



**desabina industries sdn bhd**

**DESABINA INDUSTRIES SDN BHD'S  
ACCESS REFERENCE DOCUMENT ("ARD")**

**Version 2.2 (161109)  
Effective 16 November, 2009**

Prepared by:-

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For:-

**DESABINA INDUSTRIES SDN BHD (280521-M) ("DISB")**

Registered Address

372 First Floor  
Jalan Tuanku Abdul Rahman  
50100 Kuala Lumpur

Business Address

80-I Tingkat 1  
Jalan Petani  
20000 Kuala Terengganu  
Terengganu

This ARD is available upon written request at the Business Address above and at  
[www.desabina.com.my](http://www.desabina.com.my)

## **1. Background and Scope**

- a. DISB is a company incorporated in Malaysia with its registered and business addresses stated in page 1 hereof.
- b. DISB is a licensed individual network facilities provider under the Act. Pursuant thereto, DISB may offer network facilities in the state of Terengganu.
- c. The Commission has issued the MSA Determination and this ARD is prepared pursuant to Section 5.3.2 of the MSA Determination.
- d. This ARD:-
  - i. contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and
  - ii. does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination.
- e. This ARD sets out the terms and conditions on which DISB as Access Provider shall provide the Access Service to an Access Seeker. This ARD is not an offer to enter into a legally binding contract but merely a reference document that details the terms and conditions on which DISB as Access Provider is prepared to provide the Access Service to the Access Seeker by entering into an Access Agreement.
- f. For services outside the scope of this ARD, the terms and conditions thereof shall be negotiated separately between the parties.
- g. DISB considers that this ARD is consistent with:-
  - i. the Standard Access Obligations stipulated under Section 4.1.1 of the MSA Determination and section 149 of the Act; and
  - ii. the principle of non-discrimination stipulated under Sections 4.1.5 and 4.1.6 of the MSA Determination.
- h. Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to this ARD.
- i. This ARD may be amended from time to time and upon the happening of such an event, DISB shall comply with Section 5.3.5 of the MSA Determination.

## 2. Definitions and Interpretation

a. The following words have these meanings in this ARD unless the contrary intention appears:-

“Access Agreement” means an agreement:

- i. entered into between DISB and the Access Seeker pursuant to this ARD; or
- ii. which is commercially negotiated between the Operators,

whereby DISB provides the Access Service to the Access Seeker in accordance with the terms therein contained and registered with the Commission in accordance with Section 150 of the Act.

“Access Charges” means the sum payable under the Access Agreement and/or this ARD agreed by the Operators to be paid by the Access Seeker to DISB for providing the Access Service, the indicative Access Charges are as per Annexure 3 hereof.

“Access List” means the Commission Determination on Access List, Determination No. 1 of 2005 which came into operation on 1 July, 2005 and Variation to Commission Determination on Access List (Determination No. 1 of 2005), Determination No. 1 of 2009 which came into operation on 2 February, 2009 and any subsequent amendments thereto which sets out a list of Facilities or Services determined by the Commission under section 146 of the Act.

“Access Provider” in this ARD means DISB who is a network facilities provider who owns or provides network facilities listed in the Access List and who is a licensee as defined in the Act.

“Access Request” means a request for access to Facilities or Services on the Access List made by the Access Seeker to DISB and containing the information in Clause 4(c) hereof.

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

“Access Service” means the network facilities specified in this ARD that are provided by DISB to the Access Seeker pursuant to an Access Request and upon terms and conditions in the relevant Access Agreement.

“Act” means the Communications and Multimedia Act 1998 and any subsequent amendments thereto.

“Associated Tower Site” means the space at the base of the Tower to install Equipment thereat.

“Bank Guarantee” means the guarantee executed in favor of DISB on behalf of the Access Seeker by a bank approved by DISB in a format acceptable to DISB.

“Billing Dispute” means the dispute of an invoice prepared by an Operator to the Other Operator, which is made in good faith.

“Billing Period” means the period over which the supply of access to Facilities or Services is measured for the purpose of billing as contemplated under Clause 9 hereof, which shall be no more than thirty one (31) days and in accordance with the relevant calendar month unless otherwise agreed between the Operators.

