



VERTICOM SDN BHD
Company No 808472-V

REFERENCE ACCESS OFFER

Issued pursuant to the Malaysian Communications and Multimedia Commission Determination of 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).

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PART 1 – BACKGROUND & SCOPE

- a. This Reference Access Offer (“RAO”) is prepared by Verticom Sdn. Bhd. (808472-V) (“Access Provider”), a company incorporated under the laws of Malaysia and having its registered and business address at 67-3, Jalan Nautika AU20/A, Pusat Komersil Sg. Buloh TSB, Section U20, 40160 Shah Alam, Selangor Darul Ehsan in compliance with section 5.3.3 of the Commission Determination on the Mandatory Standard on Access Determination No. 3 of 2016 (“MSA Determination”).
- b. The Access Provider is a licensed operator under the Act and pursuant to its License, may offer Access Service hereunder.
- c. This RAO:
 - i. Sets out the full terms and conditions on which the Access Provider is prepared to supply Facilities and/or Services to any Licensees, including rates, charging principles and methodologies to be applied for the Facilities and/or Services and any applicable fees or rebates;
 - ii. Incorporates the details of all available POIs offered by the Access Provider (if any), as specified on its publicly accessible website from time to time;
 - iii. Contains a copy of the application required to be completed by the Access Seeker to apply for access to Facilities and/or Services (as provided in Appendix A hereof) (“Access Request”);
 - iv. Contains a copy of the Access Provider’s standard confidentiality agreement which complies with subsection 5.3.8 of the MSA Determination (“Confidentiality Agreement”);
 - v. Contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and
 - vi. Does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination (MSA 5.3.3)
- d. For services outside the scope of this RAO, the terms and conditions thereof shall be negotiated separately between the parties.
- e. The Access Provider considers that this RAO is consistent with:
 - i. The Standard Access Obligations stipulated under subsection 4.1.1 of the MSA Determination and Section 149 of the Act; and
 - ii. The principle of non-discrimination stipulated under subsections 4.1.5 and 4.1.6 of the MSA Determination.
- f. Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to this ROA.
- g. The Access Provider shall, within twenty (20) Business Days of making any amendment to the Access Provider’s ROA, provide a copy of the amendments, or an amended copy of the Access Provider’s ROA before the Access Provider proposes to effect the changes to:

- i. The Access Seeker who is being provided with access to Facilities or Services listed on the Access List Determination under the Access Provider's existing RAO; and
 - ii. The Access Seeker who has requested the Access Provider's RAO within the period of three (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.
- h. An amendment to the Access Providers RAO will be deemed to alter the relevant terms and conditions of an Access Agreement which is based on the Access Provider's RAO.

For clarification

- 1. Where the terms and conditions of an Access Agreement are not identical to those in this RAO, an amendment to the RAO will not alter the terms of that Access Agreement except as agreed between the Operators; and
 - 2. 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 this 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 RAO, no amendments to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favour of the Access Provider (MSA 5.3.5).
- i. Upon the expiry of the twenty (20) Business Days in Clause (h) above (or such a period as the Access Provider determines is necessary to finalize the amendments to its RAO), the Access Provider will:
- i. Make available the RAO on the Access Provider'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
 - ii. Provide the updated RAO to the Commission within ten (10) Business Days after being made available under Clause 1(h)(iii)(1) (MSA 5.3.6).

PART 2 – DEFINITIONS AND INTERPRETATIONS

1. DEFINITIONS

The following words have these meanings in this RAO unless the contrary intention appears:-

“Access Agreement” means an agreement entered into between operators whereby the Access Provider provides access to an Access Seeker in accordance with the terms contained in such agreement;

“Access List Determination” means the Commission Determination on Access List, Determination No. 2 of 2015 which contains the list of Facilities and Services determined by the Commission under Chapter 3 of Part VI of the Act;

“Access Provider” means:

- (a) Network facilities provider who owns or provides Facilities listed in the Access List Determination.
- (b) Network service provider who provides Services listed in the Access List Determination; and
- (c) Who is a licensee as defined in the Act.

“Access Request” means a request for access made by an Access Seeker under subsection 5.4.5 of the Standard and containing the information contained in subsection 5.4.6 of the Standard.

“Access Seeker” means a network facilities provider, a network service provider, an applications service provider or a content applications service provider who is a licensee as defined in the Act and who makes a written request for access to Facilities and/or Services.

“Access Service Provider” means the Operator to whose Network, a line is directly connected, and over which Services are supplied, and may also be a Gaining Service Provider or a Releasing Service Provider.

“Billing Period” means the period over which the supply of access to Facilities and/or Services is measured for the purposes of billing as contemplated in subsection 5.11.1 of the Standard, which be no more than one (1) month and in accordance with the relevant calendar month, unless otherwise agreed between the parties.

“Billing Cycle” means the regular periodic basis on which the Access Provider shall issue invoices for the supply of Access to Facilities and/or Services during each Billing Period, as specified in subsection 5.11.3 of the Standard.

“Billing Dispute” has the meaning given to it in subsection 1.1 of the Dispute Resolution Procedures in Annexure A of the Standard.

“Business Day” means a day other than the following days:

- (a) A Saturday and Sunday

(b) In states where Friday is observed as the weekly holiday, a Thursday and Friday;
or

(c) A day which is lawfully observed as a national public holiday throughout Malaysia.

“Confidential Information” means all information, know-how, ideas, concepts, technology, manufacturing processes, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to, or developed in connection with, or in support of the business of the Disclosing Party but does not include:

(a) Information which is or becomes part of the public domain (other than through a breach of an Access Agreement);

(b) Information rightfully received by the Receiving Party from a third person without a duty of confidentiality being owed to the third person, except where the Receiving Party has knowledge that the third person has obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the Disclosing Party;

(c) Information which has been independently developed by the receiving party; or

(d) Information required by law or the business rules of any stock exchange to be disclosed, provided that;

i. The Receiving Party gives twenty-four (24) hours’ notice to the Disclosing Party of the particulars of the required disclosure; and

ii. The Receiving Party provides the Disclosing Party with all assistance reasonably required by the Disclosing Operator (at the Disclosing Party’s cost) to enable the Disclosing Party to take any steps available to it to prevent that disclosure or to ensure that it occurs subject to a reasonable obligation of confidence.

