

DATED THIS [Date] DAY OF [Month] 2____

ARL HomeComm Sdn Bhd

AND

[Access Seeker]

=====

ACCESS AGREEMENT

=====

PRELIMINARIES

ACCESS PROVIDER

Name : ARL HomeComm Sdn Bhd
Company No. : 412255 – P
Address : Mezzanine Floor, Wisma Ali Bawal 2, 11 Jalan Tandang, 46050 Petaling Jaya, Selangor Darul Ehsan, Malaysia
Telephone : +603 77840476
Fax : +603 77838485
email : mokhseinabd@home.net.my
Attention : Mokhsein Abdullah

ACCESS SEEKER

Name :
Company No. :
Address :

Telephone :
Fax :
email :
Attention :

EFFECTIVE DATE : [] day of [month] in the year 2_____

TERM : [] years from the Effective Date of this Agreement.

Facilities And Services Provided By ARL Homecomm To Access Seeker

[Insert the list of Network Facilities and Network Services agreed to be provided to the Access Seeker]

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This Access Agreement is made on this [date] day of [month] 2_____

By and Between

ARL HomeComm Sdn. Bhd [Company No. 412255 - P] a company incorporated under the laws of Malaysia with its registered address at Mezzanine Floor, Wisma Ali Bawal 2, 11 Jalan Tandang, 46050 Petaling Jaya, Selangor Darul Ehsan, Malaysia;

AND

[Access Seeker] [Company No. _____] a company incorporated under the laws of Malaysia with its registered office at [_____]

RECITALS:

- A. ARL HomeComm holds the following licences:
 - (i) Network Facilities Provider Individual Licence;
 - (ii) Network Services Provider Individual Licence; and
 - (iii) Applications Services Provider Class Licence.
- B. The Access Seeker seeks access to the Network Facilities and Network Services of ARL HomeComm.
- C. ARL HomeComm is obliged to provide the Access Seeker with access to its Network Facilities and Network Services, in accordance with the requirements of the Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005) (the “MSA”).
- D. ARL HomeComm agrees to provide and the Access Seeker agrees to accept the provision of the Services pursuant to the terms and conditions of this Access Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Access Agreement, including the Schedules and Annexes, all terms shall carry the meanings as defined in the MSA, and/or ascribed to it in the Act, The Commission Determination on Access List (Determination No. 1 of 2005), and additionally as defined below. The terms “Access Provider” and “ARL HomeComm” shall be used interchangeably.

“**Access Agreement**” means this agreement, its Schedules and Annexes, entered into on the day month and year written above between the Access Seeker and ARL HomeComm and which governs the access to the Facilities and Services of ARL HomeComm.

“**Access Order**” means an Access Request confirmed and accepted by ARL HomeComm pursuant to the terms of the ARL HomeComm ARD.

“**Access Reference Document**” or “**ARD**” means the Access Reference Document issued by ARL HomeComm Sdn Bhd pursuant to the MSA.

“**Act**” means the Communications and Multimedia Act 1998 (Act 588).

“**Altering Party**” means the Party which proposes to undertake a Network Change.

“**Annex**” means an Annex to this Access Agreement.

“**ARL HomeComm**” means ARL HomeComm Sdn Bhd a company incorporated under the laws of Malaysia with its registered address at Mezzanine Floor, Wisma Ali Bawal 2, 11 Jalan Tandang, 46050 Petaling Jaya, Selangor, Malaysia.

“**Bill**” means a statement of the Charges levied by ARL HomeComm on the Access Seeker pursuant to the terms and conditions of this Access Agreement.

“**Billing Dispute**” means a dispute raised in good faith on one or more Bills issued by ARL HomeComm to the Access Seeker pursuant to the terms and conditions of this Access Agreement.

“Billing Dispute Resolution Procedure” means the process relating to the resolution of Billing Disputes and as specified in the Billing and Settlement Schedule.

“Charges” means the aggregate price of the access to the Services and other matters billed by ARL HomeComm from time to time and payable by the Access Seeker on the terms and conditions of this Access Agreement.

“Claim” bears the meaning ascribed to it in Clause 22 of this Access Agreement.

“Commission” means the Malaysian Communications and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998 (Act 589)

“DTS” means digital trunk switch.

“Disclosing Party” means the Party disclosing its proprietary or licensed Confidential Information.

“Dispute Resolution” or “Dispute Resolution Procedures” means the procedures outlined in Schedule 7.

“Due Date” means, the date which is thirty one (31) days from the date of the Bill issued by ARL HomeComm to the Access Seeker.

“Foreign Operator” means a telecommunications operator providing communications services in a foreign country.

“Gateway” means a designated DTS which:

- (a) provides operational inter-working between the networks of both Parties;
- (b) provides an agreed interface between the signalling, switching, transmission and operations systems of each Party;
- (c) is defined by a unique name or code; and supports one or more POIs.

“General Dispute” means a dispute relating to the terms and conditions of this Access Agreement or the manner of performance of obligation pursuant thereto other than a Billing Dispute.

“Instrument” means a Determination or Declaration or Direction.

“Interconnection” means interconnection of the network of the Access Seeker to the network of ARL HomeComm for the purpose of accessing the Services and using agreed interfaces and signalling systems.

“Intellectual Property” means all rights conferred under Statute, common law and equity in and in relation to trade marks, trade names, logos and get up, inventions, patents, designs, copyright, circuit layouts, Confidential Information, know how and trade secrets and all rights and interests in them or licences to use any of them.

“Interconnection Link” means a physical link connecting the networks of both the Access Seeker and ARL HomeComm.

“Interconnect Steering Group or ISG” means the inter-carrier relation group established by the Parties and comprising representatives of both Parties.

“InSpan Interconnection” bears the meaning ascribed to it in the Technical Obligations Schedule 5.

“Indemnified Party” bears the meaning ascribed to it in Clause 22 of this Access Agreement.

“Indemnifying Party” bears the meaning ascribed to it in Clause 22 of this Access Agreement.

“MDF” means Main Distribution Frame.

“MSA” means the Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005).

“Negotiation Period” means the period as specified in the Dispute Resolution Obligations Schedule 7 for the resolution of disputes relating to a Bill.

“Network Capacity” means equipment and facilities required to be installed for use in the provision of one or more Services.

“Party” means the Access Seeker or Access Provider, as the context requires.

“QoS” means the quality of service as specified in Annex A and any relevant Instrument.

“RM” means Ringgit the lawful currency of Malaysia.

“Receiving Party” means the Party receiving the Confidential Information of the other Party.

“Schedule” means a schedule to this Access Agreement and “Schedules” shall be construed accordingly.

“Security” means the provision by the Access Seeker of security on the terms and conditions of this Access Agreement for the performance of its obligations under and pursuant to this Access Agreement.

“Service Supplement” means a supplementary document issued by ARL HomeComm pertaining to each Service with regard to an Access Order.

“Term” means the tenure of this Access Agreement.

“Technical Specifications” means the technical specifications set out in the Technical Obligations Schedule 5.

“Third Party” means a party who or which is not a party to this Access Agreement.

“Working Hours” means the working hours of 8.30 a.m. to 5:30 p.m. of ARL HomeComm.

