



## **ACCESS REFERENCE DOCUMENT (ARD)**

Issued pursuant to the Malaysian Communications and Multimedia Commission Determination on Access List, (Determination No. 1 of 2005) as varied by Variation To Commission Determination on Access List (Determination No. 1 of 2005), Determination No. 1 of 2009), the Malaysian Communications and Multimedia Commission Determination On Mandatory Standard On Access, Determination No. 2 of 2005 as varied by the Variation To The Commission Determination On Mandatory Standard On Access, (Determination No. 2 of 2005) (Determination No. 2 of 2009) and the Malaysian Communication and Multimedia Commission Determination on the Mandatory Standard on Access Pricing, Determination No. 1 of 2012 and the Commission Determination on the Access List, Determination No. 2 of 2015.



## **Access Reference Document**

### **CHAPTER 1 – INTRODUCTION, BACKGROUND AND SCOPE**

#### **1.1 Introduction**

1.1.1 This Access Reference is made by Omnix Sdn Bhd (Company No: 962562-X), a Company incorporated under the Laws of Malaysia and having its registered

office at Unit 602, Block G, Phileo Damansara 1, 46350, Petaling Jaya. Pursuant to Section 5.3.2 of the Mandatory Standard on Access (MSA).

1.1.2 This Access Reference Document is hereby referred to as Omnix's ARD

#### **1.2 Background**

1.2.1 Following the issuance of Malaysian Communications and Multimedia Commission Determination on Access List, (Determination No. 1 of 2005) as varied by Variation To Commission Determination on Access List (Determination No. 1 of 2005), Determination No. 1 of 2009), the Malaysian Communications and Multimedia Commission Determination On Mandatory Standard On Access, Determination No. 2 of 2005 as varied by the Variation To The Commission Determination On Mandatory Standard On Access, (Determination No. 2 of 2005) (Determination No. 2 of 2009) and the Malaysian Communication and Multimedia Commission Determination on the Mandatory Standard on Access Pricing, Determination No. 1 of 2012 and the Commission Determination on the Access List, Determination No. 2 of 2015.

##### **1.2.2 MSA Determination Obligations**

a) The MSA Determination deals with access to infrastructure sharing 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;
- (ii) Negotiation obligations;
- (iii) Content obligations;

b) Disclosure obligations are as set out in Section 5.3 of the MSA Determination

- c) Negotiation obligations are as set out in Section 5.3 of the MSA Determination
- d) Content obligations are as set out in Section 5.5 of the MSA Determination

### **1.3 Scope of Omnix's ARD**

- 1.3.1 Omnix is a licensed infrastructure sharing services provider under the Act. Pursuant to the licence, Omnix may offer infrastructure sharing infrastructure sharing, services within Malaysia.
- 1.3.2 Pursuant to Section 5.3.2 of the MSA Determination, Omnix is obliged to prepare and maintain an Access Reference Document in relation to infrastructure sharing on the Access List which Omnix provides to itself or third parties.
- 1.3.3 Omnix's ARD: a) Contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and b) Does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination.
- 1.3.4 Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to Omnix's ARD
- 1.3.5 Omnix consider Omnix's ARD to be consistent with: a) The standard access obligations stipulated under Section 4.1.1 of the MSA Determination and Section 149 of the Act; and b) The principals of the non-discrimination stipulated under section 4.1.5 and 4.1.6 of the MSA Determination.
- 1.3.6 For the purpose of clarification, this Omnix's ARD is not an offer to enter into a legally binding agreement. It is merely a reference document that indicates the terms and conditions on which Omnix is prepared to provide the infrastructure sharing as stipulated in the Access List to the Access Seeker by entering into an "Access Agreement".
- 1.3.7 Omnix's ARD has no effect on contractual agreements for the supply of infrastructure sharing by Omnix to an Access Seeker prior to the Commencement Date unless and until such contractual agreement is subsequently renegotiated and agreed between the Access Seekers.

