker for installation of Equipment at that Site.

“Handover” shall be construed accordingly

“Infrastructure sharing” shall have the meaning as defined in Part I of Schedule A

“Insurance Information” means the insurance information required by KUBTEL pursuant to Section 4.4

“Invoice” means the invoice for amounts due in respect of the supply of requested Infrastructure sharing listed in the Access List Determination during a Billing Period

“Letter of Undertaking” refers to the letter in the form set out in Part II of Schedule C by the Access Seekers to KUBTEL where, upon receipt of such Letter of Undertaking, KUBTEL shall acknowledge and thereafter execute the work commencement in relation to an infrastructure Project as Infrastructure sharing.

“License” means an individual license granted by the Minister pursuant to the Act for Communication Services.

“License Fee” means the monthly fee payable by an Access Seeker according to the payment structure pursuant to the Master Agreement set out in Schedule B and as recorded in the relevant Letter of Offer in Part III of Schedule C.

“Manuals” means the Technical and Implementation Manual, the Access Seekers and Maintenance Manual and Other Manuals which the Access Seekers establish pursuant to the Access Agreement.

“Master Agreement” means the main Agreement entered between KUBTEL and the Access Seeker (that has confirmed the demand for utilization of infrastructure sharing services once Access Request is established and agreed upon).

“Minimum Value” for the purpose of calculating the Security Sum means the total estimated value of access to the requested Infrastructure sharing provided (based on the most recent amounts invoice for those requested Infrastructure sharing) or to be provided by KUBTEL to the Access Seeker for a ninety (90) days period.

“Minister” means the Minister of Energy, Communications and Multimedia or, if different, the Minister administering the Act.

“Model Access Agreement” means the model agreement entered into pursuant to an Access Request.

“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 RAO and the Access Seeker collectively;

“Other Operator” means either

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

“Review” means a review of the MSA Determination pursuant to Section 6.5 of the MSA Determination.

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

“Security Sum” means the security, either in the form of a Bank Guarantee or cash, deposited with RAO for the supply of Infrastructure sharing listed on the Access List RAO'S REFERENCE ACCESS OFFER Page 12 of 49 Determination which is more particularly described in Section 4.3; and which amount is equivalent to the Minimum Value.

“Services” means network services and/or other services which facilitate the provision of network services or applications services which are offered in RAO's RAO and listed in the Access List Determination.

“Standard Access Obligations” has the meaning prescribed in section 149 of the Act.

“RAO” means RAO Sdn Bhd and in RAO’s RAO, is RAO unless otherwise stated.

2.2 In KUBTEL’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 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 Act that have to be done or to be done by or on before a particular day or Business Day means by or on before a particular day or Business Day means by or on 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 Access Seeker has the same meaning as in the Companies Act 1965; and
- (h) a reference to a third person is a reference to a person who is not a party to this RAO; and i) headings are included for convenience and do not affect the interpretation of RAO’s

3. Principles of Access

3.1 Services

- 3.1.1 KUBTEL's RAO applies only to Infrastructure sharing listed on the Access List Determination.
- 3.1.2 The service description for each of the Infrastructure sharing is set out in Schedule A.
- 3.1.3 Access Seekers Planning Information are set out in Schedule B.
- 3.1.4 Charging Principle are set out in Schedule C.

3.2 Eligibility for Access to Service

- 3.2.1 KUBTEL may 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, determine on a case by case basis whether to provide the Access Seeker with the Access to the Infrastructure sharing listed in the Access List Determination which are set out in KUBTEL's RAO.
- 3.2.2 For the purposes of clarification, consistent with Government policy and Determinations by the Commission (and by its predecessors) an Access seeker may only request for access to any or all the of the Infrastructure sharing listed in the Access List Determination which are set out in KUBTEL's RAO where the Access Seeker has been granted
 - (i) an individual infrastructure sharing provider license, and
 - (ii) and individual network services provider license; and
 - (iii) an individual content application services provider license, and such individual licenses are not limited or restricted from those detailed in the Communications and Multimedia (Licensing Regulations 2000, as amended in any way):
 - (a) by the reference to the type of infrastructure sharing, network services and/or content applications services that can be provided; and
 - (b) by geographical limitations to only a specific area and/or area in Malaysia to which the Access Seeker can provide such infrastructure sharing, network services and or content applications services