“Business Day” means a day other than a Saturday and Sunday or in states where Friday is observed as the weekly holiday, Thursday and Friday or a day which is lawfully observed as a national and/or state public holiday.

“Commencement Date” means the date on which the Operators enter into the Access Agreement or such other date as agreed between the Operators.

“Commission” means the Malaysian Communication and Multimedia Commission established under the Malaysian Communications and Multimedia Commission Act 1998.

“Communication” means any communications, whether between persons and persons, things and things, or person or things in the form of sound, data, text, visual images, signals, or any other form or any combination of those forms and, where the context permits, includes an attempt to establish a communication.

“Communication Service” means the network facilities, network services, application services and/or content application services provided by the Operator, as the case may be, pursuant to its License(s).

“Confidentiality Agreement” means a confidential agreement entered into between the Operators in accordance with Section 5.3.7 of the MSA Determination, a sample of which is enclosed as Annexure 1 hereof.

“Creditworthiness Information” means the information required by DISB to assess the creditworthiness of the Access Seeker which is more particularly described in Clause 4(d) of this ARD and such other information as may be required from time to time.

“Customer” means in relation to an Operator, a person having a contractual relationship with the Operator for the provision of Communications Services.

“Determination” means any lawful determination made by the Commission, pursuant to Chapter 2 of Part V of the Act.

“Direction” means any lawful direction made by the Commission pursuant to Chapter 1 of Part V of the Act.

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

“Due Date” means, in respect of an Invoice, thirty (30) days from the date of receipt of an Invoice, unless otherwise agreed between the Operators.

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

“Facilities” means network facilities and/or other facilities which facilitate the provision of network services or applications services including content applications service.

“Handover Date” means the date on which access to the Tower and Associated Tower Site is given to the Access Seeker for installation of the Equipment at that site as stated in Clause 8(a) hereof. “Handover” shall be construed accordingly.

“Infrastructure Sharing” means an Access Service which comprises the provision of physical access, which refers to the provision of space at specified Tower and Associated Tower Site to enable an Access Seeker to install and maintain its Equipment.

“Insurance Information” means the insurance information required by DISB pursuant to Clause 4(f) hereof.

“Invoice” means the invoice for amount due in respect of the supply of Access Service during a Billing Period.

“Land Site” means in respect of each Tower, the land site upon which the said Tower is erected thereon.

“License” means an individual license granted by the Minister pursuant to the Act for Communication Service.

“Minimum Value” for the purposes of calculating the Security Sum means the total estimated value of access to the requested Facilities and Services provided (based on the most recent amounts invoiced for those requested Facilities and Services) or to be provided by DISB to the Access Seeker for a ninety (90) day period.

“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 2 of 2005 which came into operation on 1 July, 2005 and Variation to Commission Determination on Mandatory Standard on Access (Determination No. 2 of 2005), Determination No. 2 of 2009 which came into operation on 2 February, 2009 and any subsequent amendments thereto.

“Network” means network facilities and/or network services comprising a system, 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.

“Operators” means DISB and the Access Seeker collectively.

“Other Operator” means either DISB or the Access Seeker, as the context requires.

“Project” means the procurement, design, construction, erection, installation, acceptance testing, project management, maintenance and renting and/or licensing of the Tower to be erected on the Land Site;

“Review” means a review of the MSA Determination pursuant to Section 6.5 of the MSA Determination

“RM” means Ringgit Malaysia which shall be the monetary currency used in this ARD 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 DISB for the supply of the Access Service which amount is equivalent to the Minimum Value.

“Services” means network services and/or other services, which facilitate the provision of, network services or applications services, including content applications services.

“Site License Offer” or “SLO” shall mean the form set out in the Annexure 2 hereof executed by the Operators pursuant to this ARD and the Access Agreement.

“Standard Access Obligations” has the meaning prescribed in Section 149 of the Act.

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

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

“Tower” means the telecommunication tower belonging to DISB to be utilized by the Access Seeker to install Equipment thereat.

