



**REFERENCE ACCESS OFFER  
("RAO")**

**Version 1.0**

Prepared by

**SKYLINE TECHNOLOGY (M) SDN BHD  
(CO. REG NO. 199501025474 (354679-M))**

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## SKYTEC's RAO – CHAPTER 1

### CHAPTER 1 INTRODUCTION, BACKGROUND AND SCOPE

#### 1.1. Preliminary

- 1.1.1. This Reference Access Offer (“RAO”) is made by Skyline Technology (M) Sdn Bhd (Company Registration No: 199501025474 (354679-M)), (“**SKYTEC**”) a company incorporated under the laws of Malaysia and having its principal place of business at No. 39, Jalan B U5/B, Section U5, 40150 Shah Alam, Selangor Darul Ehsan pursuant to Section 5.3.3 of the Commission Determination on the Mandatory Standard on Access Determination No. 3 of 2016 (“**MSA Determination**”).
- 1.1.2. SKYTEC is a licensed operator under the Communication and Multimedia Act 1998 and pursuant to its License, SKYTEC may offer network facilities within Malaysia. Pursuant to Section 5.3.3 of the MSA Determination, SKYTEC is obliged to prepare and maintain a Reference Access Offer in relation to Facilities on the Access List Determination which SKYTEC provides to itself or third parties.

#### 1.2. MSA Determination Obligations

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

##### 1.2.2. Disclosure Obligations

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

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

### 1.2.3. Negotiation Obligations

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

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

### 1.2.4. Content Obligations

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

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

### 1.2.5. The role of Standard Access Obligations

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

### **1.3. Scope**

#### 1.3.1. SKYTEC's RAO:

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

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

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

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

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

### **1.4. Amendment to SKYTEC's RAO**

#### 1.4.1. SKYTEC shall, not less than twenty (20) Business Days before SKYTEC propose to amend the RAO, provide a copy of the amended RAO showing the proposed amendment to the existing RAO, to:

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

#### 1.4.2. Upon the expiry of the twenty (20) Business Days in subsection 1.4.1 of this RAO (or such longer period as the Access Provider determines is necessary to finalize the amendments to its RAO), the Access Provider will:

- (a) make available the amended RAO on the Access Provider's publicly accessible website without delay (including updating its date and version number, both on the cover and on each page of the document); and
- (b) provide the updated RAO to the Commission within ten (10) Business Days after being made available under paragraph 1.4.2(a) of this RAO.

- 1.4.3. An amendment to SKYTEC's RAO will be deemed to alter the relevant terms and conditions of an Access Agreement which is based on SKYTEC's RAO.

For clarifications

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

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

- 1.5.1. If the Commission revokes, varies or replaces the Access List Determination relating to the Facilities or Services listed on the Access List Determination under Section 56 of the Act, SKYTEC may, by giving written notice for a period as in accordance with section 1.5.2 below to all Access Seekers to whom it is supplying Facilities or Services under SKYTEC's RAO, withdraw or replace SKYTEC's RAO with effect from a date no earlier than the effective date of the Commission's revocation.

- 1.5.2. The notice period referred to in Section 1.5.1 must be no shorter than:

- (a) the period of time between the time of giving the notice and the time at which SKYTEC is proposing to no longer provide the Facilities to itself; or
- (b) twelve (12) months.

- 1.5.3. The notice to be provided by SKYTEC under Section 1.5.1 when the Commission varies, removes or replaces the Facilities in the access list, must state:

- (a) when the variation or replacement will come into effect;
- (b) how the variation or replacement is likely to affect the Access Seeker; and

- (c) any alternative Facilities that be available to be provided by SKYTEC to the Access Seeker and the terms and conditions on which such alternative arrangements are made available.
- 1.5.4. In addition to Section 1.5.2 above, SKYTEC may give the Access Seekers to whom it is supplying Facilities under SKYTEC's RAO a notice of a variation or replacement of SKYTEC's RAO to affect such variations that are necessary or appropriate in the event of:
- (a) the occurrence of a Legislative Event that materially affects the rights or obligations of SKYTEC under SKYTEC's RAO; or
  - (b) the occurrence of a Regulatory Event that relates to SKYTEC; or
  - (c) a review by the Commission of the MSA Determination pursuant to Section 7.5 of the MSA Determination.
- 1.5.5. Notwithstanding Sections 1.5.1, 1.5.2 and 1.5.3 above, SKYTEC may subject to Section 1.4 above, replace SKYTEC's RAO at any time.

## **1.6. Availability**

- 1.6.1. SKYTEC's RAO shall be made available to an Access Seeker:
- a) on written request, at SKYTEC's principal place of business at the address stated in paragraph 1.7 below; and
  - b) on a publicly accessible website at [www.skyline-tech.com.my](http://www.skyline-tech.com.my)

## **1.7. Notices**

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

Attention : Manager

Address : SKYLINE TECHNOLOGY (M) SDN BHD  
(Registration No. 199501025474 (354679-M))  
No. 39, Jalan B U5/B,  
Section U5, 40150 Shah Alam  
Selangor Darul Ehsan.

Telephone : +603 7845 9222

Facsimile : +603 7845 9122

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## SKYTEC's RAO – CHAPTER 2

### CHAPTER 2 DEFINITIONS AND INTERPRETATIONS

#### 2.1. Definitions

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

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

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

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

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

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

**“Access List Determination”** means the Commission Determination on Access List, Determination No.2 of 2015 which came into operation on 1st September 2015.

**“Access Provider”** means: -

- (a) network facilities provider who owns or provides network facilities listed in the Access List; who is a licensee as defined in the Act.

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

**“Access Request”** means a request for access to Facilities on the Access Service made by the Access Seeker to SKYTEC and containing the information in Section 4.1.1 of Chapter 4 and any additional information requested under Section 4.5.1(a).

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

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

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

**“Bank Guarantee”** means the guarantee executed and to be granted to SKYTEC on behalf of the Access Seeker by a bank approved by SKYTEC and in a format acceptable by SKYTEC pursuant to Sections 4.3 and 4.3.3.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“SKYTEC”** means Skyline Technology (M) Sdn Bhd a company incorporated in Malaysia and having its principal of business at No. 39, Jalan B U5/B, Section U5, 40150 Shah Alam, Selangor Darul Ehsan and to include its duly appointed servants and agents.

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

**“Insurance Information”** means the insurance information required by SKYTEC pursuant to Section 4.4.

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

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

**“Legislative Event”** means:

- (a) the enactment, amendment, replacement or repeal of the Act;

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

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

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

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

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

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

“**MSA Determination**” shall have the meaning assigned to it in Section 1.1.1 of Chapter 1.

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

“**Operators**” means SKYTEC and the Access Seeker

collectively. “**Other Operator**” means either:

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

**“Regulatory Event”** means:

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

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

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

**“This RAO”** or **“SKYTEC’s RAO”** means this Reference Access Offer to include but not limited to all schedules which are integrated thereto and/or annexure(s) attached to and all amendments modifications and/or variations made thereto by SKYTEC.

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

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

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

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

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

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

## **2.2. Interpretation**

In this RAO except where the contrary intention appears:

- (a) the singular includes the plural and vice versa; and
- (b) a document includes all amendments or supplements to that document, or replacements or novation of it; and

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

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## SKYTEC's RAO – CHAPTER 3

### CHAPTER 3 PRINCIPLES OF ACCESS

#### 3.1. Access Services

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

#### 3.2. Eligibility for Access of Services

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

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

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

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

#### 3.3. Standard Access Obligations

##### 3.3.1. Access Terms and Conditions

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

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

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

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

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

### 3.3.3. Customer Principles

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

## 3.4. **Negotiation Principles**

### 3.4.1. Intellectual Property

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

### 3.4.2. Good faith and Dispute Resolution

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

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

### 3.4.3. Confidentiality

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

### 3.4.4. Necessary Third-Party Involvement Causing or Contributing to Non-compliance In Time frame If:

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



## **SKYTEC's RAO – CHAPTER 4**

### **CHAPTER 4 ACCESS REQUEST PROCEDURES**

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

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

## **4.2. Creditworthiness Information**

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

- (a) a letter, signed by the company secretary or duly authorized officer of the Access Seeker, stating that the Access Seeker is not insolvent and is not under any external administration or under similar form of administration under any laws applicable to it in any jurisdiction; and
- (b) a copy of the Access Seeker's most recently published audited balance sheet and audited profit and loss statement.

## **4.3. Security Sum**

4.3.1. SKYTEC shall ensure that the amount and type of security requirements imposed on the Access Seeker (if reasonably required) commensurate with:

- (a) a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over:
  - (i) for Facilities with a minimum period of access, the minimum period of access for those Facilities; and
  - (ii) for Facilities without a minimum period of access, a single Billing Period for those Facilities;

in an access agreement.

- (b) the creditworthiness of the Access Seeker (including prior payment records of the Access Seeker); and
- (c) the security previously required by SKYTEC (if any).

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

- (a) exceed a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the minimum period of access to Facilities to be provided by SKYTEC to the Access Seeker; or
- (b) is designed to, or has an effect of denying or delaying the Access Seeker's access to Facilities.

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

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

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

#### **4.4. Insurance Information**

- 4.4.1. Subject to Section 4.4.2, An Access Request shall be accompanied by the following insurances:
- (a) Worker's Compensation and/or Social Security Insurance and/or Employer's Liability Insurance and/or other insurance with statutory limits as required by the laws of Malaysia to provide for payment to its employees or in connection with the work covered by the Access Agreement that may be entered and/or their dependents; and
  - (b) Comprehensive general Liability Insurance of an amount which is not in excess of Ringgit Malaysia Twenty Million (RM20,000,000) for any one claim or series of claims arising out of an accident for occurrence in connection with the Access Agreement that may be entered into resulting in bodily injury and/or personal injury including death and property damage of an Operator which shall arise out of or in consequence of any acts of omissions of the Other Operator.
- 4.4.2. For the purpose of clarification, the insurance provided by the Access Seeker pursuant to Section 4.4.1 shall commensurate with the reasonable sum, which is to be agreed by SKYTEC.