An Access Seeker may not request for access to the Infrastructure sharing listed in the Access List Determination where the requested Infrastructure sharing are to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide. Consistent with Government policy and Determinations by the Commission (and its predecessors), where KUBTEL provides the Access Seeker with access to the Infrastructure sharing listed in the Access List Determination pursuant to Section 3.2.1, the charges for the requested Infrastructure sharing shall be negotiated between the Access Seekers.

3.3 Principles of Access

- 3.3.1 KUBTEL shall subject to Section 3.2, if requested to do so by an Access Seeker through an Access Request, supply a Facility listed in the Access List Determination to the Access Seeker on reasonable terms and conditions to be entered separately between the parties.
- 3.3.2 In supplying a Facility listed in the Access List Determination, KUBTEL must treat an Access Seeker on the non-discriminatory basis as required by the Standard Access Obligations in relation to the Supply of a Service.
- 3.3.3 Principles of non-discrimination (i) The access provided by KUBTEL to the Access Seeker shall be consistent with: (a) Section 149(2) of the Act; and (b) the principals set out in Sections 4.2.5 and 4.1.6 of the MSA Determination.
- 3.3.4 Customer Principles (i) KUBTEL shall observe and comply with the customer relationship principles set out in Section 4.3 of the MSA Determination.

4. Access Request Procedures

4.1 Application for Access to Services

- 4.1.1 an Access Seeker shall request KUBTEL to supply Infrastructure sharing listed in the Access List Determination to it by serving an Access Request to KUBTEL.
- 4.1.2 the purpose of such Access Request is to provide KUBTEL with sufficient information to assess the Access Seeker's request for the supply of Infrastructure sharing listed in the Access List Determination under KUBTEL's RAO.
- 4.1.3 The Access Request must:
- (a) contain the name and contact details of the Access Seeker;
 - (b) specify the Infrastructure sharing listed in the Access List Determination in respect of which access is sought;
 - (c) indicate whether the Access Seeker wishes to accept KUBTEL's RAO or negotiate an Access Agreement;
 - (d) contain the information (if any) as set out in Section 5.3.6 of the MSA Determination that the Access Seeker reasonably requires KUBTEL to provide for the purposes of the access negotiations;
 - (e) contain two (2) copies of Confidentiality Agreement properly executed by the Access Seeker in the form prescribed by KUBTEL in Annexure 1;
 - (f) specify forecasts of the capacity which the Access Seeker reasonably requires, having regard to KUBTEL's disclosed provisioning cycle as described in Part I and Part V of Schedule C;
 - (g) provide the 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 KUBTEL's Network;
 - (h) contain confirmation that the Access Seeker is not currently being supplied with the requested Facility listed in the Access List Determination or if so, the reasons for the additional request for the said Facility;
 - (i) specify the type of communications licenses held by the Access Seeker and a copy of the license where a copy had not been previously provided;
 - (j) contain Creditworthiness Information as set out in Section 4.2;
 - (k) be accompanied by a Security Sum as set out in Section 4.3;
 - (l) contain Insurance Information as set out in Section 4.4;
 - (m) contain relevant technical information relating to the interface standards of the Access Seeker; and
 - (n) contain such other information that KUBTEL may reasonably request.

