



**REFERENCE ACCESS OFFER**

**OF**

**FGV PRODATA SYSTEM SDN. BHD.**

**VERSION OF 2019**

**1<sup>st</sup> JULY 2019**

## **BACKGROUND, STRUCTURE AND SCOPE**

### **1. INTRODUCTION**

- 1.1 This Reference Access Offer (“PRODATA RAO”) specifies the procedures and process to be followed by an Access Seeker who intends to acquire a Facility and/or Service from FGV Prodata System Sdn. Bhd. (Company No. 353944-K) (“PRODATA”)

### **2. LEGAL BASIS OF PRODATA RAO**

- 2.1 Pursuant to Ministerial Direction to Determine a Mandatory Standard of Access, Direction No.2 of 2003, the Commission in exercise of its powers conferred by Sections 55, 56, 104(2) and 106 of the CMA, had issued the Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016.
- 2.2 Further, pursuant to and in exercise of its powers under Sections 55 and 146 of the CMA, the Commission issued the Commission Determination on Access List, Determination No. 2 of 2015, which stipulates the Facilities and Services which must be provided on the terms and conditions of the MSA (“Access List Determination”).
- 2.3 Subsection 5.3.3 of the MSA requires PRODATA to prepare and maintain a reference access offer for each Facility and/or Service listed in the Access List Determination that is provided by it to Access Seekers.
- 2.4 This PRODATA RAO is made pursuant to Subsection 5.3.3 of the MSA and accepted by the Commission on 1<sup>st</sup> July 2019 and registered by the Commission on [date]. In accordance with the obligations imposed by Subsection 5.3.3 of the MSA, PRODATA offers each Access Seeker, access to the Facilities and Services described and listed in the terms and conditions for regulated facilities and/or service of this PRODATA RAO.

### **3. CHANGES TO PRODATA RAO**

- 3.1 This PRODATA RAO may be subject to amendments from time to time.
- 3.2 Where an amendment is proposed to be made to the PRODATA RAO, PRODATA shall within twenty (20) Business Days before the date PRODATA proposes to effect the changes, supply an amended copy of the PRODATA RAO showing the proposed changes to the existing PRODATA RAO to:
  - (a) all Access Seekers who are being provided with access to Facilities and/or Services under the existing PRODATA RAO; and
  - (b) all Access Seekers who have requested access to Facilities and/or Services under the existing PRODATA RAO within the period of three (3) months prior to the

making of such amendments, but excluding any such Access Seeker who has since indicated that it does not wish to proceed with its Access Request.

3.3 For the purposes of the PRODATA RAO, an amendment shall mean an addition, deletion, or substitution to the provisions of the PRODATA RAO other than:

- (a) an addition, deletion or substitution, which is undertaken to correct a typographical error; or
- (b) which is specifically mentioned in the PRODATA RAO not to amount to an amendment of the PRODATA RAO; or
- (c) an amendment made to the PRODATA RAO to comply with the MSA or direction or determination of the Minister or Commission.

#### **4. EFFECT OF CHANGES TO PRODATA RAO**

4.1 if the commission revoke, varies or replaces the Access List in accordance with Section 56 of the Act, PRODATA may, by giving written notice to all Access Seekers to whom it is supplying the Facilities and/or Services, withdraw or replace this PRODATA RAO with effect from the date no earlier than the effective date of the Commission's revocation, variation or replacement.

4.2 PRODATA shall comply with Conditions 7.4.2 and 7.4.3 of the MSA Determination where it is given written notice pursuant to Subsection 4.1 above.

4.3 In addition to Condition 4.2 above, PRODATA may give the Access Seekers to whom it is supplying the Facilities and/or Services under this PRODATA RAO a notice of variation or replacement of this PRODATA RAO to effect such variations that are necessary or appropriate in the event of;

- (a) the occurrence of Legislative Event that materially affect the rights or obligations of PRODATA under PRODATA RAO
- (b) the occurrence of a Regulatory Event that relates to PRODATA; or
- (c) a review by the Commission of the MSA Determination pursuant to Subsection 7.5 of MSA Determination.

#### **5. AVAILABILITY**

5.1 This PRODATA RAO shall be made available to an Access Seeker:

- (a) on written request to person specified in Part N, General Terms and Condition of this PRODATA RAO and

(b) on a publicly accessible website at [www.feldaprodata.com.my](http://www.feldaprodata.com.my)

## 6. TERMINOLOGY

6.1 The definitions of all words used in this PRODATA RAO are contained in the Definitions and Rules of Interpretation.

## 7. STRUCTURE OF PRODATA RAO

7.1 The PRODATA RAO is divided into the following parts:

<b>Structure of PRODATA RAO</b>	Background, Structure and Scope
	Definition and Rules of Interpretation
	General Terms and Conditions
	Terms and Condition for Regulated Facilities and Service

## 8. CONFIDENTIALITY & NON-DISCLOSURE AGREEMENTS

IN WITNESS WHEREOF the Parties hereto have caused this Confidentiality and Non-Disclosure Agreement to be executed by their duly authorized representatives on the date first above written.

SIGNED by )

for and on behalf of )

FGV PRODATA SDN BHD )

in the presence of: ).....

Name:  
NRIC No:  
Designation:

.....

Witnessed by:

Name:  
NRIC No:

SIGNED by )

for and on behalf of )

[ ] )

in the presence of: ).....

Name:  
NRIC No:  
Designation:

.....

Witnessed by:

Name:  
NRIC No:

## DEFINITIONS AND RULES OF INTERPRETATION

1. The following words have these meanings in this Reference Access Offer (RAO) unless the contrary intention appears:-

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

**“Access Agreement”** means an agreement entered into between Operators whereby the Access Provider provides access to an Access Seeker in accordance with the terms contained in such agreement;

**“Access List Determination”** means the Commission Determination on Access List Determination No.2 of 2015 which contains the list of Facilities and Services determined by the Commission under Chapter 3 of Part VI of the Act;

**“Access Provider”** means an Operator who is:-

- (a) a network facilities provider who owns or provides Facilities listed in the Access List Determination; or
- (b) a network services provider who provides Services listed in the Access List Determination; and
- (c) who is a licensee as defined in the Act;

**“Access Request”** means a request for access made by an Access Seeker under subsection 2.4.5 of this RAO and containing the information contained in subsection 2.4.6 of this RAO;

**“Access Seeker”** means is a network facilities provider, a network services provider, an application service provider or a content application service provider who is a licensee as defined in the Act and who makes a written request for access to Facilities and/or Services;

**“Access Service Provider”** means the Operator to whose Network, a line is directly connected and over which Services are supplied, and may also be a Gaining Service Provider or a Releasing Service Provider;

**“Billing Cycle”** means the regular periodic basis on which the Access Provider shall issue Invoices for the supply of access to Facilities and/or Services during each Billing Period, as specified in subsection 2.11.3 of this RAO;

**“Billing Dispute”** means the meaning given to it in subsection 1.1 of the Dispute Resolution Procedure in Annexure A of this RAO;

**“Billing Period”** means the period over which the supply of access to Facilities and/or Services is measured for the purposes of billing as contemplated in subsection 2.11.1 of this

RAO, which shall be no more than one (1) month and in accordance with the relevant calendar month, unless otherwise agreed between the Operators;

**“Business Day”** means a day other than the following days:

- (a) a Saturday and Sunday;
- (b) in states where Friday is observed as the weekly holiday, a Thursday and Friday or
- (c) a day which is lawfully observed as a national public holiday throughout Malaysia;

**“B2B”** means Business to Business;

**“Call Communication”** has the meaning given to it in paragraph 3 of the Access List Determination;

**“Calling Line Identification”** or **“CLI”** means the information generated from the Network which identifies and forwards through the Network calling number;

**“Capacity Allocation Policy”** has the meaning given to it in subsection 2.7.32 of this RAO;

**“Change Notice”** has the meaning given to it in subsection 2.10.3 of this RAO;

**“Churn”** means the processes which are required to be carried out by Operators in relation to the provision of Services and transfers of Customers, whenever a Customer requests for a transfer from the Operator who has been providing the said Customer with one or more Services (Releasing Service Provider) to another Operator (Gaining Service Provider);

**“Churn Service”** means the Service which the Customer requests a Gaining Service Provider to provide;

**“Closed Number Area”** means a set of digit(s) beginning with the trunk prefix '0' which forms the first part of a national number, and which indicates the defined geographical area within Malaysia where the Customer's Fixed Number is located provided always that '09' in the states of Pahang, Terengganu and Kelantan will be treated as one Closed Number Area, '082' to '086' in the state of Sarawak will be treated as one Closed Number Area and '087' to '089' in the state of Sabah will be treated as one Closed Number Area;

**“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, concepts, technology, manufacturing 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 the Disclosing Party but does not include:

- (a) information which is or becomes part of the public domain (other than through any breach of an Access Agreement);
- (b) information rightfully received by the Receiving Party from a third person without a duty of confidentiality being owed to the third person, except where the Receiving Party has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the Disclosing Party;
- (c) information which has been independently developed by the Receiving Party; or
- (d) information required by law or the business rules of any stock exchange to be disclosed, provided that:
  - i. the Receiving Party, gives twenty-four (24) hours' notice to the Disclosing Party of the particulars of the required disclosure; and
  - ii. the Receiving Party provides the Disclosing Party with all assistance reasonably 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;

**"Content Obligations"** means those obligations set out in subsection 2.5 to 2.16 (inclusive) of this RAO;

**"Customer"** means in relation to an Operator, a person having a contractual relationship with the Operator for the provision of communications by means of that Operator's Facilities and/or Services;

**"Disclosure Obligations"** means those obligations set out in subsection 2.3 of this RAO;

**"Disclosing Party"** means the party disclosing the Confidential Information;

**"Dispute Resolution Procedures"** means the procedures outlined in Annexure A of this RAO;

**"Effective Date"** means the date on which the relevant portions of the Access Agreement requiring registration are duly registered in its entirety with the Commission under section 150 of the Act;

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

**"Equivalent of Inputs"** means is a concept that describes an Access Provider providing to itself and to all Access Seekers the same Facilities and Services on the same terms and conditions including at the same prices and service levels, using the same systems and



processes and to the same timescales. For clarification, references in this RAO to 'itself' includes its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest;

**“Facilities”** means network facilities and or other facilities which facilitate the provision of network services or applications services, including content applications services, as listed in the Access List Determination;

**“Facility and/or Service Change”** has the meaning given to it in paragraph 2.10.2(b) of this RAO;

**“Far End Handover”** means:

- (a) in relation to calls terminating on the Fixed Network, the delivery of calls to a POI within the same Closed Number Area where the call is to be terminated; and
- (b) in relation to calls terminating on the Mobile Network, the delivery of calls to a POI nearest to the location of the called number as requested by the Access Seeker or as mutually agreed between the Access Provider and the Access Seeker;

**“Fixed Network”** means network facilities and/or network services comprising the public switched telephone network and/or networks based on Internet Protocols for the provision of communications by guided electromagnetic energy or by point-to-point unguided electromagnetic energy;

**“Fixed Network Origination Service”** has the meaning as described in paragraph 4(1) of the Access List Determination;

**“Fixed Network Termination Service”** has the meaning as described in paragraph 4(2) of the Access List Determination;

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

**“Forecast”** means a forecast made by the Access Seeker referred to in subsection 2.6 of this RAO;

**“Forecast Information”** has the meaning given to it in subsection 2.6.6 of this RAO;

**“Forecast Request”** means a request by the Access Provider for Forecast Information from the Access Seeker, as described in subsection 2.6.6 of this RAO;

**“Full Access Service”** has the meaning as described to it in paragraph 4(10) of the Access List Determination;

**“Functionality Change”** has the meaning given to it paragraph 2.10.2(e) of this RAO;

**“Gaining Service Provider”** means an Operator to whom another Operator’s Customer requests for a transfer to be made to;

**“HDF”** means Handover Distribution Frame;

**“Interconnect Link Service”** has the meaning as described in paragraph 4(5) of the Access List Determination;

**“Intellectual Property”** means all rights conferred under statute, common law and equity and in relation to trademarks, trade names, logos and get up, inventions, patents, designs, copyright, circuit layouts, Confidential Information, know-how and trade secrets and all rights and interest in them or licenses to use any of them;

**“Interface Change”** has the meaning given to it in paragraph 2.10.2(a) of this RAO;

**“Internet Protocol”** has the meaning given to it in paragraph 3 of the Access List Determination;

**“Invoice”** means the invoice for amounts due in respect of the supply of Facilities and/or Services during a Billing Period as contemplated in subsection 2.11.1 and 2.11.3 of this RAO;

**“MCMCA”** means the Malaysian Communications and Multimedia Commission Act 1998, [Act 589];

**“MDF”** means Main Distribution Frame;

**“Mobile Network”** means network facilities and/or network services comprising the public cellular network and/or the public mobile radio network, for the provision of communications;

**“Mobile Network Origination Service”** has the meaning as described in paragraph 4(3) of the Access List Determination;

**“Mobile Network Termination Service”** has the meaning as described in paragraph 4(4) of the Access List Determination;

**“Near End Handover”** means:

- (a) in relation to calls terminating on a Fixed Network, the delivery of calls to a POI within a Closed Number Area where the calling number is registered; and
- (b) in relation to calls terminating on a Mobile Network, the delivery of calls to a POI nearest to the location of the calling number as requested by the Access Seeker or as

mutually agreed between the Access Provider and Access Seeker; “Negotiation Obligations” means those obligations set out in subsection 2.4 of this RAO;

“**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, and in relation to an Operator, means so much of the network as is owned or operated by the Operator;

“**Network Conditioning**” means the conditioning, equipping and installation of Equipment in the Access Provider’s Network to enable the provision of O&T Services;

“**Notice of Acceptance**” means the Access Provider’s notice of acceptance of an Order provided to the Access Seeker pursuant to subsection 2.7.12 and 2.7.13 of this RAO;

“**Notice of Receipt**” means the acknowledgement of receipt of the Order from an Access Seeker, as described in subsection 2.7.5 and 2.7.6 of this RAO;

“**O&T Service**” means an originating or terminating service in the Access List Determination, which on the Effective Date includes:

- (a) Fixed Network Origination Service;
- (b) Fixed Network Termination Service;
- (c) Mobile Network Origination Service; and
- (d) Mobile Network Termination Service;

“**Operational Support System**” or “**OSS**” means the interactive operational support system provided, or to be provided, by the Access Provider to the Access Seeker to perform the functions required in respect of access to Facilities and/or Services including but not limited to the service fulfilment and service assurances operational support system;

“**Operator**” has the meaning given to it in paragraph 3 of the Access List Determination;

“**Order**” means the Order which an Access Seeker must give to an Access Provider to obtain access to Facilities and/or Services, as described in subsection 2.7.2 of this RAO;

“**OSS Change**” has the meaning given to it in paragraph 2.10.2(d) of this RAO;

“**Other Network Change**” has the meaning given to it in paragraph 2.10.2(c) of this RAO;

“**Point of Interconnection**” or “**POI**” has the meaning given to it in paragraph 3 of the Access List Determination;

**“Point of Interface”** means a point at or between network facilities which demarcates the Network of an Access Provider and the Network of an Access Seeker and is the point at which a communication is transferred between those network facilities and includes POI and POP;

**“Point of Presence”** or **“POP”** has the meaning given to it in paragraph 3 of the Access List Determination;

**“Provisional Invoice”** means an Invoice issued under subsection 2.11.17 of this RAO;

**“QOS”** means quality of service;

**“Receiving Party”** means the party receiving the Confidential Information;

**“Reference Access Offer”** or **“RAO”** has the meaning given to that term in subsection 2.3.3 of this RAO;

**“Rejection Notice”** means the notice of rejection made by an Access Provider in response to an Access Seeker’s Forecast as described in subsection 2.6.13 of this RAO;

**“Releasing Service Provider”** means an Operator from whom its Customer requests a transfer;

**“Relevant Change”** has the meaning given to it in subsection 2.10.2 of this RAO, and includes any Interface Change, Service Change, Network Change, OSS Change and Functionality Change;

**“Service Qualifications”** means:

- (a) in relation to O&T Services, Network Co-Location Service or Interconnect Link Service, a desk and/or field study that may be conducted under subsection 2.4 and 2.7 of this RAO, and may include (where relevant) the testing of a line to ascertain whether it could be used in response to an Access Request and/or an Order or proposed Order; and
- (b) in relation to all other Facilities and Services, includes the interrogation of an Access Provider’s OSS to confirm availability of network facilities to fulfill an Order or proposed Order;

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

**“Service Specific Obligations”** means the obligations which relate to specific types of Facilities and/or Services set out in section 3 of this RAO and which add to or vary the Content Obligations in respect of those Facilities and/or Services;

**“Standard”** means the Mandatory Standard on Access as determined by the Commission in this Determination;

**“Standard Access Obligations”** or **“SAO”** means the obligations which relate to access as referred to in section 149 of the Act;

**“Sub-loop Service”** has the meaning as described in paragraph 4(14) of the Access List Determination;

**“Transfer Form”** means a form which is executed by a Customer for the purpose of authorising a Churn;

**“Transfer Request”** means a request from a Gaining Service Provider to an Access Service Provider to implement a Churn, including a Transfer Form;

**“Validity Period”** has the meaning given to the term in paragraph 2.7.13(e) of this RAO;

**“VLAN”** means Virtual Local Area Network.

2. In this PRODATA RAO except where the contrary intention appears;
  - (a) the singular includes the plural and vice versa;
  - (b) a document includes all amendments or supplements to that document, or replacements or novation of it;
  - (c) a reference to a statute, ordinance, regulations, code or other law and other instruments under it, shall include any statute, ordinance, regulation, code and other law consolidating, amending, re-enacting or replacing of any of them from time to time relating thereto or in connection therewith;
  - (d) a reference to a person includes a firm, body corporate, unincorporated association or an authority;
  - (e) a reference to a person includes the person’s executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns;
  - (f) if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the next Business Day and any reference to acts that have to be done or to be done by or on or before a particular day or Business Day means by or on or before the close of business at 5.30pm on that particular day or Business Day;
  - (g) a reference to a related body corporate of an Operator has the same meaning as in the Companies Act 2016;

- (h) a reference to a third person is a reference to a person who is not a party to the PRODATA RAO and the RAO Agreement.
- (i) headings are included for convenience and do not affect the interpretation of the PRODATA RAO and the RAO Agreement.
- (j) no rule of construction and/or interpretation applies to the disadvantage and/or detriment of the Operator having control and/or responsible for the preparation of this Agreement

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# GENERAL TERMS AND CONDITION

## PART A: PRINCIPLES OF ACCESS TO FACILITIES AND SERVICES

### 1. Provision and Usage of Facilities and Services subject to Licence

1.1 The Facilities and Services provided by the Access Provider shall at all times be subject to Facilities and Services which the Access Provider is permitted to provide under its Licence. Concurrently, the Facilities and Services provided to the Access Seeker shall only be used in connection with an activity or activities in which the Access Seeker is authorised to provide under its Licence.

