



# ***PROSONTECH***

***Think The Unthinkable.***

**PROSONTECH SDN BHD**

**(COMPANY NO. 742389-V)**

**NFP LICENSE NO. NFP/1/2000/411**

## **REFERENCE ACCESS OFFER**

### **Registered Address:**

Wisma D'Wan, No 31-2, Jalan PJU 5/18 PJU 5,

Dataran Sunway, Kota Damansara, 47810,

Petaling Jaya, Selangor.

**This RAO is available upon written request at the Business Address above and  
at**

**<http://www.prosontech.com>**

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## **Section 1 : INTRODUCTION, BACKGROUND AND SCOPE**

### **1.1 Introduction**

1.1.1. This Reference Access Offer (“RAO”) is created by Prosontech SDN BHD a company incorporated under the laws of Malaysia and having its principal place of business stated in page 1 hereof.

1.1.2 This Reference Access Offer is hereby referred to as Prosontech’s RAO.

### **1.2 Background**

1.2.1 Following the issuance of the Malaysian Communications and Multimedia Commission Determination On Access List, Determination No. 2 of 2015 and the Malaysian Communications and Multimedia Commission Determination on Mandatory Standard On Access, Determination No. 3 of 2016.

#### **1.2.2 MSA Determination Obligations**

i) The MSA Determination deals with access to network Facilities and/or Services included in the Access List and sets out the obligations that apply to Access Seekers concerning various access issues which include:

(a) Disclosure Obligations;

(b) Negotiation Obligations;

A. Disclosure Obligations;

B. Negotiation Obligations;

C. Content Obligations;

D. Service Specific Obligations

ii) Disclosure obligations are as set out in Section 5.3 of the MSA Determination.

iii) Negotiation obligations are as set out in Section 5.4 of the MSA Determination.

iv) Content obligations are as set out in Section 5.5 of the MSA Determination.

### **1.3 Scope of Prosontech 's RAO**

1.3.1 Prosontech is a licensed individual network facilities and services provider under the Act. Pursuant to the licence, Prosontech may offer network facilities, services within Malaysia.

1.3.2 Pursuant to Section 5.3.3 of the MSA Determination, Prosontech is obliged to prepare and maintain a Reference Access Offer in relation to network facilities on the Access List which Prosontech provides to itself or third parties.

1.3.3 Prosontech 's RAO:

- A. Contains all the terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and
- B. Does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination.

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

1.3.5 Prosontech consider Prosontech 's RAO to be consistent with:

- A. The standard access obligations stipulated under Section 4.1.1 of the MSA Determination and Section 149 of the Act; and
- B. The principals of the non-discrimination stipulated under section 4.1.5 and 4.1.6 of the MSA Determination.

1.3.6 This Prosontech 's RAO shall be deemed to be an offer to enter into a legally binding agreement. Pursuant to Section 2.2.2 MSA Determination, Prosontech 's RAO shall be capable of being signed as an Access Agreement or further negotiated by the Prosontech and Access Seeker.

1.3.7 Prosontech 's RAO has no effect on contractual agreements for the supply of facilities by Prosontech to an Access Seeker prior to the Commencement Date unless and until such contractual agreement is subsequently agreed and/or renegotiated between the Access Seekers.

1.3.8 Prosontech 's RAO includes all the terms and conditions that Prosontech will require in an Access Agreement, including all the services provided by Prosontech pursuant to the Access List.

1.3.9 Prosontech shall not refuse to enter into an Access Agreement with any Access Seeker on the terms of Prosontech 's RAO.

1.3.10 Subject to Section 4.6.1 of this RAO, Prosontech shall be entitled to refuse to enter into an Access Agreement if:

- A. the Access Seeker is deemed not to be agreeable with Prosontech 's RAO; or
- B. make unreasonable requests or terms pursuant to Section 4.1.2, 4.1.3 and 4.1.4 of the MSA.

#### **1.4 Amendments to Prosontech 's RAO**

1.4.1 If Prosontech wishes to amend any term of the RAO, Prosontech must, no less than twenty (20) Business Days provide a copy of the amended RAO showing the proposed changes to the existing RAO, to:

- A. the Access Seeker who is being provided with access to network facilities listed on the Access List under Prosontech 's RAO; and
- B. The Access Seeker who has requested Prosontech 's RAO within the period of 3 months prior to the making of such amendments, unless the Access Seeker has already indicated that it does not wish to proceed with an Access Request.

1.4.2 When RAO is being amended, Prosontech shall upon expiry of the twenty (20) Business Days in subsection 1.4.1 (or such longer period as Prosontech determines is necessary to finalize the amendments to its RAO), Prosontech will:

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

For clarification:

- I. nothing in subsection 1.4.1 of this Prosontech 's RAO prevents an Access Seeker from initiating a dispute in relation to an amendment to a RAO made by Prosontech under this sub section;
- II. where the terms and conditions of an Access Agreement are not identical to those in the existing RAO, an amendment to the RAO will not alter the terms of that Access Agreement except as agreed between Prosontech and Access Seeker; and
- III. without prejudice to an Access Seeker's right to dispute a change to a RAO, where the terms and conditions of an Access Agreement are identical to those in the existing RAO, an amendment to the RAO will be deemed to alter the relevant terms and conditions of that Access Agreement. However, if the Access Seeker disputes the change to the existing RAO, no amendments to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favour of Prosontech

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

1.5.1 If the Commission withdraws, replaces or varies the Access List Determination relating to the network facilities in accordance to the Access List under Section 56 of the Act, Prosontech may, by giving written notice of its intention to terminate or vary to all Access Seekers to whom it is supplying network facilities under Prosontech 's RAO. The notice period must be no shorter than:

- I. the period of time between the time of giving notice and the time at which the Prosontech is proposing to no longer provide the network facilities; or
- II. twelve (12) months.

## **1.6 Availability**

1.6.1 Prosontech 's RAO shall be made available to an Access Seeker:

- A. on written request, at Prosontech 's principle place of business; and
- B. on a publicly accessible website at [www.prosontech.com](http://www.prosontech.com)
- C. Prior to the provision of Prosontech 's RAO to the Access Seekers, the Access Seekers shall be required to enter into a Confidentiality Agreement which shall be made separately.

## Section 2: DEFINITIONS INTREPRETATION

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

| <b>Term</b>                      | <b>Meaning</b>   |
|----------------------------------|--|
| <b>Act</b>                       | The Communications and Multimedia Act 1998.  |
| <b>Access Agreement</b>          | An agreement which is commercially negotiated between the Access Seekers, whereby Prosontech provides requested Facilities listed in the Access List Determination to the Access Seeker in accordance with the terms therein contained and registered with the Commission in accordance with Section 150 of the Act. |
| <b>Access List</b>               | The list of Facilities determined by the Commission under Section 146 of the Act.  |
| <b>Access List Determination</b> | The Commission Determination on Access List, Determination No.2 of 2015 which came into force on 1 <sup>st</sup> September 2015  |
| <b>Access Request</b>            | A request for access to Facilities on the Access List Determination made by the Access seeker to Prosontech and containing the information in Section 4.1.3  |



|                               |   |
|-------------------------------|---|
| <b>Access Seeker</b>          | An Access Seeker who;<br><br>A. Is a network facilities provider, network service provider, application service provider or content application service provider and who is a licensee as defined in the Act; and<br><br>B. Makes a written request for access to the Facilities listed in the Access List Determination. |
| <b>Access Service</b>         | In relation to the network facilities means a service as specified in the Prosontech's RAO that are provided by Prosontech to the Access Seeker to an Access Request  |
| <b>Prosontech</b>             | Prosontech Sdn Bhd and in Prosontech's RAO, is Prosontech unless otherwise stated   |
| <b>Associated tower sites</b> | Is the space surrounding the tower where the Access Seeker may place its cabin or outdoor support equipment including space required for cable gantry connecting to the tower and generator-set and including necessary right of way and permission to dig.   |
| <b>Bank Guarantee</b>         | The guarantee executed and to be granted to Prosontech on behalf of the Access Seeker by a bank   |
| <b>Billing Dispute</b>        | The dispute of an invoice prepared by an Access Seeker to the Other Access Seeker which is made in good faith   |
| <b>Charges</b>                | the sums payable by the Access Seeker to Prosontech for the provision of Facilities listed in the Access List Determination.  |

|                                     |  |
|-------------------------------------|--|
| <b>Commencement Date</b>            | the date on which the Access Seekers enter into the Access Agreement or such other dates as agreed between the Access Seekers. “ <b>Commission</b> ” means the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998.   |
| <b>Communication</b>                | Any communication, whether between persons and persons, things and things, or person or things in the form of sound, data text, visual images, signals or any other form or any combination of those forms and, where the context permits, includes a Communication Attempt. For the purpose of clarification, this includes Message Communications. |
| <b>Confidentiality Agreement</b>    | A confidential agreement entered into between the Access Seekers in accordance with Section 5.3.8 of the MSA Determination.  |
| <b>Creditworthiness Information</b> | The information required by Prosontech to assess the creditworthiness of the Access Seeker which is more particularly described in Section 4.2 of Prosontech’s RAO and such other information as may be required from time to time.  |
| <b>Determination</b>                | Any lawful determination made by the Commission and/or the Minister, pursuant to the Act.  |
| <b>Direction</b>                    | Any lawful direction made by the Commission pursuant to Chapter 1 of Part V of the Act.  |
| <b>Due Date</b>                     | In respect of an invoice, thirty (30) days from the date of receipt of an invoice.   |