4.2 Credit Worthiness Information

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

- (a) a letter, signed by the executive director of the Access Seeker, stating 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;
- (b) a copy of the Access Seeker's most recently published audited balance sheet and audited profit and loss statement; and
- (c) such other information as may be reasonably requested by KUBTEL provided that such information are information which are publicly available

4.2.2 The Creditworthiness Information shall commensurate with an estimate of the value of the access to the Infrastructure sharing to be provided by KUBTEL to the Access Seeker over a ninety (90) day period

4.3 Security Sum

4.3.1 An Access Request shall be accompanied by a Security Sum. The Security that may be given by the Access Seeker may be in term of either:

- (a) Bank Guarantee; or
- (b) Cash Sum

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

4.4 Insurance Information

4.4.1 Subject to Section 4.4.2, 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 employed or in connection with the work covered by the Access Agreement that may be entered into and/or their dependants; and
- (b) Comprehensive General Liability Insurance of an amount which is not in excess of Ringgit Malaysia One Million (RM1,000,000) for any one claim or series of claims arising out of an accident or occurrence in connection with the Access Agreement that may be entered into resulting in bodily injury and/or personal including death and

property damage of an Access Seeker which may arise out of or in consequence of any acts or omissions of the Other Access Seeker. Such policy shall include contractual liability

- 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 KUBTEL.

4.5 Processing of Access Request

- 4.5.1 Acknowledgement of Receipt of access request KUBTEL shall, within ten (10) Business Days of receipt of the Access Request, inform the Access Seeker in writing that it has received the Access Request and: a) subject to section 4.5.3, 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 Infrastructure sharing listed in the Access List Determination in accordance with KUBTEL's RAO Subject to the additional information being received by KUBTEL within twenty (20) Business Days from the date of request, KUBTEL shall reconsider the Access Request in accordance with this Section 4.5.1 upon receipt of such additional information
- 4.5.2 Non-refundable processing fee:
- a) Subject to clause (b) of Section 4.5.2, KUBTEL may charge an Access Seeker 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 requested infrastructure sharing listed in the Access List Determination that can be offered and made available by KUBTEL
 - c) in the event that additional and non-routine work is required in order to process the Access Request, KUBTEL may charge a separate fee for undertaking such additional work. If the Access Seeker does not proceed with the Access Request accepted by KUBTEL, the processing fee will not be refunded to the Access Seeker
- 4.5.3 Resources charge
- In accordance with Section 5.7.28 of the MSA Determination KUBTEL may charge an Access Seeker a resource charge to be determined by reference to the costs incurred by KUBTEL for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Infrastructure sharing for the purposes of interconnection
- 4.5.4 Request for information KUBTEL shall comply with Section 5.4.16 of the MSA Determination where it requests additional information from the Access Seeker pursuant to Section 4.5.1 (a).

4.6 Assessment of Access Request

4.6.1 Reasons for Refusal Without limiting any other grounds that may be relied upon under the Act, KUBTEL may refuse to accept an Access Request for the supply of a Facility listed on the Access List Determination and accordingly may refuse to supply that Facility to the Access Seeker for any of the following reasons:

- (a) in KUBTEL's reasonable opinion, the Access Seeker's Access Request was not made in good faith;
- (b) in KUBTEL's reasonable opinion, the Access Request does not contain the information reasonably required by KUBTEL's RAO provided that KUBTEL has sought the information from the Access Seeker under Section 4.5.1 of KUBTEL's RAO and has not received that information within twenty (20) Business Days of making such a request;
- (c) KUBTEL does not currently supply or provide access to the requested Infrastructure sharing listed in the Access List Determination to itself or to any third parties, except where the access Seeker compensates KUBTEL for the supply of access to such Infrastructure sharing;
- (d) It is not technically feasible to provide access to the requested Infrastructure sharing listed in the Access List determination;
- (e) KUBTEL has insufficient capacity to provide the requested Infrastructure sharing listed in the Access List Determination;
- (f) There are reasonable grounds in KUBTEL's opinion to believe that the Access Seeker would fail to make timely payment for the supply of the relevant Facility listed in the Access List Determination;
- (g) There are reasonable grounds in KUBTEL'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 Infrastructure sharing listed in the Access List Determination; or
- (h) There are reasonable grounds for KUBTEL to refuse access in the national interest