- 1.3.8 In addition for other Additional Services or services outside Omnix's ARD, the terms and conditions for the provision of such services shall remain outside the scope of Omnix's ARD and to be negotiated separately.

#### **1.4 Amendments to Omnix's ARD**

- 1.4.1 Omnix shall within ten (10) Business Days of making any amendment to the Omnix's ARD, provide a copy of the amendments, or an amended copy of Omnix's ARD to: a) the Access Seeker who is being provided with access to infrastructure sharing listed on the Access List under Omnix's ARD; and b) The Access Seeker who has requested Omnix's ARD 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.

#### **1.5 Notice of Withdrawal, Replacement and Variation of Omnix's ARD**

- 1.5.1 If the Commission revokes, varies or replaces the Access List Determination relating to the infrastructure sharing in accordance to the Access List under Section 56 of the Act, Omnix may, by giving written notice to all Access Seekers to whom it is supplying infrastructure sharing under Omnix's ARD, withdraw or replace Omnix's ARD with effect from a date no earlier than the effective date of the Commission's revocation, variation or replacement.
- 1.5.2 Omnix shall comply with Section 6.4.2 and 6.4.3 of the MSA Determination where it is given written notice pursuant to Section 1.5.1 above.
- 1.5.3 In addition to Section 1.5.2 above, Omnix may give the Access Seekers to whom it is supplying infrastructure sharing services under Omnix's ARD to effect such variations that are necessary or appropriate in the event of: a) the occurrence of a Legislative Event that materially affects the rights or obligations of Omnix under Omnix's ARD; or b) the occurrence of a Regulatory Event that relates too Omnix; or c) a review by the Commission of the MSA Determination pursuant to Section 6.5 of the MSA Determination.
- 1.5.4 Notwithstanding Section 1.5.1, 1.5.2 and 1.5.3 above, Omnix may subject to Section 1.4 above, replace Omnix's ARD at anytime.

#### **1.6 Availability**

- 1.6.1 Omnix's ARD shall be made available to an Access Seeker: a) on written request, at Omnix's principle place of business; and b) on a publicly accessible website at [www.omnix.com.my](http://www.omnix.com.my)
- 1.6.2 Prior to the provision of Omnix's ARD to the Access Seekers, the Access Seekers shall be required to enter into a Confidentiality Agreement which shall be made separately.

## CHAPTER 2 – DEFINITION AND INTERPRETATION

2.1 The following words have these meanings in this Omnix's ARD 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 Omnix provides requested Infrastructure sharing 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 List"** means the list of Infrastructure sharing 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 1<sup>st</sup> 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.

**"Access Request"** means a request for access to Infrastructure sharing on the Access List Determination made by the Access seeker to Omnix and containing the information in Section 4.1.3.

**"Access Seeker"** means an Access Seeker who;

- a) is a infrastructure sharing 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 Infrastructure sharing listed in the Access List Determination.

**"Access Service"** in relation to the infrastructure sharing means a service as specified in the Omnix's ARD that are provided by Omnix 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 Omnix on behalf of the Access Seeker by a bank approved by Omnix 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 Infrastructure sharing or Service 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 Omnix for the provision of Infrastructure sharing 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 Communications and Multimedia Communication 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. For the purpose of clarification, this includes Message Communications.

**“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 Omnix to assess the creditworthiness of the Access Seeker which is more particularly described in Section 4.2 of Omnix's ARD 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.

**“Infrastructure sharing”** means infrastructure sharing and/or other infrastructure sharing which facilitate the provision of network 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.

**“Handover”** shall be construed accordingly

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

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

**“Invoice”** means the invoice for amounts due in respect of the supply of requested Infrastructure sharing 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 Omnix where, upon receipt of such Letter of Undertaking, Omnix shall acknowledge and thereafter execute the work commencement in relation to an infrastructure Project as Infrastructure sharing.

