



**XAIR NETWORKS SDN BHD'S  
REFERENCE ACCESS OFFER ("RAO")**

**Version 1.3**

**Effective 31 July 2017**

*This RAO is available upon written request at the Business Address and at [www.xair.com.my](http://www.xair.com.my)*

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## REFERENCE ACCESS OFFER

### CHAPTER 1 – INTRODUCTION, BACKGROUND AND SCOPE

#### 1.1 Introduction

This Reference Access Offer is made by Xair Networks Sdn Bhd (Company No: 632531-M) (“Xair”), a company incorporated under the laws of Malaysia and having its registered office at M-3-17, Plaza Damas, Jalan Sri Hartamas 1, Sri Hartamas, 50480 Kuala Lumpur on 31st July 2017 pursuant to section 5.3.3 of the Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016 (“the MSA Determination”).

This Reference Access Offer is hereby referred to as Xair’s RAO.

#### 1.2 Background

- a) The Access Provider is a licensed operator under the Act and pursuant to its License, may offer the Access Service hereunder.
- b) The Commission has issued the MSA Determination and this RAO is prepared in compliance to subsection 5.3.3 of the MSA Determination.
- c) The MSA deals with access to network facilities and network services included in the Access List and sets out the obligations that apply to Access Seekers concerning various access issues which include:
  - i - Disclosure obligations (Section 5.3 of the MSA Determination);
  - ii - Negotiation obligations (Section 5.4 of the MSA Determination); and
  - iii - Content obligations (Section 5.5 of the MSA Determination).

### 1.3 Scope of Xair's RAO

- a) Pursuant to Section 5.3.2 of the MSA Determination, Xair is obliged to prepare and maintain a Reference Access Offer in relation to network facilities on the Access List which Xair provides to itself or third parties.
- b) Xair's RAO shall be consistent with the obligations under subsection 4.1.1 of the MSA Determination and section 149 the Act; and:
  - i - Contains all the 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 (MSA 5.3.3).
- c) Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to Xair's RAO.
- d) This Xair's RAO shall be deemed to be an offer to enter into a legally binding agreement. Pursuant to Section 2.2.2 MSA Determination, Xair's RAO shall be capable of being signed as an Access Agreement or further negotiated by the Xair and Access Seeker.
- e) Xair's RAO has no effect on contractual agreements for the supply of facilities by Xair to an Access Seeker prior to the Commencement Date unless and until such contractual agreement is subsequently agreed and/or renegotiated between the Access Seekers.
- f) Xair's RAO includes all the terms and conditions that Xair will require in an Access Agreement, including all the services provided by Xair pursuant to the Access List.

- g) Xair shall, within twenty (20) Business Days of making any amendment to the Xair's RAO, provide a copy of the amendments, or an amended copy of Xair's RAO to:
  - i - the Access Seeker who is being provided with access to network facilities listed on the Access List under Xair's RAO; and
  - ii - the Access Seeker who has requested Xair's RAO within the period of ninety (90) days 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) If the Commission revokes, varies or replaces the Access List Determination relating to the network facilities listed on the Access List under section 56 of the Act, Xair may, by giving written notice to all Access Seekers to whom it is supplying network facilities under Xair's RAO, withdraw or replace Xair's RAO with effect from a date no earlier than the effective date of the Commission's revocation.
- i) Xair shall comply with Sections 6.4.2 and 6.4.3 of the MSA Determination where it withdraws or varies Xair's RAO pursuant to Section 1.3(h).
- j) In addition to Section 1.3(i) above, Xair may give the Access Seekers to whom it is supplying network facilities under Xair's RAO a notice of a variation or replacement of Xair's RAO to effect such variations that are necessary or appropriate in the event of:
  - i - the occurrence of a Legislative Event that materially affects the rights or obligations of Xair under Xair's RAO; or
  - ii - the occurrence of a Regulatory Event that relates to Xair; or
  - iii - a review by the Commission of the MSA Determination pursuant to Section 6.5 of the MSA Determination inclusive of any review by the Commission on the Mandatory Standard Access Pricing.
- k) Notwithstanding Sections 1.3(h), 1.3(i) and 1.3(j) above, Xair may subject to Section 1.3(g) above, replace Xair's RAO at any time.

- l) Subject to Section 1.3(m), Xair's RAO shall be made available to an Access Seeker:
  - i - on written request, at Xair principal place of business; and
  - ii - on a publicly accessible website.
  
- m) Prior to the provision of Xair's RAO to the Access Seeker, the Access Seeker shall be required to enter into a Confidentiality Agreement.

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## CHAPTER 2 – DEFINITION AND INTERPRETATION

The following words have these meanings in this Xair's RAO unless the contrary intention appears:

**“Act”** means the Communications and Multimedia Act 1998

**“Access Agreement”** means an agreement which is commercially negotiated between the Access Seekers, whereby Xair provides requested Facilities listed in the Access List Determination 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 Charge”** means a charge paid by the Access Seeker to Xair for accessing the Facilities listed on the access List Determination provided by Xair.

**“Access List”** means the list of Facilities determined by the Commission under Section 146 of the Act.

**“Access List Determination”** means the Commission Determination on Access List, Determination No. 1 of 2005; which came into operation on 1st July 2005 read together with the Variation to Commission Determination on Access List (Determination No. 1 of 2005), Determination No. 1 of 2009 and Determination No.2 of 2015 which came into force on 1<sup>st</sup> September 2015 or as amended from time to time.

**“Access Request”** means a request for access to Facilities on the Access List Determination made by the Access Seeker to Xair and containing the information in Section 4.1.3.

**“Access Seeker”** means an Access Seeker who:

- a) is a network facilities provider, network service provider, application service provider or content application service provider and who is a licensee as defined in the Act; and
- b) makes a written request for access to the Facilities listed in the Access List Determination.

**“Access Service”** in relation to the network facilities means a service as specified in the Xair’s RAO that are provided by Xair to the Access Seeker to an Access Request.

**“Associated tower sites”** is the space surrounding the tower where the Access Seeker may place its cabin or outdoor support equipment including space required for cable gantry connecting to the tower and generator-set

**“Bank Guarantee”** means the guarantee executed and to be granted to Xair on behalf of the Access Seeker by a bank approved by Xair pursuant to Section 4.3

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

**“Billing Period”** means the period over which the supply of access to Facilities is measured for the purpose of billing as contemplated in Chapter 6, which shall be no more than thirty one (31) days and in accordance with the relevant calendar month, unless otherwise agreed between the Access Seekers.

**“Business Day”** means a day on which banks are open for general banking business in Kuala Lumpur, Wilayah Persekutuan, other than a Saturday and Sunday or a public holiday.

**“Charges”** means the sums payable by the Access Seeker to Xair for the provision of Facilities listed in the Access List Determination.

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

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

**“Communication”** means any communication, 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 a communication attempt.



**“Confidentiality Agreement”** means a confidential agreement entered into between the Access Seekers in accordance with Section 5.3.7 of the MSA Determination.

**“Creditworthiness Information”** means the information required by Xair to assess the creditworthiness of the Access Seeker which is more particularly described in Section 4.2 of Xair’s RAO and such other information as may be required from time to time.

**“Determination”** means any lawful determination made by the Commission and/or the Minister, pursuant to the Act.

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

**“Due Date”** means, in respect of an invoice, thirty (30) days from the date of receipt of an invoice.

**“Effective Date”** means the date on which the relevant portions of the Access Agreement requiring registration is duly registered with the Commission under Section 150 or the Act in its entirety (and such registration is notified in writing to the Access Seekers).

**“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 application services.

**“Handover Date”** means the date on which access to be the Infrastructure as endorsed by a Certificate of Acceptance hereunder is given to the Access Seeker for installation of Equipment at that Site.

**“Infrastructure sharing”** shall have the meaning as defined in Part I of Schedule A

**“Instrument”** means any lawful instrument which is issued by the Commission pursuant to the Act.

**“Insurance Information”** means the insurance information required by Xair pursuant to Section 4.4.

**“Invoice”** means the invoice for amounts due in respect of the supply of requested Facilities listed in the Access List Determination during a Billing Period

**“Letter of Undertaking”** refers to the letter in the form set out in Part II of Schedule C by the Access Seekers to Xair where, upon receipt of such Letter of Undertaking, Xair shall acknowledge and thereafter execute the work commencement in relation to an infrastructure Project as Facilities.