- b. In this ARD except where the contrary intention appears:-

- i. the singular includes the plural and vice versa; and
- ii. a document includes all amendments or supplements to that document, or replacements or novations 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 1965; and
- viii. headings are included for convenience and do not affect the interpretation of this ARD.

### **3. DISB's Access Service**

- a. The Access Service provided by DISB under this ARD is Infrastructure Sharing whereby subject to the terms of the Access Agreement and/or the terms stated hereunder, DISB shall provide the Access Seeker space at its existing Tower and Associated Tower Site to enable the Access Seeker to install and maintain its Equipment.
- b. In addition to Infrastructure Sharing, DISB also provides the services of undertaking the Project which is not a service under the Access List and therefore, not covered hereunder and is subject to negotiations between the Operators. Nevertheless, DISB acknowledges that upon the completion of a Project, if in the event any Access Seeker is interested in installing Equipment at the Tower, then the same shall fall under the purview of this ARD.
- c. DISB shall if requested to do so by an Access Seeker, supply the Access Service to the Access Seeker on reasonable terms and conditions.

- d. DISB shall only provide Infrastructure Sharing service where:-
  - i. an Access Request had been made by an Access Seeker to DISB and DISB has accepted the said Access Request;
  - ii. DISB is the legal owner of the Tower;
  - iii. the Access Seeker has the appropriate License to operate the service for the purpose for which the Equipment is to be installed;
  - iv. there is spare capacity at the relevant Tower and Associated Tower Site;
  - v. any new installation by the Access Seeker will not exceed the structural loading of the relevant Tower;
  - vi. an Access Agreement had been entered into between the Operators; and
  - vii. there are no circumstances disallowing DISB from providing the Access Service.
- e. An Access Seeker may not request for access to Access Service where the requested Access Service is to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.
- f. Consistent with Government policy and Determinations by the Commission (and its predecessor), where DISB provides the Access Seeker with access to the Access Service, the Access Charges for the requested Access Service shall be negotiated between the Operators.
- g. Infrastructure Sharing for Tower and Associated Tower Site shall be for a minimum period of three (3) years, unless mutually agreed between the Operators.
- h. DISB shall observe and comply with the Customer relationship principles set out in Section 4.3 of the MSA Determination.
- i. DISB shall, in the event the following information are not provided herein this ARD, provide an Access Seeker with the following information within ten (10) Business Days of its written request:-
  - i. DISB's description of the Access Service that may be supplied to the Access Seeker, such description to be consistent with the description (if applicable) of the Facilities and Services on the register of Facilities and Services included in the Access List (as maintained by the Commission pursuant to section 148 of the Act);
  - ii. the application forms required to be completed by the Access Seeker to apply for the Access Service;



- iii. the Confidentiality Agreement required to be executed by the Access Seeker;
  - iv. DISB's current Access Charges;
  - v. details of the basis for the Access Charges;
  - vi. all relevant technical information relating to the Access Service which may be 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 DISB's Network;
  - vii. details of DISB's provisioning cycles and any impact such cycles may have upon an Access Request by the Access Seeker;
  - viii. details of DISB's quality of service targets and achievements in respect of the Facilities and/or Services which may be the subject of the Access Request;
  - ix. any security requirements, insurance requirements and creditworthiness information required by DISB;
  - x. DISB's reasons for failing to supply any of the information referred to in Clause 3(i) (i) to (ix).
- j. Prior to the provision of information under Clause 3(i) above, DISB may request the Access Seeker to enter into a Confidentiality Agreement.

**4. Access Request**

- a. An Access Seeker shall request DISB to supply the Access Service to it by serving an Access Request on DISB.
- b. The purpose of such Access Request is to provide DISB with sufficient information to assess the Access Seeker's request for the supply of the Access Service.
- c. The Access Request must contain the following information and/or items:-
  - i. the name and contact details of the Access Seeker;
  - ii. the Access Service in respect of which access is sought;
  - iii. whether the Access Seeker wishes to accept this ARD or to negotiate an Access Agreement;