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

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

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

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

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

#### 4.5.2. Non-refundable processing fee

- (a) SKYTEC may charge a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request.
- (b) The non-refundable processing fee is only applicable to the requested Access Service (s) that can be offered and made available by SKYTEC.
- (c) The fee shall be as advised in writing by SKYTEC to the Access Request upon approval of the same.
- (d) If the Access Seeker does not proceed with the Access Request accepted by SKYTEC, the processing fee will not be refunded to the Access Seeker.
- (e) The processing fee will be set-off against the Charges for the requested Facilities upon acceptance of the Access Request by SKYTEC pursuant to Section 4.8.

#### 4.5.3. Resources charge

In accordance with Section 5.7.28 of the MSA Determination SKYTEC may charge an Access Seeker a resources charge to be determined by reference to the costs incurred by SKYTEC for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Access Service(s).

### **4.6. Assessment of Access Request**

#### 4.6.1. Grounds for Refusal

Without limiting any other grounds that may be relied upon under the Act and Section 7 of Part 1 of Schedule B of this RAO, SKYTEC may refuse to accept an Access Request for the supply of Access Service(s) and accordingly may refuse to supply that Access Service(s) to the Access Seeker for any of the following reasons:

- (a) in SKYTEC's reasonable opinion, the Access Seeker's Access Request was not made in good faith and SKYTEC shall set out the basis on which the Access Request was not made in good faith;
- (b) in SKYTEC's reasonable opinion, the Access Request does not contain the information reasonably required by this RAO provided that SKYTEC has sought the information from the Access Seeker under Section 4.5.1 of this RAO and has not received that information within twenty-one (21) Business Days of making such a request;
- (c) SKYTEC does not currently supply or provide access to the requested Access Service (s) to itself or to any third parties (in which case it shall identify any alternative facilities which it does provide to itself or to any third parties which may be acceptable substitutes), except where the Access Seeker compensates SKYTEC for the original supply of access to such Access Service(s);
- (d) It is not technically feasible to provide access to the requested Access Service(s);

- (e) SKYTEC has insufficient capacity or space to provide the requested Access Service(s);
- (f) there are reasonable grounds in SKYTEC's opinion to believe that the Access Seeker would fail, to make timely payment for the supply of the relevant Access Service(s) and such concern cannot be addressed through a security requirement in accordance with this RAO; or
- (g) there are reasonable grounds in SKYTEC's opinion to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Access Service(s); or
- (h) there are reasonable grounds for SKYTEC to refuse access in the national interest.

#### 4.6.2. Determination of technical infeasibility

For the purpose of determining technical infeasibility in Section 4.6.1(d), the Operators shall comply with section 7.2 of Part 1 of Schedule B of this RAO and Section 5.4.17 of the MSA Determination.

#### 4.6.3. Determination of capacity constraints

For the purpose of determining capacity constraints in Section 4.6.1 (e), the Operators, where applicable shall comply with section 7.3 of Part I of Schedule B of this RAO and Section 5.4.18 of the MSA Determination.

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

Example of reasonable grounds for SKYTEC's belief as mentioned in Section 4.6.1 (f) includes evidence that the Access Seeker is not in the reasonable opinion of SKYTEC's creditworthy, and such creditworthiness concerns cannot be addressed through a security requirement in accordance with this RAO, to include but not limited to:

- (a) if the Access Seeker is insolvent as defined the Companies Act 2016 which the Access Seeker is unable to pay its debts as they fall due (whether of principal or other payments) with respect to all or any class of its debts and a notice of demand has been duly issued and served on the Access Seeker for such failure; and/or
- (b) an application is made under section 404 of the Companies Act 2016 to the Court to place the Access Seeker under judicial management; and/or
- (c) goes into liquidation either compulsory or voluntary (except for the purpose of amalgamation or reconstruction) or makes a proposal to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs; and/or
- (d) a resolution is passed for the winding up of the Access Seeker or a court order is made for the appointment of a receiver or manager; and/or

(e) any action and/or document evidencing failure or consistent default by the Access Seeker to pay or comply with any financial and/or payment demand from any creditor or Access Provider or any service provider.

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

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

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

4.7.1. Where SKYTEC rejects the Access Request, SKYTEC shall:

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

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

#### 4.8. Acceptance of Access Request

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

returned by the Access Seeker (in accordance with Section 4.1.1(e) of this RAO, that has also been properly executed by SKYTEC for execution by the Access Seeker.

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

4.8.3. SKYTEC will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Access Service unless:

(a) a Security Sum has been provided in accordance with Section 4.3; and

(b) an Access Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with section 150 of the Act.

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

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

(a) a date and time not later than fifteen (15) Business Days from the date of the Access Seeker's response, at which SKYTEC's representatives will be available for the initial meeting with the representatives of the Access Seeker.

(b) One copy of the executed Confidentiality Agreement returned by the Access seeker (in accordance with Section 4.1.1 (e) that has also been properly executed by SKYTEC).

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## SKYTEC's RAO – CHAPTER 5

### CHAPTER 5 PROVISION OF INFORMATION

- 5.1. The obligations of each Operator to provide information to the Other Operator are subject to the MSA Determination and the requirements of confidentiality in the confidentiality agreement signed by the Operators.
- 5.2. An Operator must provide the Other Operator on a timely basis with all agreed information reasonably required to determine rates and charges to be billed by each Operator to the Other Operator or by each Operator to its Customers.
- 5.3. To the extent permitted by Malaysian law and any relevant guidelines or customer service standards in force pursuant to the Operator's respective Licence conditions, the Operators will exchange information and otherwise cooperate in relation to the prevention and investigation of fraudulent use or misuse of the Operator's respective Communications Services and the theft of the Operator's provided terminal equipment.
- 5.4. Information provided under this RAO may only be used for the purpose for which it was given. Personal information about a Customer's credit worthiness, credit standing, credit history or credit capacity may only be used for the purposes permitted by, and in compliance with, Malaysian law.
- 5.5. Information required to be provided under this RAO need not be provided if the recipient Operator has not established security measures that are adequate to protect the confidentiality of the information. If the recipient Operator does not observe such security measures or any of the information is used by it for any purpose other than the purpose for which it was given, the providing Operator may deny the recipient Operator further access to the information for the period during which the non-observance or non-conforming use continues on notice specifying the non-observance or non-conforming use. The Operators will cooperate to resolve the providing Operator's reasonable concerns so that information exchange can be resumed as soon as possible.
- 5.6. (a) Subject to the Act and any subordinate legislation, nothing in the Access Agreement may be construed as requiring an Operator at any time to disclose to the Other Operator information which is at the date when the Access Agreement comes into force, the subject of a confidentiality obligation owed to a third person unless the third person consents to such disclosure. Where the consent of a third person is required, the Operator holding the information must use its reasonable endeavors to obtain the consent of that third person.  
  
(b) After the Access Agreement comes into force an Operator must use its best endeavors not to enter into any contract which would prevent it from making relevant information available to the Other Operator unless the contract includes a term which permits the contracting Operator to make the information available if directed to do so by the Commission.



## SKYTEC's RAO – CHAPTER 6

### CHAPTER 6 BILLING AND SETTLEMENT OBLIGATIONS

- 6.1. Where relevant, the billing and settlement obligations set out in Section 5.11.14 of the MSA Determination shall be applicable.
- 6.2. The Access Seeker shall pay SKYTEC the Charges for the relevant Access Service(s) supplied by SKYTEC to the Access Seeker, as specified in Access Agreement
- 6.3. The Operators shall bear and pay all taxes as required by Malaysian law that result from the implementation of the Access Agreement.
- 6.4. All payments must:
  - (a) be paid on the Due Date unless otherwise agreed in writing by both Operators;
  - (b) be paid by electronic transfer to SKYTEC or exceptionally, by cheque to the nominated account(s) of SKYTEC if agreed by SKYTEC; and
  - (c) must be accompanied by such information as is reasonably required by SKYTEC to properly allocate payments received.
- 6.5. For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts to SKYTEC as they become due and payable, nor does it constitute a waiver of SKYTEC's right to suspend, disconnect, or terminate the relevant network facilities or network services due to non-payment of any sums due or payable to SKYTEC.
- 6.6.
  - (a) Subject to Section 7.5, in the event SKYTEC elects to suspend or terminate the provisioning of relevant Access Service(s) to the Access Seeker, SKYTEC shall have the right to use the Security Sum (together with any interest thereon) to set off any outstanding sum due and payable to SKYTEC by the Access Seeker.
  - (b) Subject to Section 6.6(a) above, upon termination of the Access Agreement, the Security Sum deposited with SKYTEC or parts thereof, together with the interest thereon, (if any) shall be returned and/or refunded to the Access Seeker.
- 6.7. Where there is a Billing and/or Non Billing Dispute, the Operators shall comply with the dispute settlement procedures in Annexure A of this RAO.

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## SKYTEC's RAO – CHAPTER 7

### CHAPTER 7 TERMINATION, SUSPENSION AND OTHER PROVISIONS

#### 7.1. Term

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

#### 7.2. Termination

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

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

For clarifications, a notice to be given under this Section 7.2 is in addition to the notice required under Section 7.5 of this RAO.

#### 7.3. Change In Law

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

#### 7.4. Suspension

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

- (a) the Access Seeker is in breach of a material obligation and fails to remedy such breach within thirty (30) days of receiving written notice from SKYTEC to remedy such breach;
- (b) the Access Seeker's Facilities materially adversely affect the normal operation of SKYTEC's Network or are a material threat to any person's safety;
- (c) the Access Seeker's Facilities or the supply of Access Service(s) pose an imminent threat to life or property of SKYTEC, its employees or contractors;
- (d) the Access Seeker's Facilities cause material physical or technical harm to any Facilities of SKYTEC or any other person;
- (e) where the Access Seeker has failed to pay Invoices in accordance with Chapter 6 of this RAO (and subject to any right that the Access Seeker has under Chapter 6 of this RAO to dispute any amount in an invoice);
- (f) where the Access Seeker has failed to provide the new security amount under Section 7.11, 7.12 and Section 4.3 of this RAO;
- (g) where Force Majeure applies; or
- (h) the Access Seeker breaches any laws, regulations, rules or standards which has a material adverse effect on SKYTEC or the provision by SKYTEC of Access Service(s) under the Access Agreement.

