



MyKRIS Asia Sdn Bhd

Reference Access Offer

18th Dec 2018 Version 4.2

This Document Sets Out the Terms And Conditions
For Eligible CMA Licensees to Apply To MyKRIS Asia Sdn Bhd
For Access To Certain Access Services

Introduction

1. This Reference Access Offer (“**RAO**”) is published by MyKRIS Asia Sdn Bhd (“**MYKRIS**”), pursuant to the Commission
 - (i) Determination on the Access List (Determination No. 2 of 2015),
 - (ii) Determination on the Mandatory Standard on Access (Determination No 3 of 2016)
 - (iii) Determination on the Mandatory Standard on Access Pricing (Determination of No.1 of 2017)

to enable eligible licensees under the Communications and Multimedia Act 1998 to seek access to MYKRIS’s network facilities and/or network services.

2. This RAO is divided into the following parts :

Chapter 1	Introduction
Chapter 2	Interpretation and Definition
Chapter 3	Principle of Access
Chapter 4	Access Request Procedure
Chapter 5	Provision of Information
Chapter 6	Billing and Settlement Obligations
Chapter 7	Notices
Chapter 8	Term of Access Agreement
Chapter 9	Termination and Suspension Obligations
Schedule A	General Terms & Conditions 1. Forecasting Obligations 2. Ordering and Provision Obligations 3. Decommissioning Obligations 4. Network Facilities Access and Co-location 5. Billing and Settlement 6. Set Off 7. General Obligations 8. Terms of Access 9. Termination and Suspension 10. To 25. Other Terms
Schedule B	B.1-Fault Rectification Response Times B.2-MYKRIS Confidentiality Agreement
Appendix	A – Information Requirement B – Specifications C – Point of Interface List D – Price List for Access Services E – Dispute Resolution Procedures

3. This Reference Access Offer is:
- (a) the basis upon which any person, who holds a license under the Communications and Multimedia Act 1998, and who is entitled to seek, would seek access to MYKRIS's network facilities and/or network services provided that MyKRIS is able to provide such facilities or services;
 - (b) the basis upon which such persons will be granted access to the Access Services set out in Part A Section 2, upon the execution of and registration of an Access Agreement between MYKRIS and any eligible person under Section 3(a) above, such agreement containing the general terms and conditions and relevant specific terms and conditions as applicable for the specific Access Service.

4. Amendment to MyKRIS's RAO

MYKRIS shall, no less than twenty (20) Business days of making any amendment to MyKRIS' RAO, MyKRIS shall provide copy of the amended RAO showing the proposed changes to the existing RAO, to:

- (a) All Access Seekers who are being provided with access to Facilities and/or Services under the existing RAO; and
- (b) All Access Seekers who have requested access to Facilities and/or Services under the existing RAO within the period of three (3) months prior to the making of such amendments, excluding any such Access Seeker who has since indicated that it does not wish to proceed with its Access Request.

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

5. ***MyKRIS's Address*** for Correspondence;

All requests, notices, forms arising out of this RAO, shall be sent to MYKRIS at the address below :

MyKRIS Asia Sdn Bhd
Attention : Regulatory Department
Address : C-1-G, The Link2 Jalil
No 5, Jalan Jalil Perkasa 1,
57000 Bukit Jalil, Kuala Lumpur.

6. ***Definitions***

The following definitions are used throughout the RAO. The definitions set out in the RAO are hereby incorporated into this RAO by reference. Where a word is not defined in this RAO, unless the context otherwise requires, such word shall have the same meaning as that set out in the MSA.

Access List The list of network facilities and network services as Determined by the Commission from time to time pursuant to section 146 of the Act including any amendments thereto.

Access Provider	A network facilities provider who owns or provides Facilities and/or a network service provider who provides Services, listed in the Access List. For the purpose of this RAO, the Access Provider is MYKRIS
Access Seeker	A network facilities provider, a network service provider, an application service provider, or a content applications service provider who makes a written request for access to Facilities or Services, listed in Access Services
Access Services	The network facilities and network services that MYKRIS may provide access to pursuant to this RAO
Access Agreement	The agreement for Access entered into between the Access Seeker and MYKRIS pursuant to this RAO for specific
Access Request	A request for access made by Access Seeker under section 5.4.5 of MSA Determination No 3 of 2016.
Associated Tower Sites	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.
Bank Guarantee	A guarantee executed and to be granted to MYKRIS on behalf of the Access Seeker, by a bank approved by the Access Provider and in a format acceptable to the Access Provider.
Billing Dispute	The dispute of an invoice prepared by an Operator to the Other Operator which is made in good faith
Billing Period	One (1) calendar month period over which the supply to network facilities or network services is measured for the purposes of billing unless otherwise agreed between the Operators.
Business Day	A day on which banks are open for general banking business in Kuala Lumpur, Wilayah Persekutuan, other than a Saturday and Sunday or a public holiday.
Charges	The sum payable by the Access Seeker to MYKRIS for the provision of Access Services.
CMA	Communications and Multimedia Act 1998 (Act 588)
Commencement Date	The date on which the Operators enter into the Access Agreement or such other date as agreed between the Operators.
Commission or CMC or MCMC	The Malaysian Communications and Multimedia Commission which is the Regulator of the Communications Industry.

Facilities	Network Facilities and/or facilities as listed in the Access List and specified in this MYKRIS RAO which facilitate the provision of network services or application services, including content application services
MSA	Commission Determination on the Mandatory Standard on Access (Determination No. 3 of 2016) issued by the MCMC
MYKRIS	MyKRIS Asia Sdn Bhd
Operator(s)	A network facilities provider, a network services provider, an applications service provider or a content application service provider (as the context requires) who is an Access Provider or an Access Seeks (as the context requires)
Packet Loss	Ratio of total lost IP packets to total transmitted packets in a population of interest. Total lost packets includes any delivered with errors or Latency greater than 3 seconds
Parties	Means the Access Seeker and MyKRIS collectively
RAO	Reference Access Offer
Services	Network services and/or other services which facilitate the provision of network services or application services, including content applications services

CHAPTER 3 PRINCIPLE OF ACCESS

3.1. Access Services

This RAO only applies to those network facilities which are owned by MYKRIS and, network services which are provided by MYKRIS as set out in Section 3.2 below.

MYKRIS may, at its sole discretion, agree to provide Access to an Access Seeker to any other network facilities and/or network services, which are not included in the Access List on terms and conditions to be agreed between MYKRIS and the Access Seeker. MYKRIS is not bound by the provisions in the MSA nor the terms and conditions set out in this RAO to provide access to those facilities and services not on the Access List.

3.2. The network facilities and network services offered by MYKRIS

The following network facilities and/or network services ("***Access Services***") may be made available by MYKRIS subject to availability of capacity at the time of the Access Request.

(1) Infrastructure Sharing

- (a) Infrastructure Sharing is a Facility and/or Service which comprises the following:

- (i) Specified network facilities include towers and Associated Tower Sites.
- (ii) Physical access includes power, environmental services (such as heat, light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access Seeker.
- (iii) 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.

The Access Seeker shall not be entitled to grant any tenancy, lease, licence or other right of use or occupation save with the prior written consent of MYKRIS or as specified and to the extent specified in any Instrument.

A request for Infrastructure Sharing Services shall contain to the extent relevant the information in Appendix A and shall be further accompanied by a site preparation work plan and installation work plan and method.

MYKRIS will only be required to provide the Infrastructure Sharing to the Access Seeker to the extent that the Access Seeker has complied with all the requirements of this RAO, and the requirements of the Access Agreement for Infrastructure Sharing.

3.3 Eligibility for Access to Access Service(s)

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 MYKRIS' RAO where the Access Seeker has been granted

- (i) a network facilities provider license and/or
 - (ii) a network service provider license and/or
 - (iii) an applications service provider License and/or
 - (iv) a content applications service provider License,
- and such Licenses are not limited or restricted from those detailed in the Act, as amended in any way:
- (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.

3.4 Standard Access Obligations

3.4.1 Access Terms and Conditions

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

3.4.2 Principles of non-discrimination

Section 149 of the Act specifies the terms and conditions upon which MyKRIS must comply with the Standard Access Obligations. Section 149(2) provides that the access provided by MyKRIS shall be:

- (a) of at least the same or more favorable technical standard and quality as the technical standard and quality on MyKRIS's network facilities or network services; and
- (b) on an equitable and non-discriminatory basis

3.4.3 Customer Relationship Principles

MyKRIS shall observe and comply with the customer relationship principles set out in section 4.3 of the MSA Determination as below:

- (a) A Customer will be regarded as a Customer of an Operator when the Customer utilises Facilities and/or Services provided to that Customer by the Operator.
- (b) The same person may be a Customer of more than one Operator:
 - i. in respect of the same or different Facilities provided by different Operators;
 - ii. in respect of the same or different Services provided by different Operators; or
 - iii. in respect of Facilities provided by one Operator and Services provided by another Operator.
- (c) The supply by an Operator to another Operator, which the latter Operator then utilises in providing Facilities and/or Services to its Customers, does not mean that those Customers are also Customers of the first-mentioned Operator.
- (d) Each Operator will be responsible for billing its own Customers, unless express agreement to the contrary is made by the Access Provider and the Access Seeker. An agreement to the contrary may be include, without limitation :
 - i. the Access Provider billing on behalf of the Access Seeker; or
 - ii. the Access Provider in its own right billing the Customer of the Access Seeker and making a separate payment to the Access Seeker

CHAPTER 4 ACCESS REQUEST PROCEDURE

4.1 Application for Access to Services

4.1.1 An Access Seeker shall request MYKRIS to supply Access Service(s) to it by serving an Access Request on MYKRIS.

4.1.2 The purpose of such Access Request is to provide MYKRIS with sufficient information to assess the Access Seeker's request for the supply of the Access Service(s).

4.1.3 The Access Request must provide the following information:

- (a) the name and contact details of the Access Seeker;
- (b) the Access Service(s) in respect of which access is sought;
- (c) indicate whether the Access Seeker accepts MYKRIS' RAO and its Standard Access Obligations or to negotiate an Access Agreement on different terms and conditions
- (d) the ready for service date(s) for the Access Service(s) that is being sought by the Access Seeker;
- (e) contain two (2) copies of a confidentiality agreement properly executed by the Access Seeker in the form prescribed by MYKRIS as per attached schedule B2;
- (f) the forecasts of the capacity the Access Seeker may reasonably require for an initial 12 month period;;
- (g) 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 MYKRIS' Network;
- (h) type of Licenses held by the Access Seeker and a copy of the License where a copy had not been previously provided;
- (i) Creditworthiness Information as set out in Section 4.2;
- (j) Insurance Information as set out in Section 4.4; and
- (k) such other information as MYKRIS may reasonably request.

4.2 Creditworthiness Information

4.2.1 The Creditworthiness Information that may be required to accompany an Access Request (after due assessment of credit risk by MyKRIS) includes:

- (a) a letter, signed by an executive director 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 audited balance sheet and audited profit and loss statement.
- (c) such other information as may be reasonably requested by MyKRIS provided that such information are publicly available and Access Seeker is to warrant that such information is accurate.

The Creditworthiness information shall commensurate with an estimated of the charges that will be incurred by the Access Seeker over the period of Ninety (90) day period.

4.3 Security Sum

- 4.3.1 MYKRIS shall ensure that the amount and type of security requirements imposed on the Access Seeker in MYKRIS' security policy, commensurate with:
- (a) the estimate of the value of access to Access Service(s) to be provided to the Access Seeker by MYKRIS over a ninety (90) days period ("Minimum Value");
 - (b) the creditworthiness of the Access Seeker (including prior payment records of the Access Seeker); and
 - (c) the security previously reasonably required by MYKRIS (if any).
- 4.3.2 The Access Seeker must provide the Security Sum to MYKRIS in the form of a Bank Guarantee.
- 4.3.3 MYKRIS is not obliged to consider entering into an Access Agreement with the Access Seeker pursuant to MYKRIS' RAO in the event that upon reasonableness credit assessment the Access Seeker presents a credit risk. In such scenario, MyKRIS will only enter into an Access Agreement until the Access Seeker has amongst other things, provided (at the Access Seeker's costs) to MYKRIS such Security Sum commensurate with the estimate of the charges over period of ninety (90) days.
- 4.3.4 If the Access Seeker fails to fulfill any conditions or commits a breach of its obligations under this RAO or the Access Agreement, MyKRIS at its sole discretion has the right to call in all or part of the amount pledged as 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 within statutory limits as required by the laws of Malaysia to provide for payment to its employees employed or in connection with the work covered by the Access Agreement that may be entered into and/or their dependants; and
 - (b) Comprehensive General Liability Insurance or Public 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 or 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 MYKRIS.

