

2017



TERAS MILLENNIUM

TERAS MILLENNIUM SDN BHD (814926-H)

[TERAS MILLENNIUM'S RAO]

REFERENCE ACCESS OFFER

NOTICE:

TerasMil's RAO shall be made available to an Access Seeker:

1. On written request, at TerasMil's principal place of business
2. On a publicly assessable website at <http://www.terasmil.com.my/RAO-form/>

Any notices or communications in respect of TerasMil's RAO should be made in writing to

Attention	:	Suzaimy Bin Mohd Shokory (Chief Executive Officer/Director)
Address	:	Teras Millennium Sdn Bhd, No.4, Jalan Seri Utara 1, Off Jalan Ipoh, 68100 Batu Caves, Kuala Lumpur.
Telephone	:	03-6259 0111
Facsimile	:	03-6252 8899

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Teras Millennium's RAO

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Chapter 1 – Background and Scope

1.1 Background

- 1.1.1 This Reference Access Offer is made by Teras Millennium Sdn. Bhd. (Company No: 814926-H), a company incorporated under the laws of Malaysia and having its principal place of business at Lot 6800-6801, 1st Floor, Wisma Instacom, Lorong 37, Jalan Stampin Baru, 93350 Kuching, Sarawak with effect from 1st January 2017 as amended by the Commission Determination on the Mandatory Standard on Access (Determination No.3 of 2016) and pursuant to Ministerial Direction to determine a Mandatory Standard of 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 1998 ("Act"). TerasMil's RAO take effect from 1st January 2017.
- 1.1.2 Teras Millennium Sdn. Bhd. (Company No: 814926-H) ("TerasMil") is a licensed individual Network Facilities Provider under the Communications and Multimedia Act 1998 ('Act')
- 1.1.3 TerasMil's RAO is to facilitate Access Seekers who wish to have access to TerasMil's Facilities and sets out the terms and conditions for access to TerasMil's Facilities.

1.2 Scope of TerasMil's RAO

- 1.2.1 Pursuant to Section 5.3.3 of the MSA Determination, TerasMil's is obliged to prepare and maintain an Reference Access Offer in relation to network facilities on the Access List Determination which TerasMil provides to itself or third parties.
- 1.2.2 TerasMil's RAO:
- 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.
- 1.2.3 Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to TerasMil's RAO.
- 1.2.4 TerasMil considers TerasMil's RAO to be consistent with:
- a) The standard access obligations stipulated under Section 4.1.1 of the M S A Determination and section 149 of the Act; and
 - b) The principles of non-discrimination stipulated under Sections 4.1.5 and 4.1.6 of the MSA Determination.
- 1.2.5 For the purposes of clarification, the terms and conditions of TerasMil's RAO is applicable to the Facilities and which is relevant to the provisioning of facilities within TerasMil's licenses only. If the Access Seeker requests network facilities outside TerasMil's RAO, the terms and conditions for the provision of such network facilities shall remain outside the scope of TerasMil's RAO.
- 1.2.6 In addition, the Operators are free to consider TerasMil's RAO when negotiating the terms and conditions for the supply of other network facilities that are not listed in the Access List Determination.

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1.3 Commencement and Duration of TerasMil's RAO

1.3.1 TerasMil's RAO comes into force and takes effect immediately from the date referred to in Section 1.1.1 and continues until the earlier to occur of:

- a) The expiry of the RAO Term; or
- b) A review; or
- c) The withdrawal of TerasMil's RAO in accordance with the terms of TerasMil's RAO.

1.3.2 TerasMil's RAO has no effect on contractual arrangements for the supply of Facilities by TerasMil's an Access Seeker prior to the Commencement Date unless such contractual arrangement is subsequently renegotiated and agreed between the Operators.

1.4 Amendment to TerasMil's RAO

1.4.1 If TerasMil proposes to amend a RAO, that TerasMil must, not less than twenty (20) business Days before TerasMil proposes to effect the changes, provide a copy of the amended RAO showing the proposed changes to the existing RAO, to:

- a) All Access Seeker who is being provided with access to Facilities under existing RAO; and
- b) All Access Seeker who has requested access to Facilities under the existing RAO within the period of three (3) months prior to the making of such amendments, excluding any such Access Seeker who has been indicated that it does not wish to proceed with its Access Request.