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

## **7.5. Notice**

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

- (a) shall give effect to the proposed termination, suspension or material variation with Commission's written consent and subject to any time delay or any conditions which the Commission may specify (if any);
- (b) must not give effect to the termination, suspension or material variation unless SKYTEC has received written consent from Commission to such termination, suspension or material variation; and

- (c) shall take all steps practicable to minimize disruption, inconvenience to the Customer to the Access Seeker, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the termination or suspension of the Access Agreement or access to the Access Service provided under it.

## **7.6. Undertakings**

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

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

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

- (a) Charges invoiced in arrears and not yet paid; or
- (b) subject to Section 7.11 of this Chapter 7, charges arising during an applicable minimum contractual period (as described in Section 7.1 above), provided that:
  - (i) such charges must be reduced to reflect any cost savings from SKYTEC not having to supply the Access Service to the extent that they have been terminated or suspended; and
  - (ii) SKYTEC must use reasonable endeavor to mitigate its cost of termination or suspension and maximize cost savings under Section 7.7b(i) above.

## **7.8. Upfront charges refund**

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

## **7.9. Deposits and guarantees**

Notwithstanding the obligation in Section 7.8, SKYTEC shall:

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

## **7.10. Intellectual Property Rights**

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

## **7.11. Security Review**

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

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

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

## **7.12. Additional Security**

For the purpose of Section 7.11 above, an Operator may only request additional or substitute security from another Operator in manner consistent with Section 4.3 of this RAO, if the other Operator is making a new Access Request under Section 4.1 of this RAO.

## **7.13. Force Majeure**

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

7.13.2. If the delay in performance or non-performance of the Affected Party's obligations due to the event of Force Majeure is continuous for a period of more than three (3) months from the date of the Affected Party's written notification under Section 7.2(c), then either Party shall have the right to terminate this Agreement with immediate effect and neither Party shall have any claim against the other in respect of such termination save for antecedent breaches.

7.13.3. Any notice to be given under this section shall be in writing and shall be in accordance with sections 7.2 and 7.5 above of this RAO.

## **7.14. Review**

7.14.1. If: -

- (a) the Minister issues a direction or determination relating to the subject matter of this Agreement;
- (b) the Commission issues a direction or determination relating to the subject matter of this Agreement;
- (c) there are any amendment, changes or modifications to the Act, its subsidiary legislation and the instruments issued thereunder, including but not limited to the Access Pricing Determination and the MSA Determination and the Access List, which relates to the subject matter of this Agreement;
- (d) enactment of new laws and regulations which relates to the subject matter of this Agreement;
- (e) the registration, determination, promulgation, issue, amendment or replacement of any industry code with which an Operator is required or obliged to comply;
- (f) if a condition of an Operator's Licence is amended or deleted or anew condition is imposed which relates to this Agreement; or
- (g) by agreement of each of the Operators,

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

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

## **7.15. Governing Law**

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

## **7.16. Assignment**

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

## SKYTEC's RAO – SCHEDULE A

### SCHEDULE A

#### TECHNICAL AND OPERATIONAL MATTERS

##### PART I - FORECASTING

###### 1. General

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

###### 2. Forecasting Requirements

- 2.1. The Access Seeker is required to provide forecast for the Infrastructure Sharing Service.
- 2.2. The Access Seeker shall provide a forecast on a yearly basis and reviewed on a yearly basis.

##### PART II - ORDERING AND PROVISIONING

###### 1. General

- 1.1. Part II of Schedule A sets out ordering and provisioning procedures that are applicable only in relation to the provision of Access Services listed in the RAO.
- 1.2. Where relevant, the ordering and provisioning obligations set out in Section 5.7 of the MSA Determination shall be applicable.

###### 2. Ordering Procedures

- 2.1. Contact point or mechanism: The Access Provider shall designate and notify an Access Seeker of one or more of the following:
  - (a) A person to whom Orders for access to Facilities are to be delivered;
  - (b) A contact point to which Orders for access to Facilities are to be delivered (such as an email address); and
- 2.2. Order content: Prior to access being provided, an Access Provider may require an Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. An Access Provider may request an Access Seeker to provide, at a level of detail (sufficient for planning and provisioning), the following information in an Order for access to

facilities:

- (a) the Facilities to which access is requested;
- (b) a requested date and time for delivery;
- (c) the location of the points of delivery;
- (d) Equipment of the Access Seeker to be used in connection with the Order, to the extent it may adversely affect the Access Provider's Network; and
- (e) such other information that the Access Provider reasonably requires in order for it to provision access to the facilities as requested by the Access Seeker, provided that such information shall not include any information which:
  - (i) the Access Provider does not require from itself for similar provisioning;
  - (ii) identifies, or which enables the identification of, a Customer or services of the Access Seeker; or
  - (iii) is non-permitted information in subsection 5.4.16 of the MSA Determination.

2.3. Treatment of Orders and Service Qualifications: An Access Provider shall:

- (a) establish a single queue for all Orders and Service Qualifications for a given type of Facility, whether those Orders and Service Qualifications are required for itself or any Access Seekers;
- (b) give the equivalent priority to the handling of all Orders and Service Qualifications in each queue; and
- (c) otherwise treat all Orders and Service Qualifications in each queue in compliance with its queuing policy under subsection 2.29 of this Schedule.

2.4. Acknowledgement of Receipt: An Access Provider shall acknowledge receipt of an Order for Facilities, in writing (or any other material or electronic form as agreed by the parties), with the period specified in the Service Specific Obligations for the purposes of this subsection.

2.5. Notice of Receipt: The Access Provider must include in its Notice of Receipt the following information:

- (a) the time and date of receipt of the Order;
- (b) a list of any additional information reasonably required by the Access Provider from the Access Seeker to provision the Order;



- (c) if the relevant Facilities available to the Access Provider are below the capacity required to provide the relevant Facilities to the Access Seeker, the Access Provider shall inform the Access Seeker of the available capacity and timeframe for the fulfillment of the Order at the available capacity and (if relevant) with such augmentation as may be required to fulfill the Order as submitted;
  - (d) whether the Access Provider needs to perform post-Order Service Qualification because information is not readily available to the Access Provider, for example in its Operational Support Systems, together with the reasons for needing to undertake the Service Qualification;
  - (e) the position of the Order in the Access Provider's queue.
- 2.6. Further Information: The Access Provider shall allow the Access Seeker a period of up to ten (10) Business Days after a request for additional information under Section 2.5(b) of this Schedule above to provide Access Provider with such information.
- 2.7. Service Qualifications: The Access Provider shall make Service Qualifications available to the Access Seekers prior to placing Orders if such pre-Order Service Qualifications are undertaken for a given Facility by the Access Provider for itself. The Access Provider shall only require post-Order Service Qualifications to be requested if:
- (a) no pre-Order Services Qualification has been completed in accordance with the process to be developed under subsection 4.1 of Chapter 4 of this RAO;
  - (b) the Access Provider reasonably requires information from post-Order Service Qualifications which are not readily available, for example in its Operational Support Systems; and
  - (c) the Access Provider notifies the Access Seeker that post-Order Service Qualifications are necessary (together with the reasons for needing to take such Service Qualifications) at any time of providing (and as specified in) the Access Provider's Notice of Receipt under subsection 4.5 of Chapter 4 of the RAO, or, if further information has been requested under subsection 2.7 herein, within two (2) Business Days upon the expiry of the period specified in subsection 2.7 of this Schedule herein.

For clarification, an Access Seeker may also seek the consent of the Access Provider to perform a Service Qualification on its own, and such consent must not be unreasonably withheld.

- 2.8. Commencement and completion of Service Qualifications: The Access Provider shall commence a Service Qualification on the date of issuing a Notice of Receipt and complete and notify the Access Seeker of the result of any Service Qualification within the shorter of:
- (a) fifteen (15) Business Days after the date of the Notice of Receipt; and

- (b) the time within which the Access Provider performs and notifies the result of an equivalent Service Qualification undertaken by itself.
- 2.9. Withdrawal of Order following Service Qualifications: An Access Provider shall permit an Access Seeker to withdraw its Order without penalty (irrespective of whether the Access Provider has accepted the Order or not) before the earlier of:
  - (a) ten (10) Business Days after the Access Seeker receives the result of a Service Qualification under subsection 2.9 of this Schedule above; and
  - (b) one (1) Business Day before the Access Provider commences civil works to provision the Order (where the civil works are required to provision the Facility within the delivery timeframe specified in the Notice of Acceptance), and any civil works to be conducted must be subject to the issuance of a notice in writing by the Access Provider, which may be in the form of a Notice of Acceptance if civil works is to occur after the Access Provider has accepted the Order.
- 2.10. Acceptance of Obligation: An Access Provider must use its reasonable efforts to accept and fulfill Orders from the Access Seeker for Facilities which comply with a Forecast accepted by the Access Provider pursuant to subsection 2.5 of this Schedule.
- 2.11. Time for acceptance or rejection: Subject to any shorter timeframe required under subsection 5.7.12 of the MSA, an Access Provider must notify an Access Seeker that an Order for Infrastructure Sharing is accepted or rejected within ten (10) Business Days after:
  - (a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not undertake any post-Order Service Qualification for that Order under subsection 5.7.8 of the MSA; or
  - (b) providing the Access Seeker with the result of post-Order Service Qualification under subsection 5.7.9 of the MSA, where the Access Provider has undertaken post-Order Service Qualification for that Order under subsection 5.7.8 of the MSA.
- 2.12. Notice of Acceptance: An Access Provider's Notice of Acceptance to the Access Seeker must contain the following information:
  - (a) the delivery date or activation date (as applicable), which must be the date that is requested by Access Seeker, or, if that date cannot be met by the Access Provider, then no later than:
    - 1. the indicative delivery timeframe for Infrastructure Sharing which is forty (40) Business Days; or
    - 2. the period of time taken by the Access Provider to deliver, or activate, such Facilities for itself,whichever is shorter;

