

Technology Park Malaysia Corporation Sdn. Bhd.

(Company No. 377141-T)

Access Reference Document

Dated January 2016

Ver. 1.0

Issued pursuant to the Malaysian Communications and Multimedia Commission Determination on Access List, (Determination No. 1 of 2005) as varied by Variation To Commission Determination on Access List (Determination No. 1 of 2005), (Determination No. 1 of 2009) (“Access List Determination”), the Malaysian Communications and Multimedia Commission Determination On Mandatory Standard On Access (Determination No. 2 of 2005) as varied by the Variation To The Commission Determination On Mandatory Standard On Access, (Determination No. 2 of 2005) (Determination No. 2 of 2009) (“MSA Determination”) and the Malaysian Communication and Multimedia Commission Determination on the Mandatory Standard on Access Pricing (Determination No. 1 of 2012) (“MSAP Determination”).

INTRODUCTION

1. This Access Reference Document (“ARD”) specifies the procedures and process to be followed by an Access Seeker who intends to acquire a Product from Technology Park Malaysia Corporation Sdn. Bhd. (Company No. 377141-T) (“TPM”).
2. The ARD is divided into the following parts:
 - Section A Background and Scope of the ARD
 - Section B Interpretation and Definitions
 - Section C Principles of Access and Interconnection
 - Section D Access Request Process and Procedures
 - Section E Obligations for Provision of Information
 - Section F Billing and Settlement Obligations
 - Section G Notices
 - Section H Termination and Suspension Obligations
 - Schedule
3. This ARD may be subject to amendments from time to time.
4. Where an amendment is made to the ARD, TPM shall within ten (10) Business Days supply an amended copy of the ARD to all Access Seekers who have submitted to TPM an Access Request and which Access Request is still pending process by TPM.
5. For the purposes of this ARD, an amendment shall mean a substantive addition, deletion, or substitution to the provisions of the ARD other than an addition, deletion or substitution, which is undertaken to correct a typographical error.
6. If the Commission revokes, varies or replaces the Access List in accordance with Section 56 of the Act, TPM may, by giving written notice to all Access Seekers to whom it is supplying Access Service(s), withdraw or replace the ARD with effect from a date no earlier than the effective date of the Commission’s revocation, variation or replacement.
7. In the event any notice of dispute is received in regard to the ARD, TPM shall notify all Access Seekers of the effective date of the amendment to the ARD.
8. All notices, forms, requests which are required to be sent by the provisions set out herein, shall be marked "ARD" and sent to the following:

Technology Park Malaysia Corporation Sdn. Bhd.
L5-E-4, Enterprise 4
Lebuhraya Puchong – Sg Besi
Bukit Jalil
57000 Kuala Lumpur

Attention: Vice President, Park Management & Services Division

A change of address shall not be construed as an amendment to the ARD.

9. The terminology used in this ARD has the meaning ascribed to them in Section B. All other words and phrases used in this ARD shall, unless the context otherwise requires, have the same meaning as in the MSA.

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SECTION A: BACKGROUND AND SCOPE OF ARD

1. Introduction
 - 1.1 This ARD sets out the terms and conditions on which TPM as an Access Provider will provide Access Service(s) to an Access Seeker.

2. Applicability To Licensees
 - 2.1 This ARD applies to Access Seekers who are licensed under the Act as:
 - (a) network facilities providers;
 - (b) network service providers;
 - (c) applications service providers; and
 - (d) content applications service providers
 - 2.2 TPM's ARD contains the terms and conditions for the following Services and/or Facilities:
 - (a) Duct and Manhole Access Services

3. This ARD does not apply to Facilities and/or Services which are not specified in the Access List.

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SECTION B: INTERPRETATION AND DEFINITIONS

This Section B contains the meanings to words, phrases and expressions used in this ARD. Notwithstanding the foregoing, where a word or phrase or expression used in the ARD is given a specific meaning in or by the context of the ARD, such word, phrase or expression shall bear such meaning notwithstanding the contents of this Section B.