4.5 MYKRIS' Reply to the Access Request

- 4.5.1 MYKRIS shall within ten (10) Business Days of receipt of the Access Request, inform the Access Seeker in writing that it has received the Access Request and either:-

- (a) request for additional information from the Access Seeker where there is a need for further information and a joint site survey in the case of Infrastructure Sharing and Network Co-location Service, prior to considering the Access Request. MYKRIS shall comply with Section 5.4.16 of the MSA Determination when it requests for such additional information; or
- (b) indicate if it is willing to provide access to the Access Service(s) under Section 4.8 or if it is rejecting the Access Request in accordance to Section 4.7.
- (c) If MYKRIS is willing to provide access to the Access Service(s), MYKRIS shall (together with its notice of acceptance) indicate the Security Sum and any non refundable processing fee payable by the Access Seeker prior to the execution of the Access Agreement.

4.5.2 If MYKRIS requests for additional information under Section 4.5.1(a) and the Access Seeker provides the requested information to MYKRIS' satisfaction and the joint site survey (if any) is successfully completed, MYKRIS shall within ten (10) Business days of such response, provide the Access Seeker with a response under Section 4.5.1(b).

4.5.3 Non-refundable processing fee

4.5.3.1 Subject to Section 4.5.3.2, MYKRIS may charge an Access Seeker a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request.

4.5.3.2 The non-refundable processing fee is only applicable to the requested Access Service(s) that are being offered by MYKRIS.

4.5.3.3 In the event additional and/or non-routine work is required in order to process the Access Request, MYKRIS may charge a separate fee for undertaking such additional work.

4.5.4 Resource charge

In accordance with Section 5.7.28 of the MSA Determination, MYKRIS may charge an Access Seeker a one-off resource charge to be determined by reference to the costs incurred by MYKRIS for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Access Service(s). The manpower rate will range from RM500 to RM1,000 per order depending on the type of Facilities and/or Services.

4.6 Rejection of an Access Request

4.6.1 Reasons for Refusal

MYKRIS may refuse to accept an Access Request for supply of the 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 MYKRIS' reasonable opinion, the Access Seeker's Access Request was not made in good faith;
- (b) in MYKRIS' reasonable opinion, the Access Request does not contain the information reasonably required by MYKRIS' RAO provided that MYKRIS has sought the information from the Access Seeker under Section 4.5.1(a) of MYKRIS' RAO;

- (c) MYKRIS does not currently supply or provide access to the requested network facilities or network services listed in the Access List to itself or to any third parties;
- (d) it is not technically feasible (as determined in accordance with the criteria set out in Section 5.4.17 of the MSA) to provide access to the network facilities or network services requested by the Access Seeker;
- (e) MYKRIS has insufficient capacity to provide the requested network services or network facilities.
- (f) there are reasonable grounds in MYKRIS' 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 section 4.3; or
- (g) there are reasonable grounds in MYKRIS' 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 regulated Access Service(s).
- (h) MYKRIS reasonably believes that the provision of access to the Access Seeker will be contrary to the provisions and objectives of the CMA or 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 5.4.17 of the MSA Determination taking into account the following matters:

- (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 and/or Services would result in a specific and significant adverse impact on network reliability; and
- (d) the Access Provider must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this 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)

4.6.3 Determination of capacity constraints

For the purpose of determining capacity constraints in Section 4.6.1(e), the Operators shall comply with Section 5.4.18 of the MSA Determination as below:

- (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, reconsider the Access Request in accordance with the process set out in subsection 5.4 of MSA; and
 - (c) in the case of both 4.6.3 (a) and (b), the Access Provider is unable to expand capacity to meet the requirements in the Access Seeker's Access Request.
- 4.6.4 Assessment of the Access Seeker's ability to pay for the supply of Access Service(s) Examples of reasonable grounds for MYKRIS' belief as mentioned in Section 4.6.1 (f) include evidence that the Access Seeker is not creditworthy. (in the reasonable opinion of MYKRIS by referring to Central Credit Reference Information (CCRIS) and/or other credit report such as CTOS)
- 4.6.5 Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of Access Service(s)
- (a) Examples of reasonable grounds for MYKRIS' 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 the Access Service(s) have been provided (whether or not by MYKRIS).
 - (b) In determining the creditworthiness of the Access Seeker, MYKRIS may have regard to, but is not limited to the matters referred to in Section 4.2.
 - (c) In determining the creditworthiness of the Access Seeker, MYKRIS shall not take into account amounts outstanding for Access Service(s) previously provided by MYKRIS to the Access Seeker where, in accordance with the terms and conditions governing the provision of such Access Service(s), the Access Seeker is not required to pay such amounts to MYKRIS to the extent that there is a *bona fide* dispute in relation to the amounts outstanding by the Access Seeker to MYKRIS and the Access Seeker is relying on such terms and conditions as basis for its non- payment.

4.7 Notification of Rejection to the Access Seeker

- 4.7.1 If MYKRIS rejects the Access Request, MYKRIS shall within ten (10) Business Days of receiving the Access Request:
- (a) notify the Access Seeker in writing of MYKRIS' rejection;
 - (b) provide reasons for rejection under Section 4.6 to the Access Seeker;
 - (c) provide the basis for MYKRIS' 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 MYKRIS will be available to meet with representatives of the Access Seeker to discuss the rejection of the Access Request. The Access Seeker may in the meeting

request MyKRIS to substantiate reasons for refusal, and if access has been refused on the basis of the grounds in:

- i. that MyKRIS must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker;
- ii. that MyKRIS must identify when additional capacity or space is likely to be available; and
- iii. that MyKRIS 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 Facilities and/or Services, reasons for the security requirement and MyKRIS considers such concern cannot be addressed through a security requirement.

4.7.2 If the Operators are unable to resolve their differences following the meeting held pursuant to Section 4.7.1(d), 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 an Access Request

4.8.1 Where the Access Seeker has requested under Section 4.1.3 (c) and MYKRIS agrees to provide access to the Access Service(s) to the Access Seeker in accordance with MYKRIS' RAO, MYKRIS shall within ten (10) Business Days of such response under Section 4.5.1(b), provide the Access Seeker with an Access Agreement (based on the Standard Access Obligations) that includes the Charges for execution by the Access Seeker

4.8.2 With respect to Section 4.8.1, the Access Seeker shall within ten (10) Business Days either, execute and return the Access Agreement to MYKRIS or indicate in writing to MYKRIS that it wishes to negotiate the Access Agreement on different terms and conditions.

4.9 Negotiation on Access Request

4.9.1 MYKRIS may proceed with negotiation on the Access Request with the Access Seeker if the Access Seeker is not willing to accept MYKRIS's RAO. MYKRIS 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 MYKRIS'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 4.1.3 (e) that has also been properly executed by MYKRIS.

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 Information provided under MYKRIS' 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.
- 5.3 Information required to be provided under MYKRIS' 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.
- 5.4 The Operators acknowledge that when information (including for the purposes of this clause any updated information) required to be provided under this Paragraph is held on a database, the Operator entitled to receive the information will not be entitled to obtain direct access to the database. The precise method by which information is to be made available will be determined by the ISG having regard to the reasonable cost, convenience and security concerns of the Operators.
- 5.5 (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.

Chapter 6 Billing and Settlement Obligations

- 6.1 Where relevant, the billing and settlement obligations set out in Section 5.14 of the MSA Determination shall be applicable.
- 6.2 The Access Seeker shall pay MYKRIS the Charges for the relevant Access Service(s) supplied by MYKRIS 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 MYKRIS or exceptionally, by cheque to the nominated account(s) of MYKRIS if agreed by MYKRIS; and
 - (c) must be accompanied by such information as is reasonably required by MYKRIS 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 of any Invoice to MYKRIS as they become due and payable, nor does it constitute a waiver of MYKRIS' right to suspend, disconnect, or terminate the relevant network facilities or network services due to non-payment of any sums due or payable to MYKRIS.
- 6.6 (a) MYKRIS shall be entitled to revise the Security Sum in any of the following event:-
- (i) once every subscription anniversary from the Commencement Date;
 - (ii) where, in the opinion of MYKRIS, 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 creditworthiness. 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 Section 6.6(a)(iv).
- (b) Where the Security Sum is revised pursuant to Section 6.6 (a) above, the Access Seeker shall within five (5) Business Days from the written request of MYKRIS, deposit the new Security Sum with MYKRIS in the manner specified in Section 4.3.2.

- (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 accrued thereon be held by MYKRIS in addition to the Security Sum. MYKRIS shall forward to the Access Seeker a statement of the said accounts annually.

- 6.7
 - (a) In the event MYKRIS elects to suspend or terminate the provisioning of relevant Access Service(s) to the Access Seeker, MYKRIS shall have the right to use the Security Sum (together with any interest thereon) to set off any outstanding sum due and payable to MYKRIS by the Access Seeker.

 - (b) Subject to Section 6.7(a) above, upon termination of the Access Agreement, the Security Sum deposited with MYKRIS or parts thereof, together with the interest thereon, (if any) shall be returned and/or refunded to the Access Seeker.

- 6.8 Where there is a Billing Dispute, the Operators shall comply with the dispute resolution procedures in Annexure A of the MSA Determination.

Chapter 7 Notices

7.1 Any communications in respect of MYKRIS' RAO should be made in writing to:

MyKRIS Asia Sdn. Bhd.

Attention: Chief Executive Officer
Address: C-1-G, The Link2 Jalil
No 5, Jalan Jalil Perkasa 1,
57000 Bukit Jalil, Kuala Lumpur

Email: CSCheW@mykris.net

Chapter 8 Term of the Access Agreement

- 8.1 The Operators shall enter into an Access Agreement for a term of no less than THREE (3) year from the execution date of the said Access Agreement.
- 8.2 Unless otherwise agreed and subject to MYKRIS not being able to provide access as a result of Force Majeure, MYKRIS shall only require an Access Seeker to acquire access to specified Access Service(s) under an Access Agreement for a minimum period as follows:

Access Service(s)	Minimum term
Infrastructure Sharing Service	36 months

Chapter 9 Termination and Suspension Obligations

9.1 Termination circumstances:

Subject to Section 9.4, MYKRIS may terminate an Access Agreement or part thereof if any of the circumstances referred to in Section 9.1(a), 9.1(b) or 9.1(c) below apply and MYKRIS has notified the Access Seeker of its intention to terminate the Access Agreement:-

- (a) the Access Seeker has materially breached the Access Agreement and MYKRIS 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 remedy its 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.

MYKRIS 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.

9.2 Change in law:

Where the continued operation of the Access Agreement or access to any Access Service(s) provided by MYKRIS is or will be unlawful (as a result of a legislative change), the Access Seeker and MYKRIS 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 MYKRIS 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, MYKRIS may terminate the provision of access to the relevant Access Service(s).

9.3 Suspension circumstances

Subject to Section 9.4, MYKRIS 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 MYKRIS' Network or are a material 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 MYKRIS, its employees or contractors;
- (c) the Access Seeker's Facilities cause material physical or technical harm to any Facilities of MYKRIS 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 MYKRIS or the provision by MYKRIS of Access Service(s) under the Access Agreement.

For the purposes of this Section 9.3, MYKRIS must provide the Access Seeker five (5) Business Days notice in writing, including written reasons, prior to suspending access to any Access Service(s).

9.4 **Approval**

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

9.5 **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 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 withdrawn or expires prior to the expiry of that term.

9.6 **Post-termination fees**

MYKRIS 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 (as described in section 8.2 above).

9.7 **Upfront charges refund**

On termination of an Access Agreement or access to any Access Service(s) provided under it, MYKRIS 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.

9.10 **Deposits and guarantees**

Notwithstanding the obligation in Section 9.7, MYKRIS 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 MYKRIS 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 MYKRIS as at the date of termination.