**“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 Omnix and the Access Seeker (that has confirmed the demand for utilization of infrastructure sharing 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 Infrastructure sharing provided (based on the most recent amounts invoice for those requested Infrastructure sharing) or to be provided by Omnix 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 Omnix; 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 Omnix by the Commission relating Omnix's ARD; or (c) the giving of lawful direction to Omnix by the Minister relating to Omnix's ARD

**“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 Omnix’s ARD unless otherwise provided **“Security Sum”** means the security, either in the form of a Bank Guarantee or cash, deposited with Omnix for the supply of Infrastructure sharing listed on the Access List

**“Security Sum”** means the security, either in the form of a Bank Guarantee or cash, deposited with Omnix for the supply of Infrastructure sharing listed on the Access List OMNIX’S ACCESS REFERENCE DOCUMENT Page 12 of 49 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

**“Omnix”** means Omnix Sdn Bhd and in Omnix’s ARD, is Omnix unless otherwise stated.

## **2.2 In Omnix’s ARD 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 5.00pm 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 ARD; and i) headings are included for convenience and do not affect the interpretation of Omnix’s

## **ARD CHAPTER 3 – PRINCIPLES OF ACCESS**

### **3.1 Services**

- 3.1.1 Omnix's ARD applies only to Infrastructure sharing listed on the Access List Determination
- 3.1.2 The service description for each of the Infrastructure sharing is set out in Schedule A
- 3.1.3 Access Seekers Planning Information are set out in Schedule B
- 3.1.4 Charging Principle are set out in Schedule C

### **3.2 Eligibility for Access to Service**

- 3.2.1 Omnix may at its discretion and in a manner consistent with the License(s) granted (and the license rights accorded therein) by the Minister to the Access Seeker, determine on a case by case basis whether to provide the Access Seeker with the Access to the Infrastructure sharing listed in the Access List Determination which are set out in Omnix's ARD
- 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 Infrastructure sharing listed in the Access List Determination which are set out in Omnix's ARD where the Access Seeker has been granted (i) an individual infrastructure sharing 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 infrastructure sharing, 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 infrastructure sharing, network services and or content applications services

An Access Seeker may not request for access to the Infrastructure sharing listed in the Access List Determination where the requested Infrastructure sharing 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 Omnix provides the Access Seeker with access to the Infrastructure sharing listed in the Access List Determination pursuant to Section 3.2.1, the charges for the requested Infrastructure sharing shall be negotiated between the Access Seekers.

### **3.3 Principles of Access**

- 3.3.1 Omnix 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, Omnix 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 (i) The access provided by Omnix to the Access Seeker shall be consistent with: a) Section 149(2) of the Act; and b) the principals set out in Sections 4.2.5 and 4.1.6 of the MSA Determination.
- 3.3.4 Customer Principles (i) Omnix shall observe and comply with the customer relationship principles set out in Section 4.3 of the MSA Determination

#### **CHAPTER 4 – ACCESS REQUEST PROCEDURES**

##### 4.1 Application for Access to Services

- 4.1.1 an Access Seeker shall request Omnix to supply Infrastructure sharing listed in the Access List Determination to it by serving an Access Request to Omnix
- 4.1.2 the purpose of such Access Request is to provide Omnix with sufficient information to assess the Access Seeker's request for the supply of Infrastructure sharing listed in the Access List Determination under Omnix's ARD
- 4.1.3 The Access Request must:
  - a) contain the name and contact details of the Access Seeker;
  - b) specify the Infrastructure sharing listed in the Access List Determination in respect of which access is sought;
  - c) indicate whether the Access Seeker wishes to accept Omnix's ARD or negotiate an Access Agreement;
  - d) contain the information (if any) as set out in Section 5.3.6 of the MSA Determination that the Access Seeker reasonably requires Omnix 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 Omnix in Annexure 1;
  - f) specify forecasts of the capacity which the Access Seeker reasonably requires, having regard to Omnix'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 Omnix'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;
- 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; and
- n) contain such other information that Omnix may reasonably request.