1.2 **SAO:** In accordance with the Act and subject to exemptions determined by the Minister, all network facilities providers and network services providers shall provide access on reasonable terms and conditions to the Facilities and/or Services listed in the Access List Determination to any other:

- (a) Network facilities provider;
- (b) Network services provider;
- (c) Application services provider; or
- (d) Content applications provider,

Who make a written request to the relevant Access Provider for access.

1.3 **Reasonableness:** An Access Provider may refuse a request if:

- (a) Supply of the relevant listed Facilities and/or Services would not be reasonable (see subsection 1.4 of this Standard); or
- (b) Supply the relevant listed Facilities and/or Services would be reasonable, but the terms and conditions requested by the Access Seeker are not reasonable (see subsection 1.5 below)

1.4 **Unreasonable request:** Although not prescribed by the Act, a request for access to a listed Facilities and/or Services may not be reasonable if one or more of the criteria in Subsection 5.4.1 General Terms and Conditions of this PRODATA RAO are satisfied. For clarification, this PRODATA RAO does not intend or attempt to narrow the grounds of refusal upon which a party may rely upon under the Act.

1.5 **Unreasonable terms:** The Act provides for several mechanism to determine terms and conditions if the parties are unable to reach agreement on the terms and conditions of supply, including dispute resolution by the Commission.

## 1.6 **Non – discrimination:**

- (a) the operators agree acknowledge that the governing principle of this PRODATA RAO is that the Operators are, in respect of the provision of Facilities and/or Services, is an operator-to-operator relationship.
- (b) Consistent with Section 149(2) of the Act, access to Facilities and/or Services provided by an Access Provider to the Access Seeker shall be:-
  - i. Of at least the same or more favourable technical standard and quality as the technical standard and quality provided for itself on the Access Provider's Facilities and/or Services: and
  - ii. Provided on an equitable and non-discriminatory basis
  - iii. However, nothing in this PRODATA RAO shall limit the Access Seeker's ability to freely request and agree on access to the Access Provider's Facilities and/or Services that are either superior or inferior (in terms of technical standard and quality) to that which an Access Provider provides to itself.

## 1.7 **Customer Relationship Principles**

1.7.1 The Operators also agree and acknowledge that the following customer relationship principles shall apply:-

- (a) the same person may be a Customer of more than one Operator:-
  - i. in respect of the same or different Services provided by different Operators;
  - ii. in respect of the same or different Facilities provided by different Operators;
  - iii. in respect of Facilities provided by one Operator and Services provided by another Operator.
- (b) The supply by an Operator to another Operator, which the latter Operator then utilises in providing Facilities and/or Services to its Customers, does not mean that those Customers are also Customers of the first-mentioned Operator.
- (c) For the avoidance of doubt, the Operators acknowledge that each Operator will be responsible for billing its own Customers, unless otherwise agreed in writing by the Operators. Such an agreement may include, but is not limited to the following:-



- i. the Access Provider billing on behalf of the Access Seeker; or
- ii. the Access Provider, in its own right, bills the Customer of the Access Seeker and makes a separate payment to the Access Seeker.

**1.8 No Exclusivity and No Restriction on Resale**

- (a) PRODATA must not, in relation to supply of a Facility and/or Service, include a term or condition in an Access Agreement preventing an Access Seeker from acquiring the same or any other Facility and/or Service from another Operator.
- (b) PRODATA must not, in relation to the supply of a Facility and/or Service, include from re-supplying that Facility and/or Service to any person.

**1.9 Necessary third party involvement causing or contributing to non-compliance in timeframe**

**1.9.1 If:**

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

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

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## **PART B: PARAMETERS OF PRODATA RAO**

1. The scope of this PRODATA RAO is, unless otherwise specified in this PRODATA RAO, limited only to the provision of the Facilities and/or Services.
2. This PRODATA RAO is not intended to govern the provision of any facilities and/or services not specified in this PRODATA RAO except to the extent that the supply of the facility and/or service is incidental to the functionality required for the Interconnection of the Facilities of PRODATA with the Network of the Access Seeker and the carriage of Call Communications across the other Operator's Network.
3. The obligation of PRODATA to agree, in accordance with this PRODATA RAO, to cover the provision of a Communications Service to the Access Seeker is first subject to PRODATA being so obliged by virtue of its Licence or by applicable regulations, Determinations and/or Directions, and the Access Seeker being in full compliance of all the material terms of this PRODATA RAO.
4. This PRODATA RAO is intended to apply only to the provision of Facilities and/or Services by PRODATA to the Access Seeker and to incidental matters relating thereto. For the avoidance of doubt, if the access to Facilities and/or Services offered by PRODATA is accepted on the terms and conditions stipulated in this PRODATA RAO, this PRODATA RAO and the offer by PRODATA and acceptance by the Access Seeker, shall not be construed as conferring benefits on third persons.
5. The Operators hereby agree and acknowledge that this Agreement in its entirety shall only be effective and enforceable upon registration of the relevant portion of this Agreement (which requires registration) with the Commission pursuant to section 150 of the Act. The Operators hereby agree and acknowledge that those portions of this Agreement which do not require registration with the Commission, will not be lodged with the Commission for registration.
6. If an Access Seeker wishes to obtain access to facilities and/or services not specified in the Access List Determination or a QOS or service specification not the subject of any Determination or Direction, the terms and conditions of the provision of such facilities and/or services will remain outside the scope of this PRODATA RAO. Such terms and conditions will be made available by PRODATA to the Access Seeker when PRODATA receives a written request.
7. Each Operator shall notify the other Operator as soon as possible of all correspondences from the Commission pertaining to the registration of this Agreement. In the event that the Commission refuses or fails to register this Agreement or part thereof, the Operators shall negotiate in good faith to decide on the next course of action to be undertaken by the Operators.

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## **PART C: PROCEDURES FOR REQUESTING FACILITIES AND/OR SERVICES**

1. Application for Access to New Facilities and/or Services
  - 1.1 The Access Seeker may request the Access Provider to supply network facilities and/or network services specified in PRODATA RAO by serving an Access Request on the Access Provider.
  - 1.2 The purpose of such Access Request is to provide the Access Provider with sufficient information to assess the Access Seeker's request for the supply of network facilities or network services requested by the Access Seeker that are specified in the PRODATA RAO.
  - 1.3 The Access Request must:
    - (a) contain the name and contact details of the Access Seeker;
    - (b) specify the network facilities or network services in respect of which access is sought;
    - (c) indicate whether the Access Seeker wishes to accept the Access Provider's terms of offering as specified in the PRODATA RAO, or negotiate different terms;
    - (d) specify the ready for service date(s) for the network Facility and/or Service that is being sought by the Access Seeker;
    - (e) contain the information (if any) as set out in Subsection 1.4 that the Access Seeker reasonably requires the Access Provider to provide for the purposes of the access negotiations;
    - (f) where there is no such confidentiality agreement already in force, contain two (2) copies of confidentiality agreement properly executed by the Access Seeker in the form prescribed by the Access Provider;
    - (g) preliminary information regarding the scale and scope of network facility and/or network service that the Access Seeker expects to acquire from the Access Provider pursuant to the Access Request;
    - (h) 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 the Access Provider's Network;
    - (i) contain confirmation that the Access Seeker is not currently being supplied with the requested network facility or network service;

- (j) specify the type of licences held by the Access Seeker and a copy of the licence where a copy had not been previously provided;
- (k) contain Creditworthiness Information as set out in Section 2;
- (l) contain Insurance Information as set out in Section 3;
- (m) be accompanied by the Security Sum as set out in Subsection 4.4.1;
- (n) contain relevant technical information relating to the interface standards of the Equipment of the Access Seeker; and
- (o) contain such other information that the Access Provider may reasonably request

#### 1.4 Information Request to PRODATA

1.4.1 For the purposes of Subsection 1.3(e), an Access Provider must provide the following information to an Access Seeker within ten (10) Business Days of receipt of a written request from the Access Seeker, to the extent that it is not provided in the PRODATA's RAO

- (a) the application forms required to be completed by the Access Seeker to apply for access to network facilities or network services;
- (b) any supplementary details of a network facilities and/or network services offered by the Access Provider not included in the RAO, including details concerning all POIs and other locations (including sites deemed to be critical national information infrastructure and other secure sites) at which physical co-location, virtual co-location or in-span interconnection is available to Access Seekers;
- (c) any supplementary access charges for access to network facilities and/or network services not included in the RAO ;
- (d) all supplementary technical information relating to the network facilities and/or network services which may be the subject of the Access Request, which are not included in the RAO, including but not limited to any physical and logical interfaces of its network necessary to allow the development and deployment of communications services, value-added services and communications equipment that can interconnect to, and interoperate with, the Access Provider's network;
- (e) supplementary details of the Access Provider's operational processes and procedures not included in the RAO;

- (f) supplementary details of the Access Provider's provisioning cycles not included in the RAO and any impact such cycles may have upon an Access Request by the Access Seeker;
- (g) details of the Access Provider's alternative quality of service targets not included in the RAO and actual achievements of service targets in respect of the network facilities and/or network services which may be the subject of the Access Request;
- (h) any security requirements, insurance requirements and creditworthiness information required by the Access Provider under Section 2,3 and 4; and
- (i) the Access Provider's reason for failing to supply any of the information referred to in paragraphs (a) to (i) of this Subsection 1.4.

## 2. Creditworthiness Information

2.1 The Creditworthiness Information that is required to accompany an Access Request are:

- (a) a letter, signed by the executive director/senior general manager/senior vice president of the Access Seeker, stating that the Access Seeker is not insolvent and is not under any external administration or under similar form of administration under any laws applicable to it in any jurisdiction;
- (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 the Access Provider provided that such information are information which are publicly available.

## 3. Insurance Information

3.1 Subject to PART I Section 2, PRODATA may request for additional insurances, the sum of which is to be specified by PRODATA, prior to the provisioning of new facilities and/or services

## 4. Security Sum

4.1 The Access Provider may request for additional Security Sum to be specified by the Access Provider in accordance with PART E Section 3 prior to the provision of the new network facilities and/or network services.

## 5. Processing of Access Request

5.1 Access Provider's Reply to the Access Request

5.1.1 the Access Provider 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) request for additional information from the Access Seeker where there is a need for further information prior to considering the Access Request. The Access Provider shall comply with Condition 5.4.16 of the MSA Determination when it requests for such additional information;
- (b) if the Access Seeker is willing to accept a RAO from the Access Provider, the Access Provider will provide access to Facilities and/or Services in accordance with the process and the terms and condition of this PRODATA RAO;
- (c) if Subsection 5.1.1 (b) above does not apply, the Access Provider is willing to proceed to negotiate amendments to the RAO or an Access Agreement on alternative terms; or
- (d) if the Access Provider refuses the Access Request, it should be in accordance with Section 5 and 6 below.

5.1.2 If the Access Provider is willing to provide access to the Facilities and/or Services, the Access Provider shall indicate the Security Sum, any non-refundable processing fee and resource fee payable by the Access Seeker.

5.1.3 If the Access Provider requests additional information under Subsection 5.1.1(a) and the Access Seeker provides the requested information to the Access Provider's satisfaction, the Access Provider shall within ten (10) Business Days of such response, provide the Access Seeker with a response under Subsection 5.1.1(b) and Subsection 5.1.1(d) above.

## 5.2 Acceptance of Access Request

5.2.1 Where the Access Provider has agreed to provide access to the Facilities and/or Access to the Access seeker in accordance with the terms and conditions as specified in this PRODATA RAO, the Access Provider shall within ten (10) Business Days of such response under Subsection 5.1.1(b), provide the Access Seeker with two (2) copies of PRODATA RAO for execution by the Access Seeker and one (1) copy of the executed confidentiality agreement by the Access Provider.

## 5.3 Negotiation of Access Request

5.3.1 If the Access Seeker elects to negotiate the different terms and conditions under Subsection 1.3(c) above and the Access Provider is willing to proceed with negotiation of the different terms & conditions, the Access Provider must provide

one (1) copy of the executed Confidentiality Agreement by the Access Provider, and set a place, date and time not later than fifteen (15) Business Days from the date of Access Provider's response pursuant to Subsection 5.1.1(c) above at which the Access Provider representatives will be available for an Initial Meeting with the Access Seeker's representatives;

5.3.2 The Access Provider will not be taken to have agreed to provide and the Access Seeker will not be taken to have agreed to acquire the requested Facilities and/or Service until

- (a) the Security Sum, where required by the Access Provider, has been provided in accordance with Subsection 4.1 and
- (b) an Access Agreement under 5.1.1(c) above has been executed between the Operators and the relevant terms & conditions in respect of the Facilities and/or Services are registered with the Commission in accordance with section 150 of the Act.

#### 5.4 Rejection of Access Request

##### 5.4.1 Reasons for Refusal

Without limiting any other grounds that may be relied upon under the Act, the Access Provider may refuse to accept an Access Request for the supply of a network facility or network service and accordingly may refuse to supply that network facility or network service to the Access Seeker for any of the following reasons:

- (a) in the Access Provider's reasonable opinion, the Access Seeker's Access Request was not made in good faith and the Access Provider shall set out the basis on which the Access Request was not made in good faith;
- (b) in the Access Provider's reasonable opinion, the Access Request does not contain the information reasonably required by the Access Provider hereunder provided in its RAO that the Access Provider has sought the information from the Access Seeker under Subsection 5.1.1(a);
- (c) the Access Provider does not currently supply or provide access to the requested network facilities and/or network services to itself or to any third parties (in which case it shall identify any alternative network facilities and/or network services which it does provide to itself or to any third parties, which may be acceptable substitutes), except where the Access Seeker compensates the Access Provider for the supply of access to such network facilities or network services;

- (d) it is not technically feasible to provide access to the requested network facilities and/or network services;
- (e) the Access Provider has insufficient capacity or space to provide the requested network facilities and/or network services;
- (f) there are reasonable grounds in the Access Provider's opinion to believe that the Access Seeker may fail to make timely payment and to a material extent, to comply with this Agreement and the terms and conditions applicable to the supply of the relevant network facility and/or network service; or
- (g) there are reasonable grounds for the Access Provider to refuse access in the national interest.

