

PACKET ONE'S ARD – ANNEXURE I

PACKET ONE'S ARD

ANNEXURE I

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made on this day of 2009

BETWEEN

Packet One Networks (Malaysia) Sdn. Bhd. (Company No. 571389-H), a company incorporated under the laws of Malaysia and having its registered office at Packet Hub, 159, Jalan Templer 46050 Petaling Jaya, Selangor, Malaysia.. (hereinafter referred to as “Packet One ”) of the first part;

AND

[] (**Company No: []**) a company incorporated under the laws of Malaysia and having its registered office at [] (hereinafter referred to as “the Company”) of the last part.

Packet One and the Company shall be referred to individually as a “Party” and collectively as “Parties”.

RECITALS

WHEREAS:

- (A) Packet One holds NSP individual licence (Registration No: NSP/I/2000/63) NFP individual licence (Registration No: NFP/I/2000/56) and ASP Class licence under the Communications and Multimedia Act 1998 and is authorized to provide access to certain network facilities and network services under its individual licences.
- (B) The Company holds an [] individual and class licences (Registration No: []) under the Communications and Multimedia Act 1998 and is authorized to provide access to certain network facilities, network services and/or application services under its individual or class licences..
- (C) Packet One and the Company are considering a proposal for the interconnection of their networks and the provision of agreed access services (“Project”).

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- (D) For the purpose of the Project, it will be necessary and/or desirable for the Parties to disclose to each other various Confidential Information and the Parties have provided and will further provide information including but not limited to financial information, trade secrets and proprietary know how for the purpose of or in connection with the Project.
- (E) The Parties hereby agree to enter into this Agreement to regulate their intention and understanding with respect to maintaining and preserving all Confidential Information that are to be disclosed and which transpired between the Parties in relation to the Project subject to the terms and conditions hereinafter appearing.

NOW THIS AGREEMENT WITNESSETH as follows:

1. DEFINITION

“Confidential Information”

The Parties hereby agree that for the purposes of this Agreement, Confidential Information shall mean and include:

- (a) information of whatever nature relating to the Disclosing Party which is obtained by the Receiving Party and/or its Representatives in written, pictorial or oral form from or pursuant to discussions, negotiations and/or correspondences with any of the Representatives of the Disclosing Party;
- (b) information of whatever nature relating to the business of the Disclosing Party obtained by observation during visits to the Disclosing Party's premises.
- (c) analysis, compilations, studies and other documents prepared by the Receiving Party, its officers, employees, agents or professional advisers which contain or otherwise reflect or are generated from the information specified (a) and (b) above; and
- (d) all information made available by the Disclosing Party to the Receiving Party in connection with directly or indirectly to this Agreement and the fact that discussions ,negotiations and/or correspondences are

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taking, or have taken place in respect of the Contract or any of the terms, conditions or other facts with respect to any other offer.

Without limiting the generality of the foregoing, the expression Confidential Information shall also include all facts, data, specifications, drawings, reports, accounts, expressions of views, board papers, processes, formulae, matters of a technical nature, research and development information, business records, notes, products, know-how, trade secret, secret information, engineering, manufacturing, planning, employee details or other documents and things whether written, oral, electronic or in any other form disclosed and/or supplied by the Disclosing Party to the Receiving Party;

- “Disclosing Party”** means the Party from whom the Confidential Information originates and is disclosed to the Receiving Party;
- “Government Agency”** means any federal, state, municipal or local government or regulatory department, body, political subdivision, commission, instrumentality, agency, ministry, court, judicial or administrative body, taxing agency or other agency having jurisdiction over either Party or the Contract;
- “Project”** has the meaning ascribed in Recital (C);
- “Receiving Party”** means the Party to whom the Confidential is given or disclosed; and
- “Representatives”** mean the directors, officers, employees, affiliates, agents and representatives including without limitation financiers, brokers, advisors, lawyers and accountants.

2. NON-DISCLOSURE OF CONFIDENTIAL INFORMATION

2.1 In consideration of the disclosure of the Confidential Information by the Disclosing Party or any third party on behalf of the Disclosing Party to the Receiving Party, the Receiving Party undertakes:

- (a) to maintain the Confidential Information in strict confidence and to use it only for the purpose of or in connection of the Project;