- iv. the information (if any) the Access Seeker reasonably requires DISB to provide for the purposes of the negotiations;
  - v. two (2) copies of a Confidentiality Agreement properly executed;
  - vi. forecasts of the capacity the Access Seeker will reasonably require, having regard to DISB's disclosed provisioning cycle and forecasting procedures;
  - vii. relevant technical information relating to the interface standards of the Access Seeker;
  - viii. relevant information relating to the Access Seeker's Network and the functionality of its Services, to the extent that the Access Seeker is aware that such information may affect DISB's Network;
  - ix. creditworthiness information in accordance with DISB's requirements, as set out in Clause 4(d) hereof;
  - x. the Security Sum;
  - xi. insurance information in accordance with DISB's insurance requirements, as set out in Clause 4(f) hereof;
  - xii. contain the names of personnel(s) whom the Access Seeker nominates to represent the Access Seeker in access negotiations with DISB and in respect of each of those personnel:-
    - (i) his or her contact details; and
    - (ii) his or her job title; andstate the identity of the negotiating team leader whom shall have the authority to make binding representations on behalf of the Access Seeker in relation to matters arising from the access negotiations (subject to final approval from the Access Seeker's Chief Executive Officer or Board of Directors, if required by the Access Seeker);
  - xiii. a copy of the Technical Proposal;
  - xiv. a copy of the Access Seeker's License, if the same has not been deposited with DISB; and
  - xv. such other information as DISB may reasonably require.
- d. The Creditworthiness Information that is required to accompany an Access Request includes but shall not be limited to:

- i. a letter, signed by the executive director of the Access Seeker, stating that the Access Seeker is not insolvent and is not under any external administration or under similar form of administration under any laws applicable to it in any jurisdiction; and
  - ii. a copy of the Access Seeker's most recently published audited balance sheet and audited profit and loss statement; and
  - iii. such other information as may be reasonably requested by DISB provided that such information are information which are publicly available.
- e. DISB shall ensure that the amount and type of security requirements imposed on the Access Seeker in DISB' security policy, commensurate with:-
- i. the estimate of the value of access to Access Service to be provided to the Access Seeker by DISB over the Minimum Value;
  - ii. the creditworthiness of the Access Seeker (including prior payment records of the Access Seeker); and
  - iii. the security previously reasonably required by DISB (if any).

and DISB is not obliged to enter into an Access Agreement with the Access Seeker pursuant to this ARD until the Access Seeker has amongst other things, provided (at the Access Seeker's costs) to DISB such Security Sum on terms and conditions reasonably to DISB.

- f. Subject to Clause 4(g), an Access Request shall be accompanied by the following insurances:-
- i. 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 or in connection with the work covered by the Access Agreement that may be entered into and/or their dependants; and
  - ii. 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 Operator which shall arise out of or in consequence of any acts of omissions of the Other Operator. Such policy shall include contractual liability.
- g. For the purpose of clarification, the insurance provided by the Access Seeker pursuant to Clause 4(f), shall commensurate with the reasonable sum which is to be agreed by DISB.

**5. Acknowledgement of Receipt and Additional Information**

- a. DISB shall within ten (10) Business Days of receipt of an Access Request, respond to the Access Seeker in writing acknowledging receipt of the Access Request and stating that:
  - i. the Access Seeker is willing to accept this ARD from DISB and DISB is willing to provide access in accordance with this ARD; or
  - ii. DISB is willing to proceed to negotiate the Access Request; or
  - iii. DISB rejects the Access Request in accordance with Clause 7 hereof; or
  - iv. DISB requires specified additional information to make a decision on the Access Request and once that information is received from the Access Seeker, DISB shall reconsider the Access Request in accordance with this Clause.
- b. Subject to the additional information being received by DISB within twenty (20) Business Days from the date of request, DISB shall reconsider the Access Request upon receipt of such additional information.
- c. DISB shall comply with Section 5.4.16 of the MSA Determination where it requests additional information from the Access Seeker pursuant to Clause 5(a)(iv) hereof.
- d. DISB may charge an Access Seeker a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request. In the event that additional and non-routine work is required in order to process the Access Request, DISB may charge a separate fee for undertaking such additional work. If the Access Seeker does not proceed with an Access Request accepted by DISB, the processing fee will not be refunded to the Access Seeker.