Schedule A General Terms and Conditions

The following are the general terms and conditions that will be reduced into an Access Agreement to be entered into between MYKRIS and the Access Seeker with respect to the Access Services offered by MYKRIS. For these terms to become binding on the Parties, a definitive Access Agreement must be drawn up and executed by both parties and subsequently registered with the Commission.

1. Forecasting Obligations

1.1 General

- 1.1.1 The Access Seeker shall, for the duration of the Term of the Access Agreement:
- (a) provide MYKRIS with a 12 month forecast of its requirements of Access within thirty (30) days from the date of this Access Agreement; and
 - (b) periodically not less than thirty (30) days before the anniversary of the Commencement Date of this Access Agreement, furnish to MYKRIS, reasonably accurate 12 month forecasts of its requirements for Access Services.
- 1.1.2 **Duration of Forecast.** All forecast provided by the Access Seeker shall, unless the context otherwise requires, be for a twelve (12) month period.

1.2 Forecast Request

- 1.2.1 MYKRIS may at any time, request in writing (“**Forecast Request**”) that the Access Seeker provide to MYKRIS the following information (“**Forecast Information**”) in sufficient detail to enable MYKRIS to carry out its network and provision planning for the Access Services for which access is required:
- a) Network area or operational area where access is required ;
 - b) Specific time table when each of the Access Services are required ;
 - c) The required capacity;
 - d) Such other information as may be reasonably necessary for MYKRIS to carry out network planning.
- 1.2.2 **Time to Provide Forecast Information.** The Access Seeker shall provide the Forecast Information to MYKRIS within five (5) weeks from the date of receipt of the Forecast Request, unless MYKRIS agrees in writing to an extension of the time limited for the provision of the Forecast Information.
- 1.2.3 **Confidentiality of Forecast Information.** MYKRIS shall treat all Forecast Information provided by the Access Seeker to MYKRIS as confidential and shall only be used by the following personnel: (a) those personnel who are in MYKRIS’s wholesale or interconnection group or (b) those personnel of MYKRIS who are part of MYKRIS’s Network engineering group with responsibility for interconnection, for the purpose of responding to and planning for the forecast.

- 1.2.4 **Distribution of Forecast Information.** MYKRIS may only distribute Forecast Information of an Access Seeker outside the group of people referred to in Section 1.2.3 above if: (a) the Forecast Information of the Access Seeker is aggregated with forecasts provided by other operators and MYKRIS's own requirements; and (b) the Forecast Information or its use does not otherwise specifically identify the Access Seeker in any manner.

1.3 Updating & Confirming Forecasts

- 1.3.1 **Updating Forecasts.** Regardless of whether MyKRIS makes a Forecast Requests, the Access Seeker shall update its forecast quarterly and shall inform MyKRIS in writing of the updated forecast in writing, so as to enable MyKRIS to carry out efficient network planning and management to meet its current and future requirements and the performance of its obligations under this Access Agreement.
- 1.3.2 **Forecast Confirmation.** If MYKRIS requires the Access Seeker to confirm its forecasts, then the Access Seeker shall within 5 Business Days submit a statement confirming its forecasts. Upon such confirmation, the forecasts shall be deemed to be a *confirmed Access Order* for the purposes of Section 2 Ordering and Provisioning Obligations of this Agreement, to enable MYKRIS to undertake provisioning of the Access Services, subject always to the availability of spare capacity for such services or facilities.

1.4 Constrained Capacity

If MyKRIS reasonably believes that the aggregate of the total capacity of Access Services required by the Access Seeker under its relevant forecasts, MyKRIS's own requirements, and other 3rd party access seekers' forecast, would exceed the capacity which MyKRIS can provide, then MyKRIS will notify the Access Seeker of such constrained capacity, whereupon MyKRIS will endeavour to allocate the available capacity to all access seekers in accordance with Capacity Allocation Policy maintained by MyKRIS as follows:

- 1.4.1 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;
- 1.4.2 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
- 1.4.3 shall :
- a. be fair and reasonable
 - b. 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;

- c. treat the requirements of all Access Seekers on an equivalent basis to the requirements of Access Providers's own divisions, subsidiaries, partners or other entities in which it has a direct or indirect equity, contractual or other interest; and
 - d. allocate the available capacity in the relevant Facilities and/or Services in proportion to each Operator's Forecast and/or Order requirements; and
- 1.4.4 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.

1.5 Forecast Rejection or Acceptance

- 1.5.1 **Insufficiency of Forecast Information.** If MYKRIS considers that the Forecast Information supplied by the Access Seeker pursuant to Section 1.2.1 (above) is insufficient, then MYKRIS will notify the Access Seeker within five (5) Business Days of receipt of the Forecast Information, of the insufficiency of the Forecast Information and specifying what additional information MYKRIS requires.
- 1.5.2 **Acceptance.** MYKRIS will notify the Access Seeker within fifteen (15) Business Days of receiving the Forecast Information if the Forecast Information is accepted by MYKRIS.
- 1.5.3 **Effect of Acceptance.** If the Forecast Information is accepted, then the Access Seeker may not cancel, vary or alter the Forecast Information, unless MyKRIS so agrees in writing.
- 1.5.4 **Rejection.** MyKRIS may send a rejection notice to the Access Seeker within fifteen (15) Business Days of receipt of the Forecast Information, if it rejects the Access Seeker's forecast. The rejection notice will specify the reasons for rejection together with an offer by MyKRIS to meet with the Access Seeker within five (5) Business Days of the rejection notice, to discuss the rejection and alternative methods by which the Access Seeker may comply with the Forecast Request.

1.6 Review of Forecasts Upon Rejection

- 1.6.1 **By Access Seeker.** Upon the rejection of the Forecast Information by MyKRIS pursuant to Section 1.5.4 above, the Access Seeker may within twenty-one (21) Business Days from the receipt of the rejection notice by the Access Seeker, review it's Forecast Information and re-submit an amended forecast for MyKRIS' consideration.
- 1.6.2 **By MYKRIS.** If an Access Seeker submits an amended forecast, MYKRIS shall reconsider the same and the provisions set out in this Section 1 shall apply as if such amended forecast were a fresh forecast.

1.7 Over-forecasting

- 1.7.1 The Access Seeker shall refrain from over-forecasting its requirements for the Access Services.
- 1.7.2 MyKRIS shall determine whether or not the Access Seeker has over-forecasted its requirements on an annual basis by comparing the forecast amount and the previous Access Orders made for that year.
- 1.7.3 Should the Access Seeker's forecasted requirements exceed the Access Orders for that year, then there shall be deemed to be an over-forecast, and Section 1.8 shall apply in such cases.

1.8 Effect of Over-Forecasting

- 1.8.1 If there has been an over-forecast by the Access Seeker, and
 - (a) MyKRIS incurs costs and expenses in meeting such forecast, which were reasonably and necessarily incurred by MyKRIS, and
 - (b) MyKRIS has reasonably sought to mitigate its loss over a six (6) month period;then MyKRIS shall be entitled to recover from the Access Seeker an amount not exceeding seventy-five (75%) percent of such costs and expenses which could not have been mitigated by MyKRIS during the aforementioned six (6) month period.
- 1.8.2 The amount ascertained by MyKRIS in accordance with Section 1.8.1 above, shall be deemed to be a debt due from the Access Seeker to MYKRIS and MYKRIS shall include the said amount in the Invoice to the Access Seeker for the relevant Billing Period.
- 1.8.3 The Access Seeker shall pay the amount invoiced in accordance with Section 8 Billing and Settlement Obligations of this Access Agreement.

1.9 Failure to provide Forecasts

- 1.9.1 Any failure, neglect or refusal by the Access Seeker to comply with its obligations set out in this Section 1, shall entitle MyKRIS to continue to provide access to the Access Seeker but such provision of access may be at the level based on previous year's usage or level but such provision (if any) shall be without prejudice to MyKRIS's right to reduce such provision as dictated by the needs of MyKRIS and 3rd party access seekers. In either case, MYKRIS shall not be responsible for any loss, damages, costs or expenses arising to the Access Seeker.

2. Ordering and Provisioning Obligations**2.1 Access Order Information by Access Seeker**

- 2.1.1 The Access Seeker shall provide MYKRIS with an Access Order, which shall set out the following information (“**Access Order Information**” or “AOI”):
- (a) The information specified in Schedule [*state Schedule number in Access Agreement*] – General Information [*details of which are set out in this RAO*];
 - (b) the Access Services for which access is required;
 - (c) the proposed time for delivery of access by MyKRIS;
 - (d) the locations of delivery in accordance with MYKRIS’s published Points of Interface (POI);
 - (e) the specifications, technical data, functionality and inter-operability of the Equipment which the Access Seeker will be using in connection with the Access Order; and
 - (f) such other information as the Access Seeker may reasonably believe that MyKRIS may require in order to fulfil the requirements of Access Seeker.
- 2.1.2 The Access Seeker shall provide the AOI in sufficient detail and in sufficient time to enable MyKRIS to evaluate and plan the provisioning of the Access Services.
- 2.1.3 **Confidentiality of AOI.** MYKRIS shall treat all AOI provided by the Access Seeker to MYKRIS pursuant to this Access Agreement as confidential and such AOI shall only be used by the following MYKRIS personnel: (a) those personnel of MYKRIS who are in MYKRIS’s wholesale or interconnection group; or (b) those personnel of MYKRIS who are part of MYKRIS’s Network engineering group with responsibility for interconnection for the purpose of responding to and provisioning the Order.

2.2 Acknowledgement of Receipt of Access Order by MYKRIS

- 2.2.1 MYKRIS will issue to the Access Seeker an acknowledgement of receipt of the Access Order within two (2) Business Days. The following information will be provided in the receipt :
- a) the time and date of receipt;
 - b) the available capacity in MyKRIS’s relevant network facilities or network services;
 - c) time frame for the fulfilment of the Access Order;
 - d) a statement that the Access Order has been placed in the queue based on MYKRIS’s queuing policy; and
 - e) such additional information as may be required by MYKRIS to clarify the Access Order.

2.3 Additional Information

The Access Seeker shall revert to MyKRIS within ten (10) Business Days, with the additional information requested by MYKRIS in section 2.2.1 (e). Insufficient or incomplete information provided by the Access Seeker will entitle MYKRIS to reject the Access Order.

2.4 Service Qualifications

- 2.4.1 MYKRIS shall be entitled to conduct Service Qualifications on the relevant portion of its network as deemed necessary, pursuant to any request for access by an Access Seeker. MYKRIS may give a written notice and notify the Access Seeker within five (5) Business Days of receipt of the Access Order, that it intends to conduct such Service Qualification with reasons to take such action.
- 2.4.2 The Access Seeker, may with the written consent of MYKRIS and upon terms to be agreed, conduct its own Service Qualification.
- 2.4.3 MYKRIS shall use all reasonable efforts to complete the Service Qualification with respect to an Access Order within fifteen (15) Business Days of the commencement of the Service Qualification.
- 2.4.4 MYKRIS will inform the Access Seeker of the result of the Service Qualification within two (2) Business Days of the completion of such Service Qualification.
- 2.4.5 The Access Seeker may withdraw its Access Order, without penalty, within ten (10) Business Days after receiving the results of the Service Qualification. MYKRIS reserves the right to charge an administrative fee if the Access Seeker withdraws its Access Order after the prescribed 10 day period.