“Content Obligations” means those obligations set out in subsections 5.5 to 5.16 (inclusive) to the Standard.

“Customer” means in relation to an Operator, a person having a contractual relationship with that Operator for the provision of communications by means of that Operator’s Facilities and/or Services.

“Dispute Resolution Procedures” means the procedures outlined in Annexure A of the Standard.

“Due Date” means, in respect of an Invoice and payment of Access Charges, on or before the seventh (7th) of each month of thirty (30) days from the date of receipt of an Invoice whichever is earlier.

“Effective Date” means the date on which this RAO or the Access Agreement is signed by the Operators.

“Equipment” means any equipment (whether hardware or software) or device which is part of or within a Network.

“Facilities” means network facilities and/or other facilities which facilitate the provision of network services or application services, including content application services, as listed in the Access List Determination.

“Force Majeure” means an event or circumstance beyond the reasonable control of an Operator which affects the Operator’s ability to perform its obligations under the Standard or under an Access Agreement.

“Forecast” means a forecast made by the Access Seeker referred to in subsection 5.6 of the Standard.

“Infrastructure Sharing” has the meaning as described in paragraph 4(7) of the Access List Determination.

“Invoice” means the invoice for amounts due in respect of the supply of Facilities and/or Services during a Billing Period.

“License” means the relevant license granted by the Minister pursuant to the Act.

“Licensee” means a person who either holds an individual license or undertakes activities which are subject to a class license granted under the Act.

“License Term” means in respect of each Site, the period for its license to be used by the Access Seeker commencing on the Commencement Date and as stipulated in the respective SLO.

“Minister” means the Minister of Communications and Multimedia or, if different, the Minister administering the Act.

“MSA Determination” means the Commission Determination on the Mandatory Standard on Access, Determination No 3 of 2016 which came into operation on 1 January 2017 and any subsequent amendments thereto.

“Network” means network facilities and/or network services comprising a system that carries or a series of systems within Malaysia that carries or is capable of carrying communications by means of guided or unguided electromagnetic energy or both which is owned and operated by an Operator.

“Operators” means the Access Provider and the Access Seeker collectively.

“Reference Access Offer” or “RAO” means this RAO prepared and maintained by the Access Provider for each Facility and/or Service listed in the Access List which it provides to itself and the Licensees.

“Review” means a review of the MSA Determination pursuant to Section 7.5 of the MSA Determination.

“RM” means Ringgit Malaysia which shall be the monetary currency used in this RAO unless otherwise provided.

“Security Sum” means the security either in the form of a Bank Guarantee or cash, provided or to be provided by the Access Seeker to the Access Provider for the provision of access to the Facilities and/or Services.

“Service Qualifications” means:

- (a) In relation to O & T Services, Network Co-Location Service, Infrastructure Sharing, Duct and Manhole Access, Interconnect Link Service, Transmission Service, Domestic Connectivity to International Services or MNVO Access, a desk and/or field study that may be conducted under subsections 5.4 and 5.7 of the Standard, and may include (where relevant) the testing of a line to ascertain whether it could be used in response to an Access Request and/or an Order or proposed Order; and
- (b) In relation to all other Facilities and Services, includes the interrogation of an Access Provider’s OSS to confirm availability of network facilities to fulfil an Order or proposed Order

“Services” means network services and/or other services which facilitate the provision of network services or application services, as listed in the Access List Determination.

“Service Specific Obligations” means the obligations which relate to specific types of Facilities and/or Services set out on Section 6 of the Standard and which add to or vary the Content Obligations in respect of those Facilities and/or Services.

“Standard” means the Mandatory Standard on Access as determined by the Commission in the Determination.

“Standard Access Obligations” or “SAO” means the obligations which relate to access as referred to in section 149 of the Act.

“Site” means the Access Provider’s site where access to Facilities and/or Services is offered and provided under this RAO which include the Designated Infrastructure.

“Technical Proposal” means the Technical specifications proposed by an Access Seeker for a Site.

“Technical Specification” means any technical parameters, specifications and procedures applicable to a Site.

2. INTERPRETATIONS

In this RAO except where the contrary intention appears:

- i. the singular includes the plural and vice versa;
- ii. a document includes all amendments or supplements to that document, or replacements or novation of it; and
- iii. a reference to a 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 relating thereto or in connection therewith; and
- iv. a reference to a person includes a firm, body corporate, unincorporated association or an authority; and

- v a reference to a person includes the person's executors, administrators, successors, substitutes (including without limitation, persons taking by novation) and assigns; and
- vi 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 acts that have to be done or to be done by or on or before a particular day or Business Day means by or on or before the close of business at 5.00pm on that particular day or Business Day; and
- vii. a reference to a related body corporate of an Operator has the same meaning as in the Companies Act 2016; and
- viii. a reference to a third person is a reference to a person who is not a party to this RAO; and
- ix. headings are included for convenience and do not affect the interpretation of this RAO.

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PART 3 – PRINCIPLES OF ACCESS

3.1 SERVICES

- 3.1.1 The Access Provider's RAO applies only to Facilities listed on the Access List Determination.
- 3.1.2 The service description for each of the Facilities is set out in Schedule A.
- 3.1.3 Charging Principles are set out in Schedule B.

3.2 ELIGIBILITY FOR ACCESS TO SERVICE

For the purposes of clarification, consistent with Government policy and Determinations by the Commission (and by its predecessors), an Access Seeker may only request for Access to any or all of the Facilities listed in the Access List Determination which are set out in the Access Provider's RAO where the Access Seeker has been granted:

- (a) An individual network facilities provider license;
- (b) An individual network services provider license;
- (c) An individual content application service provider license;

and such individual licences are not limited or restricted from those detailed in the Communications and Multimedia (Licensing Regulations 2000, as amended in any way):

- (d) By the reference to the type of network facilities, network services and/or content application services that can be provided; and
- (e) By geographical limitation to only a specific area and/or areas in Malaysia to which the Access Seeker can provide such network facilities, network services and or content applications services.