**“Legislative Event”** means:

- a) the enactment, amendment, replacement or repeal of the Act;
- b) the enactment, amendment, replacement or repeal of the rules promulgated pursuant to sections 104 and 105 of the Act in respect of mandatory standards;
- c) the registration, determination, promulgation, issue, amendment or replacement of any industry code with which Xair is required or obliged to comply;
- d) the making of a determination, direction or finding by the Commission, the Minister or a court of law that all or any part of Xair’s RAO contravenes any provision of any law, except to the extent that the making of such determination, direction or finding constitutes a Regulatory Event.

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

**“License Fee”** means the monthly fee payable by an Access Seeker according to the payment structure pursuant to the Master Agreement set out in Schedule B and as recorded in the relevant Letter of Offer in Part III of Schedule C

**“Manuals”** means the Technical and Implementation Manual, the Access Seekers and Maintenance Manual and Other Manuals which the Access Seekers establish pursuant to the Access Agreement

**“Master Agreement”** means the main Agreement entered between Xair and the Access Seeker (that has confirmed the demand for utilization of facilities services once Access Request is established and agreed upon)

**“Minimum Value”** for the purpose of calculating the Security Sum means the total estimated value of access to the requested Facilities provided (based on the most recent amounts invoice for those requested Facilities) or to be provided by Xair to the Access Seeker for a ninety (90) days period.

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

“**Other Access Seeker**” means either Xair; or the Access Seeker, as the context requires

“**Regulatory Event**” means:

- (a) the declaration, modification, variation or revocation of the MSA Determination;
- (b) the giving of the lawful direction to Xair by the Commission relating Xair’s RAO; or
- (c) the giving of lawful direction to Xair by the Minister relating to Xair’s RAO

“**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 by Xair’s RAO unless otherwise provided

“**Security Sum**” means the security, either in the form of a Bank Guarantee or cash, deposited with Xair for the supply of Facilities listed on the Access List Determination which is more particularly described in Section 4.3; and which amount is equivalent to the Minimum Value

“**Services**” means network services and/or other services which facilitate the provision of network services or application services

“**Standard Access Obligations**” has the meaning prescribed in section 149 of the Act

“**Xair**” means Xair Networks Sdn Bhd and in Xair’s RAO, is Xair unless otherwise stated.

2.1 In Xair’s RAO except where the contrary intention appears;

- a) the singular includes the plural and vice versa; and
- b) a document includes all amendments or supplements to that document, or replacements or novations of it; and

- c) a reference to 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 to time relating thereto or in connection therewith; and
- d) a reference to a person includes a firm, body corporate, unincorporated association or an authority; and
- e) a reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), and assigns; and
- f) 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 Act that have to be done or to be done by or on before a particular day or Business Day means by or on before a particular day or Business Day means by or on before the close of business at 5.00 pm on that particular day or Business Day; and
- g) a reference to a related body corporate of an Access Seeker has the same meaning as in the Companies Act 1965; and
- h) a reference to a third person is a reference to a person is a reference to a person who is not a party to this RAO; and
- i) headings are included for convenience and do not affect the interpretation of Xair's RAO.

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## CHAPTER 3 – PRINCIPLES OF ACCESS

### 3.1 Services

3.1.1 Xair'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 Access Seekers Planning Information are set out in Schedule B.

3.1.4 Charging principles are set out in Schedule C.

### 3.2 Eligibility for Access to Service

3.2.1 Xair may at its discretion and in a manner consistent with the Licence(s) granted (and the licence rights accorded therein) by the Minister to the Access Seeker, determine on a case by case basis whether to provide the Access Seeker with access to Facilities listed in the Access List Determination which are set out in Xair's RAO.

3.2.2 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 the of the Facilities listed in the Access List Determination which are set out in Xair's RAO where the Access Seeker has been granted (i) an individual network facilities provider license, and (ii) and individual network services provider license and (iii) an individual content application services provider license, and such individual licenses are not limited or restricted from those detailed in the *Communications and Multimedia (Licensing Regulations 2000*, as amended in any way:

- (a) by the reference to the type of network facilities, network services and/or content applications services that can be provided; and
- (b) by geographical limitations 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 Xair 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.

### **3.3 Principles of Access**

3.3.1 Xair 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 reasonable terms and conditions to be entered separately between the parties

3.3.2 In supplying a Facility listed in the Access List Determination, Xair must treat an Access Seeker on the 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

3.3.3.1 The access provided by Xair to the Access Seeker shall be consistent with:

- (a) section 149(2) of the Act; and
- (b) the principles set out in sections 4.1.5 and 4.1.6 of the MSA Determination.

3.3.4 No exclusivity and no restriction on resale

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

3.3.5 Customer Principles

- 3.3.5.1 Xair shall observe and comply with the customer relationship principles set out in Section 4.3 of the MSA Determination

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## CHAPTER 4 – ACCESS REQUEST PROCEDURES

### 4.1 Application for Access to Services

4.1.1 an Access Seeker shall request Xair to supply Facilities listed in the Access List Determination to it by serving an Access Request to Xair.

4.1.2 the purpose of such Access Request is to provide Xair with sufficient information to assess the Access Seeker's request for the supply of Facilities listed in the Access List Determination under Xair'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 Xair'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 requires Xair to provide for the purposes of the access negotiations;
- e) contain two (2) copies of Confidentiality Agreement properly executed by the Access Seeker in the form prescribed by Xair in Annexure 1;
- f) specify forecasts of the capacity which the Access Seeker reasonably requires, having regard to Xair's disclosed provisioning cycle as described in Part I and Part V of Schedule C;
- g) provide the 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 Xair's Network;



- h) contain confirmation that the Access Seeker is not currently being supplied with the requested Facility listed in the Access List Determination or if so, the reasons for the additional request for the said Facility;
- i) 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;
- j) contain Creditworthiness Information as set out in Section 4.2;
- k) be accompanied by a Security Sum as set out in Section 4.3, if required;
- l) contain Insurance Information as set out in Section 4.4;
- m) contain relevant technical information relating to the interface standards of the Access Seeker;
- n) contain preliminary information regarding the scale and scope of Facilities that the Access Seeker expects to acquire from the Access Provider pursuant to the Access Request; and
- o) contain such other information that Xair may reasonably request for the sole purpose of providing access to the requested Facilities.

## **4.2 Credit Worthiness Information**

4.2.1 The Creditworthiness Information that is required to accompany an Access Request includes but shall not be limited to:

- a) a letter, signed by the executive director of the Access Seeker, stating 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
- b) a copy of the Access Seeker's most recently published audited balance sheet and audited profit and loss statement;
- c) latest bank statement of the Access Seeker's principal account; and

d) such other information as may be reasonably requested by Xair provided that such information are information which are 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 Xair to the Access Seeker over a ninety (90) day period.

### **4.3 Security Sum**

4.3.1 An Access Request shall be accompanied by a Security Sum. The security that may be given by the Access Seeker may be in the form of either:

a) Bank Guarantee; or

b) cash sum.

4.3.2 Xair is not obliged to consider entering into an Access Agreement with the Access Seeker pursuant to Xair's RAO until the Access Seeker has amongst other things, provided (at the Access Seeker's costs) to Xair such Security Sum on terms and conditions reasonably acceptable to Xair.

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#### **4.4 Insurance Information**

4.4.1 Subject to Section 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 or in connection with the work covered by the Access Agreement that may be entered into and/or their dependants; 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 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. Such policy shall include contractual liability.

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 Xair

#### **4.5 Processing of Access Request**

##### **4.5.1 Acknowledgement of Receipt of Access Request**

Xair 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 4.5.3, 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 Facilities listed in the Access List Determination in accordance with Xair's RAO; or

(c) indicate whether Xair is willing to negotiate any amendments to the RAO or the Access Agreement; or

(d) refuses the request in accordance to Section 4.6 below.

Subject to the additional information being received by Xair within twenty (20) Business days from the date of request, Xair shall reconsider the Access Request in accordance with this Section 4.5.1 upon receipt of such additional information.

#### 4.5.2 Non-refundable processing fee

4.5.2.1 Subject to Section 4.5.2.2, Xair may charge an Access Seeker a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request.

4.5.2.2 The non-refundable processing fee is only applicable to requested Facilities listed in the Access List Determination that can be offered and made available by Xair.

4.5.2.3 Unless otherwise advised in writing by Xair, the non-refundable processing fees for the respective Facilities listed in the Access List Determination are set out in Annexure 2. Processing Fees for Facilities not currently specified in Annexure 2 will be mutually agreed by the Access Seekers from time to time.