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- (b) not to use any Confidential Information disclosed to it by the Disclosing Party for its own use or any other purpose or in a manner detrimental or competitive to the Disclosing Party;
 - (c) to disclose the Confidential Information only to such of its Representatives who have a need to know or whose services are reasonably required in connection with the Project and further, where disclosure is made to its Representatives, such disclosure is made on their written undertaking to comply with the confidentiality obligations in this Agreement;
 - (d) to promptly notify the Disclosing Party in writing of the names of the Representatives involved in the Project upon request being made by Disclosing Party at any given time;
 - (e) to apply no lesser security measures and degree of care to the Confidential Information than those which it applies to its own confidential or proprietary information and the Receiving Party further undertakes to provide adequate protection of such Confidential Information from unauthorised access, copying or use;
 - (f) not to copy reproduce and/or reduce to writing or any form of recording the Confidential Information or any part thereof except as may be reasonably necessary for the Project; and
 - (g) not to remove any documents, files, records, correspondence, notes or other papers (including copies) of the Confidential Information from the Disclosing Party' premises, save and except with the written permission of an authorised Representative of the Disclosing Party and shall promptly return all such documents, files, records, correspondence, notes or other papers (including copies) of the Confidential Information to the Disclosing Party upon request by the Disclosing Party or on the completion of the Project.
- 2.2 Each Party agrees and undertakes with the other that it shall not without the prior written consent of the other Party disclose to any person (other than its Representatives and only on a need to know basis) the fact that the Confidential Information exists or has been made available, that it is in negotiations, discussions and consultation with the other Party in regard to the Proposal or any other proposal or transaction involving the other Party, or that discussions or negotiations are taking or have taken place concerning the Project or any term, condition or other fact relating to the Project or such discussions or negotiations, including, without limitation, the status thereof.

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- 2.3 The obligations imposed upon the Parties herein shall not apply to information which:
- (a) is in the possession of the Receiving Party at the time of disclosure as shown by the Receiving Party's use or files and records prior to the time of disclosure; or
 - (b) prior or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any breach of this Agreement by the Receiving Party; or
 - (c) is approved in writing for release by the Disclosing Party ; or
 - (d) is independently developed by the Receiving Party; or
 - (e) is disclosed pursuant to a requirement or request of a Government Agency or law but only to the extent so ordered.

3. RETURN OF MATERIALS

- 3.1 The Receiving Party shall immediately return to the Disclosing Party (or destroy, where delivery is not physically possible) all Confidential Information held by it or which is under its control, and all notes, calculations or summaries or other material derived or produced partly or wholly from any of the Confidential Information and any or all computer records (including copies, reproductions and recordings of them) derived or produced partly or wholly from any of the Confidential Information and shall, if requested by the Disclosing Party, provide to the Disclosing Party an undertaking from a duly authorised officer of the Receiving Party that to his personal knowledge all such records have been delivered, erased or destroyed in the following circumstances:-
- (a) when the Confidential Information is no longer required for the Project;
 - (b) on the demand of the Disclosing Party if the Receiving Party is in breach of this Agreement;
 - (c) if ordered by a court; or
 - (d) at the expiration of the period (if any) during or for which the Disclosing Party has agreed that the Receiving Party may have or continue to receive the Confidential Information.

4. DISCLAIMER AND WARRANTY

- 4.1 The Disclosing Party reserves all rights in its Confidential Information and no rights or obligations other than those expressly provided by this Agreement are granted or are to be implied from this Agreement. On receipt of a written request from the Disclosing Party, the Receiving Party shall, at its own cost and expense, forthwith return to the Disclosing Party or destroy (and in the latter case confirm the destruction in writing) all Confidential Information including all Confidential Information contained in original documents or copies of documents and all copies made, if any. In addition, any computer disk, or any other information stored on computer or any documents prepared by the Receiving Party or its Representatives which incorporate any of the Confidential Information shall be destroyed or returned to the Disclosing Party or dealt with as the Disclosing Party may direct.
- 4.2 The Disclosing Party warrants that it is lawfully entitled to disclose its Confidential Information to the other Party and to authorise the other Party to use the same for the Purpose and that the Confidential Information has not been provided in breach of any arrangement with third parties.
- 4.3 The Disclosing Party does not represent nor warrant that the Confidential Information disclosed shall be accurate and complete at the time of disclosure.

5. PATENT OR COPYRIGHT INFRINGEMENT

Nothing in this Agreement is intended to grant any rights to the Receiving Party under any patent or copyright, nor shall this Agreement grant the Receiving Party any rights in or to the Disclosing Party's Confidential Information except for the limited right to review such Contract as provided herein.

6. REMEDIES

- 6.1 The rights, powers and remedies provided in this Agreement are cumulative and do not exclude the rights, powers or remedies provided by law and equity independently of this Agreement.
- 6.2 The Receiving Party agrees that the obligations of the Receiving Party provided herein are necessary and reasonable in order to protect the Disclosing Party and its business and that the Receiving Party acknowledges that damages are not a sufficient remedy for any breach of this Agreement and that the Disclosing Party is entitled to seek specific performance or preliminary or permanent injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Receiving Party

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or its Representatives, in addition to any other remedies available at law or equity including but not limited to any claim for damages or loss **PROVIDED THAT** any losses which are not reasonably foreseeable but which the Receiving Party shall have been duly informed in writing by the Disclosing Party of the possibility of such losses occurring shall also be recoverable.