- (b) the date when civil works (if any) are intended to commence;
  - (c) the charges applicable to fulfill the Order;
  - (d) such information as is reasonably necessary for the Access Seeker to benefit from access to the Facilities; and
  - (e) the validity period, which shall be a period that is not shorter than three (3) months commencing from the date of the Notice of Acceptance ("Validity Period").
- 2.13. Commencement of delivery timeframes: The applicable delivery timeframe for an Order, as determined under paragraph 2.13(a) of this Schedule herein, shall commence from:
- (a) where the Access Seeker's confirmation of an Order is required under subsection 2.15 of this Schedule, the date the Access Seeker confirms the Order in accordance with that subsection; and
  - (b) in any other case, from the start of the Validity Period.
- 2.14. Access Seeker's confirmation:
- (a) The Access Seeker's confirmation of an Order is not required if the Access Provider accepts the Order without change. A change may include circumstances where delivery dates are delayed, estimated charges are exceeded, a post-Order Service Qualification is required or any other matter that requires further confirmation from Access Seeker before the Access Provider can proceed with the Order.
  - (b) Where the Access Seeker's confirmation is required for the Access Provider to proceed with fulfilling an Order as provided for under paragraph 2.15(a) of this Schedule, the Access Provider shall permit the Access Seeker to provide its confirmation within the Validity Period and shall not provision the Order until the confirmation is received. Upon receipt of such confirmation, the Access Provider shall fulfill the Order in accordance with the Notice of Acceptance.
- 2.15. Estimated charges: If the Notice of Acceptance provided by the Access Provider contains estimates of charges (e.g based on time and materials):
- (a) the Access Provider shall not exceed the estimate without providing the Access Seeker with a written notice prior to exceeding the estimate that:
    - (i) the estimate will likely be exceeded;
    - (ii) an explanation of the reasons for exceeding the estimate; and
    - (iii) a further estimate of the charges for the work necessary to fulfill the Order;

- (b) the Access Provider shall permit the Access Seeker to withdraw the Order without penalty within ten (10) Business Days of the notice given by the Access Provider under paragraph 2.16(a) of this Schedule if the revised estimate in that notice exceeds the original estimate by more than ten percent (10%);
- (c) where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope of work provided by the Access Provider due to:
  - (i) information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker; or
  - (ii) a change in the scope of work by the Access Seeker,
 the Access Seeker shall be obliged to pay the Access Provider for the actual cost incurred (but in no other circumstances); and
- (d) the Access Provider shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate, whereby such confirmation is to be provided by the Access Seeker within the timeframe set out in paragraph 2.13(e) or 2.16(b) of this Schedule, as applicable.

2.16. Reasons for rejection: An Access Provider may only reject an Order from an Access Seeker where:

- (a) subject to subsection 2.17 this Schedule A (as if references to 'Access Request' in that subsection were references to 'Order'), it is not technically feasible to provide access to the Facilities requested by the Access Seeker;
- (b) subject to compliance with subsections 2.31 and 2.32 of this Schedule A, the Access Provider has sufficient capacity to provide the requested Facilities;
- (c) subject to subsection 2.19 of this Schedule A, the Order is in excess of the agreed Forecast levels;
- (d) the Order or variation request duplicates an Order awaiting fulfilment;
- (e) the Access Seeker has not obtained the necessary related agreements from the Access Provider (e.g. regarding access to a new Point of Interface);
- (f) there are reasonable grounds to believe that the Access Seeker would fail to a material extent, to comply with the terms and conditions of the Access Agreement and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g through the application of a security requirement in accordance with the Standard);

- (g) there are reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Facilities to protect the integrity of a Network, or the safety of individuals working on, or using services supplied by means of Network or Equipment and such concern cannot be addressed to the Access Provider's satisfaction, acting reasonably (e.g through the application of reasonable security or escorted access requirements).
- 2.17. Notice of rejection: An Access Provider's notice of rejection of an Order to the Access Seeker must:
- (a) set out the grounds on which the Access Provider rejects the Order, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Order; and
  - (b) offer to meet, and meet if the offer is accepted by the Access Seeker, within five (5) Business Days of the notice of rejection of the Order to discuss the reasons for rejection and alternative methods of compliance.
- 2.18. Delivery dates: The Access Provider shall deliver the Order for the Facilities by the delivery date or activation date (as applicable) as specified in the Notice of Acceptance or the extended delivery date (if any) as determined in accordance with subsection 2.24 of this Schedule.
- 2.19. Early delivery dates: If the Access Provider, in the normal course of business, is able to offer a delivery date earlier than the delivery date that would otherwise apply, it must advise the Access Seeker and, if requested by the Access Seeker, deliver access to the relevant Facilities at the earlier delivery date.
- 2.20. Delayed delivery dates: Where there is a delay in the delivery of an Order, and:
- (a) the delay is caused by the Access Provider:
    - (i) the Access Provider shall notify the Access Seeker of the delay to the delivery date, together with the reasons for the delay, as soon as practicable after the Access Provider becomes aware of the possible delay;
    - (ii) the Access Provider shall permit the Access Seeker to cancel the Order without penalty if the delay is longer than the equivalent time period for delivery of the Facility; and
    - (iii) the delivery date shall be extended for a further period as reasonably necessary, and the Access Provider shall promptly notify the Access Seeker of the revised delivery date; or

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

2.21. Cancellation and variation of Orders: An Access Provider shall allow an Access Seeker to cancel or vary an Order at any time subject to subsection 2.26 of this Schedule.

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

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

2.23. Testing and provisioning: An Access Provider shall:

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

- 2.24. Queuing policy: An Access Provider shall establish and maintain a queuing policy for each Facility and/or Service, which:
- (a) shall be non-discriminatory;
  - (b) shall be applied to Orders and Service Qualifications of all Access Seekers and Orders and Service Qualifications for itself for the same or similar Facilities, and shall treat the Orders and Service Qualifications of Access Seekers on an equivalent basis to that which the Access Provider treats Orders and Service Qualifications for itself for the same or similar Facilities; and
  - (c) shall seek to maximize the efficiency of its ordering and provisioning process.
- 2.25. Acceptance on queue: An Access Provider shall promptly notify an Access Seeker at the time of providing an acknowledgment of receipt of the Order under section 2.4 of this Schedule (and as specified in the Notice of Receipt under section 2.5 of this Schedule), of their acceptance of, and position in, the Access Provider's queue.
- 2.26. Constrained capacity: If an Access Provider reasonably believes that the capacity in any Facilities required by:
- (a) the Access Seeker pursuant to the relevant Forecast and/or Order;
  - (b) other Access Seekers, pursuant to their relevant Forecasts and/or Orders; and
  - (c) the Access Provider, for the purposes of its own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest,
- would, in aggregate, exceed the capacity which the Access Provider will be in a position to be able to provide, the Access Provider must:
- (a) notify all Access Seekers to whom relevant capacity is supplied; and
  - (b) allocate the available capacity between itself, the Access Seeker and other Access Seekers in accordance with the Access Provider's Capacity Allocation Policy.
- 2.27. Capacity Allocation Policy: If the Access Provider claims or is likely to claim that it has insufficient capacity to meet an Access Seeker's Forecasts or Orders, the Access Provider shall maintain a Capacity Allocation Policy, which:

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

2.28. Late delivery: If an Access Provider fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with paragraph 2.24(a)iii of this Schedule, except where such failure has been caused solely by the Access Seeker's delay or a lack of authorization by a third party, the Access Provider shall, without limitation to any other rights the Access Seeker may have under subsection 2.7 of this Schedule or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring charges payable for access to the Facilities for the period of the Access Provider's delay, and the methodology and unit rates for calculating such rebates shall be set out in the Access Provider's RAO. If the Access Provider alleges that a failure has been caused solely by the Access Seeker's delay or a lack of authorization by a third party, the Access Provider shall have the burden of demonstrating:

- (a) that allegation; and



(b) that the Access Provider has done all things reasonably practicable to minimize or avoid such failure.

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## **PART III - OPERATIONS AND MAINTENANCE**

### **1. General**

- 1.1. Where relevant, the operations and maintenance obligations set out in Section 5.12 of the MSA Determination shall be applicable.

### **2. Operations and Maintenance Standard**

- 2.1. The Operators shall ensure that the operations and maintenance standards and procedures used in the respective network do not adversely affect the operations of each other's Networks.
- 2.2. Each operator shall be responsible for the operations and maintenance of its own network facilities and network services.

### **3. Maintenance Procedures and Practices**

- 3.1. Each operator shall on its own establish the recommended maintenance procedures for maintaining and servicing its own network facilities and network services.

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## SKYTEC's RAO – SCHEDULE B

### SCHEDULE B

#### SERVICE DESCRIPTION

#### PART 1 – INFRASTRUCTURE SHARING

##### 1. General

- 1.1. Part 1 of Schedule B sets out the terms and conditions which are applicable to Infrastructure Sharing.
- 1.2. Infrastructure Sharing
  - (a) Infrastructure Sharing is a Facility which comprises the following:
    - (i) provision of physical access, which refers to the provision of space at specified network facilities to enable an Access Seeker to install and maintain its own equipment;
  - (b) Specified network facilities include towers and Associated Tower Sites.
  - (c) Physical access include power, environmental services (such as heat, light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access Seeker.
  - (d) Provision of space at Associated Tower Sites includes space where the Access Seeker may place its cabin or outdoor equipment and space required for cable gantry connecting to the tower and generator set.
- 1.3. The words “Associated Tower Sites” refer to land owned, leased or tenanted by an Operator surrounding or on which the tower is situated, including necessary right-of-way and permission to dig.
- 1.4. Where relevant, service specific obligations set out in Section 6.8 of the MSA Determination shall be applicable.