#### 5.4.2 Determination of technical infeasibility

For the purposes of determining technical infeasibility in Subsection 5.4.1 (d), the Access Provider shall not reject an Access Request on the grounds of technical infeasibility unless the Access Provider establishes that there are substantial technical or operational concerns preventing the fulfilment of the Access Request. The following shall be taken into account in determining whether access is technically feasible:

- (a) economic, accounting, billing, space or site concerns shall be disregarded by the Access Provider except to the extent that space or site concerns may be taken into account in circumstances where there is no possibility of expanding the space available on the relevant site;
- (b) any requirement for the Access Provider to modify its facilities or Equipment in order to meet the Access Request will not, of itself, mean that the access is not technically feasible;
- (c) if the Access Provider asserts that meeting the Access Request would have an adverse impact on Network reliability, the Access Provider must provide evidence that provision of the requested facilities or services would result in a specific and significant adverse impact on Network reliability; and
- (d) the Access Provider must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this Condition) improvements that would allow the Access Provider to meet the Access Request (in whole or part and including for an interim period until any primary difficulties can be resolved).

#### 5.4.3 Determination of capacity constraints



An Access Provider may only refuse an Access Request on the ground set out in Subsection 5.4.1(d), where the Access Provider notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because the requisite capacity is:-

- (a) already carrying traffic to capacity or near full capacity;
- (b) already reserved for future use by the Access Provider or another access seeker, where such future use shall commence not later than six (6) months from the date of the Access Request. If the reserved capacity is not subsequently used by the reserving operator within seven (7) months from the date of the Access Request, the Access Provider must promptly inform the Access Seeker and, if required by the Access Seeker, re-consider the Access Request in accordance with this Part C; and
- (c) in the case of both Conditions 5.4.3(a) and (b), the Access Provider is unable to expand capacity to meet the requirements in the Access Seeker's Access Request.

#### 5.4.4 Assessment of the Access Seeker's ability to pay for supply of relevant network facilities or network services

- (a) Reasonable grounds in which the Access Provider may refuse in accordance with Subsection 5.4.1(f) includes evidence that the Access Seeker is not, in the reasonable opinion of the Access Provider, creditworthy.

#### 5.4.5 Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of relevant network facilities or network services

- (a) Reasonable grounds in which the Access Provider may refuse in accordance with Subsection 5.4.1(g) includes repeated failures by the Access Seeker to comply with the terms and conditions on which similar access to network facilities or network services being provided by the Access Provider to the Access Seeker.

#### 5.4.6 Assessment of Creditworthiness

In determining the creditworthiness of the Access Seeker, the Access Provider:

- (a) may have regard to the list of information in Section 2; but
- (b) shall not take into account amounts outstanding for network facilities or network services previously provided by the Access Provider to the Access Seeker where, in accordance with the terms and conditions governing the provision of such network facility or network service, the Access Seeker is not required to pay such amounts to the Access Provider to the extent that

there is a bona fide dispute in relation to the amounts outstanding by the Access Seeker

## 5.5 Notification of Rejection to the Access Seeker

5.5.1 Subject to where the Access Provider rejects the Access Request, the Access Provider shall:

- (a) notify the Access Seeker in writing of the Access Provider's rejection within ten (10) Business Days from receipt of the Access Request;
- (b) provide reasons for rejection under Subsection 5.4.1 to the Access Seeker;
- (c) provide the basis for the Access Provider's rejection of the Access Request; and
- (d) indicate a date and time, not later than seven (7) Business Days from the date of the notice of rejection, at which representatives of the Access Provider 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 the Access Provider to substantiate its reasons for refusal, and if access has been refused on the basis of the ground in

5.5.2 Where the Operators are unable to resolve their differences following the meeting held pursuant to Subsection 5.5.1(d), either Operator may request resolution of the dispute in accordance with PART M.

## 5.6 Non-Refundable Resource Charge and Processing Fees

5.6.1 The Access Provider may charge the Access Seeker a one-off non-refundable resource charge to be determined by reference to the reasonable costs incurred by the Access Provider for the allocation of manpower and other resources to enables the Access Provider to process, test and fulfil the Access Seeker.

5.6.2 The Access Provider shall forward to the Access Seeker in writing the scope of works, estimated duration of the works and the resource charges in relation the works. The Access Provider shall not be obliged to commence work until the scope of works and the said resource charge has been agreed to in writing by the Access Seeker.

5.6.3 The non-refundable resource charges for the respective Facilities and services are set out in Annexure 1 of this PRODATA RAO. The resource charges for the Facilities and Services not currently specified in Annexure 1 will be mutually agreed by the Operators from time to time.

## 6. Period

6.1 If an operator wishes to negotiate an Access Agreement with another Operator;

- (a) both parties shall notify the Commission when the negotiations for the Access Agreement begin under this subsection;
- (b) both parties shall use their best endeavours to conclude the Access Agreement within:
  - i. where there is no Access Agreement in place between the Operators, four (4) months; or
  - ii. where there is already a commercial agreement or an Access Agreement in place between the operators, three (3) months
- (c) if the negotiation are not completed within the applicable timeframe specified under Subsection 6.1(b) of this PRODATA RAO;
  - i. the parties may jointly apply to the Commission for an extension of time to negotiate and if the extension of time is not granted by the Commission, there shall be deemed to be a dispute between the parties and the Dispute Resolution Procedures shall take effect; or
  - ii. either party may initiate the Dispute Resolution Procedures; and
- (d) if the Commission grants an extension of time under 6.1(c)(i) above, it may do so subject to such conditions as it specifies (such as an on-going requirement to provide updates on negotiations at specified intervals and the right to reduce or extend any extension).

## 7. Faith

7.1 All Operator shall co-operate, in good faith and in a commercially reasonable manner, in implementing & negotiate the terms of its Access Agreements, include;

- (a) acting promptly, honestly , and not perversely or irrationally;
- (b) shall not refuse to negotiate terms of access not related to price for the reason that the rate, charge, charging principles or methodologies of access has not been agreed upon;
- (c) avoiding the imposition of unreasonable restrictions or limitations on the provision of access to Facilities and/or Service (such as refusing to provide particular forms of access that the Access Provider provides to itself);
- (d) avoiding unnecessary disputes and resolving disputes promptly and fairly

- (e) fail to provide information that is necessary to conclude the supplemental agreement to this Agreement including, without limitation:
  - i. information about the Access Provider's Network that the Access Seeker reasonably requires to identify the Network elements or network components to which it requires access; and
  - ii. information about the basis of the determination of rates, charges or fees.

## 8. Fast Track Application Process

- 8.1 Notwithstanding and as an alternative process to that set out in Section 1 to Section 7, an Access Provider shall make available a fast-track application and agreement process for Access Seekers based on the following principles below.
- 8.2 the fast-track process shall be limited to the criteria set out by the Access Provider in accordance with Subsection 8.6.
- 8.3 the fast-track agreement between the Access Provider and the Access Seeker must be on the terms of this Prodata RAO.
- 8.4 the Access Provider may only refuse the Access Seeker's fast-track application for the reasons set out in Subsection 5.4.1(c), 5.4.1(f) and 5.4.1(g).
- 8.5 within ten (10) Business Days of the Access Provider's receipt of a fast-track application, the Access Provider must provide the Access Seeker with two (2) copies of Prodata RAO for further execution by the Access Seeker, or a notice of refusal that sets out the ground for refusal under Subsection 8.4 above including the basis on which those grounds apply.
- 8.6 The Access Provider shall set up, and publish on its publicly accessible website, the criteria on which Access Seekers will be eligible for the fast-track application and agreement process according to the following principles:
  - (a) the fast-track process may be limited to the supply of Facilities and/or Services to the extent that such supplies do not have a material impact on the Access Provider's current level of network resources; and
  - (b) the Facilities and/or Services which may be the subject of a fast track application may be limited to End-to-End Transmission Services

## **PART D: PROVISION OF INFORMATION**

1. The obligations of each Operator to provide information to the other Operator are as set out in this Agreement or as otherwise agreed between the Operators and are subject to the requirements of confidentiality imposed by this Agreement.
2. An Operator must provide the other Operator on a timely basis with all agreed information reasonably required to determine rates and charges to be billed by each Operator to the other Operator or by each Operator to its Customers.
3. Each Operator will charge and bill its own Customers for a Call Communication. The Operators will agree on the Communication Information which is to be exchanged for the purposes of charging and billing, and such Communication Information will be deemed. For the purpose of inter-operator billing reconciliation the Operators will provide CLI to each other subject to:
  - (a) the ability of the relevant exchange to provide CLI; and
  - (b) CLI being forwarded to it from another network with which it's Network is interconnected.
4. CLI and data relating to CLI will be kept confidential by the Operators. The Operators may use the CLI disclosed to it only for the following purposes:-
  - (a) prevention and investigation of fraud;
  - (b) display to Customers;
  - (c) emergency services;
  - (d) malicious call tracing; and
  - (e) inter-Operator and/or Customer billing

provided always that such use does not violate the law. The Operators will co-operate in the barring of CLI where required under law, Determination, Direction or as otherwise agreed.
5. To the extent permitted by Malaysian law and any relevant guidelines or customer service standards in force, pursuant to the Operator's respective Licence conditions, the Operators will exchange information and otherwise cooperate in relation to the prevention and investigation of fraudulent use or misuse of the Operators' respective Communications Services and the theft of the Operator's provided terminal equipment.
6. Information provided under this Prodata RAO may only be used for the purpose for which it was given. Personal information about a Customer's credit worthiness, credit standing,

credit history or credit capacity may only be used for the purposes permitted by, and in compliance with, Malaysian law.

7. If any of the information is used by an Operator for any purpose other than the purpose for which it was given, the providing Operator may deny the recipient Operator further access to the information for the period during which the non-observance or nonconforming use continues on notice specifying the non-observance or non-conforming use. The Operators will cooperate to resolve the providing Operator's reasonable concerns so that information exchange can be resumed as soon as possible.
8. The Operators acknowledge that when information (including, for the purposes of this Condition any updated information) required to be provided under this Condition is held on a database, the Operator entitled to receive the information will not be entitled to obtain direct access to the database. The precise method by which information is to be made available will be determined by the Operator having regard to the reasonable cost, convenience and security concerns of the Operators.
9.
  - (a) Subject to the Act and any subordinate legislation, nothing in this Agreement may be construed as requiring an Operator at any time to disclose to the other Operator information which is at the date when this Agreement comes into force, the subject of a confidentiality obligation owed to a third person unless the third person consents to such disclosure. Where the consent of a third person is required, the Operator holding the information must use its reasonable endeavours to obtain the consent of that third person.
  - (b) After this Agreement comes into force an Operator must use its best endeavours not to enter into any contract which would prevent it from making information available to the other Operator unless the contract includes a term which permits the contracting Operator to make the information available if directed to do so by the Commission.
10. All communication information, call and such other relevant information in relation to Call Communication must be kept by both Operators for a period of two (2) years unless otherwise agreed in writing for the purposes of verification and audit.
11. The Operators further agree that the information provided for the purpose of this Agreement shall be subject to the Confidentiality Agreement.

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## **PART E: BILLING AND SETTLEMENT**

### **1. Billing**

- 1.1 (a) in respect of any Charge due from an Operator, the invoicing Operator (“Invoicing Operator”) shall raise the Invoice for amount due for the supply of Facilities and Services except for:
- i. Charges incurred for agreed numbers used for testing purposes prior to the commissioning of the respective POI; and
  - ii. voice announcements at switches which are limited to:-
    - A. the number is not in service;
    - B. bulk change announcement;
    - C. subscriber set is not switched on/active;
    - D. subscriber set is out of range; or
    - E. any other related voice announcement at exchanges (which are not chargeable) to be mutually agreed in writing by the Operators.
- (b) Unless otherwise agreed in writing, the Invoicing Operator shall invoice in writing or in electronic form (as requested by the Operator receiving the Invoice (“Invoiced Operator”)), on an Operator to Operator basis, within thirty (30) days from the end of the Billing Period for amounts due in respect of the supply of Facilities and Services during the Billing Period. The Invoicing Operator shall provide with each Invoice, such information as may be reasonably necessary for the Invoiced Operator to verify the rates and charges specified in the Invoice. In addition, the Invoiced Operator may request, in writing, for the billing report to be provided by the Invoicing Operator in an electronic format.
- (c) The Invoicing Operator shall provide the Invoiced Operator at the Invoiced Operator’s written request, with an aggregated summary of billings for access to the Facilities and/or Services provided to the Invoiced Operator in monthly tranches.
- (d) The Operators shall, from time to time, inform each other of the mailing address and the department to which the Invoice should be sent to and also their respective bank account details for the purposes of enabling the other Operator to make payment. All Invoices shall be delivered by hand or post (either registered mail or courier).

- 1.2 (a) The Invoicing Operator is responsible for obtaining information upon which the invoice is based, and if the Invoicing Operator does not normally collect that information and it is not reasonably practicable for the Invoicing Operator to do so but the Invoiced Operator is able to collect the information, the Invoiced Operator may, upon written request, provide a summary of information which is reasonably necessary to allow the Invoicing Operator to provide accurate and timely Invoice to the Invoiced Operator subject to such terms and conditions as may be determined by the Invoiced Operator, and if the Invoiced Operator provides such information, the Invoicing Operator undertakes that it will only use that information to verify its own interconnect usage report.
- (b) If the Invoiced Operator provides such information, the Invoicing Operator shall pay the Invoiced Operator a reasonable fee to be determined by the Invoiced Operator. In the event the Invoicing Operator requires a more detailed interconnect report or information, the Invoicing Operator may request the same from the Invoiced Operator and such details will be provided at a reasonable additional charge to be determined by the invoiced operator provided always that it is reasonably practicable for the Invoiced Operator to do so.
- (c) For the purposes of preparing the summary of information, the 'A' and 'B' numbers and the handover POI shall be included.
- 1.3 (a) If the Invoicing Operator is unable to submit an Invoice for actual charges for any network facilities and/or network services supplied in a Billing Period, then the Invoicing Operator may issue to the Invoiced Operator an Invoice for a provisional amount ("Provisional Amount") based on the last Invoice provided that the amount of the Provisional Amount is no more than the average of the most recent three (3) Invoices. Where there have not been three (3) past Invoices for access to the Facilities and/or Services, the Invoicing Operator may issue a provisional Invoice up to the full value of the amount based on the most recent Invoice. The Invoiced Operator shall pay the Provisional Amount by the Due Date. The Provisional Amount will be adjusted in the next invoice or as soon as practicable but not later than sixty (60) days after the month in which the charges were incurred or such other time period as may be agreed in writing ("Adjustment Period"). If an adjustment is not made within the Adjustment Period, the Invoiced Operator shall treat the Provisional Amount as the actual Invoice.
- (b) The Invoicing Operator may invoice the Invoiced Operator for the Provisional Amount for a period of not more than three (3) successive Billing Periods.
- 1.4 (a) If the actual amount for a particular Billing Period is higher than the



Provisional Amount for the Billing Period, then the Invoiced Operator will pay in full such difference (free of interest) within thirty one (31) days from the receipt of the invoice to the Invoicing Operator.

- (b) If the actual amount for a particular Billing Period is lower than the Provisional Amount for the same Billing Period, the Invoicing Operator will reimburse in full such difference free of interest within thirty one (31) days from the invoice to the Invoiced Operator. Such payment must be forwarded to the Invoiced Operator together with the relevant monthly statement of the actual interconnect usage.

1.5 Where appropriate, any taxes (including goods and service tax or sales and service tax, as applicable), duties or other imposts (as at the date of this PRODATA RAO or imposed after the date of this PRODATA RAO) shall be added to all or any Charges under this PRODATA RAO and be paid by the Operator responsible for making such payment.

## 2. Term of Payment

2.1 (a) The Invoiced Operator must pay any amount due and owing to the Invoicing Operator on the Due Date unless otherwise agreed in writing by both Operators.

- (b) The Invoiced Operator to whom any Facilities and/or Service is provided under this Agreement must pay the Invoicing Operator the applicable rates and charges, and on the terms and conditions set out or referred to, as the case may be, in this Agreement.

2.2 (a) must be paid by electronic transfer to the Invoicing Operator or by cheque to the nominated account(s) of the Invoicing Operator;

- (b) must be accompanied by such information which is reasonably required by the Invoicing Operator to properly allocate payments received, failing which the Invoicing Operator shall have the absolute discretion to allocate payments received to any amounts due and payable; and

- (c) unless otherwise agreed by the Operators, shall not be subject to any set-offs except where the Invoiced Operator is in liquidation or at least three (3) invoices have been issued and such Invoices have not been paid

2.3 (a) Subject to Subsection 2.3(b), all invoices shall be stated in Ringgit Malaysia and payment must be made in Ringgit Malaysia; and

- (b) For invoices stated in foreign currency or other agreed forms in respect of Charges incurred for the utilisation of a foreign network, payment for such invoices shall be made in the currency nominated unless otherwise agreed.