- 6.3 The Receiving Party hereby consents to the institution of proceedings for such relief by the Disclosing Party and the grant of any such relief by a competent court of law.
- 6.4 In the event of litigation relating to the matters contained herein, if a court of competent jurisdiction determines in a final, non-appealable order that this Agreement has been breached by the Receiving Party or its Representatives, the Receiving Party shall reimburse the Disclosing Party for all costs and expenses (including without limitation, legal fees and expenses) incurred in connection with all such litigation.

7. **CONFIDENTIALITY**

Each Party agrees to keep the existence and nature of this Agreement confidential and not to use the same or the name of the other Party in any advertisement or other disclosure with regard to this Agreement without the prior written consent of the other Party.

8. **PERIOD OF OBLIGATION**

The obligation of the Receiving Party in respect of disclosure and use of the Confidential Information acquired from Disclosing Party shall continue and survive the expiry and/or termination of this Agreement.

9. **NOTICES**

- 9.1 All notices under this Agreement shall be in writing and shall be sent personally by hand or by facsimile or electronically or registered or recorded delivery post to the Party being served at its address as specified hereunder or such other address of which such Party shall have given notice as aforesaid, and marked for attention of that Party's signatory of this Agreement. Unless the contrary shall be proved each such notice or communication shall be deemed to have been given or made and delivered:

(a) if by letter, seventy two (72) hours after posting; or

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- (b) if by hand or by courier, when delivered, or
- (c) if by facsimile transmission, one (1) hour after its transmission if such time is during business hours in the place of its receipt or, if it is not, on the opening of business on the next succeeding business day in the place of its receipt Provided That the sender has an answerback confirmation and print-out copy of the transmission report generated by the facsimile machine from which such notice was sent that the document has been successfully transmitted

9.2 The correspondence address and facsimile number of the Parties are as follows:-

Packet One Networks (Malaysia) Sdn. Bhd.

Address : Packet Hub, 159, Jalan Templer, 46050 Petaling
Jaya, Selangor
Telephone No.: (603) 7450 8888
Facsimile No.: (603) 7947 1127
Attention : Vice President, Corporate Office

[COMPANY NAME]

Address : []
Telephone No.: []
Facsimile No. : []
Attention : []

10. SUCCESSORS BOUND

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

11. NON-ASSIGNMENT

This Agreement is personal to the Parties and shall not be assigned or otherwise transferred in whole or in part by the Parties unless with the prior written consent of the other Party.

12. WAIVER

No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by any Party of breach of any provision of this Agreement shall be deemed to

be a waiver of any subsequent breach of the same or any other provisions.

13. APPLICABLE LAW AND JURISDICTION

The laws of Malaysia shall be applied to this Agreement and each Party agrees to submit to the exclusive jurisdiction of the Malaysian courts.

14. TIME

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

15. NO OBLIGATION

This Agreement does not restrict either Party from developing new or improved products or services, and marketing the same. Nothing in this Agreement shall be construed as an obligation by either Party to enter into any contract, agreement or other business relationship with any other party.

16. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement and understanding among the Parties with respect to the Confidential Information and supersedes all previous agreements, understandings and undertakings between them relating to it.

17. AMENDMENT

No amendment, variation, modification, replacement or alteration of any terms and conditions set forth in this Agreement shall be effective unless it is made in writing and mutually agreed and consented by all the Parties.

18. SEVERABILITY

Any provision of this Agreement which is invalid or unenforceable by law shall be effective to the extent of such invalidity or unenforceability only without affecting the remaining provisions thereof. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree to the terms of mutually satisfactory provisions to be substituted for the provisions which are found to be void and unenforceable by applicable law.

19. COSTS

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19.1 Each Party shall bear its own costs and expenses arising out of the preparation and execution of this Agreement.

19.2 Stamp duty shall be borne by the Company.

20. NON-PUBLICITY

No Party shall disclose to any third party the existence or contents of this Agreement, or the fact that the Parties are discussing the subject covered by this Agreement.

21. HEADINGS

The headings used in this Agreement are for reference purposes only and shall not be construed as part of this Agreement.

[The remainder of this page is intentionally left blank]

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IN THE WITNESS WHEREOF the Parties hereto have hereunto set their hands on the day and year first above written.

SIGNED by)
for and on behalf of)
Packet One Networks (Malaysia))
Sdn. Bhd. (Company No. 571389-H)
in the presence of :-)
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) Name:
.....)
) Designation
Name:)
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NRIC No:)
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SIGNED by)
for and on behalf of)
[] (Company [])
in the presence of :-)
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NRIC No:)
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