|                               |  |
|-------------------------------|--|
| <b>Effective Date</b>         | The date on which the relevant portions of the Access Agreement requiring registration is duly registered with the Commission under Section 150 or the Act in its entirety (and such registration is notified in writing to the Access Seekers). |
| <b>Equipment</b>              | Any equipment (whether hardware or software), or device which is part of or within the Network.  |
| <b>Facilities</b>             | Network facilities and/or other facilities which facilitate the provision of network services or applications services including content application services.   |
| <b>Handover Date</b>          | The date on which access to be the Infrastructure as endorsed by a Certificate of Acceptance hereunder is given to the Access Seeker for installation of Equipment at that Site. “ <b>Handover</b> ” shall be construed accordingly.             |
| <b>Infrastructure sharing</b> | Shall have the meaning as defined in <b>Part I of Schedule A</b> “Insurance Information” means the insurance information required by Prosontech pursuant to <b>Section 4.4</b> .   |
| <b>Invoice</b>                | The invoice for amounts due in respect of the supply of requested Facilities listed in the Access List Determination during a Billing Period.  |
| <b>License</b>                | An individual license granted by the Minister pursuant to the Act for Communication Services.  |
| <b>License Fee</b>            | The monthly fee payable by an Access Seeker.   |
| <b>Manuals</b>                | The Technical and Implementation   |

|                         |  |
|-------------------------|--|
|                         | Manual, the Access Seekers and Maintenance Manual and Other Manuals which the Access Seekers established pursuant to the Access Agreement.   |
| <b>Minimum Value</b>    | For the purpose of calculating the Security Sum means the total estimated value of access to the requested Facilities provided (based on the most recent amounts invoice for those requested Facilities) or to be provided by Prosontech to the Access Seeker for a ninety (90) days period.   |
| <b>Minister</b>         | The Minister of Communications and Multimedia or, if different, the Minister administering the Act.  |
| <b>Operator</b>         | Prosontech or Access Seeker as the context requires.   |
| <b>Regulatory Event</b> | <ul style="list-style-type: none"> <li>A. The declaration, modification, variation or revocation of the MSA Determination;</li> <li>B. The giving of the lawful direction to Prosontech by the Commission relating Prosontech's RAO; or</li> <li>C. The giving of lawful direction to Prosontech by the Minister relating to Prosontech's RAO</li> </ul> |
| <b>Review</b>           | A review of the MSA Determination pursuant to Section 7.5 of the MSA Determination.  |
| <b>RM</b>               | Ringgit Malaysia which shall be the monetary currency used by Prosontech's RAO unless otherwise provided.  |
| <b>R.O.W</b>            | Right of way.  |
| <b>Security Sum</b>     | The security, either in the form of a Bank Guarantee or cash, deposited with   |

|                                    |   |
|------------------------------------|---|
|                                    | Prosontech for the supply of Facilities listed on the Access List Determination which is more particularly described in <b>Section 4.3</b> ; and which amount is equivalent to the Minimum Value. |
| <b>Services</b>                    | Network services and/or other services which facilitate the provision of network services or application services.  |
| <b>Standard Access Obligations</b> | Prescribed in section 149 of the Act.   |

**2.2** In Prosontech's RAO except where the contrary intention appears;

- a. the singular includes the plural and vice versa; and
- b. a document includes all amendments or supplements to that document, or replacements or novation of it; and
- c. a reference to statute, ordinance, regulations, code or other law and other instruments under it, shall include any statute, ordinance, regulation, code and other law consolidating, amending, re-enacting or replacing of any of them from time to time relating thereto or in connection therewith; and
- d. a reference to a person includes a firm, body corporate, unincorporated association or an authority; and
- e. a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; and
- f. if the day on which the payment of money falls due is not a Business Day, the due date shall be deemed to be the Next Business Day and any reference to Act that have to be done or to be done by or on before a particular day or Business Day means by or on before a particular day or Business Day means by or on before the close of business at 5.00pm on that particular day or Business Day; and
- g. a reference to a related body corporate of an Access Seeker has the same meaning as in the Companies Act 1965; and
- h. a reference to a third person is a reference to a person is a reference to a person who is not a party to this RAO; and
- i. headings are included for convenience and do not affect the interpretation of Prosontech's RAO

## **SECTION 3 – PRINCIPLES OF ACCESS**

### **3.1. Access Services**

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

3.1.1. The Access Seeker may request the Access Provider to supply the Facilities and/or Services listed in this Prosontech RAO by submitting an Access Request to the Access Provider with sufficient information to assess the Access Seeker request for the Facilities and/or Services at Prosontech discretion.

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

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

3.1.2. An Access Seeker may not request for the Access Service (s) where the Access Service(s) are to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.

### **3.2. Standard Access Obligations**

#### **3.2.1. Access Terms and Conditions**

Prosontech as the Access Provider shall if requested by an Access Seeker to supply the access services to the Access Seeker on reasonable terms and conditions.

#### **3.2.2. Principles of non-discrimination**

Consistent with Section 149 (2) of the Act, the access to facilities and/or services that shall be provided to Access seeker by Access provider shall be equitable and non-discriminatory basis.

### 3.2.3. Customer Principles

Prosontech shall recognize and act consistently with the customer relationship principle set out in subsection 4.3.2 of the MSA Determination.

## **3.3. Negotiation Principles**

### 3.3.1. Intellectual Property

For the avoidance of doubt, this RAO is solely meant to relate to the Access Provider's provision of facilities and/or services to the Access Seeker, and should not be understood as affording advantages on third parties (s).

### 3.3.2. Good faith and Dispute Resolution

Each party will negotiate and implement the provisions of the Access Agreement in good faith and in a commercially reasonable manner.

Based on the Confidentially Agreement negotiated between the parties, any confidentiality information provided by another Operator during the course of negotiating an Access Agreement or during the length of Prosontech RAO shall be kept confidential.

## **Section 4 – ACCESS REQUEST PROCEDURES**

### **4.1. APPLICATION FOR ACCESS TO SERVICES**

#### **4.1.1. If an Access Seeker:**

i.) does not have an Access Agreement in place with the Access Provider and wishes to seek access to Facilities and/or Services under this RAO; or

ii.) does have an Access Agreement with the Access Provider but:

(1) the current term of the Access Agreement will expire or terminate within the next four (4) months; or

(2) the requested Facilities and/or Services are outside the scope of that Access Agreement;

such Access Seeker shall submit an Access Request. Prior to giving access to the Facilities and/or Services, the Access Provider should design a procedure for desk/field studies and Service Qualifications that the Access Seeker may undertake (MSA 5.4.5).

#### **4.1.2. Access Request in writing setting out the information listed in below:**

- a) the name and contact details of the Access Seeker,
- b) the Access Service (s) in respect of which access is sought
- c) whether the Access Seeker wishes to accept Prosontech's RAO, to negotiate amendment to the RAO or to negotiate an Access Agreement on alternative terms;
- d) the information (if any) the Access Seeker reasonably requires Prosontech to provide for the purposes of the access negotiations;
- e) two (2) copies of the Confidentiality and Non-Disclosure Agreement (in the form made available by the Access Provider) duly executed by the authorized persons;
- f) preliminary information regarding the scale and scope of Facilities and/or Services that the Access Seeker expects to acquire from Prosontech pursuant to Access Request;



- g) relevant technical information relating to the interface standards of the equipment of the Access Seeker
- h) relevant information relating to the Access Seeker and functionality of its Services, to the extent that Access Seeker is aware that such information may affect PROSONTECH Network;
- i) creditworthiness information in accordance with Prosontech requirement as set out in subsection 4.2;
- j) assessed security (or if applicable, confirmation of security provided) in accordance with Prosontech security requirement as set out in subsection 4.3;
- k) insurance information in accordance with Prosontech insurance requirement as set out in subsection 4.4; and
- l) such other information as Prosontech may reasonably request for the sole purpose of providing access to the requested Facilities and/or Services.

## **4.2 SECURITY SUM**

4.2.1. The Access Seeker must deposit or obtain a security amount as Security in order to fulfil all of the Access Seeker's obligations under this RAO or Access Agreement. The total amount of security above must be at least twice the monthly access fee of Access Charges

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

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

4.2.3. PROSONTECH must not impose a security requirement on an Access Seeker which:

- i. Exceeds a commercially reasonable estimate of the charges that will be incurred by the Access Seeker over the minimum period of access to Facilities and/or Service to be provided by PROSONTECH to the Access Seeker; or

ii. Is designed to, or has an effect of denying or delaying the Access Seeker's access to Facilities and/or Services

4.2.4. The Access Seeker shall provide the Security Sum to PROSONTECH in the form of Cheque

4.2.5. For the avoidance of doubt, security amounts do not exempt the access provider from the obligation to pay the amount when the access seeker expires. Nor does it constitute an access provider suspension, termination, or waiver of rights. will terminate the access service when the is due or the amount paid to the access provider has not been paid.