- 2.4 It is hereby expressly agreed that the Invoicing Operator is entitled to the payment of interest without prejudice to any other rights of the Invoicing Operator. Interest on due and unpaid amounts is payable (as well as before judgment and after judgement) at the rate of two percent (2%) per annum above Malayan Banking Berhad Base Rate (BR) calculated daily from the Due Date until the date of actual payment. Payments which are overdue by more than sixty (60) days will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad BR (as well before judgment and after judgement) calculated from the Due Date until the date of receipt by the Invoicing Operator of full payment. Further, the BR rate to be used shall be the published rate prevailing on the date of payment.
- 2.5 Where interest in respect of any due and unpaid amount is due to the Invoicing Operator under Subsection 2.4, the Invoicing Operator may add the amount of such interest to its next invoice.
- 2.6 If the Invoicing Operator discovers an error in an invoice given to the Invoiced Operator under this Part D, it must notify the Invoiced Operator. The Invoicing Operator which made the error must make the necessary adjustment to correct that error (including adjusting any interest erroneously charged) in its next Invoice.
- 2.7 The Invoicing Operator may include omitted or miscalculated Charges from an Invoice at a later date provided that the Invoicing Operator is able to substantiate the Charges to the Invoiced Operator and:
- (a) with respect to Charges for Interconnect Traffic, the inclusion or amendment is made within:-
    - i. three (3) months of the end of the Billing Period in which the omitted or miscalculated Charges for Interconnect Traffic should have been included; or
    - ii. three (3) months from the end of the Billing Period in which the Call Communication were made or other services provided, if there was no relevant original Invoice for Interconnect Traffic; and
  - (b) with respect to any other Charges (other than Charges for Interconnect Traffic), the inclusion or amendment is made within three (3) months from the end of the Billing Period for the Facilities and Services provided.
- 2.8 Notwithstanding anything to the contrary, the Invoiced Operator 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 Invoiced Operator in the event the Invoiced Operator is required by law to pay the Said Taxes for and on behalf of the Invoiced Operator.

### 3. Security Sum

3.1 The Access Seeker shall have deposited or procured the deposit of the Security Sum as security for the performance of the Access Seeker obligations under this PRODATA RAO. The amount of the initial Security Sum shall be based on the Minimum Value determined by Prodata as at the date hereof. For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts to Prodata as they become due and payable, nor does it constitute a waiver of the PRODATA's right to suspend, disconnect, or terminate the relevant Facilities and/or Services due to non-payment of any sums due or payable to Prodata.

3.2 (a) The Access Provider shall be entitled, from time to time, to revise the Security Sum in any of the following event;

i. where, the amount of the Security Sum is less than the Minimum Value

ii. where, opinion of the Access provider, there is a material adverse change in circumstance in relation to the Access Seeker's creditworthiness. For clarification, material change in circumstances includes, 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. Revisions made by the Access Provider to the minimum value shall be notified in writing to the Access Seeker and, where revisions are based on this sub-clause (ii) only, shall set out the method of calculation and basis of determination of the Minimum Value. The Access Seeker shall be entitled to seek and obtain clarifications to the notifications of revision to the Minimum Value; and/or

iii. upon the provisioning of new or additional Facilities and/or Services to the Access Seeker, to ensure that the Security Sum is equivalent to the Minimum Value after taking into consideration the estimated value of new or additional Facilities and/or Services provided or to be provided over three (3) Billing Periods.

(b) Where the amount of the Security Sum is, at any time, less than the Minimum Value (including when a demand has been made by the Access Provider) determined in accordance with Subsection 3.2(a), the Access Seeker shall within twenty-one (21) Business Days from the written request of the Access Provider, deposit a new security equivalent to the revised Minimum Value.

3.3 (a) Purposes of Security Sum deposit shall only be used as set on Subsection 3.1. The Access Provider may at its discretion call upon the Security Sum at any time after Due Date (if payment has not been made by the Access Seeker) or upon a breach of the Access Seeker's payment has not been made by the Access Seeker) or upon a breach of the Access Seeker's payment obligations

(other than that due to disputes in faith) or in the event of any fines or penalties by authorities imposed on the Access Provider due to the default, breach or negligence of the Access Seeker, subject to the limitation on liability stipulated in PART I of this PRODATA RAO (except for non-payment).

- (b) Upon termination of this PRODATA RAO the Access Provider shall immediately in writing unconditionally waive its rights under any guarantee provided as Security Sum in respect of future performance (from the date of termination) of this PRODATA RAO by the Access Seeker if any. Since this PRODATA RAO has been terminated. However, the guarantee shall remain in full force in respect of any antecedent breaches under this PRODATA RAO.

Without prejudice to the rights and remedies of the Access Provider under this PRODATA RAO (including the right to claim for any or all amounts due and payable under this PRODATA RAO and to call upon Security Sum) and under law.

3.4 an access Provider shall only vary the amount and type of any security requirements imposed on the Access Seeker:

- (a) a maximum of once in any twelve (12) month period;
- (b) if there is a material increase in the credit risk to the Access Provider due to changes in PART D Subsection 4 of this PRODATA RAO; or
- (c) if the Access Provider determines, acting reasonably, that the variation will materially reduce or remove the increased credit risk.

An Access Provider may request additional or substitute security from the Access Seeker, in a manner consistent with Part C and Part D of this PRODATA RAO, if the Access Seeker was making a new Access Request under Part C of this PRODATA RAO.

#### 4. Billing Disputes

4.1 Where there is a Billing Dispute, the Operators shall comply with the dispute resolution procedures in Part L.

4.2 For the avoidance of doubt, the Invoiced Operator shall not use the dispute resolution procedure in Part L to avoid or delay payment due to the Invoicing Operator where there is no genuine dispute

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## **PART F: INTELLECTUAL PROPERTY RIGHTS**

1. All right, title and interest in and to any:
  - (a) Intellectual Property (in relation to matters which are the subject of this PRODATA RAO) developed or to be developed vests in the Operator who developed that Intellectual Property or for whom that Intellectual Property was developed by a third person; and
  - (b) improvements to or adaptations, versions or modifications of Intellectual Property (in relation to matters which are the subject of this PRODATA RAO) vest in the Operator who developed that Intellectual Property or on behalf of whom that Intellectual Property was developed.
2. The Operators will negotiate arrangements (including in respect of title) concerning Intellectual Property jointly developed in the course of performing or otherwise in connection with this PRODATA RAO.
3. Each Operator shall licence to the other Operator on a royalty-free basis, all Intellectual Property rights necessary for the on-going operation of this Agreement and the interoperability of the Operators' Networks but shall be subject to any relevant third party licences. The Operators agree that such Intellectual Property rights accorded to them shall only be used for purposes of this PRODATA RAO unless otherwise agreed in writing.
4. Each Operator ("Indemnifying Operator") indemnifies the other Operator ("Innocent Operator") against all liability or loss arising directly from, and all reasonable costs, charges and expenses incurred by the Innocent Operator in connection with any claim, action, suit or demand alleging infringement of the rights of a third party arising from use by the Innocent Operator of Intellectual Property disclosed or licensed by the Indemnifying Operator under this Agreement. This indemnification will represent the only remedy and form of compensation available to the Innocent Operator in relation to the infringement of Intellectual Property licensed or disclosed by the Indemnifying Operator under this Agreement.

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## **PART G: PROVISION OF FACILITIES AND SERVICES**

1. The Access Seeker shall not use any Facilities and/or Services provided by the Access Provider and shall ensure that its Customers shall not use the Access Seeker's Communications Service provided by means of the Access Provider's Facilities and/or Services other than in accordance with all applicable laws, including but not limited to, the terms of any licence applicable to the Access Seeker, data privacy laws, the laws of copyright and intellectual property rights.
2. The Operators acknowledge and agree that, subject to the quality of standards stipulated in this Agreement, neither Operator has any control whatsoever over the accuracy, quality or integrity of the information, data or programs accessed or transmitted via its Network or for the loss of messages, information, data or images resulting from delays, non-deliveries, mis-deliveries or service interruptions.
3.
  - (a) The Access Provider has no control whatsoever over the information, images or other content transmitted through its Network. As such, the Access Provider shall not be responsible for the content of any Communications conveyed by making use of its Facilities and/or Services.
  - (b) The Access Seeker has no control whatsoever over the information, images or other content transmitted through its Network save and except for information, imaged or other content created or owned by the Access Seeker. As such, the Access Seeker shall not be responsible for the content of any Communications conveyed by making use of its Facilities and/or Services save and except for the content of any Communications created or owned by the Access Seeker.
4. The Access Provider does not warrant that:
  - (a) the Facilities and/or Services will meet the Access Seeker's requirements or the requirements of any third party (including the Access Seeker's Customers); or
  - (b) subject to the target times and quality of service based on standards specification of PRODATA RAO, the operation of the Facilities and/or Services will be uninterrupted or error-free or that any defects in the Facilities and/or Services can be rectified.
5. The Access Seeker shall only offer its services to its Customers under its own brand without any use of, or reference to the Access Provider's brands. The Access Seeker agrees not to offer any service under any brand, including any trademark, trade name or company name, of the Access Provider unless the use of the brand(s) of the Access Provider is explicitly provided for under this Agreement or as mutually agreed by the Operators.

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## **PART H: CONFIDENTIALITY OBLIGATION**

### **1. Scope**

1.1 Except as permitted by this RAO Agreement, each Operator must:

- (a) keep confidential, and not use or disclose, any Confidential Information of the other Operator;
- (b) ensure that any Confidential Information of the other Operator is stored and handled in such a way as to secure it against loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or destruction; and
- (c) immediately notify the other Operator if it becomes aware of any breach or alleged breach of its own obligations under this Section 1 of this PRODATA RAO Agreement and comply with any reasonable directions from the other Operator with respect to remedying that breach.

The obligation under this Section 1 of this PRODATA RAO Agreement shall extend to Confidential Information provided to or obtained by an Operator prior to entry into this PRODATA RAO Agreement.

### **2. Exclusions**

2.1 The obligations of confidence in Section 1 of this PRODATA RAO Agreement do not apply to Confidential Information:

- (a) that is required to be disclosed by applicable law;
- (b) that is required to be disclosed under compulsion of Law or by a court or regulator. However, before disclosing any information, the recipient must promptly notify the discloser in writing and exhaust all reasonable steps (whether required by the discloser or not) to maintain such Confidential Information in confidence;
- (c) that is required to be disclosed in accordance with the rules of any stock exchange upon which the recipient's or its holding company's or ultimate holding company's or related company's securities are listed (if applicable);
- (d) that is in the public domain otherwise than as a result of a breach of this PRDATA RAO Agreement; or
- (e) that is already known by, or rightfully received, or independently developed, by the recipient free of any obligation of confidence.

### 3. Permitted disclosure

3.1 Each Operator may use and disclose Confidential Information of the other only on a 'need to know' and confidential basis, and solely for the exercise of rights, or the performance of obligations under this PRODATA RAO Agreement:

- (a) with the prior written consent of the other Operator;
- (b) to its directors, agents, professional advisers, employees, contractors and subcontractors; or
- (c) to its related parties.

### 4. Preventing disclosures

4.1 Each Operator must take all steps and do all such things as may be reasonably necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other Operator.

### 5. Return of Confidential Information

5.1 Except as expressly permitted under this PRODATA RAO Agreement, an Operator who has received Confidential Information from the other Operator under this PRODATA RAO Agreement must, on the request of that other Operator and as directed by that Operator, immediately:

- (a) deliver all Confidential Information to that Operator; Or
- (b) destroy all Confidential Information (and certify the destruction to that Operator or permit an employee of that Operator to witness the destruction), and, must cease accessing, and ensure any personnel cease accessing any systems or databases to which they have been granted access.

5.2 An Operator who has received Confidential Information from the other Operator under this PRODATA RAO Agreement may retain one (1) copy of any notes and other records that it is required by Law to retain.

### 6. Remedies

6.1 Each Operator acknowledges that:

- (a) the other Operator, or their related bodies corporate, may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information, and that monetary damages would be an insufficient remedy; and



(b) in addition to any other remedy available at Law or in equity, the other Operator or its related bodies corporate are entitled to injunctive relief to prevent a breach of, and to compel specific performance of Section 1 of this PRODATA RAO Agreement.

6.2 The rights arising under this Section 1 of this PRODATA RAO Agreement do not exclude any other rights of any Operator.

6.3 If either Operator is uncertain as to whether any information is Confidential Information, it must treat that information as Confidential Information and as not in the public domain unless and until the Operators agree in writing that the information is in the public domain.

7. Each Operator must bear its own cost in complying with the provisions of this PART G of this PRODATA RAO Agreement.

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## **PART I: LIABILITY AND INDEMNITY**

1. Save to the extent that another provision of this PRODATA RAO Agreement expressly provides for (or expressly excludes or limits) a remedy, a liability or a form of compensation in relation to an act, omission or event, this PART H of this PRODATA RAO Agreement shall regulate the liability (whether arising in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach or any other cause) of an Operator to the other Operator under and in relation to this PRODATA RAO Agreement and in relation to any act, omission or event relating to or arising out of this PRODATA RAO Agreement.
2. Insurance
  - 2.1 Without limiting or reducing each Operator's liability and responsibility as contained elsewhere in this PRODATA RAO Agreement, each Operator shall procure and maintain the following insurances applicable to its operations with respect to and for the duration of this PRODATA RAO Agreement provided that the Operators shall not be required to maintain any additional insurance beyond that mentioned in paragraphs (a) and (b) below:
    - (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 to provide for payment to its employees employed on or in connection with the work covered by this PRODATA RAO and/or their dependants.
    - (b) Comprehensive General Liability Insurance of an amount which is not more than RM20,000,000 for any one claim or series of claims arising out of an incident or occurrence in connection with this RAO Agreement resulting in bodily injury and/or personal injury including death and property damage of an Operator which shall arise out of or in consequence of any acts or omission of the other Operator. Such policy shall include contractual liability.
3. Damage to Property
  - 3.1 Either Operator ("defaulting Operator") shall indemnify and hold the other Operator safe and harmless from and against all costs, expenses and claims relating to damage to or destruction or loss of all or any property beneficially and/or absolutely owned by the other Operator arising out of any act or omission of the defaulting Operator, its servants or agent in so far as such damage, destruction or loss arises out of or in the course of or by reason of the carrying out any works for or in relation to the Services or in providing Communications Services.
4. Death and Personal Injury
  - 4.1 Subject to Subsection 6.6.4 of this RAO Agreement, the defaulting Operator shall be absolutely liable for, and hereby indemnifies the other Operator from and against all costs, expenses and claims in respect of all injuries to, including the death of any and

all employees of the other Operator arising out of any act or omission of the defaulting Operator, its servants or agent.

## 5. Third Person Indemnity

5.1 Subject to Subsection 6.6.4 of this RAO Agreement, the defaulting Operator shall indemnify and hold the other Operator safe and harmless from and against all costs, expenses and claims in respect of:

(a) all injuries to, including death of; and/or

(b) loss of or damage to property of,

Third Parties arising out of or in connection with or in the course of or by reason of the defaulting Operator's breach or when due to any acts, omission or default of the defaulting Operator, its servants and/or agents in the carrying out of any works for or in relation to this RAO Agreement or the access and use of the Facilities and/or Services or in providing the Communications Services

## 6. Liability

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

6.2 Subject to Section 5 of this RAO Agreement, neither Operator shall be liable to the other Operator or any other Third Party (including the Customers of the other Operator) nor shall either Operator be liable to indemnify the other Operator for any claims, proceedings or actions brought or made by a Third Party against the other Operator, howsoever arising, including but not limited to:

(a) the lack of or loss or interruption or any delays to access, Interconnection, transmission or otherwise; and

(b) any claims, proceedings or actions brought or made against the other Operator by any person pursuant to a contractual relationship with the other Operator.

6.3 Notwithstanding Sections 3 and 6.2 of this RAO Agreement, an Operator shall not be liable for damage to property due to hacking and the transmission of malicious codes and/or programs by Third Parties (other than its employees, agents, servants, contractors and/or other persons under its control) provided that presently available security solutions or anti-virus solutions have been put in place by the Operators.

6.4 In no event will either Operator's liability under this RAO Agreement other than for Charges, interest for late payment and other sums payable under this RAO Agreement exceed RM20,000,000 only per event for any accident or occurrence, in connection with this RAO Agreement save that with respect to fraud by an Operator, the liability

of that Operator under this RAO Agreement shall not exceed RM50,000,000 only per event for any accident or occurrence. Further, the limitation of liability set out in this Subsection 6.4 of this RAO Agreement, shall not apply to amounts due and payable under an Invoice nor for any liability for fraud.

