

THIS REFERENCE ACCESS OFFER IS

MADE BY: MEDINI ISKANDAR MALAYSIA SDN. BHD. (MIMSB), a company incorporated in Malaysia and having its registered office and business address at B-FF-02, Medini 6, Jalan Medini Sentral 5, Bandar Medini Iskandar Malaysia, 79250 Iskandar Puteri, Johor.

ON: [Date]

PURSUANT TO: The Commission Determination on the Mandatory Standard on Access, Determination No. 3 of 2016 (“the Determination”).

WHEREAS:

- A. The Malaysian Communications and Multimedia Commission (“the Commission”) has pursuant to the Ministerial Direction to Determine a Mandatory Standard on Access, Direction No. 2 of 2003 and in exercise of the powers conferred by sections 55, 56, 104(2) and 106 of the Communications and Multimedia Act 1889 [Act 588] (“Act”), has determined the Determination.
- B. Subsection 5.3.3 of the Determination requires each Access Provider to prepare and maintain a Reference Access Order (“ROA”) for each Facility and/or Service listed in the Access List Determination which such Access Provider provides to itself or third parties.
- C. This RAO is in two parts – the first outlines the procedures necessary to accept the RAO and enter into a RAO with MIMSB; the second includes the minimum terms and conditions on which MIMSB will enter into such an agreement with Access Seekers seeking access to the duct and manhole (“Duct and Manhole Access”), the detailed terms and conditions being contained in the relevant schedules.

PART 1 – ACCEPTANCE PROCEDURES

1. CLARIFICATION ON RAO TERMS AND CONDITIONS

- 1.1 Before submitting an Access Request under clause 2.1, an Access Seeker may request a clarification regarding the RAO by submitting a request to MIMSB.
- 1.2 MIMSB shall provide its response within three (3) Business Days from the date of receipt of the request for clarification under clause 1.1.

2. ACCESS REQUEST

- 2.1 Subject to subsection 6.11 of the Determination, if an Access Seeker seeks Duct and Manhole Access from MIMSB, the Access Seeker shall submit a Access Request to MIMSB with the following information:-
 - a. The name and contact details of the Access Seeker;
 - b. Whether the Access Seeker wishes to accept MIMSB’s RAO, to negotiate amendments to the RAO, or to negotiate an Access Agreement on alternative terms;

- c. The information (if any) the Access Seeker reasonably requires MIMSB to provide for the purposes of the negotiations;
- d. Two (2) copies of confidentiality agreement properly executed by the Access Seeker in the form provided in **Attachment A**;
- e. Preliminary information regarding the scale and scope of the Duct and Manhole Access that the Access Seeker expects to acquire from MIMSB;
- f. Relevant technical information relating to the interface standards of the equipment of the Access Seeker;
- g. Such other information as MIMSB may reasonably request for the sole purpose of providing Duct and Manhole Access pursuant to subsection 5.6 of the Determination.

2.2 The Access Seeker shall submit the Access Request in writing to:-

Medini Iskandar Malaysia Sdn. Bhd.
 B-FF-02, Medini 6, Jalan Medini Sentral 5,
 Bandar Medini Iskandar Malaysia,
 79250 Iskandar Puteri, Johor.
 Tel. No.: 07-5098500
 Fax No.: 07-509 8501
 Attn: Executive Vice President, Township Management Division

2.3 MIMSB shall within ten (10) Business Days of receipt of an Access Request, respond to the Access Seeker in writing acknowledging receipt of the Access Request together with the applicable information in accordance with subsection 5.3.7 of the Determination and further stating that:-

- a. If the Access Seeker is willing to accept a RAO from MIMSB, MIMSB will provide Duct and Manhole Access in accordance with this RAO ;
- b. If paragraph 2.3(a) above does not apply, MIMSB is willing to proceed to negotiate amendments to the RAO or an Access Agreement on alternative terms;
- c. MIMSB refuses the Access Request in accordance with subsection 5.4.10 of the Determination; or
- d. MIMSB requires specified additional information to make a decision on the Access Request in accordance with paragraphs 2.3(a) to 2.3(c) above, and once such information is received from the Access Seeker, MIMSB shall reconsider the Access Request and the ten (10) Business Days for MIMSB to consider the Access Request will recommence from the receipt of the information from the Access Seeker.

MIMSB shall provide a copy of its response to the Commission simultaneously with its response to the Access Seeker.

- 2.4 If MIMSB responds that Duct and Manhole Access will be provided in accordance with this RAO, MIMSB shall, within ten (10) Business Days of such response, provide two (2) copies of the Access Agreement executed by MIMSB to the Access Seeker and one (1) copy of the executed confidentiality agreement returned by the Access Seeker that has also been properly executed by MIMSB.
- 2.5 For the purpose of this RAO, an agreement entered into on the same terms and conditions to those in Part 2 of this RAO shall be referred to as an Access Agreement.
- 2.6 If MIMSB is willing to proceed with negotiation of the Access Request, MIMSB will set out in its response to the Access Seeker a place, date and time, not later than fifteen (15) Business Days from the date of MIMSB's response to commence negotiations and one (1) copy of the executed confidentiality agreement returned by the Access Seeker that has also been properly executed by MIMSB.
- 2.7 If MIMSB decides to refuse the Access Request, MIMSB shall set out in its response to the Access Seeker:-
 - a. The grounds on which MIMSB refused the Access Request as set out in subsection 5.4.11 of the Determination;
 - b. The basis of MIMSB's decision with sufficient particulars to enable the Access Seeker to make its own assessment about the applicability of the specified grounds of refusal; and
 - c. A place, date and time, not later than seven (7) Business Days from the date of MIMSB's response for the purpose of discussing the refusal of the Access Request.
- 2.8 If the parties have been unable to resolve any differences about validity of the Access Request and the Access Seeker disagrees with MIMSB's refusal of the Access Request, either party may request resolution of the dispute in accordance with the Dispute Resolution Procedures.

3. REPRESENTATIONS AND WARRANTIES

- 3.1 By submitting a Access Request, the Access Seeker represents and warrants that:-
 - a. It is the holder of a valid Network Facilities Provider licence and a valid Network Services Provider licence both issued under the Act; and
 - b. It has power to enter into and observe its obligations under the Access Agreement; and
 - c. It has in full force and effect the authorisations necessary to enter into the Access Agreement, observe obligations under it and allow it to be enforced; and

- d. Its obligations under the Access Agreement are valid and binding and are enforceable against it in accordance with its terms; and

- e. The information provided by it to MIMSB in its Access Request is complete, true and correct, and not misleading.

3.2 MIMSB represents and warrants that:-

- a. it has power to enter into and observe its obligations under the Access Agreement;
- b. it has in full force and effect the authorisations necessary to enter into the Access Agreement, observe obligations under it and allow it to be enforced; and
- c. its obligations under the Access Agreement are valid and binding and are enforceable against it in accordance with its terms.