2.5 Acceptance or Rejection of an Access Order

- 2.5.1 MYKRIS will notify the Access Seeker, within either five (5) Business Days or if MYKRIS intends to carry out a Service Qualification, ten (10) days, (as the case may be), from the date of receipt of the Access Order by MYKRIS as set out in the acknowledgement issued under Section 2.2 above, whether such Access Order is accepted or rejected.
- 2.5.2 **Rejection.** MYKRIS may reject an Access Order on any of the following grounds:
- a) It is not technically feasible to provide the requested Access Services;
 - b) MYKRIS has insufficient capacity to provide the requested network services of facilities at the time requested by the Access Seeker;
 - c) The Access Order exceeds the forecast levels provided by the Access Seeker pursuant to Section 1 of this Access Agreement;
 - d) the Access Order or variation requested duplicates another Access Order waiting for fulfillment;
 - e) Access Seeker has not obtained the necessary related agreements from MYKRIS;
 - f) MYKRIS has reasonable grounds to believe that the Access Seeker would materially fail to comply with the terms of Access Agreement,
 - g) MYKRIS has reasonable grounds to believe that the Access Seeker would fail, in connection with the supply of the Access Services, to protect the integrity of MYKRIS's Network and/or safety of individuals working on or using services supplied by MYKRIS's Network.
- 2.5.3 If the Access Order is rejected, then MYKRIS shall issue a notice of rejection which shall contain, inter alia, the following information :

- a) the ground(s) of rejection as stated in section 2.5.2;
 - b) the time period by which MYKRIS will accept a modified Access Order;
 - c) the nature of such acceptable modifications to the Access Order.
- 2.5.4 The Access Seeker may within five (5) Business Days of receipt of the Notice of Rejection, request in writing to meet MYKRIS to discuss the reasons for rejection and alternative methods of compliance.
- 2.5.5 If MYKRIS refuses to meet with the Access Seeker then the Access Seeker may if it disagrees with the grounds for rejection, initiate the dispute resolution process specified in Schedule [*insert Schedule number in Access Agreement*] – Dispute Resolution Procedure.
- 2.5.6 **Acceptance.** If the Access Order is accepted, then MYKRIS shall issue a notice of acceptance which shall contain, *inter alia*, the following information :
- a) The specific delivery date for the Access Services, which shall be: (i) in the case of Access Order for new facilities or services, no later than sixty (60) days from the date of the Access Order, or (ii) in the case of augmentation of the current capacity on existing facilities or infrastructure, no later than forty (40) days from the date of the Access Order.
 - b) The actual or an estimate of the charges payable to MYKRIS by the Access Seeker, for the fulfillment of the Access Order. MYKRIS may initially provide an estimate of the charges, which may be subsequently varied. If a variation of charges occurs, then the Access Seeker may withdraw the Access Order if the variation of the charges exceeds the original estimate by ten per centum (10%).
 - c) That the Access Seeker must within ninety (90) days from the date of the notice of acceptance confirm in writing to MYKRIS of its intention to proceed with the Access Order. The charges set out shall remain valid for the period of ninety (90) days.

2.6 Confirmation & Charges

- 2.6.1 **Access Seeker's Confirmation.** If MyKRIS accepts an Access Order, the Access Seeker shall within the ninety (90) day period from the date of notice of acceptance, confirm in writing its agreement to proceed with such Access Order.
- 2.6.2 **Estimate Charges.** If MYKRIS had provided an estimate of the charges to the Access Seeker, MYKRIS will not exceed the estimate unless MYKRIS provides the Access Seeker with written notice by prior to MYKRIS exceeding the estimate, stating that:
- (a) the estimate will likely to be exceeded;
 - (b) the reasons for exceeding the estimate; and
 - (c) a further estimate of the charges for the work necessary to fulfill the Order.
- 2.6.3 If the revised estimate exceeds the original estimate by more than 10% of the original estimate, then the Access Seeker may within ten (10) Business Days from the date of the notice specified in Section 2.6.2 above, withdraw the Access

Order, and such withdrawal shall not expose the Access Seeker to any penalty, and MYKRIS shall also be released from fulfilling the Access Order, without being in breach of any of its obligations under the Access Agreement.

- 2.6.4 If the Access Seeker does not withdraw the Access Order after being notified by MYKRIS in accordance with Section 2.6.2 above, then the Access Seeker shall be deemed to have agreed to the revised charges from MYKRIS, and MYKRIS shall continue with the work and the Access Seeker shall be liable to pay to MYKRIS the revised charges.

2.7 Fulfilment of an Access Order

Upon receipt of the confirmation specified in Section 2.6.1 above, MYKRIS will use all reasonable efforts to fulfil the Access Orders for the Access Services which complies to the forecast supplied by such Access Seeker, on the terms and conditions contained in the Access Agreement

2.8 Required Extra Capacity

- 2.8.1 MYKRIS may, by written notice, require the Access Seeker to purchase additional capacity on the Access Seeker's side of the Network, as MYKRIS reasonably estimates, may be required by the Access Seeker to meet the demand on its Network.
- 2.8.2 Should the Access Seeker fail, neglect or refuse to procure such additional capacity within seven (7) Business Days of MYKRIS's notice, and the actual demand exceeds the capacity on the Access Seeker's Network, MYKRIS will notify the Access Seeker in writing of such overload on MYKRIS's Network. Thereafter, the parties shall meet within five (5) Business Days of the notice, to identify alternative sources of the required capacity for the Access Seeker.
- 2.8.3 If the access capacity issue on the Access Seekers Network cannot be resolved within ten (10) Business Days of the last meeting between the parties, MYKRIS shall be entitled, without further notice to the Access Seeker, to bar or block services (including calls) to the Access Seeker's Network to the extent necessary to minimise congestion within MYKRIS's Network.

2.9 Delivery Date for Access

- 2.9.1 MYKRIS will deliver the ordered access to the Access Services on or before the date specified in the notice of acceptance sent by MYKRIS.
- 2.9.2 Should MYKRIS be able to deliver the ordered access to the Access Seeker earlier than the agreed delivery date, MYKRIS will advise the Access Seeker of such early delivery and if agreed to by the Access Seeker, deliver such ordered access at such earlier date.

2.10 Delay to Delivery Dates

- 2.10.1 In the event there is a delay in the delivery date, MYKRIS will as soon as reasonably practicable, notify the Access Seeker of the delay and the reasons for the delay and also advise the Access Seeker of the revised date of delivery. If the

delay is longer than fourteen (14) days, the Access Seeker may cancel the Access Order without any penalty.

- 2.10.2 MYKRIS will give the Access Seeker a rebate for any delay in the delivery date, such rebate shall be of an amount equivalent to the recurring charges payable by the Access Seeker to MYKRIS for access to the network services or facilities over a period equal to the period of the delay solely due to MYKRIS. Notwithstanding the foregoing, MYKRIS shall not be liable for any delay caused by or attributable to the Access Seeker. The rebate will be reflected in the Invoice issued for the next Billing Cycle.

2.11 Cancellation of Access Orders

- 2.11.1 An Access Seeker may cancel or vary an Access Order in writing provided to MYKRIS at any time prior to provisioning of the Access Services by MYKRIS. MYKRIS shall be entitled to charge the Access Seeker for all costs and expenses incurred by MYKRIS in relation to the cancelled or varied Access Order.
- 2.11.2 For the purposes of this Section a variation of an Access Order shall be an addition, modification, substitution or omission made to an Access Order.

2.12 Testing and Provisioning by Access Seeker

MYKRIS will offer all reasonable assistance and cooperation to the Access Seeker in relation to the testing and provisioning of ordered Access Services. MYKRIS shall be entitled to charge the Access Seeker a reasonable one-off fee for such assistance and cooperation.

2.13 Queuing Policy for Access

MYKRIS maintains a Queuing Policy for all Access Seekers on a non-discriminatory basis that maximises the efficiency of its ordering and provisioning process. MYKRIS will place an Access Seeker in MYKRIS's queuing system at the time of providing an acknowledgement of receipt of the Access Order pursuant to Section 2.2 above.

3. Decommissioning Obligations

3.1 Decommissioning Notice

In the event MYKRIS is desirous of decommissioning a Point of Interface, either (a) as a result of a third party landlord's notice to vacate under a tenancy or lease agreement, or

(b) for any other commercial reason, MYKRIS shall give a Decommissioning Notice to the Access Seekers if the Access Seeker is so affected, at least:

- a) one (1) year's notice in writing to the Access Seeker prior to the decommissioning of a Point of Interface; or

- b) six (6) month's notice in writing to the Access Seeker prior to the decommissioning of any network facilities or network services.

(as the case may be).

MyKRIS may give a shorter notice in circumstances where it is unable to meet the notice requirements set out in this section 3.1, but in any event shall give as much notice as possible.

3.2 Co-operation by MYKRIS

MYKRIS will offer reasonable co-operation to all relevant Access Seekers to work out a timetable for the decommissioning of a relevant Point of Interface, network facilities or network services.

3.3 Alternative Arrangements

3.3.1 Where MYKRIS gives a Decommissioning Notice, MYKRIS will use all reasonable efforts to provide the affected Access Seeker, a functionally equivalent interconnection at an alternative Point of Interface, on terms and conditions that are similar to that applicable to the Point of Interface that has been decommissioned, for a period of three (3) years from the date the alternative Point of Interface was commissioned. In the event MYKRIS is unable to agree or provide an alternative Point of Interface to the Access Seeker, the parties will discuss and agree on a reasonable compensation as stated below upon the decommissioning. The Access Seeker shall use its best efforts to obtain interconnection from another Operator.

3.3.2 Where MYKRIS gives a Decommissioning Notice to the Access Seeker that it will decommission a network facility or network service, MYKRIS will use all reasonable efforts to provide the affected Access Seeker access to an alternative network facility or network service on terms and conditions that are similar to that applicable to the network facilities or network services that has been decommissioned, for a period of three (3) years from the date the alternative network facilities or network services are commissioned. In the event MYKRIS is unable to agree or provide an alternative network facilities or network services to the Access Seeker, the parties will discuss and agree on a reasonable compensation as stated below upon the decommissioning. The Access Seeker shall use its best efforts to obtain access to network facilities or network services from another Operator.

3.4 Compensation for Decommissioning Point of Interface

3.4.1 MYKRIS shall pay to the Access Seeker, the Access Seeker's reasonable costs, necessarily incurred in: (a) decommissioning any of the Access Seeker's links to the Point of Interface that is proposed to be decommissioned and that are or will be rendered redundant by the proposed decommissioning; (b) installing or otherwise procuring links between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to Section 3.3.1 above; and (c) the carriage of traffic between the Point of Interface that is proposed to be decommissioned and the substitute Point of Interface to be provided pursuant to Section 3.3.1 above for a period of three (3) years from the date of decommissioning.

3.5 Compensation for Decommissioning Network Facilities or Network Services

- 3.5.1 MYKRIS shall pay to the Access Seeker, the Access Seeker's reasonable costs, necessarily incurred in (a) moving the Access Seeker's Equipment from the decommissioned network facilities to the alternative network facilities offered in accordance with Section 3.3.2 above; or (b) re-arranging Equipment to connect to the alternative network services offered in accordance with Section 3.3.2 above, unless such decommissioning is caused by an event of Force Majeure.

3.6 Determining Compensation.

The parties agree to the following process to determine the compensation payable by reason of Sections 3.4 and 3.5 above:

- 3.6.1 The Access Seeker must within thirty (30) days of the completion of the decommissioning and re-installation at the substitute Point of Interface, submit to MYKRIS details of the Access Seeker's reasonable costs identified in Sections 3.4.1 and 3.5.1 above.
- 3.6.2 If MYKRIS considers that the submission is insufficient for MYKRIS to verify the costs, MYKRIS may request the Access Seeker to provide further information, whereupon the Access Seeker shall within thirty (30) days submit the further information required or provide an explanation as to its unavailability.
- 3.6.3 Upon receipt of all requisite information from the Access Seeker, MYKRIS shall within thirty (30) days, evaluate and determine if the costs incurred is reasonable and necessary, and if MYKRIS agrees with quantum of costs incurred, MYKRIS shall notify the Access Seeker in writing of its decision and the Parties shall agree on a mechanism for payment of the compensation.
- 3.6.4 If after the period set out in Section 3.6.3, MYKRIS disagrees with the computation provided by the Access Seeker, then MYKRIS shall notify the Access Seeker stating its reasons for its disagreement. Upon such notification, the Parties shall meet at a mutually agreed venue and time to resolve the disagreement failing which, a dispute is deemed to have arisen, which shall be resolved in accordance with the *Dispute Resolution Procedure in Appendix E [As Stated in Access Agreement]*.

4. Network Facilities Access and Co-Location

4.1 Applicability

If any co-location or access is to be provided by MYKRIS under this Access Agreement, then the provisions set out in this section shall be applicable.

4.2 Inspection

MYKRIS will allow a selected number of employees of the Access Seeker to physically inspect the network facilities of MYKRIS, provided that the Access Seeker gives MYKRIS five (5) days prior notice of such inspection and furnishes a list of the Access Seeker's nominated employees who will attend the inspection. MYKRIS shall have the right to limit the number of persons allowed in any of its facilities, and may refuse entry to any unauthorised employees of the Access Seeker from gaining entry into such facilities.