#### **4.2 Credit Worthiness Information**

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; and
- c) such other information as may be reasonably requested by Omnix 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 Infrastructure sharing to be provided by Omnix 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 term of either:

- a) Bank Guarantee; or
- b) Cash Sum

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

#### **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 (RM2, 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 Omnix

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

4.5.1 Acknowledgement of Receipt of access request Omnix 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 Infrastructure sharing listed in the Access List Determination in accordance with Omnix's ARD Subject to the additional information being received by Omnix within twenty (20) Business Days from the date of request, Omnix 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

- a) Subject to clause (b) of Section 4.5.2, Omnix may charge an Access Seeker a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request
- b) the non-refundable processing fee is only applicable to requested infrastructure sharing listed in the Access List Determination that can be offered and made available by Omnix
- c) in the event that additional and non-routine work is required in order to process the Access Request, Omnix may charge a separate fee for undertaking such additional work. If the Access Seeker does not proceed with the Access Request accepted by Omnix, the processing fee will not be refunded to the Access Seeker

#### 4.5.3 Resources charge

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

- 4.5.4 Request for information Omnix 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, Omnix 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 Omnix's reasonable opinion, the Access Seeker's Access Request was not made in good faith;
- b) in Omnix's reasonable opinion, the Access Request does not contain the information reasonably required by Omnix's ARD provided that Omnix has sought the information from the Access Seeker under Section 4.5.1 of Omnix's ARD and has not received that information within twenty (20) Business Days of making such a request;
- c) Omnix does not currently supply or provide access to the requested Infrastructure sharing listed in the Access List Determination to itself or to any third parties, except where the access Seeker compensates Omnix for the supply of access to such Infrastructure sharing;

- d) It is not technically feasible to provide access to the requested Infrastructure sharing listed in the Access List determination;
- e) Omnix has insufficient capacity to provide the requested Infrastructure sharing listed in the Access List Determination;
- f) There are reasonable grounds in Omnix'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 Omnix'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 Infrastructure sharing listed in the Access List Determination; or
- h) There are reasonable grounds for Omnix to refuse access in the national interest

#### 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 4.6.1I, 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 Infrastructure sharing listed in the Access List Determination Examples of reasonable grounds for Omnix's belief as mentioned in Section 4.6.1(f) mentioned above include evidence that the Access Seeker is not in the reasonable opinion of Omnix creditworthy

#### 4.6.5 Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of relevant Infrastructure sharing listed in the Access List Determination Examples of reasonable grounds for Omnix'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 Infrastructure sharing have been provided (whether or not by Omnix)

#### 4.6.6 Assessment of Creditworthiness

- a) in determining the creditworthiness of the Access Seeker, Omnix may have regard to, but is not limited to the matters referred to in Section 4.2
- b) in determining the creditworthiness of the Access Seeker, Omnix shall not take into account amounts outstanding for Infrastructure sharing previously provided by Omnix to the Access Seeker where, in accordance with the terms and conditions governing the provision of such Facility or Service, the Access Seeker is not required to pay such amounts to Omnix to the extent that there is a bona fide dispute in relation to the amounts

outstanding by the Access Seeker to Omnix 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 Omnix rejects the Access Request, Omnix 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 Omnix'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 Omnix 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 Omnix to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in section 4.6.1, Omnix 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 Annexure A of the MSA Determination

**4.8 Acceptance of Access Request**

4.8.1 Where Omnix agrees to provide access to Infrastructure sharing listed in the Access List Determination to the Access Seeker in accordance with Omnix's ARD, Omnix 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 Model 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 5.4.2, 5.4.4, 5.4.9 and 5.4.15 of the MSA Determination in negotiating and concluding an Access Agreement



- 4.8.3 Omnix 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 Section 4.1 and 4.3; and
  - (b) an Access Agreement has been executed between the Access Seekers and the Access Agreement is registered with the Commission in accordance with Section 150 of the Act

## 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 Omnix's ARD
- 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 Omnix's ARD 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 nonobservance 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