4.5.2.4 In the event that additional and non-routine work is required in order to process the Access Request, Xair may charge a separate fee for undertaking such additional work. If the Access Seeker does not proceed with the Access Request accepted by Xair, the processing fee will not be refunded to the Access Seeker.

4.5.2.5 The processing fee will be set-off against the Charges for the requested Facilities upon acceptance of the Access Request by Xair pursuant to Section 4.8.

#### 4.5.3 Resources charge

In accordance with Section 5.7.28 of the MSA Determination Xair may charge an Access Seeker a resources charge to be determined by reference to the costs incurred by Xair for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Facilities for the purposes of interconnection.

#### 4.5.4 Request for information

Xair shall comply with Section 5.4.16 of the MSA Determination where it requests additional information from the Access Seeker pursuant to Section 4.5.1(a).

### **4.6 Assessment of Access Request**

#### 4.6.1 Reasons for Refusal

Without limiting any other grounds that may be relied upon under the Act, Xair may refuse to accept an Access Request for the supply of a Facility listed on the Access List Determination and accordingly may refuse to supply that Facility to the Access Seeker for any of the following reasons:

- (a) in Xair's reasonable opinion, the Access Seeker's Access Request was not made in good faith and Xair shall set out the basis on which the Access Request was not made in good faith;
- (b) in Xair's reasonable opinion, the Access Request does not contain the information reasonably required by Xair's RAO provided that Xair has sought the information from the Access Seeker under Section 4.5.1 of Xair's RAO and has not received that information within twenty (20) Business Days of making such a request;
- (c) Xair does not currently supply or provide access to the requested Facilities listed in the Access List Determination to itself or to any third parties, except where the Access Seeker compensates Xair for the supply of access to such Facilities;
- (d) it is not technically feasible to provide access to the requested Facilities listed in the Access List Determination;

- (e) Xair has insufficient capacity to provide the requested Facilities listed in the Access List Determination;
- (f) there are reasonable grounds in Xair's opinion to believe that the Access Seeker would fail to make timely payment for the supply of the relevant Facility listed in the Access List Determination;
- (g) there are reasonable grounds in Xair'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 Facilities listed in the Access List Determination; or
- (h) there are reasonable grounds for Xair to refuse access in the national interest; or
- (i) the facilities sought are not in the Access List Determination.

#### 4.6.2 Determination of technical infeasibility

For the purpose of determining technical infeasibility in Section 4.6.1(d), the Access Seekers 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 Section 4.6.1(e), the Access Seekers 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 listed in the Access List Determination

Examples of reasonable grounds for Xair's belief as mentioned in Section 4.6.1(f) include evidence that the Access Seeker is not in the reasonable opinion of Xair's creditworthy.

4.6.5 Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of relevant Facilities listed in the Access List Determination

Examples of reasonable grounds for Xair's belief as mentioned in Section 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 Facilities have been provided (whether or not by Xair).

4.6.6 Assessment of Creditworthiness

4.6.6.1 In determining the creditworthiness of the Access Seeker, Xair may have regard to, but is not limited to the matters referred to in Section 4.2.

4.6.6.2 In determining the creditworthiness of the Access Seeker, Xair shall not take into account amounts outstanding for Facilities previously provided by Xair to the Access Seeker where, in accordance with the terms and conditions governing the provision of such Facility, the Access Seeker is not required to pay such amounts to Xair to the extent that there is a *bona fide* dispute in relation to the amounts outstanding by the Access Seeker to Xair and the Access Seeker is relying on such terms and conditions as basis for its non-payment.

**4.7 Notification of Rejection to the Access Seeker**

4.7.1 Where Xair rejects the Access Request, Xair shall:

- (a) notify the Access Seeker in writing within ten (10) Business Days from 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 Xair's rejection of the Access Request; and

- (d) indicate a date and time, not later seven (7) Business Days from the date of the notice of rejection, at which representatives of Xair will be available to meet with representatives of the Access Seeker to discuss the rejection of the Access Request. At this meeting, the Access Seeker may request Xair to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in Section 4.6.1(e), Xair 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 resolution of the dispute in accordance with Chapter 7.

#### **4.8 Acceptance of Access Request**

4.8.1 Where Xair agrees to provide access to Facilities listed in the Access List Determination to the Access Seeker in accordance with Xair's RAO, Xair shall within ten (10) Business Days of such respond under Section 4.5.1(b), provide the Access Seeker with two copies of the executed Access Agreement, for execution by the Access Seeker.

4.8.2 Where the Access Seeker wish to negotiate an Access Agreement, the Access Seekers shall comply with the requirements in Sections 5.4.1, 5.4.2, 5.4.3, 5.4.4, 5.4.9 and 5.4.15 of the MSA Determination in negotiating and concluding an Access Agreement.

4.8.3 Xair will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Facility listed in the Access List Determination until:

- (a) a Security Sum has been provided in accordance with Sections 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 in accordance with section 150 of the Act.



## 4.9 Fast-track application and agreement

4.9.1 Notwithstanding and as an alternative process to that set out in subsections 5.4.1 to 5.4.18 of the MSA, Xair shall make available a fast-track application and agreement process for Access Seekers based on the following principles:

- (a) the fast-track process shall be limited to the criteria set out by the Xair in accordance with subsection 5.421 of the MSA;
- (b) the fast-track application form:
  - i - shall be limited to gathering information from the Access Seeker as set out in paragraphs 5.4.6(a) and 5.4.6(b) of this Standard; and
  - ii - in respect of any requirement to provide security, shall set out a process for determining the required security sums under subsection 5.3.9 of the MSA within five (5) Business Days of the Access Provider's receipt of a fast-track application;
- (c) Xair may only refuse the Access Seeker's fast-track application for the reasons set out in paragraphs 5.4.11 5.4.1 1(e) or 54.11(f) of this Standard;
- (d) the fast-track agreement between the Access Provider and the Access Seeker must be on the terms of the Access Provider's RAO; and
- (e) within ten (10) Business Days of Xair's receipt of a fast-track application, the Access Provider must:
  - i - provide the Access Seeker with two (2) copies of the RAO executed by the Access Provider, or a notice of refusal that sets out the grounds for refusal under paragraph 5.4.20(c) of the MSA (including the basis on which those grounds apply); and
  - ii - provide the Commission with a copy of the response at the same time that it provides the response to the Access Seeker under paragraph of this Standard.

#### 4.9.2 Principles for setting up fast-track process

Xair shall set up, and publish on its publicly accessible website, the criteria on which Access Seekers will be eligible for the fast-track application and agreement process according to the following principles:

- (a) the criteria must be determined and applied by Xair on a non-discriminatory basis;
- (b) the fast-track process may be limited to the supply of Facilities to the extent that such supplies do not have a material impact on the Access Providers current level of network resources; and
- (c) the Facilities which may be the subject of a fast track application may be limited to Fixed Network Termination Service, Mobile Network Termination Service, Transmission Services, Interconnect Link Service, HSBB Network Services, Digital Subscriber Line Resale Service and ANE.

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## CHAPTER 5 – PROVISION OF INFORMATION

- 5.1 The obligations of each Access Seeker to provide information to the Other Access Seeker are subject to the MSA Determination and the requirements of confidentiality imposed by Xair'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 the 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 Xair's RAO may only be used for the purpose for which it was given, Personal Information about a Customer's credit worthiness, 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 on notice 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 be resumed 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 is at the date when the Access Agreement comes into force, the subject of a confidentiality obligation owed to a third person unless the third person 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 the Other Access Seeker unless the contract includes a term which permits the contracting Access Seeker to make the information available if the directed to do so by the Commission.

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## CHAPTER 6 – BILLING AND SETTLEMENT

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

### 6.2 Billing

- 6.2.1 (a) In respect of any charge due from the Access Seeker, Xair shall raise the Invoice for amount due for the supply of Facilities.
- (b) Unless otherwise agreed in writing, Xair shall Invoice in writing or in electronic form (as requested by the Access Seeker), on a Party to Party basis, within thirty (30) days from the provisioning of the Facilities for amounts due in respect of the supply of Facilities during the Billing Period. Xair shall provide with each Invoice, such information as may be reasonably necessary for the Access Seeker to verify the rates and charges specified in the Invoice. In addition, the Access Seeker may request, in writing, for the billing report to be provided by Xair in an electronic format.
- (c) Xair shall provide the Access Seeker at the Access Seeker's written request, with an aggregated summary of billings for access to the Facilities provided to the Access Seeker in monthly tranches.
- (d) The Access Seeker shall, from time to time, inform Xair of the mailing address and the department to which the Invoice should be sent to and also Xair's bank account details for the purposes of enabling the Access Seeker to make payment. All physical Invoices shall be delivered by hand or post (either registered mail or courier).
- (e) The Access Seekers shall bear and pay all taxes as required by Malaysian law that result from the implementation of the Access Agreement.
- (f) The Access Seeker must pay any amount due and owing to the Xair on the Due Date unless otherwise agreed in writing by both Access Seekers.