Access Agreement	means the bilateral agreement (usually called the Right of Way Agreement) to be executed between TPM and the Access Seeker which sets out the terms and conditions that govern the grant by TPM of access to TPM's Facilities and/or Services.
Access List	means the list of Facilities and Services determined from time to time by the Commission pursuant to Chapter 3 of Part VI of the Act and the current Commission determination is Malaysian Communications and Multimedia Commission Determination on Access List, (Determination No. 1 of 2005) As Varied By Variation To Commission Determination on Access List (Determination No. 1 of 2005), Determination No. 1 of 2009) which came into operation on 2 February 2009, which sets out a list of Access Service(s) determined by the Commission under section 146 of the Act.
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.
Access Request	means a request for access to Access Service(s) by the Access Seeker to TPM containing the information in Clause 2.1 under Section D of this ARD and any additional information requested under Clause 4.1 of Section D of this ARD.
Access Seeker	means an Operator who makes written request for access to Facilities and/or Services of TPM or is being provided with Facilities and/or Services by TPM.
Act	means the Communications and Multimedia Act 1998 (Act 588).
Applications Services	bears the meaning ascribed to it under the Act.
ARD	means the Access Reference Document issued by TPM.
Bank Guarantee	means a guarantee executed in favour of TPM, on behalf of the Access Seeker, by a bank approved by TPM and in a format acceptable to TPM.
Business Day	means any day other than a Saturday, Sunday or public holiday (whether gazetted or not) which is lawfully observed as a national public holiday and on which commercial banks are open for usual banking business in Kuala Lumpur
Commission	means the Malaysian Communications and Multimedia Commission established under the Malaysian Communications

and Multimedia Commission Act (Act589) and also known as the Suruhanjaya Komunikasi dan Multimedia Malaysia.

Customer	means in relation to a Party, a person having a contractual relationship with the said Party for the provision of Applications Services including Content Applications Services by means of that Party's facilities and/or services.
Facilities	means facilities which facilitates the provision of network services or application services, including content application services and "Facility" shall be construed accordingly.
Instrument	means a direction or determination or declaration made by the Minister or the Commission pursuant to the Act.
Licence	means an Individual Licence or a Class Licence granted by the Minister pursuant to the Act.
MSA	means the Malaysian Communications and Multimedia Commission Determination on Mandatory Standard on Access, Determination No. 2 of 2005 As Varied by Variation to the Commission Determination on Mandatory Standard on Access, (Determination No. 2 of 2005) Determination No. 2 of 2009.
Network Facilities	bears the meaning as ascribed in the Act.
Network Services	bears the meaning as ascribed in the Act.
Operator	means a network facilities provider, a network services provider, an applications service provider or a content application service provider (as the context requires) and includes both TPM and the Access Seeker.
Party	means TPM or the Access Seeker as the context requires and "Parties" means both TPM and the Access Seeker.
Product	means each of the separate provision by TPM of access to its Facilities and/or Services and "Products" shall be construed accordingly.
Security Sum	means security in the form of a Bank Guarantee provided or to be provided by the Access Seeker to TPM for the supply of Access Service(s).
Services	means the provision by TPM of access to Facilities and/or services and "Service" shall be construed accordingly.
Third Party	means a party who or which is not a party to the Access Agreement.

SECTION C: PRINCIPLES OF ACCESS AND INTERCONNECTION

1. Services

- 1.1 TPM's ARD applies only to the Access Service(s) listed in Clause 2.2 under Section A above.
- 1.2 The service description of the Access Service(s) is set out in Section A of the Schedule in this ARD below.
- 1.3 The technical and operational matters for the Access Service(s) are set out in Section A of the Schedule in this ARD below.
- 1.4 The charges and charging principles for the Access Service(s) is set Section B of the Schedule in this ARD below.