### **4.3. INSURANCE INFORMATION**

4.3.1. An Access Request shall be accompanied by the following insurances:

- a) Worker's Compensation and/or Social Security Insurance and/or Employer's Liability Insurance and/or other insurance with statutory limits as required by the laws of Malaysia to provide for payment to its employees or in connection with the work covered by the Access Agreement that may be entered and/or their dependents; and
- b) Comprehensive general Liability Insurance of an amount with the minimum value of Ringgit Malaysia One Million (RM1, 000,000) or contract limit whichever is higher for any one claim or series of claims arising out of an accident for occurrence in connection with the Access Agreement that may be entered into resulting in bodily injury and/or personal injury including death and property damage of an Operator which shall arise out of or in consequence of any acts of omissions of the Other Operator.

For the purpose of clarification, the insurance provided by the Access Seeker shall commensurate with the reasonable sum, which is to be agreed by PROSONTECH.

### **4.4. PROCESSING OF ACCESS REQUEST**

4.4.1. Acknowledgement of Receipt of Access Request

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

- a) Subject to Section 5.4.16 of the MSA, request additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request; or
- b) Indicate whether it is willing to provide access to Access Service (s) under paragraph 4.8 or

- c) If it is rejecting the Access Request in accordance to paragraph 4.7. Subject to the additional information being received by Access Provider within twenty- one (21) Business Days from the date of request, Access Provider shall reconsider the Access Request upon receipt of such additional information and the ten (10) Business Days for Access Provider to consider the Access Request will recommence from the receipt of the information from the Access Seeker.

#### 4.4.2. Non-refundable processing fee

The access provider may charge the access seeker a non-refundable processing fee / one-time fee to perform the administrative work required to process the access request.

This is determined by looking at the access provider's manpower and other resource allocation costs. If the access provider justifies such a one-time charge for the access seeker because the access provider must provide the requested facility, the access provider tests the order for the new facility and / or service. And to be able to fulfill. One-time charges such as and / or services will be charged at a reasonable cost depending on the situation

### **4.5. ASSESSMENT OF ACCESS REQUEST**

#### 4.5.1. Grounds for Refusal

Without limiting any other grounds that may be relied upon under the Act, Access Provider may refuse to accept an Access Request for the supply of Access Service(s) and accordingly may refuse to supply that Access Service (s) to the Access Seeker for any of the following reasons:

- a) In reasonable opinion, the Access Seeker's Access Request was not made in good faith and shall be proven.
- b) In reasonable opinion, the Access Request does not contain the information reasonably required and has not received that information within twenty-one (21) Business Days of making such a request;
- c) Access Provider does not currently supply or provide access to the requested Access Service (s) to itself or to any third parties.
- d) It is not technically feasible to provide access to the requested Access Service(s);
- e) Access Provider has insufficient capacity or space to provide the requested Access Service(s);
- f) Access Provider believe that the Access Seeker will fail to make the payment for the supply of relevant services or

- g) Fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Access Service(s); or
- h) For reasonable grounds refuse access due to national interest.

#### 4.5.2. Determination of technical infeasibility

For the purpose of determining technical infeasibility in subsection 4.6.1(d), the Operators shall comply with Section 5.4.17 of the MSA Determination.

#### 4.5.3. Determination of capacity constraints

For the purpose of determining capacity constraints in subsection 4.6.1 (e), the Operators, where applicable shall comply with Section 5.4.18 of the MSA Determination.

#### 4.5.4. Assessment of the Access Seeker's ability to pay for supply of relevant Facilities or

##### Services listed in the Access List Determination:

Example of reasonable grounds for PROSONTECH's belief as mentioned in subsection 4.6.1 (f) includes evidence that the Access Seeker is not in the reasonable opinion of PROSONTECH creditworthy.

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

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

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

4.6.1. Where the Access Provider rejects the Access Request, it shall:

- a) provide grounds for rejection to the Access Seeker;
- b) provide basis of the rejection of the Access Request with sufficient particular to enable the Access Seeker to make its own assessment about the applicability of the specific ground of rejection; and
- c) Indicate a date and time, not later seven (7) Business Days from the date of the notice of rejection, at which representatives of Access Provider will be available to meet with representatives of the Access Seeker to discuss the rejection of the Access Request.

#### 4.7. Acceptance of Access Request

4.7.1. Where the Access Seeker is willing to accept RAO and Access Provider agrees to provide access to Facilities or Services listed in the Access Service to the Access Seeker,

4.7.2. It shall within ten (10) Business Days of such response provide the Access Seeker with two (2) copies of the executed RAO and one (1) copy of executed confidentiality agreement returned by the Access Seeker.

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

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

- a) a Security Sum has been provided in accordance with Section 4.3; and
- b) an Access Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with section 150 of the Act.

#### 4.8. Negotiations on Access Request

4.8.1. Access Provider may proceed with negotiation on the Access Request with the Access Seeker if the Access Seeker is not willing to accept the RAO. Access Provider 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 Access Provider 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

## **SECTION 5 ACCESS SEEKER OBLIGATIONS**

The obligations of each Operator to provide information to the Other Access Seeker are subject to the MSA Determination and the requirements of confidentiality in the confidentiality agreement signed by the Operators.

### **5.1. Forecasting Obligations (MSA 5.6)**

- The Access Provider may require the Access Seeker to provide a sincere forecast for a particular period of time for the provision of access to the Facility and / or Services as a condition of accepting orders for access to the Facility and / or Services.
- In the extent that the access seeker needs this information to provide forecasts, the access seeker can request preliminary information about the availability and capacity of its facilities and / or services from the access provider.
- When the Access Seeker confirms the forecast, it is considered an order for the purposes of the MSA Rule will apply.
- An Operators may agree to an alternative forecasting procedure other than that set out in subsection 5.6 of the MSA Determination
- Subject to subsections 5.6.11 to 5.6.13 of the MSA Determination, the Access Provider must carry out network planning in order to enable Forecasts to be met. If the Access Seeker has confirmed a Forecast under subsection 5.6.3 of the MSA Determination, it will be binding on the Access Seeker.

### **5.2. Ordering and Provisioning Obligations (MSA 5.7)**

#### 5.7 Ordering & Provisioning Obligations

Prior to access being provided, the Access Provider may require the Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. The Access Provider may request the Access Seeker to provide, at a level of detail (sufficient for planning and provisioning), the following in an Order for access to the Access Service: -

- i. the Access Service to which access is requested;
- ii. a requested date and time for delivery;
- iii. the detailed address of the location of the points of delivery and location maps, if necessary;

- iv. the Technical Specifications of the Equipment to be used in connection with the Order and its Technical Proposal;
- v. such other information that the Access Provider reasonably requires in order for it to plan for the provision of access to the Facilities and/or Services as requested by the Access Seeker (MSA 5.7.2).

Ordering information provided by the Access Seeker shall be treated by an Access Provider as Confidential Information of the Access Seeker and shall only be used by those persons within the Access Provider whose role is within: -

- i. the Access Provider's wholesale or interconnection group; and
- ii. that part of the network engineering group of the Access Provider responsible for interconnection or access, for the purpose of responding to and provisioning for the Order (MSA 5.7.3).

The Access Provider shall: -

- i. establishes a single queue for all Orders and Service Qualifications for a given type of Facility and/or Service, whether those Orders and Service Qualifications are required for itself or any Licensee;
- ii. give the equivalent priority to the handling of all Orders and Service Qualifications in each queue; and
- iii. otherwise treat all Orders and Service Qualifications in each queue in compliance with its queuing policy established under subsection 5.7.29 of the MSA Determination (MSA 5.7.4).

e. The Access Provider shall acknowledge receipt of an Order for Access Services in writing or in any

other material or electronic form as agreed by the Operators within:

- i. two (2) Business Days for Infrastructure Sharing; and
- ii. the relevant period specified in the Service Specific Obligations under section 6 of the MSA Determination for the other Access Services (MSA 5.7.5).

f. The Access Provider shall include in its acknowledgement of receipt above ("Notice of Receipt") the following information: -

- i. the time and date of receipt of the Order;



ii. a list of any additional information reasonably required by the Access Provider from the Access Seeker to provision the Order;

iii. if the relevant Facilities and/or Services available to the Access Provider are below the capacity required to provide the relevant Facilities and/or Services to the Access Seeker, the Access Provider shall inform the Access Seeker of the available capacity and timeframe for the fulfilment of the Order at the available capacity and (if relevant) with such augmentation as may be required to fulfil the Order as submitted;

iv. whether the Access Provider needs to perform post-Order Service Qualification because information is not readily available to the Access Provider together with the reasons for needing to undertake the Service Qualification; and

v. the position of the Order in the Access Provider's queue (MSA 5.7.6).

g. The Access Provider shall allow the Access Seeker a period of up to ten (10) Business Days after a request for additional information under Clause 7(f)(ii) above to provide the Access Provider with such information (MSA 5.7.7).

h. The Access Provider shall make Service Qualifications available to the Access Seekers prior to placing Orders if such pre-Order Service Qualifications are undertaken for a given Facility and/or Service by the Access Provider for itself. The Access Provider shall only require post-Order Service Qualifications to be requested if: -

i. no pre-Order Services Qualification has been completed under Clause 5(a) hereof or under subsection 5.4.5 of the MSA;

ii. the Access Provider reasonably requires information from post-Order Service Qualifications which are not readily available; and

iii. the Access Provider notifies the Access Seeker that the post-Order Service Qualifications are necessary together with the reasons for needing to take such Service Qualifications at the time of providing and as specified in the Access Providers Notice of Receipt or if further information has been requested under Clause 7(g) hereof, within two (2) Business Days upon the expiry of the period specified in Clause 7(g) hereof (MSA 5.7.8).

i. The Access Provider shall commence a Service Qualification on the date of issuing a Notice of Receipt and complete and notify the Access Seeker of the result of any Service Qualification within the shorter of:

- i. fifteen (15) Business Days after the date of the Notice of Receipt; and
  - ii. the time within which the Access Provider performs and notifies the result of an equivalent Service Qualification undertaken for itself (MSA 5.7.9).
  