- (g) Notwithstanding anything to the contrary, Xair shall be entitled to deduct or withhold such taxes, duties, levies or such other sums imposed by such governmental authorities ("said taxes") from any sum or sums due to the Access Seeker in the event Xair is required by law to pay the said taxes for and on behalf of the Access Seeker.

### **6.3 Backdate Billing**

- 6.3.1 Where appropriate, any taxes (including goods and service tax), duties or other imposts (as at the date of this Agreement or imposed after the date of this Agreement) shall be added to all or any charges under this Agreement and be paid by the Party responsible for making such payment.

### **6.4 Terms of Payment**

- 6.4.1
  - (a) The Access Seeker must pay any amount due and owing to Xair on the Due Date unless otherwise agreed in writing by both Parties.
  - (b) The Access Seeker to whom any Facilities is provided under this Agreement must pay Xair the applicable rates and charges, and on the terms and conditions set out or referred to, as the case may be, in this Agreement.
  - (c) The Access Seeker shall acknowledge their acceptance of invoice issued by Xair to the Access Seeker upon receipt and fax over the acknowledgment to Xair on the day of receipt, failing which the Access Seeker is deemed to have been received by the Access Seeker three (3) days after posting or courier of the invoice.

#### **6.4.2 Method of payments:**

- (a) must be paid by electronic transfer to Xair or by cheque to the nominated account(s) of Xair;
- (b) must be accompanied by such information as it reasonably required by Xair to properly allocate payments received, failing which Xair shall have the absolute discretion to allocate payments received to any amounts due and payable; and

- (c) Xair shall only be entitled to set-off any amounts stated in any Invoice and which is outstanding against any amounts owed to the Access Seeker:
- i - in the event the Access Seeker is in or goes into or threatens to go into liquidation or passes a resolution to wind up; or
  - ii - there are at least three (3) Invoices unpaid by the Access Seeker; or
  - iii - unless otherwise agreed by the Parties, set-off is to be limited to the same type of Facilities provided.

6.4.3 Unless otherwise agreed by Xair and the Access Seeker, all invoices shall be stated in RM and payment must be made in RM; and

6.4.4 It is hereby expressly agreed that Xair is entitled to the payment of interest without prejudice to any other rights of Xair. Interest on due and unpaid amounts is payable (as well as before judgment and after judgment) at the rate of two percent (2%) per annum above Malayan Banking Berhad base rate calculated daily from the Due Date until the date of actual payment. Payments which are overdue by more than sixty (60) days will bear interest at the rate of three percent (3%) per annum above Malayan Banking Berhad base rate (as well as before judgment and after judgment) calculated from the Due Date until the date of receipt by Xair of full payment. Further, the base rate to be used shall be the published rate prevailing on the date of payment.

6.4.5 Where interest in respect of any due and unpaid amount is due to Xair under Condition 6.4.4, Xair may issue a debit note for this interest.

6.4.6 If Xair discovers an error in an invoice given to the Access Seeker under this Chapter 6, it must notify the Access Seeker. Xair which made the error must make the necessary adjustment to correct that error (including adjusting any interest erroneously charged).

6.4.7 Xair may include omitted or miscalculated Charges from an earlier Invoice in a later Invoice or issue an Invoice for Charges which previously have not been invoiced provided that Xair is able to substantiate the Charges to the Access Seeker.

6.4.8 Notwithstanding anything to the contrary, Xair shall be entitled to deduct or withhold such taxes, duties, levies or such other sums imposed by such governmental authorities (“said taxes”) from any sum or sums due to the Access Seeker in the event Xair is required by law to pay the said taxes for and on behalf of the Access Seeker.

## 6.5 Security Sum

6.5.1 The Access Seeker shall have deposited the Security Sum as security for the performance of all the Access Seeker’s obligations under this Agreement. The amount of the initial Security Sum for each Facility shall be as stipulated respective Facility description. For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts to Xair as they become due and payable, nor does it constitute a waiver of the Xair’s right to suspend, disconnect, or terminate the relevant Facilities due to non-payment of any sums due or payable to Xair.

6.5.2 For the purpose of clarification, the Security Sum (if payable) does not relieve the Access Seeker from its obligations to pay amounts to Xair as they become due and payable, nor does it constitute a waiver of Xair right to suspend, disconnect, or terminate the relevant network services due to non-payment of any sums due or payable to Xair.

6.5.3 Xair shall be entitled to revise the Security Sum in any of the following event:

- (a) where, in the reasonable opinion of Xair, the amount of the Security Sum is less than the Minimum Value calculated over a ninety (90) days period determined by Xair;
- (b) where, in the opinion of Xair, there is a material change in circumstances in relation to the Access Seeker’s Creditworthiness. In such cases, Xair may request for additional security in addition to the Minimum Value to sufficiently and reasonably mitigate its risk in providing the relevant Facilities 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, so long as those amounts have not been disputed in good faith;
- (c) upon the provisioning of new or additional Facilities to the Access Seeker;



(d) at each subsequent anniversary from the Commencement Date; and

(e) as provided under the respective Facilities descriptions.

6.5.4 Where the Security Sum is revised pursuant to Section 6.5.3 (a) above, the Access Seeker shall within five (5) Business Days from the written request of Xair, deposit the new Security Sum with Xair in the manner specified in Section 4.3 of Xair' RAO.

6.5.5 Where the Access Seeker deposit 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 by Xair in addition to the Security Sum, Xair shall forward to the Access Seeker a statement of the said accounts annually.

6.5.6 The Security Sum deposited by the Access Seeker with Xair and any interest thereon shall only be used for the purposes set out in Section 6.5.3. Xair may at its discretion call upon or deduct the Security Sum at any time after the Due Date or upon breach of any of the Access Seeker's obligation. Such utilization or deduction of the Security Sum shall not be construed as set-off or counterclaim.

6.5.7 Upon termination of the Agreement:

(a) the Security Sum deposited with Xair or parts thereof shall be returned and/or refunded to the Access Seeker within sixty (60) days from the date of termination provided all other amounts payable by the Access Seeker to Xair have been paid; and

(b) Xair shall immediately in writing unconditionally waive its rights under any guarantee provided as Security Sum in respect of future performance of this Agreement by the Access Seeker if any, since this Agreement has been terminated save and except that the guarantee shall remain in full force in respect of any antecedent breaches under this Agreement or in respect of any amounts payable by the Access Seeker to Xair as at the date of termination, without prejudice to the rights and remedies of Xair under this Agreement (including but not limited to the right to claim for any or all amounts due and payable under the Agreement and/or to call upon the Security Sum) and/or under law.

**6.6 Billing Disputes**

6.6.1 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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## **CHAPTER 7 - TERMINATION**

### **7.1 Termination Obligations**

This Access Agreement may be terminated or part thereof if any of the following circumstances apply and Xair has notified the Access Seeker of its intention to terminate the Access 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 Xair 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 losses due to such breach;
- (b) The Access Seeker is subject to winding up order; or
- (c) A Force Majeure event have persisted for ninety (90) days;

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

### **7.2 Approval**

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

## SCHEDULE A

### SERVICE DESCRIPTION

#### PART I – INFRASTRUCTURE SHARING

##### 1. General

1.1 Part I 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 Xair shall not be obliged to provide to Access Seeker Infrastructure Sharing for the Designated and associated Tower Sites unless:

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

##### 3. Infrastructure Sharing

3.1 Xair agrees to provide Infrastructure Sharing at the designated tower to the requesting Access Seekers in accordance with the terms of Master Agreement initially entered into between Xair and other Access Seeker. The terms and conditions for technical matters are also spelled out in the said Master Agreement.