For the purposes of this Subsection 6.4 of this RAO Agreement, fraud shall have the meaning prescribed in Section 17 of the Contracts Act 1950.

## 7. Exclusion of Warranties

- 7.1 Except as expressly set out in this RAO Agreement, all representations, conditions and warranties (whether express or implied, statutory or otherwise) including but not limited to any implied warranty of merchantability, implied warranty of fitness for a particular purpose, implied warranty of non-infringement and implied warranty arising out of the course of dealing, custom or usage of trade with respect to any facility and service provided including the Facilities and Services, by PRODATA are expressly negative and excluded. The warranties set forth in this RAO Agreement are the only warranties made by PRODATA and will not be enlarged or diminished without PRODATA's approval.
- 7.2 In no event will PRODATA be liable to the Access Seeker or any other person for loss of profits, loss of revenue, loss of business, loss of opportunity, loss of use of data, special, exemplary, indirect, incidental, consequential or punitive damages of any kind for any reason, including, without limitation, the breach of this RAO Agreement or any termination or suspension of this RAO Agreement or termination or suspension of access or use of any Facility and/or Service, whether such liability is asserted on the basis of contract, tort (including negligence and strict liability) or otherwise, even if PRODATA has been advised of the possibility of such damages. The essential purpose of this provision is to limit the potential liability of PRODATA arising out of this RAO Agreement.

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## **PART J: RISK MANAGEMENT**

1. If PRODATA believes the Access Seeker has committed a breach of any provision of this RAO Agreement (“Access Seeker Breach”), and which breach PRODATA believes is capable of being remedied, then PRODATA may elect to follow the procedures in this PART I of this RAO Agreement. If such an election is made and evidenced by PRODATA taking the steps in Section 3 of this RAO Agreement, then the procedure in this PART I of this RAO Agreement shall be followed before PRODATA exercises any rights under PART J of this RAO Agreement, provided always that PRODATA shall be entitled to exercise any rights to seek injunctive or interim relief in respect of the above-mentioned breach.
2. If no election is made pursuant to Section 1 of this RAO Agreement by PRODATA, PRODATA may elect to exercise its rights under any part of this RAO Agreement allowing the exercise of rights in light of an Access Seeker Breach, including without limitation, Section 18 of this RAO Agreement.
3. PRODATA must notify the Access Seeker of the alleged Access Seeker Breach and the procedure for rectification herein (“Access Seeker Breach Notice”) and such notice must provide, to the best of PRODATA’s knowledge, the details of the breach and, to the extent reasonable given PRODATA’s knowledge of the breach and without prejudice to any proceedings PRODATA may bring against the Access Seeker, describe those steps which PRODATA considers should be taken by the Access Seeker to make good the breach.
4. The Operators will meet within two (2) Business Days, or such other period as may be mutually agreed by the Operators but no later than fourteen (14) Business Days, of the Access Seeker receiving an Access Seeker Breach Notice from PRODATA.
5. At the meeting referred to in Section 4 of this RAO Agreement, the Access Seeker must either:
  - (a) demonstrate to PRODATA’s satisfaction that the alleged Access Seeker Breach has not occurred; or
  - (b) propose a plan of action, taking into account the steps proposed by PRODATA, to be undertaken by the Access Seeker (including as to timing) to correct the alleged Access Seeker Breach and to prevent similar breaches in the future (“Rectification Plan”).
6. By close of business on the day of the meeting or within such time as may be agreed mutually by the Operators from time to time, the Access Seeker will serve on PRODATA, a written copy of the Rectification Plan.
7. If PRODATA is not satisfied with the Access Seeker’s proposed Rectification Plan, PRODATA may reject the proposed Rectification Plan or may propose amendments within seven (7) Business Days of receiving it. The Access Seeker shall give reasonable consideration to any amendments proposed by PRODATA and resubmit the proposed Rectification Plan for PRODATA review pursuant to this Section 7 this RAO Agreement within seven (7) Business Days of receiving PRODATA’s proposed amendments.

8. PRODATA may reject the proposed Rectification Plan within fourteen (14) Business Days of submission of the proposed Rectification Plan by the Access Seeker pursuant to Section 7 of this RAO Agreement or resubmission of the proposed Rectification Plan by the Access Seeker pursuant to PRODATA's amendments referred to in Section 7 of this RAO Agreement. PRODATA shall notify the Access Seeker of its rejection in writing and PRODATA may elect to exercise its rights under any part of this RAO Agreement, including without limitation, PART J of this RAO Agreement.

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## **PART K: TERMINATION AND SUSPENSION**

1. This Agreement shall only take effect on the Effective Date and shall remain in force until the termination of this Agreement.
2. Termination Circumstances
  - 2.1 An Operator ("Notifying Operator") may terminate this RAO Agreement or part thereof if:
    - (a) the other Operator ("Defaulting Operator") fails to remedy a breach (which is capable of remedy) of a material obligation under this RAO Agreement (including but not limited to the events specified in Subsection 3.3.1 (a) to (g) within thirty (30) Business Days of receiving a notice of breach from the Notifying Operator; or
    - (b) a winding up order has been made against the Defaulting Operator and the order remains or will remain in effect for a continuous period of ninety (90) Business Days; or
    - (c) an order is made or an effective resolution is passed, for the reconstruction and amalgamation of the Defaulting Operator or otherwise under Section 366 of the Companies 2016 any other similar action or proceeding under any other law and the order or resolution remains or will remain in effect for a continuous period of sixty (60) Business Days; or
    - (d) a receiver, receiver and manager, official manager, provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the undertaking and property of the Defaulting Operator;
    - (e) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of the Defaulting Operator;
    - (f) the Defaulting Operator assigns its assets for the benefit of its creditors; or
    - (g) the Defaulting Operator fails to remedy breaches (which are capable of remedy) of any laws, regulations, rules or standards which has a material adverse effect on the Notifying Operator or this RAO Agreement or the provision of Facilities and/or Services, within thirty (30) Business Days of receiving a notice of breach from the Notifying Operator; or
    - (h) a Force Majeure, substantially and adversely affecting the ability of an Operator to perform its obligations to the other Operator under this Agreement, continues for a consecutive period of ninety (90) days However, Notifying Operator may not give notice under this Section 2 unless the Notifying Operator has:

- i. negotiated or endeavoured to negotiate in good faith with the other Operator to remedy the Force Majeure with the purpose of amending the terms of this Agreement to enable this Agreement to remain in full force and effect notwithstanding such inability to so perform; and
- ii. has failed to reach any agreement within thirty (30) days from the commencement of negotiations.

2.2 Upon the occurrence of the events set out in Section 2 of this RAO Agreement or where a breach is incapable of remedy (and subject to the provision of Section 4 of this RAO Agreement where the Notifying Operator is PRODATA), the Notifying Operator may terminate this RAO Agreement by issuing a termination notice to the Defaulting Operator/other Operator (in the case of Force Majeure) and this RAO Agreement shall terminate in accordance with the terms of the termination notice.

### 3. Suspension Circumstance

3.1 PRODATA may, without liability, by giving five (5) Business Days' notice to the Access Seeker setting out the reasons in the notice (a copy of such notice shall also be given at the same time to the Commission), suspend to the extent necessary, access to its Facilities and/or Services where:

- (a) the Access Seeker fails to remedy a breach (which is capable of remedy) of a material obligation under this RAO Agreement within thirty (30) Business Days of receiving a notice of breach from PRODATA;
- (b) the Access Seeker fails to remedy breaches (which are capable of remedy) of any Laws, which has a material adverse effect on PRODATA or this RAO Agreement or the provision of Facilities and/or Services, within thirty (30) Business Days of receiving a notice of breach from PRODATA;
- (c) the Access Seeker fails to remedy any fault or condition (which is capable of remedy), that causes the Access Seeker's network facilities to materially and adversely affect the normal operation of PRODATA's Network or the Network of any other operator connected to PRODATA's Network, or are a material threat to any person's safety;
- (d) the Access Seeker fails to remedy any condition (which is capable of remedy), that causes the Access Seeker's network facilities or supply of a network service posing an imminent threat to life or property of PRODATA's, its employees or contractors;
- (e) the Access Seeker fails to remedy any fault or condition (which is capable of remedy) in the Access Seeker's network facilities that cause material physical or technical harm to any network facilities of PRODATA or any other person;



- (f) subject to PART N Subsection 1.1 of this RAO Agreement, where Force Majeure applies;
- (g) where the Access Seeker has failed to provide the new security amount as required under PART D of this RAO Agreement.

3.2 Upon the occurrence of the events set out in Subsection 2.1 of this RAO Agreement above or where a breach is incapable of remedy and subject to the provision of Subsection 4.1 of this PRODATA RAO Agreement, PRODATA may suspend access to its Facilities and/or Services by issuing a suspension notice and the suspension of access to PRODATA's Facilities and/or Services shall take effect in accordance with the terms of the suspension notice.

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

#### 4. Notice of Commission

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

- (a) shall only give effect to the proposed termination, suspension or material variation with the Commission's written consent and subject to any delay or conditions which the Commission may specify. The Commission will endeavour to respond to PRODATA's notice within ten (10) Business Days or such other period that the Commission considers is reasonable;
- (b) must not give effect to the proposed termination, suspension or material variation unless PRODATA has received written consent from the Commission to such termination, suspension or material variation; and
- (c) shall take all steps practicable to minimise disruptions and inconveniences to the Customers of the Access Seeker, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the suspension or termination of this RAO Agreement, or access to Facilities and/or Services provided under it.

5. The issuance of a suspension notice shall not in any way prejudice or prevent PRODATA from exercising its right to issue a termination notice under Section 2 of this RAO Agreement.

6. In the event PRODATA suspends access to Facilities and Services by reason of the Access Seeker's failures set out in Section 3 of this RAO Agreement, PRODATA must reinstate access to Facilities and Services upon the Access Seeker remedying its failure or the redirection of the Commission.

7. Notwithstanding Section 4, in the event that:-

(a) an Operator's Licence(s) is terminated and the Operator is not immediately granted another Licence(s) of that type (where a License of that type or another Licence is required); or

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

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

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

(a) preventing such further breaches from occurring;

(b) preventing the continuation of the said breach; and/or

(c) requiring the Operator in breach to comply with their obligations under this Agreement,

without the necessity of first exercising any of its rights herein. For the avoidance of doubt, Section 2, 3, 4 and 12 shall not preclude the other Operator from immediately seeking urgent interlocutory action under this Subsection.

9. If, after the termination or expiry of this Agreement in whole or in part:

(a) an Operator ("requesting Operator") gives the other Operator written notice requesting the other Operator to carry out necessary disconnection works and to return any equipment or facilities of the requesting Operator or a third person installed by or for the requesting Operator; and

- (b) the other Operator has failed to comply with the request, the requesting Operator may enter the premises of the other Operator on reasonable notice for the purposes of carrying out any necessary disconnection works and repossessing any such equipment and facilities. The other Operator on whose premises such equipment or facilities were installed is responsible for compensating the requesting Operator for any such equipment or facility which is not delivered up in good condition (fair wear and tear excepted) and for making good all the damage to the requesting Operator's premises, if the equipment or facilities of the other Operator are in the requesting Operator's premises or under the requesting Operator's care. The other Operator shall indemnify the requesting Operator in respect of any damage thereby caused to the premises, equipment and facilities of or under the care of the requesting Operator.

10. Upon termination of this Agreement or part thereof:

- 10.1 subject to Subsection 10.2 below, the Access Provider shall refund to the Access Seeker within sixty (60) days all amounts paid in advance in respect of Facilities and/or Services to the extent that the amount (or part of the amount calculated on a pro-rata basis) relate to the period after the effective date of termination; and
- 10.2 the Access Seeker shall immediately pay all amounts due to the Access Provider for the provision of Facilities and/or Services prior to and up to termination (save for disputed amounts which the Access Seeker is entitled to withhold).
- 10.3 For the avoidance of doubt, the Access Provider shall be entitled to claim for all Charges arising during an applicable minimum contractual period provided under this Agreement notwithstanding that the provision of Facilities and/or Services was terminated prior to the expiry of the applicable minimum period provided that:
  - (a) such charges must be reduced to reflect any cost savings to the Notifying Operator from not having to supply the Facilities and/or Services to the extent that they have been terminated or suspended; and
  - (b) the Notifying Operator must use reasonable endeavours to mitigate its cost of termination or suspension and maximise cost savings under Section 10.3(a).

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

- 11. Without prejudice to the Access Provider's rights and remedies under this Agreement and/or law, upon termination of this Agreement or suspension of access to Facilities and/or Services, the Access Provider shall not be entitled to penalise the Access Seeker with a penalty with respect to the provision of Facilities and/or Services. Nothing in this Section 11 shall prejudice, limit or negate the rights and remedies of the Access Provider under this Agreement or law to seek redress or claim damages, cost and expenses for breach of this

Agreement by the Access Provider, to enforce its right of indemnities, to claim interest and generally to enforce its rights and remedies.

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

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## **PART L: REVIEW**

1. Subject to Section 3 of this part RAO Agreement, if:

- (a) the Minister issues a direction or determination relating to the subject matter of this RAO Agreement;
- (b) the Commission issues a direction or determination relating to the subject matter of this RAO Agreement;
- (c) there are any amendment, changes or modifications to the CMA, its subsidiary legislation and the Instruments issued thereunder;
- (d) enactment of new laws and regulations which relates to the subject matter of this RAO Agreement;
- (e) the registration, determination, promulgation, issue, amendment or replacement of any industry code with which an Operator is required or obliged to comply;
- (f) if a condition of an Operator's Licence is amended or deleted or a new condition is imposed which relates to this RAO Agreement; or
- (g) by agreement of each of the Operators,

the Operators agree to review this RAO Agreement as soon as practicable in good faith. Where the changes referred to in Sections 1 (a) to (g) of this RAO Agreement affect this RAO Agreement, the Operators shall negotiate as soon as practicable and in good faith such amendments to this RAO Agreement as are necessary or appropriate to ensure compliance with such changes.

2. If after the date hereof,

- (a) any change in, or the introduction of, any law, regulation or regulatory requirement; or
- (b) any direction, request or requirement of any central bank, monetary, regulatory or other authority,

results in a currency depreciation of the Ringgit or the appreciation of any other currency against the Ringgit or any other currency control that will increase the cost to, or impose an additional cost on, either Operator in making or keeping its Network and Facilities available, or maintaining its Network and Facilities, then either Operator will be entitled to request for a review of the charges which are affected by it and the Operators will in good faith negotiate any amendments to this Agreement.

3. The obligation to negotiate set out in Sections 1 and 2 of this RAO Agreement commences promptly after delivery of a notice from one Operator to the other Operator setting out in reasonable detail, the amendments sought.
4. If:
  - 4.1 Regulated Facility and/or Service is removed from the Access List or becomes a non-regulated facility or service pursuant to a revocation or an amendment to the Access List:
    - (a) the Access Provider may, at its discretion and by giving notice to the Access Seeker:
      - i. terminate or withdraw that network facility or network service; or
      - ii. vary or modify the terms and conditions pertaining to that network facility or network service subject to mutual agreement provided always that the Operators shall, within fourteen (14) days from the date of Access Provider's notice, first discuss the variation or modification which the Access Provider proposes to adopt ("initial meeting"). Thereafter, if the Operators fail to agree on the amended terms and conditions within forty five (45) days from the initial meeting or such other time as may be mutually agreed in writing by the Operators, then the Access Provider shall be entitled to terminate or withdraw that network facility or network service under paragraph 4.1(a)(i) above. In such a case, the notice period referred to in Subsection 4.4.3, shall commence from the date of the Access Provider's notice to vary the terms. Nothing in this paragraph (a)(ii) shall prevent the Access Seeker from terminating the affected network facility or network service at any time in accordance with Subsection 4.1(b)(i).
    - (b) the Access Seeker may by giving notice to the Access Provider either:-
      - i. terminate that network facility or network service by giving at least three (3) months written notice without penalty; or
      - ii. propose to vary or modify the terms and conditions pertaining to that network facility or network service subject to mutual agreement provided always that the Operators shall, within fourteen (14) days from the date of Access Seeker's notice, first discuss the variation or modification which the Access Seeker proposes ("first meeting"). Thereafter, if the Operators fail to agree on the amended terms and conditions within forty five (45) days from the first meeting or such other time as may be mutually agreed in writing by the Operators, the Access Seeker may terminate or withdraw that network facility or network services in accordance with Subsection 4.1(b)(i). Nothing in this Subsection 4.1(b)(ii) shall prevent the Access

Provider from terminating or withdrawing the affected network facility or network service at any time in accordance with Subsection 4.1(a)(i).