**6. Acceptance**

- a. If DISB responds that access will be provided in accordance with this ARD (as described in Clause 5(a)(i)), DISB shall within ten (10) Business Days of such response, provide an ARD executed by DISB to the Access Seeker.
- b. If DISB is willing to proceed with negotiation of the Access Request (as described in Clause 5(a)(ii)), DISB shall set out in such response:-
  - i. a date and time, not later than fifteen (15) Business Days from the date of the Access Seeker's response, at which DISB's representatives will be available for the initial meeting with representatives of the Access Seeker; and

- ii. a copy of the executed Confidentiality Agreement returned by the Access Seeker that has also been properly executed by DISB.
- c. Where the Access Seeker wish to negotiate an Access Agreement, the Operators shall comply with the requirements in Section 5.4.2, 5.4.3 and 5.4.15 of the MSA Determination in negotiating and concluding an Access Agreement.
- d. Operators must use their best endeavors to conclude the Access Agreement within 120 days of the Access Seeker's Access Request bearing in mind the negotiation procedures set out in Sections 5.4.9 to 5.4.18 in the MSA Determination. If negotiations are not completed within the 120 day period:-
  - i. the Operators may jointly apply to the Commission for further time to negotiate and if the extension is not granted, the Operators are deemed to be in dispute and the Dispute Resolution Procedures in the MSA Determination will take effect; or
  - ii. either Operator may initiate the Dispute Resolution Procedures in the MSA Determination.
- e. DISB will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Access Service until:-
  - i. the Security Sum has been provided; and
  - ii. the Access Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with section 150 of the Act.

## **7. Rejection**

- a. If DISB decides to refuse the Access Request, DISB must provide the Access Seeker with a written response, setting out:-
  - i. the grounds in subsection 5.4.11 of the MSA Determination and/or in Clause 7(b) below on which DISB is relying; and
  - ii. the basis of DISB's decision with sufficient particulars to enable the Access Seeker to make its own assessment about the applicability of the specified grounds of rejection; and
  - iii. a date and time, not later than seven (7) Business Days from the date of the rejection notice, at which representatives of DISB will be available to meet with representatives of the Access Seeker for the purpose of discussing the rejection of the Access Request. At this meeting, the Access Seeker may request DISB to substantiate its reasons for refusal, and if access has been

refused on the basis of the grounds in 5.14.11(d) of the MSA Determination, DISB must identify when additional capacity is likely to be available.

- b. Without limiting any other grounds that may be relied upon under the Act, DISB shall not refuse an Access Request, except on the grounds that:-
  - i. DISB does not currently supply or provide access to the relevant Facilities or Services to itself or to any third parties, except where the Access Seeker compensates DISB for the original supply of access to Facilities or Services to the Access Seeker;
  - ii. the Access Seeker has not provided all of the information required to be provided in accordance with subsection 5.4.6 of the MSA Determination;
  - iii. it is not technically feasible to provide access to the Facilities or Services requested by the Access Seeker;
  - iv. subject to the MSA Determination, DISB has insufficient capacity or space to provide the requested Services or Facilities;
  - v. DISB has reasonable grounds to believe that the Access Seeker may fail to make timely payment for the requested Facilities or Services;
  - vi. there are reasonable grounds 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 Facilities or Services; or
  - vii. there are reasonable grounds for DISB to refuse access in the national interest.
- c. For the purpose of determining technical infeasibility in Clause 7(b)(iii), the Operators shall comply with Section 5.4.17 of the MSA Determination.
- d. For the purpose of determining capacity constraints in Clause 7(b)(iv), the Operators shall comply with Section 5.4.18 of the MSA Determination.
- e. Examples of reasonable grounds for DISB's belief as mentioned in Clause 7(b)(v) include evidence that the Access Seeker is not in the reasonable opinion of DISB creditworthy.
- f. Examples of reasonable grounds for DISB's belief as mentioned in Clause 7(b)(vi) include repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to Access Service have been provided (whether or not by DISB).
- g. In determining the creditworthiness of the Access Seeker, DISB may have regard to, but is not limited to the matters referred to in Clause 4(d) and DISB shall not take into account amounts outstanding for

Access Service previously provided by DISB to the Access Seeker where, in accordance with the terms and conditions governing the provision of such Access Service, the Access Seeker is not required to pay such amounts to DISB to the extent that there is a bona fide dispute in relation to the amounts outstanding by the Access Seeker to DISB and the Access Seeker is relying on such terms and conditions as basis for its non-payment.