4. EFFECT OF VARIATION OF MIMSB'S RAO

- 4.1 MIMSB may amend its RAO from time to time in accordance with subsections 5.3.5 and 5.3.6 of the Determination.
- 4.2 Any amendments made by MIMSB to this RAO will automatically form part of this Access Agreement.

PART 2 – ACCESS AGREEMENT

THIS MIMSB ACCESS AGREEMENT (ACCESS AGREEMENT)

Between

MEDINI ISKANDAR MALAYSIA SDN BHD (Company No.: 782021-V), a company incorporated in Malaysia under the Companies Act, 1965 and having its registered address and place of business at B-FF-02, Medini 6, Jalan Medini Sentral 5, Bandar Medini Iskandar Malaysia, 79250 Nusajaya, Johor of the first part ("**MIMSB**");

And

[---] (Company No.: [---]), a company incorporated in Malaysia under the Companies Act 1965 and having its registered address at [---] of the other part ("**Access Seeker**");

(collectively, "**Parties**" and individually, "**Party**").

WHEREAS:

- A. MIMSB is the owner of the entire network of underground ducting across Medini Iskandar Malaysia, a prime property development spanning an area of 9.3 square kilometres or 2,230 acres with a total gross floor area of 189 million square feet.
- B. MIMSB is the holder of a Network Facilities Provider licence issued under the Communications and Multimedia Act 1998.
- C. Access Seeker is the holder of a Network Facilities Provider licence and a Network Services Provider licence both issued under the Communications and Multimedia Act 1998 to provide a wide range of services including internet broadband, voice and data services and the provision of network infrastructure.
- D. Access Seeker and MIMSB have agreed to enter into this Access Agreement to establish the manner in which the granting of the Duct and Manhole Access is to be managed and the granting of such access is on a non-exclusive basis in accordance with the terms and conditions stated herein below.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Access Agreement, save and where the context otherwise requires, the following words and expressions shall have the meanings respectively set out opposite them:

“Access Agreement”	means this Access Agreement, all schedules and appendices incorporated herein and shall include all modifications and supplemental(s) thereto from time to time in force;
“Access Agreement Date”	means the date of this Access Agreement;
“Access Seeker’s License”	Means the licence dated [---] issued by the Malaysian Communications and Multimedia Commission, as amended or supplemented from time to time;
“Business Day(s)”	<p>means:</p> <p>(a) a day (excluding Saturdays, Sundays and gazetted public and/or state holidays) in Kuala Lumpur and Selangor; and</p> <p>(b) a day (excluding Fridays, Saturdays and gazetted public and/or state holidays) in Johor;</p> <p>on which transactions of the nature contemplated herein can be carried out;</p>
“Cables”	means fiber optic cables or other cables or fittings installed or to be installed within the duct by Access Seeker.
“Charges”	means a fee payable by Access Seeker for the Duct and Manhole Access referred to in this Access Agreement;
“Confidential Information”	shall bear the meaning set out in Clause 18 ;
“Contractor”	means contractors or subcontractors engaged by Access Seeker to carry out installation, maintenance, upkeep or repair works for and on behalf of Access Seeker;
“Damage”	means any damage caused to the existing cables or fittings presently within the duct and manhole infrastructure, the Land or the surrounding developments;
“Determination”	means the Determination on the Mandatory Standard on Access, Determination No. 3 of 2016;
“Duct and Manhole Access”	means the Facility and/or Service which comprises provision of physical access to:

- i. a duct which extends from the Access Seeker's location to the first manhole associated with such a duct;
- ii. each duct or series of ducts, which extends from one or more of the ducts described in sub-paragraph (i) above to the closet exchange building associated with the duct(s) and associated manholes in areas in which the Access Provider has exclusive rights to develop or maintain duct and manhole infrastructure, whether or not in combination with other Facilities and Services; and
- iii. sub-ducts where there is no room for the Access Seeker to install its own sub-ducts. ;

“Effective Date”

Means the date on which this Access Agreement is registered with to the Malaysian Communications and Multimedia Commission in accordance with the Commission Determination on the Mandatory Standard on Access;

“Hazardous Substance”

means:

- (a) any petrochemical or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls, radon gas, and toxic mold;
- (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants" or "pollutants" or words of similar meaning and regulatory effect;
- (c) any other chemical, material or substance, exposure to which is prohibited, limited, or regulated by any applicable environmental Law; or
- (d) any substance known by the State in which the Land is located to cause cancer and/or reproductive toxicity or dangerous in any applicable Federal, State or local law or regulation;

“Instruments”

Includes a direction, determination or declaration made by the Minister or by the Commission under the Act;

“Intellectual Property Rights”

means all intellectual property rights, in any jurisdiction worldwide, present or future, unregistered or registered pertaining to patent, trademarks, industrial designs,

copyright, circuit layouts, software, software documentation, inventions, ideas, improvements, discoveries, domain names, company or trading names, processes, formulations, marketing information, trade secrets, customers lists, confidential information, technical knowledge, know-how and other related intellectual property rights;

“Land”	means the land where the duct and manhole infrastructure is located;
“Law”	means any statute, decree, constitution, regulation, decision, determination, mandatory standards, finding, ruling order, code, writ, injunction, mandate, ordinance, judgment or directive or any Relevant Authorities is a signatory or party, and includes any legislative, judicial or administrative interpretation or application of any of the foregoing and which has the force of law upon the relevant Party(ies) and is in reference to any of the foregoing as amended, substituted, reissued or re-enacted;
“Loss or Losses”	includes any damage, loss, cost, charge, expense, penalty, compensation, fine, payment or liability (including legal expenses on a solicitor/own client basis) and "Losses" to be construed accordingly;
“MCMC”	means the Malaysian Communications and Multimedia Commission;
“MIMSB”	means MEDINI ISKANDAR MALAYSIA SDN BHD (Company No.: 782021-V);
“MIMSB Licence”	Means the licence dated 17 February 2015 issued by the Commission to MIMSB, as amended or supplemented from time to time;
“Order”	means the Order which Access Seeker shall give to MIMSB to obtain access to the Duct Space;
“Permits”	means all permits, licenses, consents, permission, approvals, exemptions, waivers and certificates in legally effective form of any Relevant Authority or other competent authority under any Law, to start, carry out, construct or install the Cables as the same may from time to time be varied, extended, relaxed or waived;
“Relevant Authorities”	means any Government, semi or quasi-government department or statutory body or agency including Majlis Perbandaran Johor Bahru Tengah and MCMC;
“Ringgit Malaysia” or	means the lawful currency of Malaysia;

“RM”

“Tax”

means all form of taxation and statutory, governmental, supra governmental, state, provincial, local governmental or municipal impositions, duties, contributions and levies (including withholdings and deductions) whether of Malaysia or elsewhere in the world, wherever imposed and however arising and all penalties, fines, charges, costs and interests, together with the costs of removing any charge or encumbrance relating thereto and "Taxes" and "Taxation" shall be construed accordingly;