For clarification:

- i. Nothing in subsection 1.4.1 of this TerasMil's RAO prevents an Access Seeker from initiating a dispute in relation to an amendment to a RAO made by the TerasMil under this subsection;
- ii. Where the terms and conditions of an Access Agreement are not identical to those in the existing RAO, an amendment to the RAO will not alter the terms of that Access Agreement except as agreed between the TerasMil and Access Seeker, and
- iii. Without prejudice to the Access Seeker's right to dispute a change to a RAO, where the terms and conditions of an Access Agreement are identical to those in the existing RAO, an amendment to the RAO will be deemed to alter the relevant terms and conditions of that Access Agreement. However, if the Access Seekers disputes the change to the existing RAO, no amendments to the Access Agreement will be deemed to occur unless and until such dispute is resolved in favour of the TerasMil.

1.4.2 Amended TerasMil's RAO: Upon expiry of the twenty (20) Business Days in subsection 1.4.1 of this TerasMil's RAO (or such longer period as the TerasMil determine is necessary to finalize the amendments to its RAO). The TerasMil will:

- a) Make available the amended RAO on the TerasMil publicly accessible website without delay (including updating its date and version number, both on the cover and on each page of the document); and
- b) Provide the update RAO to the Commission within ten (10) Business Days after being made available under paragraph 1.4.2 (a) of this TerasMil's RAO

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- 1.5 Notice of Withdrawal, Replacement and Variation of TerasMil's RAO
 - 1.5.1 If the Commission removes, varies or replaces the Access List Determination relating to the Facilities, and TerasMil wishes to terminate or change the terms of the supply of that Facility, TerasMil may only do so in a manner that is consistent with the supply of that Facility to itself, and must provide notice of its intention to terminate or vary, to all Access Seekers to whom it is supplying that Facility. The notice period must be not shorter than:
 - a) the period of time between the time of giving the notice and the time at which the TerasMil is proposing to no longer provide the Facilities to itself; or
 - b) Twelve (12) months
 - 1.5.2 TerasMil's may give the Access Seekers to whom it is supplying Facilities under TerasMil RAO a notice of a variation or replacement of TerasMil's RAO to effect such variations that are necessary or appropriate in the event of:
 - a) The occurrence of a Legislative Event that materially affect the rights or obligations of TerasMil under TerasMil's RAO; or
 - b) The occurrence of a Regulatory Event that relates to TerasMil
 - 1.5.3 Notwithstanding Sections 1.5.1 to 1.5.2 above, TerasMil's may subject to Section 1.4 above, replace TerasMil's RAO at any time.

Chapter 2 – Definitions and Interpretation

2.1 Definitions

The following words have these meanings in this TerasMil's Reference Access Offer unless the contrary intention appears: -

“Act” means the Communications and Multimedia Act 1998.

“Access Agreement” means an agreement:

- (a) entered into between TerasMil and the Access Seeker pursuant to this RAO; or
- (b) which is commercially negotiated between the Operators,

whereby TerasMil provides the requested Access Services to the Access Seeker in accordance with the terms therein contained and registered with the Commission in accordance with the Section 150 of the Act.

“Access List Determination” means the Commission Determination on Access List, Determination No.2 of 2015 which came into effect on 1 September 2015.

“RAO Term” means the period of three (3) years commencing from the date set out in Section 1.1.1 or such other period as may be specified by TerasMil from time to time.

“Access Request” means a request made by the Access Seeker to TerasMil for access to Facilities and containing the information in section 4.1.3.

“Access Provider” means:

- a) network facilities provider who owns or provides network facilities listed in the Access List; or
- b) network services provider who provides network services listed in the Access List; who is a licensee as defined in the Act. For the purpose of this RAO, the Access Provider is TerasMil.

“Access Seeker” means an Operator who:

- a) Is a network facilities provider, network services 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 Facilities and/or Services.

“Bank Guarantee” means a guarantee executed and to be granted to TerasMil on behalf of the Access Seeker, by a bank approved by the Access Provider and in a format acceptable to the Access Provider.

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

“Billing Period” means one (1) calendar month period over which the supply of Facilities is measured for the purposes of billing unless otherwise agreed between the Operators

“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 TerasMil for accessing and/or being provided the Facilities.

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

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

“Communication” means any communication, whether between persons and persons, things and things, or persons and 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 an attempt to establish a communication.

“Communications Service” means the network facilities, network services, application services and/or content application services provided by the Operator, as the case may be, pursuant to its License(s).