4.3 *Physical Access to MYKRIS's Facilities*

MYKRIS shall subject to the terms set out below, allow the Access Seeker's employees physical access to MYKRIS's specified facilities, and also physical control over the Access Seeker's Equipment located at such network facilities at any time the Access Seeker needs such access, subject always to the Access Seeker providing the names of its personnel who will have access to MYKRIS' facilities prior to such access.

4.4 *Escorts during Access and Site Register*

- 4.4.1 MYKRIS may at its discretion and at its costs, for security purposes, assign escorts (who may either be its own employees or third parties) to be present when the authorised employees of the Access Seeker wish to enter onto MYKRIS's facilities.
- 4.4.2 The Access Seeker shall at all times establish and maintain a site register to record the names of all employees who visit MYKRIS's facility. MYKRIS shall be entitled to inspect such site register upon request. MyKRIS may on its own volition maintain a site register to record the names of all employees of the Access Seeker who visit MYKRIS's facility.
- 4.4.3 MYKRIS shall be entitled to refuse entry to any person purporting to be the Access Seekers employee if a proper site register is not maintained by the Access Seeker.

4.5 *Space Requirements*

- 4.5.1 MYKRIS will allocate space at each location where MYKRIS has available space and wishes to allow co-location to an Access Seeker at such location. Such allocation shall be made on a non-discriminatory manner.
- 4.5.2 **Provision of Information.** The Access Seeker shall at least thirty (30) days before the anniversary of the Commencement Date provide such information about its physical space requirements for a twelve (12) month period over the duration of the Term of the Access Agreement. This will enable MYKRIS to satisfy the provisions of Section 3.13.11 of the MSA which requires Access Providers to submit information regarding its physical space availability, usage and space reservation. MYKRIS may request the Access Seeker to provide such further information and the Access Seeker shall provide such further information within five (5) Business Days of the request.

4.6 *Preparatory Work by the Access Seeker*

MYKRIS will permit an Access Seeker's employees or its authorised contractor to carry out preparatory work at MYKRIS's network facilities if such work is required for the purposes of allowing the Access Seeker to obtain access to or to co-locate at MYKRIS's network facilities. MYKRIS shall only allow such preparatory work to be carried out if it is satisfied that such employees or authorised contractors of the Access seeker have the necessary qualifications and skills to carry the intended work.

4.7 *Preparatory Work by MYKRIS*

4.7.1 If the parties agree that MYKRIS shall carry out the preparatory work on behalf of the Access Seeker, then MYKRIS shall undertake the preparatory work and the Access Seeker shall furnish all necessary co-operation to MYKRIS to enable MYKRIS to complete the preparatory work and MYKRIS shall be entitled to the costs reasonable incurred in carrying out the preparatory work based on an estimate given to the Access seeker.

4.7.2 **Right to Withdraw.** If MYKRIS undertakes preparatory work for the Access Seeker based on a previous estimate, and if MYKRIS is of the opinion that the estimated charges may be exceeded, MYKRIS will give a written notice to the Access Seeker providing a revision of the estimated charges. The Access Seeker may within five (5) Business Days from receipt of the revised estimate, withdraw the request that MYKRIS carry out the preparatory work without penalty if the revised estimate exceeds the previous estimate by more than ten percent (10 %). The Access Seeker will be liable to compensate the MYKRIS if it withdraws the access request in all other circumstances.

4.7.3 If the Access Seeker does not respond within the time limited for withdrawing the request for preparatory work, then the revised estimate shall be deemed to be agreed by the Access Seeker and MYKRIS shall continue with the preparatory work based on the revised estimates.

4.8 *Delays in Preparatory Work*

If there is likely to be a delay on the part of MYKRIS in carrying out the preparatory work within the agreed time frame, MYKRIS will promptly notify the Access Seeker of such delay and the reasons thereof. If the delay exceeds fourteen (14) days, the Access Seeker shall have a right to cancel the preparatory work being undertaken by MYKRIS without penalty. In addition MYKRIS may be liable to compensate the Access Seeker for reasonable costs incurred as a result of the delay, provided the delay was not caused or contributed by the Access seeker and subject to reasonable efforts by the Access Seeker to mitigate those costs.

4.9 *Utilities and Ancillary Services*

If MYKRIS has permitted access or physical co-location at a MYKRIS location or network facilities, MYKRIS will, subject to the parties reaching a prior agreement as to applicable cost, make available the under mentioned utilities and ancillary services where such utilities and ancillary services are within the control of MYKRIS and MYKRIS has capacity to provide:

- (a) access to roads
- (b) access to land
- (c) power
- (d) back up power
- (e) environmental services such as ventilation, air conditioning, fire protection
- (f) security services
- (g) site maintenance.

4.10 Marking of Access Seekers Equipment

The Access Seeker shall mark or label its Equipment which is co-located with MYKRIS's Equipment in such a manner that the Equipment is easily identified as belonging to the Access Seeker.

4.11 Access for Maintenance

MYKRIS will allow reasonable access to the Access Seeker's personnel for the purposes of maintaining the Access Seeker's Equipment PROVIDED THAT the Access Seeker first notifies MYKRIS of the names of its personnel who will require access to carry out such maintenance, and MYKRIS's has approved that those Access Seeker's personnel may access those facilities or location.

4.12 Extensions of Network Facilities

- 4.12.1 MYKRIS may, subject to technical feasibility and at the Access Seeker's own costs, reasonably permit the Access Seeker to extend MYKRIS's network facilities as may be reasonably required to meet the Access Seekers requirements.
- 4.12.2 If the Access Seeker intends to extend MYKRIS's network facilities, the Access Seeker must first submit a proposal to MYKRIS setting out the purpose of such extension, the design of such extension and the impact such extensions may have on MYKRIS's network.
- 4.12.3 Within thirty (30) days from receipt of the proposal by MYKRIS, MYKRIS will evaluate and determine whether to agree to such extension or not. The decision of MYKRIS is final and the Access Seeker agrees that such decision shall be binding on the Access Seeker.
- 4.12.4 If MYKRIS agrees with the proposal, then MYKRIS shall advise the Access Seeker of its decision. The Access Seeker shall be responsible for obtaining all permits and approvals required by law if it is to undertake the extension work, and indemnify and keep MYKRIS indemnified against all losses, costs, fines, damages, expenses and claims which may arise by virtue of the Access Seeker undertaking the extension work.

5. Billing and Settlement Obligations

5.1 Security Sum & Charges

- 5.1.1 **Charges.** The Access Seeker shall pay MYKRIS the agreed charges for the Access Services. The charges may either be commercially set prices or regulated prices set out in the Mandatory Standard on Access Pricing, Commission Determination No. 1 of 2017 or any other Price Determinations issued by the MCMC from time to time.
- 5.1.2 If MYKRIS incurs additional costs outside those envisaged by the parties in the Access Agreement, then the Access Seeker shall pay such additional costs to MYKRIS, in accordance with the terms set out herein.
- 5.1.3 **Security Sum.** The Access Seeker may be required to provide to MYKRIS a bank guarantee from a Bank in Malaysia for an amount equal to [*amount to be specified – note: the amount would be approximately upto three (3) months charges of the relevant Access Services provided to the Access Seeker*] upon due credit risk assessment by MyKRIS.

5.2 Invoices

- 5.2.1 MYKRIS will issue Invoices to the Access Seeker in writing and/or in electronic form, in within thirty (30) calendar days of the end of the Billing Period. The invoices shall be for all amounts due to MYKRIS in respect of the supply of Access Services during such Billing Period, including such amounts as referred to in Section 5.1.2 above, less any rebates payable by MYKRIS to the Access Seeker under the Access Agreement.
- 5.2.2 **Billing Cycle.** MYKRIS will issue invoices in monthly billing cycles, unless otherwise agreed between MYKRIS and the Access Seeker, and each Invoice will be supported by such information reasonably necessary to allow the Access seeker to verify the Invoice.
- 5.2.3 In the event MYKRIS is unable for any reason to issue an invoice, MYKRIS may issue a provisional Invoice based on the previous months invoice.
- 5.2.4 Unless otherwise agreed by MyKRIS and Access Seeker in an Access Agreement, all invoices are in Ringgit Malaysia (RM) and payment shall be made by the Access Seeker in Ringgit Malaysia.

5.3 Billing Errors

The Access Seeker must notify MYKRIS, within ten (10) days from the date of the Invoice, if there are errors in the Invoice. Upon verification and confirmation of such errors, MYKRIS will make the necessary adjustments in the next Invoice to the Access seeker.

5.4 Payment

- 5.4.1 The Access Seeker shall make full payment of all Invoices (including any provisional Invoice) issued to it by MYKRIS within thirty (30) days from the date

of each Invoice. The payments may be made either by cheque or electronic fund transfer directly to an account nominated by MYKRIS.

- 5.4.2 Notwithstanding anything to the contrary, the Access Seeker may withhold payment of amounts disputed in good faith, provided that the Access Seeker notifies MYKRIS within the timelines as set out in Section 5.6.1 below.
- 5.4.3 After resolution of the Billing Dispute, if MYKRIS is obliged to refund an amount to the Access Seeker, MYKRIS will pay interest on the refunded amount in accordance with Section 8.8 below. Interest will be payable from the date the Access Seeker paid the disputed amount to the date of the refund by MYKRIS.
- 5.4.4 If the dispute is resolved against the Access Seeker, the Access Seeker shall, in addition to paying the amount disputed, pay interest at the rate specified in Section 5.8.

5.5 *Billing Dispute Notification*

5.5.1 **Right to Dispute.** If the Access Seeker disputes any of the Invoices (within the time periods specified in section 5.6 below), the Access Seeker shall provide sufficient and complete information to MYKRIS relating to such dispute including:

- a) the nature of the dispute, supported with necessary documents;
- b) the amount disputed;
- c) detail of the Invoice stating the Access Seekers account number with MYKRIS, the invoice reference number, the invoice date, the invoice amount and the billing verification information
- d) such other information as the Access Seeker deems necessary to facilitate the expeditious resolution of the dispute.

5.5.2 **Grounds for Disputing Invoice.** An Invoice may be disputed by the Access Seeker if the Access Seeker has reasonable grounds to believe that an error has arisen from one of the following circumstances:

- (a) MYKRIS'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 Access Seeker's Billing System;
- (c) MYKRIS has made some other error in respect of the recording of the calls or calculation of the Charges.

5.6 *Billing Disputes Timeline*

5.6.1 If the Access Seeker intends to dispute an Invoice, the Access Seeker must do so within the following time lines:

- a) in the case of domestic calls, the Access Seeker will notify MYKRIS within thirty (30) days of receipt of the disputed invoice from MYKRIS;
- b) in the case of international calls, the Access Seeker will notify MYKRIS within six (6) months of receipt of the disputed invoice from MYKRIS.

- c) in the case of any other Facilities and/or Services, the Access Seeker will notify MyKRIS within thirty (30) Business Days of receipt of the disputed invoice from MyKRIS
- 5.6.2 If the Access Seeker does not dispute the Invoice within the above specified time lines, then the Access Seeker shall be deemed to have accepted the Invoices and shall pay the disputed amount to MYKRIS within five (5) Business Days without any deductions or set-off.

5.7 Billing Dispute Resolution

The parties agree to use their reasonable endeavors to promptly resolve any Billing Dispute notified under this section 8. If the parties are unable to resolve a Billing Dispute, then such Billing Dispute will be resolved in accordance with the Dispute Resolution Procedure in Annexure A of the MSA Determination.

5.8 Late Payment Interest

- 5.8.1 MYKRIS shall be entitled to charge the Access Seeker late payment interest on all amounts outstanding with respect to any overdue Invoice, at the rate of two percent (2%) per annum above Malayan Banking Berhad's base rate calculated daily from the due date of the Invoice until the date of full payment or eight percent (8%) per annum from the due date until full payment (whichever is the lower).
- 5.8.2 If any invoice is overdue by sixty (60) days or more, such invoice shall be subject to further interest at the rate of three percent (3%) per annum above the Malayan Banking Berhad's base rate calculated daily from the sixtieth day following the due date until the date of full payment, or eight percent (8%) per annum from the due date until full payment (whichever is the lower).