1.2. Interpretation

- (a) words denoting one gender include the other gender and neuter gender and words denoting the singular include the plural and vice versa;
- (b) an expression importing a natural person includes any corporation or other body corporate, partnership, association, public authority, two or more persons having a joint or common interest, or any other legal or commercial entity or undertaking;
- (c) any part of speech or grammatical form of a word or phrase defined in this Access Agreement has a corresponding meaning;
- (d) where a word or phrase indicates an exception to any of the provisions of this Access Agreement, and a wider construction is possible, such word or phrase is not to be construed *ejusdem generis* with any of the foregoing words or phrases and where a word or phrase serves only to illustrate or emphasise any of the provisions of this Access Agreement, such word or phrase is not to be construed, or to take effect, as limiting the generality of such provision;
- (e) any reference to a recital, sub-paragraph, paragraph, Clause, Schedule or party is to the relevant recital, sub-paragraph, paragraph, Clause, Schedule or party of, or to, this Access Agreement and any reference to this Agreement or any of the provisions hereof includes all amendments and modifications made to this Agreement or any such provisions as may be mutually agreed in writing by the parties, from time to time and in force;
- (f) any reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted and shall include all by-laws, Instruments, orders, rules and regulation made thereunder;
- (g) in relation to any payment by Access Seeker to MIMSB, any reference to “payment”, or cognate expressions, shall mean payment made or to be made in cash or by way of cashier’s order/bank draft (drawn on a bank or financial institution licensed to carry on banking business under the provisions of the Financial Services Act 2013) or effected through inter-bank transfers to the account of the payee, giving the payee access to immediately available, freely transferable, cleared funds and shall be free from restrictions encumbrances withholding set-off and deductions, whether required by law

or any third party provided that if there is any such restriction encumbrance withholding set-off or deduction, Access Seeker shall pay such additional sum(s) such that the MIMSB will retain the intended amount as though there had been no such restriction encumbrance withholding set-off or deduction save for payments due from MIMSB to Access Seeker or any other payments due from MIMSB payable under this Agreement and the word “Ringgit Malaysia” and the abbreviation “RM” mean the lawful currency of Malaysia;

- (h) any reference to “writing”, or cognate expressions, includes any communication effected electronically, by telex, cable, facsimile transmission or other comparable means of communications;
- (i) any reference to a “business day” is to any day except for Saturday, Sunday or public holiday in Kuala Lumpur and Johor Bahru and any reference to a “day”, “week”, “month” or “year” is to that day, week, month or year in accordance with the Gregorian calendar;
- (j) if any period of time is specified from a given day, or the day of a given act or event, it is to be calculated exclusive of that day and if any period of time falls on a day which is not a business day, then that period is to be deemed to only expire on the next business day;
- (k) the recitals to this Access Agreement shall have effect and be construed as an integral part of this Access Agreement, but in the event of any conflict or discrepancy between any of the provisions of this Access Agreement, such conflict or discrepancy shall, for the purposes of the interpretation and enforcement of this Access Agreement, be resolved by giving the provisions contained in the Clauses of this Access Agreement priority and precedence over the provisions contained in the recitals to this Access Agreement;
- (l) the headings and sub-headings in this Access Agreement are inserted merely for convenience of reference and shall be ignored in the interpretation and construction of any of the provisions contained herein;
- (m) a warranty, representation, undertaking, indemnity, covenant or agreement on the part of two or more persons binds them jointly and severally;
- (n) any agreement, notice, consent, approval, disclosure or communication under or pursuant to this Access Agreement shall be in writing;
- (o) words denoting an obligation on a party to do an act, matter or thing includes an obligation to procure that it be done or words placing a party under a restriction include an obligation not to permit an infringement of the restriction;
- (p) reference to a document shall include references to any sort of document whether paper or paperless and expressed or described on any substance either with alphabets, figures, symbols and/or marks;
- (q) the words “hereto”, “herein”, “hereinafter”, “hereinbefore”, “hereof”, “hereunder”, and other words of similar import shall refer to this Agreement as a whole and not to any particular provision; and

- (r) no rule for the construction or interpretation of contracts shall apply to the disadvantage of a party for the reason that the party was responsible for the preparation of this Access Agreement or any part of it.

2. COMMENCEMENT AND DURATION

- 2.1 This Access Agreement shall be submitted to the Commission by MIMSB within five (5) Business Days of being executed by both Parties.
- 2.2 This Access Agreement shall commence on the Effective Date and, without prejudice to Clause 21, shall continue in force until the earlier of:-
 - (a) The expiry or termination of the MIMSB Licence where MIMSB is not simultaneously granted another licence of that type;
 - (b) The expiry or termination of the Access Seeker's Licence where the Access Seeker is not simultaneously granted another licence of that type;
 - (c) The termination of this Access Agreement by a Party in accordance with Clause 16; or
 - (d) The termination of this Access Agreement by mutual agreement in writing by the Parties.
- 2.3 If the Commission reviews and amends the Determination at any time, MIMSB shall review this Access Agreement and seek the Commission's approval to such amendments to the RAO and this Access Agreement as it considers necessary or desirable. This Access Agreement shall also be reviewed under the circumstances set out in subsection 5.16.10 of the Determination.

3. PRINCIPLES OF ACCESS

- 3.1 Provision and Usage of Duct and Manhole Access subject to Licence
 - a. The Duct and Manhole Access provided by MIMSB shall at all times be subject to the facilities and services which MIMSB is permitted to provide under its Licence. Concurrently, the Duct and Manhole Access provided to Access Seeker shall only be used in connection with an activity or activities in which Access Seeker is authorised to provide under its Licence. The ordering and provisioning obligations as set out in subsection 5.7 of the Determination shall apply.
- 3.2 Principles of Non-Discrimination
 - a. The Parties agree and acknowledge that the governing principle of this Access Agreement is that the Parties are, in respect of the provision of the Duct and Manhole Access, in an operator-to-operator relationship.
 - b. Consistent with section 149(2) of the Communications and Multimedia Act 1998, the Duct and Manhole Access provided by MIMSB to Access Seeker shall be:-
 - i. of at least the same or more favourable technical standard and quality as the technical standard and quality provided on MIMSB's own Duct and Manhole Access; and

- ii. on an equitable and non-discriminatory basis.
- c. However, nothing in this Access Agreement shall limit Access Seeker's ability to freely request and agree on MIMSB's Duct and Manhole Access that are either superior or inferior (in terms of technical standard and quality) to that which MIMSB provides to itself or its related companies.

4. DUCT AND MANHOLE ACCESS

- 4.1 In consideration of the Charges, and in further consideration of the terms and conditions of this Access Agreement and the Access Terms, MIMSB hereby agrees to grant the Duct and Manhole Access to Access Seeker and Access Seeker hereby agrees to accept the Duct and Manhole Access.
- 4.2 Access Seeker shall at its own cost and expense install the Cables with diameter not exceeding one hundred (100) millimetres each.
- 4.3 Access Seeker shall ensure that the Cables to be installed adhere to all international industry standards and have been tested in accordance with the industrial standards (such as International Telecommunication Union-Telecommunication Standardization Sector and International Electrotechnical Commission).
- 4.4 Access Seeker shall obtain at its own cost and expense all Permits, plans or drawings associated with the Cables or installation of the Cables prior to commencing the installation works.
- 4.5 Access Seeker shall ensure that all personnel deployed for the installation of the Cables, including operation of any machinery, plant, tools and equipment, are fully trained, qualified, competent and properly certified in all environmental, safety and health aspects and meet the requirements of any applicable Laws.