2. Eligibility for Access to Access Service(s)

- 2.1 TPM may at its discretion and in a manner consistent with the licence(s) granted (and the licence rights accorded therein) by the Minister to the Access Seeker, determine on a case by case basis whether to provide the Access Seeker with access to the Access Service(s) set out in TPM' ARD.
- 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 network facilities or network services listed in the Access List which are set out in TPM' ARD where the Access Seeker has been granted (i) a network facilities provider Licence and/or (ii) a network service provider licence and/or (iii) an applications service provider licence and/or (iv) a content applications service provider licence, and such licences are not limited or restricted from those detailed in the Act, as amended in anyway:
 - a. by reference to the type of network facilities, network services and/or applications services that can be provided; and
 - b. by geographical limitations to only a specific area and/or areas in Malaysia to which the Access Seeker can provide such network facilities, network services and/or applications services.
- 2.3 An Access Seeker may not request for access to Access Service(s) where the requested Access Service(s) are to be used in connection with an activity or activities which the Access Seeker is not licensed to perform.
- 2.4 Consistent with Government policy and Determinations by the Commission's (and its predecessor), where TPM provides the Access Seeker with access to the Access Service(s) pursuant to Clause 2.1 above, the charges for the requested Access Service(s) shall be as mutually agreed between TPM and the Access Seeker in the Access Agreement.

3. Standard Access Obligations

- 3.1 TPM shall, subject to Clause 2 above, if requested to do so by an Access Seeker, supply the Access Service(s) to the Access Seeker on reasonable terms and conditions.
- 3.2 Section 149 of the Act specifies the terms and conditions upon which TPM must comply with the Standard Access Obligations. Section 149(2) provides that the access provided by TPM shall be:
- a) of at least the same or more favourable technical standard and quality as the technical standard and quality on TPM's network facilities or network services; and
 - b) on an equitable and non-discriminatory basis.

4. Customer Principles

- 4.1 TPM shall observe and comply with the customer relationship principles set out in section 4.3 of the MSA.

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SECTION D: ACCESS REQUEST PROCESS AND PROCEDURES

1. Introduction
 - 1.1 An Access Seeker must comply with the following process if it wishes to obtain access to Facilities and/or Services on the Access List from TPM.
 - 1.2 These provisions apply in the following circumstances:
 - (a) Where there is no current Access Agreement between TPM and the Access Seeker; or
 - (b) If there is a valid and subsisting Access Agreement between TPM and the Access Seeker but :-
 - (i) such Access Agreement will expire within 4 months from the date when the Access Seeker makes a request; or
 - (ii) the requested Facility and/or Service is outside the scope of such access agreement.
2. Access Request Process
 - 2.1 An Access Seeker shall request TPM to supply Access Service(s) to it by submitting an Access Request to TPM. The Access Request shall contain the following information;
 - (a) the name and contact details of the Access Seeker
 - (b) the Access Service which is sought;
 - (c) whether the Access Seeker wishes to accept the ARD or to negotiate an Access Agreement;
 - (d) the information (if any) the Access Seeker reasonably requires TPM to provide for the purposes of the negotiations;
 - (e) two (2) copies of a confidentiality agreement properly executed by the Access Seeker in the form prescribed by TPM;
 - (f) Forecasts of the capacity the Access Seeker will reasonably require, having regard to TPM's provisioning cycle;
 - (g) relevant technical information relating to the interface Standards of the Access Seeker;
 - (h) relevant information relating to the Access Seeker's Network and the functionality of its Services, to the extent that the Access Seeker is aware that such information may affect TPM's Network;
 - (i) Credit worthiness information in accordance with TPM's requirements;

- (j) Security Sum in accordance with TPM's requirements;
- (k) Insurance information in accordance with TPM's requirement; and
- (l) such other information as TPM may reasonably request.

2.2 Within ten (10) Business Days of receipt of the Access Request from the Access Seekers, TPM shall respond to the Access Seeker by either:

- (a) accepting the Access Request based on the terms and conditions in this ARD; or
- (b) accepting the Access Request and to negotiate the Access Agreement; or
- (c) requesting for further information from the Access Seeker; or
- (d) rejecting the Access Request.