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

### 3.3 Duration of Infrastructure Sharing

3.3.1 Infrastructure Sharing at a designated Tower or agreed between the Access Seekers, shall be for an Initial Period of seven (7) years with an option to renew for three (3) successive terms of five (5) years each up to a maximum of fifteen (15) years (“Renewal Term”).

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

(a) The Access Seeker agrees to commence Infrastructure Sharing; and

(b) The Access Seeker takes physical possession of the shared space (“Shared Space”) at the Designated Tower or Associated Tower Site, after informing Xair the exact location of the equipment/antenna.

## 4. Access Seeker’s Obligations

4.1 The Access Seeker shall be responsible for and bear the cost of all electricity utilized by the Access Seeker at the Shared Space. Xair shall provide the access for power supply and assist the Access Seekers for its own individual meter.

### 4.2 Installation of Equipment

4.2.1 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 Xair

### 4.3 Safety and health and Security Procedures

4.3.1 The Access Seeker shall comply with the provisions and requirements of the occupational safety and Health Act 1994 (“OSHA”). These provisions include the usage of personal protective equipment such as safety helmet, safety boots, safety goggles and other safety gadgets as prescribed by OSHA.

4.3.2 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 Xair within twenty four (24) hours from the time of the occurrence.

4.3.3 The Access Seeker shall comply and cause its employees, agents and contractors to comply with all guidelines, rules and regulations issued by Xair from time to time on site access and security procedures with respect to access to and use of the Shared Space. Further the Access Seeker shall ensure the security of its Shared Space is such that no unauthorized person shall enter the Shared Space.

4.4 Sub-letting and Assignment

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

## **5. Forecast**

5.1 Xair shall only request Forecasts where:

- (a) the maximum period of time covered by Forecasts regarding Infrastructure Sharing is one (1) year;
- (b) the minimum intervals or units of time to be used in Forecasts regarding Infrastructure Sharing is one (1) year; and
- (c) The maximum frequency to update or to make further Forecasts regarding Infrastructure Sharing is once a year.

## **6. Processing of Order for Infrastructure Sharing**

6.1 Xair shall acknowledge receipt of each Order for Infrastructure Sharing within two (2) Business Days.

6.2 Xair must 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 Access Provider did not undertake any post-Order Service Qualification for that 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.

**7. Indicative Delivery Timeframe**

- 7.1 Indicative Delivery Timeframe shall be for a term of sixty (60) business days and shall commence from the Notice of Acceptance or confirmation of the Order under subsection 5.7.14 of the MSA.

**8. Billing Cycle**

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

**9. Physical Access**

- 9.1 Xair shall allow an Access Seeker, its nominated employees and/or contractors to physically access Xair's network facilities and the Access Seeker's Equipment, and to have physical control over the Access Seeker's Equipment located at such network facilities, at equivalent times and in accordance with equivalent processes and procedures as are applicable to itself where:

- (a) Xair is required to fulfil an Order for Infrastructure Sharing; or
- (b) for the Access Seeker to perform operations or maintenance activities.

**10. Escorts**

- 10.1 Xair is only permitted to require an escort to be present when nominated employees and/or contractors of the Access Seeker wish to enter into Xair's property if Xair requires an escort for its own employees or contractors in the same circumstances. If Xair 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, Xair shall:

- (a) bear the costs of such escort service;
- (b) provide immediate 24-hour physical access to the Access Seeker for emergency maintenance requests;
- (c) subject to paragraph 6.1 of this Schedule, provide physical access at the time requested by an Access Seeker for planned maintenance requests on the shorter of:
  - i - two (2) Business Days' notice for manned sites and five (5) Business Days' notice for unmanned sites; and
  - ii - the period of notice which it requires from itself when providing itself with physical access for planned maintenance;
- (d) for both planned and emergency maintenance requests at unmanned sites only, have its escort arrive within the shorter of:
  - i - thirty (30) minutes of time required by the Access Seeker pursuant to paragraph 6.1 of this Schedule (as applicable) plus a reasonable window to allow for travel time (which must be estimated in an operations and maintenance manual given to the Access Seeker, or estimated at the time of responding to the Access Seeker's physical access request); and
  - ii - the period of time it requires for its escorts to arrive for planned and emergency maintenance at unmanned sites.



**SCHEDULE B**

**ACCESS SEEKER'S PLANNING INFORMATION**

**ACCESS SEEKER'S PLANNING INFORMATION**

<b>SITE NAME</b>	
<b>TOWER HEIGHT</b>	
<b>TYPE OF TOWER</b>	
<b>DATE</b>	

<b>COORDINATE</b>	
<b>LONGITUDE</b>	<b>LATITUDE</b>

**BTS INFO**

<b>ACCESS SEEKERS</b>	<b>BTS TYPE</b>	<b>BTS DIMENSION</b>	<b>CABIN SIZE</b>	<b>PLINTH SIZE</b>	<b>NUMBER OF BTS</b>
Access Seekers 1					
Access Seekers 2					
Access Seekers 3					

### RF ANTENNA INFO

ACCESS SEEKERS	ANTENNA QUANTITY	ANTENNA ORIENTATION	ANTENNA DIMENSION (MM)	ANTENNA HEIGHT	CABLE TYPE	CABLE LENGTH
Access Seekers 1						
Access Seekers 2						
Access Seekers 3						

### MICROWAVE ANTENNA INFO

ACCESS SEEKERS	ANTENNA QUANTITY	ANTENNA AZIMUTH	ANTENNA SIZE	ANTENNA HEIGHT	CABLE TYPE	CABLE LENGTH
Access Seekers 1						
Access Seekers 2						
Access Seekers 3						

## **SCHEDULE C**

### **PART I – OPERATIONS AND MAINTENANCE**

#### **1. General**

1.1 Part VI of Schedule C sets out the operations and maintenance procedures that are applicable in relation to the Facilities as listed in the Xair

1.2 Where relevant, the operations and maintenance obligations set out in Section 5.15 of the MSA Determination shall be applicable.

#### **2. Operations and Maintenance Standard**

2.1 Each Access Seeker shall be responsible for the operations and maintenance of its own Network Facilities or Network Services.

#### **3. Maintenance Procedures and Practices**

3.1 Each Access Seeker shall on its own establish the recommended maintenance procedures for maintaining and servicing its own Network Facilities or Network Services.

#### **4. Fault Management**

4.1 The Access Seeker will manage their own Networks to minimize disruption to services and, in the event of interruption or failure of any service, will restore those services as soon as is reasonably practical.

#### **5. Network Monitoring**

5.1 Each Access Seeker is responsible for monitoring of alarms belonging to its own Network.

## PART II – CHARGING PRINCIPLE

- a. The following rates shall be utilized as indicative rates for access to telecommunication structures below 24 meters (ranging from 12 meters to 24 meters) to be granted to an Access Seeker to install its Equipment:

Structure Type	Rate for 1st to 7th Year		Rate for 8 <sup>th</sup> to 15 <sup>th</sup> Year	
	2W	3W	2W	3W
Streetlights	RM3,750	RM3,000	RM3,188	RM2,550
Floodlights	RM4,500	RM3,500	RM3,825	RM2,975
Payphone	RM3,500	-	RM2,975	-

- i - The rates stated above and all rates stated in this RAO are exclusive of GST levied by the Government which GST shall be payable by the Access Seeker to the Access Provider over and above the Access Charges. The rates are also exclusive of other costs such as leasing of cabinet(s), due to space constraint, locality, Variation Order (“VO”), etc...
- ii - In the event the land rental for the Site as imposed by its landowner exceed the amount of RM2,000.00, the Access Seeker shall bear the sum in excess of the said land rental.
- iii - Subject always to the availability of space in the Associated Tower Site and the loading of the Tower, 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 Associated Tower Site and may be provided land space not more than 3.6 meters x 2.7 meters. In any case, the Equipment to be allowed per Tower and Associated Tower Site shall be upon agreement of the parties.

iv - 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:

1. RM500.00 per month for any additional RF antennas or dishes measuring less than 0.6 meters (where applicable) in diameter

v - In the event there is Additional Infrastructure under a Variation Order already existing at the Tower, the additional Access Charges payable for the site per RM1,000.00 of the cost of the Additional Infrastructure under the Variation Order (for example generator set, cabin etc) are as follows:

<b>Cost for User</b>	<b>Additional Access Charges (per month per User) for every RM1,000.00</b>
Cost per User (2 Sharing Parties)	13.53
Cost per User (3 Sharing Parties)	10.83

vi - The Access Charges that will be payable by the Access Seeker will be dependent on the number of telecommunication companies (Access Seeker and other licensees (if any) ("User(s)")) using any particular Tower.

vii - vii. 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 three (3).