1.2 Interpretation

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- (d) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind including amendments or supplements to, or replacements or novations of, that document;
- (e) a reference to a party to a document includes that party's successors and permitted assigns;
- (f) a reference to the whole of any thing (including but not limited to, any right) includes a part of that thing;
- (g) any amount includes any part of that amount;
- (h) For the avoidance of doubt, unless otherwise defined in this Access Agreement, words used in this Access Agreement shall have the same meaning as those provided in the Interpretation section of the MSA, unless the context otherwise requires.

2. STRUCTURE OF THIS ACCESS AGREEMENT

2.1 The following documents are to be read and construed as a part of this Access Agreement:

The main body of this Access Agreement;

Schedule 1 : Forecasting Obligations

Schedule 2 : Ordering and Provisioning Obligations

Schedule 3 : Billing and Settlement Obligations

Schedule 4 : Operations and Maintenance Obligations

Schedule 5 : Technical Obligations

Schedule 6 : Relationship Management Obligations

Schedule 7 : Dispute Resolution Obligations

Schedule 8 : Price List

Annex A : Quality of Service Levels

Annex B : Fault Rectification Response Times

2.2 Unless expressly stated to the contrary, the following shall be the order of precedence in the interpretation of this Access Agreement in the event of any inconsistency:

- (a) Each Service Supplement as to the terms and conditions of the provision of the relevant Service provided by ARL HomeComm under and pursuant to the Service Supplement;
- (b) The main body of this Access Agreement;
- (c) The Schedules; and
- (d) The Annexes.

2.3 There is no order of priority between one Schedule and another Schedule and one Annex and another Annex.

2.4 Although ARL HomeComm is licensed to provide the full range of telecommunications Services in keeping with its licences, the terms and conditions of this Access Agreement are applicable only to those Services being currently provided by ARL HomeComm to the Access Seeker.

3. RELATIONSHIP BETWEEN THE PARTIES

3.1 The Parties agree and acknowledge that ARL HomeComm and the Access Seeker are in a Operator-to-Operator relationship and not a Operator-to-Customer relationship. Accordingly, the Parties will treat each other on a non-discriminatory basis.

3.2 Neither Party nor any of their Related Parties is to be deemed an employee, agent, contractor or representative of the other Party and neither Party has nor is given any authority to bind or oblige or incur any liability on behalf of the other Party and no such authority is to be implied.

4. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Each of the Parties represents and warrants to the other that:

- (a) it is duly incorporated and validly existing with limited liability under the laws of Malaysia and with full power and authority to own its assets and carry on its business;
- (b) its memorandum and articles of association permits it to sign and deliver, and exercise its rights and perform its obligations under, this Access Agreement, and this Access Agreement constitutes valid and binding obligations;
- (c) no litigation, arbitration or administrative proceeding and/or claim which might, by itself or together with any other such proceedings or claims, have material adverse effect is at present in progress or pending or, to the best of its knowledge, information and belief, threatened against it or any of its assets;
- (d) it has fully disclosed in writing all facts it knows or should reasonably know and which are material for disclosure in the context of this Access Agreement; and
- (e) it has obtained all licences, consents, approvals, waivers and authorisations required and these licences, consents, approvals, waivers and authorisations have not been withdrawn, modified, revoked or terminated, or expired, and are in full force and effect.

5. CONDITIONS PRECEDENT

5.1 It shall be a condition precedent to the effectiveness and validity of this Access Agreement that it be registered with the Commission pursuant to the Act.

5.2 The Access Seeker shall satisfy the condition precedent within forty-five (45) days, or such further period as may be agreed by the Parties, from the date of the execution of this Access Agreement, but in any event not later than ninety (90) days from the date of execution of this Access Agreement.

- 5.3 If the condition precedent is not satisfied by the expiry of ninety (90) days from the date of execution of this Access Agreement or such further period as may be agreed by the Parties then this Access Agreement shall be deemed to be null and void and of no effect, and both Parties shall have no claim against the other save and except that if ARL HomeComm has undertaken any network provisioning prior thereto, such costs shall be payable by the Access Seeker within thirty (30) days of being so billed by ARL HomeComm.

6. TERM OF THIS ACCESS AGREEMENT

- 6.1 This Access Agreement shall be for a term of three (3) years commencing from the Effective Date unless earlier terminated pursuant to Clause 23.
- 6.2 Prior to the expiry of the Term the Access Seeker must give to ARL HomeComm notice in writing at least one hundred and eighty (180) days before the expiry of the Term requesting that the Access Agreement be renewed for a further term of three (3) years and subject to the provisions of Clause 26 on the same terms and conditions as set out in this Access Agreement or such other terms and conditions as may be prescribed by any written law or Instrument.
- 6.3 If ARL HomeComm agrees to such notice in writing, then the Parties shall execute a new access agreement which shall be registered, if required, with the Commission.

7. RELATIONSHIP MANAGEMENT

The relationship of the Parties under this Access Agreement shall be governed by and managed in accordance with the provisions set out in Schedule 6 – Relationship Management Obligations.

8. SERVICES

- 8.1 ARL HomeComm shall supply to the Access Seeker for the Term of this Access Agreement, access to Services as set out in the Preliminaries and elaborated further in a Service Supplement.
- 8.2 The Service Supplement shall contain the Technical Specifications of the Service in relation to which access is sought by the Access Seeker in the Access Order and such other terms and conditions as are reasonably necessary to govern the granting or provision of access to the Service.
- 8.3 Each Service Supplement may contain a Service Term that may be different from the Term of this Access Agreement. In the event such a term is specified, the Service shall be provided only for the duration of the Service Term provided such a term does not extend beyond the Term or until the date of expiry or earlier termination of this Access Agreement.
- 8.4 If the Access Seeker requires access to other facilities or services not set out in the Access List current at the time of entry into this Access Agreement, then the Access Seeker shall submit an Access Request in accordance with the ARD.
- 8.5 The provision of all Services shall be terminated on the expiry of the Term or earlier termination of this Access Agreement.

9. SECURITY

- 9.1 The Access Seeker shall provide at its sole cost and expense and maintain for the Term the following Security: [to be determined by ARL HomeComm] as security for the performance by the Access Seeker of its obligations under the terms of this Access Agreement.
- 9.2 The Security shall not be utilised by the Access Seeker for the purposes of set-off of any sums due under this Access Agreement to ARL HomeComm.
- 9.3 ARL HomeComm shall not be obliged to release the Security following the expiry of this Access Agreement for a period of ninety (90) days.
- 9.4 ARL HomeComm may review the Security provided to it by the Access Seeker if:
- (i) there has been a material change in circumstance in relation to the Access Seeker's creditworthiness; or
 - (ii) new Network Facilities and/or Network Services are provided to the Access Seeker; or
 - (iii) Network Facilities and/or Network Services are withdrawn or decommissioned; or
 - (iv) there is a change in the methodology of determining the Security.

10. INSURANCE

- 10.1 Prior to the Effective Date, the Access Seeker will deliver to ARL HomeComm evidence satisfactory to ARL HomeComm of the currency of the policies of insurance under this Clause 10. The Access Seeker must effect and maintain the following insurances with an insurer or insurers acceptable to ARL HomeComm:
- (a) Comprehensive General Liability Insurance for an amount of not more than [to be determined by ARL HomeComm], for any one occurrence in respect of any liability for bodily injury (including death) of any person, personal injury, or property damage arising out of or in connection with the performance of this Access Agreement;
 - (b) 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..
- 10.2 The Access Seeker must effect the insurance required under Clause 10 prior to the Effective Date and must maintain such insurance until the expiry or earlier termination of this Access Agreement.
- 10.3 The Access Seeker must notify ARL HomeComm in writing of any claim and any event associated with this Access Agreement which is likely to give rise to a claim against the insurance effected by the Access Seeker, within five (5) days after the Access Seeker becomes aware of such claim or event.