“Confidentiality Agreement” means:
Confidentiality agreement entered into between TerasMil and the Access Seeker in accordance with Section 5.3.8 of the MSA Determination which is provided in Annexure 3.

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

“Customer” means in relation to an Operator, a person having a contractual relationship with the Operator for the provision of Communications Services.

“Determination” means any lawful determination made by the Commission and/or the Minister pursuant to Chapter 2 of Part V of the Act.

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

“Equipment” means any equipment (whether hardware or software), or device which is part of or within the Network.

“Facilities” means network facilities and/or other facilities which facilitate the provision of network services or applications services including content applications services which are listed in the Access List Determination and offered in TerasMil's RAO.

“Facilities Access” in relation to Facilities, means a service for the provision of access to network facilities and/or premises.

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

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

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"Invoice" means the invoice for amounts due in respect of the supply of requested Facilities during a Billing Period.

"TerasMil" means Teras Millennium Sdn. Bhd. and in TerasMil's RAO, is the Access Provider unless otherwise stated.

"Legislative Event" means:

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

"License" means an individual license granted by the Minister pursuant to the Act for Communication Services.

"Manuals" means the Technical and Implementation Manual, the Operations and Maintenance Manual and other manuals which the Operators establish pursuant to the Access Agreement.

"Minimum Value" for the purposes of calculating the Security Sum means:

The total estimated value of access to the requested Facilities provided (based on the most recent amounts invoiced for those requested Facilities) or new facilities to be provided by TerasMil to the Access Seeker for a ninety (90) day period.

"Minister" means the Minister of Communications and Multimedia or, if different, the Minister administering the Act.

"Network" means network facilities and/or network services comprising a system, or a series of systems within Malaysia, that carries or is capable of carrying communications by means of guided or unguided electromagnetic energy or both.

"Operators" means TerasMil and the Access Seeker collectively.

"Other Operator" means either:

- a) TerasMil; or
- b) 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 a lawful direction to TerasMil by the Commission relating to TerasMil's RAO; and/or
- c) The giving of a lawful direction to TerasMil by the Minister relating to TerasMil's RAO.

“Review” means a review of the MSA Determination, a review of the Mandatory Standard on Access Pricing and Commission Determination on Access List.

“RM” means:

Ringgit Malaysia which shall be the monetary currency used in TerasMil' RAO unless otherwise provided.

“Security Sum” means the security:

- a) In the form of a Bank Guarantee, deposited with TerasMil in accordance with Section
- b) 4.3 for the supply of Facilities ; and
- c) Which amount is equivalent to the Minimum Value.

“Services” means network services and/or other services which facilitate the provision of network services or applications services, including content applications services which are listed in the Access List Determination and offered in TerasMil's RAO.

“Service Ordering Procedures” means the procedures governing the forecasting, planning and ordering of relevant Facilities and Services as set out in Chapter 4.

“Standard Access Obligations” or “SAO” has the meaning prescribed in Section 149 of the Act.

“Technical Specifications” means any technical parameters, specifications and procedures applicable to Interconnection of the Operators' Network and provision of Access Services documented in this RAO or any manuals referred to in the Access Agreement.

“Tower” means the telecommunication tower belonging to the Access Provider to be utilized by the Access Seeker to install Equipment thereat which may be any of the following.

“Associated tower sites” means land owned, leased or tenanted by an Operator surrounding on which the tower is situated, including necessary right-of-way and permission to dig.

“Infrastructure Sharing” means:

- (a) physical access includes power, environmental services (such as heat, light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access Seeker.
- (b) provision of space at Associated Tower sites includes space where the Access Seeker may place its cabin or outdoor equipment and space required for cable gantry connecting to the tower and generator set.

“IBC” means in- building cellular system belonging to the Access Provider to be utilized by the Access Seeker.

2.2 Interpretations

In TerasMil's RAO except where the contrary intention appears;

- a) The singular includes the plural and vice versa; and
- b) A document includes all amendments or supplements to that document, or replacements or novation's of it; and
- c) A reference to a 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

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- 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 acts that have to be done or to be done by or on or before a particular day or Business day means by or on or 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 Operator has the same meaning as in the Companies Act 1965; and
- h) A reference to a third party is a reference to a person who is not a party to TerasMil's RAO; and
- i) No rule of construction and/or interpretation applies to the disadvantage and/or detriment of the Operator having control and/or responsibility for the preparation of TerasMil's RAO; and
- j) Headings are included for convenience and do not affect the interpretation of TerasMil's RAO.