- b. The following rates shall be utilized as indicative rates for access to heavy duty telecommunication towers of T2 specifications to be granted to an Access Seeker to install its Equipment:

<b>Tower Height</b>	<b>Type</b>	<b>2 Way</b>	<b>3 Way</b>	<b>4 Way</b>	<b>5 Way</b>	<b>6 Way</b>
150 feet	Heavy Duty	RM6,426	RM3,672	RM2,916	RM2,624	RM2,362
200 feet	Heavy Duty	RM8,883	RM5,076	RM4,104	RM3,694	RM3,324
250 feet	Heavy Duty	RM9,450	RM5,400	RM4,320	RM3,888	RM3,499
300 feet	Heavy Duty	RM12,075	RM6,900	RM5,500	RM4,950	RM4,455
350 feet	Heavy Duty	RM15,225	RM8,700	RM6,900	RM6,210	RM5,589
400 feet	Heavy Duty	RM17,325	RM9,900	RM7,900	RM7,110	RM6,399

- i - The rates stated above and all rates stated in this RAO are exclusive of GST levied by the Government which GST shall be payable by the Access Seeker to the Access Provider over and above the Access Charges.
- ii - The rates above are for the license term of minimum Seven (7) years but if the Access Seeker intends to take a license of a site for a longer period than 7 years, a lesser rate may be agreed by the Access Provider.
- iii - The Access Provider may subject to agreement of parties, upon an Access Seeker taking a long term license of a site, grant discount on the Access Charges post the 7th year of the license.

- iv - Subject always to the availability of space in the Associated Tower Site and the loading of the Tower, 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 or 1.2 meters (depending on the Tower) per Associated Tower Site and may be provided land space for a cabin not more than 3.6 meters x 2.7 meters in diameter. In any case, the Equipment to be allowed per Tower and Associated Tower Site shall be upon agreement of the parties.
  
- v - 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 or 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:
  - 1. RM500.00 per month for any additional RF antennas or dishes measuring less than 1.2 meters or 0.6 meters (where applicable) in diameter; and
  - 2. RM1,000.00 per month for any dishes measuring more than 1.2 meters or 0.6 meters (where applicable) in diameter.
  
- c. In the event there is Additional Infrastructure under a Variation Order already existing at the Tower, the additional Access Charges payable for the site per RM1,000.00 of the cost of the Additional Infrastructure under the Variation Order (for example generator set, cabin etc) are as follows:

<b>Cost for User</b>	<b>Additional Access Charges (per month per User) for every RM1,000.00</b>
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
Cost per User (6 Sharing Parties)	6.93



- 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 licensees (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 six (6).
- f. If in the event the number of Users per Tower reduces, the following shall happen:
  - i - in cases where the exiting User had taken a rental/license for a maximum period of Seven (7) years only, the remaining Users will be subject to an upward revision of the Access Charges, back to the tier higher than the current Access Charges paid by them; and
  - ii - in cases where the exiting User had taken a license for a minimum period of Ten (10) years only and the following happens:
    - 1. when the land rental for the Site as imposed by its landowner exceed the amount of RM5,000.00 and the Access Seeker wishes not to continue to contribute towards the land rental equally with the other Users at the Site and exits the Site upon agreement of the Access Provider; or
    - 2. when a User other than the Access Seeker exits a Tower upon the completion of its rental/license period with the Access Provider pursuant to any agreement between them and does not renew or extend the said period;then the remaining Users will be subject to an upward revision of the Access Charges, back to the tier higher than the current Access Charges paid by them; and
  - 3. in other cases than stated above, the remaining Users will not be subject to an upward revision of the Access Charges and will continue paying the current Access Charges.

- g. In any case, the Access Charges payable by the Access Seeker to the Access Provider to gain access at any Tower shall be at the rate the other current User is paying the Access Provider, with discounts to be agreed upon other Users utilizing the same site and subject always to paragraph (a) above.
- h. Nevertheless, in the event that an Access Seeker is interested to appoint the Access Provider to undertake the Project, subject to the relevant agreement(s) is/are entered into between the parties upon terms and conditions agreed upon which shall include amongst others that the Access Term to be for a minimum period of at least ten (10) years, the Access Provider may offer the following rates for the Access Charges to the Access Seeker for heavy duty telecommunication towers of T2 specifications:

<b>Tower Height</b>	<b>Type</b>	<b>Single</b>	<b>2 Sharing</b>	<b>3 Sharing</b>	<b>4 Sharing</b>	<b>5 Sharing</b>	<b>6 Sharing</b>
150 feet	Heavy Duty	RM6,426	RM3,672	RM2,916	RM2,624	RM2,362	RM2,126
200 feet	Heavy Duty	RM8,883	RM5,076	RM4,104	RM3,694	RM3,324	RM2,992
250 feet	Heavy Duty	RM9,450	RM5,400	RM4,320	RM3,888	RM3,499	RM3,149
300 feet	Heavy Duty	RM12,075	RM6,900	RM5,500	RM4,950	RM4,455	RM4,009
350 feet	Heavy Duty	RM15,225	RM8,700	RM6,900	RM6,210	RM5,589	RM5,030
400 feet	Heavy Duty	RM17,325	RM9,900	RM7,900	RM7,110	RM6,399	RM5,759

(Paragraphs (c) till (f) above are applicable for Projects as well.)

- i. The cost of the Project and the Access Charges for Towers involving 4 legged towers, aesthetic towers and any other telecommunication infrastructure 200 feet and above not as per the Towers under paragraphs (h) above, shall be calculated in the following manner:

DESCRIPTION	COST	REMARKS
Cost of the Tower 200 feet and above not as per the Towers under paragraphs (h) and (i)(x) above (including Civil, Structural, Mechanical and Electrical Works) (RM), P	P	15% above current (at time of construction) JKR rate or to be agreed between Parties where no JKR Rate is available.
OPEX Cost (RM) taken for seven (7) years for purpose of calculation only, Q	Q=RM315,000.00	OPEX is for base rental of site at RM3,000.00 only per month and other expenses totalling RM45,000.00 per year SAVE AND EXCEPT for any increase of rental beyond RM3,000.00 shall be equally shared between the Users
Total Interest based on rate of 6.5% per annum over 7 years for purpose of calculation only (RM), R	$R=(P \times 0.065 \times 7 \text{ years})$	
Total Cost (RM), S	$S= P+Q+R$	
Total Repayment per month (RM), T	$T= S/(12 \times 7)$	

Cost per Single User, U	$U = T$	
Cost per User (2 Users), V	$V = (1.25 \times U) / 2$	Rounded off to the nearest RM100 using Microsoft Excel "round" function
Cost per User (3 Users), W	$W = (1.50 \times U) / 3$	Rounded off to the nearest RM100 using Microsoft Excel "round" function
Cost per User (4 Users), X	$X = (1.75 \times U) / 4$	Rounded off to the nearest RM100 using Microsoft Excel "round" function
Cost per User (5 Users), Y	$Y = (2.00 \times U) / 5$	Rounded off to the nearest RM100 using Microsoft Excel "round" function
Cost per User (6 Users), Z	$Z = (2.25 \times U) / 6$	Rounded off to the nearest RM100 using Microsoft Excel "round" function

- j. In the event there is OPEX Cost to be incurred for a specific site where Additional Infrastructure under a Variation Order is involved, the OPEX Cost shall for purpose of calculation only, be calculated over a period of seven (7) years as per the tables above.

- k. The rates in Ringgit Malaysia (RM) per RM1,000.00 of the cost of the Additional Infrastructure for the Project under the Variation Order (for example generator set, cabin etc) are as follows:

<b>Cost for User</b>	<b>Additional rate for 1st to 10th year (per month per User) for every RM1,000.00</b>
Cost per Single User	17.32
Cost per User (2 Sharing Parties)	10.83
Cost per User (3 Sharing Parties)	8.66
Cost per User (4 Sharing Parties)	7.58
Cost per User (5 Sharing Parties)	6.93
Cost per User (6 Sharing Parties)	6.50

- l. However, for any telecommunication structure to be constructed on sites situated on islands (land area surrounded by water whether salt or fresh water) or for sites situated at highlands (gradient exceeding 15%), all of the abovesaid rates for the Additional Access Charges shall be added thereon an amount equivalent to 15% each or any other amount decided by the Access Provider.
- m. If in the event the land rental charged on the Access Provider for the Associated Tower Site shall exceed RM2,000.00 / RM3,000.00 (depending on Tower), the excess thereof (as applicable) shall be equally shared by the Users of a Tower and its Associated Tower Site.