#### **8. Installation of Equipment at Tower and Associated Tower Site**

- a. Upon completion of Clause 6(e) above, DISB shall issue the SLO to the Access Seeker and allow access to the relevant Tower for the purpose of the Access Seeker installing the Equipment within fourteen (14) days from the receipt of the SLO.
- b. The Access Seeker shall ensure that the Equipment installed at the Tower and/or the Associated Tower Site shall be as per the Technical Specifications.
- c. On the Handover Date for the Tower, DISB hereby agrees to provide a set of keys to the Access Seeker for the purpose of twenty-four (24) hour access to the respective Tower and the Associated Tower Site.

#### **9. Billing**

- a. Where relevant, the billing and settlement obligations set out in Section 5.14 of the MSA Determination shall be applicable.
- b. The Access Seeker shall pay DISB the Access Charges for the Access Service supplied by DISB to the Access Seeker, as specified in the Access Agreement. In any case, due to the nature of DISB's business, the Access Charges shall be payable in Ringgit Malaysia in advance on or before the seventh (7<sup>th</sup>) day of each calendar month whether or not an Invoice had been forwarded by DISB to the Access Seeker. In the event the Handover Date does not fall on the first (1<sup>st</sup>) day of the calendar month, the Access Charges for that calendar month shall be pro-rated accordingly.
- c. The Operators shall bear and pay all taxes as required by Malaysian law that result from the implementation of the Access Agreement.
- d. All payments must:
  - i. be paid on the Due Date unless otherwise agreed in writing by both Operators;
  - ii. be paid by electronic transfer to DISB or exceptionally, by cheque to the nominated account(s) of DISB if agreed by DISB; and
  - iii. must be accompanied by such information as is reasonably required by DISB to properly allocate the payments received.

- e. For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts to DISB as and when they become due and payable, nor does it constitute a waiver of DISB's right to suspend, disconnect or terminate the Access Service due to non-payment of any sums due or payable to DISB.
- f. DISB shall be entitled to revise the Security Sum in any of the following event:-
  - i. at each subsequent anniversary from the Commencement Date;
  - ii. where, in the opinion of DISB, the Security Sum is less than the actual Minimum Value calculated at the end of the most recent ninety (90) days period;
  - iii. upon the provisioning of new or additional network facilities or network services to the Access Seeker; or
  - iv. where there is material change in circumstances in relation to the Access Seeker's creditworthiness. For clarification, a material change in circumstances includes, but is not limited to, a failure by the Access Seeker to pay on the Due Dates at least three (3) Invoices rendered in the preceding six (6) months (so long as those amounts have not been disputed in good faith). If the amounts in the Invoices are disputed in good faith, this will not constitute a material change in circumstances for purposes of this Clause 9(f)(iv).
- g. Where the Security Sum is revised pursuant to Clause 9(f) above, the Access Seeker shall within five (5) Business Days from the written request of DISB, deposit the new Security Sum with DISB in the manner specified in Clause 4(e) hereof.
- h. In the event DISB elects to suspend or terminate the provisioning of the Access Service to the Access Seeker, DISB shall have the right to use the Security Sum (together with any interest thereon) to set off any outstanding sum due and payable to DISB by the Access Seeker.
- i. Subject to Clause 9(h) above, upon termination of the Access Agreement, the Security Sum deposited with DISB or parts thereof, together with the interest thereon, (if any) shall be returned and/or refunded to the Access Seeker.
- j. Where there is a Billing Dispute, the Operators shall comply with the dispute resolution procedures in Annexure A of the MSA Determination.

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**Annexure 1**

**Confidentiality Agreement**

## CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on

BETWEEN

DESABINA INDUSTRIES SDN BHD (280521-M), a company incorporated in Malaysia with its registered address at 372 First Floor, Jalan Tuanku Abdul Rahman, 50100 Kuala Lumpur (hereinafter referred to as "DISB") of the one part;

AND

(hereinafter referred to as "Access Seeker") of the other part.