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

- 2.1. SKYTEC shall not be obliged to provide to the Access Seeker Infrastructure Sharing for the Designated and/or Associated Tower Sites, as the case may be, unless:
  - (a) SKYTEC:
    - (i) is the legal owner of the Designated Tower and the land on which the Designated Tower resides; or

- (ii) has exclusive rights of use of the land pursuant to a lease or tenancy agreement on which the Designated Tower resides and the Access Provider has been granted the requisite approval by the owner or landlord of said land to permit the Access Seeker to use the said land in accordance with the terms herein contained.
- (iii) 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; and
- (iv) there is sufficient space.

### **3. Infrastructure Sharing**

- 3.1. SKYTEC agrees to provide Infrastructure Sharing at the designated tower or associated tower sites (“Designated Tower or Associated Tower Sites”) to the Access Seeker in accordance with the terms of this Agreement including the relevant Terms and Conditions for Technical Matters and the terms and conditions of this Part 1 of Schedule B.
- 3.2. The list of the Designated Tower and Associated Tower Sites may be obtained from the SKYTEC upon written request.
- 3.3. Duration of Infrastructure Sharing
  - (a) Infrastructure Sharing at a Designated Tower or Associated Tower Site, agreed between the Operators, shall be for a fixed period of three (3) years unless a lesser period is stipulated by SKYTEC (where SKYTEC’s right to use the land on which the Designated Tower or Associated Tower Site is located is less than three (3) years) and may be further renewed subject to the mutual agreement of the Operators. The Access Seeker shall within six (6) months prior to the expiry of the term of the Infrastructure Sharing notify SKYTEC in writing as to whether or not it wishes to renew the term of the Infrastructure Sharing.
  - (b) The term of the Infrastructure Sharing shall commence on the date (“Start Date”):
    - (i) SKYTEC agrees to make available for physical possession the shared space (“Shared Space”) at the Designated Tower or Associated Tower Site; or
    - (ii) the Access Seeker takes physical possession of the Shared Space at the Designated Tower or Associated Tower Site,whichever is the earlier.
- 3.4. Utilities and ancillary services: The Access Provider must, where the relevant utilities and ancillary services are within the Access Provider’s control, ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access to the same extent that the Access Provider provides to itself, including but not limited to:

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

3.5. Cost: The utility and ancillary costs in respect of the network facilities as contemplated in subsection 3.5 of this Schedule shall be apportioned (in accordance with fair and equitable principles) between the Access Provider and all Access Seekers at the relevant location.

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

##### **4.1. Utilities**

- (a) The Access Seeker shall be responsible to apply for its own individual meter and power supply to the Shared Space and shall be further responsible for and bear the cost of all electricity utilized by the Access Seeker at the Shared Space.
- (b) In the event that the Access Seeker's application to the relevant authority for an individual meter is not successful, the Access Seeker may:
  - (i) subject to the SKYTEC's prior written approval, utilize the electricity supplied to SKYTEC at that premises provided that:
    - SKYTEC is of the opinion that the electricity power load is sufficient to be shared with the Access Seeker and other access seekers with- in its tower or associated tower site; and
    - the Access Seeker reimburse SKYTEC for all electricity charges utilised (and any additional charges for back-up power) by the Access Seeker at the Shared Space, the charges of which are set out in Part 1 of Schedule C;

or

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

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

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

#### 4.3. Use of Shared Space

- (a) The Access Seeker shall only use the Shared Space for the sole purpose of providing its Communication Services and shall not do or permit to be done any act or thing which is illegal or may become a nuisance or give reasonable cause for complaint from the owner or any of the other access seekers in SKYTEC’s Designated Tower or Associated Tower Site or any other buildings adjoining the tower or associated tower site.
- (b) If the Access Seeker has not complied with Paragraph 4.3.1 of this Schedule, the Access Seeker shall take the necessary rectification or remedial action to address any legitimate complaints made by SKYTEC or other access seekers in the Designated Tower or Associated Tower Site.
- (c) The Access Seeker’s right to use the Shared Space and the right of access does not entitle the Access Seeker to any proprietary rights or interest whether under statute, common law, equity or any theory of law in any building, land, fixture, other structure or in or to the Designated Tower or Associated Tower Sites save for the Access Seeker’s own equipment.
- (d) Where the Designated Tower is located on the land that is owned by a third party (“Infrastructure Site Owner”) and the Access Provider’s use of the land is pursuant to a tenancy or lease, the Access Provider shall be under no obligation to seek any renewal of the term of the tenancy or lease. The Access Seeker agrees that it shall not seek a tenancy or lease or licence to the Designated Tower or Associated Tower Sites from the Infrastructure Site’s owner unless SKYTEC signifies in writing that it is no longer interested in the use of the Designated Tower or Associated Tower Sites or SKYTEC does not renew or take a lease or tenancy or licence of the Designated Tower or Associated Tower Site within six (6) months from the date of expiry.

#### 4.4. Storage

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

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

#### 4.5. Increase in Premium

The Access Seeker shall not do or permit to be done anything which would render the insurance policy or policies with respect to SKYTEC's Designated Tower or Associated Tower Site on which the Shared Space is located void or voidable or whereby the premium of the said policy or policies may be increased. In the event of an increase in premium or other expenses on renewal of such policy 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 SKYTEC including the expenses incurred thereto.

#### 4.6. Repairs

- (a) In the event of any damage caused to the Shared Space by the Access Seeker, the Access Seeker shall, at its own cost and expense, restore and to forthwith make good within a reasonable time any replacement and/or repair (fair wear and tear excepted) as specified in the notice in writing given by SKYTEC to the Access Seeker specifying therein all necessary replacements and/or repairs to be affected as may be commensurate with the extent of the damage.
- (b) If the Access Seeker fails to affect the replacements and/or repairs within the time period stipulated in the notice (which period must be a reasonable time), SKYTEC may, whether or not together with its workmen, enter the Shared Space and make all necessary replacements and/or repairs to the plant, facilities and equipment. The costs for all such necessary replacements and/or repairs shall be a debt due from the Access Seeker and shall be recoverable by SKYTEC save where the replacements and/or repairs were due to the natural failure of the structure or due to the Access Provider.

#### 4.7. Tenantable Condition

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

#### 4.8. Consents, Licences and Approvals

- (a) The Access Seeker shall be fully responsible to obtain all relevant consents, permits, approvals and licenses from third parties and governmental authorities or agencies to carry out / provide its Communications Services at the Shared Space including operating and using all equipment, systems, cables, links and devices.
- (b) The Access Seeker shall further observe and comply with all relevant laws, by laws, rules and regulations affecting the Access Seeker which are now in force or which may hereafter be enacted.
- (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 SKYTEC (and which rules and regulations equally apply to Access Provider and to all Access Seekers) from time to time and notified to the Access Seeker in writing Provided Always that SKYTEC 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 SKYTEC has been negligent.

#### 4.9. Installation of Equipment

- (a) The Access Seeker shall ensure that all equipment, system or devices on the Shared Space shall:
  - (i) be type-approved and comply with all relevant laws and regulations;
  - (ii) not cause any frequency interference to any other access seekers' equipment or services provided in or around the Shared Space. Where the Access Seeker's equipment causes frequency interference to the other access seekers' equipment or services provided in or around the Shared Space, the Access Seeker shall immediately (and in any event no longer than 24 hours) take all such necessary steps to stop any such interference;
  - (iii) be electromagnetically compatible in accordance with the prescribed standards and shall not cause electromagnetic interference to any other access seekers' equipment or services provided in or around the Shared Space. Where the Access Seeker's equipment causes electromagnetic interference to other access seekers' equipment or services provided in or around the Shared Space, the Access Seeker shall immediately (and in any event no longer than 24 hours) take all such necessary steps to stop any such interference; and/or
  - (iv) not be connected to any equipment belonging to SKYTEC without the written consent from SKYTEC.
- (b) If an Operator notifies ("Notifying Operator") another Operator that the other Operator's Network, network facilities, network services or Equipment is causing interference to the Notifying Operator's Network, network facilities, network services or Equipment:



- (i) the other Operator shall rectify the situation as soon as possible, and in any case, within twenty-four (24) hours of receiving notice from the Notifying Operator, so that no interference is caused; or
- (ii) if the other Operator is not able to locate the source of the interference within twenty-four (24) hours under paragraph 4.9.1(b)(i) above, the other Operator shall promptly notify the Notifying Operator, and both Operators shall meet as soon as possible, and in any case, within twenty-four (24) hours of such notice and jointly examine each other's Network, network facilities, network services or Equipment to locate the source of the interference.

(c) In the event that:

- (i) the Access Seeker fails to fulfill its obligations under this Paragraph 4.9.1 of this Schedule above; or
- (ii) the equipment, system or devices of the Access Seeker is or poses an imminent threat or danger to the public health and safety or the Access Provider and/or other access seeker's facilities, equipment, device or system,

SKYTEC 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.

- (d) The Access Seeker shall only be permitted to install its equipment, system and/or devices (which shall include any equipment, system and/or devices leased or hired to be used solely for its Communications Services) on the Shared Space for the provision of its Communications Services and shall not be permitted to install any other operator's equipment, system and/or devices on the Shared Space without the prior written approval of SKYTEC.
- (e) The Access Seeker shall not damage, tamper, modify, alter or handle any equipment, system or devices belonging to SKYTEC or any other access seeker in the Shared Space without the prior written approval of SKYTEC and/or the other access seeker.
- (f) An Access Provider shall ensure that any insurance that it requires an Access Seeker to have in place extends no further than the reasonable insurable interest that the circumstances require and shall not be permitted to require:
  - (i) insurance beyond that necessary for worker's compensation, social security, employer's liability insurance and insurance within statutory limits as required by the laws of Malaysia in respect of its employees employed in connection with the work covered by the Access Agreement that may be entered into; and
  - (ii) comprehensive general liability insurance in excess of Ringgit Malaysia Twenty Million (RM20,000,000.00) for any one claim or

series of claims arising out of an accident or occurrence in connection with the Access Agreement that may be entered into.