An Access Seeker may not request for access to the Facilities listed in the Access List Determination where the requested Facilities are to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.

Consistent with Government Policy and Determinations by the Commission (and its predecessors), where the Access Provider provides the Access Seeker with access to the Facilities listed in the Access List Determination, the charges for the requested Facilities shall be negotiated between the Access Seekers and Access Provider.

3.3 PRINCIPLES OF ACCESS

- 3.3.1 The Access Provider shall subject to Section 3.2, if requested to do so by an Access Seeker through an Access Request, supply a Facility listed in the Access List Determination to the Access Seeker on a non-discriminatory basis as required by the Standard Access Obligations in relation to the Supply of a Service.

3.3.2 In supplying a Facility listed in the Access List Determination, the Access Provider must treat an Access Seeker on a non-discriminatory basis as required by the Standard Access Obligations in relation to the Supply of a Service.

3.3.3 Principles of non-discrimination

As required by subsection 149(2) of the Act, an Access Provider must provide access to those Facilities and/or Services specified in the Access List Determination, and such access must be:

- (a) Of at least the same or more favourable technical standard and quality as the technical standard and quality provided for itself on the Access Provider's Facilities and/or Services; and
- (b) Provided on an equitable and non-discriminatory basis.

3.3.4 No exclusivity and no restriction on resale

- (a) An Access Provider must not, in relation to the supply of a Facility and/or Service, include a term or condition in an Access Agreement preventing an Access Seeker from acquiring the same or any other Facility and/or Service from another Operator.
- (b) An Access Provider must not, in relation to the supply of a Facility and/or Service, include a term or condition in an Access Agreement preventing an Access Seeker from re-supplying that Facility and/or Service to any person.

3.3.5 Customer Principles

The Access Provider shall observe and comply with the customer relationship principles set out in Section 4.3 of the MSA Determination.

PART 4 – ACCESS REQUEST PROCEDURES

4.1 Application for Access to Services

- 4.1.1 An Access Seeker shall request from the Access Provider to supply Facilities listed in the Access List Determination by serving an Access Request to the Access Provider.
- 4.1.2 The purpose of such Access Request is to provide the Access Provider with sufficient information to assess the Access Seeker's request for the supply of Facilities listed in the Access List Determination under the Access Provider's RAO.
- 4.1.3 The Access Request must:
- (a) Contain the name and contact details of the Access Seeker;
 - (b) Specify the Facilities listed in the Access List Determination in respect of which access is sought;
 - (c) Indicate whether the Access Seeker wishes to accept the Access Provider's RAO or negotiate an Access Agreement;
 - (d) Contain the information (if any) as set out in Section 5.3.7 of the MSA Determination that the Access Seeker reasonably require the Access Provider to provide for the purposes of the access negotiations;
 - (e) Contain two (2) copies of the Confidentiality Agreement properly executed by the Access Seeker in the form prescribed by the Access Provider in Annexure 1;
 - (f) Contain preliminary information regarding the scale and scope of Facilities and/or Services that the Access Seeker expects to acquire from the Access Provider pursuant to the Access Request;
 - (g) Contain relevant technical information relating to interface standards of the equipment of the Access Seeker;
 - (h) Contain relevant information relating to the Access Seeker and functionality of its Services, to the extent that the Access Seeker is aware that such information may affect the Access Provider's Network;
 - (i) Contain information that the Access Seeker is not currently being supplied with the requested Facility listed in the Access List Determination or if so, the reason for the additional request for the said Facility;
 - (j) Specify the type of communications licenses held by the Access Seeker and a copy of the license where a copy had not been previously provided;
 - (k) Contain Creditworthiness Information as set out in Section 4.2;
 - (l) Be accompanied by a Security Sum as set out in Section 4.3;
 - (m) Contain Insurance Information as set out in Section 4.4

- (n) Contain preliminary information regarding the scale and scope of the Facilities and/or Services that the Access Seeker expects to acquire from the Access Provider pursuant to the Access Request; and
- (o) Contain such other information that the Access Provider may reasonably request for the sole purpose of providing access to the requested Facilities and/or Services.

4.2 Credit Worthiness Information

- 4.2.1 The Creditworthiness Information that is required to be submitted with an Access Request shall include but not be limited to:
 - (a) A letter, signed by the Director of the Access Seeker stating that the Access Seeker is not insolvent and is not under any external administration or under a similar form of administration under any laws applicable to it in any jurisdiction; and
 - (b) A copy of the Access Seeker's most recently published audited balance sheet and audited profit and loss statement.
 - (c) Such other information as may be reasonably requested by the Access Provider provided that such information is publicly available.
- 4.2.2 The Creditworthiness Information shall commensurate with an estimate of the value of the Access to the Facilities to be provided by the Access Provider to the Access Seeker over a ninety (90) day period.

4.3 Security Sum

- 4.3.1 The Access Provider may request a Security Sum from the Access Seeker in the event that the Access Seeker is deemed to present a credit risk. The security that may be given by the Access Seeker may be in terms of either:
 - (a) Bank Guarantee; or
 - (b) Cash Sum.
- 4.3.2 The Access Provider is not obliged to consider entering into the Access Agreement with the Access Seeker until the Access Seeker has amongst other things provided (at the Access Seeker's costs) to the Access Provider such Security Sum on terms and conditions reasonably acceptable to the Access Provider.

4.4 Insurance Information

- 4.4.1 Subject to subsection 4.4.2, an Access Request shall be accompanied by the following insurances:
 - (a) Worker's Compensation and/or Social Security Insurance and/or Employer's Liability Insurance and/or other insurance with statutory limits as required by the laws of Malaysia to provide for payment to its employees

employed in connection with the work covered by the Access Agreement that may be entered into and/or their dependents; and

- (b) Comprehensive General Liability Insurance of an amount which is not in excess of Ringgit Malaysia Twenty Million (RM20,000,000.00) for any one claim or series of claims arising out of an accident or occurrence in connection with the Access Agreement that may be entered into resulting in bodily injury and/or personal injury including death and property damage of an Access Seeker which may arise out of or in consequence of any acts or omissions of the Other Access Seeker.