5.9 Backbilling

- 5.9.1 If MYKRIS discovers that there are any errors or omissions, or miscalculations in an Invoice ("**the affected Invoice**"), MYKRIS shall include the difference between the revised value (taking into account the errors, omissions and miscalculations) and the value of the affected invoice (with such errors, omissions and miscalculations), and such difference shall be included into a later Invoice. This differential amount shall be identified in sufficient detail to enable the Access Seeker to undertake a reconciliation of the Invoices and payments made, PROVIDED THAT the amendment is made within two (2) months from the date of issuance of the affected invoice, or three (3) months from the latest date when the calls were made or service provided by MYKRIS.
- 5.9.2 Upon receipt of the Invoice containing such differential amounts, the Access Seeker may either request for further information within ten (10) Business Days or pay the said Invoice.

6. Set-Off

- 6.1 The Access Seeker shall not deduct, withhold or set-off any amounts stated in the Invoices against any amounts which MYKRIS may owe the Access Seeker or which may be due from MYKRIS to the Access Seeker.
- 6.2 If the Access Seeker in contravention of this section 6 withholds, sets-off or deducts any amounts from the Invoice (except if a Billing dispute has been initiated under Sections 5.5 to 5.7 above), then MYKRIS may suspend the provision of the Access Services, until the Access Seeker pays the amount withheld.
- 6.3 The amount withheld shall be subject to interest as computed in accordance with Section 5.8 above.
- 6.4 MYKRIS may set-off any amount owing to it by the access seeker if the access seeker is in default of payment for 3 billing cycles or in liquidation, from any monies held by the access provider to the account of the access seeker including calling on any security guarantees or security deposits.

7. General Obligations of the parties

7.1 MYKRIS's obligation to supply

- 7.1.1 MYKRIS shall supply to the Access Seeker the Access Services as set out in Appendix Part D2 for the duration of the Term of the Access Agreement.

7.2 Additional Access Requirements

- 7.2.1 If the Access Seeker requires access to additional network facilities or network services not set out in Appendix Part D2 to this Access Agreement, then the Access Seeker may obtain Access to such additional Access shall by submitting an Access Request in accordance with Part B of the MYKRIS RAO.
- 7.2.2 If MYKRIS accepts such Access Request, then the parties agree that MYKRIS may elect to either amend this Access Agreement by preparing a supplemental agreement, which adds such additional Access Services, or enter into a new Access Agreement for such additional Access Services.

8. Term of Access Agreement

8.1 Term

- 8.1.1 This Access Agreement shall be for a term of 3 years commencing from the Commencement Date until the Expiry Date ("**Term**"). Or for a term that mutually agreed by both parties upon commercial justification.
- 8.1.2 If the Access Seeker wishes to renew the Term of this Access Agreement, then the Access Seeker must give to MYKRIS a notice at least one-hundred and eighty (180) days notice before expiry of the Term requesting that the Access Agreement be renewed further a further term of two (2) years on the same terms and conditions as set out in this Access Agreement ("the Renewal Notice"), save

that MyKRIS shall have the liberty to review the access charges on commercially negotiated Access Services.

8.1.3 If MYKRIS agrees to such the Renewal Notice, then the parties shall execute a new Access Agreement on the new terms.

8.1.2 Term of Supply

Unless otherwise agreed by MyKRIS and Access Seeker in an Access Agreement, and subject to MyKRIS not being able to provide access as a result of Force Majeure, MyKRIS shall only require the Access Seeker to acquire access to individual Facilities and/or Services for a minimum period as follows :

	Facilities and/or Services	Minimum Period
1.	Infrastructure Sharing Services	Twelve (12) months

9. Suspension and Termination Obligations

9.1 Termination by MYKRIS

Without prejudice to any other rights or remedy which MYKRIS may have against the Access Seeker, but subject to Section 9.4 below, MYKRIS may, terminate the Access Agreement :

- (a) if any one of the following events have occurred:
 - (i) where the Access Seeker has committed a material breach of the Access Agreement, and MYKRIS has given the Access Seeker thirty (30) days to remedy the breach and the Access Seeker has failed, neglected and/or refused to do so; or
 - (ii) where the Access Seeker has become subject to a winding up order; or
 - (iii) a Force Majeure event has continued for a period of more than 90 days.

9.2 Change in law

9.2.1 Where the continued operation of the Access Agreement or access to any network facilities or network services provided thereunder is or will become unlawful as a result of legislative amendment(s), the Access Seeker and MYKRIS shall meet within five (5) Business Days of MYKRIS becoming aware of the legislative change, to review whether access to the relevant network facilities or network services may be provided by MYKRIS on terms and conditions acceptable to the Access Seeker and which would prevent such access from being unlawful under the legislative change (“**Alternative Terms and Conditions**”).

9.2.2 If the parties cannot agree on the Alternative Terms and Conditions within ten (10) Business Days or such further period as may be mutually agreed, MYKRIS may terminate this Access Agreement if MYKRIS obtains the approval of the Commission as set out in Section 9.4 below.

9.3 Suspension

9.3.1 Subject to Section 9.3.2, MYKRIS may only suspend access to any network facilities or network services in the following circumstances:

- a) the Access Seeker's network facilities materially and adversely affect the normal operation of MYKRIS's Network or are a material threat to the safety of any individual;
- b) the Access Seeker's network facilities or the supply of a network service poses an imminent threat to the life or the property of MYKRIS, its employees or contractors;
- c) the Access Seeker's network facilities cause material physical or technical harm to any network facilities of MYKRIS or any other person;
- d) where the Access Seeker has failed to pay Invoices in accordance with its obligations under Section 5 of this Access Agreement;
- e) where the Access Seeker has failed to provide additional security in accordance with section 14.3 of this Access Agreement ; or
- f) where a Force Majeure event occurs.
- g) the Access Seeker breaches any laws, regulations, rules or standards which has a material and adverse effect on MyKRIS or the provision by MyKRIS 's Facilities and/or Services under this Access Agreement.

9.3.2 Subject to Section 9.4 below, MYKRIS shall give an Access Seeker five (5) Business Days prior written notice of its intention to suspend the Access Seeker's access to any of MYKRIS's network facilities or network services. Such notice shall also contain written reasons for the intended suspension.

9.4 Prior Approval of Commission for Termination, Suspension, Variation

9.4.1 MYKRIS shall give the Commission prior written notice of its intention to terminate, suspend or materially vary an Access Agreement. Such notice shall also state the reasons for MYKRIS's action and its appropriateness.

9.4.2 The right of MYKRIS to terminate or suspend or seek to materially vary the Access Agreement or access to any Access Services provided under it, may be exercised only when the Commission has agreed to such a course of action and has so notified MYKRIS. Such notification may contain such conditions as the Commission may specify.

9.4.3 Upon receipt of such notification, MYKRIS shall comply with the conditions and timeframes set out by the Commission, notwithstanding any provision in this Access Agreement to the contrary.

9.5 Effect of termination

9.5.1 Any termination under this Access Agreement shall be without prejudice to any accrued rights and obligations of the parties at the date of termination.

9.5.2 MYKRIS shall not be entitled to any additional charges, costs or expenses on termination of an Access Agreement or access to any network facilities or network services provided under it except:

- a) charges invoiced in arrears and not yet paid; or
- b) charges arising during the minimum contractual period as set out in Section 5.1.2.3 above provided that:
 - i. such charges must be reduced to reflect any cost savings to MyKRIS from not having to supply the Facilities and/or Services to the extent that they have been terminated or suspended; and
 - ii. MyKRIS must use reasonable endeavors to mitigate its costs termination or suspension and maximize cost savings under paragraph 9.5.2 (b)i above

9.5.3 Upon the termination of an Access Agreement or access to any Access Services provided thereunder, MYKRIS shall refund to the Access Seeker all amounts paid in advance to the extent that the amount (or part thereof calculated on a pro-rata basis), relate to the period after the date of termination.

9.5.4 Notwithstanding the obligation in Section 9.5.3, MYKRIS shall:

- a) within sixty (60) days of termination of the Access Agreement refund to the Access Seeker any deposit paid less any amount owed to MYKRIS ; and
- b) immediately upon termination of the Access Agreement unconditionally waive any rights under any guarantee provided by the Access Seeker.

9.6 *Effect of Suspension*

9.6.1 If MYKRIS elects to suspend the Access Agreement, then for the duration of the suspension, MYKRIS shall not be required to provide any access to the Access Seeker, and the rights, responsibilities and obligations of the parties pursuant to this Access Agreement will be held in abeyance until the Access Agreement is reactivated, and the Access Seeker may not exercise any such rights.

9.6.2 If the Access Agreement is suspended, the period of suspension shall not affect the expiry date of the Access Agreement.

9.6.3 MYKRIS shall not be held responsible to the Access Seeker for anything occurring, arising or manifesting itself during the period of suspension, nor liable for any loss, costs, damages, expenses (including consequential losses) which the Access Seeker may suffer due to the suspension.

10. Assignment

10.1 Neither party shall assign the Access Agreement to any other person, unless the prior written consent of the other party to this Access Agreement is obtained (which consent shall not be unreasonably withheld).

11. Force Majeure

- 11.1 Neither party will be deemed to be in default under this Access Agreement, or will be liable to the other, for failure to perform any of its non-monetary obligations under this Agreement for any period and to the extent that such failure results from any event or circumstance beyond that party's reasonable control, including acts or omissions of the other party or third parties, natural disasters, riots, war, civil disorder, court orders, acts or regulations of governmental bodies, labour disputes or failures or fluctuations in telecommunications equipment or lines, or other equipment failure, and which it could not have prevented by reasonable precautions or could not have remedied by the exercise of reasonable efforts, provided that the exercise of such reasonable precautions or reasonable efforts will not require the incurrence of any additional cost or expense (each, a **"Force Majeure Event"**).

12. Intellectual Property Rights

- 12.1 Each party shall license to the other party for the Term of the Access Agreement and on a royalty-free basis, all Intellectual Property rights necessary for the proper operation of the Access Agreement and the inter-operability of each party's networks, subject to any relevant third party licenses.
- 12.2 If either party fails to comply with its obligations under section 16.1, the party in default shall indemnify the other party from all loss suffered and liability incurred by the other party as a result of any infringement of any third party intellectual property rights used in the other party's network. This indemnification will be the only remedy and form of compensation available to the party invoking it relation to intellectual property licensed or disclosed under the Access Agreement.
- 12.3 Except as otherwise expressly provided in the Access Agreement, all intellectual property rights, including trade secrets if any, shall remain in the ownership of the person creating or commissioning the same and nothing in the Access Agreement shall confer or be deemed to confer on either party any rights or licenses in the intellectual property of the other party or of any third party.
- 12.4 Without prejudice to section 12.3, neither party shall be entitled to use any trademarks or service marks (whether registered or not) of the other party in any document or other medium, without the prior written consent of the other party.
- 12.5 The parties will negotiate arrangements (including in respect of title) concerning intellectual property jointly developed in the course of the performance of the Access Agreement or otherwise in connection with the Access Agreement.

13. Confidentiality

- 13.1 **Scope of Obligation.** Except as otherwise expressly provided in this Agreement, MYKRIS and the Access Seeker each agree that :
- (i) all information communicated to it by the other and identified as confidential, (or which the other party ought reasonably have known is confidential by nature) whether before or after the Commencement Date including without limitation information relating to the business affairs of the parties, information relating to the parties' customers or employees, and service offerings,

- (ii) all information identified as confidential to which it has access in connection with the access, on or after the Commencement Date, and
- (iii) this Agreement and the parties' rights and obligations under this Agreement, will be and will be deemed to have been received in confidence and will be used only for purposes of this Agreement, and each of the parties, agree to use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of the information.

No such information will be disclosed by the recipient party without the prior written consent of the other party as such information shall only be disseminated on a need-to-know basis; provided however, that each party may disclose this Agreement and the other party's confidential information to those of the recipient party's legal advisers, auditors, insurers (if applicable), such parties appointed by the Commission, the Commission, and the full time employees who have a need to have access to such information in connection with their employment (or engagement, if applicable) by the recipient party, so long as the recipient party requires, in the case of its legal advisers, auditors and insurers, that each of them execute a confidentiality agreement containing terms and conditions no less restrictive than those set out in this Section 13.