4.10. Installation of Electrical Points and Plumbing Connection

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

4.11. Safety and Health and Security Procedures

- (a) The Access Provider and Access Seeker shall comply with the provisions and requirements of the Occupational Safety and Health Act 1994 (“OSHA”). These provisions include the usage of personal protective equipment such as safety helmet, safety boots, safety goggles and other safety gadgets as prescribed by OSHA. Any failure to comply with OSHA by the Access Seeker shall be rectified immediately and if required by SKYTEC, the Access Seeker shall comply with all actions specified by SKYTEC including to cease or suspend work or to disconnect their Equipment from the power supply or source.
- (b) The Access Seeker shall exercise due care in the execution of their work so as to prevent accidents and are required to report any incidents including but not limited to accidents as a result of their works to SKYTEC within twenty-four (24) hours from the time of the occurrence.
- (c) The Access Seeker shall comply and cause its employees, agents and contractors to comply with all guidelines, rules and regulations issued by SKYTEC, if any (and which guidelines, rules and regulations equally apply to all access seekers) from time to time on site access and security procedures with respect to access to and use of the Shared Space. Further the Access Seeker shall undertake all such necessary measures to prevent unauthorized access to the Shared Space.

4.12. Sub-letting and Assignment

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

4.13. Maintenance of Equipment

- (a) The Access Seeker shall be responsible for the operation and maintenance of its Equipment, system and/or devices at the Shared Space.
- (b) SKYTEC shall not be responsible for any damage to the Access Seeker’s Equipment, system and/or devices at the Shared Space caused by fire, water leakage, air-conditioning/mechanical ventilation failure, power fluctuation/interruption and/or by any other causes or reasons unless due to SKYTEC’s negligence.

- (c) In the operation and maintenance of the Equipment, systems and/or devices at the Shared Space, the Access Seeker must:
  - (i) take such other action as a reasonably prudent Access Seeker would in operating and maintaining its Equipment, systems and/or devices;
  - (ii) keep the Shared Space in a tidy and safe condition at all times; and
  - (iii) ensure that flammable or toxic material is not left in or around the Shared Space following maintenance and/or other operations.
- (d) If a fault, defect or problem with the Access Seeker's Equipment, systems and/or devices at the Shared Space causes or may cause damage to the Shared Space and/or to SKYTEC's and other access seeker's equipment and/or facilities, the Access Seeker must notify SKYTEC in writing as soon as practicable and repair the fault, defect or problem or take other appropriate corrective action immediately to SKYTEC's satisfaction.
- (e) If the Access Seeker detects a fault, defect or problem in the Shared Space, it must notify SKYTEC as soon as possible.

## **5. SKYTEC's Obligations**

### **5.1. Exclusive Possession**

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

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

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

### **5.3. SKYTEC's Covenant**

Decommissioning notice: Except where any other Facility and/or Service which relies on the Access Provider's use of that site, as a result of a third-party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, an Access Provider must provide no less than:

- (a) six (6) months' notice in writing to all relevant Access Seekers prior to the decommissioning of any Facilities which rely on the Access Provider's use of that site.

Where an Access Provider is required to vacate the site as a result of a third-party landlord's notice (under an arm's length tenancy agreement) or a local authority's notice, the Access Provider must provide all relevant Access Seekers with as much notice as possible in relation to the matters in paragraphs 5.3.1 (a) above.

#### 5.4. Alternative arrangements

An Access Provider which notifies an Access Seeker of its intention to decommission any other Facilities, shall provide to the Access Seeker access to alternative Facilities on terms and conditions and at a recurring charge which are not disadvantageous to the Access Seeker, relative to the terms and conditions and recurring charge applicable in respect of the Facilities that are proposed to be decommissioned, for a period that is not less than three (3) years from the date of decommissioning.

#### 5.5. Decommissioned Facilities compensation

Except where decommissioning is caused by Force Majeure, an Access Provider shall pay the Access Seeker's reasonable costs, necessarily incurred in:

- (a) moving the Access Seeker's Equipment from the decommissioned Facilities to alternative Facilities offered in accordance with paragraph 5.3.2 (a) of this RAO; or
- (b) rearranging Equipment to connect to alternative Services offered in accordance with paragraph 5.3.2(a) of this RAO.

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

6.1. The Access Seeker shall on the expiration or termination of the Infrastructure Sharing at each Shared Space, at its own cost and expense, remove all its equipment, system and devices which may have been installed by the Access Seeker and to peaceably and quietly yield up the Shared Space to SKYTEC with all SKYTEC's fixtures and additions thereto in good and tenantable repair and condition in accordance with the covenants herein contained.

6.2. The Access Seeker shall be given:

- (a) a grace period of ten (10) Business Days effective from the expiry or termination of the Infrastructure Sharing at the Shared Space; or
- (b) where the Designated Tower is to be dismantled or SKYTEC is to vacate the land on which the Designated Tower resides in accordance with Paragraphs 5.3.1 and 5.3.2 of this Schedule, such reasonable grace period as may be specified by SKYTEC taking into consideration the time lines provided by the relevant authorities or the owner of the land / landlord (including any extension obtained from the relevant authorities or the

owner of the land / landlord) to the Access Provider to dismantle the Designated Tower or to vacate the said land provided always that the Access Seeker must vacate the Shared Space earlier than the stipulated time line provided to the SKYTEC to enable SKYTEC to comply with the requisite time lines, to vacate the Shared Space, during which no monthly rental will be charged by SKYTEC. Should the equipment, system or devices not be removed within the grace period, SKYTEC shall have the right to:

- (i) charge for the use of the Shared Space at the rate of two (2) times the current rental or the cost of reinstatement as debt due and payable; and
- (ii) without any liability to the Access Seeker, dispose of the equipment, system or devices in such manner as SKYTEC deems fit with a one (1) month's written notice. If the Access Seeker fails to settle any debt due for the use of the Shared Space,
- (iii) SKYTEC shall have a lien on the equipment, system or devices and is entitled to retain such equipment, system or devices or to sell the equipment system or devices at any price in such manner as it deems fit for payment of any such debt and the cost of sale shall be borne by the Access Seeker. SKYTEC shall be entitled to set off the proceeds from the sale of the equipment, system or devices against any and all debts due by the Access Seeker to SKYTEC.

## **7. Grounds for Refusal**

7.1 Grounds for refusal: Except where expressly permitted otherwise under the Act or Section 4.6.1 of this RAO, an Access Provider shall not refuse an Access Request, except on the grounds that:

- (a) The Access Provider does not currently supply, or provide access to, the relevant Facilities to itself or to any third parties (in which case it shall identify any alternative facilities which it does provide to itself or to any parties, which may be acceptable substitutes), except where the Access Seeker compensates the Access Provider for the original supply of access to Facilities to the Access Seeker;
- (b) the Access seeker has not provided all the information required to be provided in accordance with sections 4.1, 4.2 and 4.3 of Chapter 4 this RAO;
- (c) It is not technically feasible to provide access to the Facilities requested by the Access Seeker;
- (d) subject to this RAO, the Access Provider has insufficient capacity or space to provide the requested Facilities;
- (e) the Access Provider has reasonable grounds to believe that the Access Seeker may fail to make timely payment for the requested Facilities and such concern cannot be addressed through a security requirement in accordance with this RAO;

- (f) there are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities; or
- (g) there are reasonable grounds for the Access Provider to refuse access in the national interest.

7.2 Technical infeasibility: For the purposes of subsection 7.1(c) of this RAO, an Access Provider shall not refuse an Access Request on the grounds of technical infeasibility unless the Access Provider establishes that there are substantial technical or operational concerns preventing the fulfillment of the Access Request. Each of the following matters shall be taken into account in determining whether access is technically feasible:

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

7.3 Capacity constraint: An Access Provider may only refuse an Access Request on the ground that an Access Provider has insufficient capacity or space under subsection 7.1(d) of this RAO where the Access Provider notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because the requisite capacity is:

- (a) already carrying traffic to full capacity or near full capacity; or
- (b) already reserved for future use by the Access Provider or another Access Seeker, where such future use shall commence not later than six (6) months from the date of the Access Request. If the reserved capacity is not subsequently used by the reserving party within seven (7) months from the date of the Access Request, the Access Provider must promptly inform the Access Seeker and, if required by the Access Seeker, re-consider the Access Request in accordance with the process set out in Chapter 4 of the RAO; and

(c) in the case of both subsections 7.3(a) and 7.3(b) of this RAO, the Access Provider is unable to expand capacity to meet the requirements in the Access Seeker's Access Request.

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## SKYTEC's RAO – SCHEDULE C

### SCHEDULE C

#### CHARGES AND CHARGING PRINCIPLE

##### PART 1 – INFRASTRUCTURE SHARING

###### 1. General

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

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

###### Charges and charging principle for Infrastructure Sharing

Tower Height	Type	Charges per month per Sharing Operator		
		Single Operator	2 Sharing Operators	3 Sharing Operators
45m	Heavy Duty	RM 6,426	RM 4,016	RM 3,213
60m	Heavy Duty	RM 8,883	RM 5,552	RM 4,442
76m	Heavy Duty	RM 9,450	RM 5,906	RM 4,725

- (a) The Charges that will be payable by a Sharing Operator will be dependent on the number of Sharing Operators using any particular Infrastructure.
- (b) If in the event the number of Sharing Operators per Infrastructure increases, the Charges payable by the Sharing Operators will be revised downwards as per the payment structure above.
- (c) If in the event the number of Sharing Operators per Infrastructure reduces, the remaining Sharing Operator(s) will not be subject to an upward revision of the Charges.
- (d) For infrastructures which are not covered in the table above, the charges shall be based on the following commercial principles: -



- (i) Total interest and Principal based on rate of 6.5% per annum over 7 years.
- (ii) Total Repayment over 7 years.
- (iii) Markup for 2 sharing Parties = 25%
- (iv) Markup for 3 Sharing Parties = 50%
- (v) Schedule of Rates for calculation purpose is based on 15% above JKR rate (where applicable).
- (vi) The rates in Ringgit Malaysia (RM) per RM1,000.00 of the cost of the Additional Infrastructure under the Variation Order (for example generator set, cabin etc.) are as follows:

<b>Cost for Telco</b>	<b>Additional Charges for (per month per Sharing Operator)</b>
Cost Per Single Telco	17.32
Cost per Telco (2 Sharing Parties)	10.83
Cost per Telco (3 Sharing Parties)	8.66