**ANNEXURE 1**

**CONFIDENTIALITY AGREEMENT**

## CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT (hereinafter referred to as the "Agreement") is made on \_\_\_\_\_ 2017 (hereinafter the date shall be referred to as the "Effective Date")

BETWEEN

**XAIR NETWORKS SDN BHD (Company No. 632531-M)**, a company duly incorporated in Malaysia under the Companies Act 1965 with its registered address at M-3-17, Plaza Damas, Jalan Sri Hartamas 1, Sri Hartamas 50480 Kuala Lumpur (hereinafter referred to as "Xair")

AND

**ABC BERHAD (Company No. \*\*\*\*\*)**, a company duly incorporated under the Malaysian Companies Act 1965 with its registered address at \*\*\*\*\* (hereinafter referred to as "ABC")

(hereinafter Xair or \*\*\*\*\* referred to as singularly as "the Party", and collectively as "the Parties")

### **WHEREAS:**

- A. Xair and ABC intend to explore mutual business opportunities in relation to Xair (hereinafter referred to as "the Project") and in the course of discussions, will be disclosing certain commercially valuable, proprietary and confidential business, financial, technical and other information to each other.
- B. Both parties agree to hold such proprietary and confidential information in the strictest confidence upon the terms and conditions hereinafter appearing.
- C. The parties enter into this Agreement in contemplation of one or more meetings and various communications and discussions which may, and will, involve the disclosure by one of the parties (the "Disclosing Party") to the other party (the "Receiving Party") of Confidential Information, as hereinafter defined.

**NOW IT IS HEREBY** agreed by the parties as follows:

## **1. DEFINITIONS**

- 1.1 **“Confidential Information”** is defined as any and all information of any kind, whether in written or electronic format, oral or otherwise, and whether or not labeled as “Confidential”, including without limitation, information relating to the business, financial condition, marketing strategies, know-how, suppliers, customers, operations, pricing, technical information, students, contract terms and conditions and all information of any kind relating to either Party, their respective shareholders and/or Affiliates which are disclosed, submitted or howsoever made available by or on behalf of one Party to the other or to their Personnel for the purpose of or in connection with the Project, whether before, on or after the date of this Agreement.
- 1.2 **“Disclosing Party”** means the party disclosing the Confidential Information.
- 1.3 **“Personnel”** means either party’s employees, officers, advisors, consultants or agents.
- 1.4 **“Receiving Party”** means the party receiving the Confidential Information.
- 1.5 **“Affiliate”** means in relation to any Party, any other Party that directly or indirectly Controls, is under common Control with, or is Controlled by, that Party.
- 1.6 **“Control”** means the power to direct or cause the direction of the management policies of a party, whether through ownership of voting securities or by contract or otherwise. If a party (“first-mentioned party”) directly or indirectly holds more than fifty percent (50%) of the equity of, or directly or indirectly has more than fifty percent (50%) of the voting power of, any other party (“second-mentioned party”), the first-mentioned party is deemed to have Control over the second-mentioned party.

## **2. MUTUAL UNDERTAKING**

- 2.1 Both parties agree and undertake:
- 2.1.1 to hold the Confidential Information of the other party in the strictest confidence and to not at any time disclose or use or permit to be disclosed or used any of the Confidential Information or its knowledge of the existence of the Confidential Information for any purpose other than for the purpose of the Project; and
- 2.1.2 not to disclose or divulge the Confidential Information of the other party to any person whatsoever without the prior written consent of the other party.



### 3. OBLIGATIONS OF CONFIDENTIALITY

3.1 Both parties hereby covenant and agree to do all of the following:

- (a) Confidential Information disclosed by a Disclosing Party shall be used by the Receiving Party and its affiliates solely for the purposes contemplated by this Agreement. For purposes of this Agreement, the term "affiliates" shall mean any person or entity which is approved by the Disclosing Party and is controlled by or under common control with the Receiving Party.
- (b) Confidential Information is proprietary to the Disclosing Party and is, and shall remain, the property of the Disclosing Party.
- (c) Tangible forms of Confidential Information shall not be copied, in whole or in part, without the prior written consent of the Disclosing Party, except for a reasonable number of copies deemed necessary by the parties hereto when negotiating the transactions contemplated by this Agreement.
- (d) The Receiving Party and its employees, officers, directors and affiliates shall hold Confidential Information in confidence and take all reasonable steps to preserve the confidential and proprietary nature of Confidential Information, including, without limitation:
  - (i) Refraining from disclosing Confidential Information to persons within its organization not having a reason to know, and persons outside its organization regardless of the reason except as necessary to carry out the transactions contemplated by this Agreement or to exercise the rights granted therein; and
  - (ii) Ensuring all of its employees, officers, directors and affiliates who gain access to Confidential Information of its confidential and proprietary nature.
  - (iii) Developing reasonable procedures and policies to ensure that all of its employees, officers, directors and affiliates who gain access to Confidential Information observe the confidentiality and nondisclosure requirements hereof. In the case of the Third Party, each party it subcontracts with shall execute an agreement substantially in the form of this Agreement with respect to Confidential Information of MISI.

- (e) The Receiving Party understands and agrees that it is not allowed to exploit in any manner whatsoever the Confidential Information, in whole or in part, except as contemplated by this Agreement. The Receiving Party further agrees that at no time shall it use or permit any other third party to use the Confidential Information for its own benefit or for the benefit of any other third party, or in any manner adverse to or to the detriment of the Disclosing Party, its affiliates or their respective shareholders.
- (f) The confidentiality and non-disclosure obligations of the previous paragraphs shall not apply if, and to the extent that:
  - (i) Confidential Information was known to the Receiving Party prior to its receipt from the Disclosing Party;
  - (ii) Confidential Information is or becomes part of the public domain other than by the fault of the Receiving Party;
  - (iii) Confidential Information is rightfully disclosed to the Receiving Party by a third party that is legally free to disclose such Confidential Information; or
  - (iv) Disclosure is required by a judicial order or decree of governmental law or regulation, provided that the Receiving Party promptly notifies the Disclosing Party of such requirement and reasonable opportunity is allowed by the Receiving Party for the Disclosing Party to file for or obtain a protective order or otherwise proceed to protect under applicable law the interests of the Disclosing Party.
- (g) Although this Agreement does not restrict the Receiving Party from working with a person or entity which has independently developed information or materials similar to the Confidential Information, in such circumstance, the Receiving Party agrees not to disclose the fact that any similarity exists between the Confidential Information and the independently developed information and materials, and the Receiving Party understands that such similarity does not excuse the Receiving Party from the non-disclosure and other obligations in this Agreement.

- (h) Either party shall be free to use for any purpose the residuals resulting from access to or work with the Confidential Information, provided that such party shall maintain the confidentiality of such Confidential Information as provided in this Agreement. The term “residuals” shall mean information in non-tangible form, which may be inadvertently retained in memory by persons, who have had access to such Confidential Information, including ideas, concepts or know – how contained therein. No party shall have any obligation to limit or restrict the assignment of such residuals or to pay royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to any party a license under the other party’s copyrights, patents or other intellectual property rights.
- (i) All Confidential Information supplied to by the Disclosing Party hereunder and all copies thereof, in whole or in part and on all media, shall be returned to the Disclosing Party by the Receiving Party promptly upon demand by the Disclosing Party.
- (j) The Confidential Information and all Intellectual Property Rights (as defined hereinafter) fixed, embodied or otherwise subsisting therein or arising therefrom, and in all works, formulae, recipes, packaging, inventions, discoveries, know-how, techniques, processes, methods, systems, ideas and other elements thereof, are and will remain the sole and exclusive property of its owner, over which the owner retains all ownership and all right, title, and interest. The furnishing of any Confidential Information hereunder shall not be construed as the granting of a license under any patent, patent application, copyright, copyright registration, trade secret or other proprietary right by the Disclosing Party to any person or entity or as implying any obligation other than is specifically stated herein. For the purposes of this Agreement, “Intellectual Property Rights” means any and all rights affecting intellectual or industrial property existing now or in the future in Malaysia or anywhere else globally. .
- (k) Both Parties agree not to issue or release any articles, advertising, publicity, or other public notices relating to this Agreement, the facts and circumstances pertaining hereto, or any Confidential Information or mentioning or implying the name of the other party (including without limitation, the fact that a meeting or discussion has taken place between the parties), except as may be required by law or after providing the other party, to the extent practical, with an opportunity to review and comment thereon.
- (l) With regard to Confidential Information disclosed hereunder, the Receiving Party agrees not to export such Confidential Information to any country to which such export is prohibited by laws and regulations of the Government of Malaysia’s jurisdiction.

- (m) The Receiving Party understands and agrees that injunctive relief would be appropriate to prevent any actual or threatened use of disclosure of such Confidential Information and that the Receiving Party will indemnify and hold the Disclosing Party harmless from any and all loss or damage (including legal costs) which arise from the unauthorized use or disclosure of Confidential Information by the Receiving Party and/or its employees, officers, agents, subcontractors and affiliates.
- (n) The Receiving Party understands that the Disclosing Party may waive some of the requirements expressed in this Agreement but such a waiver to be effective must be made in writing by the Disclosing Party and should not in any way be deemed a waiver of the Disclosing Party's right to enforce any other requirements or provisions of this Agreement.

#### **4. EXCEPTIONS**

- 4.1 The confidentiality obligations herein shall not apply, however, to any part of the Confidential Information which:
  - 4.1.1 prior to the date hereof, is in the public domain or hereafter comes into the public domain other than as a result of a breach of this Agreement;
  - 4.1.2 is explicitly approved for release by written authorisation of the Disclosing Party;
  - 4.1.3 was known to the Receiving Party at the time of disclosure as shown by written records in existence at the time of disclosure;
  - 4.1.4 was lawfully obtained by the Receiving Party without breach of this Agreement and otherwise not in violation of the Disclosing Party's rights;
  - 4.1.5 is required by law or by order of a court of competent jurisdiction or by any rule, direction or regulation of any regulatory or governmental authority or any other relevant authority, including without limitation, a recognised stock exchange, to be disclosed by the Receiving Party or its Affiliates, provided always that, to the extent permitted by law, prior to any such disclosure being made, the Receiving Party shall notify and consult with the Disclosing Party as to the proposed form, nature and purpose of the disclosure;or

4.1.6 is required to be made to any investor or potential investor, financier or potential financier in connection with (i) an investment or potential investment in, or (ii) funding or potential funding for the Parties or its Affiliate and such investor or potential investor or financier or potential financier, as the case may be, is bound by confidentiality obligations, provided that (a) disclosure is restricted to the fact of the existence of discussions between the Parties in respect of the Project and to particulars and information in respect of the transactions or intended transactions between the Parties relating to the Project including copies of any agreements or proposed agreements in respect of such transactions; and (b) the Receiving Party shall notify the Disclosing Party in writing prior to any such disclosure being made.

## **5. NON-CIRCUMVENTION**

5.1 In addition, the Parties hereby agree to not circumvent each other and work with business associates, clients, and other third party vendors introduced by the other party. The Parties understands that any business venture arising out of the introduction of the Introduced Party and the other Party, the Introducing Party shall retain ownership of such referral and that the other party cannot deal directly with such referred company without the written consent of the Introducing Party.

## **6. DURATION OF OBLIGATION**

6.1 This Agreement shall continue to govern the delivery of the Confidential Information until terminated by written notice from either party to the other, subject to the provisions of any agreements to be executed between the parties hereto, except that the obligations of the parties hereunder with regard to the Confidential Information disclosed prior to termination shall continue in effect for a period of five (5) years. This Agreement shall apply to any Confidential Information that may have been provided to the Receiving Party prior to the effective date hereof.

6.2 In the event if one Party is made aware of the other Party's non-compliance of its obligation of confidentiality after the termination of this Agreement, the aggrieved Party shall be entitled to remedies as accorded by law against the defaulting Party.

## **7. OWNERSHIP OF CONFIDENTIAL INFORMATION**

- 7.1 The parties acknowledge and agree that all Confidential Information disclosed by or on behalf of the Disclosing Party shall be and remain the property of the Disclosing Party. Nothing in this Agreement shall be construed as granting or conferring any license or any rights whatsoever (including without limitation any intellectual property rights), whether expressly, impliedly or otherwise, in respect of the Disclosing Party's Confidential Information to the Receiving Party.

## **8. RESTRICTIONS AND RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION**

- 8.1 Tangible forms of Confidential Information shall not be copied, in whole or in part, without the prior written consent of the Disclosing Party, except for a reasonable number of copies necessary to carry out the transactions contemplated by or pursuant to this Agreement.
- 8.2 Upon request by the Disclosing Party and at the Disclosing Party's direction, the Receiving Party shall forthwith:
- 8.2.1 return all documents A and other materials containing such Confidential Information together with all copies and reproductions thereof; or
  - 8.2.2 destroy all documents A and other materials containing such Confidential Information together with all copies and reproductions thereof and the Receiving Party shall confirm such destruction to the Disclosing Party in writing.

## **9. NO LICENCE**

- 9.1 No license, whether express or implied, in the Confidential Information is granted by either party to the other to use the Confidential Information other than in the manner and to the extent authorised by this Agreement.
- 9.2 The Receiving Party understands and agrees that it is not allowed to sell, develop or otherwise exploit any parts, products, services, documents A or information which embody in whole or in part any Confidential Information, except as contemplated by this Agreement.

## **10. REMEDIES FOR BREACH**

- 10.1 Both Parties acknowledge that they are aware and fully understand that in the event of any breach of this Agreement by the Receiving Party or their Personnel or Affiliate, then the Disclosing Party could suffer substantial loss and damage which monetary damages cannot adequately remedy.
- 10.2 The Receiving Party acknowledges that the Disclosing Party shall be entitled to specific performance, injunctive and other equitable relief in enforcing the obligations in this Agreement in addition to all other remedies available in law.

## **11. LAWS AND JURISDICTION**

- 11.1 This Agreement is governed by and interpreted in accordance with the laws of the Receiving Party's domicile country and each party hereby agrees to submit to the non-exclusive jurisdiction of the courts of Receiving Party's domicile country.

## **12. NO WAIVER OR ACQUIESCENCE**

- 12.1 No delay by either party in exercising any right, power or remedy under this Agreement shall operate as a waiver or acquiescence thereof nor shall it restrict or affect the party's right or powers under this Agreement.

## **13. AMENDMENTS**

- 13.1 This Agreement is the entire agreement between the parties and supersedes any and all prior or contemporaneous representations, agreements and promises, written or oral, between the parties, regarding the subject matter of this Agreement. Any amendments to this Agreement shall only be effective if agreed in writing and signed by both parties.

## **14. BINDING EFFECT**

- 14.1 This Agreement shall be binding on the heirs, permitted assigns and successors in title of the parties hereto.

## **15. GENERAL**

- 15.1 This Agreement is the entire agreement between the parties and supersedes any and all prior or contemporaneous representations, agreements and promises, written or oral, between the Disclosing Party and Receiving Party, regarding the subject matter of this Agreement.
- 15.2 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- 15.3 The Parties acknowledge and agree that each is an independent business entity and as such, neither Party may represent itself as an employee, agent or representative of the other, nor may it incur any obligations on behalf of the other Party which are not specifically authorised in this Agreement.
- 15.4 If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement shall remain in full force apart from such provision which shall be deemed deleted.
- 15.5 Notices under this Agreement may be delivered by hand, by registered mail, by email or by facsimile to the notification details of the Parties as specified in Schedule A.
- 15.6 Notice shall be deemed given:
- 15.6.1 in the case of hand delivery or registered mail, upon written acknowledgement of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;
  - 15.6.2 in the case of facsimile, upon completion of transmission.
- 15.7 Time, wherever mentioned, shall be of the essence in this Agreement.
- 15.8 Each Party shall bear its own legal costs in relation to the preparation of this Agreement.
- 15.9 This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior arrangements, agreements, representations or undertakings. There are no promises, terms, conditions, or obligations, oral or written expressed or implied other than those contained in this Agreement. Any subsequent alteration, amendment or addition to this Agreement shall be in writing and signed by the authorised representatives of the Parties.



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the date and year first above written.

For and on behalf of **XAIR NETWORKS SDN BHD**

in the presence of:

.....

Name:

Designation: Director

For and on behalf of **ABC BERHAD**

in the presence of:

.....

Name:

Designation: Director