11. FORECAST

- 11.1 The Access Seeker shall supply to ARL HomeComm Forecast Information in accordance with Schedule 1 – Forecasting Obligations.
- 11.2 The Access Seeker must provide all Forecast Information within or at the relevant Forecast Period and all such Forecast Information must be provided in good faith having been arrived at by the exercise of best endeavours to ensure that the Forecast Information is accurate.

12. ORDERING AND PROVISIONING

- 12.1 ARL HomeComm shall provide the Access Seeker with the Services in respect of which there is a valid and subsisting Access Order.
- 12.2 ARL HomeComm shall process any Order it receives from an Access Seeker in accordance with the terms and conditions of Schedule 2 and any terms and conditions stipulated in a relevant Service Supplement.

13. BILLING AND SETTLEMENT

- 13.1 The Access Seeker shall pay to ARL HomeComm the Charges in accordance with the provisions of Schedule 3 - Billing and Settlement Obligations, and any relevant Service Supplement without set-off, counterclaim or deductions on the Due Date.
- 13.2 If ARL HomeComm shall incur such other costs or provide such other services not specifically provided for in this Access Agreement, the Access Seeker shall pay all such sums due on the Due Date according to the Billing Period.
- 13.3 All Charges for the Services shall be in accordance with Schedule 8 – Price List as amended from time to time.

14. INTERCONNECTION AND POINT OF INTERFACE PROCEDURES

- 14.1 ARL HomeComm agrees to provide services reasonably required by the Access Seeker to facilitate Interconnection and the provision of Applications Services and Content Application Services on the terms of this Access Agreement. Such services shall include but not limited to:-
- (a) conditioning, equipping and installation of Facilities at the Gateway and in its network to enable the provision of Services;
 - (b) on-going operations and maintenance of the foregoing;
 - (c) the establishment and on-going operation of operational practices, systems and procedures specified in Schedule 4 – Operations and Maintenance Obligations, in accordance with the terms set out in this Access Agreement.

- 14.2 The Parties agree to implement Interconnection in accordance with the terms and conditions of Schedule 5 – Technical Obligations. .
- 14.3 ARL HomeComm shall not be obliged to provide Interconnection if in the opinion of ARL HomeComm it would be technically infeasible or there exists capacity constraints as described in Schedule 2 – Ordering and Provisioning Obligations.

15. QUALITY OF SERVICE

ARL HomeComm shall use its best endeavours to meet the QoS parameters that are specified in Annex A – Quality of Service Levels and such other QoS as may be specified by any Instrument or law or in the relevant Service Supplement.

16. NETWORK CHANGE AND NON-DISCRIMINARY OBLIGATION

- 16.1 This Clause 16.1 applies where an Operator proposes to implement a Network Change of a type referred to in Clause 16.2 which necessitates a change in the hardware or software (including interface software) of the other Party's Network in Order to ensure the continued proper operation and compatibility of the Parties' respective Networks, services and procedures.
- 16.2 The following kinds of proposed Network Changes may be within the scope of Clause 16.1:
- (a) any change by the Party proposing to make the change (Notifying Party) to any technical specification of the interconnection interface between their respective Networks (Interface Change);
 - (b) any change by the Notifying Party to any technical specification or characteristic of the Facilities or Services to which the other Party (Recipient Party) has access which will or might affect:
 - i. the Recipient Party's Network;
 - ii. the Recipient Party's use of the Facilities or Services provided by the Notifying Party (Service Change);
 - (c) any change by the Notifying Party to any technical specification or characteristic of that Notifying Party's Network which will or might affect the Recipient Party's Network;
 - (d) any change by the Notifying Party to any of the operational support systems used in intercarrier processes, including without limitation:
 - i. the billing system (Schedule 3);
 - ii. the Ordering and provisioning systems (Schedule 2); or
 - iii. the Customer Churn process (Clause 24); and
 - (e) any enhancement by the Notifying Party of the features, functions or capabilities of the Facilities or Services to which the Recipient Party has access, which enhancement the Notifying Party proposes to make available either:
 - i. to itself; or
 - ii. to any other Operator.
- 16.3 If a Notifying Party proposes to make a Relevant Change to its Network, services or procedures, the Notifying Party shall provide the Recipient Party with notice in writing of:
- (a) the nature, effect, technical details and potential impact on the Recipient Party's Network of the proposed Relevant Change, described at a sufficient level of detail to enable the other Party to identify and begin planning such changes as may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant Change; and
 - (b) a date, which shall be no later than ten (10) Business Days from the date of the notice under this clause, on which representatives of the Notifying Party will be available to discuss with representatives of the Recipient Party the proposed Relevant Change and the changes that may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant Change as soon as reasonably practicable and, in any event, with not less than ninety (90) days notice period.

16.4 Further to the notification, the Notifying Party shall:

- (a) meet with representatives of the Recipient Party on the date set out in the Change Notice or as soon as practicable thereafter, for the purpose of discussing the Relevant Change and any changes that may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant Changes;
- (b) provide any additional information reasonably requested by the Recipient Party no later than ten (10) Business Days after the Recipient Party's request for such additional information; and
- (c) take reasonable account of concerns raised and proposals made by the Recipient Party to minimize any adverse impact of the Relevant Changes on the Recipient Party and revise the Change Notice accordingly.

16.5 A Notifying Party shall, bearing its own costs in doing so:

- (a) co-operate with a Recipient Party in relation to the development of procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Parties' respective Networks;
- (b) jointly carry out testing with the Recipient Party no less than twenty (20) Business Days before the Notifying Party proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under Clause 16.5 (a).

16.6 Subject to the Recipient Party having co-operated with the Notifying Party in relation to the conduct of tests under Clause 16.5, if such tests:

- (a) are not accepted by ten (10) Business Days prior to the date when the Notifying Party proposes to effect the Relevant Changes; or
- (b) do not provide reasonable assurance of the continued proper operation and compatibility of the Parties' respective Networks, services and procedures the Notifying Party must postpone implementation of the Relevant Changes. The period of postponement will be the period necessary to allow the Parties to repeat the steps in Clause 16.3 to 16.5 above.

17. PROVISION OF INFORMATION

In order to ensure the efficient implementation of Interconnection each of the Parties must as soon as reasonably practicable provide the other Party with such information as may be reasonably necessary from time to time to enable the other Party to :-

- (a) provide the Services;
- (b) ensure the successful hand over of Communications between the Parties' networks;
- (c) plan and implement operational practices and procedures; and
- (d) design and build its network in such a way as will ensure that the Parties' networks are properly interconnected.

18. NETWORK PROTECTION AND RELATED MATTERS

18.1 The Parties are responsible for the safe operation of its network and must take steps reasonably necessary to institute such procedures as are required to ensure that its network, network operations and implementation of this Access Agreement:

- (a) does not endanger the safety or health of the officers, employees, contractors, agents or Customers of the other Party; and
- (b) does not damage, interfere with or cause any deterioration in the operation and quality of service of the other Party's network.