- (e) The Charges for any Infrastructure not provided above or herein this Agreement for example aesthetic towers, monopoles, towers below 45 meters and beyond 76 meters shall be calculated in the following manner: -

Description	Cost	Remarks
Cost of the relevant aesthetic towers, monopoles, towers below 45 meters and beyond 76 meters and other Infrastructure not provided for above (including Civil, Structural, Mechanical and Electrical Works) (RM), <b>A</b>	<b>A</b>	15% above JKR rate or to be agreed between parties where no JKR Rate is available
OPEX Cost (RM) for seven (7) years only, <b>B</b>	<b>B</b>	Case by case basis

Total Interest based on rate of 6.5% per annum over 7 years (RM), <b>C</b>	<b>C = (A X 0.065 X 7 years)</b>	
Total Cost of the aesthetic towers, monopoles, towers below 45 meters and beyond 76m and other Infrastructure not provided for above (RM), <b>D</b>	<b>D= A+B+C</b>	

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**SKYTEC's RAO –  
ANNEXURE A**

**ANNEXURE A**

**DISPUTE RESOLUTION PROCEDURES**

**1. Definitions**

- 1.1 In the Dispute Resolution Procedures set out in this Annexure A:
- (a) "Billing Dispute" means the dispute of an Invoice issued by one party to the other party, which is made in good faith;
  - (b) "Billing Dispute Notice" means the written notification made by one party to the other party in relation to a Billing Dispute in accordance with subsection 7.4 of this Annexure;
  - (c) "Billing Dispute Notification Period" means the period after the date of receipt of an invoice during which a Billing Dispute may be raised in relation to that Invoice, as specified in subsection 7.2 of this Annexure;
  - (d) "Billing Representative" means a representative of the party appointed in accordance with the billing procedures set out in subsection 7.15 of this Annexure;
  - (e) "Billing System" means a system to issue Invoices relating to charges payable by each party under an Access Agreement;
  - (f) "Dispute" has the meaning given to it in subsection 2.1 of this Annexure;
  - (g) "Notice" means the notice issued of intention to escalate the issue to the Interconnect Steering Group, as specified in subsection 5.1 of this Annexure; and
  - (h) "Technical Expert" has the meaning given to it in subsection 6.3 of this Annexure.

**2. Introduction**

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

- 2.2 The following dispute resolution mechanisms are discussed in this section:
- (a) inter-party working groups;
  - (b) interconnect steering group; and
  - (c) subject to specific resolution of disputes, being:
    - i. technical disputes (which must follow the procedure set out in section 6 of this Annexure if they cannot be resolved through the application of the general dispute resolution provisions in sections 3, 4 and 5 of this Annexure);
    - ii. Billing Disputes (as defined in subsection 1.1 of this Annexure), which must follow the procedures set out in section 7 of this Annexure; or
    - iii. any other types of disputes, which, if cannot be resolved through the application of the general dispute resolution provisions in sections 3, 4 and 5 of this Annexure, must be referred to the Commission for resolution.

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

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

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

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

### **3. General**

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

- 3.2 Both Parties to a Dispute shall ensure that their representatives acting in relation to a Dispute are of sufficient seniority and have authority to settle a Dispute on their behalf. At the commencement of the Dispute Resolution Procedures, each party must notify the other party of the scope of the authority of each of their representatives. If, in the course of the Dispute Resolution Procedures, it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to the representative, a party may require that those matters be referred to more senior officers of that party who have authority to settle those matters.
- 3.3 During a Dispute and any dispute resolution process invoked in accordance with the Annexure, an Access Provider and Access Seeker must continue to fulfil the obligations under the Access Agreement between them.
- 3.4 The Parties to a Dispute shall exchange information of a type described in the MSA Determination during the course of, and to facilitate, resolution of the Dispute.
- 3.5 A party must not use information obtained under subsection 3.4 of this Annexure for any purpose other than to resolve the Dispute.
- 3.6 Subject to Chapter 7 of Part V of the Act, an arbitrator of a Dispute (including a Technical Expert or the Commission, in accordance with this Annexure) may decide not to determine the Dispute if the arbitrator considers that the Dispute is trivial, frivolous or vexatious, or if there is insufficient evidence before the arbitrator to determine the Dispute.
- 3.7 The costs of the arbitration are to be shared equally between the parties, unless the arbitrator of the Dispute has decided not to determine the Dispute in accordance with subsection 3.6 above. If an arbitrator decides not to determine the Dispute, the party that initiated the Dispute must pay the other party's costs.

#### **4. Inter-party working group**

- 4.1 In the first instance the Access Seeker and the Access Provider should attempt to resolve the Dispute between themselves.
- 4.2 The Access Provider and the Access Seeker shall establish a working group, or working groups, to fulfil the requirements of subsection 4.1 above. The working group shall comprise of representatives of the Parties, and be headed by a person who holds a position that is at least equivalent to the head of the Access Provider's Wholesale Group or Access Group.

- 4.3 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 to be shared equally; and
  - (d) formal notification procedures to the working group.
- 4.4 The Access Provider and the Access Seeker shall use reasonable endeavors to attempt to settle the Dispute in the working group for a period of no longer than thirty (30) Business Days unless otherwise agreed by the Parties, subject always to a party's right to seek urgent interlocutory relief.

## **5 Use of a Technical Expert**

- 5.1 Once a Dispute is referred to a Technical Expert, it may not be referred back to a working group.
- 5.2 The person to whom a technical dispute may be referred under this section 6:
- (a) will be an expert appointed by agreement of the Parties or, if the Parties cannot agree, by the Commission;
  - (b) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communications 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 of interest,
- ("Technical Expert").
- 5.3 If the Parties fail to appoint a Technical Expert within ten (10) Business Days of the need to refer a Dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.
- 5.4 When relying on the services of a Technical Expert, the following dispute resolution procedures will apply to the Technical Expert:
- (a) The Parties will present written submissions to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and

- (b) each party may respond to the other party's submission in writing within fifteen (15) Business Days from the date of the other party's submission.
- 5.5 At the request of either party and subject to the parties agreeing, or the Technical Expert deciding within five (5) Business Days of the last written submission, that the arbitration by the Technical Expert should be by documents only, a Technical Expert hearing will be held within fifteen (15) Business Days of the last written submission.
- 5.6 Should a Technical Expert hearing be held, each party will have the opportunity of making an oral submission. This process will be conducted in private.
- 5.7 The procedure for hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Parties) but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.
- 5.8 The Technical Expert will not have the power to appoint any other experts.
- 5.9 The Technical Expert will deliver his or her award within fifteen (15) Business Days of the hearing or of the last written submission where the arbitration is by documents only.
- 5.10 Every Dispute referred to a Technical Expert will be considered separately so that time limits for each Dispute are complied with.
- 5.11 The Technical Expert's decision will be binding on the Parties (in the absence of manifest error of fact or law).

## **6 Billing Dispute resolution**

- 6.1 As outlined in the billing provisions in Chapter 6 of this RAO, a party ("Invoicing Party") shall provide to the other party ("Invoiced Party") an Invoice in writing, or in such electronic form as may be agreed from time to time, for amounts due in respect of the supply of Facilities during such Billing Cycle.
- 6.2 An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if:
  - (a) in case of any other Facilities, the Invoiced Party notifies the Invoicing Party within thirty Business Days after the date of receipt of such Invoice, provided that, in any case specified above, the Invoiced

Party's Billing Dispute Notice specifies the information in accordance with subsection 7.4 of this Annexure.

- 6.3 A Billing Dispute may only arise where the Invoiced Party has reasonable grounds to believe that an error has arisen from one of the following circumstances:
- (a) the Invoicing Party's Billing System is, or has been, defective or inaccurate in respect of the recording of the calls which are the subject of the Dispute;
  - (b) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Party's Billing System;
  - (c) there is, or has been, a fraud perpetrated by the Invoicing Party; or
  - (d) the invoicing Party has made some other error in respect of the recording of the calls or calculation of the charges which are the subject of the Billing Dispute.
- 6.4 A Billing Dispute Notice given under this section 7 must specify:
- (a) the reasons for which the Invoice is disputed;
  - (b) the amount in dispute,
  - (c) details required to identify the relevant Invoice and charges in dispute including:
    - i. the account number;
    - ii. the Invoice reference number;
    - iii. the Invoice date;
    - iv. the Invoice amount; and
    - v. billing verification information; and
  - (d) evidence in the form of a report, indicating the relevant traffic data which is in dispute.
- 6.5 The Invoiced Party may withhold payment of amounts disputed in good faith in accordance with subsection 5.11.11 of the MSA. If the Billing Dispute is resolved against the Invoiced Party, that Invoiced Party shall be required to pay interest at the rate specified in subsection 5.11.15 of the MSA on the amount payable.



- 6.6 Where the Invoiced Party has paid an amount and subsequently notifies the Invoicing Party of a Billing Dispute in relation to that amount within the Billing Dispute Notification Period, the Invoicing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount. Once the Billing Dispute is resolved, if the Invoicing Party is obliged to refund an amount to the Invoiced Party, interest will be payable on the refunded amount at the rate specified in subsection 5.11.15 of the MSA Determination. In such circumstances, interest will be payable from the date the Invoiced Party paid the disputed amount to the date of the refund by the Invoicing Party.
- 6.7 The parties agree to use their reasonable endeavors to promptly resolve any Billing Dispute notified under this section 7.
- 6.8 If the parties are unable to resolve any Billing Dispute within one (1) month (or such other period as the parties may agree) from the date on which the Billing Dispute Notice is received, either party may seek the consent of the other party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other party is, however, under no obligation to agree to such extension.
- 6.9 To the extent that a Billing Dispute notified under this section involves a Billing Dispute with an international correspondent of the invoicing Party, the Dispute Resolution Procedures shall be suspended for a reasonable period of time pending resolution of the Billing Dispute with that international correspondent. As a general rule, the period of suspension will not exceed four (4) months. However, the parties shall recognize that some Billing Disputes with international correspondents may take longer to resolve, in which case the Invoicing Party must promptly inform the Invoiced Party of the likely period required for resolution.
- 6.10 Once the negotiation period under subsection 7.8 of this Annexure (including any extension agreed) and any suspension period under subsection 7.9 of this Annexure have expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in subsection 7.11 of this Annexure ("**Billing Dispute Escalation Procedure**").
- 6.11 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this subsection 7.11 by notifying the Invoicing Party's Billing Representative. Both parties shall then appoint a designated representative who has authority to settle the Billing Dispute, and who is at a higher level of management than the persons with direct responsibility for administration of this Standard. The designated representatives shall meet as often as they reasonably deem necessary to discuss the Billing Dispute

and negotiate in *good faith* in an *effort* to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one party to the other party shall be honored.