4.2 if:

- (a) a non-regulated facility and/or service becomes a Regulated Facility and/or Service pursuant to an amendment to the Access List; or
- (b) where there is a variation or amendment to the Access List service description of a Regulated Facility and/or Service,

either Operator may propose variation or modification to the terms and conditions pertaining to that network facility or network service subject to mutual agreement provided always that the Operators shall, within fourteen (14) days, from the date of the written notice by the notifying Operator, first discuss the variation or modification proposed to be adopted ("preliminary meeting"). Thereafter, if the Operators fail to agree on the amended terms and conditions within ninety (90) days from the preliminary meeting or such other time as may be mutually agreed in writing by the Operators, then either Operator may initiate the dispute resolution procedures in PART M. Nothing in this Subsection 4.2(b) shall prevent the Access Seeker from terminating the affected network facility or network service at any time, without penalty, by giving the Access Provider three (3) months written notice.

4.3 The notice given pursuant to Subsection 4.1(a)(i), shall be:

- (a) the period of time between the time of giving notice and the time at which the Access Provider is proposing to no longer provide the network facility or network service to itself or other access seekers; or
- (b) twelve (12) months,

whichever is the earlier.

4.4 The notice given pursuant to Subsection 4.1(a)(i) must state any alternative network facility or network service that may be available to be provided by the Access Provider to the Access Seeker and the terms and conditions of such alternative arrangement.

4.5 The amended terms and conditions agreed between the Operators shall take retrospective effect from the date of the relevant Commission's Determination takes effect (or where none is specified, the date of the Commission's Determination was made) unless otherwise agreed.

5. For the avoidance of doubt:

5.1 the variation of the Agreement pursuant to Subsection 4.1 (a) shall not be subject to the approval process required under Subsection 8.8.1(b) PART N; and

5.2 the provisions of this Agreement remain in full force and effect during any negotiations conducted under this PART L until commencement of an agreement replacing or amending this Agreement.

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## **PART M: DISPUTE RESOLUTION PROCESS**

### **1. Introduction**

1.1 Subject to Subsection 2.2.3, an Access Provider and an Access Seeker shall adopt and comply with this dispute resolution procedure in relation to any dispute which may arise between an Access Seeker and Access Provider in relation to or in connection with the supply of any Facilities and/or Services and/or in relation to the terms and conditions of this Agreement (“Access Dispute”).

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

(a) inter-party working groups;

(b) Interconnect Steering Group; and

(c) specific resolution of disputes, being:

- i. technical disputes (which must follow the procedures set out in Section 5 if they cannot be resolved through the application of the general dispute resolution provisions in Section 2, 3 and 4);
- ii. Billing Disputes, which must follow the procedures set out in Section 6; or
- iii. any other types of disputes which, if cannot be resolved through the application of the general dispute resolution provisions in Section 2, 3 and 4, must be referred to the Commission for resolution.

1.3 A dispute between the Operators regarding any matter dealt with under this Agreement shall first be attempted to be resolved by good faith negotiation between the Operators in accordance with this Agreement.

1.4 All disputes referred to the Commission pursuant to this Agreement shall be dealt with in accordance with the Act. Where the decision of the Commission is appealed in the Appeals Tribunal under the Act, the decision of the Appeals Tribunal shall be final and binding subject always to the right of judicial review contained in the Act.

### **2. General**

2.1 Until expiry of the dispute resolution procedures set out herein, an Operator may not commence court proceedings relating to that dispute, other than an application for purposes set out in Subsection 2.2.2 PART N. Nothing in this Section 2.2.1 shall be construed as ousting the jurisdiction of any court.

2.2 An Operator shall ensure that its representatives acting in relation to a dispute are of sufficient seniority and have authority to settle an access dispute on behalf of the

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

- 2.3 During a dispute and any dispute resolution process invoked in accordance with this PART M, an Access Provider and Access Seeker must continue to fulfil their obligations under this Agreement between themselves.
- 2.4 Subject to Section 2.2.5, the Operators shall exchange information of a type described in this Agreement during the course of, and to facilitate, resolution of such a dispute.
- 2.5 Confidential information of an Operator which is disclosed, and any other oral or written submissions made by an Operator or an Operator's representatives during the course of any dispute resolution process will be subject to the confidentiality restrictions contained in the Confidentiality Agreement and this Agreement.
- 2.6 An Operator must not use information obtained under Subsection 2.2.4 or described in Subsection 2.2.5 for any purpose other than to resolve the dispute.
- 2.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of a dispute (including a Technical Expert (as hereinafter defined) or the Commission, in accordance with this PART M) may decide not to determine the dispute if the arbitrator considers that the dispute is trivial, frivolous or vexatious, or if there is insufficient evidence before the arbitrator to determine the dispute.
- 2.8 The costs of the arbitration are to be shared equally between the Operators, unless the arbitrator of the dispute has decided not to determine the dispute in accordance with Subsection 2.2.7. If an arbitrator decides not to determine the dispute, the Operator that initiated the dispute must pay the costs of the arbitration including the other Operator's costs thereto.

### 3. Inter-Party Working group

- 3.1 In the first instance, the Operator raising a dispute must inform the other Operator in writing and the Access Seeker and Access Provider should attempt to resolve the Access Dispute between themselves in good faith.
- 3.2 An Access Provider and Access Seeker shall establish a working group, or working groups, to fulfil the requirements set out in Subsection 3.3.1. The working group shall be comprised of representatives of the Operators, and be headed by a person who holds a position that is at least equivalent to the head of the Access Provider's wholesale or interconnection group.

3.3 The Access Provider shall provide for:

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

3.4 The Access Provider and the Access Seeker shall use reasonable endeavours to attempt to settle an Access Dispute in the working group level for a period of no longer than thirty (30) Business Days unless otherwise agreed by the parties, subject always to an Operator's right to obtain relief in court as set out in Subsection 2.2.2 PART N.

#### 4. Interconnection Steering Group

4.1 In the event that the Operators cannot resolve the dispute between themselves within the time specified in Subsection 3.3.4, or after any agreed time extension has expired, either Operator may give ten (10) Business Days written notice ("Notice Period") to the other Operator stating its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice Period, then either Operator may notify the other Operator ("Receiving Operator") that it wishes to refer the issue to the Interconnect Steering Group (ISG). In such an event, the Parties shall promptly form a committee comprising the ISG with an equal number of appropriate representatives from each Operator.

4.2 The ISG to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Operator of a notice under Subsection 4.4.1. If the ISG fails to meet or has not been formed within ten (10) Business Days of the receipt by the Receiving Operator of a notice of escalation of the Dispute, either Operator may refer the dispute to a Technical Expert (in accordance with Section 5) or to the Commission for resolution in accordance with Subsection 4.3(a) or (b), respectively.

4.3 If the ISG does not resolve the dispute within twenty (20) Business Days after it first meets to review that dispute under Subsection 4.4.2, either Operator may:

- (a) to the extent the issues in dispute are technical in nature, refer any technical dispute to a Technical Expert in accordance with Section 5; or
- (b) refer the dispute to the Commission for final arbitration.

#### 5. Use of a Technical Expert

- 5.1 A dispute will only be referred to a Technical Expert if the provisions in Section 3 and 4 have been complied with.
- 5.2 Once a dispute is referred to a Technical Expert, it may not be referred back to a Working Group or ISG.
- 5.3 The person to whom a technical dispute may be referred under this section:
  - (a) will be an expert appointed by agreement of the Operators or, if the Operators cannot agree, by the Commission;
  - (b) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communication industry;
  - (c) need not be a Malaysian citizen or resident; and
  - (d) will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict or interest,("Technical Expert").
- 5.4 If the Operators fail to appoint a Technical Expert within ten (10) Business Days of the notice to refer a dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.
- 5.5 When relying on the services of a Technical Expert, the following procedures will apply to the dispute resolution procedure of the Technical Expert:
  - (a) the Operators will present written submission to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and
  - (b) each Operator may respond to the other Operator's submission in writing within fifteen (15) Business Days from the date of the other Operator's submission.
- 5.6 A Technical Expert hearing will be within fifteen (15) Business Days of the last written submission unless:
  - (a) an Operator requests for and the other Operator agrees that the use of the Technical Expert be by documents only; or
  - (b) failing agreement of the Operators, the Technical Expert decides within five (5) Business Days of the last written submission that the use of the Technical Expert be by documents only.

- 5.7 Should a Technical Expert hearing procedure be held, each Operator will have the opportunity of making an oral submission. This process will be conducted in private.
- 5.8 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Operators) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.
- 5.9 The Technical Expert will not have the power to appoint any other experts.
- 5.10 The Technical Expert will deliver his award within fifteen (15) Business Days of the conclusion of the hearing or of the last written submission where the arbitration is by documents only. A failure to comply with the time frame in this Subsection 5.5.10 does not invalidate the Technical Expert's award.
- 5.11 Every dispute referred to a Technical Expert will be considered separately so that time limits for each dispute are complied with.
- 5.12 The Technical Expert's decision will be final and binding on the Operators (in the absence of manifest error of fact or law).

## 6. Billing dispute resolution

- 6.1 An Invoicing Operator shall allow the Invoiced Operator to dispute an Invoice prepared by the Invoicing Operator if:
  - (a) in the case of domestic Call Communication (including International Inbound Calls), the Invoiced Operator notifies the Invoicing Operator in writing within forty-five (45) days from the last day of the period specified in PART E Subsection 2.2.7 (as the case may be), in which late or omitted Charges for a particular traffic month may be Invoiced;
  - (b) in the case of any other Facilities and Services (other than those specified in paragraph (a) above), the Invoiced Operator notifies the Invoicing Operator in writing within forty-five (45) days after the date of receipt of such Invoice.

If the Invoiced Operator fails to dispute an Invoice within the specified time period above, the Invoiced Operator is deemed to have accepted the Invoice.

- 6.2 Unless otherwise agreed in writing, a Billing Dispute may only arise where the Invoiced Operator has reasonable grounds to believe that an error has arisen from one of the following circumstances:
  - (a) the Invoicing Operator's Billing System is, or has been, defective or inaccurate in respect of the recording of the calls which are the subject of the dispute;

- (b) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Operator's Billing System;
- (c) there is, or has been, a fraud perpetrated by the Invoicing Operator; or
- (d) the Invoicing Operator has made some other error in respect of the recording of the Call Communications and calculation of the Charges which are the subject of the Billing Dispute.

6.3 All Billing Dispute Notices given under this Section 6 must specify;

- (a) the detailed reasons for which the Invoiced Operator disputes the Invoice;
- (b) the amount in dispute;
- (c) details required to identify the relevant Invoice and charges in dispute including:
- (d) the account number;
- (e) the Invoice reference number;
- (f) the Invoice date;
- (g) the Invoice amount;
- (h) billing verification information; and
- (i) evidence in the form of the Invoiced Operator's outgoing report, indicating the relevant traffic data which is in dispute.

6.4 Subject to Section 6.6.5, an Operator is obliged to pay the amount stated in the Invoice by the Due Date even if it disputes the amount of the Invoice. If the amounts paid to date for the period pending settlement of the Dispute is higher than the amounts payable, then the Invoicing Operator will pay in full such difference and interest, calculated in accordance with PART E Subsection 2.2.4, within fourteen (14) days from the date of settlement of Dispute, as documented by the Operators. The interest shall be payable by the relevant Operator from the payment date of the disputed amount to the date of actual payment of the differential amount.

6.5 Notwithstanding Subsection 6.6.4, if the Operators are not able to settle a Billing Dispute within the time periods specified in Subsection 6.6.7, an Operator may withhold payment of amounts disputed in good faith for all subsequent Invoices issued by the Invoicing Operator. If the dispute is resolved between the Operators in writing against the Invoiced Operator, then the Invoiced Operator shall pay interest (calculated in accordance with PART E Subsection 2.2.4) on the outstanding amounts due to the Invoicing Operator. The interest shall be payable within fourteen (14) days from the

settlement of the Dispute, as documented by the Operators. Interest shall be calculated from the Due Date until date of actual payment of the outstanding amount.

- 6.6 The Operators agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this Subsection 6.6.
- 6.7 If the Operators are unable to resolve any Billing Dispute within ninety (90) calendar days (or such other period as the Operators may agree) from the date on which the Billing Dispute Notice is received, either Operator may seek the consent of the other Operator to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other Operator is, however, under no obligation to agree to such extension.
- 6.8 To the extent that a Billing Dispute notified under this Section 6 involves a Billing Dispute with an international correspondent of the Invoicing Operator, the dispute resolution procedures shall be suspended for a reasonable period of time pending resolution of the dispute with that international correspondent. As a general rule, the period of suspension will not exceed one hundred twenty (120) days. However, the Operators recognize that some Billing Disputes with international correspondents may take longer to resolve, in which case the Access Provider must promptly inform the Access Seeker of the likely period required for resolution.
- 6.9 Once the negotiation period under Subsection 6.6.7 and any extension granted under Subsection 6.6.8 has expired, the Billing Dispute may be referred by the Access Seeker to the procedure described in Subsection 6.6.10 ("Billing Dispute Escalation Procedure").
- 6.10 The Access Seeker may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this Subsection 6.6.10 by notifying the Access Provider's Billing Representative. Each of the Operators shall then appoint a designated representative that has authority to settle the Billing Dispute, and that is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives however all reasonable requests for relevant information made by one Operator to the other Operator shall be honoured.
- 6.11 Although it is the good faith intention of the Parties to use the billing dispute resolution procedures to the fullest extent to try to solve Billing Disputes, nothing in this Agreement shall prevent either Operator from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.

6.12 An Operator may request a joint investigation of Invoice discrepancies after that Operator has conducted comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the Operators must agree the terms of the joint investigation, including:

- (a) the scope of the joint investigation;
- (b) how the joint investigation will be conducted; and
- (c) the date by which the joint investigation must be concluded.

The joint investigation may include the generation of test Call Communications to the other Operator's Network.

6.13 Enquiries relating to billing, collecting and settlement arrangements or in relation to Network and operation issues may be directed to the Billing Representatives nominated by each Operator. The Billing Representatives nominated by each Operator shall be their Billing Representative at the ISG meetings.

6.14 Either Operator may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.

6.15 If the Operators are unable to resolve any Billing Dispute after exhausting the Billing Dispute Escalation Procedure, either Operator may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the CMA. For the purposes of clarification, the Billing Dispute procedure shall follow the procedure in this Section 6 and does not involve the inter-party working group, Interconnect Steering Group and Technical Expert under Section 3,4 and 5.

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## **PART N: GENERAL PROVISIONS**

### **1. Force Majeure**

1.1 If an Operator is unable to perform any obligation (other than an obligation to pay money) under this Agreement by reason of Force Majeure and that Operator:

- (a) gives the other Operator to which the obligation is owed prompt notice of the Force Majeure with reasonably full particulars thereof and an estimate of the extent and duration of its inability to perform; and
- (b) shall continue to take all actions within its power to comply as fully as possible with the said terms and conditions.

then that obligation is suspended insofar as it is affected by, and during the continuance of the Force Majeure.

1.2 If the Force Majeure continues beyond fourteen (14) days after the notice given under Subsection 1.1.1, the Operators shall meet to discuss in good faith a mutually satisfactory resolution to the problem.

1.3 The requirement that a Force Majeure be removed with all possible diligence does not require the settlement of strikes, lockouts or other labour disputes or claims or demands on unreasonable terms. If a strike, lockout or other labour dispute or claim or demand principally concerns any matter the subject of this Agreement, the Operator affected must so notify and consult with the other Operator.

### **2. Governing Law**

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

2.2 In the event of:

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

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

### 3. Operators to Act in Good Faith

3.1 Each Operator agrees that it will act in good faith in relation to the other Operator with respect to all matters relating to or contemplated by this Agreement.

### 4. Costs and Expenses

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

### 5. Relationship of the Operators

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

### 6. Surviving Obligations

6.1 Termination or expiration in whole or in part of this Agreement does not affect those Sections (including, without limitation, PART F, G, H, I, K and M) which by their nature survive termination or expiry.

### 7. Relationship with Third Persons

7.1 An Operator and any of its employees, agents, representatives or contractors shall not be deemed to be an employee, agent, contractor or representative of the other Operator unless the other Operator is a related body corporate of the first mentioned Operator.

7.2 Subject to Subsection 7.1, no Operator has any authority to bind or oblige or incur any liability on behalf of the other Operator and no such authority is to be implied.

7.3 Subsection 7.1 and 7.2 have neither the effect nor imply:

- (a) that an Operator or any of its employees, agents, representatives or contractors is the employee agent contractor or representative of the other Operator; or
- (b) that an Operator has the authority to bind or oblige or incur a liability on behalf of the other Operator,

unless the first mentioned Operator is a related body corporate of the other Operator.