4.6.2 Determination of technical infeasibility

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

4.6.3 Determination of capacity constraints

For the purpose of determining capacity constraints in Section 4.6.11, the Access Seekers shall comply with Section 5.4.18 of the MSA Determination

4.6.4 Assessment of the Access Seeker's ability to pay for supply of relevant Infrastructure sharing listed in the Access List Determination Examples of reasonable grounds for KUBTEL's belief as mentioned in Section 4.6.1(f) mentioned above include evidence that the Access Seeker is not in the reasonable opinion of KUBTEL creditworthy

4.6.5 Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of relevant Infrastructure sharing listed in the Access List Determination Examples of reasonable grounds for KUBTEL'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 Infrastructure sharing have been provided (whether or not by KUBTEL)

4.6.6 Assessment of Creditworthiness

- (a) in determining the creditworthiness of the Access Seeker, KUBTEL may have regard to, but is not limited to the matters referred to in Section 4.2
- (b) in determining the creditworthiness of the Access Seeker, KUBTEL shall not take into account amounts outstanding for Infrastructure sharing previously provided by KUBTEL to the Access Seeker where, in accordance with the terms and conditions governing the provision of such Facility or Service, the Access Seeker is not required to pay such amounts to KUBTEL to the extent that there is a bona fide dispute in relation to the amounts outstanding by the Access Seeker to KUBTEL and the Access Seeker is relying on such terms and conditions as basis for its non-payment

4.7 Notification of Rejection to the Access Seeker

4.7.1 Where KUBTEL rejects the Access Request, KUBTEL shall:

- a) notify the Access Seeker in writing within ten (10) Business Days from receipt of the Access Request or additional information requested pursuant to Section 4.5.1, as the case may be;
- b) provide reasons for rejection under Section 4.6 to the Access Seeker;
- c) provide the basis for KUBTEL's rejection of the Access Request; and

- d) indicate a date and time, not later seven (7) Business Days from the date of the notice of rejection, at which representatives of KUBTEL 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 KUBTEL to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in section 4.6.11, KUBTEL must identify when additional capacity is likely to be available.

4.7.2 Where the Access Seekers are unable to resolve their differences following the meeting held pursuant to Section 4.7.1(d), either Access Seeker may request resolution of the dispute in accordance with Annexure A of the MSA Determination

4.8 Acceptance of Access Request

4.8.1 Where KUBTEL agrees to provide access to Infrastructure sharing listed in the Access List Determination to the Access Seeker in accordance with KUBTEL's RAO, KUBTEL shall within ten (10) Business days of such respond under Section 4.5.1(b), provide, the Access Seeker with two copies of the executed Model Access Agreement, for execution by the Access Seeker

4.8.2 Where the Access Seeker wish to negotiate an Access Agreement, the Access Seekers shall comply with the requirements in Sections 5.4.2, 5.4.4, 5.4.9 and 5.4.15 of the MSA Determination in negotiating and concluding an Access Agreement

4.8.3 KUBTEL will not be taken to have agreed to acquire the requested Facility listed in the Access List Determination until:

- (a) a security sum has been provided in accordance with Section 4.1 and 4.3; and
- (b) an Access Agreement has been executed between the Access Seekers and the Access Agreement is registered with the Commission in accordance with Section 150 of the Act