13.2 Exceptions to Disclosure. The obligations of non-disclosure will not prevent either party from disclosing information that belongs to the other party if :

- (i) it is already known by the recipient party without an obligation of confidentiality other than under this Agreement,
- (ii) is publicly known or becomes publicly known through no act of the recipient party,
- (iii) is rightfully received from a third party,
- (iv) is independently developed without use of the other party's confidential information
- (v) is disclosed without similar restrictions to a third party by the party owning the confidential information or
- (vi) is required to be disclosed pursuant to Law or a court order or governmental authority. If confidential information is required to be disclosed in connection with the conduct of any mediation or dispute resolution proceeding carried out pursuant to Section 13, such confidential information may be disclosed pursuant to and in accordance with the approval and at the direction of the mediator or other third party, as the case may be, conducting such proceeding.

13.3 Return or Destruction. Upon written request at the expiration or termination of this Agreement for any reason, all such documented confidential information (and all copies) owned by the requesting party will be returned to the requesting party or will be destroyed, with written certification being given to the requesting party. The provisions of this Section 13 will survive the expiration or termination of this Agreement for any reason.

14. Review and Amendments

14.1 Review of Access Agreement

The parties agree that the Access Agreement shall be reviewed:

- a) if the Minister issues a direction or determination relating to Access and related matters;
- b) if the Commission issues a direction or determination relating to Access and related matters;
- c) if the CMA or the Standard is amended in relation to its subject matter;
- d) by agreement between the parties;
- e) if a condition of either party's license is amended or deleted or a new condition is imposed that affects the other party's right to provide or receive Access.

[collectively referred to as a “**Review Events**”].

14.2 Review Process

- 14.2.1 If a Review Event occurs, then MYKRIS may notify the Access Seeker that the Access Agreement will be reviewed as soon as possible but in any event no later than thirty (30) days from the date when MYKRIS notifies the Access Seeker.
- 14.2.2 Upon completion of the review, MYKRIS shall submit to the Access Seeker a copy of the Access Agreement duly marked up with the amendments or modifications or variations clearly identified.
- 14.2.3 The Access Seeker shall revert with its comments and suggested changes (if any) within fourteen (14) days from the date of receipt of the amended Access Agreement.
- 14.2.4 Once the parties have agreed to the amendments to the Access Agreement, then the parties shall execute the amended Access Agreement and MYKRIS shall submit the same for registration with the Commission.

14.3 Review of Security for Payment

- 14.3.1 MYKRIS may review the security provided by the Access Seeker if there has been a *material change* in circumstance in relation to the Access Seeker's creditworthiness. However the review will be capped as maximum once a year as per MSA subsection 5.16.7
- 14.3.2 For the purposes of this Section 14.3, a *material change* in circumstances includes, but is not limited to, failure to pay on the due date at least three (3) Invoices rendered in the preceding six (6) months as long as those amounts have not been disputed in good faith.
- 14.3.3 **Additional Security.** If a material change has manifested, MYKRIS may request additional security from the Access Seeker to cover any risks associated with the continuous provision of Access to the Access Seeker. Failure to provide the

additional security may entitle MYKRIS to suspend the Access Services in accordance with section 9.3 above.

15. Insurance

15.1 The Access Seeker must take out and maintain the following insurances with a reputable insurer in Malaysia Prior to the Commencement Date, and will deliver to MYKRIS evidence satisfactory to MYKRIS of the currency of the policies of insurance :

- (a) *General Liability Insurance* for an amount of not less than RM2 million, for any one occurrence in respect of any liability for bodily injury (including death) of any person, personal injury, or property damage arising out of or in connection with the performance of the this Access Agreement. The insurance policy must contain a “cross liabilities” clause so that each of the insured parties will be considered as a separate and distinct unit and the term “Insured” in the policy will apply to each party as if a separate policy had been issued to each of the parties in its name alone;
- (b) *Workers’ Compensation Insurance* or *Social Security Insurance* in accordance with applicable awards or legislation and insurance against common law liability to any person employed by the Access Seeker;

15.2 **Period of insurance.** The Access Seeker must effect the insurance required under Section 15.1 prior to the Commencement Date and must maintain such insurance until the expiry or termination of this Agreement.

15.3 **Notification of claims** The Access Seeker must notify MYKRIS in writing of any claim and any event associated with this Access Agreement which is likely to give rise to a claim against the insurance effected by the Access Seeker, within five (5) days after the Access Seeker becomes aware of such claim or event and provide such further information to MYKRIS in relation to the claim or event as MYKRIS may reasonably require.

16. Costs and Expenses

16.1 Each party shall bear its own costs and expenses for negotiating, preparing and executing the Access Agreement and all documents contemplated by it, except where the Access Agreement expressly provides otherwise. Stamp duty payable in respect of the Access Agreement shall be borne by the Access Seeker.

17. Reciprocity in Obtaining Access

17.1 If MYKRIS requires Access from the Access Seeker, then MYKRIS may acquire such Access to the network facilities or network services of the Access Seeker on similar terms as MYKRIS provides to the Access Seeker under this Agreement.

18. Governing Law

18.1 The interpretation, validity and performance of the Access Agreement shall be interpreted in accordance with the laws of Malaysia.

19. Compliance with laws

19.1 The parties shall comply with all applicable laws, regulations, directions, determinations and all subsidiary instruments issued from time to time by the Commission or the Ministry pursuant to the CMA.

20. Conditions Precedent

20.1 It shall be a condition precedent to the effectiveness and validity of the Access Agreement:

that it be registered with the Commission pursuant to the CMA; and
that the Access Seeker has provided the appropriate security to MYKRIS.

20.2 It shall be the obligation of the Access Seeker to satisfy the conditions precedent within 30 days, or such further period as may be agreed by the parties, after the execution of the Access Agreement, but in any event not later than 90 days from the date of execution of the Access Agreement.

20.3 If the conditions precedent are not satisfied by the expiry of 90 days from the date of execution of the Access Agreement, then this Access Agreement shall be deemed to be null and void and of no effect, and both parties shall have no claim against the other save and except that if MYKRIS has undertaken any network provisioning prior thereto, such costs shall be payable by the Access Seeker within 30 days from the date of invoice.

21. Notices

21.1 All notices, demands or other communication required to be given under this Access Agreement shall be in writing and shall be sufficiently given or made if:

- a) delivered by hand, at the time of delivery; or
- b) sent by pre-paid registered post, on the third Business Day after posting;
or
- c) sent by legible facsimile transmission, when receipt of such facsimile transmission is confirmed by the printing of a transmission report; or
- d) sent by electronic mail, at the time of despatch unless a delivery failure message is returned to the sender;

addressed to the intended recipient at its address, facsimile number or electronic mail set out below. Either party may from time to time notify the other party of its change of address or facsimile number in accordance with this clause.

If to MYKRIS:

MyKRIS Asia Sdn Bhd
C-1-G, The Link2
NO 5, Jalan Jalil Perkasa 1,
57000 Bukit Jalil, Kuala Lumpur

Tel No: 03 79803888

Attention: Mr. Chang WH (Business Director)

e-mail address : Chang@mykris.net

If to the Access Seeker:

[To insert Address]

Fax No: [To insert]

Attention: [To insert]

E-Mail Address: [To insert]

22. Dispute Resolution

All disputes arising out of or relating to the Access Agreement will be decided and resolved in accordance with the process set out in the Dispute Resolution Procedures in Schedule [*insert Schedule as per Access Agreement*].

23. Entire Agreement

23.1 The Access Agreement will represent the entire understanding between the parties in respect of the provision of network facilities and/or network services dealt with thereunder.

23.2 The following schedules are incorporated into and forms part of the Access Agreement, in the format set out in Part B of this RAO :

- (a) Schedule A.1 – Fault Rectification Response Times
- (b) Schedule A.2 – Confidentiality Agreement
- (c) Appendix A – Technical Requirements
- (e) Appendix B – Point of Interface List
- (f) Appendix C – Price List from MYKRIS
- (g) Appendix D - Dispute Resolution Procedures

[The relevant Schedules which are to be incorporated as part of the Access Agreement will be specified at the time MYKRIS delivers the definitive document.]

23.3 The Access Agreement, supersedes all previous understandings, commitments, agreements or representations whatsoever, whether oral or written, in relation to the subject matter of the Access Agreement.

23.4 This Access Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which taken together will constitute one instrument.

24. Good Faith and Non-Exclusivity

24.1 Each party will act in good faith in relation to the other with regard to all matters relating to or contemplated by the Access Agreement. The parties acknowledge that nothing in the Access Agreement will prevent, limit or restrict in any way whatsoever either party from supplying any facilities and/or service to any other person by means of such party's Network.

25. Partial Invalidity

25.1 If any term or condition of the Access Agreement is found to be illegal, invalid or unenforceable in any respect under any applicable law, then the remainder of the Access Agreement or the application of such term or condition to other situations or circumstances shall not be affected, and the parties agree to amend the Access Agreement to reflect the correct intention of the parties and/or the directions of the Commission (where applicable) to the extent permissible by such applicable law.

Schedule A – The Schedules

Index to Schedule A

This part sets out the various Schedules which will be attached to the Access Agreement :

- Schedule A.1 - Fault Rectification Response Times
- Schedule A.2 - MYKRIS Confidentiality Agreement

Schedule A.1 - Fault Rectification Response Times

FAULT RECTIFICATION RESPONSE TIMES (Section 5.15.13 MSA)

The following Fault Rectification Response Times apply to both parties to the Access Agreement, where applicable to the Access Services provided by MYKRIS under this Access Agreement.

Priority Level	Fault Types (examples)	Response Timeframe	Progress Update Frequency	Rectification Timeframe
Level 1	<ul style="list-style-type: none"> 1. Major switch outage 2. Transmission bearer total outage 3. Route blocking > 50% 4. Major signalling problem 5. Major routing issues 6. Fraudulent calls 	Within 1 hour	Every 1 hour	4 hours
Level 2	<ul style="list-style-type: none"> 1. Minor switch outage 2. Minor routing issue 3. Minor signalling problems 4. Route blocking 10%-30% 5. Cross line & silent calls 	Within 4 hours	Every 4 hours	24 hours
Level 3	<ul style="list-style-type: none"> 1. Faults affecting single or small number of Customers 2. Route blocking <10% 	Within 24 hours	Every 24 Hours	72 hours
Level 4	<ul style="list-style-type: none"> 1. Remote Congestion 2. External Technical Irregularities (ETI) 3. Other performance related issues 	Within 48 hours	Every 48 hours	10 Business Days

For the purposes of this Schedule, the following are the explanatory notes to the above table:

- (a) All faults reported shall be ascribed with a “Priority Level” as set out in the above table for response, reporting frequency and restoration purposes and MYKRIS and the Access Seeker shall cooperate fully with one another to achieve the given time targets based on the severity of the fault reported.
- (b) The “Fault Types” listed in the table above are only examples of possible types of faults. MyKRIS and Access Seeker are required to categorize all faults by reference to the specified “Priority Levels”, ‘Response Timeframes’ and ‘Rectification Timeframes’
- (c) “*Response Timeframe*” refers to the time for either MYKRIS or the Access Seeker takes to respond to and appropriately attend to the fault. Response Times are to be measured from either the time the fault is notified by the other party to the Faulty party or from the time when the Faulty party first becomes aware of the fault, whichever is the earlier.
- (d) “*Progress Update Frequency*” refers to the frequency to update the Access Seeker until the fault is rectified.
- (e) “*Rectification Timeframe*” refers to the time taken by MyKRIS to rectify a faulty Network, Facility and/or Service and is determined by the period between the reporting of a fault to the relevant fault reporting service of MyKRIS and the rectification of the fault on a permanent or temporary basis (provided that if rectified on a temporary basis, MyKRIS will continue attempting to achieve a permanent rectification without delay)



Schedule A.2 - Confidentiality Agreement

Mutual Non-Disclosure Agreement

between

xxxx Sdn Bhd

Add 1

Add 2

Malaysia.

(Hereinafter referred to as “**XXX**”)

and

MyKRIS Asia Sdn Bhd

Block H-08-01, SetiaWalk,

Persiaran Wawasan,

47100 Puchong, Selangor.

(Hereinafter referred to as "**MyKRIS**").