3. Acceptance

3.1 If the Access Request made by the Access Seeker accepts the terms and conditions of this ARD and the access agreement as the basis for the access to the Facilities and/or Services offered to be provided by TPM, then TPM shall issue copies of the Access Agreement which the Access Seeker shall execute and return to TPM within ten (10) Business Days with the Security Sum and copies of insurance arrangements specified by TPM.

3.2 If:

- (a) the Access Seeker had submitted an Access Request which contains a request to negotiate the terms and conditions of the access agreement, and
- (b) TPM is willing to proceed to negotiate the Access Request and the terms and conditions of the access agreement;

then TPM shall do the following:

- (i) issue the draft Access Agreement; and
- (ii) specify a date and time no later than fifteen (15) Business Days from the date of the Access Request at which the Access Seeker's representative can meet with the representative of TPM to negotiate the terms and conditions of the Access Agreement; and
- (iii) require the Access Seeker to provide such additional information as may be reasonable in the circumstances.

4. Request for Further Information

4.1 TPM may request the Access Seeker to provide further information on the Access Request.

- 4.2 The Access Seeker shall within ten (10) Business Days provide further information to TPM as requested pursuant to Clause 4.1.
- 4.3 If in TPM's opinion the information provided is sufficient for it to make a decision as to whether to accept or reject the Access Request, it shall reconsider the Access Request and inform the Access Seeker of its decision within ten (10) Business Days.
- 4.4 For the avoidance of doubt, TPM may make more than one request for additional information from the Access Seeker in order for TPM to make a decision as to whether to accept or reject the Access Request. Each request shall be subject to the provisions in Clause 4.2 and 4.3.
- 4.5 If the Access Seeker does not provide further information in response to a request made by TPM, then the Access Seeker shall be deemed to have revoked the Access Request.

5. Access Request Rejection

- 5.1 If TPM rejects an Access Request, TPM shall inform the Access Seeker and indicate the date its representatives are available to meet the Access Seeker to discuss the rejection of the Access Request. The Access Seeker may attend and meet with the representatives of TPM on the date and time and at the venue specified which date shall not be later than seven (7) Business Days from the date of Access Request rejection notice.
- 5.2 If the Access Seeker fails or neglects to attend the specified meeting without providing acceptable reasons in writing at least one day prior to the date of the meeting, then such failure shall be deemed to be acceptance of the rejection of the Access Request.
- 5.3 If the Access Seeker does attend, and the rejection of the Access Request is not resolved (whether at that meeting or any subsequently agreed meeting), then either TPM or the Access Seeker may initiate the Dispute Resolution Procedures set out in the MSA.
- 5.4 Pending the final determination of the dispute, TPM shall not be obliged to provide access to the Access Seeker.

6. Right to Reject

- 6.1 TPM may reject an Access Request made by an Access Seeker upon any of the following grounds:
 - (a) the Access Request is not made in good faith; or
 - (b) the information provided by the Access Seeker is incomplete or false; or
 - (c) it is not technically feasible to provide access to the Facilities and/or Services requested; or
 - (d) TPM has insufficient capacity or space to provide the requested Facilities and/or Services; or

- (e) TPM reasonably believes that the Access Seeker may fail to make timely payments for the requested Facilities and/or Services; or
- (f) TPM reasonably believes that the Access Seeker may fail, to a material extent, to comply with the terms and conditions of access of the relevant Facilities and/or Services; or
- (g) does not currently supply or provide access to the requested Facilities and/or Services to itself or to any third party; or
- (h) TPM reasonably believes that the safety of its network will be compromised by the grant of the access requested; or
- (i) TPM reasonably believes that access is being sought for a purpose in contravention of any laws; or
- (j) TPM reasonably believes that the provision of access to the Access Seeker will be contrary to the objectives of the Act; or
- (k) access is being sought to Facilities and/or Services which are not on the Access List; or
- (l) on the basis of national interest.