5. Provision of Information

- 5.1 The obligations of each Access Seeker to provide information to the Other Access Seeker are subject to the MSA Determination and the requirements of confidentiality imposed by KUBTEL's RAO
- 5.2 To the extent permitted by Malaysian law and any relevant guidelines or customer service standards in force pursuant to the Access Seeker's respective License conditions, the Access Seekers will exchange information and otherwise cooperate in relation to the prevention and investigation of fraudulent use or misuse of the Access Seeker's respective Communications Services and the theft of the Access Seeker's provided terminal equipment
- 5.3 Information provided under KUBTEL's RAO may only be used for the purpose for which it was given, Personal Information about a Customer's credit worthiness, credit standing, and history or credit capacity may only be used for the purposes permitted by, and in compliance with, Malaysian Law
- 5.4 If the information is used by an Access Seeker for any purpose other than the purpose for which it was given, the providing Access Seeker may deny the recipient Access Seeker 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 continues. The Access Seekers will cooperate to resolve the providing Access Seeker's reasonable concerns so that information exchange can be resumed as soon as possible
- 5.5
 - a) subject to the Act and any subordinate legislation, nothing in the Access Agreement may be construed as requiring an Access Seeker at any time to disclose to the Other Access Seeker 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 Access Seeker holding the information must use its reasonable endeavours to obtain the consent of that third person.
 - b) After the Access Agreement comes into force an Access Seeker must use its best endeavours not to enter into any contract which would prevent it from making information available to the Other Access Seeker unless the contract includes a term which permits the contracting Access Seeker to make the information available if the directed to do so by the Commission.

6. Billing and Settlement

- 6.1 Where relevant, the billing and settlement obligations set out in Section 5.14 of the MSA Determination shall be applicable
- 6.2 The Access Seekers shall, from time to time, inform each other of the mailing address and the department to which the Invoice should be sent to and also their respective bank account details for the purposes of enabling the other Access Seeker to make payment. All Invoices shall be delivered by hand or post (either registered mail or courier)
- 6.3 The Access Seekers shall bear and pay all taxes as required by Malaysian law that result from the implementation of the Access Agreement
- 6.4 The Access Seeker must pay any amount due and owing to the KUBTEL on the Due Date unless otherwise agreed in writing by both Access Seekers
- 6.5 All payments must:
 - a) be paid by electronic transfer to KUBTEL or exceptionally, by cheque to the nominated account(s) of KUBTEL if agreed by KUBTEL;
 - b) be accompanied by such information as is reasonably required KUBTEL to properly allocate payments received, failing which KUBTEL shall have the absolute discretion to allocate payments received to any amounts due and payable; and
 - c) be paid on the Due Date unless otherwise agreed in writing by both Access Seekers
- 6.6 All invoices shall be stated in ringgit Malaysia and payment must be made in Ringgit Malaysia
- 6.7 Notwithstanding anything to the contrary, KUBTEL shall be entitled to deduct or withhold such taxes, duties, levies or such other sums imposed by such governmental authorities ("said taxes") from any sum or sums due to the Access Seeker in the event KUBTEL is required by law to pay the said taxes for and on behalf of the Access Seeker
- 6.8 (a) For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts to KUBTEL as they become due and payable, nor does it constitute a waiver of KUBTEL right to suspend, disconnect, or terminate the relevant network services due to non-payment of any sums due or payable to KUBTEL a) KUBTEL shall be entitled to revise the Security Sum in any of the following event:

- (i) where, in the reasonable opinion of KUBTEL, the amount of the Security Sum is less than the Minimum Value calculated over a ninety (90) days period determined by KUBTEL
 - (ii) where, in the opinion of KUBTEL, there is a material change in circumstances in relation to the Access Seeker's Creditworthiness. In such cases, KUBTEL may request for additional security in addition to the Minimum Value to sufficiently and reasonably mitigate its risk in providing the relevant Infrastructure sharing and/or Services listed on the Access List Determination to the Access Seeker. For clarification, material change in circumstances includes, but is not limited to, failure to pay on the Due Date in respect of three (3) invoices rendered in the preceding six (6) months, so long as those amounts have not been disputed in good faith;
 - (iii) Upon the provisioning of new or additional Infrastructure sharing to the Access Seeker; and
 - (iv) at each subsequent anniversary from the Commencement Date;
- (a) Where the Security Sum is revised pursuant to Section 6.9 (a) above, the Access Seeker shall within five (5) Business Days from the written request of KUBTEL, deposit the new Security Sum with KUBTEL in the manner specified in Section 4.3 of KUBTEL's RAO
 - (b) Where the Access Seeker deposit monies in lieu of a Bank Guarantee, such monies shall be deposited in a separate interest-bearing account ("the said accounts") and any interest accrued thereon is held by KUBTEL in addition to the Security Sum, KUBTEL shall forward to the Access Seeker a statement of the said accounts annually
- 6.9 The Security Sum deposited by the Access Seeker with KUBTEL and any interest thereon shall only be used for the purposes set out in Section 6.8. KUBTEL may at its discretion call upon or deduct the Security Sum at any time after the Due Date or upon breach of any of the Access Seeker's obligation. Such utilization or deduction of the Security Sum shall not be construed as set-off or counterclaim b) Upon termination of the Access Agreement the Security Sum deposited with KUBTEL or part s thereof together with the interest thereon, (if any) shall be returned and/or refunded to the Access Seeker within sixty (60) days from the date of termination;
- 6.10 Billing Dispute Procedures
- (a) Where there is a Billing Dispute, the Access Seekers shall comply with the dispute resolution procedures in **Annexure A of the MSA Determination.**

7. Termination

7.1 Termination Obligations

This Access Agreement may be terminated or part thereof if any of the following circumstances apply and KUBTEL has notified the Access Seeker of its intention to terminate the Access Agreement:-

- (a) The Access Seeker has materially breached the Access Agreement such breach shall have persisted for a period of thirty (30) days without correction and shall have caused KUBTEL inability to operate; or in the reasonable opinion of the non-breaching Party, the economic objective of the non-breaching Party shall have suffered or the non-breaching Party shall have sustained material risks or losses due to such breach;
- (b) The Access Seeker is subject to winding up order; or
- (c) A Force Majeure event have persisted for ninety (90) days;

KUBTEL shall forward to the Commission a copy of the notice of termination to the Access Seeker

7.2 Approval

Prior to terminating or seeking to materially vary an Access Agreement or access to any Access Service(s) provided under it, KUBTEL must inform the Commission in writing of the action it proposes to take and the reasons why such action is appropriate. KUBTEL 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 warrant

SERVICE DESCRIPTION

PART I – INFRASTRUCTURE SHARING

1. General
 - 1.1 Part I of schedule A sets out the terms and conditions which are applicable to Infrastructure Sharing.
2. Pre-Requisites for Applying for Infrastructure Sharing
 - 2.1 KUBTEL shall not be obliged to provide to Access Seeker Infrastructure Sharing for the Designated and associated Tower Sites unless:
 - a) KUBTEL is the legal owner of the tower
 - b) The Access Seeker has the appropriate licences from the relevant authorities to operate the service for the purpose for the equipment is to be installed; and
 - c) There is no space constraint
3. Infrastructure Sharing
 - 3.1 KUBTEL agrees to provide Infrastructure Sharing at the designated tower to the requesting Access Seekers in accordance with the terms of Master Agreement initially entered into between KUBTEL and other Access Seeker. The terms and conditions for technical matters are also spelled out in the said Master Agreement.
 - 3.2 The Access Seekers shall publish on its website and keep updated a list of the Designated Tower leased from KUBTEL
 - 3.3 Duration of Infrastructure Sharing
 - 3.3.1 Infrastructure Sharing at a designated Tower or agreed between the Access Seekers, shall be for an Initial Period of five (5) years with an option to renew for three (3) successive terms of five (5) years each up to a maximum of fifteen (15) years ("Renewal Term").
 - 3.3.2 The term of the Infrastructure Sharing shall commence on the date ("Handover date")
 - a) The Access Seeker agrees to commence Infrastructure Sharing
 - b) The Access Seeker takes physical possession of the shared space ("Shared Space") at the Designated Tower or Associated Tower Site, after informing KUBTEL the exact location of the equipment/antenna.