Chapter 3 – Principles of Access and Interconnection

3.1 Application of TerasMil's RAO

TerasMil's RAO sets out the terms and conditions upon which Access Seekers may access TerasMil's Facilities. TerasMil's RAO applies only to the Facilities.

3.2 Eligibility for Access of Services

3.2.1 TerasMil shall 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, to provide to Access Seeker with access to the Facilities.

3.2.2 Consistent with Government policy and Determination by the Commission (and its predecessor), an Access Seeker may only request for access to any or all of the Facilities where the Access Seeker has been granted relevant license(s) from Commission.

3.2.3 And such individual licenses or class licenses are not limited or restricted from those detailed in the Communications and Multimedia (Licensing) Regulations 2000, as amended in any way:

- a) By reference to the type of (i) network facilities (NFP), (ii) network services (NSP), (iii) applications services (ASP) and/or (iv) content applications services that can be provided; and
- b) By geographical limitations to only specific area and/or areas in Malaysia to which the Access Seeker can provide such network facilities, network services, application services and/or content applications services.

3.2.4 Consistent with Government policy and Determination by the Commissions (and its predecessor), where TerasMil provides the Access Seeker with access to the Facilities pursuant to Section 3.2.1, the charges for the requested Facilities shall be negotiated between the Operators subject to any mandatory standard on access pricing determined by the Commission.

3.3. Standard Access Obligations

3.3.1 Access Terms and Conditions

Subject to Sections 3.2, TerasMil shall if requested to do so by the Access Seeker, supply a Facility to the Access Seeker on reasonable terms and conditions.

3.3.2 Principles of non-discrimination

In supplying a Facility, TerasMil shall treat an Access Seeker on a non-discriminatory basis as required by the Standard Access Obligations in relation to the supply of a Service(s). The access provided by TerasMil to the Access Seeker shall be consistent with:

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

3.3.3 Customer Principles

TerasMil shall observe and comply with the customer relationship principles set out in Section 4.3 of the MSA Determination.

3.4 Negotiation Principles

3.4.1 Good faith

Each party shall co-operate, in good faith and commercially reasonable manner, in negotiating and implementing the terms of the Access Agreement and use all reasonable endeavors to resolve any disputes arising from or in connection with TerasMil's RAO. (Refer Annexure 4 for Dispute Resolution Procedures of the MSA)

3.4.2 Confidentiality

An Operator must protect from disclosure any confidentiality information provided by another Operator given in the course of negotiating an Access Agreement or during the term of of Access Agreement in accordance with the Confidentiality Agreement signed between the parties. Sample of TerasMil's non-discloser agreement is in Annexure 3.

Chapter 4 – Access Request Procedures

4.1 Application for Access to Services

4.1.1 Where an Access Seeker makes a request to TerasMil to supply Facilities, the Access Seeker shall serve an Access Request on TerasMil.

4.1.2 The purpose of such Access Request is to provide TerasMil with sufficient information to assess the Access Seeker's request for the supply of Facilities under TerasMil's RAO.

4.1.3 The Access Request must:

- a) Contain the name and contact details of the Access Seeker;
- b) Specify the Facilities in respect of which access is sought;
- c) indicate whether the Access Seeker wishes to accept TerasMil's RAO or negotiate an Access Agreement
- d) Contain the information (if any) as set out in Section 5.3.7 of the MSA
Determination that the Access Seeker reasonably requires TerasMil 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 TerasMil;
- f) Specify forecasts of the capacity which the Access Seeker reasonably requires, having regards to TerasMil's disclosed provisioning cycle and forecasting as described herein;
- 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 TerasMil's Network;
- h) 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;
- i) Contain Creditworthiness Information as set out in Section 4.2;
- j) Be accompanied by a Security Sum as set out in Section 4.3;
- k) Contain Insurance Information as set out in Section 4.4;
- l) Contain relevant technical information relating to the interface standards of the Access Seeker; and
- m) Such other information that TerasMil may reasonably request.

4.2 Creditworthiness Information

4.2.1 The Creditworthiness Information that is required to accompany an Access Request to not go beyond subsection 5.3.11 of the MSA, which specifies the list of creditworthiness information that can be requested from the Access Seeker.