4.4.2 For the purpose of clarification, the insurance provided by the Access Seeker pursuant to Section 4.4.1 shall commensurate with the reasonable sum which is to be agreed by the Access Provider.

4.5 Processing of Access Request

4.5.1 Acknowledgement of Receipt of Access Request

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

- (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 if it is rejecting the Access Request in accordance to paragraph 4.7.

Subject to the additional information being received by the Access Provider within twenty-one (21) business days from the date of request, the Access Provider shall reconsider the Access Request upon receipt of such additional information and the ten (10) business days for the Access Provider to consider the Access Request will recommence from the receipt of the information from the Access Seeker.

4.5.2 Non-Refundable Processing Fee

- (a). The Access Provider may charge a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request.
- (b) The non-refundable processing fee is only applicable to the requested Access Service(s) that can be offered and made available by the Access Provider.
- (c) The fee shall be as advised in writing by the Access Provider to the Access Request upon approval of the same.
- (d) In the event that additional or non-routine work is required in order to process the Access Request, the Access Provider may charge a separate fee for undertaking such additional work. If the Access Seeker

does not proceed with the Access Request accepted by the Access Provider, the processing fee will not be refunded to the Access Seeker.

- (e) The processing fee will be set off against the charges for the re-requested Facilities and Services upon acceptance of the Access Request by the Access Provider pursuant to paragraph 4.8.

4.5.3 Resources to Change

- (a) In accordance with subsection 5.7.28 of the MSA Determination, the Access Provider may charge an Access Seeker a resource charge to be determined by reference to the costs incurred by the Access Provider for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Access Service(s).
- (b) The fees for the specific Access Services are set out in the Schedule B – Charges and Charging Principles of the RAO.

4.6 Assessment of Access Request

4.6.1 Grounds for Refusal

Without limiting any other grounds that may be relied upon under the Act and this RAO, the 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 the Access Provider's reasonable opinion, the Access Seeker's Access Request was not made in good faith and the Access Provider shall set out the basis on which the Access Request was not made in good faith;
- (b) In the Access Provider's reasonable opinion, the Access Request does not contain the information reasonably required by the Access Provider's RAO provided that the Access Provider has sought the information from the Access Seeker under subsection 4.5.1 of the Access Provider's RAO and has not received that information within twenty-one (21) business days of making such a request;
- (c) The Access Provider does not currently supply or provide access to the requested Access Service(s) to itself or to any third parties (in which case it shall identify any alternative Facilities and/or Services which it does provide to itself or to any third parties which may be acceptable substitutes), except where the Access Seeker compensates the Access Provider for the original supply of access to such Access Service(s);
- (d) It is not technically feasible to provide access to the requested Access Service(s);
- (e) The Access Provider has insufficient capacity or space to provide the requested Access Service(s).
- (f) There are reasonable grounds in the Access Provider's opinion to believe that the Access Seeker would fail to make timely payment for the supply of the relevant Access Service(s) and such concerns cannot be addressed through a security requirement in accordance with this RAO; or

(g) There are reasonable grounds in the Access Provider's opinion to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Access Service(s); or

(h) There are reasonable grounds for the Access Provider to refuse access in the national interest.

4.6.2 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.

4.6.3 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.

4.6.4 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 the Access Provider's belief as mentioned in subsection 4.6.1(f) includes evidence that the Access Seeker is not, in the reasonable opinion of the Access Provider, creditworthy.

4.6.4 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 the Access Provider'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.

4.7 Notification of Rejection to the Access Seeker

4.7.1 Where an Access Request is rejected, the Access Provider shall:

(a) Notify the Access Seeker in writing within ten (10) Business Days from the receipt of the Access Request or additional information requested pursuant to Section 4.5.1, as the case may be;

(b) Provide reasons for rejection under Section 4.6 to the Access Seeker.

(c) Provide the basis for the Access Provider's rejection of the Access Request; and

(d) Indicate a date and time, not later than seven (7) Business Days from the date of the notice of rejection, at which representatives of the Access Provider will be able to meet with the representatives of the Access Seeker to discuss the rejection of the Access Request. At this meeting, the Access Seeker may request of the Access Provider to substantiate its reasons for

refusal, and if access has been refused on the basis of the grounds in Section 4.6.1.e, the Access Provider must identify when additional capacity is likely to be available.

4.7.2 Where the Access Seekers are unable to resolve their differences following the meeting held pursuant to Section 4.7.1(d), either Access Seeker may request for a resolution of the dispute in accordance with Annexure A of the MSA Determination.

4.8 Acceptance of Access Request

4.8.1 Where the Access Provider agrees to provide access to Facilities listed in the Access List Determination to the Access Seeker in accordance with the Access Provider's RAO, the Access Provider shall, within ten (10) Business Days of such, respond under Section 4.5 by providing the Access Seeker with two (2) copies of the executed Model Access Agreement for execution by the Access Seeker and one (1) copy of the confidentiality agreement which has been duly executed by the Access Seeker.

4.8.2 Where the Access Seeker wishes to negotiate an Access Agreement, the Access Seekers shall comply with the requirements in Section 5.4.2, 5.4.4, 5.4.9, and 5.4.15 of the MSA Determination in negotiating and concluding an Access Agreement.

4.8.3 The Access Provider will not be deemed to have agreed to approve the requested Facility listed in the Access List Determination until:

- (a) If a security sum is deemed to be required by an Access Seeker, the Security Sum has been provided in accordance with Section 4.1 and 4.3; and
- (b) An Access Agreement has been executed between the Access Seekers and the Access Agreement is registered with the Commission.