(together referred to as “**Parties**”).

Preamble

MYKRIS as the Access Provider and XXX as the Access Seeker, desire to enter into an Access arrangement, and in the course of doing so, desire to have each party disclose (“Disclosing Party”) to the other party (“Receiving Party”) confidential information related to the **MyKRIS and “XXX”** respectively.

For the purpose of this Agreement, information shall mean all business, financial, technical, scientific or other information, including without limitation specifications, designs, plans, drawings, software, data, prototypes, process techniques, etc. Information includes all copies, embodiments and derivatives containing such information. Information may be in any form or medium, tangible or intangible, and may be communicated in writing, orally, or through visual observation. Information shall be deemed as being confidential if it bears the mark “Confidential” or a similar one or if the confidentiality is unequivocally inferred from the circumstances of the actual relation. Such confidential information shall hereinafter be referred to as “INFORMATION”.

Both parties shall keep INFORMATION confidential as follows:

1. The Receiving Party shall hold all INFORMATION in confidence and use all reasonable measures to safeguard such INFORMATION from unauthorized disclosure, reproduction or use. INFORMATION shall be treated by the Receiving Party with the same degree of care as is it normally exercises to protect its own proprietary information of similar nature, but in no case with less than reasonable and adequate care.
2. The Receiving Party shall use INFORMATION only for purposes of furthering of the provision and receipt of Access under the Access Agreement. Use of the INFORMATION for any other purposes – internal or external - is prohibited.
3. Neither party shall reverse engineer, disassemble or de-compile any prototypes, software or other tangible objects which embody the Disclosing Party's INFORMATION and which are provided to the Receiving Party. Each party agrees to notify the Disclosing Party in writing of any misuse or misappropriation of the INFORMATION provided by the Disclosing Party which may come to its attention
4. The Receiving Party shall restrict disclosure of such INFORMATION to its employees with a need to know to the extent they are directly involved in the provision of Access and shall cause these employees to comply with the provisions of this Agreement. The Receiving Party shall not disclose such INFORMATION to any third party without prior written approval of the Disclosing Party.
5. INFORMATION shall not be copied or reproduced without prior written approval by the Disclosing Party except to the extent reasonably necessary for the Access Agreement. All copies must be marked as being confidential.
6. These restrictions on the use or disclosure of INFORMATION shall **NOT** apply to any INFORMATION for which the Receiving Party can prove that:
 - it has become generally available to the public without breach of this Agreement; or
 - at the time of disclosure was known to the Receiving Party free of restriction as evidenced by documentation in the Receiving Parties' possession or which was lawfully received free of restriction from another party; or
 - it is required to be disclosed in order to comply with a judicial order, decree or law; or
 - it has been independently developed by the Receiving Party as evidenced by documentation; or
 - the Disclosing Party has agreed in writing that it is free of such restrictions.
7. After termination of the Access Agreement, all INFORMATION shall be either returned upon first written request to the Disclosing Party or shall be destroyed by the Receiving Party, which must be certified in written form.

8. This Agreement shall be effective as of the signature of both Parties. Its confidentiality provisions shall remain in force for the duration of the Access Agreement between MYKRIS and XXX . This Agreement shall also be valid for any INFORMATION made available in context with the Access Agreement by the Parties prior to its coming into force.
9. All INFORMATION shall remain the property of the Disclosing Party. By disclosing INFORMATION or executing this Agreement, the Disclosing Party does not, explicitly or implicitly, grant any license or right to use under any trademark, patent, copyright or any other intellectual property right to use the INFORMATION hereunder disclosed for any purpose other than the purpose of evaluation as herein described.
10. The invalidity of any provision of this Agreement does not lead to the invalidity of the overall Agreement. The Parties agree to replace any such invalid provision by a clause approximating as closely as possible the commercial intentions of the parties.
11. This Agreement constitutes the entire understanding between the Parties hereto as to the INFORMATION and merges all prior discussions between them relating thereto.
12. No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and signed on behalf of each of the Parties by their respective duly authorized officers or representatives.
13. This Agreement shall be construed under and governed by the laws of Malaysia. Any claims or disagreements arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the competent court of Malaysia.

XXX Sdn Bhd**MyKRIS Asia Sdn Bhd**

By

By

Name

Name

Title

Title

Date

Date

Appendix A Requirements

Part A.1 Infrastructure Sharing Service

1. General

- 1.1 This part sets out the Specific Terms and Conditions under which MYKRIS agrees to provide, at the request of an Access Seeker, access to “Infrastructure Sharing Service” under the Access List.
- 1.2 MYKRIS will only be required to provide the Infrastructure Sharing Service to the Access Seeker to the extent that the Access Seeker has complied with all the requirements of this RAO and the requirements of the Access Agreement for Internet Interconnect Service.

2. Scope

- 2.1 The Infrastructure Sharing Service is provision of Facility and/or Service for physical/space common access including environmental services/utilities, common antenna system/tower, associated tower.

3. Information Required

- (a) Earth Map with coordinate (Longitude and Latitude) of the location for the Infrastructure Licensed Site
- (b) The brand, model, part number and technical specification (kindly attach product catalogue or technical brochure) of the Equipment to be installed include the physical dimension, weight and wind load.
- (c) Schematic diagram to clearly indicate the mounting positions of the Equipment including of height, angle and radius.
- (d) Cable specifications for type of cable to be installed i.e. fibre optic, CAT5e/6 etc
- (e) Detail work scope and work plans attached with shop drawing/schematic diagram

Appendix B – Point of Interface

Locations	Locations
Center Point Shah Alam Crystal Crown Klang Hotel Armada Petaling Jaya State IPDC Iskandar Johor Menara AmFirst Petaling Jaya Wisma MPL Kuala Lumpur Nusajaya Johor Bahru Plaza Perangsang Shah Alam	Menara Multi-Purpose Kuala Lumpur Menara MPL Kuala Lumpur Menara Komtar Penang Menara Suntech Penang Plaza MCB Kuala Lumpur Sheraton Kuala Lumpur Subang Square Subang

Appendix C – Price List for the Access Services

PART C1 : Infrastructure Sharing Service

1. This Part sets out the Charges which are applicable to the Infrastructure Sharing service.
2. Charges And Charging Principles
 - 2.1 The applicable Charges for Infrastructure Sharing shall commercially being negotiated and agreed between the Access Seeker and the Access Provider in accordance to the Access Agreement.
 - 2.2 The availability of the Service is subject always to the availability of space in the Associated Tower Site and the loading of the structure.
 - 2.3 An Access Seeker may upon agreement by the Access Provider be allowed to install up to three (3) RF antennas and one (1) microwave antenna/dish with a maximum diameter of 0.6 meter or 1.2 meters per site.
 - 2.4 The following charges applied :
 - (i) RM500.00 per month for RF antennas or dishes measuring less than 0.6 meters or 1.2 meters in diameter ; and
 - (ii) RM1,000.00 per month any RF antennas or dishes measuring more than 0.6 meters or 1.2 meters in diameter

APPENDIX D 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 Appendix;
- (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 Appendix;
- (d) **“Billing Representative”** means a representative of the party appointed in accordance with the billing procedures set out in subsection 7.15 of this Appendix;
- (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 Appendix;
- (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 Appendix; and
- (h) **“Technical Expert”** has the meaning given to it in subsection 6.3 of this Appendix.

2. Introduction

2.1 Subject to subsection 2.2(c) of this Appendix, 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 and/or Services 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 Appendix if they cannot be resolved through the application of the general dispute resolution provisions in Sections 3, 4 and 5 of this Appendix);
 - i. Billing Disputes (as defined in subsection 1.1 of this Appendix), which must follow the procedures set out in section 7 of this Appendix; 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 Appendix, 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 Appendix are references to sections subsections and paragraphs of this Appendix.
- 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 this Appendix, an Access Provider and Access Seeker must continue to fulfil their obligations under the Access Agreement between them.
 - 3.4 Subject to subsection 3.5 of this Appendix, the Parties to a Dispute shall exchange information of a type described in this Standard during the course of, and to facilitate, resolution of the Dispute.
 - 3.5 Confidential Information of a party which is disclosed, and any other oral or written submissions made by a party or a party's representatives during the course of any dispute resolution process will be subject to the

confidentiality restrictions in relevant confidentiality provisions contained in the Confidentiality Agreement prepared in accordance with subsection 5.3.8 of the MSA.

- 3.6 A party must not use information obtained under subsection 3.4 of this Appendix or described in subsection 3.5 above for any purpose other than to resolve the Dispute.
 - 3.7 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 Appendix) 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.
 - 3.8 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 3.7 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 or Interconnection 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 endeavours 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. Interconnect steering group
 - 5.1 In the event that the Parties cannot resolve the Dispute between themselves within the time specified in subsection 4.4 of this Appendix, or after any agreed time extension has expired, either party may give ten (10) Business Days' written notice ("**Notice**") to the other party stating its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice, then either party may notify the other party ("**Receiving Party**") that it wishes to refer the issue to the Interconnect Steering Group ("**ISG**").

- 5.2 In the event that a Dispute is referred to an ISG under subsection 5.1 above, the Parties shall promptly form a committee comprising the ISG with an equal number of appropriate representatives from each party.
- 5.3 The ISG to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Party of the Notice under subsection 5.1 of this Appendix. If the ISG fails to meet or has not been formed within ten (10) Business Days of the receipt by the Receiving Party of the Notice, either Party may refer the Dispute:
- (a) to the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with section 6 of this Appendix);
or
 - (b) to the Commission for arbitration.
- 5.4 If the ISG has not resolved the Dispute within twenty (20) Business Days after it first meets to review that Dispute under subsection 5.3 above, either party may refer the Dispute:
- (a) to the extent the issues in dispute are technical in nature, to a Technical Expert (in accordance with section 6 of this Appendix);
or
 - (b) to the Commission for final arbitration.
6. Use of a Technical Expert
- 6.1 A Dispute will only be referred to a Technical Expert if the provisions of section 5 of this Appendix have been complied with.
- 6.2 Once a Dispute is referred to a Technical Expert, it may not be referred back to a working group or ISG.
- 6.3 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”).
- 6.4 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.
- 6.5 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.
 - 6.6 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.
 - 6.7 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.
 - 6.8 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.
 - 6.9 The Technical Expert will not have the power to appoint any other experts.
 - 6.10 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'.
 - 6.11 Every Dispute referred to a Technical Expert will be considered separately so that time limits for each Dispute are complied with.
 - 6.12 The Technical Expert's decision will be binding on the Parties (in the absence of manifest error of fact or law).
7. Billing Dispute resolution
- 7.1 As outlined in the billing provisions of this Standard at subsection 5.11, 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 and/or Services during such Billing Cycle.
 - 7.2 An Invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if:
 - (a) in the case of domestic calls and interconnection, the Invoiced Party notifies the Invoicing Party within thirty (30) Business Days after the date of receipt of such Invoice;
 - (b) in the case of outgoing and incoming international calls and interconnection, the Invoiced Party notifies the Invoicing Party within six (6) months after the date of receipt of such Invoice; or
 - (c) in case of any other Facilities and/or Services, 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 Appendix.

- 7.3 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.
- 7.4 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.
- 7.5 The Invoiced Party may withhold payment of amounts disputed in good faith in accordance with section 5.4.2 of Schedule A. If the Billing Dispute is resolved against the invoiced Party, that Invoiced Party shall be required to pay interest at the rate specified in section 5.4.2 of Schedule A of this Standard on the amount payable.
- 7.6 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 section 5.8 of Schedule A. 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.
- 7.7 The parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this section 7

- 7.8 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.
- 7.9 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 recognise 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.
- 7.10 Once the negotiation period under subsection 7.8 of this Appendix (including any extension agreed) and any suspension period under subsection 7.9 of this Appendix have expired, the Billing Dispute may be referred by the Invoiced Party to the procedure described in subsection 7.11 of this Appendix (“BillingDispute Escalation Procedure”).
- 7.11 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 honoured.
- 7.12 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.
- 7.13 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 Appendix 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.
- 7.14 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.
- 7.15 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.
- 7.16 Either party may at any time nominate another Billing Representative, provided that ten (10) Business Days prior notification of such appointment is given.
- 7.17 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.