18.2 A Party must not cause the other Party's Network to be used for or in connection with any illegal acts, purpose or otherwise.

18.3 A Party may not interfere with the reasonable use of the Applications Services and/or Content Applications Services subscribed to by Customers of the other Party.

18.4 The Parties agree that they shall comply with the procedures and processes specified in Schedule 5 – Technical Obligations.

19. NETWORK FACILITIES ACCESS AND CO-LOCATION

- 19.1 This Clause 19 applies where co-location or access is to be provided to or at network facilities under the MSA.
- 19.2 ARL HomeComm will allow nominated employees or contractors of a potential Access Seeker to physically inspect network facilities of ARL HomeComm during normal business hours provided that:
- (a) the Access Seeker has provided no less than five (5) Business Days notice of its request to perform a physical inspection; and
 - (b) the nominations made by the Access Seeker are reasonable, having regard to the position of each person and the number of persons nominated.
- 19.3 ARL HomeComm will allow an Access Seeker, its employees and contractors to physically access the ARL HomeComm's network facilities and have physical control over the Access Seeker's Equipment located at such network facilities, twenty-four (24) hours a day, seven (7) days a week.
- 19.4 If ARL HomeComm determines that it is necessary to have an escort present when employees or contractors wish to enter into ARL HomeComm's property, that ARL HomeComm may:
- (a) make such escort service available at all times during ordinary business hours;
 - (b) have such escort service on call (with no longer than a thirty (30) minute response time to attend at the ARL HomeComm's property) outside ordinary business hours; and
 - (c) bear the costs of such escort service.
- 19.5 For the purposes of subsection 19.4, if an escort does not arrive at the ARL HomeComm's property within 30 minutes of the scheduled commencement of the visit by the Access Seeker, the Access Seeker's staff may proceed to enter the ARL HomeComm's property without an escort in emergency situation.
- 19.6 The Access Seeker must establish and maintain a register of all persons who visit ARL HomeComm's property, which must be made available for inspection by ARL HomeComm, upon request.
- 19.7 ARL HomeComm will not reserve space other than for its own current needs, its future needs, (calculated by use of a reasonably projected rate of growth over 2 years) and the needs of other Access Seekers who are currently occupying or have ordered space from ARL HomeComm.
- 19.8 ARL HomeComm will allocate space at each location where colocation is to be permitted in a non-discriminatory way and will treat other Access Seekers as it treats itself.
- 19.9 ARL HomeComm will not impose minimum space requirements on an Access Seeker.
- 19.10 Re-configuration: If there are space constraints at a particular location, ARL HomeComm will take reasonable steps to optimise its usage of the space, including through the upgrading of Facilities or endeavouring to transfer the Equipment to an alternative location.
- 19.11 ARL HomeComm will notify the Commission every twelve (12) months of its space requirements over a three (3) year period from the date of notification, together with a reconciliation of its reservation over the previous twelve (12) months with its actual space needs.
- 19.12 If preparatory work is necessary for the purposes of allowing the Access Seeker to obtain access to or co-locate at or on an ARL HomeComm's network facilities, ARL HomeComm will permit the Access Seeker's employees or contractors to perform such preparatory work if the Access Seeker satisfies ARL HomeComm (acting reasonably and in accordance with the guidelines referred to below) that such employees or contractors have the necessary qualifications. ARL HomeComm shall publish and make available a policy about the necessary qualifications of employees and contractors who will be permitted to perform such preparatory work, such policy shall be nondiscriminatory in its application to ARL HomeComm and the Access Seeker personnel who perform similar functions.
- 19.13 If ARL HomeComm agrees to perform preparatory work and does so on an estimated charge (e.g. based on a time and materials basis):

- (a) ARL HomeComm will not exceed the estimate without providing the Access Seeker with prior written notice that:
 - i. the estimate will likely be exceeded; and
 - ii. a further estimate of the charges for the work necessary to complete the preparatory work;
 - (b) ARL HomeComm will permit the Access Seeker to withdraw the request for preparatory work without penalty if the revised estimate exceeds the original estimate by more than 10% of the original estimate.
- 19.14 if ARL HomeComm agrees to perform preparatory work and ARL HomeComm is or is likely to be unable to perform such work within the agreed timeframe, ARL HomeComm will:
- (a) notify the relevant Access Seeker of such delay, together with the reasons for the delay, as soon as practicable after ARL HomeComm becomes aware of the possible delay;
 - (b) permit the Access Seeker notified under paragraph 19.14(a) to cancel the preparatory work without penalty if the delay is longer than fourteen (14) business days; and
 - (c) compensate the Access Seeker for any costs incurred as a result of such delay, subject to the Access Seeker reasonable endeavours to mitigate those costs.
- 19.15 If ARL HomeComm has permitted access or physical co-location at a particular location or network facilities, ARL HomeComm must, where the relevant utilities and ancillary services are within ARL HomeComm's control, ensure that all necessary utilities and ancillary services are provided for the Access Seeker to benefit from such access or co-location, including but not limited to:
- (a) access to roads;
 - (b) access to land;
 - (c) power, including the provision of back up power;
 - (d) environmental services (including but not limited to heat, light, ventilation and air-conditioning, fire protection);
 - (e) security, taking care to ensure that its agents, representatives or contractors do not damage any Equipment, and keep the location secured and protected from vandalism or theft; and
 - (f) site maintenance.
- 19.16 ARL HomeComm will not require the use of cages or similar structures to physically segregate co-located Equipment or Equipment to be located at or on network facilities of the Access Seeker.
- 19.17 ARL HomeComm will permit an Access Seeker to locate Equipments on or at ARL HomeComm's network facilities which is necessary for the purpose of obtaining the benefit of access to the network services and network facilities provided in accordance with the MSA, including but not limited to multi-functional Equipment which may also be used for purpose other than those specified in this Clause.
- 19.18 The Parties shall mark or label their Equipments in such a manner that they can be easily identified as the Equipment of the Parties.
- 19.19 ARL HomeComm will permit, and do its endeavour reasonably necessary to allow the Access Seeker to maintain its Equipment at or on the network facilities to which access has been granted. This may include, for example, the provision of physical access. For the purpose of this Clause, an Access Seeker shall be permitted to maintain its Equipment at or on the network facilities if ARL HomeComm allows external contractors or other third parties to maintain similar Equipments on the network facilities.
- 19.20 ARL HomeComm shall reasonably permit the Access Seeker, at the Access Seeker's cost, to extend network facilities of ARL HomeComm as may reasonably be required to meet the Access Seeker's requirements in the circumstances which are technically feasible.

19.21 The utility costs for the network facilities as contemplated in this Clause shall be apportioned against the utility and ancillary costs charged to other Access Seekers at the relevant location.

19.22 ARL HomeComm will not require an Access Seeker to acquire other facilities or services from ARL HomeComm as a condition for providing access to Facilities or Services.

20. CONFIDENTIAL INFORMATION

20.1 Except as otherwise expressly provided in this Access Agreement, ARL HomeComm and the Access Seeker each agree that:

- (a) all information communicated to it by the other and identified as confidential, whether before or after the Effective Date, including without limitation information relating to the business affairs of the Parties, information relating to the Parties' customers or employees, and service offerings;
- (b) all information identified as confidential to which it has access in connection with the access, on or after the Effective Date; and
- (c) this Access Agreement and the Parties' rights and obligations under this Access Agreement, will be deemed to have been received in confidence and will be used only for purposes of this Access Agreement, and each of the Parties, agree to use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of the information.