- j. The Access Provider shall permit an Access Seeker to withdraw its Order without penalty (irrespective of whether the Access Provider has accepted the Order or not) before the earlier of: -
  - i. ten (10) Business Days after the Access Seeker receives the result of a Service Qualification under Clause 7(i) above; and
  - ii. one (1) Business Day before the Access Provider commences civil works to provision the Order (where the civil works are required to provision the Access Service within the delivery timeframe specified in the Notice of Acceptance (as defined in Clause 7(m) hereof)) and any civil works to be conducted must be subject to the issuance of a notice in writing by the Access Provider which may be in the form of a Notice of Acceptance if civil works is to occur after the Access Provider has accepted the Order (MSA 5.7.10).
  
- k. The Access Provider must use its reasonable efforts to accept and fulfil Orders from the Access Seeker for Facilities and/or Services which comply with a Forecast accepted by the Access Provider pursuant to subsection 5.6 of the MSA Determination (MSA 5.7.11).
  
- l. The Access Provider must notify the Access Seeker that an Order is accepted or rejected within: -
  - i. the specified timeframe in the Service Specific Obligations under Section 6 of the MSA Determination for the purposes of this Clause 7(l); or
  - ii. the timeframe within which it accepts or rejects equivalent Orders for itself, whichever is shorter and if the Access Provider notifies the Access Seeker that an Order is rejected, the Access Provider must advise the Access Seeker whether the Access Provider would be able to accept the Order in a modified form (MSA 5.7.12).
  
- m. The Access Providers notice of acceptance to the Access Seeker (“Notice of Acceptance”) must contain the following information: -

- i. the delivery date or activation date (as applicable) which must be the date that is requested by the Access Seeker or if that date cannot be met by the Access Provider, then no later than the indicative delivery timeframe or activation timeframe specified in the Service Specific Obligations under Section 6 of the MSA Determination for the purposes of this Clause 7(m) or the period of time taken by the Access Provider to deliver or activate such Facilities and/or Services for itself, whichever is shorter;
- ii. the date when civil works (if any) are intended to commence;
- iii. the charges applicable to fulfil the Order
- iv. such information as is reasonably necessary for the Access Seeker to benefit from access to the Facilities and/or Services; and
- v. the validity period, which shall be a period that is not shorter than three (3) months commencing from the date of the Notice of Acceptance (“Validity Period”) (MSA 5.7.13)

n. The applicable delivery timeframe for an Order as determined under Clause 7(m)(i) above shall commence from: -

- i. where the Access Seeker’s confirmation of an Order is required under Clause 7(o) hereof, the date the Access Seeker confirms the Order in accordance with the sub-clause; and
- ii. in any other case, from the start of the Validity Period (MSA 5.7.14).

o. The Access Seeker’s confirmation of an Order is not required if the Access Provider accepts the Order without change. A change may include circumstances where delivery dates are delayed, estimated charges are exceeded, a post-Order Service Qualification is required or any other matter that requires further confirmation from the Access Seeker before the Access Provider can proceed with the Order and where the Access Seekers confirmation is required for the Access Provider to proceed with fulfilling an Order as provided for under this Clause, the Access Provider shall permit the Access Seeker to provide its confirmation within the Validity Period and shall not provision the Order until the confirmation is received. Upon receipt of such confirmation, the Access Provider shall fulfil the Order in accordance with the Notice of Acceptance (MSA 5.7.15).

p. If the Notice of Acceptance provided by the Access Provider contains estimates of charges (e.g., based on time and materials):-

i. the Access Provider shall not exceed the estimate without providing the Access Seeker with a written notice prior to exceeding the estimate that: -

- (1) the estimate will likely be exceeded;
- (2) an explanation of the reasons for exceeding the estimate; and
- (3) a further estimate of the charges for the work necessary to fulfil the Order;

ii. the Access Provider shall permit the Access Seeker to withdraw the Order without penalty within ten (10) Business Days of the notice given by the Access Provider under Clause 7(p)(i) above if the revised estimate in that notice exceeds the original estimate by more than ten percent (10%);

iii. where the actual cost incurred by the Access Provider exceeds an estimate or revised estimate for a specific scope of work provided by the Access Provider due to:-

(1) information or facts provided by the Access Seeker which are inaccurate or erroneous or not disclosed by the Access Seeker; or

(2) a change in the scope of work by the Access Seeker, the Access Seeker shall be obliged to pay the Access Provider for the actual cost incurred (but in no other circumstances unless otherwise agreed between the Operators); and

iv. the Access Provider shall commence work after the Access Seeker confirms that it is agreeable to the estimate or revised estimate (MSA 5.7.16)

q. The Access Provider may only reject an Order from an Access Seeker where: -

i. subject to subsection 5.4.17 of the MSA Determination and Clause 5(n) hereof, it is not technically feasible to provide the Access Services requested by the Access Seeker;

ii. subject to compliance with subsections 5.7.31 and 5.7.32 of the MSA Determination, the Access Provider has insufficient capacity to provide the requested Access Services;

iii. subject to subsection 5.7.19 of the MSA Determination and Clause 7(s) hereof, the Order is in excess of the agreed Forecast levels;

iv. the Order or variation request duplicates an Order awaiting fulfilment;

v. the Access Seeker has not obtained the necessary related agreements from the Access Provider;

vi. there are reasonable grounds to believe that the Access Seeker would fail to a material extent to comply with the terms and conditions of the Access Agreement and such concern cannot be addressed to the Access Provider's satisfaction acting reasonably; or

vii. in connection with the supply of the Access Services, there are reasonable grounds to believe that the Access Seeker would fail to protect the integrity of a Network or the safety of individuals working on or using services supplied by means of a Network or the Equipment and such concern cannot be addressed to the Access Providers satisfaction acting reasonably (MSA 5.7.17).

r. An Access Provider's notice of rejection of an Order to the Access Seeker must: -

i. set out the grounds on which the Access Provider rejects the Order at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Order; and

ii. offer to meet and meet if the offer to meet is accepted by the Access Seeker, within five (5) Business Days of the notice of rejection of the Order to discuss the reasons for rejection and alternative methods of compliance (MSA 5.7.18).

s. Notwithstanding Clause 7(q)(ii) above, the Access Provider must use its reasonable efforts to provide sufficient capacity to enable the Access Provider to accept and fulfil Orders from the Access Seeker for the Access Services which are in excess of the relevant Forecast. The Access Provider is only required to do so if after meeting the Forecast requirements of other Access Seekers and itself, there is available capacity or the Access Provider could readily upgrade existing capacity. The Access Provider shall allocate the available capacity on a non-discriminatory basis to meet the over Forecast requirements of all Access Seekers and itself. The Access Provider is not required to supply the Access Services in excess of the Forecast if despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of the Access Services provided to all Access Seekers and/or itself (MSA 5.7.19)

t. The Access Provider shall deliver the Order for the Facilities and/or Services by the delivery date or activation date (as applicable) as specified in the Notice of Acceptance or the extended delivery date (if any) as determined in accordance with Clause 7(v) below (MSA 5.7.22).

u. If the Access Provider in the normal course of business is able to offer a delivery date earlier than the delivery date that would otherwise apply, it must advise the Access Seeker and if requested by the Access Seeker, deliver access to the relevant Facilities and/or Services at the earlier delivery date (MSA 5.7.23).

v. Where there is a delay in the delivery of an Order, and: -

i. the delay is caused by the Access Provider: -

(1) the Access Provider shall notify the Access Seeker of the delay to the delivery date together with the reasons for the delay as soon as practicable after the Access Provider becomes aware of the possible delay;

(2) the Access Provider shall permit the Access Seeker to cancel the Order without penalty if the delay is longer than the equivalent time period for delivery of the Facility and/or Service; and

(3) the delivery date shall be extended for a further period as reasonably necessary and the Access Provider shall promptly notify the Access Seeker of the revised delivery date; or

ii. where the delay is caused by the Access Seeker: -

(1) the Access Provider shall notify the Access Seeker of the delay to the delivery date as soon as practicable after the Access Provider becomes aware of it;

(2) the Access Provider and Access Seeker must work together to minimize the delay; and

(3) the delivery date shall be extended for a further period as reasonably necessary and the Access Provider shall promptly notify the Access Seeker of the revised delivery date (MSA 5.7.24).

w. An Access Provider shall allow an Access Seeker to cancel or vary an Order at any time subject to Clause 7(x) below or otherwise mutually agreed between the Operators (MSA 5.7.25).