- a) If TerasMil reasonably believes that the Access Seeker may not be able to meet any liabilities that may arise under an Access Agreement with the Access Seeker;
- b) If the creditworthiness information sought is limited to information which is publicly available (on this basis, TerasMil may request the Access Seeker to warrant that such information is accurate); and
- c) To the extent commensurate with a commercially reasonable estimate of the charges that will be incurred by the TerasMil over the minimum period of access to Facilities in an Access Agreement

4.2.2 The Creditworthiness information shall commensurate with an estimated value of the access to the Facilities to be provided by TerasMil 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 shall be in the form of a Bank Guarantee.

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 or in connection with the work covered by the Access Agreement that may be entered and/or their dependent's; and
- b) Comprehensive general Liability Insurance of an amount which is not in excess of Ringgit Malaysia Twenty Million (RM20, 000,000) for any one claim or series of claims arising out of an accident for occurrence in connection with the Access Agreement that may be entered into resulting in bodily injury and/or personal injury including death and property damage of an Operator which shall arise out of or in consequence of any acts of omissions of the Other Operator. 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 TerasMil and does not exceed the insurance requirements specified under subsection 5.3.10 of the MSA

4.5 Processing of Access Request

4.5.1 Acknowledgement of Receipt of Access Request

Subject to Section 4.7, TerasMil shall within ten (10) Business Day of receipt of the Access Request inform the Access Seeker in writing that it has received the Access Request and:

- a) Subject to Section 5.4.6 of the MSA, request additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request; or
- b) Indicate whether it is willing to provide access to Facilities in accordance with TerasMil's RAO.
- c) TerasMil is willing to proceed to negotiate an Access Agreement.

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

4.6 Assessment of Access Request

4.6.1 Reason for Refusal

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

- a) In TerasMil's reasonable opinion, the Access Seeker's Access Request was not made in good faith and TerasMil shall set out the basis on which the Access Request was not made in good faith;
- b) In TerasMil's reasonable opinion, the Access Request does not contain the information reasonably required by TerasMil's RAO provided that TerasMil has sought the information from the Access Seeker under Section 4.5.1 of TerasMil's RAO and has not received that information within twenty (20) Business Days of making such a request;
- c) TerasMil does not currently supply or provide access to the requested Facilities to itself or to any third parties, except where the Access Seeker compensates TerasMil for the supply of access to such Facilities;
- d) It is not technically feasible to provide access to the requested Facilities;
- e) TerasMil has insufficient capacity to provide the requested Facilities;
- f) There are reasonable grounds in TerasMil's opinion to believe that the Access Seeker would fail, to make timely payment for the supply of the requested Facilities and such concern cannot be addressed through a security requirement in accordance with this RAO;
- g) There are reasonable grounds in TerasMil's opinion to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities; or
- h) There are reasonable grounds for TerasMil to refuse access in the national interest; or
- i) The access is being sought to facilities which are not in the Access List Determination.

4.6.2 Determination of technical infeasibility

For the purpose of determining technical infeasibility in Section 4.6.1(d), the Operators shall comply with Section 5.4.17 of the MSA Determination. Each of the following matters shall be taken into account in determining whether access is technically feasible:

- a) economic, accounting, billing, space or site concerns shall be disregarded by the TerasMil except that space or site concerns may be taken into account in circumstances where there is no possibility of expanding the space available on the relevant site;
- b) any requirement for TerasMil to modify its facilities in order to meet the Access Request will not, on its own, mean that the access is not technically feasible,
- c) if the TerasMil asserts that the meeting with the Access Request would have an adverse impact on network reliability, the TerasMil must provide evidence that provision of the requested Facilities would result in specific and significant adverse impact on network reliability; and
- d) the TerasMil must be able to demonstrate that it has considered and found not to be technically feasible (in accordance with this subsection) improvements that would allow the TerasMil to meet the Access Request (in whole, or in part, and including for an interim period until any primary difficulties can be resolved)

4.6.3 Determination of capacity constraints

For the purpose of determining capacity constraints in Section 4.6.1 (e), the Operators shall comply with Section 5.4.18 of the MSA Determination. The TerasMil notifies the Commission in writing that it does not have sufficient capacity to meet the Access Request because the requisite capacity is;

- a) already carrying traffic to full capacity or near full capacity; or
- b) already reserve for future use by the TerasMil or another Access Seeker, where such future use shall commence not later than six (6) months from the date of Access Request. If the reserved capacity is not subsequently used by the reserving party within seven (7) months from the date of Access Request, the TerasMil must promptly inform the Access Seeker and, if required by Access Seeker, re-consider the Access Request in accordance with the process set out in Chapter 4 of this RAO; and
- c) in the case of both paragraphs 4.6.3 (a) and 4.6.3 (b) of this RAO, the TerasMil is unable to expand capacity to meet the requirement in the Access Seeker's Access Request

4.6.4 Assessment of the Access Seeker's ability to pay for supply of relevant Facilities listed in the Access List Determination.