20.2 No such Confidential Information will be disclosed by the Receiving Party without the prior written consent of the Disclosing Party and such information shall only be disseminated on a need-to-know basis; provided however, that each Party may disclose this Access Agreement and the Disclosing Party's Confidential information to:

- (a) The Receiving Party's Related Parties and Professional Advisers;
- (b) such parties appointed by the Commission; and
- (c) the Commission.

20.3 If the Disclosing Party shall require the Receiving Party shall procure that each of the Related Parties and Professional Advisers execute a confidentiality agreement containing terms and conditions no less restrictive than those set out in this Clause. In any event, compliance by each of the persons referenced in the preceding sentence with the confidentiality obligation set out in this Clause will remain the responsibility of the Receiving Party.

20.4 Each Party hereby agrees to be bound by the confidentiality provisions contained in the MSA and generally in the Act.

20.5 The provisions of this Clause will not prevent either Party from disclosing information that:

- (a) belongs to such Party; or
- (b) is already known by the Receiving Party without an obligation of confidentiality other than under this Access Agreement; or
- (c) is publicly known or becomes publicly known through no unauthorised act of the Receiving Party; or
- (d) is rightfully received from a Third Party; or
- (e) is independently developed without use of the other Party's Confidential Information; or
- (f) is disclosed without similar restrictions to a Third Party by the Disclosing Party; or
- (g) if required to be disclosed pursuant to law or a court order or Government Agency or Instrument, such Confidential Information may be disclosed pursuant to such requirement so long as the Party required to disclose the Confidential Information, provides the other Party with timely prior notice of such requirement and the Receiving Party has exhausted all reasonable measures to maintain such Confidential Information in confidence and the Receiving Party will coordinate with the Disclosing Party in an effort to limit the nature and scope of such required disclosure.

- 20.6 If Confidential Information is required to be disclosed in connection with the conduct of any mediation or dispute resolution proceeding carried out pursuant to Clause 25, such Confidential Information may be disclosed pursuant to and in accordance with the approval and at the direction of the mediator or other Third Party, as the case may be, conducting such proceeding.
- 20.7 Upon written request at the expiration or termination of this Access Agreement for any reason, all such documented Confidential Information (and all copies) owned by the Receiving Party will be returned to the Disclosing Party or will be destroyed, with written certification being given to the Disclosing Party.
- 20.8 The provisions of this Clause will survive the expiration or termination of this Access Agreement for any reason.
- 20.9 Confidential Information provided by the Disclosing Party to the Receiving Party is provided for the benefit of the Receiving Party only. The Disclosing Party warrants that such information is correct at the time of disclosure and if the same shall subsequently be discovered to be incorrect or has been revised or changed the Disclosing Party shall promptly notify the Receiving Party.
- 20.10 The Parties acknowledge that a breach of this Clause by the Receiving Party may cause the Disclosing Party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, the Disclosing Party shall be entitled to injunctive relief against such a breach or threatened breach.

21. INTELLECTUAL PROPERTY

- 21.1 The Parties shall be licensed to the other Party for the Term of this Access Agreement and on a royalty-free basis, all Intellectual Property rights, but only to such extent as is necessary, for the proper operation of this Access Agreement and the inter-operability of each Party's networks, subject to any relevant Third Party licences.
- 21.2 If either Party fails to comply with its obligations under Clause 21.1, the Party in default shall indemnify the other Party from all Loss suffered and liability incurred by the other Party as a result of any infringement of any Third Party Intellectual Property rights used in the other Party's network. This indemnification will be the only remedy and form of compensation available to the Party invoking it in relation to Intellectual Property licensed or disclosed under this Access Agreement.
- 21.3 Except as otherwise expressly provided in this Access Agreement, all Intellectual Property rights, including trade secrets if any, shall remain in the ownership of the person creating or commissioning the same and nothing in this Access Agreement shall confer or be deemed to confer on either Party any rights or licenses in the Intellectual Property of the other Party or of any Third Party.
- 21.4 Without prejudice to Clause 21.3, neither Party shall be entitled to use any trademarks or service marks or get up (whether registered or not) of the other Party in any document or other medium.
- 21.5 The Parties will negotiate arrangements (including in respect of title) concerning Intellectual Property jointly developed in the course of the performance of this Access Agreement or otherwise in connection with this Access Agreement.
- 21.6 If a Party ("User") becomes aware of any infringement or threatened infringement of any Intellectual Property rights of the Other Party ("Owner"), the User must promptly notify the Owner identifying (if possible) the infringer and the infringement or potential infringement.
- 21.7 The Owner may take such steps and proceedings as it considers necessary or desirable to protect its rights and the rights of the User in respect of the Intellectual Property rights, and the User must render all reasonable assistance in connection with those steps or proceedings at the request and expense of the Owner.
- 21.8 All right, title and interest in and to any:
- (a) Intellectual Property rights developed after the Effective Date vests in the Party who developed that Intellectual Property rights or for whom that Intellectual Property rights was developed by a Third Party; and

- (b) improvements to or modifications of Intellectual Property rights vests in the Party who developed that Intellectual Property rights or on behalf of whom that Intellectual Property rights was developed; and
- (c) Intellectual Property rights developed or generated by a Party from Confidential Information disclosed, communicated or delivered to it under this Agreement vests in the Party who disclosed, communicated or delivered the Confidential Information.

22. LIABILITY, LIMITATION AND INDEMNITY

- 22.1 Neither Party excludes liability for death or personal injury attributable to its own negligence or to the negligence of its agent, employee or otherwise.
- 22.2 Subject to Clause 22.1, ARL HomeComm is not liable to the Access Seeker for liability or Loss incurred in connection with an action, claim, suit or demand brought or made against the Access Seeker by persons:
- (a) pursuant to a contractual relationship with the Access Seeker; or
 - (b) in respect of an Applications Services or Content Applications Services provided on terms and conditions set out in the Access Seeker's standard terms and conditions, where to the extent such liability or loss could have been excluded by the Access Seeker in that contract regardless of whether such liability was excluded.
- 22.3 Save where otherwise stated in this Access Agreement subject to Clauses 22.1, Clause 23.1, Clause 23.2, Clause 23.4, Clause 23.9 and Clause 23.10 a Party is not liable to the other Party legally by reason of or in connection with this Access Agreement:
- (a) for any amount in excess of RM20 million for any one incident or series of events arising out of a single incident or occurrence;.
 - (b) in respect of any Loss, Consequential Loss or indirect liability, loss, cost, charge or expense, including but not limited to loss of profits; or
 - (c) subject to Clause 22.4, any delay or interruption in the provision of any Service by the Party or any failure of the Party's network; or
 - (d) any act or omission of any Customer of the Party or of any Third Party for whom the Party is not responsible.
- 22.4 If the provision of any Service to a Party is interrupted for any reason (other than breach of this Access Agreement by, or negligence of, the other Party) for a period in excess of twenty-four (24) hours, fixed recurring charges are payable by the firstmentioned Party for that Service, the firstmentioned Party is entitled to a pro rata reduction in the fixed recurring charges otherwise due for the Service for the duration of the interruption and the other Party has no further liability to the firstmentioned Party for the interruption. The 24-hour period starts when the Service interruption is notified to the other Party by the firstmentioned Party or any other person and ends when the Service is fully restored.
- 22.5 Subject to Clause 22.2, 22.3 and 22.7, and without limiting Clause 23.1, Clause 23.2, Clause 23.4, Clause 23.9 and Clause 23.10, a Party ("Indemnifying Party") shall indemnify the other Party ("Indemnified Party") against all liability or loss arising directly from, and any reasonable cost, charge or expense incurred in connection with:
- (a) damage to or loss of any equipment, facility or other property of the Indemnified Party caused by the wilful or negligent act or omission of the Indemnifying Party or its employee, agent and/or otherwise arising out of or in connection with this Agreement; and
 - (b) any legal liability by a third party against the Indemnified Party in respect of or arising out of any act or omission of the Indemnifying Party in the course of using the Services provided by the Indemnified Party.
- 22.6 If any action, claim, suit or demand ("Claim") is made by a Third Party against a Party ("Indemnified Party") which, if satisfied or paid by the Indemnified Party, would result in liability of the other Party ("Indemnifying Party") under the indemnity set out in Clauses 22.4 or 22.5 :

- (a) the Indemnified Party must give written notice of the Claim to the Indemnifying Party as soon as practicable after the making of the Claim; and
 - (b) within thirty (30) days after receipt of that notice, the Indemnifying Party must:
 - (i) cause the Indemnified Party to be put in sufficient funds to satisfy or pay the Claim; or
 - (ii) give notice to the Indemnified Party directing it to take such action (including legal proceedings) in respect of the Claim as is notified at the Indemnifying Party's expense; and
 - (c) the Indemnifying Party must cause the Indemnified Party to be put, and thereafter maintained, in sufficient funds and time to pay all reasonable costs and expenses of any action or settlement directed by the Indemnifying Party under Clauses 22.6(b)(ii) and 22.6(d)(i); and
 - (d) the Indemnified Party:
 - (i) must take such action as the Indemnifying Party directs to avoid, dispute, defend, appeal, settle or compromise ("deal with") the Claim and any adjudication thereof; and
 - (ii) must not deal with the Claim except as directed by the Indemnifying Party.
- 22.7 Save where the contrary is stated in this Access Agreement and/or subject to Clause 23.1, Clause 23.2, Clause 23.4, Clause 23.9 and Clause 23.10, a Party is not obligated to indemnify the other Party under Clauses 22.5 or 22.6 :-
- (a) to the extent that the Loss is the sole and direct result of any breach or negligent act or omission by the Indemnified Party of its obligations under this Access Agreement;
 - (b) to the extent of any amount in excess of the relevant maximum amount determined under any Instrument or law; and
 - (c) in respect of any Consequential Loss or indirect liability, loss, cost, charge or expense, including but not limited to loss of profits.
- 22.8 Except as expressly set out in this Access Agreement and subject to any law to the contrary, all representations, conditions and warranties (whether express or implied, statutory or otherwise) with respect to any Service provided by a Party are expressly excluded.
- 22.9 If the Parties breach any condition or warranty implied by law which cannot be excluded or modified, to the extent permitted by law the liability of the Party is limited to:
- (a) in the case of services constituting or included in a Service, the resupply of, or payment of the cost of resupplying, the service; and
 - (b) in the case of goods constituting or included in a Service:
 - (i) the replacement of the goods or the supply of equivalent goods; or
 - (ii) the repair of the goods; or
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired;
 at the election of the Party in breach.

23. TERMINATION, SUSPENSION AND DECOMMISSIONING OBLIGATIONS

- 23.1 Without prejudice to any other rights or remedy which ARL HomeComm may have against the Access Seeker, but SUBJECT TO Clause 23.6 to Clause 23.8, ARL HomeComm may, terminate this Access Agreement or any Service Supplement:
- (a) if any one of the following events has occurred:
 - (i) where the Access Seeker has committed a material breach of this Access Agreement, and ARL HomeComm has given the Access Seeker thirty (30) days to remedy the breach and the Access Seeker has failed, neglected and/or refused to do so; or

- (ii) where the Access Seeker has become subject to a winding up order; or
- (iii) the Access Seeker's Licence expires, is terminated or revoked or suspended for any reason whatsoever; or
- (iv) the Access Seeker is using the Network Facilities and/or the Network Services of ARL HomeComm for purposes in contravention of law; or
- (v) the Access Seeker falsely attributes to ARL HomeComm that ARL HomeComm is to blame for any fault or circumstance; or
- (vi) a Force Majeure has continued for more than 90 days.

AND

- (b) ARL HomeComm has issued a notice to the Access Seeker stating that ARL HomeComm will terminate this Access Agreement within thirty (30) days from the date of the notice of termination unless:
 - (i) the material breach complained of is remedied; or
 - (ii) the winding up order is set aside or the winding up petition is withdrawn or the resolution to wind up is rescinded; or
 - (iii) the Access Seeker is, if required, issued a licence of similar nature, quality and characteristics,

and in the event of the breach still continuing after the expiry of the aforementioned thirty (30)-day period this Access Agreement shall automatically terminate.

- 23.2 Where the continued operation of this Access Agreement or access to any Network Facilities or Network Services provided hereunder is or will become unlawful as a result of law, the Access Seeker and ARL HomeComm shall meet within five (5) Business Days of ARL HomeComm becoming aware of the relevant law, to review whether access to the relevant Network Facilities or Network Services may be provided by ARL HomeComm on terms and conditions acceptable to the Access Seeker and which would prevent such access from being unlawful under the relevant law ("alternative terms and conditions").
- 23.3 If the Parties cannot agree on the alternative terms and conditions within 10 Business Days or such further period as may be mutually agreed, ARL HomeComm may terminate this Access Agreement if ARL HomeComm obtains the approval of the Commission as set out in Clause 23.6 to Clause 23.8.
- 23.4 Subject to Clause 23.5, ARL HomeComm may only suspend this Agreement or access to any Network Facilities or Network Services or any Service Supplement in the following circumstances:
- (a) the Access Seeker's Network Facilities or Network Services materially and adversely affect the normal operation of ARL HomeComm's network or are a material threat to the safety of any individual; or
 - (b) the Access Seeker's Network Facilities or the supply of a Network Service or the giving of access to a Network Facility poses an imminent threat to the life or the property of ARL HomeComm or its employee, agent and/or otherwise; or
 - (c) the Access Seeker's Network Facilities causes material physical or technical interference to or degrades or adversely affects the operation of any Network Facilities of ARL HomeComm or any related Third Party; or
 - (d) where the Access Seeker has failed to pay Bills in accordance with its obligations under this Access Agreement; or
 - (e) where a Force Majeure event occurs; or
 - (f) the Access Seeker breaks any laws, regulations, rules or standard which has a material adverse effect on ARL HomeComm or the provision by ARL HomeComm of Facilities and/or Services under this Access Agreement.

- 23.5 Subject to Clause 23.6 to Clause 23.8 below, ARL HomeComm shall give an Access Seeker five (5) Business Days prior written notice of its intention to suspend the Access Seeker's access to any of ARL HomeComm's Network Facilities or Network Services. Such notice shall also contain written reasons for the intended suspension. In the event that any provision of this Access Agreement gives ARL HomeComm the right to either terminate or suspend this Access Agreement or Service Supplement, ARL HomeComm shall be entitled at its absolute discretion to decide which course of action to pursue.
- 23.6 ARL HomeComm shall give the Commission prior written notice of its intention to terminate, suspend or materially vary this Access Agreement or any Service Supplement. Such notice shall also state the reasons for ARL HomeComm's action and its appropriateness.
- 23.7 The right of ARL HomeComm to terminate or suspend or seek to materially vary this Access Agreement or access to any Network Facilities or Network Services provided under it or any Service Supplement, as set out in this Access Agreement, may be exercised only when the Commission has agreed to such a course of action and has so notified ARL HomeComm. Such notification may contain such conditions as the Commission may specify.
- 23.8 Upon receipt of such notification, ARL HomeComm shall comply with the conditions and timeframes set out by the Commission, notwithstanding any provision in this Access Agreement to the contrary.
- 23.9 Any termination under this Access Agreement shall be without prejudice to any accrued rights and obligations of the Parties at the date of termination and subject to the provisions of Clause 22 ARL HomeComm shall be entitled to claim for all Loss suffered by it.
- 23.10 ARL HomeComm shall not be entitled to any additional charges, costs or expenses on termination of this Access Agreement or access to any Network Facilities or Network Services provided under it except:
- (a) Charges invoiced in arrears and not yet paid; or
 - (b) Charges arising during the minimum contractual period as set out in any relevant Service Supplement; or
 - (c) any claim made pursuant to Clause 22 and Clause 23.9.
- 23.11 Upon the termination of this Access Agreement or access to any Network Facilities or Network Services provided hereunder, ARL HomeComm shall refund to the Access Seeker all amounts paid in advance to the extent that the amount (or part thereof calculated on a pro-rata basis), relate to the period after the date of termination but subject always to ARL HomeComm's right to set-off the said amount against any claim stated in Clause 23.10.
- 23.12 Notwithstanding the obligation in Clause 23.11, ARL HomeComm shall:
- (a) within sixty (60) days of termination of this Access Agreement refund to the Access Seeker any deposit paid; and
 - (b) immediately upon termination of this Access Agreement unconditionally waive any rights under any guarantee or other security provided by the Access Seeker,
- Provided always that the obligations under this Clause 23.12 shall be subject to the rights of ARL HomeComm stated in Clause 23.10.

24. CHURN OBLIGATIONS

- 24.1 The Releasing Service Provider must not object to the Access Service Provider implementing any Customer's Churn request, where such request is received by the Access Service Provider from a Gaining Service Provider.
- 24.2 Except where the Releasing Service Provider and the Access Service Provider are the same person, the Gaining Service Provider must notify the Releasing Service Provider of each proposed Churn prior to forwarding a Transfer Request to the Access Service Provider.
- 24.3 Within two (2) Business Days of receipt by the Releasing Service Provider of the notice from the Gaining Service Provider, the Releasing Service Provider must advise the Gaining Service Provider if it believes, on reasonable grounds, that the Transfer Request is invalid because:
- (a) the Transfer Request resulted from a processing error; or
 - (b) the Transfer Request was incomplete.

For clarification, if no notice is provided under this subsection, the Gaining Service Provider may forward the Transfer Request to the Access Service Provider.

- 24.4 If a notification is made under subsection 24.3, the Releasing Service Provider must provide the Gaining Service Provider with evidence upon which the notification is based. In such circumstances, the Releasing Service Provider and the Gaining Service Provider must take immediate action to rectify the invalid Churn in accordance with the Customer's wishes. If the Customer wishes to proceed with the transfer to the Gaining Service Provider, and the Gaining Service Provider provides the Releasing Service Provider with a Transfer Form, the Transfer Request may be provided to the Access Service Provider immediately.
- 24.5 Within two (2) Business Days after the receipt of a Transfer Request, the Access Service Provider must implement the Churn and advise each of the Gaining Service Provider and the Releasing Service Provider that the transfer has been completed.
- 24.6 An Access Service Provider must facilitate and implement Churns between Operators in accordance with the obligations specified in subsection 24.5, even if the Access Service Provider is not the Releasing Service Provider or the Gaining Service Provider.
- 24.7 The Access Service Provider and the Releasing Service Provider must not use information disclosed for the purposes of a Churn (including information contained in a Transfer Request or a Transfer Form) for other purposes. In particular, the Access Service Provider and the Releasing Service Provider must handle information disclosed for the purposes of a Churn as confidential, and must not use such information in connection with offering services to a Customer.
- 24.8 If a Service is subject to a Churn, a Releasing Service Provider or an Access Service Provider (acting as an Access Provider for the purposes of the Standard) must not refuse an Access Request on the ground that the Releasing Service Provider is currently using the Service specified in the Access Request.

25. DISPUTE AND LEGAL BOILERPLATE OBLIGATIONS

- 25.1 The Parties shall have an absolute obligation to supply access to the Facilities or Services in accordance with MSA. Such obligation shall not be conditional upon the use of that Operator's reasonable or best endeavours. Each Operator shall ensure that it shall not enter into any arrangement which will prevent, hinder or restrict the fulfillment of the Operator's obligation under MSA.
- 25.2 An Operator must establish mutually acceptable compensation arrangements with the other Operator (including bill-and-keep arrangements).
- 25.3 Each Operator must appoint a representative to an Interconnect Steering Group (and such other working groups as may be agreed upon) to manage the smooth and timely implementation of the terms and conditions of Access Agreements.
- 25.4 An Operator must comply with with Schedule 7 – the Dispute Resolution Obligations.
- 25.5 Each Operator shall specify all charges in an Access Agreement and shall not attempt to recover any other costs, expenses or charges which are not specified in the Access Agreement except where such work is to be done on a time and materials basis in which case the Access Provider shall do such work in accordance with a quotation agreed with the Access Seeker as set out in the Standard.
- 25.6 Each Operator shall licence to the other Operator under an Access Agreement on a royalty-free basis, all Intellectual Property rights necessary for the ongoing operation of the Access Agreement and the interoperability of the Operators' Networks, subject to any relevant third party licences. The term of the licence must be consistent with the term of the relevant Access Agreement.
- 25.7 An Operator may only review the security provided to it by another Operator in accordance with Clause 9 during the term of an Access Agreement if there has been a material change in circumstances in relation to the other Operator's creditworthiness. For clarification, a material change in circumstances includes, but is not limited to, failure to pay on the due date specified in at least three (3) Invoices rendered in the preceding six (6) months, so long as those amounts have not been disputed in good faith. If amounts contained in Invoices are disputed in good faith, this will not constitute a material change in circumstances for the purposes of this Clause.

- 25.8 If subsection 25.7 applies, an Operator may only request additional or substitute security from another Operator in a manner consistent with that which would apply if the other Operator was making a new Access Request under Clause 9 of this Access Agreement.
- 25.9 An Operator's right to assign its rights under an Access Agreement prepared by it shall be reciprocal with the other Operator's rights of assignment.
- 25.10 An Operator shall specify in an Access Agreement prepared by it that such Access Agreement shall be reviewed:
- (a) if the Minister issues a direction or determination relating to its subject matter;
 - (b) if the Commission issues a direction or determination relating to its subject matter;
 - (c) if the Act or this Standard is amended in relation to its subject matter;
 - (d) by agreement of each of the parties; or
 - (e) if a condition of the Operator's licence is amended or deleted or a new condition is imposed.
- 25.11 Each Operator shall bear its own costs and expenses in relation to the preparation, negotiation and execution of an Access Agreement to which they are parties.
- 25.12 ARL HomeComm must offer to acquire access to Facilities and Services on the same terms that it provides access to those Facilities and Services.