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PART 5 – PROVISION OF INFORMATION

- 5.1 The obligations of each Access Seeker to provide information to other Access Seekers are subject to the MSA Determination and the requirements of confidentiality imposed by the Access Provider's RAO.
- 5.2 To the extent permitted by Malaysian law and any relevant guidelines or customer service standards in force pursuant to the Access Seeker's respective License conditions, the Access Seekers will exchange information and otherwise cooperate in relation to prevention and investigation of fraudulent use or misuse of the Access Seeker's respective Communications Services and the theft of the Access Seeker's provided terminal equipment.
- 5.3 Information provided under the Access Provider's RAO may only be used for the purpose(s) for which it was given; personal information about a customer's creditworthiness, credit standing and history or credit capacity may only be used for the purposes permitted by, and in compliance with, Malaysian Law.
- 5.4 If the information is used by an Access Seeker for any purpose other than the purpose for which it was given, the providing Access Seeker may deny the recipient Access Seeker further access to the information for the period during which the non-observance or non-conforming use continues specifying the non-observance or non-conforming use continues. The Access Seekers will cooperate to resolve the providing Access Seeker's reasonable concerns so that information exchange can resume as soon as possible.
- 5.5
 - (a) Subject to the Act and any subordinate legislation, nothing in the Access Agreement may be construed as requiring an Access Seeker at any time to disclose to the other Access Seeker information which at the date when the Access Agreement comes into force, the subject of a confidentiality obligation owed to a third person unless the third consents to such disclosure. Where the consent of a third person is required, the Access Seeker holding the information must use its reasonable endeavours to obtain the consent of that third person.
 - (b) After the Access Agreement comes into force, an Access Seeker must use its best endeavours not to enter into any contract which would prevent it from making information available to other Access Seekers unless the contract includes a term which permits the contracting Access Seeker to make the information available if directed to do so by the Commission.

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PART 6 – BILLING AND PAYMENTS

- 6.1 Where relevant, the billing and settlement obligations set out in 5.1.1 of the MSA Determination shall be applicable.
- 6.2 The Access Seekers shall, from time to time, inform each other of the mailing address and the department to which the Invoice should be sent to and their respective bank account details for the purposes of enabling the other Access Seeker to make payment. All invoices shall be delivered by hand or post (either registered mail or courier) or email.
- 6.3 The Access Seeker shall bear and pay all taxes as required by Malaysian law that result from the implementation of the Access Agreement.
- 6.4 The Access Seeker must pay any amount due and owing to the Access Provider on the Due Date unless otherwise agreed in writing by both Access Seekers and the Access Provider.
- 6.5 All payments must:
- (a) Be paid by electronic transfer to the Access Provider or exceptionally, by cheque, to the nominated account(s) of the Access Provider if agreed by the Access Provider;
 - (b) Be accompanied by relevant information so that the Access Provider can properly identify the payor and properly allocate the payment received, failing which, the Access Provider shall have the absolute discretion to allocate payment received to any amount due and payable;
 - (c) Be paid on the Due Date unless otherwise agreed in writing by both the Access Seeker and the Access Provider.
- 6.6 All invoices shall be stated in Ringgit Malaysia and payment must be made in Ringgit Malaysia.
- 6.7 Notwithstanding anything to the contrary, the Access Provider shall be entitled to deduct or withhold such taxes, duties, levies or such other sum imposed by such governmental authorities (“said taxes”) from any sum or sums due from the Access Seeker in the event the Access Provider is required by law to pay the said taxes and on behalf of the Access Seeker.
- 6.8 For the purposes of clarity, the Security Sum (if payable) does not relieve the Access Seeker from its obligation to pay amounts to its Access Provider as they become due and payable, nor does it constitute a waiver of the Access Provider’s right to suspend, disconnect or terminate the relevant network services due to non-payment of any sums due and payable to the Access Provider.
- (a) The Access Provider shall be entitled to revise the Security Sum if payable in any of the following events:
 - (i) Where in the reasonable opinion of the Access Provider, the amount of the Security Sum is less than the minimum value calculated over a ninety (90) day period determined by the Access Provider;

- (ii) Where, in the opinion of the Access Provider, there is a material change in the circumstances in relation to the Access Seeker's Creditworthiness. In such cases, the Access Provider may request additional security in addition to the Minimum Value to sufficiently and reasonably mitigate its risk in providing the relevant Facilities and/or Services listed on the Access List Determination to the Access Seeker. For clarification, material change in circumstances includes, but is not limited to, failure to pay on the Due Date in respect of three (3) Invoices rendered in the preceding six (6) months, as long as those amounts have not been disputed in good faith;
 - (iii) Upon the provisioning of new or additional Facilities to the Access Seeker; and
 - (iv) At each subsequent anniversary from the Commencement Date; where the Security Sum is revised pursuant to Section 6.9(a) below, the Access Seeker shall, within five (5) business days of the date of the written request of the Access Provider, deposit the new Security Sum with the Access Provider in the manner specified in Section 4.3 of the Access Provider's RAO.
- (b) Where the Access Seeker deposits monies in lieu of a Bank Guarantee, such monies shall be deposited in a separate interest-bearing account ("the said accounts") and any interest accrued thereon is held to the benefit of the Access Provider in addition to the Security Sum.
- 6.9 (a) The Security Sum Deposited by the Access Seeker with the Access Provider Shall only be used for the purposes of Access Seeker's obligation. Such Utilization or deduction of the Security Sum shall not be construed as set-off Or counterclaim.
- (b) Upon termination of the Access Agreement, the Security Sum deposited with the Access Provider or parts thereof, (if any) shall be returned and/or refunded to the Access Seeker within sixty (60) days from the date of termination.

6.10 Billing Dispute Procedures

Where there is a billing dispute, the Access Seekers shall comply with the dispute resolution procedures in **Annexure A of the MSA Determination**.

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PART 7 – TERMINATION

7.1 Termination Obligations

This Access Agreement may be terminated or part thereof if any of the following circumstances apply and the Access Provider has notified the Access Seeker of its intention to terminate the Access Agreement:

- (a) The Access Seeker has materially breached the Access Agreement and such breach shall have persisted for a period of thirty (30) days without correction and shall have caused the Access Provider inability to operate or in the reasonable opinion of the non-breaching party, the economic objective of the non-breaching party shall have suffered or the non-breaching party shall have sustained material risk or losses due to such breach;
- (b) The Access Seeker is subject to a winding up order; or
- (c) A Force Majeure event has persisted for ninety (90) days.

The Access Provider shall forward to the Commission a copy of the notice of termination to the Access Seeker.