WHEREAS:-

- A. DISB is a licensed individual network facilities provider under the Communications and Multimedia Act 1998. Pursuant thereto, DISB may offer network facilities in the state of Terengganu.
- B. The parties are discussing certain matters thereby necessitating the exchange of information for the purpose of determining their respective interests in establishing a business relationship between them.
- C. The parties wish to defend their rights with respect to the said information and to protect the confidentiality thereof and proprietary features contained therein.

NOW THIS AGREEMENT WITNESSETH as follows:-

1. Definition

"Confidential Information" means all oral or written information of any kind, whether in printed or electronic format, including but not limited to technical information, data or know-how which relates to research, product plans, product, services, customers, markets, software, developments, inventions, process, designs, drawings, engineering, hardware and software configuration information, marketing or finance or any form of business plans whether or not labeled as "Confidential" and submitted by one party to the other party during the discussions and/or meetings, which Confidential Information is designated in writing to be confidential or proprietary or if given orally, is confirmed promptly in writing as having been disclose as confidential or proprietary.

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

"Recipient" means the party to whom the Confidential Information is given or disclosed.

2. Non-Disclosure of Confidential Information

- a. The Recipient agrees not to use any Confidential Information disclosed to it by the Disclosing Party for its own use or for any purpose except to carry out discussions concerning and the undertaking of any business relationship between the two.
- b. The Recipient will not disclose any Confidential Information of the Disclosing Party to third parties or to employees or agents of the Recipient except employees and/or agents who are required to have the information in order to carry out the discussion of the contemplated business.
- c. The Recipient agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the Disclosing Party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized hereunder to have any such information, which measures shall include the highest degree of care that the Recipient utilize to protect its own Confidential Information of a similar nature.
- d. The Recipient agrees to notify the Disclosing Party in writing of any misuse or misappropriation of Confidential Information of the Disclosing Party which may come to the Recipient attention.

3. Information excluded from Confidentiality

The obligation imposed upon either party herein shall not apply to information which:

- i. is in the possession of the Recipient at the time of disclosure as shown by the Recipient's files and records immediately prior to the time of disclosure; or
- ii. prior or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of the Recipient; or
- i. is approved in writing by the Disclosing Party for release; or
- ii. is independently developed by the Recipient; or
- iii. is disclosed to a third party pursuant to written authorisation from the Disclosing Party; or
- iv. is received from a third party without similar restrictions as against the Receiving Party; or
- v. is disclosed pursuant to a requirement or request of a Government agency, but only to the extent so ordered.

4. No Commitment

Nothing in this Agreement imposes on either party an obligation to enter into any agreement or transaction.

5. Return Of Materials

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

6. Patent or Copyright Infringement

Nothing in this Agreement is intended to grant any rights to the Recipient under any patent or copyright nor shall this Agreement grant the Recipient any rights in or to the Disclosing Party's Confidential Information which was given solely for the purpose of determining whether to enter into the proposed business relationship with the Disclosing Party.

7. Term

The foregoing commitments of the Recipient shall survive any termination of discussions between the parties and shall continue for a period of two (2) years following the date of this Agreement.

8. Miscellaneous

This Agreement shall be binding upon and for the benefit of the undersigned parties, their successors and assigns, provided that Confidential Information of the Disclosing Party may not be assigned without the prior written consent of the Disclosing Party. Failure to enforce any provision of this Agreement shall constitute a waiver of any term hereof.

9. Governing Law

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

10. Remedies

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

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and year first  
abovewritten.

SIGNED by }  
 }  
for and on behalf of DISB }  
in the presence of:- }

SIGNED by }  
 }  
for and on behalf of }  
the Access Seeker }  
in the presence of:- }

**Annexure 2  
Site License Offer ("SLO")**

Ref:	
Date:	

**SITE LICENSE OFFER**

This Site License Offer (SLO) is issued pursuant to DISB Access Reference Document ("ARD") and the Access Agreement entered into between DISB and the Access Seeker stated herein.

1. DISB Site Details

DISB ID		Access Seeker ID	
Latitude		Longitude	
Site Name			
Site Address			
Structure Height			
Current Site User Configuration			

2. Equipment proposed by Access Seeker:

Omni Antenna	
RF Panel Antenna	
Tx Antenna	
Cabin Space	
Genset Space	

3. License Term:	From		Expiry	
Further License Term:	From		Expiry	
4. License Fee (Monthly):	RM			
5. Security Deposit:	RM			
6. Commencement Date of License:				

7. Terms and Conditions

- i) The issuance of this SLO is subject to the terms and conditions stipulated in DISB's ARD and the Access Agreement entered into between the parties
- ii) Possession of Site is upon payment of Security Deposit and one (1) month License Fee in advance.
- iii) All Equipment to be installed within the Site boundary.
- iv) Access Seeker shall be liable for damages caused to existing equipment on Site at the time when the Access Seeker's works/installation are in progress.
- v) Other additional terms and conditions, if any, as agreed between the parties.

IN WITNESS WHEREOF, the undersigned have through their duly authorized representatives signed this SLO on the day and year written below.

For and on behalf of  
**the Access Seeker**

Date
Name
Designation

Company Chop

For and on behalf of  
**DISB**

Date
Name
Designation

Company Chop

**Annexure 3**  
**Access Charges**

- a. The following rates shall apply when access is granted to an Access Seeker to install its Equipment at the Tower subject to the Access Seeker shall only be allowed to install a maximum of Six (6) antennas and Two (2) microwave dishes (subject further that the maximum diameter of any dishes installed shall not exceed 1.2 meters only) per Tower:-

Tower Height	Type	2 Way	3 Way	4 Way	5 Way
150 feet	Heavy Duty	RM6,426	RM3,672	RM2,916	RM2,624
200 feet	Heavy Duty	RM8,883	RM5,076	RM4,104	RM3,694
250 feet	Heavy Duty	RM9,450	RM5,400	RM4,320	RM3,888
300 feet	Heavy Duty	RM12,075	RM6,900	RM5,500	RM4,950
350 feet	Heavy Duty	RM15,225	RM8,700	RM6,900	RM6,210
400 feet	Heavy Duty	RM17,325	RM9,900	RM7,900	RM7,110

- b. In the event there is Additional Infrastructure under a Variation Order requested by the Access Seeker, the rates in Ringgit Malaysia (RM) per RM1,000.00 of the cost of the Additional Infrastructure under the Variation Order (for example generator set, cabin etc) are as follows:

Cost for User	Additional Access Charges (per month per User) for every RM1,000.00
Cost per User (2 Sharing Parties)	17.32
Cost per User (3 Sharing Parties)	10.83
Cost per User (4 Sharing Parties)	8.66
Cost per User (5 Sharing Parties)	7.58

- c. 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 in excess of 1.2 meters in diameter, subject to the consent by the Access Provider and also subject to the Tower's space and loading, the Access Seeker shall pay the following additional Access Charges:-
- i. RM500.00 per month for any additional RF antennas or dishes measuring less than 1.2 meters in diameter; and
  - ii. RM1,000.00 per month for any dishes measuring more than 1.2 meters in diameter.
- d. The Access Charges that will be payable by the Access Seeker will be dependent on the number of telecommunication companies (Access Seeker and other Operators (if any) ("User(s)")) using any particular Tower.
- e. If in the event the number of Users per Tower increases, the Access Charges payable by the Users will be revised downwards as per the payment structure above. There shall be no further reduction for the Access Charges if the Users for any Tower exceed five (5).
- f. If in the event the number of Users per Tower reduces, the remaining Users will be subject to an upward revision of the Access Charges, back to the previous Access Charges paid by them.
- g. For Access Charges where an Access Seeker wish to gain access at such structure and/or works and/or any telecommunication structure involving floodlights, aesthetic towers, monopoles, Towers below 150 feet and beyond 400 feet and other telecommunication structure not provided for above shall be at the rate the current User is paying the Access Provider, with discounts to be agreed upon other Users utilizing the same site.