x. The Access Provider may impose a charge for the cancellation or variation of the Order and the charge which the Access Seeker is required to pay shall not exceed the lesser of the following amounts: -

i. the sum of costs necessarily incurred by the Access Provider which is directly attributable to the cancellation or variation; or

ii. an amount equal to the Access Charges that would have been payable by the Access Seeker in the six (6) months immediately following the cancellation or variation had the Order not been cancelled or varied,

and reduced to the extent that those costs have been mitigated or would have been mitigated had the Access Provider used its best endeavours to do so, and unless otherwise agreed between the Operators in writing herein and/or in the Access Agreement (MSA 5.7.26).

y. The Access Provider shall cooperate with the Access Seeker in relation to the testing and provisioning of the ordered Access Services and treat an Access Seeker testing and provisioning on an equivalent basis to that which the Access Provider treats testing and provisioning for itself (MSA 5.7.27).

z. If the Access Provider fails to meet the delivery date or any extended delivery date notified to the Access Seeker in accordance with Clause 7(v)(i)(3) hereof except where such failure has been caused solely by the Access Seeker's delay or a lack of authorisation by a third party, the Access Provider shall without limitation to any other rights the Access Seeker may have under Clause 7 hereof or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the Access Charges payable for access to the Facilities and/or Services for the period of the Access Providers delay. If the Access Provider alleges that a failure has been caused solely by the Access Seeker delay or a lack of authorisation by a third party, the Access Provider shall have the burden of demonstrating that allegation and that the Access Provider has done all things reasonably practicable to minimize or avoid such failure (MSA 5.7.33).

aa. In any case, the Operators shall comply with the Ordering and Provisioning obligations under section 5.7 of the MSA Determination and all Orders shall be treated on a first come first serve basis.

### **5.3. Decommissioning Obligations (MSA 5.9)**

a) Decommissioning notice: The access provider needs to notify the all-relevant Access Seekers prior to the suspension of related facilities and / or services that depend on the use of the site by writing at least 6 months in advance, if access provider needs to leave the site as a result of the cancellation of (under a market lease agreement) by a third party landlord or the cancellation of the municipality.

- b) Co-operation: The Access Provider must co-operate and negotiate with all relevant Access Seekers in relation to the timetable for decommissioning of the relevant Facilities and/or Service.
- c) Alternative Arrangements: Access provider shall notifying access seekers of their intention to decommission any facilities and / or services, and shall provide depending on availability, alternative access facilities and / or services at regular rates which not put the access seeker in a disadvantages situation related to the Terms of Service and the recurring fees applicable in connection with the facility and / or service will be abolished for at least three years from the date of decommissioning.
- d) Decommissioning Facilities and/or Services compensation: Unless the decommissioning is triggered by force majeure, or as a result of third-party termination (based on normal market lease agreement) or notification from the local authority, the access provider shall pay the access seeker reasonable cost necessarily incurred in re-arranging the equipment to connect to alternative services offered in accordance with clause 5A

#### **5.4. Operation & Maintenance Obligations (MSA 5.12)**

- a) Operations and maintenance responsibility: Every Operator shall be responsible for all the operations and maintenance of its own facilities and services.
- b) Fault reporting service: Each Operator shall establish and maintain a fault reporting service that allows Customers who are directly connected to the Network of that Operator and to whom that Operator supplies Facilities and/or Services (inter alia) to report faults relating to any Network, Facility and/or Service.
- c) Customer notification: Each Operator will advise all of its directly connected Customers to report all faults to the fault reporting service
- d) Non-discriminatory fault reporting and identification: An Operator shall perform fault reporting and identification on a non-discriminatory basis and treat the faults reported by the other Operator on an equivalent basis as it treats the faults reported by itself.



- e) Bear own costs: Each Operator is responsible for establishing and maintaining a fault reporting service at its own cost irrespective of the location of the fault.
  
- f) Fault priority: Each Operator shall give priority to faults in the following order:-
  - i. the highest service loss impact in terms of the number of Customers affected;
  - ii. those which have been reported on previous occasions and have re occurred; and
  - iii. all other faults.
  
- g) Fault rectification: Each Operator shall rectify faults on a non-discriminatory basis
  
- h) Planned maintenance: If any User intends to undertake planned maintenance ("Maintenance Operator") which may affect the Access Seeker's Network, Facilities and/or Services, the Maintenance Operator must: -
  - i. provides at least the greater of the time which it notifies its own Customers and ten (10) Business Days' notice of the planned maintenance;
  
  - ii. use its reasonable endeavours to minimize any disruption to the carriage of communications that crosses or would cross all Users Networks, and which are caused by the maintenance or re-routing; and
  
  - iii. where the Users agree that it is practicable, provide alternative routing or carriage at no additional cost to the Access Seeker.

I. Planned maintenance windows: A Maintenance Operator shall undertake planned maintenance within windows of time agreed with other Users, and where the windows of time for such planned maintenance have the least effect on end users.

J. Emergency maintenance: If a Maintenance Operator needs to undertake emergency maintenance which may affect the other Users' Network, the Maintenance Operator must, if it is able to: -

- i. provides at least twenty-four (24) hours' notice of the planned maintenance.
- ii. use its reasonable endeavours to minimize any disruption to the carriage of communications that cross or would cross all Users' Networks, and which are caused by the maintenance or re-routing; and
- iii. where the Users agree that it is practicable, provide alternative routing or carriage at no additional cost to the other Users.

K. Hours of fault reporting and rectification: An Access Provider shall maintain twenty-four (24) hours a day, seven (7) days a week fault reporting and rectification service.

### **5.5. Technical Obligations (MSA 5.13)**

a) Compliance: Operators must comply with the relevant guidelines issued by the Commission by unless expressly revoked and inconsistent with the technical obligations set out in the MSA Determination

b) Prevention of technical harm: The Access Seeker must take reasonable measures to ensure that interconnection and access do not cause physical or technical harm to the other Users' Network, which measures shall be no less robust than the measures which the Access Seeker takes in respect of new facilities or Equipment incorporated into its own Network.

c) Technical Standards: Access Seeker must comply with any applicable technical Standard adopted by the Commission under Chapter 3 of Part VII of the Act.

d) No Interference: The Access Seeker may not allow any third party to, or knowingly, permit the following with respect to the network, network equipment, network services, or equipment which: -

- i. Causes interference; or
- ii. Materially obstructs, interrupts or impedes the continuous use or operation of, the Network, network facilities, network services or Equipment of another User.

e) Notice of interference and rectification: The access provider notifies the access seeker that the access seeker's network, network equipment, network services, or equipment is causing interference to the access provider and / or other users' networks, network equipment, network services, or equipment.

i. The Access Seeker shall rectify the situation as soon as possible, and in any case, within twenty-four (24) hours of receiving notice from the Access Provider, so that no interference is caused or will continue; or

ii. If the Access Seeker is not able to locate the source of the interference within twenty-four (24) hours under Clause 14(e)(i) hereof, the Access Seeker shall promptly notify the Access Provider and both Operators shall meet as soon as possible and, in any case, within twenty-four (24) hours of such notice and jointly examine each other's Network, network facilities, network services or Equipment to locate the source of the interference

## **SECTION 6 SERVICE SPECIFIC OBLIGATIONS FOR INFRASTRUCTURE SHARING**

### **(MSA 6.8)**

**(1) Application:** Additional terms and conditions which are applicable to Infrastructure Sharing Services.

**(2) Forecasts:** For the purposes of subsection 5.6.6 of the MSA Determination and Clause 6 hereof, the Access Provider shall only request Forecasts where: -

(a) the maximum period of time covered by Forecasts regarding Infrastructure Sharing is one

(1) year;

(b) the minimum intervals or units of time to be used in Forecasts regarding Infrastructure

Sharing is one (1) year; and

(c) the maximum frequency to update or to make further Forecasts regarding Infrastructure Sharing is once a year.

**(3) Acknowledgement of receipt:** For the purposes of Clause 7(e) hereof and subsection 5.7.5 of the MSA Determination, the Access Provider shall acknowledge receipt of each Order for Infrastructure Sharing within two (2) Business Days.

**(4) Time for acceptance or rejection:** Subject to any shorter timeframe required under Clause 7(l) hereof and subsection 5.7.12 of the MSA Determination, the Access Provider must notify the Access Seeker that an Order for Infrastructure Sharing is accepted or rejected within ten (10) Business Days after: -

(a) issuing the Notice of Receipt in respect of the Order, where the Access Provider did not

undertake any post-Order Service Qualification for that Order under Clause 7(h) hereof and

subsection 5.7.8 of the MSA Determination; or

(b) providing the Access Seeker with the result of post-Order Service Qualification under Clause 7(i) hereof and subsection 5.7.9 of the MSA Determination, where the Access Provider has undertaken post-Order Service Qualification for that Order under Clause 7(h) hereof and subsection 5.7.8 of the MSA Determination.

**(5) Indicative delivery timeframe:** For the purposes of Clause 7(m)(i) hereof and paragraph 5.7.13(a)(i) of the MSA Determination, the indicative delivery timeframe for Infrastructure Sharing is forty (40) Business Days. For clarification: -

(a) the indicative delivery timeframe commences from the Notice of Acceptance or confirmation of the Order (whichever is later) in accordance with Clause 7(n) hereof and subsection 5.7.14 of the MSA Determination hereof;

(b) where a delay in the delivery of an Order is caused by the Access Seeker, the delivery date

specified in the confirmed Order or indicative delivery time set out above shall be extended for a further period as may be reasonably required by the Access Provider; and

(c) the Access Provider is not required to commence work on an Order unless and until all requisite way leave and/or governmental authority approval has been obtained

**(6) Billing Cycle:** For the purposes of subsection 5.11.3 of the MSA Determination, between the Operators, the Billing Cycle for Infrastructure Sharing will be one (1) year in advance for the first year and quarterly in advance for subsequent years, unless otherwise agreed between the Operators.