**CHAPTER 6 – BILLING AND SETTLEMENT**

- 6.1 Where relevant, the billing and settlement obligations set out in Section 5.14 of the MSA Determination shall be applicable
- 6.2 The Access Seekers shall, from time to time, inform each other of the mailing address and the department to which the Invoice should be sent to and also their respective bank account details for the purposes of enabling the other Access Seeker to make payment. All Invoices shall be delivered by hand or post (either registered mail or courier)
- 6.3 The Access Seekers shall bear and pay all taxes as required by Malaysian law that result from the implementation of the Access Agreement
- 6.4 The Access Seeker must pay any amount due and owing to the Omnix on the Due Date unless otherwise agreed in writing by both Access Seekers
- 6.5 All payments must:
- a) be paid by electronic transfer to Omnix or exceptionally, by cheque to the nominated account(s) of Omnix if agreed by Omnix;
  - b) be accompanied by such information as is reasonably required Omnix to properly allocate payments received, failing which Omnix shall have the absolute discretion to allocate payments received to any amounts due and payable; and
  - c) be paid on the Due Date unless otherwise agreed in writing by both Access Seekers
- 6.6 All invoices shall be stated in ringgit Malaysia and payment must be made in Ringgit Malaysia
- 6.7 Notwithstanding anything to the contrary, Omnix 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 Omnix is required by law to pay the said taxes for and on behalf of the Access Seeker
- 6.8 For the purpose of clarification, the Security Sum does not relieve the Access Seeker from its obligations to pay amounts to Omnix as they become due and payable, nor does it constitute a waiver of Omnix right to suspend, disconnect, or terminate the relevant network services due to non-payment of any sums due or payable to Omnix a) Omnix shall be entitled to revise the Security Sum in any of the following event:

- (i) where, in the reasonable opinion of Omnix, the amount of the Security Sum is less than the Minimum Value calculated over a ninety (90) days period determined by Omnix
  - (ii) where, in the opinion of Omnix, there is a material change in circumstances in relation to the Access Seeker's Creditworthiness. In such cases, Omnix may request for additional security in addition to the Minimum Value to sufficiently and reasonably mitigate its risk in providing the relevant Infrastructure sharing and/or Services listed on the Access List Determination to the Access Seeker. For clarification, material change in circumstances includes, but is not limited to, failure to pay on the Due Date in respect of three (3) invoices rendered in the preceding six (6) months, so long as those amounts have not been disputed in good faith;
  - (iii) Upon the provisioning of new or additional Infrastructure sharing to the Access Seeker; and
  - (iv) at each subsequent anniversary from the Commencement Date;
- b) Where the Security Sum is revised pursuant to Section 6.9 (a) above, the Access Seeker shall within five (5) Business Days from the written request of Omnix, deposit the new Security Sum with Omnix in the manner specified in Section 4.3 of Omnix's ARD
  - c) 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 Omnix in addition to the Security Sum, Omnix shall forward to the Access Seeker a statement of the said accounts annually
- 6.9 a) The Security Sum deposited by the Access Seeker with Omnix and any interest thereon shall only be used for the purposes set out in Section 6.8. Omnix 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 b) Upon termination of the Access Agreement the Security Sum deposited with Omnix or parts thereof together with the interest thereon, (if any) shall be returned and/or refunded to the Access Seeker within sixty (60) days from the date of termination; and
- 6.10 Billing Dispute Procedures
- a) Where there is a Billing Dispute, the Access Seekers shall comply with the dispute resolution procedures in **Annexure A of the MSA Determination.**

## **CHAPTER 7 – TERMINATION**

### **7.1 Termination Obligations**

This Access Agreement may be terminated or part thereof if any of the following circumstances apply and Omnix 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 Omnix 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;

Omnix 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, Omnix must inform the Commission in writing of the action it proposes to take and the reasons why such action is appropriate. Omnix 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 Omnix shall not be obliged to provide to Access Seeker Infrastructure Sharing for the Designated and associated Tower Sites unless :
    - a) Omnix 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 Omnix 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 Omnix 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 Omnix
  - 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 five (5) 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”).