7.2 Approval

Prior to the termination or seeking to materially vary an Access Agreement or access to any services provided under it, the Access Provider must inform the Commission in writing of the action it proposes take and the reasons why such action is appropriate. The Access Provider shall not terminate, suspend, or seek to materially vary the Access Agreement of access to any Services until such time and on such conditions as the Commission may warrant.

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SCHEDULE A

PART I – INFRASTRUCTURE SHARING

1. General

- 1.1 Part 1 of Schedule A sets out the terms and conditions which are applicable to Infrastructure Sharing.

2. Pre-Requisites for Applying for Infrastructure Sharing

- 2.1 The Access Provider shall not be obliged to provide to the Access Seeker Infrastructure Sharing unless:

- (a) The Access Provider is the legal owner of the tower;
- (b) The Access Seeker has the appropriate licenses from the relevant authorities to operate the service for the purpose of the equipment to be installed; and
- (c) There is no space or loading constraint.

3. Infrastructure Sharing

- 3.1 The Access Provider agrees to provide Infrastructure Sharing at the designated tower to the requesting Access Seeker in accordance to the terms of the Master Agreement, if any, initially entered into between the Access Provider and the Access Seeker.

- 3.2 The Access Seekers shall publish on its website and keep updated a list of the Designated Towers leased from the Access Provider.

3.3 Duration of Infrastructure Sharing

- 3.3.1 Infrastructure Sharing at a Designated Tower shall be for an Initial period of Seven (7) years with an option to renew for three (3) successive terms of three (3) years each, unless otherwise agreed to by both parties.

- 3.3.2 The term of the Infrastructure Sharing shall commence on the date of (“Handover Date”):

- (a) The Access Seeker agrees to commence Infrastructure Sharing; or
- (b) The Access Seeker takes physical possession of the shared space (“Shared Space”) at the Designated Tower Site, whichever is earlier.

4. Access Seeker’s Obligations

- 4.1 The Access Seeker shall be responsible for and shall bear the cost of all electricity utilized by the Access Seeker at the Shared Space. The Access Seeker shall pay the proportion of electricity bill if utilizing the Access Provider’s power source as billed by the Access Provider.

4.2 Installation of Equipment

- 4.3 The Access Seeker shall only be permitted to install its equipment, system and/or devices on the Shared Space and shall not be permitted to install any other party’s

equipment, system and/or devices on the Shared Space without the prior written approval of the Access Provider.

4.4 Safety and Health and Security Procedures:

- (a) The Access Seeker shall comply with the provisions and requirements of the Occupational Safety and Health Act 1994 (“OSHA”), environmental regulation, traffic regulation or any other laws and regulations which the Access Provider is subject to. Some of these provisions include but are not limited to the use of personal protective equipment such as safety helmets, safety boots, safety goggles and other safety gadgets as prescribed by OSHA.
- (b) The Access Seeker shall exercise due care in the execution of their work so as to prevent accidents and are required to report any incidents including but not limited to accidents as a result of their works to the Access Provider within twenty-four (24) hours from the time of the occurrence.
- (c) The Access Seeker shall comply and cause its employees, agents and contractors to comply with all guidelines rules and regulations issued by the Access Provider or the party which the Access Provider is subjected to from time to time on access and security procedures with respect to access and the use of Shared Space. The Access Seeker shall ensure the security of its Shared Space so no unauthorized person shall enter the Shared Space.

4.5 Sub-Letting and Assignment

The Access Seeker shall not at any time sub-let, assign or lease the Shared Space to others.

5. Processing of Order for Infrastructure Sharing

5.1 The Access Provider shall acknowledge receipt of each Order for Infrastructure Sharing within two (2) Business Days.

5.2 The Access Provider shall notify an 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 the Order under subsection 5.7.8 of the MSA; or
- (b) Providing the Access Seeker with the result of post-Order Service Qualification where the Access Provider has undertaken post-Order Service Qualification Order under subsection 5.7.8 of the MSA.

6. Indicative Delivery Timeframe

6.1 Indicative Delivery Timeframe shall be for a term of forty (40) Business Days and shall commence from the Notice of Acceptance or confirmation of the Order under subsection 5.7.14 of the MSA.

7. Billing Cycle

7.1 The Billing Cycle for Infrastructure Sharing will be one (1) year in advance for the first year and quarterly in advance for subsequent years.

8. Physical Access

8.1 The Access Provider shall allow an Access Seeker, its nominated employees and/or contractors to physically access the Access Provider's network facilities and the Access Seeker's equipment located at such network facilities, at equivalent times and in accordance to equivalent processes and procedures as are applicable to itself where:-

- (a) The Access Provider is required to fulfil an Order for Infrastructure Sharing;
- (b) Subject to restrictions faced by the Access Provider;
- (c) For the Access Seeker to perform operations or maintenance activities.

9. Escorts

9.1 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 the 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 Seeker shall:

- (a) Bear the costs of such escort service;
- (b) Be provided immediate 24-hour physical access to the Access Seeker for emergency maintenance requests subject to rules and regulations bound by the Access Provider such as but not limited to highway work permits;
- (c) Subject to paragraph 6.8.9(d) of the Standard, be provided physical access at the time requested by the Access Seeker for planned maintenance request (subject to rules and regulations which the Access Provider is bound to, such as but not limited to highway work permit) on:
 - (i) Two (2) Business Days' notice for manned sites and five (5) Business Days' notice for unmanned sites; or
 - (ii) The period of notice which it requires from itself when providing itself with physical Access for planned maintenance.