7.4 Either Operator may advise its Customers that certain services are provided by it, but each Operator must not represent that the other Operator jointly participates in the Operator's services.

## 8. Variation

8.1 (a) A variation of any part of this Agreement is valid if, and only if, made between and in writing subscribed by the Operators and that the variation in respect of Regulated Facilities and Services is registered with the Commission in accordance with the Act.

(b) Subject to Subsection 8.8.1(a), where the Operators agree to materially vary the Agreement or access to its Facilities and/or Services, the Operators shall inform the Commission in writing of the action the Access Provider proposes to take and the reasons why such action is appropriate. This Agreement or access to Facilities and/or Services shall not be varied until such reasonable time and on such reasonable conditions as the Commission may legally specify.

(c) In this Section 8, a reference to a variation includes a reference to an addition, deletion, amendment, modification, alteration or other variation.

## 9. Assignment

9.1 No rights, benefits or obligations under this Agreement may be assigned or novated by an Operator without the prior written consent of the other Operator, which consent must not be unreasonably withheld.

## 10. Remedies Cumulative

10.1 Subject to any clause or provision of this Agreement which provides for a remedy or form of compensation to the exclusion of any other remedy or form of compensation, the rights, powers and remedies provided in this Agreement are:

(a) cumulative; and

(b) not exclusive of the rights, powers or remedies provided by law independent of this Agreement.

## 11. Notices

11.1 Subject to Subsection 1.1.1(d) Part E, a notice, invoice, approval, consent, request or other communication in connection with this Agreement:

(a) must be in writing; and

- (b) must be left at the address of the addressee, or sent by ordinary post, registered post or licensed courier to the address of the addressee or sent by facsimile (to be followed by post) to the facsimile number of the addressee which is set out below or if the addressee notifies another address or facsimile number then to that address or facsimile number.

The address and facsimile number of each Operator is:

**PRODATA:**

Attention : General Manager, Business Development

Address : Level 19, East, Wisma FGV, Jalan Raja Laut, 50350, Kuala Lumpur

Tel : 03-2789 0900

Email : prodatacare@fgvholdings.com

**Access Seeker:**

Attention :

Address :

Facsimile:

- 11.2 notice, invoice, approval, consent, request or other communication takes effect from the time it is received unless a later time is specified in it.
- 11.3 notice, invoice, approval, consent, request or other communication is, in the absence of contrary evidence, deemed to be received:
  - (a) in the case of A.R registered post, on the third Business Day after posting;
  - (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicated that the facsimile was sent in its entirety to the facsimile number of the recipient;
  - (c) in the case of an email, upon transmission of the email provided there is no notification of error or failure in transmission is received by the sender, if sent before and
  - (d) in the case of a communication left at the address of the addressee or licensed courier, at the time the communication was so left.
- 11.4 Notwithstanding anything to the contrary in this Section 11, notification by way of email shall not be applicable to or valid with respect to any legal notices, claims, demands, suits, actions and/or proceedings.

**12. Waiver**

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

- (b) No failure or delay on the part of any Operator in exercising any rights hereunder shall operate as a waiver thereof nor shall any single or partial exercise of such right preclude any other or further exercise of any other right hereunder provided however that nothing in this condition shall extend time or be construed to extend time for the performance of any right or obligation under this Agreement if a time period is imposed for the performance of such right or obligation.
- (c) Knowledge or acquiescence by any Operator of, or in, breach of any of the provisions of this Agreement shall not operate as, or be deemed to be, a waiver of such provision and, notwithstanding such knowledge or acquiescence, such Operator shall remain entitled to exercise the rights and remedies under this Agreement, and at law, and to require strict performance of all of the provisions of this Agreement.

### 13. Entire Agreement

13.1 This Agreement constitutes the entire agreement of the Operators regarding the subject matter of this Agreement.

### 14. Severability

14.1 The whole or any part of this Agreement that is illegal or unenforceable:

- (a) will be:
  - i. read down to the extent necessary so that it is legal and enforceable; or
  - ii. severed (if it cannot be read down in accordance with paragraph (i)); and
- (b) will not affect the continued operation of the remaining provisions of this Agreement.

### 15. Time of the Essence

Time wherever referred to in this Agreement shall be of the essence.

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**ANNEXURE I  
NON-REFUNDABLE PROCESSING FEE**

<b>Type of Facilities or Services</b>	<b>Type of Access Request</b>	<b>Processing Fee</b>
Network Co-location Service	Request for Site establishment	RM 300 per circuit
End-to-End Transmission Service	a) Establishment of new route/bearer	RM600 per circuit
	b) Circuit Migration Exercises	RM600 per circuit
	c) Provisioning of Additional Circuits	RM250 per circuit

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# **TERMS AND CONDITIONS FOR REGULATED FACILITIES AND/OR SERVICE**

## **END-TO-END TRANSMISSION SERVICE**

### **SECTION I: SERVICE DESCRIPTION**

#### 1. General

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

#### 2. Scope of End-to-End Transmission Service

##### 2.1 End-to-End Transmission Service:

(a) The End-to-End Transmission Service is a Facility and/or Service for the carriage of communications between:

- i. two (2) End User locations;
- ii. between two (2) Access Seeker Points of Presence; or
- iii. between one (1) End User location and one Access Seeker Point of Presence via such network interfaces at such transmission rates as may be agreed between the Access Provider and the Access Seeker.

(b) Network interfaces may use any technology as may be agreed between PRODATA and the Access Seeker.

##### 2.2 The functionalities of the End-to-End Transmission Service include:

- (a) transmission and switching (whether packet or circuit);
- (b) the signalling required to support the technology or to provide a service;
- (c) termination at either end by a port, router, network termination unit, switch, submarine cable landing centre or earth station; and
- (d) a digital protocol (including Internet Protocols).

2.3 The End-to-End Transmission Service may be for the carriage of Communications which comprise of content applications service.

2.5 An access seekers for End-to-End Transmission Service which includes but limited to a network facilities provider or network service provider which is only authorised to

provide limited network facilities or network services such as in the last mile, but wishes to acquire the End-to-End Transmission Service in order to connect its limited network facilities or network services.

2.6 For the avoidance of doubt, the End-to-End Transmission Service comprise but is not limited to the Facilities and/or Services specified in the Trunk Transmission Service and the Wholesale Local Leased Circuit Service.

### 3. Provisioning of End to End Transmission Services

3.1 PRODATA will provide End-to-End Transmission Services for provision of Communications Services between two (2) or more locations, requested by the Access Seeker in accordance with this RAO Agreement.

3.2 PRODATA shall ensure End-to-End Transmission Service conforms to the Technical Specifications, subject to the Access Seeker's use of this End-to-End Transmission Service in accordance with the Technical Specifications.

3.3 The Access Seeker shall provide the Access Provider reasonable access to its premises when the Access Provider reasonably requires it for the purpose of installing, maintaining, modifying or removing Equipment related to the provision of End to End Transmission Service by the Access Provider.

3.4 PRODATA shall ensure End-to-End Transmission Services conform to the QoS Standards and Technical Specifications, subject to the Access Seeker's use of Equipment being compatible with PRODATA's network.

3.5 The minimum period in which the Access Seeker may lease End-to-End Transmission Services is one (1) year.

3.6 The Access Seeker shall pay to the Access Provider for End to End Transmission Services stated in this Section I/ Schedule of this Rao agreement provided by PRODATA, Charges in accordance with the applicable provision set out in Section../Schedule... of this Prodata RAO.

### 4. Service Specific Obligations

4.1 **Application:** Applies where access to End-to-End Transmission Service has been requested or is to be provided.

4.2 **Forecasts:** PRODATA shall only request Forecast where:

(a) the maximum period of time covered by Forecasts regarding End-to-End Transmission Services is one (1) year;



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

4.3 **Acknowledgement of receipt:** An Access Provider shall acknowledge receipt of each Order for an End-to-End Transmission Service within two (2) Business Day

4.4 **Time for acceptance or rejection:** Subject to any shorter timeframe, an Access Provider must notify an Access Seeker that an Order for an End-to-End Transmission Service is accepted or rejected within ten (10) Business Days after

- (a) issuing the Notice of Receipt in respect of the order, where the Access Provider did not undertake any post-Order Service Qualification for that order; or
- (b) providing the Access Seeker with the result of post-Order Service Qualification information, where the Access Provider has undertaken post-Order Service Qualification for that Order.

4.5 **Indicative delivery timeframe:** The indicative delivery timeframes for End-to-End Transmission Service is:

- (a) Transmission Services, twenty (20) Business Days; and
- (b) if new network facilities are required to supply the End-to-End Transmission Services, sixty (60) Business Days

For clarification, the indicative delivery timeframe in this PRODATA RAO commences from the Notice of Acceptance or confirmation of the Order (as applicable) in accordance with Subsection 2.14 of Schedule 1B of this RAO Agreement subject always that where any approval is required from a government authority or any third party, such approval has been obtained and the conditions imposed under or in connection with that approval has been fulfilled by the Access Seeker.

4.6 **Billing Cycle:** Between the Operators, the Billing Cycle for End-to-End Transmission Services will be quarterly from date commissioning.

4.7 **Reporting:** Access Provider shall notify the Commission in writing, in respect of each type of Transmission Service (i.e. any Leased Circuit Service or End-to-End Transmission Service) offered or supplied by the Access Provider, details of:

- (a) each technically feasible network point at which a Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the Transmission Services are supplied at those points);

- (b) each network interface through which a Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the Transmission Services are supplied using those interfaces)
- (c) each bit rate at which a Transmission Service is offered and supplied (and, in the case of supply, the Access Seekers to whom the Transmission Services are supplied at those bit rates); and
- (d) whether the Transmission Service is supplied in conjunction with any other Facility or Service.

4.8 **No bundling:** An Access Provider shall not require an Access Seeker to purchase an End-to-End Transmission Service together with any other Transmission Service. For example, an Access Provider shall not require an Access Seeker to purchase a Trunk Transmission Service between a pair of technically feasible network transmission points with a Trunk Transmission Service between another pair of technically feasible network transmission points.

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## **END-TO-END TRANSMISSION SERVICE**

### **SECTION II: CHARGES AND CHARGING PRINCIPLES**

#### **1. General**

1.1 Section II sets out the charges and charging principles which would be applicable to End-to-End Transmission Service.

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

2.1 The Access Seeker may lease any or all of the End-to-End Transmission Service referred to table A from Access Provider for the duration of one (1) year with the option to renew for the same duration.

2.2 The Access Seeker will not be entitled to terminate any of the lease agreements in respect of any End-to-End Transmission Service in the first year. If the Access Seeker terminates the Access Seeker shall pay the applicable charges for the minimum period of one (1) year irrespective of use. After the first year, the Access Seeker may terminate the lease agreement by providing the Access Provider three (3) month prior notice. Any advanced payment for the unutilised portion of the lease agreement will be refunded on a pro-rated basis. Upon expiry, the lease agreement will be automatically renewed for the same duration unless either Operator gives a written notice to the other Operator, three (3) months prior to the expiry of the agreement, stating its intention not to renew the agreement.

#### **3. Payment Terms**

3.1 The payment terms for End-to-End Transmission Service is as follows:

(a) for the first year, one (1) year in advance; and

(b) for subsequent years, quarterly in advance

3.2 The contract period for the lease agreement shall commence from the date of commissioning of the respective End-to-End Transmission Service circuit.

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**TABLE A: CHARGES FOR END-TO-END TRANSMISSION SERVICE**

	Ringgit Malaysia per month		
	2018	2019	2020
Within Peninsular Malaysia and within Sabah and Sarawak			
1 Mbps	105	106	108
10 Mbps	1,353	1,302	1,256
100 Mbps	2,130	2,000	1,895
200 Mbps	2,993	2,775	2,606
500 Mbps	5,582	5,102	4,737
750 Mbps	7,739	7,041	6,512
1 Gbps	10,103	9,166	8,459
3 Gbps	28,406	25,660	23,597
5 Gbps	46,078	41,543	38,144
Between Peninsular Malaysia and Sabah and Sarawak			
1 Mbps	134	133	132
10 Mbps	1,638	1,565	1,500
100 Mbps	4,979	4,628	4,334
200 Mbps	8,690	8,032	7,483
500 Mbps	19,825	18,243	16,930
750 Mbps	29,104	26,753	24,802
1 Gbps	39,274	36,079	33,430
3 Gbps	115,919	106,399	98,511
5 Gbps	191,934	176,109	163,001
Installation (non-recurring charge)	5,110	5,365	5,633

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## **NETWORK CO-LOCATION**

### **SECTION I: SERVICE DESCRIPTION**

#### **1. General**

1.1 Section I sets out the terms and conditions which are applicable to Network Co-location Service.

#### **2. Types of Network Co-Location Services**

2.1 The types of Network Co-Location Services provided by the Access Provider are:

- (a) Physical Co-Location, which refers to the provision of space at the Access Provider's premises to enable the Access Seeker to install and maintain its own equipment necessary for the provision of the Access Seeker's services through the Facilities and/or Services of the Access Provider. Physical Co-Location includes physical space, power, environmental services (such as heat, light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access Seeker;
- (b) Virtual Co-Location, which refers to the provision of facilities or services at the Access Provider's premises to enable the acquisition by the Access Seeker of Facilities and Services, where equipment is owned and maintained by the Access Provider;
- (c) In-span interconnection, which is the provision of a POI at an agreed point on a physical cable linking an Access Provider's network facilities to an Access Seeker's network facilities.

#### **3. Pre-requisites for Applying for Network Co-Location Services**

##### **3.1 General Pre-requisites for Network Co-Location**

3.1.1 The Access Provider shall not be obliged to provide to the Access Seeker Network Co-Location at the designated sites ("Designated Sites") unless:

- (a) the Access Provider:
  - i. is the legal owner of the Designated Sites; or
  - ii. has exclusive rights of use of the Designated Sites pursuant to a lease or tenancy agreement and the Access Provider has been granted the requisite approval by the owner or landlord of Designated Sites to permit the Access Seeker to use space for physical co-location in accordance with the terms herein contained.

- (b) the Access Seeker has the appropriate license under the Act and its subsidiary legislation to operate the service for the purpose for which the equipment is to be installed and other approvals from relevant authority, where required;
- (c) there is sufficient space at the Designated Site, provided there is excess space available after taking into consideration of PRODATA's own use requirement and future expansion plan; and
- (d) that it is not technically infeasible to implement Network Co-Location at the Designated Site as provided in Subsection 5.4.2 PART C of the General Terms and Conditions .

3.1.2 The list of the Designated Sites may, upon written request by the Access Seeker, be obtained from the Access Provider within four (4) weeks from the date of receipt of the written request.

#### 4. General Terms and Conditions on Network Co-Location Services

##### 4.1 Duration

- (a) Network Co-Location at a Designated Site, agreed between the Operators, shall be for a fixed period of three (3) years unless a lesser period is stipulated by the Access Provider (where the Access Provider's right to use the Designated Site is less than three (3) years) and may be further renewed subject to the mutual agreement of the Operators. The Access Seeker shall within six (6) months prior to the expiry of the term of the Network Co-Location at the Designated Site notify the Access Provider in writing as to whether or not it wishes to renew the term of the Network Co-Location at the Designated Site. If the Access Seeker notifies the Access Provider that it wishes to renew the term of the Network Co-Location at a Designated Site but the Access Provider's lease or tenancy to use the land on which the Designated Site expires upon or will expire in the renewed term, the Access Provider shall, within one (1) month from the date of receipt of the Access Seeker written notice, inform the Access Seeker as to its intention to renew its lease or tenancy of the said land.
- (b) The term of the Network Co-Location shall commence on the date ("Commencement Date"):
  - i. the Access Provider makes available for physical possession the co-located space ("Co-Located Space") at the Designated Site in accordance with the agreed specifications and the Access Provider has notified the Access Seeker in writing of the same; or
  - ii. the Access Seeker takes physical possession of the Co-located Space at the Designated Site,

whichever is the earlier.

## 5. Specific Terms and Conditions for Physical Co-Location

### 5.1 Use of Co-Located Space

- (a) The Access Seeker shall only use the Co-Located Space for the sole purpose of providing Communication Services and shall not do or permit to be done any act or thing which is illegal or may become a nuisance or give reasonable cause for complaint by the Access Provider or owner or any of the other access seekers in the Access Provider's Designated Site or owner any other buildings adjoining the Designated Site.
- (b) If the Access Seeker has not complied with Technical Matters the Access Seeker shall take the necessary rectification or remedial action to address any complaints made by the Access Provider or other access seekers in the Designated Site or owner or owner of the building adjoining the Designated Site.
- (c) The Access Seeker's right to use the Co-Located Space and the right of access does not entitle the Access Seeker to any proprietary rights or interest whether under statute, common law, equity or any theory of law in any building, land, fixture, other structure or in or to the Designated Site.
- (d) Where the land on which the Designated Site is located is owned or controlled by a third party ("Site Owner") and the Access Provider's use of the Designated Site is pursuant to a tenancy or lease, the Access Provider shall be under no obligation to seek any renewal of the term of the tenancy or lease. The Access Seeker agrees that it shall not seek a tenancy or lease to the land on which the Designated Sites is located from the Site Owner unless the Access Provider signifies in writing that it is no longer interested in the use of the Designated Sites.