5. CHARGES AND PAYMENT

- 5.1 In consideration of MIMSB agreeing to grant Duct and Manhole Access to Access Seeker, Access Seeker shall duly and punctually pay to MIMSB the Charges, calculated at RM1,000.00 per duct kilometre per month, on a quarterly basis.
- 5.2 Upon execution of this Access Agreement, Access Seeker shall pay to MIMSB the sum equivalent to three times the Charges as security deposit ("**Security Deposit**") as security for the due observance and performance by Access Seeker of its obligations under this Access Agreement and which shall not be treated as or set off against the Charges.
- 5.3 In the event of any default on the part of Access Seeker in the observance and performance of any of its obligations herein contained, MIMSB shall be entitled to forfeit the whole of the Security Deposit.
- 5.4 If Access Seeker shall have duly performed and observed all its obligations herein contained, the Security Deposit shall be refunded free of interest to Access Seeker within thirty (30) days upon the termination of this Access Agreement.

- 5.5 The Charges and the Security Deposit set out in this Access Agreement are not inclusive of any goods and services tax (“GST”) or any tax of similar in nature which is levied or will be levied by the relevant authority pursuant to the Goods and Services Tax Act 2014.
- 5.6 Unless there is a dispute in respect of the items invoiced as set out in clauses 5.7, Access Seeker shall make payment directly to MIMSB within thirty (30) days of receipt of the invoice. The invoices are due and payable in Malaysian Ringgit.
- 5.7 In the event that Access Seeker disputes any item in MIMSB's invoice, the Access Seeker shall notify MIMSB of the disputed item within thirty (30) days from the date of the receipt of the invoice. The notice must specify the complaint and, in the meantime, the payment for the disputed items only shall be withheld until the settlement of the dispute, either amicably or in accordance with clause 22.9.
- 5.8 All undisputed items by the Access Seeker shall be paid promptly in accordance with the terms of this Access Agreement.

6. INTEREST ON OVERDUE MONIES

- 6.1 Unless otherwise provided for herein, if any sums referred to in this Access Agreement shall remain unpaid by one Party to the other, interest on such unpaid amount shall commence immediately thereafter and be payable by the former to the latter from the day immediately after the relevant expiry date for payment to the date of full payment to be calculated from day to day at the rate of four per centum (4%) per annum calculated on daily basis.

7. TAXES

- 7.1 Access Seeker shall be responsible for its own Taxes in respect of all sums payable by Access Seeker to MIMSB under this Access Agreement.

8. NOT TO ALLOW ACCESS TO OTHER PARTIES

- 8.1 Access Seeker shall not allow Duct and Manhole Access to any other telecommunications or network service providers in any manner whatsoever without the prior written consent of MIMSB.
- 8.2 Subject to prior written notice by MIMSB, Access Seeker shall permit Duct and Manhole Access to other telecommunications or network service providers identified by MIMSB.

9. TESTS AND CONSTRUCTION

- 9.1 Within two (2) Business Days from the date of the Access Seeker's request, Access Seeker shall have the right to enter upon the Land for the purpose of making appropriate engineering and boundary surveys, inspections or other reasonably necessary tests for the purpose of establishing the exact cable routing, termination points, jointing locations and cutting lengths before commencement of any installation works.

- 9.2 At least thirty (30) days (or such other period as required by the Relevant Authorities) before commencement of the installation works, Access Seeker and/or its Contractor will submit to the Relevant Authorities and MIMSB, a traffic control plan, proposed work and schedule plan, vicinity map or drawing showing the routes, approved layout, as-built drawings, locations and the surrounding area of the installation works and any other documents as may be required by the Relevant Authorities or MIMSB.
- 9.3 MIMSB shall reply to Access Seeker with its approval on the proposed installation works within seven (7) Business Days from the date of the receipt from Access Seeker the complete documents under Clause 9.2.
- 9.4 The Parties hereby agree and acknowledge that the installation works shall only be carried out in the presence of MIMSB's personnel and the representatives of other telecommunications or network service providers, where applicable.
- 9.5 During installation, Access Seeker shall be responsible for the overall condition of the duct and manhole infrastructure (including the existing cables and fittings presently within the duct and manhole infrastructure) and the Land. Upon completion of the work, MIMSB may conduct inspection on the duct and manhole infrastructure and the Land to ensure that no Damage was caused by Access Seeker's installation works. Access Seeker shall, if deemed necessary by MIMSB, conduct testing on the existing cables within the duct and manhole infrastructure.
- 9.6 In the event of Damage caused by Access Seeker's activities, Access Seeker shall be liable for the cost of repair or reimbursement of costs of repair for such Damage and all other Losses incurred by MIMSB arising therefrom, including but not limited to the costs of replacing all damaged cables and fittings, costs of reinstatement of the existing underground infrastructure as well as re-establishing the existing communications network service to the telecommunications service providers' network, building or structure. Access Seeker shall, if required by MIMSB, take all necessary steps to rectify, replace or repair so as to restore the duct and manhole infrastructure and the Land to a condition that is similar to its condition before the activities began as if no Damage has been caused.
- 9.7 Upon completion of the installation works, Access Seeker shall submit to MIMSB a complete set of as-built drawings, location and the surrounding area of the installation works showing the modification of the duct and manhole infrastructure and placement of Cables within the duct and manhole infrastructure.
- 9.8 In the event Access Seeker fails to comply with its obligations under Clause 9 and Clause 10 of this Agreement, MIMSB shall be entitled to impose a fee of Ringgit Malaysia Five Hundred only (RM500.00) for each requirement which Access Seeker fails to comply, which shall be payable by Access Seeker within thirty (30) days from the date of receipt by Access Seeker of MIMSB's invoice.

10. MAINTENANCE AND REPAIR

- 10.1 During the term of this Access Agreement, MIMSB shall be responsible for the maintenance, upkeep and repair of the manholes.
- 10.2 MIMSB shall not be held liable for any damage to the Cables and the duct and manhole infrastructure unless Access Seeker provides MIMSB with conclusive evidence or proof that

such damage was caused by MIMSB while carrying out the maintenance, upkeep and repair work on the manholes.