6.2 Notification of Rejection to the Access Seeker

If TPM rejects the Access Request, TPM shall within ten (10) Business Days of receiving the Access Request:

- (a) notify the Access Seeker in writing of TPM rejection;
- (b) provide reasons for rejection under Clause 6.1 to the Access Seeker;
- (c) provide the basis for TPM rejection of the Access Request; and
- (d) indicate a date and time, not later seven (7) Business Days from the date of this notice of rejection, at which representatives of TPM will be available to meet with representatives of the Access Seeker to discuss the rejection of the Access Request.

7. Right to Withdraw Access Request

7.1 No later than the 5th Business Day following the date of the Access Request, the Access Seeker may withdraw the Access Request at no cost. The Access Seeker must inform TPM in writing of its decision to withdraw the Access Request before the expiry of the 5th Business Day.

7.2 TPM shall not be obliged or under any liability to fulfill an Access Request that is withdrawn.

8. Applicability for Additional Services

8.1 Notwithstanding that the Access Seeker may have entered into an Access

Agreement with TPM, the Access Seeker shall for each additional facility or service of a type which it requires access to in addition or in substitution to the access already provided under an Access Agreement, submit an Access Request in accordance with the provisions set out above.

9. Processing and Other Charges

9.1 TPM may charge the Access Seeker a non-refundable processing fee for undertaking administrative work to process the Access Request.

9.2 In the event additional and/or non-routine work ie non-administrative work or site visits or site surveys or technical surveys or technical evaluation work or testing etc, is required in order to process the Access Request, TPM will charge a separate fee for undertaking such additional work.

9.3 The Access Seeker shall always remain liable to pay the fees for processing the Access Request and the undertaking by TPM of the additional and/or non-routine work, notwithstanding the Access Request may have been rejected by TPM or withdrawn by Access Seeker.

10. Commencement of Negotiation

10.1 If an Access Seeker has received a notice from TPM to proceed with negotiation of the Access Agreement, the Access Seeker must within ten (10) Business Days of receipt of such notice submit to TPM a list of its comments identifying the affected clauses the proposed amendments, the priority of importance and the rationale for such change. The Access Seeker shall also specify in such submission, the date when it proposes to commence negotiations.

10.2 If the Access Seeker shall have failed, neglected and/or refused to do so, then the Access Seeker shall have been deemed to have withdrawn its Access Request.

11. Duration of Negotiations

11.1 All negotiations shall be concluded within 120 days from the date TPM receives a written request to commence negotiations.

11.2 If negotiations are not completed within 120 days:

(a) the Parties may jointly apply to the Commission for an extension of time to negotiate and if the extension of time is not granted by the Commission, there shall be deemed to be a dispute between the Parties and the dispute resolution procedures under the MSA shall take effect; or

(b) either Party may initiate the dispute resolution procedures.

12. Initial Meeting

12.1 The designated representatives of TPM and Access Seeker shall meet on the date and time at the venue specified by TPM, and shall:

- (a) agree a timetable for the negotiations, including milestones and dates for subsequent meetings;
- (b) agree the negotiating procedures, including:
 - (i) the calling and chairing meetings;
 - (ii) the party responsible for keeping minutes of meetings;
 - (iii) clearly defined pathways and timetables for escalation within each party of matters not agreed in meetings;
 - (iv) procedures for consulting and including in the negotiating process relevant experts from the staff of each of the parties; and
 - (v) procedures for preparing and exchanging position papers;
- (c) review the information requested and provided to date and identify information yet to be provided by each Party; and
- (d) identify what technical investigations, if any, need to be made and by whom such investigations should be made.