**(7) Physical access:** Where required to fulfil an Order for Infrastructure Sharing or for the Access Seeker to perform operations or maintenance activities, the Access Provider shall allow the Access Seeker, its nominated employees and/or contractors to physically access the Access Provider's network facilities and the Access Seeker's Equipment, and to have physical control over the Access Seeker's Equipment located at such network facilities, at equivalent times and in accordance with equivalent processes and procedures as are applicable to itself.

**(8) Nominated personnel:** The employees and/or contractors nominated by the Access Seeker under

subsections 6.8.7, 6.8.9 and 6.8.10 of the MSA Determination and items (7), (9) and (10) herein will be

reasonable, having regard to: -

(a) the position of each person and the number of persons nominated; and

(b) the position of each of the Access Provider's own personnel and the number of the Access

Provider's personnel to which the Access Provider provides physical access to such network

facilities.

**(9) Escorts:** The Access Provider is only permitted to require an escort to be present when nominated

employees and/or contractors of the Access Seeker wish to enter into the Access Provider's property if the Access Provider requires an escort for its own employees or contractors in the same circumstances. If an Access Provider determines that it is necessary to have an escort present when the nominated employees and/or contractors of the Access Seeker wish to enter into the Access Provider's property, the Access Provider shall: -

- (a) bear the costs of such escort service;
- (b) subject to paragraph 6.8.9(d) of the MSA Determination and item (9)(d) hereof, provide

immediate physical access to the Access Seeker for emergency maintenance requests, twentyfour (24) hours a day, seven (7) days a week;

- (c) subject to paragraph 6.8.9(d) the MSA Determination and item (9)(d) hereof, provide physical access at the time requested by an Access Seeker for planned maintenance requests on the shorter of: -

- (i) two (2) Business Days' notice for manned Sites and five (5) Business Days' notice for unmanned Sites; and

- (ii) the period of notice which it requires from itself when providing itself with physical access for planned maintenance;

- (d) for both planned and emergency maintenance requests at unmanned Sites only, have its escort arrive within the shorter of: -

- (i) thirty (30) minutes of time required by the Access Seeker pursuant to paragraph 6.8.9(b) or 6.8.9(c) of the MSA Determination or item (9)(b) or (9)(c) hereof (as applicable) plus a reasonable window to allow for travel time (which must be estimated in an operations and maintenance manual given to the Access Seeker, or estimated at the time of responding to the Access Seeker's physical access request); and

- (ii) the period of time it requires for its escorts to arrive for planned and emergency

maintenance at unmanned Sites.

**(10) Absence of escort:** For the purposes of subsection 6.8.7 of the MSA Determination and item (7)

herein, if an escort does not arrive at the Site within the timeframe specified in subsection 6.8.9 and

item (9) hereof, the Access Seeker's nominated employees and/or contractors may proceed to enter the Site without an escort.

**(11) Site register:** The Access Seeker must establish and maintain a register of all persons who visit the Site on the Access Seeker's behalf, which must be made available for inspection by the Access Provider upon request.

**(12) Utilities and ancillary services:** The Access Provider must, where the relevant utilities and ancillary services are within the Access Provider's control, ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access to the same extent that the Access Provider provides to itself, including but not limited to:-

- (a) access to roads;
- (b) access to land;
- (c) power (provided available from the relevant power provider), including the provision of back-up power (upon commercial terms herein);
- (d) space for the Access Seeker to provide its own environmental services (including but not limited to heat, light, ventilation and air-conditioning, fire protection);
- (e) security, taking care to ensure that its agents, representatives or sub-contractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft;
- (f) site maintenance; and
- (g) any other utilities and ancillary services as mutually agreed by Operators.

**(13) Cost:** The utility and ancillary costs in respect of the network facilities as contemplated in subsection 6.8.12 of the MSA Determination and item (12) above shall be apportioned (in accordance with fair and equitable principles) between the Access Provider and all Users at the relevant location.

**(14) Marking:** The Access Seeker shall clearly mark or label its Equipment in such a manner that they can be easily identified as the Equipment of the Access Seeker.

**(15) Maintenance:**

- (a) The Access Provider shall permit and do all the things reasonably necessary to allow the Access Seeker to maintain its Equipment at or on the Designated Infrastructure to which access has been granted. This includes the provision of physical access.
- (b) The Access Provider shall ensure that the Site and the Designated Infrastructure, as the case may be, shall be in good and working order and shall be responsible for the general upkeep, maintenance and repair of the Site, the Designated Infrastructure, the chain link fencing surrounding each Site (where applicable) as well as the access roads to the same during the License Term.

(c) In the event of any structural damage or defects occurring unto the Site or the Designated

Infrastructure, the chain link fencing surrounding each Site (where applicable) or the access roads, as the case may be, whether through ordinary usage, wear and tear or otherwise (except where the damage or defects was caused by the fault or negligence of the Access Seeker) then the Access Provider shall repair the same immediately at the Access Provider's own costs and expenses upon the discovery of such damage or defects or upon notification by the Access Seeker.



## **SECTION 7 BILLING AND SETTLEMENT OBLIGATIONS**

7.1. Where relevant, the billing and settlement obligations set out in Section 5.11 of the MSA Determination shall be applicable.

7.1.1. Invoices: Access Provider will do its utmost to invoice Access Seeker in writing or electronically (at the request of Access Seeker) within one month of the end of each billing cycle, in accordance with the sections of subsection 6.1.3. increase. The amount to be paid in connection with the provision of facilities and / or services during the relevant billing period.

7.1.2. Currency: All invoices and payment shall be made in Ringgit Malaysia as agree in this RAO, unless agreed otherwise.

7.1.3. Billing Cycle: All invoices shall be issue in monthly basic by the Access Provider to Access Seeker unless there is different Billing cycle that been agreed.

7.1.4. Billing Verification Information: All information for rates and charges shall be included in the invoice.

7.1.5. Other Billing Information: An Operator must provide to any Operator information within its possession that is reasonably necessary to allow the other Operator to provide accurate and timely billing services to itself, other Operators and Customers.

7.1.6. Billing Error: If an Operator discovers an error in an Invoice, it must promptly notify the other Operator. The Operator which made the error must make necessary adjustments to correct that error within one (1) month of notification.

7.1.7. Due Date: An Access Seeker shall make the payment that been invoice by the Access Provider in (1) month from the date of invoice.

7.1.8. Method of Payment: Access Seeker shall pay an Invoice by bank cheque or electronic funds transfer directly to an account nominated by Access Provider

7.1.9. No Set-Off: Unless otherwise agreed by PROSONTECH and Access Seeker in the RAO, PROSONTECH may not set-off Invoices except where the Access Seeker

is in liquidation or at least three (3) Invoices have been issued and such Invoices have not been paid (excluding disputed amounts).

7.1.10. Withholding of Disputed Amounts: An Access Seeker is not allowed to withhold payment of any amount disputed.

a) The Access Seeker notifies PROSONTECH within fifteen (15) Business Days from the date of receipt of the Invoice of such dispute (unless otherwise agreed by PROSONTECH and Access Seeker in the RAO); and

b) The Access Seeker's notification specifies the information referred to in subsection 6.1.13 of this Section.

7.1.11. Billing Disputes: Access Seeker may dispute any amount in an Invoice if:

a) in case of any other Facilities and/or Services, the Access Seeker notifies PROSONTECH within thirty (30) Business Days after the date of receipt of such Invoice, provided that, in any case specified above, the Access Seeker's notification specifies the information referred to in subsection 6.1.13 of this Section.

7.1.12. Notification of Billing Dispute: PROSONTECH may require an Access Seeker to provide the following information when disputing any amount in an Invoice:

- 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.

7.1.13. Billing Dispute Resolution: PROSONTECH and an Access Seeker must comply with the Dispute Resolution Procedures applicable to Billing Disputes in Annexure A of the MSA.

7.1.14. Interest: Except for any amount in an Invoice being disputed by an Access Seeker in good faith in accordance with subsection 6.1.12 of this RAO, PROSONTECH may charge interest on any amount outstanding from an Access Seeker from time to time, in respect of that overdue sum for the period beginning on its due date and ending on the date of the receipt of the overdue sum by PROSONTECH. The interest that may be charged by PROSONTECH shall be at the rate of two percent (2%) per annum above Malayan Banking Berhad's base rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than two (2) months will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad's base rate calculated from the due date until the date of receipt by PROSONTECH of full payment. For clarification, PROSONTECH shall not charge interest on an amount which is disputed by an Access Seeker in good faith.

7.1.15. Back billing: Unless otherwise agreed by PROSONTECH and Access Seeker in the RAO, PROSONTECH may include omitted or miscalculated charges from an earlier Invoice in a later Invoice, or issue an Invoice for charges which have previously not been invoiced provided that PROSONTECH is able to substantiate the charges to the Access Seeker and such inclusion, amendment or issuance is made within three (3) months from the end of the Billing Cycle in which the Facilities and/or Services were provided.