26. REVIEW AND AMENDMENTS

- 26.1 The Parties agree that this Access Agreement shall be reviewed:
- (a) if the Minister issues a Direction or Determination relating to its subject matter; or
 - (b) if the Commission issues a Direction or Determination relating to its subject matter; or
 - (c) if the CMA or the MSA is amended in relation to its subject matter; or
 - (d) by agreement between the Parties; or
 - (e) if a condition of either Party's Licence is amended or deleted or a new condition is imposed; or
 - (f) if there is material change which affects or reasonably could be expected to affect the commercial and technical basis of this Access Agreement; or
 - (g) if this Access Agreement is assigned or transferred by the Access Seeker; or
 - (h) if this Access Agreement has ceased to be reasonable; or
 - (i) if the Access Seeker serves a Renewal Notice.
- [each one of the above events shall be referred to as a "Review Event"].
- 26.2 If a Review Event occurs, then ARL HomeComm may notify the Access Seeker that this Access Agreement will be reviewed. The review shall be undertaken and completed as soon as possible but in any event no later than thirty (30) business days from the date when ARL HomeComm notifies the Access Seeker.
- 26.3 Upon completion of the review, ARL HomeComm shall submit to the Access Seeker a copy of this Access Agreement duly marked up with the amendments or modifications or variations clearly identified.
- 26.4 The Access Seeker shall revert with its comments and suggested changes (if any) within fourteen (14) business days from the date of receipt of the amended access agreement.
- 26.5 If the Parties agree to the amendments, modifications or variations to this Access Agreement, then the Parties shall execute the amended Access Agreement and the amended Access Agreement shall be submitted for registration with the Commission. The Parties agree to negotiate in good faith for any review of the terms and conditions of this Access Agreement.

26.6 If this Access Agreement is materially varied by reason of the occurrence of the Review Event, ARL HomeComm shall submit to the Commission for the Commission's prior approval to undertake the variation of this Access Agreement pursuant to the MSA.

27. ASSIGNMENT

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

28. FORCE MAJEURE

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

28.2 Where a Force Majeure Event continues for a period of ninety (90) days ARL HomeComm shall be entitled to either suspend this Access Agreement or the relevant Service Supplement notwithstanding that the Term or the Service Term has not expired.

29. COSTS AND EXPENSES

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

30. GOVERNING LAW

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

30.2 In the event of :-

- (a) a Party seeking urgent interlocutory relief in respect of any matter; (b) a Party seeking relief in respect of the other Party failing to comply with the dispute resolution process set out in Clause 25;
- (c) a Party seeking relief in respect of a manifest error or mistake of law or otherwise of the Technical Expert or Arbitrator; or
- (d) a Party seeking to resolve any dispute arising under this Agreement, other than a dispute as defined in Clause 25;

each Party irrevocably and unconditionally submits exclusively to the jurisdiction of the Courts of Malaysia for such relief or resolution.

31. COMPLIANCE WITH LAWS

The Parties shall comply with all applicable laws, regulations and all subsidiary instruments issued from time to time by the Commission or the Minister pursuant to the Act.

32. NOTICES

All notices, demands or other communication required or permitted to be given or made under or in connection with this Access Agreement shall be in writing to the registered address or address stated herein and shall be sufficiently served or made if:

- (a) delivered by hand, at the time of delivery; or
- (b) sent by pre-paid registered post, on the third (3rd) Business Day after posting; or

- (c) sent by legible facsimile transmission, when receipt of such facsimile transmission is confirmed by the printing of a transmission report (a copy thereof shall be sent immediately thereafter by pre-paid registered post); or
- (d) sent by electronic mail, at the time of despatch unless a delivery failure message is returned to the sender;

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

33. ENTIRE AGREEMENT

- 33.1 This Access Agreement represents the entire understanding between the Parties in respect of the provision of Network Facilities and/or Network Services dealt with hereunder.
- 33.2 This Access Agreement, supercedes all previous understandings, commitments, agreements or representations whatsoever, whether oral or written, in relation to the subject matter of this Access Agreement.
- 33.3 This Access Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which taken together will constitute one instrument.
- 33.4 Notwithstanding the foregoing, the Parties agree that:
 - (a) outstanding obligations under any Existing Agreement will be performed;
 - (b) all accrued rights under any Existing Agreement will remain unaffected and enforceable;
 - (c) all outstanding disputes under any Existing Agreement will be resolved in accordance with the MSA;
 - (d) all outstanding sums due will be paid when due or if disputed in good faith when the dispute is finally resolved in accordance with the MSA;
 - (e) no Access Request need be made by the Access Seeker for Network Facilities and/or Network Services provided under any Existing Agreement; and
 - (f) all minimum contract periods for Network Facilities and/or Network Services provided under any Existing Agreement shall, unless yet to completed, be deemed fulfilled.

34. GOOD FAITH AND EXCLUSIVITY

Each Party will act in good faith in accordance to Section 4 (1), Part 1 of the ARD in relation to the other with regard to all matters relating to or contemplated by this Access Agreement. The Parties acknowledge that nothing in this Access Agreement will prevent, limit or restrict in any way whatsoever either Party from supplying any facilities and/or service to any person by means of such Party's network.

35. PARTIAL INVALIDITY

35.1 Subject to Clause 28, if a provision of this Access Agreement is :-

- (a) in breach of a statute, ordinance, code, regulation or statutory instrument; or
- (b) in breach of a condition of a Party's Licence; or
- (c) in breach of an Instrument; or
- (d) void or voidable by any Party or unenforceable or illegal;

but would not be in breach of, void, voidable, unenforceable or illegal, as the case may be, if it were read down and it is capable of being read down, it is to be read down to that extent.

35.2 If a provision of this Access Agreement is still in breach or void or voidable, unenforceable or illegal after being read down under this Clause:-

- (a) if the provision would not be in breach of void, voidable, unenforceable or illegal if words were omitted, those words are hereby severed; and
- (b) in any other case, the whole provision is hereby severed;

and the remainder of this Agreement has full force and effect.

36. NO AGENCY, PARTNERSHIP ETC.

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

37. REMEDIES CUMULATIVE

The rights, powers and remedies provided in this Access Agreement are:

- (a) cumulative; and
- (b) not exclusive of the rights, powers or remedies provided by law independent of this Access Agreement.

38. SURVIVING OBLIGATIONS

Termination or expiration of this Access Agreement does not affect those Clauses and Schedules and Annexes and Service Supplements, which by their nature survive termination or expiry.

39. TIME

Time wherever mentioned in this Access Agreement shall be of the essence.

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

SIGNED by)
 for and on behalf of)
 ARL HomeComm Sdn Bhd)

in the presence of:)
 Name:
 NRIC No:
 Designation:

SIGNED by)
 for and on behalf of)
 Access Seeker)

in the presence of:)
 Name:
 NRIC No:
 Designation: