

ARL HomeComm Sdn Bhd

[Company No. 412255-P]

ACCESS REFERENCE DOCUMENT

Version 1.0

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1. INTRODUCTION

1.1 The MSA

Malaysian Communications and Multimedia Commission (the "Commission") has issued the Commission Determination on the Mandatory Standard on Access (Determination No. 2 of 2005) (the "MSA"), which came into force on 1 July 2005.

1.2 ARLHC

ARL HomeComm Sdn Bhd ("ARLHC") is an Access Provider, as defined in the MSA.

1.3 Purpose

ARLHC has prepared this Access Reference Document ("ARD") in compliance with the MSA to provide the means for all applicable licensees under the Communications and Multimedia Act 1998 (the "CMA") to seek and to be granted access to ARLHC's Network Facilities and Network Services, subject to the terms and conditions of an Access Agreement to be executed between ARLHC and such applicable licensees.

1.4 ARD Sections

This ARD comprises the following sections :

- Introduction and Access Request Process
- Sample Confidentiality Agreement
- Sample Access Agreement
- Service List
- Applicable Forms

1.5 ARD Amendments

This ARD may be amended from time to time by ARLHC, and the amendments shall come into effect on the effective date(s) specified on a written notice that ARLHC shall issue to all applicable Access Seekers or Customers, in accordance with Section 5.3.5 of the MSA.

1.6 Applicability And Scope

This ARD applies to access that may be provided by ARLHC to Network Facilities owned by and Network Services provided by ARLHC, as set out in the Access List only.

The Network Facilities and Network Services defined in the Access List which ARLHC provides to Access Seekers are :

- (a) Interconnect Link Service;**
- (b) Private Circuit Completion Service;**
- (c) Domestic Network Transmission Service;**
- (d) Infrastructure Sharing;**
- (e) Network Colocation Service;**
- (f) Internet Interconnection Service;**
- (g) Broadcasting Transmission Service;**

The definitions of these Facilities and Services in the Access List shall be applicable unless the context requires otherwise.

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1.7 Definitions

For the purposes of this ARD the following terms shall have the respective meanings :

Access Agreement	An agreement entered into between ARLHC and an Access Seeker, whereby ARLHC provides access to the Access Seeker in accordance with the terms contained in the agreement, and which shall be registered with the Commission in accordance with the CMA.
Access List	The list of Facilities and Services determined by the Commission under Chapter 3 of Part VI of the CMA.
Access Provider	ARL HomeComm Sdn Bhd ("ARLHC").
Access Seeker	A Network Facilities provider, Network service provider, applications service provider or content applications service provider who is a licensee as defined in the CMA and who makes a written request for access to ARLHC's Facilities and/or Services.
Customer	In relation to ARLHC, a person having a contractual relationship with ARLHC for the provision of communications by means of ARLHC's Facilities and/or Services.
Operator	ARLHC and/or the Access Seeker.
Party or Parties	ARLHC or the Access Seeker as the context requires.

Other than the definitions above, all other terms used in this ARD shall, unless the context otherwise requires, have the same meaning as in the MSA.

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2. PROCESS FOR ACCESS REQUEST

2.1 Introduction

To obtain access to ARLHC's Network Facilities and Network Services, an Access Seeker must make a request in accordance with the process described in this section. Nevertheless ARLHC at its sole discretion may waive the access request process in whole or in part if so considered appropriate.

This access request process is applicable in the following circumstances:

- (a) There is no existing Access Agreement between ARLHC and the Access Seeker; or
- (b) There is an existing Access Agreement between ARLHC and the Access Seeker, and either
 - (i) the Access Agreement will expire within four (4) months from the date when the Access Seeker makes the request; or
 - (ii) the requested Network Facilities or Network Services are not included in the scope of the Access Agreement.

2.2 Access Request

To obtain access from ARLHC the Access Seeker must make an Access Request in writing to ARLHC, duly signed by an authorised signatory and including the following mandatory elements:

- (a) That it seeks access from ARLHC;
- (b) Describes the type of access required, which may be an Access List Facility or Service or a non-Access List Facility or Service;
- (c) Two (2) copies of a confidentiality agreement properly executed by the Access Seeker in the forms prescribed in this ARD
- (d) Include all other information specified in Section 5.4.6 of the MSA; and
- (e) Furnish certified true copies of the following:
 - (i) The licence(s) issued under the CMA or registration with the Commission;
 - (ii) Certificate of Incorporation;
 - (iii) Memorandum and Articles of Association;
 - (iv) Form 24 - Return of Allotment of Shares;
 - (v) Form 49 - Return giving Particulars in Register of Directors, Managers and Secretaries and Changes of Particulars; and
 - (vi) Such other information as ARLHC may reasonably request.

2.3 ARLHC's Response To Access Request

Within ten (10) Business Days after the date of receiving the Access Request, ARLHC shall respond to the Access Seeker, by either:

- (a) Issuing **Form AR1** (Acceptance of Access Request); or
- (b) Issuing **Form AR2** (Request for Further Information);
- (c) Issuing **Form AR3** (Acceptance of Request to Negotiate);
- (d) Issuing **Form AR4** (Rejection of Access Request)

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2.4 ARLHC's Acceptance of Access Request

- (a) In the event ARLHC is satisfied with the information provided by the Access Seeker, then ARLHC shall within ten (10) Business Days after the date of receiving the Access Request, issue Form AR1 to the Access Seeker and provide the following information to the Access Seeker:
 - (i) ARLHC's description of each of the Network Facilities and Network Services provided by ARLHC;
 - (ii) The application forms to be completed by the Access Seeker to apply for access to ARLHC's Network Facilities and Network Services;
 - (iii) ARLHC's currently effective access charges for access to Network Facilities and Network Services;
 - (iv) All relevant technical information relating to the Network Facilities and Network Services which are the subject of the Access Request, including but not limited to any physical and logical interfaces of its Network necessary to allow the development and deployment of communications Services, value-added Services and communications equipment that can interconnect to, and interoperate with, ARLHC's Network;
 - (v) Details of ARLHC's provisioning cycles and any impact such cycles may have upon an Access Request by the Access Seeker;
 - (vi) Details of ARLHC's quality of service targets and achievements in respect of the Network Facilities and Network Services which may be the subject of the Access Request; and
 - (vii) Details of security requirements, insurance requirements and creditworthiness information required by ARLHC under subsections 5.3.8, 5.3.9 and 5.3.10 of the MSA.
- (b) If ARLHC is unable to provide any of the information listed in paragraphs (a)(i) to (vii) above within the stipulated time period, then ARLHC shall provide reasons explaining ARLHC's inability to provide such information to the Access Seeker, whereupon the time period to provide such information shall be extended another ten (10) business days.
- (c) If at the end of the extended time period ARLHC is unable to provide the required information then the Access Seeker may choose whether to proceed with the Access Request or not. In the event the Access Seeker chooses not to proceed with the Access Request then the Access Seeker shall inform ARLHC accordingly in writing.
- (d) In the event the Access Seeker chooses not to proceed with the Access Request then the information provided by the Parties shall be subject to the terms of the confidentiality agreement and neither Party shall in any way utilise any such information in violation of the terms of the confidentiality agreement.
- (e) If after perusing the documentation and information provided by ARLHC the Access Seeker wishes to proceed with the Access Request, then the Access Seeker must within a period of ten (10) business days of receipt thereof provide ARLHC with written confirmation that the Access Seeker agrees with the terms provided or wishes to negotiate on specific terms.

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2.5 ARLHC's Request for Further Information

- (a) ARLHC may request the Access Seeker to provide further information pursuant to an Access Request, by issuing Form **AR2** (Request for Further Information) to the Access Seeker.
- (b) Upon receipt of Form **AR2** the the Access Seeker shall within ten (10) Business Days provide the further information to ARLHC.
- (c) If in ARLHC's opinion the information provided is sufficient for a decision as to whether to accept or reject the Access Request, ARLHC shall reevaluate the Access Request and inform the Access Seeker of its decision within ten (10) Business Days from the date ARLHC received the further information from the Access Seeker.
- (d) ARLHC may request more than once for additional information from the Access Seeker, and each request shall be subject to the provisions in paragraphs (b) and (c) above.
- (e) In the event the Access Seeker fails to provide the further information in response to a request made by ARLHC, then it shall be deemed that the Access Seeker has revoked the Access Request. Nevertheless such revocation shall be without prejudice to the Access Seeker submitting a fresh Access Request.

2.6 ARLHC Agrees To Negotiate

- (a) If the Access Seeker submits an Access Request which contains a request to negotiate the terms and conditions of the Access Agreement, then ARLHC shall:
 - (i) issue Form **AR3** (Acceptance of Request To Negotiate);
 - (ii) provide the information set out in Section 2.4(a)(i) to (vii);
 - (iii) require the Access Seeker to provide all relevant technical information relating to the Access Seeker's Network which ARLHC may reasonably need; and
 - (iv) require the Access Seeker to provide such additional information as may be reasonable in the circumstances.
- (b) Upon issuance by ARLHC of the Form **AR3** to the Access Seeker, the time limited for concluding the negotiations as set out in this ARD shall be deemed to have commenced.