7.1.16. Provisional Billing: Where PROSONTECH is unable to issue an Invoice within one (1) month after the end of the Billing Cycle in accordance with subsection 6.1.1 of this Section, it may issue an Invoice to an Access Seeker for a provisional amount, based on the last Invoice ("Provisional Invoice"). In such circumstances, PROSONTECH may invoice the Access Seeker for a provisional amount for a period of not more than three (3) successive Billing Cycles, provided that the total provisional amount is no more than the average of the three (3) most recent Invoices. Where there have not been three (3) past Invoices for access to the relevant Facilities and/or Services, PROSONTECH may issue a Provisional Invoice up to the full value of the amount based on the most recent Invoice. For clarification:

- a) If the actual amount for a particular Billing Period is higher than the amount stated in the Provisional Invoice for the Billing Period, then the Access Seeker will pay in full such difference (free of interest) within one (1) month from the receipt of Debit Note ("DN") to PROSONTECH. The DN issued must be

forwarded to the Access Seeker together with the relevant monthly statement of the actual interconnect usage.

b) If the actual amount for a particular Billing Period is lower than the amount stated in the Provisional Invoice for the same Billing Period, PROSONTECH will reimburse in full such difference free of interest by issuing a Credit Note ("CN") within one (1) month after the month in which the charges were incurred. Such CN must be forwarded to the Access Seeker together with the relevant monthly statement of the actual interconnect usage

7.1.17. Adjustment Period: Where a Provisional Invoice is issued by PROSONTECH, within the next two (2) months or such other time period as may be agreed in the RAO ("Adjustment Period",) PROSONTECH must issue an Invoice for the actual amount due for access to the relevant Facilities and/or Services. If that Invoice for the actual amount is not issued within the Adjustment Period, the Access Seeker shall treat the provisional amount as the actual amount. If the actual amount for a particular Billing Period is higher than the provisional amount for the Billing Period, then the Access Seeker will pay in full such difference (free of interest) within one (1) month from the receipt of the actual Invoice to PROSONTECH. If the actual amount for a particular Billing Period is lower than the provisional amount for the Billing Period, then PROSONTECH will reimburse in full such difference (free of interest) within one (1) month from the receipt of the actual Invoice to the Access Seeker.

7.2. The Access Seeker shall pay PROSONTECH the Access Charges for the relevant Access Service(s) supplied by PROSONTECH to the Access Seeker, as specified in Schedule of this RAO.

### 7.3. Terms of Payment

a) The Access Seeker must, subject to subsection 5.1.11 of this Section, pay any amount due and owing to PROSONTECH on the Due Date unless otherwise agreed in writing by both Operators.

b) The Access Seeker to whom any Facilities and/or Service is provided under this RAO must, subject to subsection 6.1.11 of this Section, pay PROSONTECH the applicable rates and charges, and on the terms and subsections set out or referred to, as the case may be, in this RAO.

7.4. All payments must:

a) Be paid on the Due Date unless otherwise agreed in writing by both Operators.

b) Must be accompanied by such information as is reasonably required by PROSONTECH to properly allocate payments received.

## **SECTION 8 –TERMINATION, SUSPENSION & OTHER PROVISIONS**

### **8.1. Term**

The Operators shall enter into an Access Agreement for a term of no less than 10 years from the execution date of the said Access Agreement.

### **8.2. Termination**

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

- a) The Access Seeker has materially breached the Access Agreement and PROSONTECH has notified the Access Seeker that it will terminate the said agreement in no less than one (1) month if the Access Seeker does not remedy its breach by the end of that period; or
- b) The Access Seeker is subject to a winding up order (whether compulsorily or voluntarily) or cease to trade in normal course of business or become insolvent or a receiving order has made against it or has entered into any agreement or composition with or assignment for the benefit of its creditors or the Access Seeker's assets are subject of any form distress or execution or any analogous insolvency event related to the Access Seeker has occurred in any jurisdiction; or
- c) A Force Majeure has continued for a period of more than three (3) months.
- d) PROSONTECH shall forward to the Commission a copy of the notice of termination at the same time as providing the notice of termination to the Access Seeker. For clarifications, a notice to be given under this subsection 7.2 is in addition to the notice required under subsection 7.5 of this RAO

### **8.3. Change in Law**

Where the continued operation of the Access Agreement or access to any Access Service(s) provided by PROSONTECH is or will be unlawful (as a result of a legislative change), the Access Seeker and PROSONTECH shall meet within 5 Business Days of becoming aware of the relevant change in law to review whether access to the relevant Access Service(s) may be provided by PROSONTECH 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, PROSONTECH may terminate the provision of access to the relevant Access Service(s).

#### **8.4. Suspension**

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

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

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

Seeker. For clarification, a notice to be given under this subsection 7.4 is an addition to the notice required under subsection 7.5.

#### **8.5. Notice**

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

action is appropriate. PROSONTECH 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. PROSONTECH:

- a) Shall give effect to the proposed termination, suspension or material variation with Commission's written consent and subject to any time delay or any conditions which the Commission may specify (if any)
- b) Must not give effect to the termination, suspension or material variation unless PROSONTECH has received written consent from Commission to such termination, suspension or material variation; and
- c) Shall take all steps practicable to minimize disruption, inconvenience to the Customer to the Access Seeker, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the termination or suspension of the Access Agreement or access to the Access Service provided under it

## **8.6. Undertakings**

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

## **8.7. Post-termination fees**

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

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



### **8.8. Upfront charges refund**

On termination of an Access Agreement or access to any Access Service(s) provided under it, PROSONTECH 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 prorated basis) relate to the period after the date of effect of such termination.

### **8.9. Deposits and guarantees**

Notwithstanding the obligation in subsection 7.8, PROSONTECH shall:

- a) within two (2) months of termination of the Access Agreement refund to the Access Seeker any deposit paid (without interest) provided all other amounts payable by the Access Seeker to PROSONTECH 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 PROSONTECH as at the date of termination.

### **8.10. Intellectual Property Rights**

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

### **8.11. Security Review**

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

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

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

## **8.12. Additional Security**

For the purpose of subsection 7.11 above, an Operator may only request additional or substitute security from another Operator in manner consistent with subsection 4.3 of this RAO. If the other Operator was making a new Access Request under subsection 5.3 of this RAO

## **8.13. Force Majeure**

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

8.13.2. If the delay in performance or non-performance of the Affected Party’s obligations due to the event of Force Majeure is continuous for a period of 90 days from the date of the Affected Party’s written notification under Section 7.2(c), then either Party shall have the right to terminate this Agreement with immediate effect and neither Party shall have any claim against the other in respect of such termination save for antecedent breaches.

## **8.14. Review**

- a) The Minister issues a direction or determination relating to the subject matter of this Agreement;
- b) the Commission issues a direction or determination relating to the subject matter of this Agreement;
- c) there are any amendment, changes or modifications to the Act, its subsidiary legislation and the instruments issued thereunder, including but not limited to the Access Pricing Determination and the MSA Determination and the Access List, which relates to the subject matter of this Agreement;
- d) enactment of new laws and regulations which relates to the subject matter of this Agreement;

- e) the registration, determination, promulgation, issue, amendment or replacement of any industry code with which an Operator is required or obliged to comply;
- f) if a condition of an Operator's License is amended or deleted or a new condition is imposed which relates to this Agreement; or
- g) by agreement of each of the Operators,

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

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

### **8.15. Governing Law**

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

### **8.16. Assignment**

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

**SCHEDULE**  
**CHARGES AND CHARGING PRINCIPLE**

**PART 1 – INFRASTRUCTURE SHARING**

**1. GENERAL**

1.1 In this part 1 of schedule sets out the charges and charging principle which is used for Infrastructure Sharing Services

**2. Charges & Charging Principles**

2.1 All Infrastructure sharing that been provided by PROSONTECH shall only to the extent necessary be subject to the Charges listed in the Table below. As for the purposes of clarification any other Infrastructure Sharing Services that has not listed in the Table below are negotiated charges.

Table: Charges and charging principle for on ground infrastructure

| ITEM | SITE TYPE (TOWER) | UNIT OF MEASUREMENT | Monthly Rental Rate up to 10 years License Term (RM) |                     |                     |
|------|-------------------|---------------------|--|---------------------|---------------------|
|      |                   |                     | SINGLE OPERATOR                                      | 2 SHARING OPERATORS | 3 SHARING OPERATORS |
| 1    | LANDMARK          | PER SITE/MONTH      | 5,600 – 6,800  | 4,700 – 5,200       | 3,800 – 4,500       |
| 2    | MONOPOLE          | PER SITE/MONTH      | 4,500 – 5,000  | 3,800 – 4,500       | 3,100 – 3,800       |
| 3    | LAMPOLE           | PER SITE/MONTH      | 3,500 -4,500   | 3,500 – 3,000       | 3,000 - 2500        |

## APPENDIX 1

### LIST OF PROSONTECH INFRASTRUCTURE SHARING SITES

| <b>NO</b> | <b>STATE</b>        | <b>AREA</b>           |
|-----------|---------------------|-----------------------|
| <b>1</b>  | <b>PERAK</b>        | <b>IPOH</b>           |
|           |                     | <b>MANJUNG</b>        |
|           |                     | <b>TAIPING</b>        |
|           |                     | <b>TELUK INTAN</b>    |
| <b>2</b>  | <b>PULAU PINANG</b> | <b>SEBERANG PERAI</b> |

**ANNEXURE 1**

**NON-DISCLOSURE AGREEMENT**

---

BETWEEN

**PROSOTECH SDN BHD**  
(Company No. 742389-V)

**AND**

COMPANY NAME  
(Company No)

**THIS NON-DISCLOSURE AGREEMENT** (hereinafter referred to as "**Agreement**") is made on

**BETWEEN**

PROSONTECH SDN BHD (Company No. 742389-V), a company incorporated under the laws of Malaysia and having its registered office at No. 31-3A, Jalan PJU 5/18, Dataran Sunway, Kota Damansara 47810 Petaling Jaya, Selangor Darul Ehsan (hereinafter referred to as "PTESB") which expression shall where the context so requires include its successors and assigns) on the first part;

**AND**

[ ] (Company No: [ ]) a company incorporated under the laws of Malaysia and having its registered office [ ] (hereinafter referred to as ("The Company") of the other part.

(PTESB and The Company shall be referred to as the "Party and collectively as Parties").

**WHEREAS:**

A) PTESB is a Network Facility Provider licensee under the Malaysian Communications and Multimedia Act 1998 and is in the business of providing network facilities to all licensees under the Malaysian Communications and Multimedia Act 1998 in Malaysia.

B) The Company holds an [ ] individual and class licenses under the Communications and Multimedia Act 1998 and is authorized to provide access to certain network facilities, network services and/or application services under its individual or class licenses..

c) PTESB and the Company are considering a proposal for the interconnection of them networks and the provision of agreed access services("Project").

d) For the purpose of the Project, it will be necessary and/or desirable for the Parties to disclose to each other various Confidential Information and the Parties have provided and will further provide information including but not limited to financial information, trade secrets and proprietary know how for the purpose of or in connection with the Project.

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

**NOW THIS AGREEMENT WITNESSETH as follows: -**

**1. DEFINITION**

“Agreement” means this Non-Disclosure Agreement entered into between the Parties hereto;

“**Confidential Information**” means any and all oral or written information of any kind, whether commercially valuable or otherwise, whether in written or printed or electronic format, pictorial or oral form or in any other medium, disclosed, submitted or howsoever made available by or on behalf of the Disclosing Party to the Recipient including to its officers, employees, agents or adviser, whether before or after the date of this Agreement, including but not limited to technical information, facts, data, specifications or know-how which relates to research, interpretations, assumption, product plans, product, services, customers, markets, pricing, legal software, developments, inventions, process, designs, drawings, engineering, hardware and software configuration information, marketing or finance or any form of business plans relating to its business, operations and assets whether or not labelled as “Confidential” (orally disclosed) and submitted by one party to the other party during the discussions and/or meetings with any of the officers, employees, agents or advisers of the Disclosing Party relating to the Transaction; which Confidential Information is designated in writing to be confidential or proprietary or if given orally, is confirmed promptly in writing as having been disclose as confidential or proprietary.

**Disclosing Party**” means the party from whom the Confidential Information originates and is disclosed to the Recipient.

“**PDPA**” means the Personal Data Protection Act 2010 and includes any subsidiary legislation made under the PDPA and also any legislation replacing the PDPA.

“**Personal Data**” means personal data (having the meaning ascribed under the PDPA), including but not limited to, the personal information of PTESB’s customers and/or employees.

**2. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION**

2.1. In consideration of the disclosure of the Confidential Information by the Disclosing Party

or any third party on behalf of the Disclosing Party to the Receiving Party, the Receiving

Party undertakes:

- a) to maintain the Confidential Information in strict confidence and to use it only for the purpose of or in connection of the Project;



b) not to use any Confidential Information disclosed to it by the Disclosing Party for its

own use or any other purpose or in a manner detrimental or competitive to the Disclosing Party;

c) to disclose the Confidential Information only to such of its Representatives who have a need to know or whose services are reasonably required in connection with the Project and further, where disclosure is made to its Representatives, such disclosure is made on their written undertaking to comply with the confidentiality obligations in this Agreement;

d) to promptly notify the Disclosing Party in writing of the names of the Representatives involved in the Project upon request being made by Disclosing Party at any given time;

e) to apply no lesser security measures and degree of care to the Confidential Information than those which it applies to its own confidential or proprietary information and the Receiving Party further undertake to provide adequate protection of such Confidential Information from unauthorized access, copying or use;

f) not to copy reproduce and/or reduce to writing or any form of recording the Confidential Information or any part thereof except as may be reasonably necessary for the Project; and

g) not to remove any documents, files, records, correspondence, notes or other papers (Including copies) of the Confidential Information from the Disclosing Party' premises, save and except with the written permission of an authorized Representative of the Disclosing Party and shall promptly return all such documents, files, records, correspondence, notes or other papers (including copies) of the Confidential information to the Disclosing Party upon request by the Disclosing Party or on the completion of the Project.

2.2. Each Party agrees and undertakes with the other that it shall not without the prior written consent of the other Party discloses to any person (other than its Representatives and only on a need-to-know basis) the fact that the Confidential Information exists or has been made available, that it is in negotiations, discussions and consultation with the other Party in regard to the Proposal or another proposal or transaction involving the other Party, or that discussions or negotiations are taking or have taken place concerning the Project or any term, condition or other fact relating to the Project or such discussions or negotiations, including, without limitation, the status there of.

2.3. The obligations imposed upon the Parties herein shall not apply to information which:

- a) is in the possession of the Receiving Party at the time of disclosure as shown by the Receiving Party's use or files and records prior to the time of disclosure; or
- b) prior or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any breach of this Agreement by the Receiving Party; or
- c) is approved in writing for release by the Disclosing Party; or
- d) is independently developed by the Receiving Party; or
- e) is disclosed pursuant to a requirement or request of a Government Agency or law but only to the extent so ordered.

### **3. RETURN OF MATERIALS**

Any materials or documents which have been furnished by the Disclosing Party to the Recipient will be promptly returned or destroyed, accompanied by all copies of such documentation, within seven (7) working days after the business possibility has been rejected or concluded.

### **4. REPRESENTATION AND WARRANTIES**

The Confidential Information disclosed under this Agreement is delivered "AS IS", and all representations or warranties, whether express or implied, including warranties or conditions for fitness for a particular purpose, merchantability, accuracy or completeness, title and non-infringement, are hereby disclaimed. Further, the Disclosing Party shall not have any liability to the Recipient resulting from any use of the Confidential Information.

### **5. PATENT OR COPYRIGHT INFRINGEMENT**

Nothing in this Agreement is intended to grant any rights to the Receiving Party under any patent or copyright, nor shall this Agreement grant the Receiving Party any rights in or to the Disclosing Party's Confidential Information except for the limited right to review such Contract as provided herein.

## **6. REMEDIES**

The Recipient agrees that the obligations of the Recipient provided herein are necessary and reasonable in order to protect the Disclosing Party and its business and the Recipient expressly agrees that monetary damages would be inadequate to compensate the Disclosing Party for any breach by the Recipient of its covenants and agreement set forth herein. Accordingly, the Recipient agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the Disclosing Party and that in addition to any other remedies that may be available, in law, in equity or otherwise, the Disclosing Party shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the Recipient without the necessity of providing actual damages.

## **7. CONFIDENTIALITY**

Each Party agrees to keep the existence and nature of this Agreement confidential and not to use the same or the name of the other Party in any advertisement or other disclosure with regard to this Agreement without the prior written consent of the other Party.

## **8. GOVERNING LAW**

This Agreement shall be governed by and construed and enforced in accordance with the laws of Malaysia and shall be binding upon the parties hereto in Malaysia and worldwide. The courts of Malaysia shall have exclusive jurisdiction to hear and determine all actions and proceedings arising out of this Agreement and the Recipient hereby submits to the jurisdiction of the courts of Malaysia for the purpose of any such actions and proceedings.

## **9. SEVERANCE OF TERMS**

If any provision or any part of any provision of this Agreement is deemed to be unenforceable or void by any court or by any competent authority then such provision or part shall be severed from this Agreement and the remainder thereof given effect to if such court or competent authority determines that such a provision or part would be valid and enforceable having a reduced form scope or term then the same shall be given effect to the such reduced form as to such reduced scope or for such reduced term.

## **10. STAMPING COST**

The stamp duty of this Agreement shall be borne by each party.

## **11. HEADINGS**

The headings used in this Agreement are for reference purposes only and shall not be construed as part of this Agreement.

IN THE WITNESS WHEREOF the Parties here to have here unto set their hands on the day and year

first above written.

SIGNED by )  
for and on behalf of )  
PROSONTECH SDN. BHD. )  
(Company No. 742389-V) )  
in the presence of: ) - .....  
Name: )  
 ) Designation  
- ..... Name: )  
NRIC No: )  
 )

)  
SIGNED by )  
for and on behalf of [ ] ( )  
Company [ ] ) in the presence of:- )  
 )  
 ) - .....  
Name: )  
..... Name: ) Designation  
NRIC No: )  
 )