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SECTION E: OBLIGATIONS FOR PROVISION OF INFORMATION

- 1 The obligations of each Operator provide information to the Other Operator are subject to MSA Determination and the requirements of confidentiality in the confidentiality agreement signed by the Operators.
- 2 An operator must provide the other Operator on a timely basis with all agreed information reasonably required to determine rates and chargers to be billed by each Operator to the Other Operator or by each Operator to its Customers.
- 3 To the extent permitted by Malaysia laws and any relevant guidelines or Customer service standards in force pursuant to the Operator's respective Licence conditions, the Operator 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 theft of the Operator's provided terminal equipment.
- 4 Information provided under the ARD may only be used for the purpose for which it was given. Personal information about a Customer's credit worthiness, creditstanding, credit history or credit capacity may only be used for the purposes permitted by, and in compliance with, Malaysia Law.
- 5 Information required to be provided under the ARD 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 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. The Operators will cooperate to resolve the providing Operator's reasonable concerns so that information exchange can be resumed as soon as possible.
- 6 The Operators acknowledge that when information (including for the purposes of this clause any updated information) required to be provided under this Section is held on a database, the Operator entitled to receive the information will not be entitled to obtain direct access to the database. The precise method by which the information is to be made available will be determined by the management of TPM having regard to the reasonable cost, convenience and security concerns of the Operators.
- 7 (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 the third person unless the third person consents to such disclosure. Where the consent of a third person is required, the Operator holding the information must use its reasonable endeavours to obtain the consent of that third person.

(b) After the Access Agreement comes into force an Operator must use its best endeavours 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.

8 All communication information, call and other relevant information in relation to Call Communication must be kept by both Operators for a period as may be agreed by the Operators pursuant to the Confidentiality Agreement for the purposes of verification and audit.

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SECTION F:

BILLING AND SETTLEMENT OBLIGATIONS

- 1 Where relevant, the billing and settlement obligations set out in Section 5.14 of the MSA Determination shall be applicable.
- 2 The Access Seeker shall pay TPM the Charges for the relevant Facilities and/or Services supplied by TPM to the Access Seeker, as specified in Section B of the Schedule in this ARD below and / or the Access Agreement.
- 3 The Operators shall bear and pay all taxes as required by Malaysian law that result from the implementation of the Access Agreement.
- 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 TPM or exceptionally, by cheque to the nominated account(s) of TPM if agreed by TPM; and
 - (c) must be accompanied by such information as is reasonably required by TPM to properly allocate payments received.
- 5 For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts of any Invoices as they become due and payable, nor does it constitute a waiver of TPM'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 TPM.
- 6 (a) TPM shall be entitled to revise the Security Sum in any of the following event:-
 - (i) at each subsequent anniversary from the Commencement Date;
 - (ii) where, in the opinion of TPM, the Security Sum is less than the actual Minimum Value calculated at the end of the most recent ninety (90) days period;
 - (iii) upon the provisioning of new or additional network facilities or network services to the Access Seeker; or
 - (iv) where there is material change in circumstances in relation to the Access Seeker's credit worthiness. For clarification, a material change in circumstances includes, but is not limited to, a failure by the Access Seeker to pay on the Due Dates at least three (3) Invoices rendered in the preceding six (6) months (so long as those amounts have not been disputed in good faith). If the amounts in the invoices are

disputed in good faith, this will not constitute a material change in circumstances for purposes of this Clause 6 (a) (iv).

- (b) Where the Security Sum is revised pursuant to Clause 6 (a) above, the Access Seeker shall within ten (10) Business Days from the written request of TPM, deposit the new Security Sum with TPM.
 - (c) Where the Access Seeker deposits monies in lieu of a Bank Guarantee, such monies shall be deposited in a separate interest bearing account ("said accounts") and any interest secured thereon be held by TPM in addition to the Security Sum. TPM shall forward to the Access Seeker a statement of the said accounts annually.
7. (a) In the event TPM elects to suspend or terminate the provisioning of relevant Access Service(s) to the Access Seeker, TPM shall have the right to use the Security Sum (together with any interest thereon) to set off any outstanding sum due and payable to TPM by the Access Seeker.
- (b) Subject to Clause 7 (a) above, upon termination of the Access Agreement, the Security Sum deposited with TPM or parts thereof, together with interest thereon, (if any) shall be returned and/or refunded to the Access Seeker.
- 8 Where there is a Billing Dispute, the Operators shall comply with the dispute resolution procedures in Annexure A of the MSA Determination.