### 5.2 Storage

- (a) The Access Seeker shall not permit to be kept on the Co-Located Space or any part thereof:
  - i. any materials the storage of which may contravene any ordinance, statute, regulation or by-law;
  - ii. any materials the storage of which an increased rate of insurance is usually required; or
  - iii. any explosive, combustible or radioactive substances.

### 5.3 Increase in Premium

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

#### 5.4 Repairs

- (a) In the event of any damage caused to the Co-Located Space by the Access Seeker, the Access Seeker shall, at its own cost and expense, restore and to forthwith make good any damage to the original state and condition (fair wear and tear excepted) as specified in the notice in writing given by the Access Provider to the Access Seeker. Where applicable, the Access Provider may specify all necessary repairs or, where damage cannot be made good with repairs to the original state and condition, such replacements to be effected to the building, plant, facilities and equipment.
- (b) If the Access Seeker fails to effect the replacements and/or repairs within the time period stipulated in the notice (which period must be a reasonable time), the Access Provider may, whether or not together with its workmen, enter the Co-Located Space and make all necessary replacements and/or repairs to the building, plant, facilities and equipment. The costs for all such necessary replacements and/or repairs shall be a debt due from the Access Seeker and shall be recoverable by the Access Provider save where the replacements and/or repairs were due to the natural failure of the structure or due to the Access Provider.

#### 5.5 Tenantable Condition

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

#### 5.6 Consents, Licences and Approvals

- (a) The Access Seeker shall be fully responsible to obtain all necessary consents, permits, approvals and licenses from third parties and governmental authorities or agencies to carry out/provide its Communications Services at the Co-Located



Space including operating and using all equipment, systems, cables, links and devices.

- (b) The Access Seeker shall further observe and comply with all laws, by-laws, rules and regulations affecting the Access Seeker which are now in force or which may hereafter be enacted.
- (c) The Access Seeker shall further observe and perform and cause all its employees, independent contractors, agents or invitees to observe and perform all rules and regulations made by the Access Provider (and which rules and regulations equally apply to all access seekers and the Access Provider) from time to time and notified to the Access Seeker in writing Provided Always that the Access Provider shall not be liable to the Access Seeker in any way for violation of the rules and regulations by any person including the Access Seeker or its employees, independent contractors, agents or invitees save where the Access Provider has been negligent.

#### 5.7 Sub-letting and Assignment

- (a) The Access Seeker shall not sub-let, assign or part with the possession of the Co-Located Space without the prior written approval of the Access Provider (the approval of which shall not be unreasonably withheld). Where the Access Provider allows the Access Seeker to sub-let the Co-Located Space, the Access Seeker shall be fully responsible for the acts and omission of its sub-lessee and shall ensure that its sublease complies with all the Access Seeker's obligations with respect to the Co-Located Space under this Agreement.
- (b) Where the Access Seeker is permitted by the Access Provider to sub-let part of the Co-Located Space to other access seekers for the purposes of co-locating with the Access Seeker at the Co-Located Space, the Access Seeker shall strictly comply with the same procedures in respect of permitting access as those stipulated and/or required by the Access Provider in providing access. The Access Seeker must notify the Access Provider of all persons with whom the Access Seeker has reached a co-location agreement within two (2) Business Days of reaching such agreement. The Access Seeker shall provide sufficient evidence to the Access Provider to demonstrate that such agreement with the other access seeker have been duly registered with the Commission, failing which the other access seekers shall not be permitted to co-locate at the Co-Located Space. The Access Seeker shall be fully responsible to ensure that all other access seekers co-locating with the Access Seeker at the Co-Located Space shall strictly comply with all the relevant terms and conditions contained in this Agreement including but not limited to provisions pertaining to the preservation of and the security of the Access Provider's Network Facilities and premises.

#### 5.8 Payment of Quit Rents, Rates and Taxes

- (a) The Access Provider will pay all quit rents, rates (save for utilities), taxes, assessments which are or may hereafter be charged upon the Co-Located Space. Any increase in quit rent, assessment, taxes or rates on the Co-Located Space from the Commencement Date of the Network Co-Location shall be borne by the Access Provider and all access seekers in proportion to their usage of space.

## 5.9 The Access Provider's Covenant

### 5.9.1 In the event that:

- (a) the Access Provider is required by the relevant authorities to dismantle the infrastructure on the Designated Site; or
- (b) any governmental or State authority or owner/landlord of the Designated Sites, requires the Access Provider to vacate the Designated Site for whatsoever reason,

such that the Access Seeker is not able to:

- i. install or utilise the equipment, system or devices thereon; or
- ii. provide its Communication Services at the Designated Site,

the Access Seeker and/or the Access Provider may, notwithstanding the minimum term, terminate the Network Co-Location at Co-Located Space without liability. Any advanced payment will be refunded on a pro-rated basis. The Operators agree that the remedies set out in this Subsection 5.9 shall be the only remedy against the Access Provider and the Access Provider shall not be liable to the Access Seeker for any damages, costs and/or expenses including but not limited to the costs of dismantling and removing the Access Seeker's equipment, system or devices. The Access Provider will provide as much notice as possible to the Access Seeker and will use its reasonable endeavours to offer the Access Seeker other suitable Designated Sites with the same terms and conditions for the term period as agreed under this Agreement.

- 5.9.2 Where the Access Provider is required by any governmental authority or agency or any state backed company to sell or dispose the Designated Site to the governmental authority or its nominated person or entity, the Access Provider will use its endeavours (but does not guarantee that it will be able) to sell the Designated Site subject to any existing rights of the Access Seeker to use the Co-Located Space on the Designated Site. However, where the third party purchaser requires that the Access Seeker vacate the Co-Located Space prior to the sale of the Designated Site, the Access Seeker shall dismantle its equipment, system and devices and vacate the Co-Located Space prior to the sale of the said Designated Site to the third party. The Access Provider will provide as much notice as

possible to the Access Seeker and will use its reasonable endeavours to offer the Access Seeker other suitable Designated Sites with the same terms and conditions for the term period as agreed under this Agreement. Should the Access Seeker disagree with the alternative arrangement, any advance payment will be refunded on a pro-rated basis. The Operators agree that the Access Seeker and/or the Access Provider may, notwithstanding the minimum term, terminate the Network Co-Location at the Co-Located Space without liability. The Operators agree that the remedies set out in this Subsection 5.9 shall be the only remedy against the Access Provider and the Access Provider shall not be liable to the Access Seeker for any damages, costs and/or expenses including but not limited to the costs of dismantling and removing the Access Seeker's equipment, system or devices except for damage to the Access Seeker's equipment, system or devices caused by the Access Provider.

## 5.10 Utilities

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

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

(a) subject to the Access Provider's prior written approval, utilise the electricity supplied to the Access Provider at that premises provided that:

i. the Access Provider is of the opinion that the electricity power load is sufficient to be shared with the Access Seeker and other access seekers within its Designated Site; and

ii. the Access Seeker reimburse the Access Provider for all electricity charges utilised (and any other additional charges for back-up power) by the Access Seeker at the Co-Located Space, the charges of which shall be determined by the Access Provider; or

(b) where the Access Provider is not able to provide the electricity supply to the Access Seeker, the Access Seeker shall be entitled to bring and install its own generator registered and licensed by Energy Commission (Suruhanjaya Tenaga) at the Co-Located Space at the Designated Site.

## 5.11 To Permit the Access Provider to Enter and View Condition

- (a) Where the Co-Located Space is an enclosed or secured area, the Access Seeker shall permit the Access Provider and his agents, servants and contractors, to enter the Co-Located Space at all reasonable times and upon giving five (5) Business Days written notice for the purpose of viewing the state and condition thereof or for any other reasonable purpose. The Operators agree however, that in an emergency which poses a clear and imminent danger to public safety and/or the Access Provider or other access seekers equipment, the Access Provider may enter the Co-Located Space by first giving verbal notification and which shall be followed by a written notification within twenty four (24) hours and take reasonable actions as the circumstances dictate to address the emergence situation. The Access Seeker shall have the option to provide an escort to the Access Provider, at its own cost, but the Access Provider shall not be prevented from entering if the escort fails to be present.

#### 5.12 Installation of Equipment

- (a) The Access Seeker shall ensure that all equipment, system or devices on the Co-Located Space shall:
- i. be type-approved and comply with all relevant laws and regulations;
  - ii. not cause any frequency interference to the Access Provider's and/or any of the other access seekers' equipment or services provided in or around the Co-Located Space;
  - iii. be electromagnetically compatible in accordance with the prescribed standards and shall not cause electromagnetic interference to the Access Provider's and/or any of the other access seekers' equipment or services provided in or around the Co-Located Space.; and/or
  - iv. not be connected to any equipment belonging to the Access Provider without the written consent from the Access Provider.

For the purposes of Subsection 5.12(a)(ii) and (iii), the Operators agree that where the Access Seeker's equipment causes frequency interference or electromagnetic interference to the Access Provider and/or other access seekers' equipment or services provided in or around the Co-Located Space.

- (b) In the event that:
- i. the Access Seeker fails to fulfil its obligations under this Subsection 5.12(a);  
or
  - ii. the equipment, system or devices of the Access Seeker is or poses a threat or danger to the public health and safety or the Access Provider and/or other access seeker's facilities, equipment, device or system,

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

- (c) The Access Seeker shall only be permitted to install its Equipment on the Co-Located Space for the provision of its Communications Services and shall not be permitted to install any other operator's equipment, system and/or devices on the Co-Located Space without the prior written approval of the Access Provider.
- (d) The Access Seeker shall not damage, tamper, modify, alter or handle any equipment, system or devices belonging to the Access Provider or any other access seeker in the Designated Site and/or the Co-Located Space without the prior written approval of the Access Provider and/or the other access seeker.
- (e) The Access Seeker is responsible for insuring its equipment and shall purchase the necessary insurances when carrying out any works including installation works on the Access Provider's Designated Site. The insurance shall be in the amount which is sufficient to insure the full value of the works carried out by the Access Seeker.

#### 5.13 Installation of Electrical Points and Plumbing Connection

- (a) The Access Seeker shall not install any electrical sockets, plugs or electrical power points or electrical motor or engine or appliances or make any additional plumbing connections on or to the Co-Located Space without obtaining the prior written consent of the Access Provider to the work plan.

#### 5.14 Safety and Health and Security Procedures

##### 5.14.1 Compliance with Occupational Safety and Health (OSH) Requirements

- (a) The Access Seeker shall comply and shall secure compliance by his personnel and agents at all times during the term of the tenancy with the followings:
  - i. Factories and Machinery Act, 1967 (if applicable);
  - ii. Occupational Safety and Health Act, 1994;
  - iii. all other relevant occupational safety and health requirements imposed by law including any subsequent amendments to or re-enactment of the said law;

- iv. any directives or order by Access Provider or relevant authorities and/or superintending officer representative (SOR) relating to occupational safety and health requirements; and
- v. all guides, codes and recommendations issued or made by the government, professional or trade organization or other official or responsible organization relating to occupational safety and health.

The above are hereinafter collectively referred to as the “OSH Requirements”.

- (b) The Access Seeker shall take all necessary precautions to protect the environment, property and its own employees and any employees of Access Provider and any third parties who are at any time directly or indirectly affected by the operations of the Access Seeker. Such precautions shall include but not limited to the provision of information on the equipment and substances to be used, hazards and risks involved in the performance of the works.
- (c) Occupational Safety and Health (OSH) Measures
  - i. The Access Seeker shall familiarize himself with the area of the site where the Works are to be performed and any operating units bordering the same and the hazards which might be encountered in carrying out the works for which he has contracted. The Access Seeker shall fully co-operate and comply with any directives from Access Provider or any regulatory authority, should any of them consider there is hazard involved and request the Access Seeker thereafter to alter its mode of operations.
  - ii. The Access Seeker shall be under an obligation to take all reasonable measures in relation to the type of works undertaken and shall conduct himself, manage his work force and carry out his operation in such a way as to comply at all times with obligations and duties under the OSH Requirements.
  - iii. The Access Seeker shall ensure the usage of personal protective clothing and equipment whenever it is required and shall provide the Personal Protective Equipment (PPE) and Personal Protective Clothing at Access Seeker’s own expense as required by its personnel to comply with the OSH Requirements. The PPE includes items such as safety helmet, safety boots, safety goggles and other safety gadgets as prescribed in the OSHA. The Access

Seeker shall also comply with any safety requirement from Access Provider from time to time if any.

- iv. The Access Seeker shall ensure that the tools and equipment, and other items used in the execution of the works are in a safe, sound and good condition and capable of performing the function for which they are intended.
- v. No employees of the Access Seeker or any other persons engaged through the Access Seeker shall be assigned to work on site unless they are trained through the National Institute of Occupational Safety and Health (NIOSH) Program.

(d) Site Accidents

- i. The Access Seeker shall immediately report to Access Provider any accidents, injuries or near misses arising from the execution of the Works, soonest possible within 24 hours from the time of occurrence.
- ii. The Access Seeker shall furnish to Access Provider full details of such accidents, injuries or near misses or other relevant information as may be required by the Access Provider within three (3) days after the occurrence.
- iii. Access Provider shall be entitled to carry out any investigations of such accidents, injuries or near misses. The Access Seeker shall render full assistance to Access Provider for purposes of such investigations.

(e) Non-Compliance of Occupational Safety and Health (OSH) Requirements

- i. Without prejudice to the Access Seeker's obligations as set out herein, Access Provider shall have the right at any time and from time to time to carry out occupational safety and health inspection and audit during performance of the works hereunder.
- ii. If during the performance of works under this Agreement, Access Provider informs the Access Seeker that it is in the opinion that the Access Seeker is conducting the works in such a way as to endanger Access Seeker and any persons engaged or employed by the Access Seeker, plant equipment or materials or environment, the Access Seeker shall promptly remedy that

breach of occupational safety, health and environment provisions.

- iii. Access Provider may direct the Access Seeker to suspend the works until such time as the Access Seeker satisfies Access Provider that the Works will be resumed in conformity with applicable occupational safety, health and environment provisions. During periods of suspension referred to above, Access Provider shall not be liable to any cost or losses incurred by the Access Seeker.

5.14.2 The Access Seeker shall comply and cause its employees, agents and contractors to comply with all guidelines, rules and regulations issued by the Access Provider (and which rules and regulations equally apply to all access seekers) from time to time on site access and security procedures with respect to access to and use of the Co-Located Space. Further, the Access Seeker shall undertake all such necessary measures to ensure the security of its Co-Located Space prevents unauthorised access to the Co-Located Space.

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## NETWORK CO-LOCATION

### SECTION II: CHARGES FOR NETWORK CO-LOCATION SERVICE

1. Physical Co-Location Service supplied by the Access Provider shall, only to the extent necessary, will be subject to the Physical Co-Location Service Charges listed in Table A below. For the purposes of clarification, all other Physical Co-Location Service charges not listed in Table A below are negotiated charges.

TABLE A: ONE-TIME CHARGES

Type of Charge	Location Category	Charge (RM)
Site Survey	Applicable all location	As per quotation
Site Preparation Work	Applicable all location	As per quotation
Relocating & Termination	Applicable all location	As per quotation

TABLE B: RECURRING CHARGE

Type of Charge	2018	2019	2020 (until new MSAP Determination takes effect)
Co-Location of one square meter in technical building (RM/Year)	864	900	948

2. The following rate is applicable where the Access Seeker requires an Access route into the Access Provider's building.

Type of Charge	Additional Charge (RM/Month)
Access Route	RM 2,000.00

3. Network Co-Location Service provided by PRODATA may be subject to other commercial charges depending on the Access Seeker's requirement and additional cost that may be applicable.
4. Where the Access Seeker is also sharing power supply with the Access Provider from the same meter the following charges will apply:

Type of charge	2018	2019	2020 (until new MSAP Determination takes effect)
kWh of electricity consumed by co-located equipment (RM/kWh)	0.8583	0.9013	0.9463

**Note:** The electricity charges stipulated in the Table above shall be inclusive of maintenance services of the Access Provider's electrical system.