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SCHEDULE B – CHARGING PRINCIPLE

1. The following rates shall be utilized as indicative rates for access to telecommunication structures to be granted to an Access Seeker to install its Equipment thereat:

STRUCTURE TYPE	Rate of 1 st to 7 th Year	
	2W	3W
24m Pole	RM3,750 – RM4,500	RM2,920 – RM4,000
30m Pole	RM3,750 – RM4,500	RM2,920 – RM4,000
30m Monopole	RM5,000 – RM5,500	RM4,200 – RM5,000
36m Monopole Tree	RM5,000 – RM6,000	RM4,300 – RM5,000
45m Tower	RM5,000 – RM6,000	RM4,300 – RM5,000

- (a) The rates stated above, and all rates stated in this RAO are exclusive of GST or any other taxes levied by the Government which shall be payable by the Access Seeker to the Access Provider over and above the Access Charges.
- (b) In the event the land rental for the Site as imposed by its landowner exceeds the amount of RM2,000.00 (Ringgit Malaysia Two Thousand Only), the Access Seeker shall bear the sum in excess of the said rental.
- (c) Subject always to the availability of space and loading at the Tower Site, an Access Seeker may, upon agreement by the Access Provider, be allowed to install three (3) RF Antennas and one (1) Microwave Antenna/Dish with a maximum diameter of 0.6 meters per Tower Site. In any case, the equipment to be allowed per Tower Site shall be upon agreement of the parties.
- (d) In the event that the Access Seeker wishes to install more than the maximum number of dishes and/or antennas at any Tower or dishes not more than 0.6 meters (where applicable) in diameter, subject to the consent by the Access Provider and also subject to the available land space and Tower loading, the Access Seeker shall pay the following additional Access Charges:
- (i) RM500.00 (Ringgit Malaysia Five Hundred Only) per month for any additional RF antennas or dishes measuring less than 0.6 meters (where applicable) in diameter.
- (e) If the number of users per Tower increases or decreases, the Access Charges payable may be revised, subject to the Access Agreement of provided for.

- (i) In the event there is Additional Infrastructure under a Variation Order at the Tower, the additional Access Charges payable for the Site per RM1,000.00 (Ringgit Malaysia One Thousand Only) of the cost of the Additional Infrastructure under the Variation Order are as follows:

COST FOR USER	ADDITIONAL ACCESS CHARGES (per month per user) FOR EVERY RM1,000.00.
2 Sharing Parties	17.32
3 Sharing Parties	10.83
4 Sharing Parties	8.66
5 Sharing Parties	7.58
6 Sharing Parties	6.93

- (ii) The Access Charges that will be payable will be dependent on the number of telecommunication companies using any particular Tower.

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ANNEXURE I – NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made on this day of

BETWEEN

Verticom Sdn Bhd (Company No. 808472-V), a company incorporated under the laws of Malaysia and having its registered address at 67-3, Jalan Nautika AU20/A, Seksyen U20, Pusat Komersil TSB Sg. Buloh, 40160 Shah Alam, Selangor (hereinafter referred to as “VSB”) of the first part;

AND

[] (**Company No. { }**), a company incorporated under the laws of Malaysia and having its registered office at [] (hereinafter referred to as “The Company”) of the last part.

VSB and the Company shall be referred to individually as a “Party” and collectively as “Parties”.

RECITALS

WHEREAS

- (a) VSB holds NFP individual license under the Communications and Multimedia Act 1998 and is authorized to provide access to certain network facilities and network services under its individual licenses.
- (b) The Company holds an [] individual under the Communications and Multimedia Act 1998 and is authorized to provide access to certain network facilities and network services under its individual or class licenses.
- (c) VSB and the Company are considering a proposal for the interconnection of their 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 is 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

“Confidential Agreement”

The Parties hereby agree that for the purposes of this Agreement, Confidential Information shall mean and include:

- (a) Information of whatever nature relating to the Disclosing Party which is obtained by the Receiving Party and/or its representatives in written, pictorial or oral form from or pursuant to discussions, negotiations and/or correspondences with any of the Representatives of the Disclosing Party;
- (b) Information of whatever nature relating to the business of the Disclosing Party obtained by observation during visits to the Disclosing Party’s premises.
- (c) Analysis, compilation, studies and other documents prepared by the Receiving Party, its officers, employees, agents or professional advisers which contain or otherwise reflects or are generated from the information specified in (a) and (b) above; and
- (d) All information made available by the Disclosing Party to the Receiving Party in connection with directly or indirectly to this Agreement and the fact that discussions, negotiations and/or correspondence are taking, or have taken place in respect of the Contract or any of the terms, conditions or other facts with respect to any other offer. Without limiting the generality of the foregoing, the expressed Confidential Information shall also include all facts, data, specifications, drawings, reports, accounts, expressions of views, board papers, processes, formulae, matters of a technical nature, research and development information, business records, notes, products, know-how, trade secret, secret information, engineering, manufacturing, planning, employee details or other documents and things whether written, oral, electronic or in any other form disclosed and/or supplied by the Disclosing Party to the Receiving Party;

“Disclosing Party”	Means the Party from whom the Confidential Information originates and is disclosed to the Receiving Party;
“Government Agency”	Means any federal, state, municipal or local government or regulatory department, body, political subdivision, commission, instrumentality, agency, ministry, court, judicial or administrative body, taxing agency or other agency having jurisdiction over either Party or the Contract;
“Project”	Has the meaning ascribed in Recital (C);
“Receiving Party”	Means the Party to whom the Confidential is given or disclosed; and
“Representatives”	Means the directors, officers, employees, affiliates, agents and representatives including without limitation financiers, brokers, advisors, lawyers and accountants.

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 with 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 the 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 undertakes to provide adequate protection of such Confidential Information from unauthorised 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's premises, save and except with the written permission of an authorised 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, disclose 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, discussion, and consultation with the other party in regard to the proposal or any other proposal or transaction involving the other Party, or that discussions or negotiations are taking place 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 thereof.
- 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 to 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

- 3.1 The Receiving Party shall immediately return to the Disclosing Party (or destroy, where delivery is not physically possible) all confidential information held by it or which is under its control, and all notes, calculations or summaries or other material derived or produced partly or wholly from any of the Confidential Information and any or all computer records (including copies, reproductions and recordings of them) derived or produced partly or wholly from any of the Confidential Information and shall, if requested by the Disclosing Party, provide to the Disclosing Party an undertaking from a duly authorised officer of the Receiving Party that to his personal knowledge, all such records have been delivered, erased or destroyed in the following circumstances:
- (a) When the Confidential Information is no longer required for the Project;
 - (b) On the demand of the Disclosing Party if the Receiving Party is in breach of this Agreement;

(c) If ordered by a court; or

(d) At the expiration of the period (if any) during or for which the Disclosing Party has agreed that the Receiving Party may have or continue to receive the Confidential Information.