- 6.12 Once any Billing Dispute has been resolved to the parties' satisfaction, any sum to be paid or repaid shall be paid by the relevant party within ten (10) Business Days from the date of resolution of the Billing Dispute.
- 6.13 Although it shall be the good faith intention of the parties to use the above Billing Dispute Resolution Procedures to the fullest extent to try to solve Billing Disputes, nothing in this Annexure shall prevent either party from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- 6.14 A party may request a joint investigation of Invoice discrepancies after that party has conducted a comprehensive internal investigation, including an examination of its own Billing System. Prior to commencement of the joint investigation, the parties must agree on the terms of the joint investigation, including:
- (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 calls to the other party's Network.

- 6.15 Enquiries relating to billing, collecting and settlement arrangements or in relation to Network and operational issues may be directed to the Billing Representatives nominated by each party.
- 6.16 Either party may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- 6.17 If the Billing Dispute Escalation Procedure has been exhausted, either party may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the Act.

## SKYTEC's RAO – ANNEXURE I

### ANNEXURE I

#### NON-DISCLOSURE AGREEMENT

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

#### **Between**

**SKYLINE TECHNOLOGY (M) SDN BHD (Registration No. 201401018375 (1094462-W))**, a company incorporated under the laws of Malaysia with its place of business at SO-15-1, Menara 1, Strata Office, No. 3 Jalan Bangsar, KL ECO City, 59200 Kuala Lumpur, Malaysia (hereinafter referred to as “**SKYTEC**”) of the first part;

#### **And**

[ ] (**Company No.** ) a company incorporated under the laws of Malaysia with its place of business at [ ].

(Hereinafter referred to as “**the Company**”) of the first part.

**SKYTEC** and **the Company** shall be referred to each as a “Party” and together the “Parties”).

#### RECITALS

#### WHEREAS:

- a) SKYTEC holds an NFP individual license under the Communications and Multimedia Act (CMA) 1998 and is authorized to provide access to certain network facilities under its individual licenses.
- b) The Company holds an [ ] individual and class licenses under the Communications and Multimedia Act (CMA) 1998 and is authorized to provide access to certain network facilities, network services and/or application services under its individual or class licenses.
- c) The Parties are considering a proposal for the Company to use the Facilities supplied by SKYTEC (“Business Purpose”).
- d) It will be necessary and/or desirable for the Parties to disclose to each other various Confidential Information and the Parties have provided and will further provide information including but not limited to financial information, trade secrets and proprietary know how for the purpose of or in connection with the Business Purpose.

- e) The Parties hereby agree to enter into this Agreement to regulate their intention and understanding with respect to maintaining and preserving all Confidential Information that are to be disclosed and which transpired between the Parties in relation to the Project subject to the terms and conditions hereinafter appearing.

**IT IS AGREED: -**

**1. INTERPRETATION**

- 1.1 In this Agreement: -

**“Business Purpose”** has the meaning given to it in the Recital above;

**“Confidential Information”** means and includes all information whether commercial, financial, technical or otherwise, including without limitation all secret or confidential information, of the Disclosing Party in whatever form, together with all analyses, compilations, data, studies or other documents prepared by the Receiving Party which are derived from or in connection with such information or which contains or are based in whole or in part upon such information, the fact that such information has been made available, that discussions concerning the Business Purpose are taking place and that this Agreement has been entered into;

**“Disclosing Party”** means the party disclosing Confidential Information;

**“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;

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

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

**2. DISCLOSURE OF CONFIDENTIAL INFORMATION**

- 2.1 Each party will disclose and provide to the other such Confidential Information as such Disclosing Party deems is necessary for the Business Purpose.
- 2.2 The Receiving Party will not disclose Confidential Information to any person, firm, corporation, association or any other entity for any reason or purpose whatsoever, provided however, that such party may disclose the Confidential Information on a need-to-know basis to its professional advisors and all staff, both support and management, employed by it or any of its subsidiary, affiliated or associate companies provided that such persons are bound by an equivalent duty of confidentiality toward the Receiving Party.

- 2.3 The Receiving Party will not utilize, employ, exploit or in any other manner whatsoever use the Confidential Information other than for the Business Purpose without the prior written consent of the Disclosing Party.

### **3. STANDARD OF CARE**

- 3.1 The Receiving Party must protect the Confidential Information of the Disclosing Party and, in doing so, must use no less than the highest degree of care that such party applies to its own proprietary or secret information.
- 3.2 The Confidential Information must be stored and handled in such a way as to prevent unauthorized disclosure.

### **4. RETURN OF CONFIDENTIAL INFORMATION**

The Disclosing Party may give notice in writing at any time requiring that any part of the Confidential Information disclosed pursuant to this Agreement and any copies thereof be either returned or destroyed, such return or destruction shall be accompanied by a notice from the Receiving Party to the Disclosing Party to the effect that upon such return or destruction the Receiving Party has not knowingly retained in its possession or under its control, either directly or indirectly, any Confidential Information or copies thereof, and the Receiving Party must comply with any such request within thirty (30) days of receipt of such request.

### **5. EXCLUDED INFORMATION**

- 5.1 The obligations pursuant to this Agreement do not apply to any Confidential Information that: -
- 5.1.1 is in possession of the Receiving Party prior to receipt from the Disclosing Party;
  - 5.1.2 is or becomes publicly known, otherwise than as a consequence of a breach of this Agreement;
  - 5.1.3 is developed independently by the Receiving Party;
  - 5.1.4 is disclosed by the Receiving Party to satisfy a requirement of, or demand by, a competent court of law or governmental or regulatory body made pursuant to law or to satisfy the requirements of any stock exchange upon which shares of the Receiving Party are listed;
  - 5.1.5 is disclosed to a third party pursuant to written authorization from the Disclosing Party; or

5.1.6 is received from a third party without similar restrictions and without breach of this Agreement.

**6. NO COMMITMENT**

Nothing in this Agreement imposes on either party an obligation to enter into any agreement or transaction and in particular will not oblige either party to enter into any agreement pursuant to the Business Purpose.

**7. AMENDMENT AND ASSIGNMENT**

No amendment to or assignment of the benefit of any of the provisions of this Agreement will be effective unless consented to in writing by both parties to this Agreement.

**8. NO WAIVER**

The failure to enforce or to require the performance at any time of any one of the provisions of this Agreement will not be construed to be a waiver of such provision, and will not affect either the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every provision in accordance with the terms of this Agreement.

**9. ENTIRE AGREEMENT**

This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior agreements between the parties, whether written or oral, with respect to the subject matter of this Agreement.

**10. NOTICES**

10.1 All notices, demands or other communications under this Agreement must be given or made in writing, and must be delivered personally, or sent by fax, with electronic confirmation of receipt, as follows:-

If to : **SKYLINE TECHNOLOGY (M) SDN BHD** If to [ ]  
(Company No. 199501025474 (354679-M)) :- (Company No. [ ])

No. 39, Jalan B U5/B, Seksyen U5,  
40150 Shah Alam, Selangor Darul  
Ehsan, Malaysia. [ ]

Tel: 03 7845 9222 Tel:  
Fax: 03 7845 9122 Fax:  
Attention: Attention: [ ]

**Mr Lim Chun Kwong**

or at such address or to such fax number as may be designated by notice from such party.

- 10.2 Any notice, demand or other communication given or made personally or by fax in the manner prescribed in this paragraph will be deemed to have been given when clearly received in full.

## **11. NO TRANSFER OF TITLE, NO LICENCES OR WARRANTIES**

- 11.1 All official Confidential Information of the Disclosing Party is acknowledged by the Receiving Party to be the property of the Disclosing Party. The disclosure of the Confidential Information does not confer any rights to that Confidential Information on the Receiving Party.
- 11.2 No license to the Receiving Party under any trade secrets, patents or copyrights is granted or implied by disclosing Confidential Information to that party.
- 11.3 Neither party accepts any responsibility for or makes any representations or warranties, express or implied, with respect to the accuracy or completeness of any of the Confidential Information and neither party will be liable to the other for any loss resulting from the use of the Confidential Information.

## **12. TERMINATION**

- 12.1 This Agreement will remain in full force and effect until terminated by either party providing one month's written notice of termination to the other party.
- 12.2 Termination does not affect a party's accrued rights and liabilities at the date of termination and the obligations of the parties under clauses 2 through 5 which will survive for a period of one (1) year from the date termination.

## **13. GOVERNING LAW**

- 13.1 This Agreement is governed and construed in accordance with the laws of Malaysia.
- 13.2 If any dispute arises under this Agreement, then the parties hereto hereby agree to submit to the jurisdiction of the Malaysian Courts.

**14. ANNOUNCEMENT/PUBLICATION**

Upon execution of this Agreement neither party shall either verbally or in any written form publish or announce the obligations under this Agreement and the Business Purpose recited herein unless consent is obtained from the other party.

**IN WITNESS** whereof this Agreement was entered into by the duly authorized representatives of the Parties hereto on the day and year set out above.

SIGNED by )  
for and on behalf of )  
**Skyline Technology (M) Sdn. Bhd.** )  
**(Registration No.199501025474** )  
**(354679-M))** )

.....  
Name:  
Designation:

In the presence of:-

.....  
Name:  
NRIC No:

SIGNED by )  
for and on behalf of [ ] )  
(Company [ ] )

.....  
Name:  
Designation:

In the presence of:-

.....  
Name:  
NRIC No: