

REFERENCE ACCESS OFFER (RAO)

Dated            day            2017

ARL HOMECOMM SDN. BHD.

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## **Company Background And Scope**

1. ARL has been playing an active and engaging role in the local telecommunication revolution since 1996. The Company has a paid up capital of RM10.5 million.
2. ARL design, build and erect telecommunication towers and antennas for cellular providers , broadcasters and local government and/or councils.
3. ARL is granted a license by the Malaysian Ministry of Energy, Communications and Multimedia to provide Community Multimedia Network Services (CMNS) nationwide.
4. ARL is also license holder of both the Network Facilities Provider (NFP(I)), Network Services Provider (NSP(I)) and Application Service Provider (ASP(C ) ) , from Malaysian Communication And Multimedia Commission (MCMC) , Grade G7 from CIDB and registered with Ministry of Finance.
5. ARL possesses a wealth of experience an time-tested integrity to deliver the assurance of cost effective , iconic and uninterrupted transition to new technologies.

### **MISSION**

To provide an elaborative and innovative facilities far reaching from conventional telecommunication infrastructure services.

## **VISION**

1. To become the most absolute intelligent telecommunication tower and leading independent infrastructure provider in the region.
2. To be a premium provider and major player of affordable and easy-to-use Community Multimedia Network Services (CMNS).
3. We maximise the innovativeness of the potential of telecommunication technology in our works.
4. Prepare ourselves for long-term sustainability in profit and project implementation.
5. Be market oriented by staying conscious to market's requirements , trends and perceptions. We stay abreast of market trends and needs to be able to stand out in innovation, pricing and quality.
6. We believe in creating products that last beyond the façade . Products that make people remember us for a long time. We believe in manpower being one of our greatest assets and invest in them. New ideas are able to be conceptualised and explored in each of our project.

## **Definitions And Interpretations**

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

"Access Agreement"	means an agreement :  (a) entered into between ARL and an Access Seeker ; or  (b) which is commercially negotiated between the Operators , whereby ARL 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 agreed by the Operators to be paid by the Access Seeker to ARL for providing the Access Service , the indicative Access Charges are as per Appendix 1 hereof.
"Access Provider"	means ARL who is a network facilities provider who owns or provides network facilities listed in the Access List and who licensee is 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 ARL.
"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 provided by ARL.
"Access Service"	means the network facilities that are provided by ARL to the Access Seeker pursuant to an Access Request and upon terms and conditions in the relevant Access Agreement.
"Act"	means the Communication and Multimedia Act 1998 and any subsequent amendments thereto to it.
"Associated Tower Site"	means the space at the base of the Tower/Pole infrastructure to install Equipment thereat.
"Billing Dispute"	means the dispute of an invoice prepared by an Operator to the other Operator which is made in good faith .
"Commission"	means the Malaysian Commission and Multimedia Commission established under the Malaysian Communication And Multimedia Commission Act 1998 .
"Equipment"	means any equipment (whether hardware or software) or device which is part or within the Network .
"Due Date"	means in respect of an invoice by 7 <sup>th</sup> day of every calendar month unless otherwise agreed by the Operators .
"Facilities"	means network facilities and/or other facilities which facilitate the provision of the network services and applications

services including content application services.

“GST”

means the Goods and Services Tax or whatsoever taxes called by whatever name charged by the Government of Malaysia for the supply of good and/or services provided hereunder.

“Handover Date”

means the date on which access to the Tower and Associated Tower site identification given to the Access Seeker for installation of the Equipment at that site.

“Infrastructure Sharing”

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

“Letter of Offer”

or “LOO” refers to the documents offered set out in Appendix 2 issued by the Access Provider to the Access Seeker . The validity of the LOO is within 90 calendar days from the date of LOO.

“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 the Variation to Commission Determination on Mandatory Standard on Access (Determination No. 2 of 3005) Determination No. 2 of 2009 which came

into operation on 2 February , 2009 and any subsequent amendments thereto.

“Master License Agreement”

or “MLA” means agreement entered between Access Seeker and Access Provider.

“Security Deposit”

means the security in the form of cash, provided or to be provided by the Access Seeker to the Access Provider for the supply of the Access Service which amount is equivalent to 2 months rental rate.

“Tower”

means any telecommunication infrastructure which includes towers, poles and fibre optics to be used to install RF Antennas, microwave dish and remote radio unit .

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## **ACCESS SERVICE**

1. The Access Service provided by Access Provider under this RAO is Infrastructure Sharing whereby subject to the terms of the Access Agreement between Access Provider and Access Seekers, Access Provider shall provide the Access Seekers space at its existing Tower and new Tower to enable the Access Seeker to install and maintain its Equipment.
2. Access Provider shall if requested to do so by an Access Seeker, supply the Access Service to the Access Seeker on reasonable terms and conditions.
3. Access Provider shall only provide Infrastructure Sharing Service where :-
  - (a) Upon confirmation of latitude /longitude which has been agreed by both parties, Access Provider will submit to relevant local authority (PBT) for approval. Once Letter of Award obtained from PBT, Access Provider will issue LOO to Access Seeker;
  - (b) Access Provider is the legal owner of the Tower;
  - (c) The Access seeker has the appropriate License (NFP, NSP & ASP) to operate the service for the purpose for which the Equipment is to be installed;
  - (d) Any new installation by the Access Seeker will not exceed the structural loading of the relevant tower;
  - (e) Master License Agreement had been entered into between Access Seeker and Access Provider.
4. 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.
5. Consistent with Government Policy and Determinations by the Commission (and its predecessor) where Access Provider provides the Access Seeker with access to the Access Service, the Access Charges for



the requested Access Service shall be negotiated among all parties involved .

6. A security Deposit will be paid to the Access Provider by the Access Seeker prior to accessing the Associated Tower Site.
7. The Access Provider shall ensure that the amount and type of security requirements imposed on the Access Seeker in the Access Provider's security policy , commensurate with :-
  - (a) The estimate of the value of access service to be provided to the Access Seeker by the Access Provider on agreed amount;
  - (b) The financial ability of the Access Seeker (including prior payment records of the Access Seeker ) ; and
  - (c) The security previously reasonable required by the Access Provider ( if any) .

And the Access Provider is not obliged to enter into an Access Agreement with the Access Seeker pursuant to this RAO until the Access Seeker has amongst other things, provided (at the Access Seeker's cost) to the Access Provider such Security Deposit on terms and conditions reasonably to the Access Provider.

8. This agreement may be terminated or part thereof if any of the following circumstances apply and Access Provider has notified the Access Seeker of its intention to terminate the agreement :-
  - a) The Access Seeker has materially breached the Access Agreement such breach shall have persisted for a period of thirty (30) days without correction and shall have caused 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 risks or loses due to such breach ;
  - b) The Access Seeker is subject to winding up order ; or
  - c) Force majeure event have persisted for ninety ( 90) days;

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

9. Prior to terminating or seeking to materially vary RAO , Access Provider shall inform the Commission in writing of the action it proposes to take and reasons why such action is appropriate. Access Provider shall not terminate , suspend or seek to materially vary the RAO until such time and on such conditions, as the Commission may warrant.

### **CONFIDENTIALITY**

1. Each Party agrees that materials disclosed (whether orally or in writing , machine readable or in any other form) to another Party hereunder or under any predecessor of this Agreement as well as documents prepared by the Parties pursuant to this agreement or any under predecessor of this agreement may contain proprietary confidential information could cause irreparable injury.
2. Each party agrees that all such confidential information provided by one party to the other will only be disclosed to its officers, directors, employees and advisors on a need to know the basis and only to such extent as is necessary for the purposes contemplated by this agreement and such confidential information shall not otherwise be disclosed to any other person.
3. All extracts, digests and copies of such confidential information shall be maintained under strict control by its recipient. Notwithstanding the foregoing , the receiving Party may disclose the confidential information upon the order of any court or otherwise pursuant to any applicable law , rule, regulation or lawful order , PROVIDED ALWAYS, the receiving party agrees that it will provide the disclosing party with prompt notice of such order(s) to enable the disclosing party to seek an appropriate protective order or to take steps to protect the confidentiality of such confidential information.

4. The term confidential information shall not include such portions of confidential information which :-
  - ( a ) is generally available to the public or has become, after the time of discovery, part of the public domain by publication or otherwise through no fault of the receiving party;
  - ( b ) was, prior to the time of disclosure , already known to the receiving party and was not acquired, directly or indirectly, from disclosing Party or its representatives;
  - ( c ) is ,after the time of disclosure , independently developed by the receiving party and not as a result of disclosure of the confidential information by the disclosing party to the receiving party;
  - ( d ) is, after the time of disclosure , acquired in good faith without any restriction of confidentiality from a third party who is under no secrecy obligation to the disclosing party with respect thereto which is known to the receiving party ; or
  - ( e ) is, no longer treated as confidential by the disclosing party.
5. No party shall publish or permit to be published either alone or in conjunction with any other party or any information ,articles, photographs or other illustrations relating to this agreement without prior written consent of Access Provider .
6. The obligations contained in this Confidential clauses shall survive the termination of this agreement without limit in point of time except and until such confidential information enters the public domain as set out above.

## **BILLING**

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

2. The Access Seeker shall pay the Access Provider the Access charges and the GST chargeable thereon for the Access Service supplied by the Access Provider to the Access Seeker, as specified in the Access Agreement. In any case, due to the nature of the Access Provider'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 the Access Provider to the Access Seeker. In the event that 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.
3. Both parties shall bear and pay all taxes as required by the Malaysian Law that result from the implementation of the Access Agreement.
4. All payment must :
  - ( a ) be paid on the Due Date unless otherwise agreed in writing by both parties ;
  - ( b ) 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 ; and
  - ( c ) must be accompanied by such information as is reasonably required by the Access Provider to properly allocate the payments received.
5. For the purpose of clarification, the Security Deposit does not relieve the Access Seeker from its obligations to pay amounts to the Access Provider as and when they become due and payable, nor does it constitute a waiver of the Access Provider's right to suspend , disconnect or terminate the Access Service due to non-payment of any sums due or payable to the Access Provider .
6. In the event the Access Provider elects to suspend or terminate the provisioning of the Access Service to the Access Seeker due to non payment of any sums owe or payable to the Access Provider , the

Access Provider shall have the right to use the Security Deposit (together with any interest thereon) to set off any outstanding sum due and payable to the Access Provider by the Access Seeker.

7. Subject to Clause 6 above, upon the termination of the Access Agreement, the Security Deposit deposited with the Access Provider or parts thereof, together with the interest thereon (if any) shall be returned and/or refunded to the Access Seeker.

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

SIGNED by ]

For and on behalf of ]

The Access Provider ]

In the presence of ]

SIGNED by ]

For and on behalf of ]

The Access Seeker]

In the presence of ]

## **APPENDIX 1 –License Fee**

1. The Licence fee to be applied when access to site is granted to an Access Seeker to install its Equipment at the Tower in essence shall be negotiated between the Access Seeker and Access Provider which will be subject to the Access Seeker to only be allowed to install a maximum of three ( 3 ) RF Antennas, three(3 ) Remote Radio Units (RRU) and one ( 1 ) microwave dishes (subject further that the maximum diameter of any dishes installed shall not exceed 0.6 metres only) per Tower . the maximum license fee to be charged will be as agreed amount between both parties .
2. The above Licence Fee shall be inclusive of CAPEX (costs, expenses) and maintenance of the Tower recurring or otherwise howsoever and whatsoever incurred( but excluding GST) for the License Period and the Extended License Period (unless otherwise expressed and specifically agreed by the Parties) and any additional fees or expenses incurred by Access Provider in excess (if any) shall be borne by Access Provider.
3. In the event the number of the Access Seeker per Tower increases, the License Fee payable by the Access Seekers will be revised downwards.
4. The Access Charges that will be payable by the Access Seeker will be dependent on the number of Access Seeker and Other Operators (if any) using any particular Tower.

## APPENDIX 2 – Letter of Offer

### LOO FORMAT

Client Name:  
Attention to:

Ref. No.:  
Date:

Address:  
Tel:

**Subject: Letter of Offer for License to Install, Operate and Maintain a  
[description of tower, etc] at [description of Land Site Name]**

We, [Company Name] are pleased to offer the License to install, operate and maintain a  
[description of tower, etc] at the [ site name ]

1	Client	:	
	Company	:	
2	Land Site	:	
3	License Fee	:	
4	Telecommunication Structure	:	
5	Equipment	:	
6	Commencement Date	:	Handover Date
7	License Term	:	[X] years from Handover Date
8	Renewal Term	:	
9	Scheduled Handover Date of Telecommunication Structures	:	
1 0	Availability of electricity supply on Land Site	:	Yes/No



Kindly indicate your acceptance to the above by signing and returning the duplicate of this copy.

Yours faithfully,

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Name:

Designation:

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We, [ Access Seeker ] hereby confirm acceptance of the above terms & conditions for the License of the above mentioned Premises.

For and On Behalf of [ Access Seeker ]

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Name:

Designation:

Date :