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SECTION G: NOTICES

- 1 Any communications in respect of TPM's ARD should be made in writing to :
- Attention : Shahazman Abu Samah
 Vice President, Park Management & Services Division
- Address : Level 5, Enterprise 4
 Technology Park Malaysia
 Lebuhraya Puchong – Sg Besi
 Bukit Jalil
 57000 Kuala Lumpur
- Facsimile : 03-8996 3810
- Email : shahazman@tpm.com.my

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SECTION H: TERMINATION AND SUSPENSION OBLIGATIONS

1 Termination circumstances

Subject to Clause 4, TPM may terminate an Access Agreement or part thereof if any of the circumstances referred to in Clause 1 (a), 1 (b) or 1 (c) below apply and TPM has notified the Access Seeker of its intention to terminate the Access Agreement:-

- (a) The Access Seeker has materially breached the Access Agreement and TPM has notified the Access Seeker that it will terminate the said Agreement in no less than thirty (30) days if the Access Seeker has not remedied the breach by the end of that period; or
- (b) The Access Seeker is subject to a winding up Order; or
- (c) A Force Majeure has continued for a period of more than 90 days.

TPM shall forward to the Commission copy of the notice of termination at the same time as providing the notice of termination to the Access Seeker.

2 Changes in law

Where the continued operation of the Access Agreement or access to any Access Service(s) provided by TPM is or will be unlawful (as a result of a legislative change), the Access Seeker and TPM shall meet within five (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 TPM on different terms and conditions, TPM may terminate the provision of access to the relevant Access Service(s).

3 Suspension circumstances

Subject to Clause 4 below, TPM may only suspend access to any Access Service(s) in the following circumstances:

- a) The Access Seeker's Facilities materially adversely affect the normal operation of TPM's Network or are a threat to any person's safety;
- b) The Access Seeker's Facilities or the supply of Access Service(s) pose an imminent threat to life or property of TPM, its employees or contractors;
- (c) The Access Seeker's Facilities cause material physical or technical harm to any Facilities of TPM or any other person;
- (d) Where the Access Seeker has failed to pay Invoices in accordance with Section 5.14 of the MSA Determination;
- (e) Where force majeure applies; or
- (f) The Access Seeker breaches any laws, regulations, rules, or standards which

has a material adverse effect on TPM or the provision by TPM of Access Service(s) under the Access Agreement.

For the purposes of this Clause 3, TPM must provide Access Seeker five (5) Business Days notice in writing, including written reasons, prior to suspending access to any Access Services(s).

4 Approval

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

5 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 Commission within five (5) Business Days of such adoption. In such circumstances, the terms and conditions of the Access Agreement will continue to be in force for the remainder of the term of that Access Agreement, even if the access undertaking is withdrawn or expires prior to the expiry of that term.

6 Post-termination fees

TPM 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) Charges arising during an applicable minimum contractual period

7 Upfront charges refund

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

8 Deposits and guarantees

Notwithstanding the obligation in Clause 7, TPM shall:

- (a) Within sixty (60) days 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 TPM have been paid; and
- (b) Immediately upon termination of the Access Agreement unconditionally waive any rights under the guarantees provided by the Access Seeker except in respect of amounts payable by the Access Seeker to TPM as at the date of termination.

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SCHEDULE

SECTION A - ACCESS SERVICE DESCRIPTION

DUCT AND MANHOLE ACCESS

1. General

This section sets out the terms and conditions which are applicable to Duct and Manhole Access.

2. The followings are the Facilities/Services which may be provided by TPM:

Item	Facilities/Services	Capacities/Size
1.	Manholes Access (ROW)	Cable / Connection / Month
2.	Duct	Cable / Connection / Month

3. General Terms and Conditions for Duct and Manhole Access

3.1 Duct and Manhole Access is a Facility and/or Service which comprises the provision of physical access to:

- (a) Lead-In Ducts and associated manholes
- (b) Mainline Ducts and associated manholes in areas in which TPM has exclusiverights to develop or maintain duct and manhole infrastructure, whether ornot in combination with other Facilities and Services.
- (c) Sub-ducts where there is no room for the Access Seeker to install its own sub-ducts.