- 10.3 Access Seeker hereby undertakes that it shall not claim from MIMSB for any Losses suffered by Access Seeker due to the time period required by MIMSB to carry out the maintenance, upkeep and repair of the manholes.
- 10.4 Access Seeker shall be responsible for the maintenance, upkeep and repair of the Cables, its own equipment and sub-duct.
- 10.5 Access Seeker shall provide MIMSB with at least seven (7) days prior written notice with the estimated date and time on which access to the duct and manhole infrastructure will be required for the purpose of carrying out the maintenance, upkeep and repair work to the Cables, its own equipment and sub-duct.
- 10.6 The Parties hereby agree and acknowledge that all maintenance, upkeep and repair of the Cables, its own equipment and sub-duct shall only be carried out by Access Seeker in the presence of MIMSB's personnel.
- 10.7 Notwithstanding anything to the contrary herein, if Access Seeker in good faith believes that there is an emergency which adversely affects the Cables or Access Seeker's network, Access Seeker may conduct immediate maintenance on the Cables provided Access Seeker notifies MIMSB of the same as soon as reasonably practicable.
- 10.8 Access Seeker shall observe, fulfil and comply with Clause 9.5 and Clause 9.6 of this Access Agreement while carrying out the maintenance, upkeep and repair of the Cables.

10A. SUSPENSION

MIMSB may only suspend the Duct and Manhole Access in the following circumstances:-

- (a) Access Seeker's facilities materially and adversely affect the normal operation MIMSB's duct and manhole infrastructure, or are a material threat to any person's safety;
- (b) Access Seeker's facilities or the supply of services pose an imminent threat to life or property of MIMSB, its employees or contractors;
- (c) Access Seeker's facilities cause material, physical or technical harm to any facilities of MIMSB or any other person;
- (d) Access Seeker has failed to pay invoices in accordance with Clause 5.6 of this Access Agreement (and subject to any right that Access Seeker has under Clause 5.7 of this Access Agreement to dispute any amount in an invoice);
- (e) Where Access Seeker has failed to provide the Security Deposit as required under Clause 5.2 of this Access Agreement;
- (f) Where Force Majeure applies; or

- (g) Access Seeker breaches any laws, regulations, rules or standards which has a material and adverse effect on MIMSB or the provision by MIMSB of the Duct and Manhole Access under this Access Agreement.

MIMSB shall provide Access Seeker with five (5) Business Days' notice, including reasons, prior to suspending the Duct and Manhole Access. MIMSB shall forward to MCMC a copy of the notice of suspension at the same time as providing the notice of suspension to Access Seeker.

11. RELOCATION

- 11.1 Subject to subsection 5.9 of the Determination, in the event MIMSB, State, Federal or private projects require the relocation of the duct and manhole infrastructure, MIMSB shall provide written notice to the Access Seeker in accordance with subsection 5.9.1 of the Determination. Access Seeker would be responsible for the relocation of the Cables at no cost to MIMSB. MIMSB will relocate the duct and manhole infrastructure at its own cost and expense.
- 11.2 If the position, measurements, boundaries and area of the Duct and Manhole Access shall differ or vary from the position, measurements, boundaries and area after the relocation, no such discrepancy or inaccuracy shall annul this Access Agreement.
- 11.3 The Parties hereby agree that the Charges shall be adjusted in proportion to the difference in the measurements of the Duct and Manhole Access.
- 11.4 For the purpose of calculating the adjustment of the Charges under Clause 11.3 above, the Parties herein agree to the rate of Ringgit Malaysia One Thousand (RM1,000.00) only per duct kilometre per month of the duct.

12. HAZARDOUS SUBSTANCE

- 12.1 Access Seeker agrees and acknowledges that it will not use, generate, store, dispose or release any Hazardous Substance on, under, about or within the duct and manhole infrastructure or the Land in violation of any Law or regulation.
- 12.2 This Clause shall survive the termination of this Access Agreement.

13. OBLIGATIONS OF ACCESS SEEKER

- 13.1 Access Seeker shall with respect to any installation, maintenance, upkeep or repair works to be carried out by third parties on behalf of Access Seeker, ensure that its obligations under this Access Agreement, as far as they would pertain to such works if Access Seeker was performing them, are incorporated into subcontracts with such third parties, and Access Seeker shall be responsible to MIMSB for, and liable to MIMSB with respect to all such works, and the compliance by such Contractors with such obligations.
- 13.2 Access Seeker shall be responsible for payment of all employees, agents, representatives, engineers and Contractors engaged by Access Seeker for the purpose as contemplated under this Access Agreement and shall comply with all requirements pertaining to employer's liability, workers compensation, unemployment insurance and social security.
- 13.3 Access Seeker shall, at all times during the duration of this Access Agreement, at its own cost and expense take out and maintain or caused to be taken out and maintained a Comprehensive

General Liability Insurance with broad form endorsement, covering personal injury liability including death, property loss and/or damage and workmen's compensation and an All Risk Insurance with a minimum coverage of RM10,000,000.00 with such reputable insurance company or agency. Access Seeker shall submit to MIMSB copies of the insurance policies upon execution of this Access Agreement.

14. REPRESENTATIONS AND WARRANTIES

14.1 Further to any other representations and warranties of Access Seeker under this Agreement, Access Seeker warrants and undertakes to MIMSB that:

- (a) Access Seeker is a duly incorporated company and validly existing under the laws of Malaysia;
- (b) Access Seeker is the holder of a valid Network Facilities Provider licence and a valid Network Services Provider licence both issued under the Communications and Multimedia Act 1998;
- (c) Access Seeker has the right, power and authority to execute this Access Agreement and to perform its obligations hereunder, and that it has taken all corporate and other acts required to be taken by it to authorise the execution of this Access Agreement and all documents and Instruments required or contemplated hereunder;
- (d) that the execution and delivery of this Access Agreement and the performance of its obligations under this Access Agreement do not and will not violate, conflict with or result in a breach of any decree, memorandum and/or articles of incorporation, charter, by-law, Law, contract or obligation to which Access Seeker is a party or by which Access Seeker is bound;
- (e) that there are no actions, suits or proceedings or regulatory investigations pending or threatened against or affecting Access Seeker before any court or administrative body or arbitration tribunal that might affect the ability of Access Seeker to meet and carry out its obligations under this Access Agreement;
- (f) Access Seeker and its employees, agents or Contractors have all the necessary skill, expertise, experience and resources to install the Cables in accordance with the terms of this Access Agreement;
- (g) Access Seeker shall ensure that the installation of the Cables are adequately supervised by qualified personnel;
- (h) Access Seeker shall maintain all necessary Permits from the Relevant Authorities in the carrying out of its obligations under this Access Agreement;
- (i) Access Seeker shall pay all fees, charges and expenses to the Relevant Authorities for the Permits issued by the Relevant Authorities;

- (j) Access Seeker shall at all times be responsible for acquainting itself with and comply with all Laws, rules and regulations as well as guidelines, standards, codes of practice, regulations and other like Instruments of regulator(s) including but not limited to the Communications and Multimedia Act 1998;
- (k) Access Seeker shall comply with provision of Environmental Quality Act 1974 and Occupational Safety and Health Act 1994 and all Laws relating to occupational safety and health in connection with the installation works within the duct and manhole infrastructure and on the Land and any other relevant Acts, enactments or ordinances, by-laws, regulations and any other subsidiary legislations made thereunder or any directions requirements or instructions whatsoever given by any authority competent to do so;
- (l) Access Seeker shall ensure that the installation of the Cables will be done in a timely and professional manner and in accordance with the time schedules submitted by Access Seeker and approved by MIMSB, will conform to the best practices and standards generally observed in the industry and shall carry out such installation works with diligence and efficiency;
- (m) Access Seeker shall complete the installation works in accordance with the plans approved by the Relevant Authorities or subject to such modifications or alterations as are required by the Relevant Authorities;
- (n) Access Seeker shall take all reasonable and necessary precautions and other measures to secure the Land during the installation works on the Land in accordance with the applicable Laws and regulations;
- (o) no announcement or publicity concerning this Access Agreement or any matter ancillary thereto shall be made by Access Seeker without the prior written consent of MIMSB;
- (p) that all written statements, representations and warranties made by Access Seeker in this Access Agreement are true and accurate.

14.2 MIMSB's representations and warranties.

Further to any other representations and warranties of MIMSB under this Agreement Agreement, MIMSB warrants and undertakes that:-

- (a) MIMSB is a duly incorporated company and validly existing under the laws of Malaysia;
- (b) MIMSB is the holder of a valid Network Facilities Provider licence issued under the Communications and Multimedia Act 1998;
- (c) MIMSB has the right, power and authority to execute this Access Agreement and to perform its obligations hereunder, and that it has taken all corporate and other acts required to be taken by it to authorise the execution of this Access Agreement and all documents and Instruments required or contemplated hereunder;
- (d) that the execution and delivery of this Access Agreement and the performance of its obligations under this Access Agreement do not and will not violate, conflict with or result in a breach of any decree, memorandum and/or articles of incorporation, charter,

by-law, Law, contract or obligation to which MIMSB is a party or by which MIMSB is bound;

- (e) MIMSB is the legal and beneficial owner of the duct and manhole infrastructure in Bandar Medini Iskandar Malaysia and therefore has the right to grant Access to Access Seeker;
- (f) the duct and manhole infrastructure complies with legal requirements including but not limited to local authority requirements, occupational and safety laws and environmental laws;
- (g) MIMSB shall ensure the presence of MIMSB's qualified personnel for the installation works, during the maintenance, upkeep and repair of the Cables and the duct by Access Seeker and MIMSB warrants that this shall not unreasonably delay the installation works, maintenance, upkeep and repair processes by Access Seeker.
- (h) no announcement or publicity concerning this Access Agreement or any matter ancillary thereto shall be made by MIMSB without the prior written consent of Access Seeker; and
- (i) that all written statements, representations and warranties made by MIMSB in this Access Agreement are true and accurate.

15. HEALTH AND SAFETY

- 15.1 Access Seeker shall ensure that all works undertaken in relation to installation of the Cables complies with all relevant safety, health and environment requirements of Malaysia.
- 15.2 Further to Clause 15.1, Access Seeker shall be responsible for ensuring that all such safety, health and environmental regulations and guidelines are adhered to at all times by its personnel and those of its Contractors, in the performance of its obligations under or in relation to this Access Agreement.

16. TERMINATION

- 16.1 This Access Agreement shall only take effect on the Access Agreement Date.
- 16.2 (a) Either Party may terminate this Access Agreement or part thereof if:-
 - (i) the other Party ("**Defaulting Party**") fails to remedy a breach (which is capable of remedy) of a material obligation under this Access Agreement within thirty (30) days of receiving a notice of breach from the notifying party ("**Notifying Party**");
 - (ii) a winding up order has been made against the Defaulting Party and the order remains or will remain in effect for a continuous period of ninety (90) days; or
 - (iii) an order is made or an effective resolution is passed, for the reconstruction and amalgamation of the Defaulting Party or otherwise under Section 176 of the Companies Act 1965 or any other similar action or proceeding under any other law and the order or resolution remains or will remain in effect for a continuous period of sixty (60) days; or

- (iv) a receiver, receiver and manager, official manager, provisional liquidator, liquidator, or like official is appointed over the whole or a substantial part of the undertaking and property of the Defaulting Party; or
 - (v) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of the Defaulting Party; or
 - (vi) the defaulting party fails to remedy breaches (which are capable of remedy) of any laws, regulations, rules or standards which has a material adverse effect on the non-defaulting party or this Access Agreement or the provision of the Duct and Manhole Access, within thirty (30) days of receiving a notice of breach from the notifying party; or
 - (vii) a Force Majeure, substantially and adversely affecting the ability of either Party to perform its obligations to the other Party under this Access Agreement, continues for a consecutive period of ninety (90) days provided that the notifying party may not give notice under this **Clause 16.2** unless the Notifying Party has negotiated or endeavoured to negotiate in good faith with the other Party to remedy the Force Majeure and amend the terms of this Access Agreement to enable this Access Agreement to remain in full force and effect notwithstanding such inability to so perform but has failed to reach any agreement within thirty (30) days from the commencement of negotiations.
 - (b) Upon the occurrence of the events set out in **Clause 16.2** above or where a breach is incapable of remedy, and subject to the provision of **Clause 16.3** below, the Notifying Party may terminate this Access Agreement by issuing a termination notice to the Defaulting Party/other Party (in the case of Force Majeure) and this Access Agreement shall terminate in accordance with the terms of the termination notice.
- 16.3
- (a) Where the Notifying Party seeks to terminate the Access Agreement (or part thereof) on any grounds including those specified in **Clauses 16.2 (a)(i) to (vii)** with respect to termination the Notifying Party shall first notify the Commission (such notification to be copied immediately to the defaulting party) in writing of such action and specify the reasons for such action ("**Notice to the Commission**").
 - (b) If the Commission notifies the Notifying Party that the Notifying Party is permitted to terminate this Agreement (or part thereof) the Notifying Party may, issue a termination notice to the Defaulting Party and this Access Agreement shall terminate in accordance with the terms of the notice.
- 16.4
- Notwithstanding anything to the contrary, in the event a Party breaches any of its obligations under this Access Agreement, the other Party shall, without prejudice to any of its rights and remedies under this Access Agreement and under law, have the absolute discretion to immediately seek urgent interlocutory action which shall include but not be limited to:-
- (a) preventing such further breaches from occurring;
 - (b) preventing the continuation of the said breach; and/or
 - (c) requiring the Party in breach to comply with their obligations under this Access Agreement,

without the necessity of first exercising any of its rights herein. For the avoidance of doubt, **Clauses 16.2, 16.3 and 22.9** shall not preclude the other Party from immediately seeking urgent interlocutory action under this Clause.

16.5 Without prejudice to the MIMSB's rights and remedies under this Access Agreement and/or law, upon termination of this Access Agreement, the MIMSB shall not be entitled to penalise the Access Seeker with a penalty with respect to the provision of the Duct and Manhole Access.

16.6 Termination or expiry of this Access Agreement, in whole or in part, does not operate as a waiver of any breach by a Party of any of its provisions and is without prejudice to any rights, liabilities or obligations of any Party which have accrued up to the date of the termination or expiry, including a right of indemnity.

16.7

(a) Following the giving of a notice of termination under the provisions of Clause 16.3(b), Access Seeker shall settle the Charges or such part thereof owing and payable by Access Seeker to MIMSB for the Duct and Manhole Access prior to the termination of this Access Agreement and thereafter neither Party shall have further right or obligation under this Access Agreement to the other Party, save in respect of –

(i) any obligation under this Access Agreement which is expressed to apply after the termination of this Access Agreement;

(ii) any rights or obligations which have accrued in respect of the provisions of this Access Agreement to either Party prior to such termination; and

(iii) the obligation of Access Seeker to remove all the Cables within thirty (30) days of the expiration or earlier termination of this Access Agreement at its own cost and expense and shall reinstate the duct and manhole infrastructure to its original state and condition.

(b) Should Access Seeker fail to remove the Cables from the Duct Space within the time period stipulated in Clause 16.7(a)(iii) above, MIMSB shall be entitled to claim from Access Seeker a sum equivalent to Ringgit Malaysia Five Hundred (RM500.00) only per kilometre per day as liquidated damages from the day after expiry of the time period under Clause 16.7(a)(iii) until the date of removal by Access Seeker of the Cables from the Duct Space.

(c) If Access Seeker does not claim the Cables from MIMSB sixty (60) days after the termination of this Access Agreement, the Cables will be deemed abandoned and MIMSB can thereafter dispose of the Cables as it sees fit at Access Seeker's sole cost and expense.

17. INDEMNITY AND LIMITATION OF LIABILITY

17.1 Access Seeker agrees to indemnify and hold harmless MIMSB, its employees or representatives, from and against any and all Losses, demands, proceedings, actions, obligations or liabilities whatsoever in which MIMSB may sustain or incur of which may be brought or, established against it by any person and which in any case arises out, of or in relation to or by reason of:

17.1.1 the negligence, omission, recklessness, wilful misconduct or fraud of Access Seeker, its employees, agents or Contractors;

- 17.1.2 any unauthorised act or omission of Access Seeker, its employees, agents or Contractors; or
 - 17.1.3 the breach of any of the warranties and undertakings contained in Clause 14.1 hereof.
- 17.2 Notwithstanding anything herein contained, neither Party shall be liable in any manner whatsoever to the other for any loss of profits, goodwill, indirect or consequential or economic loss (including any action brought by third parties) even if such loss is reasonably foreseeable or one Party has been informed by the other Party of the possibility of the Party incurring the same.

18. CONFIDENTIALITY

- 18.1 Each Party agrees that materials disclosed (whether orally or in writing, machine readable or in any other form) to another Party hereunder or under any predecessor of this Access Agreement as well as all documents prepared by the Parties pursuant to this Access Agreement or under any predecessor of this Access Agreement may contain proprietary confidential information and trade secrets ("**Confidential Information**") and the disclosure of such Confidential Information could cause irreparable injury.
- 18.2 Each Party agrees that all such Confidential Information provided by one Party to the other will only be disclosed to its officers, directors, employees and advisors on a need to know basis and only to such extent as is necessary for the purposes contemplated by this Access Agreement and such Confidential Information shall not otherwise be disclosed to any other person. All extracts, digests, and copies of such Confidential Information shall be maintained under strict control by its recipient. Notwithstanding the foregoing, the receiving Party may disclose the Confidential Information upon the order of any court or otherwise pursuant to any applicable Law, rule, regulation or lawful order, PROVIDED ALWAYS the receiving Party agrees that it will provide the disclosing Party with prompt notice of such order(s) to enable the disclosing Party to seek an appropriate protective order or to take steps to protect the confidentiality of such Confidential Information. For the avoidance of doubt, nothing herein shall prevent the disclosure of Confidential Information or other information to the Commission by the disclosing party.
- 18.3 The term Confidential Information shall not include such portions of the Confidential Information which:
 - 18.3.1 is generally available to the public or has become, after the time of discovery, part of the public domain by publication or otherwise through no fault of the receiving Party;
 - 18.3.2 was, prior to the time of disclosure, already known to the receiving Party and was not acquired, directly or indirectly, from the disclosing Party or its representatives;
 - 18.3.3 is, after the time of disclosure, independently developed by the receiving Party and not as a result of disclosure of the Confidential Information by the disclosing Party to the receiving Party;

- 18.3.4 is, after the time of disclosure, acquired in good faith without any restriction of confidentiality from a third party who is under no secrecy obligation to the disclosing Party with respect thereto which is known to the receiving Party; or
- 18.3.5 is no longer treated as confidential by the disclosing Party.
- 18.4 No Party shall publish or permit to be published either alone or in conjunction with any other party or any information, articles, photographs or other illustrations relating to this Access Agreement without the prior written consent of the other Party of such information.
- 18.5 The obligations contained in this Clause shall survive the termination of this Access Agreement without limit in point of time except and until such Confidential Information enters the public domain as set out above.

19 ANNOUNCEMENTS

- 19.1 No Party shall make, or permit any person to make, any public announcement concerning this Access Agreement or the subject matter of this Access Agreement without the prior written consent of the other parties (that consent not to be unreasonably withheld or delayed), except as required by Law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 19.2 The Party making any permitted communication shall consult the other Party in advance as to the form, content and timing of any communication.

20 NOTICES

- 20.1 Any notice or communication under or in connection with this Access Agreement shall be in writing and shall be delivered by pre-paid registered letter or by hand or by facsimile transmission to the addresses given herein below or at such other address as the recipient may have notified in writing to the other Party hereto.

- (a) if delivered to MIMSB, to be addressed to:

Medini Iskandar Malaysia Sdn Bhd
B-FF-02, Medini 6, Jalan Medini Sentral 5,
Bandar Medini Iskandar Malaysia,
79250 Iskandar Puteri, Johor,
Malaysia
Tel: 607-509 8500
Fax: 607-509 8501

Attention: Managing Director/CEO
Copy to: Township Management Division

- (b) if delivered to Access Seeker to be addressed to:

[---]
Tel : [---]

Fax: [---]

Attention: [---]

20.2 Proof of Posting

Proof of posting or despatch of any notice or other communication be deemed to be proof of receipt:

- (a) in the case of notice or communication sent by prepaid registered letter, such letter shall be deemed to have been served upon expiry of five (5) days after the same has been lodged with the postal authorities for delivery; and/ or
- (b) in the case of communication by e-mail or facsimile, on the sender's receipt of a transmission report which purports to confirm that the recipient has received such facsimile; and/ or
- (c) In the case of delivery in person, on the recipient's acknowledgement of receipt which purports to confirm that the recipient has received such notice.

21 FORCE MAJEURE

- 21.1 Notwithstanding anything herein contained, neither Party shall be liable to the other Party for, any delay in performing any of its obligations under this Access Agreement if such delay is caused by circumstances beyond the reasonable control of the Party so delaying and such Party shall be entitled (subject to giving the other Party full particulars of the circumstances in question and to using its best endeavours to resume full performance without any delay) to a reasonable extension of time for the performance of such obligations.
- 21.2 The Party so affected shall use all reasonable efforts to mitigate the effects of its delay in performing its obligations in full and if necessary, shall carry out the obligations affected by force majeure as soon as reasonably possible after the cessation of such force majeure.

22 MISCELLANEOUS

22.1 NO PARTNERSHIP

Nothing in this Access Agreement is intended to, or shall be deemed to, establish any partnership between the Parties or constitute any Party as an agent or partner of the other for any purpose and that the Party shall not hold itself out as such.

22.2 WAIVER

- 22.3.1 A waiver of any right or remedy under this Access Agreement or by Law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 22.3.2 A failure or delay by a Party to exercise any right or remedy provided under this Access Agreement or by Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under

this Access Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 22.3.3 A Party that waives a right or remedy provided under this Access Agreement or by Law in relation to the Party, or takes or fails to take any action against that Party, does not affect its rights in relation to any other Party.

22.3 **ENTIRE AGREEMENT**

This Access Agreement constitutes the entire agreement between the Parties and supersedes all prior agreement, understandings, negotiations, representations and discussion of the Parties. There are no warranties representations or agreements among the Parties related to the same subject matter, except as expressly set forth herein. This clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

22.4 **GOOD FAITH AND NON-EXCLUSIVITY**

Each of the Parties agrees that it will act in good faith in relation to the other Party with respect to all matters relating to or contemplated by this Access Agreement.

The Parties acknowledge that nothing in this Access Agreement shall prevent, limit or restrict in any way whatsoever either Party from supplying any Facility and/or Service to any person.

Notwithstanding any provisions of this Access Agreement, neither Party shall be prohibited in any way whatsoever from entering into an agreement with another person for similar Facility and/or Service.

22.5 **REVIEW**

(h)

- (i) the Minister issues a direction or determination relating to the subject matter of this Access Agreement;
- (ii) the Commission issues a direction or determination relating to the subject matter of this Access Agreement;
- (iii) there are any amendment, changes or modifications to the Act, its subsidiary legislation and the Instruments issued there under including but not limited to the MSA Determination, the Access List Determination and the Mandatory Standard on Access Pricing which relates to the subject matter of this Access Agreement;
- (iv) enactment of new laws and regulations which relates to the subject matter of this Access Agreement;
- (v) the registration, determination, promulgation, issue, amendment or replacement of any industry code with which MIMSB is required or obliged to comply;
- (vi) if a condition of an MIMSB's Licence is amended or deleted or a new condition is imposed which relates to this Access Agreement; or

(vii) by agreement of each of the Parties,

the Parties agree to review the Access Agreement as soon as practicable in good faith. Where the changes referred to in Clause 22.5(a)(i) to (vii) above affect this Access Agreement, the Operators shall negotiate, as soon as practicable and in good faith, such amendments to this Access Agreement as are necessary or appropriate to ensure compliance with such changes.

- (b) The obligation to negotiate set out in Clause 22.5(a) commences promptly after delivery of a notice from one party to the other setting out in reasonable detail, the amendments sought.

22.6 **VARIATION**

Any and all amendments or modifications of this Access Agreement must be made by mutual agreement of the Parties and must be in writing and signed by an authorised official of both Parties. This Access Agreement shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived in whole or in part, except by such written agreement of all Parties.

22.7 **SEVERABILITY**

- (a) If any court or competent authority finds that any provision of this Access Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Access Agreement shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of this Access Agreement would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend that provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

22.8 **GOVERNING LAW**

This Access Agreement shall take effect as deed made in Malaysia on the date when it is executed by and on behalf of the Parties executing the same and all questions regarding to the validity, construction or performance of this Access Agreement shall be governed by the laws of Malaysia.

22.9 **DISPUTES**

The Parties hereby agree that the dispute resolution procedures set out in Annexure A of the Determination shall apply.

22.10 **LANGUAGE**

This Access Agreement shall be in the English Language and any other translations may be made out but in case of conflict the English version shall prevail.

22.11 **TIME**

Time wherever mentioned herein shall be of the essence in this Access Agreement.

22.12 **COSTS**

Each Party shall bear its own costs and expenses incurred by it in connection with this Access Agreement.

22.13 **BINDING**

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

22.14 **ASSIGNMENT**

- (a) Access Seeker shall not be entitled to assign any of its obligations entitlements or liabilities under this Access Agreement whether in whole or in part to any party without MIMSB's approval in writing having first been obtained.
- (b) Access Seeker however acknowledges that MIMSB may assign this Access Agreement and any of its rights or obligations hereunder to its subsidiary companies, affiliates or to a party which MIMSB acquires or purchases its assets or liabilities thereof or to a party who has acquired, merged with or taken over MIMSB, at no additional cost to MIMSB, by giving notification to Access Seeker. In any event, both Parties shall cooperate and do such things as may be necessary to give effect to any such assignment.

22.15 **INTELLECTUAL PROPERTY RIGHTS**

- (a) Any Intellectual Property owned by any Party prior to the execution of this Access Agreement or developed independently by the Party, shall be vested solely in that Party either as owner or licensee.
- (b) Nothing set forth in this Access Agreement shall disturb the right, title or interest of one Party in its Intellectual Property Rights which are in existence as of the date of this Access Agreement or independently discovered or developed by that Party.
- (c) **Mutual Responsibilities**

The Parties agree that under this Access Agreement:

- (i) neither Party grants the other the right or license to use its trademarks, trade dress, service marks, trade names, or other designations in any promotion or publication except as explicitly set forth herein;
- (ii) each Party will allow the other reasonable opportunity to rectify a material default before it claims that the other has not met its obligations.

- (iii) neither will bring a legal action more than six (6) years after the cause of action arises (regardless of when the claiming party became aware of the underlying facts).
- (d) Each Party shall indemnify and keep the other fully and effectively indemnified against all damages, costs, claims demands, expenses, liabilities or proceedings of whatsoever nature arising out of or in connection with any claim that infringes the intellectual property rights (including without limitation any patent, copyright, registered design or trademark) of any third party.
- (e) This Clause shall survive the termination of this Access Agreement.

-----*The rest of this page is intentionally left blank*-----

EXECUTION PAGE

IN WITNESS WHEREOF the Parties have hereunto caused this Access Agreement to be duly executed as at the day and year first above written.

MIMSB

Signed for and on behalf of)
MEDINI ISKANDAR MALAYSIA)
SDN BHD)
(Company No.: 782021-V))
in the presence of:

.....
Witness (signature))
Name:)
NRIC No:)

.....
Signatory (signature)
Name:
NRIC No:

ACCESS SEEKER

Signed for and on behalf of)
[---])
(Company No.: [---]))
in the presence of:)
)

.....
Witness (signature))
Name:)
NRIC No:)

.....
Signatory (signature)
Name:
NRIC No:

APPENDIX A

Location and Layout Plan of the duct and manhole infrastructure in Medini Iskandar Malaysia

- As attached -