4. Access Seeker's Obligations

- 4.1 The Access Seeker shall be responsible for and bear the cost of all electricity utilized by the Access Seeker at the Shared Space. KUBTEL shall provide the access for power supply and assist the Access Seekers for its own individual meter.
- 4.2 Installation of Equipment
- 4.3 The Access Seeker shall only be permitted to install its equipment, system and/or devices on the Shared Space and shall not be permitted to install any other party's equipment, system and/or devices on the Shared Space without the prior written approval of KUBTEL
- 4.4 Safety and health and Security Procedures
- 4.5 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.
- 4.6 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 KUBTEL within twenty-four (24) hours from the time of the occurrence.
- 4.7 The Access Seeker shall comply and cause its employees, agents and contractors to comply with all guidelines, rules and regulations issued by KUBTEL 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 ensure the security of its Shared Space is such that no unauthorized person shall enter the Shared Space.
- 4.8 Sub-letting and Assignment
The Access Seeker shall not at any time sub-let, assign or lease the Shared Space to the others.

**SCHEDULE B
ACCESS PLANNING INFORMATION & CHARGES**

Part I – Access Seekers Planning

Site ID		Site Name		
Site Address				
Tower Height		Tower Type		
Coordinate	Latitude		Longitude	

Microwave Antenna Information

Access Seekers	Antenna Quantity	Antenna Azimuth	Antenna Size	Antenna Height	Cable Type	Cable Length
Access Seekers 1						
Access Seekers 2						
Access Seekers 3						

Part II – KUBTEL Rate of Charges

Structure Type	Tower Height M	Sharing						
		1	2	3	4	5		
Monopole	45	6,500	4,550	3,460				
	30	5,600	3,800	2,850				
Mpole tree	45	7,210	5,250	4,120				
	30	6,030	4,250	3,500				
Lamp pole	30	5,370	4,230	3,540				
	24	5,000	3,700	3,300				
Tower	45	5,750	3,320	2,750			2,650	2,500
	60	8,000	4,620	3,900			3,770	3,560
	75	8,520	4,920	4,110			3,970	3,750
	90	11,360	6,280	5,230			5,050	4,770
	102	13,710	7,920	6,560	6,340	5,980		
	122	16,060	9,010	7,510	7,260	6,850		
Rooftop	Boom	4,720	3,440	3,440	3,440	3,440		
	Tripod	4,770	3,680	3,680	3,680	3,680		
	Unipole 3	3,860	3,030	3,030	3,030	3,030		
	Unipole 6	4,190	3,280	3,280	3,280	3,280		
	Unipole 9	4,600	3,590	3,590	3,590	3,590		
	Mini Structure	4,760	3,690	3,690	3,690	3,690		

SCHEDULE C
PART 1 – TECHNICAL AND OPERATIONAL MATTERS

1. General
 - 1.1 Part VI of Schedule C sets out the operations and maintenance procedures that are applicable in relation to the Services as listed in the KUBTEL
 - 1.2 Where relevant, the operations and maintenance obligations set out in Section 5.15 of the MSA Determination shall be applicable.
2. Operations and Maintenance Standard
 - 2.1 Each Access Seeker shall be responsible for the operations and maintenance of its own Infrastructure sharing or Network Services.
3. Maintenance Procedures and Practices
 - 3.1 Each Access Seeker shall on its own establish the recommended maintenance procedures for maintaining and servicing its own Infrastructure sharing or Network Services.
4. Fault Management
 - 4.1 The Access Seeker will manage their own Networks to minimize disruption to services and, in the event of interruption or failure of any service, will restore those services as soon as is reasonably practical.
 - 4.2 In the event of failure of electric supply, KUBTEL shall provide alternative power supply as agreed in the Master Agreement.
5. Network Monitoring
 - 5.1 Each Access Seeker is responsible for monitoring of alarms belonging to its own Network.

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