3.2 Provision of physical access includes the provision of

- (a) Space at specified network facilities to enable an Access Seeker to install and maintain its own lines, equipment and sub-ducts;
- (b) Access for the personnel of the Access Seeker.

3.3 The Access Seeker shall pay TPM the Charges in accordance with the applicable provisions in Section B of this Schedule.

4. Pre-Requisites for applying Duct and Manhole Access

4.1 The Access Provider shall not be obliged to provide to the Access Seeker the Duct and Manhole Access unless:

- (a) the Access Provider:
 - (i) is the owner of the Duct and Manhole; or
 - (ii) has exclusive rights of use of the Duct and Manhole pursuant to a lease or tenancy agreement with the owner of the Duct and Manhole and the Access Provider has been granted the requisite approval by the owner of the said Duct and Manhole to permit the Access Seeker to use the Duct and Manhole;
- (b) the Access Seeker has the appropriate license under the Act and its subsidiary legislation to operate the service and other approvals from relevant authorities, where required;
- (c) there is sufficient space; and
- (d) the Technical Proposal from the Access Seeker has been accepted by the Access Provider.

5. Duration of Duct and Manhole Access

5.1 Duct and Manhole Access agreed between the Operators, shall be for a fixed period of three (3) years unless a lesser period is stipulated by the Access Provider (where the Access Provider's right to use the Duct and Manhole 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 Duct and Manhole notify the Access Provider in writing as to whether or not it wishes to renew the term of the Duct and Manhole Access.

5.2 The term of the Duct and Manhole Access shall commence on the date ("Start Date"):

- (a) the Access Provider makes available for physical possession the Duct and Manhole space in accordance with the agreed specifications in the Technical Proposal and the Access Provider has notified the Access Seeker in writing of the same; or
- (b) the Access Seeker takes physical possession of the Duct and Manhole, whichever is the earlier.

6. Use of Duct and Manhole

6.1 The Access Seeker shall only use the Duct and Manhole for the sole purpose of providing Communication Services and shall not do or permit to be done any act or thing which is illegal or may become a nuisance or give reasonable cause for complaint from the Access Provider, or owner or any of the other access seekers.

6.2 The Access Seeker shall not sub-let the Duct and Manhole without the prior written approval of the Access Provider.

6.3 The Access Provider shall not be responsible for any damage to the Access Seeker's equipment, system and/or devices in the Duct and Manhole caused by fire, water

leakage, air-conditioning/mechanical ventilation failure, power fluctuation/ interruption and/or by any other causes or reasons.

SECTION B - BILLING CHARGES AND OBLIGATIONS

DUCT AND MANHOLE ACCESS

- 1 In consideration of the duct and / or manhole access, Access seeker shall pay to TPM –
 - (a) a monthly charge of RM1,000.00 based on per cable (point-to-point) basis regardless of length, for the existing cables of the Access Seeker; and
 - (b) a monthly charge of RM1,000.00 based on per cable (point-to-point) basis regardless of length, for each and every cable to be installed by Access Seeker.

(Hereinafter items (a) and (b) above shall be collectively referred to as “the Charges”).

- 2 TPM shall issue its invoice for the Charges incurred for the preceding month before 15th day of the current calendar month and Access Seeker hereby agrees to pay the Charges to TPM within thirty (30 days) upon receipt of such an invoice.
- 3 In the event Access seeker fails to pay the Charges within thirty (30) days upon receipt of the invoice as stipulated under clause 2 above (whether the same shall have been formally demanded or not) Access Seeker shall pay the penalty of 1.5% (one point five per centum) per month on each of the outstanding amount payable under this Agreement from the date such amount becomes due until payment in full is received by TPM.