4. DISCLAIMER AND WARRANTY

4.1 The Disclosing Party reserves all rights in its Confidential Information and no rights and obligations other than those expressly provided by this Agreement are granted or are to be implied from this Agreement. On receipt of a written request from the Disclosing Party, the Receiving Party shall, at its own cost and expense, forthwith return to the Disclosing Party or destroy (or in the latter case confirm the destruction in writing) all Confidential Information including all Confidential Information contained in original documents or copies of documents and all copies made, if any. In addition, any computer disk, or any other information stored on a computer or any documents prepared by the Receiving Party or its Representatives which incorporate any of the Confidential Information shall be destroyed or returned to the Disclosing Party or dealt with as the Disclosing Party may direct.

4.2 The Disclosing Party warrants that it is lawfully entitled to disclose its Confidential Information to the other Party and to authorise the other Party to use the same for the Purpose and that the Confidential Information has not been provided in breach of any arrangement with third parties.

4.3 The Disclosing Party does not represent nor warrant that the Confidential Information disclosed shall be accurate and complete at the time of disclosure.

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

6.1 The rights, powers and remedies provided in this Agreement are cumulative and do not exclude the rights, powers or remedies provided by law and equity independently of this Agreement.

6.2 The Receiving Party agrees that the obligations of the Receiving Party provided herein are necessary and reasonable in order to protect the Disclosing Party and its business and that the Receiving Party acknowledges that damages are not a sufficient remedy for any breach of this Agreement and that the Disclosing Party is entitled to seek specific performance or preliminary or permanent injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Receiving Party or its Representatives, in addition to any other remedies available at law or equity including but not limited to any claim for damages or loss PROVIDED THAT any losses which are not reasonably foreseeable but which the Receiving Party shall have been duly informed in writing by the Disclosing Party of the possibility of such losses occurring shall also be recoverable.

6.3 The Receiving Party hereby consents to the institution of proceedings for such relief by the Disclosing Party and the grant of any such relief by a competent court of law.

- 6.4 In the event of litigation relating to the matters contained herein, if a court of competent jurisdiction determines in a final, non-appealable order that this Agreement has been breached by the Receiving Party or its Representatives, the Receiving Party shall reimburse the Disclosing Party for all costs and expenses (including, without limitation, legal fees and expenses) incurred in connection with all such expenses.

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 prior written consent of the other Party.

8. PERIOD OF OBLIGATION

The obligation of the Receiving Party in respect of the disclosure and use of the Confidential Information acquired from the Disclosing Party shall continue and survive the expiry and/or termination of this Agreement.

9. NOTICES

- 9.1 All notices under this Agreement shall be in writing and shall be sent personally by hand or by facsimile or electronically or registered or recorded delivery post to the Party being served at its address as specified hereunder or such other address of which such Party shall have given notice as aforesaid, and marked for attention of that Party's signatory of this Agreement. Unless the contrary can be proved, each such notice or communication shall be deemed to have been given or made and delivered:

- (a) If by letter seventy-two (72) hours after posting;
- (b) If by hand or by courier, when delivered; or
- (c) If by facsimile transmission, one (1) hour after its transmission, if such time is during business hours in the place of its receipt or, if it is not, on the opening of business on the next succeeding business day in the place of its receipt; provided that the sender has an answerback confirmation and print-out copy of the transmission report generated by the facsimile machine from which such notice was sent that the document has been successfully transmitted.

- 9.2 The correspondence address and facsimile number of the Parties are as follows:

Verticom Sdn Bhd

Address : 67-3, Jalan Nautika AU20/A,
Seksyen U20, Pusat Komersil TSB
Sg.Buloh, 40160 Shah Alam, Selangor.

Telephone No : +603 2296 9020

Facsimile No : +603 2296 9030

Attention : Director

[COMPANY NAME]

Address : []

Telephone No : []

Facsimile No : []

Attention : []

10. SUCCESSORS BOUND

This Agreement shall be binding on the successors-in-title and permitted assigns of the Parties.

11. NON-ASSIGNMENT

This Agreement is personal to the Parties and shall not be assigned or otherwise transferred in whole or in part by the Parties unless with the prior written consent of the other Party.

12. WAIVER

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by any Party of breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provisions.

13. APPLICABLE LAW AND JURISDICTION

The laws of Malaysia shall be applied to this Agreement and each Party agrees to submit to the exclusive jurisdiction of the Malaysian courts.

14. TIME

Time wherever mentioned in this agreement shall be of the essence.

15. NO OBLIGATION

This Agreement does not restrict either Party from developing new or improved products or services and marketing the same. Nothing in this Agreement shall be construed as an obligation by either Party to enter into any contract, agreement or other business relationship with any other Party.

16. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement and understanding among the Parties with respect to the Confidential Information and supersedes all previous agreements, understandings and undertakings between them relating to it.

17. AMENDMENT

No amendment, variation, modification, replacement or alteration of any terms and conditions set forth in this Agreement shall be effective unless it is made in writing and mutually agreed and consented by all the Parties.

18. SEVERABILITY

Any provision of this Agreement which is invalid or unenforceable by law shall be effective to the extent of such invalidity or unenforceability only without affecting the remaining provisions thereof. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree to the terms of mutually satisfactory provisions to be substituted for the provisions which are found to be void and unenforceable by applicable law.

19. COSTS

19.1 Each Party shall bear its own costs and expenses arising out of the preparation and execution of this Agreement.

19.2 Stamp duty shall be borne by the Company.

20. NON-PUBLICITY

No Party shall disclose to any third party the existence or contents of this Agreement, or the fact that the Parties are discussing the subject covered by this Agreement.

21. HEADINGS

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

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IN THE WITNESS WHEREOF the Parties hereto and have hereunto set their hands on the day and year first above written.

SIGNED by)
for and on behalf of)
Verticom Sdn Bhd)
(Company No. 808472-V) in)
the presence of:)
)
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.....)
Name :)
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NRIC :)
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Name:
Designation:

SIGNED by)
for and on behalf of)
[] (Company []))
in the presence of:)
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