OMNIX'S ACCESS REFERENCE DOCUMENT

- 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
  - b) The Access Seeker takes physical possession of the shared space ("Shared Space") at the Designated Tower or Associated Tower Site, after informing Omnix 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. Omnix shall provide the access for power supply and assist the Access Seekers for its own individual meter.
- 4.2 Installation of Equipment
- 4.3 The Access Seeker shall only be permitted to install its equipment, system and/or devices on the Shared Space and shall not be permitted to install any other party's equipment, system and/or devices on the Shared Space without the prior written approval of Omnix
- 4.4 Safety and health and Security Procedures
- 4.5 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.
- 4.6 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 Omnix within twenty four (24) hours from the time of the occurrence.
- 4.7 The Access Seeker shall comply and cause its employees, agents and contractors to comply with all guidelines, rules and regulations issued by Omnix 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.

4.8 Sub-letting and Assignment

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

**SCHEDULE B**  
**ACCESS SEEKERS PLANNING INFORMATION &**  
**CHARGES**



# PART I

## ACCESS SEEKERS PLANNING INFORMATION

SITE NAME		
TOWER HEIGHT		
TYPE OF TOWER		
DATE		
COORDINATE		
LONGITUDE	LATITUDE	

## MICROWAVE ANTENNA INFORMATION

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

## PART II

### OMNIX RATE OF CHARGES

#### **A) LICENSE FEE FOR VACANT LAND**

Item	Site Type	UOM	Monthly Rental Rate up to 7 years License Term (RM)	
			Single Operator	2 Sharing Operators
1	Tower, 76m	Per Site/Month	7,440.00	4,464.00
2	Tower, 60m	Per Site/Month	6,640.00	3,984.00
3	Tower, 45m	Per Site/Month	5,040.00	3,024.00
4	Monopole, 45m	Per Site/Month	6,240.00	3,744.00
5	Monopole, 30m	Per Site/Month	5,200.00	3,116.00
6	Monopole Tree, 45m	Per Site/Month	6,720.00	4,032.00
7	Monopole Tree, 30m	Per Site/Month	5,500.00	3,300.00
8	Minaret, 30m/24m	Per Site/Month	6,200.00	4,700.00
9	Lamp Pole, 30m	Per Site/Month	5,500.00	3,750.00
10	Pylon, 30m/24M	Per Site/Month	6,200.00	6,000.00

## **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 Services as listed in the Omnix
  - 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 Infrastructure sharing 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 Infrastructure sharing 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.
  - 4.2 In the event of failure of electric supply, Omnix shall provide alternative power supply as agreed in the Master Agreement.
5. Network Monitoring
  - 5.1 Each Access Seeker is responsible for monitoring of alarms belonging to its own Network.

## SCHEDULE D

# Omnix Rental Rates

## *All Schools Nationwide*

Rates	Structure type	Structure type	Structure type
<b>Schools Nationwide (10+5 yrs)</b>	<b>30/24m Signboard</b>	<b>30/24m Monopole</b>	<b>30/24m Minaret</b>
	Rate (RM)	Rate (RM)	Rate (RM)
As Anchor tenant	<b>6000</b>	<b>6000</b>	<b>6000</b>
As second sharing (sites 1-20)	<b>5600</b>	<b>5600</b>	<b>5600</b>
As second sharing (sites 21-50)	<b>5400</b>	<b>5400</b>	<b>5400</b>
As second sharing (sites 51 +)	<b>5200</b>	<b>5200</b>	<b>5200</b>