2.7 ARLHC Rejects Access Request

- (a) If ARLHC rejects an Access Request, ARLHC shall issue Form **AR4** (Rejection of Access Request) and the Access Seeker may attend and meet with ARLHC on the date, time and venue specified in the Form AR4.
- (b) If the Access Seeker fails to meet ARLHC as requested, then it shall be deemed to be acceptance of the basis of rejection of the Access Request by ARLHC.
- (c) If in spite of meeting the Parties are not able to resolve the rejection of the Access Request (whether at that meeting or any subsequently agreed meeting), then either Party may initiate the Dispute Resolution Procedures set out in Section 5 of this ARD, in order to determine the reasonableness or unreasonableness of the rejection by ARLHC.
- (d) Pending the final determination of the dispute, ARLHC shall not be obliged to provide access to the Access Seeker.

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2.8 ARLHC's Right To Reject The Access Request

ARLHC reserves the right to reject an Access Request upon any of the following grounds:

- (a) If the provision of the Access List Facilities or Services would be unreasonable under the following circumstances:
 - (i) the information provided by the Access Seeker is incomplete;
 - (ii) not technically feasible, as determined in accordance with the criteria set out in Section 5.4.17 of the MSA;
 - (iii) ARLHC has insufficient capacity to provide the requested Network Facilities or Network Services.
 - (iv) ARLHC has reason to believe that the Access Seeker may fail to comply with the terms and conditions set out in this ARD for the relevant Network Facilities or Network Services;
 - (v) ARLHC has reason to believe that the safety of its Network will be compromised by the grant of the access requested;
 - (vi) ARLHC has reason to believe that the provision of access to the Access Seeker will be in furtherance of an activity which is illegal under Malaysian law; or
 - (vii) ARLHC has reason to believe that the provision of access to the Access Seeker will be contrary to the provisions and objectives of the CMA.
- (b) Although the provision of the Access List Facilities or Services would be reasonable but the terms and conditions which are requested by the Access Seeker for such provision are unreasonable in the opinion of ARLHC.

2.9 Applicability To Additional Services

Notwithstanding that the Access Seeker may have entered into an Access Agreement with ARLHC, the Access Seeker shall submit an Access Request in accordance with the provisions above for each additional Facility or Service which it requires access to.

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3. NEGOTIATION PROCESS AND TIMELINE

3.1 Introduction

The negotiation process and timelines described in this section shall apply to all forms of negotiation between ARLHC and an Access Seeker with regard to the Access Agreement. All negotiations shall be conducted in good faith, in accordance with the provisions of Section 5.4.15 of the MSA.

3.2 Commencement Of Negotiations

An Access Seeker who has indicated the intention to negotiate the terms and conditions of the Access Agreement with ARLHC and has received Form **AR3** (Acceptance of Request To Negotiate) must within five (5) Business Days of such receipt submit the following to ARLHC:

- (a) A list of clauses which it wishes to change and the proposed clauses in its place; or
- (b) The draft Access Agreement for negotiation,

and shall state the proposed date for commencement of the negotiations. If the Access Seeker fails, neglects or refuses to do so then the Access Seeker shall be deemed to have withdrawn its Access Request and ARLHC shall not be under any obligation to provide access to the Access Seeker.

3.3 Duration of Negotiations

- (a) All negotiations shall be concluded within one-hundred and twenty (120) days from the date the Access Seeker submits a written request to ARLHC to commence negotiations, and by default the time period shall be deemed to commence from the date of issuance of the Form **AR3** to the Access Seeker.
- (b) The Parties may agree in writing to extend the time period for concluding such negotiations and shall thereupon submit a joint request for the approval of the extension to the Commission.
- (c) Pending the Commission's approval the Parties shall continue to negotiate in good faith to conclude the Access Agreement.

3.4 The Initial Meeting

Designated representatives of ARLHC and the Access Seeker shall meet at the agreed date, time and venue, and shall agree upon:

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

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3.5 Objection Rights

- (a) Either Party may object to any person or persons nominated by the other Party to attend and/or lead any negotiations;
- (b) If a Party wishes to object to such person or persons, then that Party must as soon as reasonably practicable but not less than five (5) Business Days prior to the date of the initial meeting, submit an objection in writing to the other Party:
 - (i) identifying the person or persons which the Party objects to; and
 - (ii) stating the reasons for such objection.
- (c) A Party may only object to a person nominated by the other Party on the grounds that the participation of such nominee would adversely affect the legitimate business activities of the objecting Party;
- (d) Upon receipt of the written objection, the recipient shall ensure that the person objected to does not attend the initial meeting;
- (e) Unless the objection is resolved at the initial meeting, the person against whom the objection was lodged shall not attend any of the negotiations between the Parties.

3.6 Failure To Reach Agreement

If the Parties are unable to reach agreement by the time limited for so doing, then both Parties may apply to the Commission for an extension of time to complete the negotiations, and if such application for extension of time is refused by the Commission, then either Party may seek the resolution of such failure pursuant to the Dispute Resolution Procedures set out in this ARD.