*Penang Sites*

<b>Rates</b>	<b>Structure type</b>	<b>Structure type</b>	<b>Structure type</b>
<b>Penang Sites (10+5 yrs)</b>	<b>30/24m Signboard</b>	<b>30/24m Monopole</b>	<b>30/24m Minaret</b>
	Rate (RM)	Rate (RM)	Rate (RM)
As Anchor tenant	<b>6000</b>	<b>6000</b>	<b>6000</b>
As second sharing (sites 1-20)	<b>5600</b>	<b>5600</b>	<b>5600</b>
As second sharing (sites 21-50)	<b>5400</b>	<b>5400</b>	<b>5400</b>
As second sharing (sites 51-100)	<b>5200</b>	<b>5200</b>	<b>5200</b>

*All sites excluding Schools and Penang*

<b>Rates</b>	<b>Structure type</b>	<b>Structure type</b>	<b>Structure type</b>
<b>All Sites excluding Schools and Penang (10+5 yrs)</b>	<b>30/24m Signboard</b>	<b>30/24m Monopole</b>	<b>30/24m Minaret</b>
	Rate (RM)	Rate (RM)	Rate (RM)
As Anchor tenant	<b>6000</b>	<b>6000</b>	<b>6000</b>
As second sharing (sites 1-20)	<b>5200</b>	<b>5200</b>	<b>5200</b>
As second sharing (sites 21-50)	<b>5000</b>	<b>5000</b>	<b>5000</b>
As second sharing (sites 51-100)	<b>4700</b>	<b>4700</b>	<b>4700</b>

*Vacant Land*

The License Fee shall include but not be limited to the following:

Service	Status
Local Council permit/renewal fee/year	Included
Land Rental month	Included
Telecommunication insurance/year	Included
TNB/month	To be reimbursed
Land site maintenance/month	Included
Standard Offer	3 X RF Panel antennAs, 2 X 0.6 MW For node B site.  2 units of MW up to 1.2m and 3 X RF panel antennAs for node B (tower structure)  6 X RF panel antennAs, 4 X 0.6m and 2 X 1.2m MW for hub site (tower structure)

# ANNEXURE 1

## CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on

BETWEEN

OMNIX (M) SDN BHD (Comp No: 962562-X), a company incorporated in Malaysia

with its registered address at Unit 602, Block G, Phileo Damansara 1, 46350, Petaling Jaya, Selangor (hereinafter referred to as "the Access Provider") of the one part;

AND

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

WHEREAS:-

- A. The Access Provider is a licensed individual infrastructure sharing provider under the Communications and Multimedia Act 1998.
- B. The parties are discussing certain matters thereby necessitating the exchange of information for the purpose of determining their respective interests in establishing a business relationship between them.
- C. The parties wish to defend their rights with respect to the said information and to protect the confidentiality thereof and proprietary features contained therein.

NOW THIS AGREEMENT WITNESSETH as follows:-

### 1. Definition

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



proprietary or if given orally, is confirmed promptly in writing as having been disclosed as confidential or proprietary.

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

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

## OMNIX'S ACCESS REFERENCE DOCUMENT

### 2. Non-Disclosure of Confidential Information

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

### 3. Information excluded from Confidentiality

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

- i. is in the possession of the Recipient at the time of disclosure as shown by the Recipient's files and records immediately prior to the time of disclosure; or
- ii. prior or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of the Recipient; or
- i. is approved in writing by the Disclosing Party for release; or
- ii. is independently developed by the Recipient; or
- iii. is disclosed to a third party pursuant to written authorisation from the Disclosing Party; or

- iv. is received from a third party without similar restrictions as against the Receiving Party; or
- v. is disclosed pursuant to a requirement or request of a Government agency, but only to the extent so ordered.

4. No Commitment

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

5. Return of Materials

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

6. Patent or Copyright Infringement

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

7. Term

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

8. Miscellaneous

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

9. Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of Malaysia and shall be binding upon the parties hereto in Malaysia and worldwide. The courts of Malaysia shall have exclusive jurisdiction to hear and determine all actions and proceedings

arising out of this Agreement and the Recipient hereby submits to the jurisdiction of the courts of Malaysia for the purpose of any such actions and proceedings.

10. Remedies

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

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

SIGNED by )  
for and on behalf of )  
the Access Provider )  
in the presence of )

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