Example of reasonable grounds for TerasMil's belief as mentioned in Section 4.6.1 (f) includes evidence that the Access Seeker is not in the reasonable opinion of TerasMil creditworthy and such concern cannot be addressed through a security requirement in accordance with this RAO;

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

Example of reasonable grounds for TerasMil's belief as mentioned in Section 4.6.1

(g) include repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to Facilities have been provided (whether or not by TerasMil).

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4.6.6 Assessment of Creditworthiness

4.6.6.1 In determining the creditworthiness of the Access Seeker, TerasMil may have regard to not go beyond the subsection 5.3.11 of the MSA, which specifies the list of creditworthiness information that can be requested from the Access Seeker.

4.6.6.2 In determining the creditworthiness of the Access Seeker, TerasMil shall not take into account amounts outstanding for Facilities previously provided by TerasMil to the Access Seeker where, in accordance with the terms and conditions governing the provision of such Facility, the Access Seeker is not required to pay such amounts to TerasMil to the extent that there is a bona fide dispute in relation to the amounts outstanding by the Access Seeker to TerasMil 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 TerasMil rejects the Access Request, TerasMil shall:

- a) Promptly 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 4.6.1 above to the Access Seeker;
- c) Provide the basis for TerasMil'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 TerasMil 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 TerasMil to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in Section 4.6.1(e), TerasMil must identify when additional capacity is likely to be available. TerasMil also must reassess the Access Seeker's original Access Request considering any supplementary information provided by the Access Seeker and TerasMil must identify the form of security requirement which would satisfy its concern that the Access Seeker may fail to make timely payment for the requested Facilities, its reasons for the security requirement and why it considers such concern cannot be addressed through a security requirement.

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4.8 Acceptance of Access Request

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

4.8.2 Where the Access Seeker wish to negotiate an Access Agreement, the Operators shall comply with the requirements in Sections 5.4.2, 5.4.3, and 5.4.4 of the MSA Determination in negotiating and concluding an Access Agreement. The details as below:

- a) An operator shall co-operate, in good faith and in a commercially reasonable manner, in negotiating and implementing the terms of its Access Agreements.
- b) An Operator must protect from disclosure any Confidential Information provided by another Operator in the course of negotiating an Access Agreement and during the term of an Access Agreement in accordance with a confidentiality agreement prepared of this RAO.
- c) An Operator shall only use such Intellectual Property and information provided by another Operator for the purpose of providing or acquiring access to requested Facilities. An Operator must not use such Intellectual Property or information for the development or marketing of other communication services or Equipment by that Operator, its own divisions, subsidiaries, partners or other entities in which it has direct or indirect equity, contractual or other interest, or third parties.

4.8.3 TerasMil will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Facility until:
a) Security Sum has been provided in accordance with Section 4.1 and 4.3; and
b) Access Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with section 150 of the Act.

4.9 Negotiations on Access Request

4.9.1 Pursuant to Section 4.8.2, where the Access Seeker wish to negotiate an Access Agreement, TerasMil will set out in its response to the Access Seeker:

- a) The names of personnel of TerasMil's representatives in the negotiations and in respect of those personnel:
 - i. his or her contact details
 - ii. his or her job title; and
 - iii. details of his or her availability for the access negotiations;
- b) The identity of the negotiating team leader, and TerasMil shall ensure that the negotiating team leader shall have authority to make binding representations on behalf of TerasMil in relation to matters arising from the negotiations (subject to final approval from TerasMil's Chief Executive Officer/Director, if required)
- c) The information which is reasonably required from the Access Seeker for the purposes of negotiations;
- d) Date and time not later than fifteen (15) Business Days from the date of the Access Seeker's response, at which TerasMil's representatives will be available for the initial meeting with the representatives of the Access Seeker.
- e) One copy of the executed Confidentiality Agreement in accordance with Section 4.1.3 (e) that has also been properly executed by the Operators.

4.9.2 If an Operator wishes to negotiate an Access Agreement with another Operator:

- a) Both parties shall notify the Commission when the negotiations for the Access Agreement begin under this subsection;
- b) Both parties shall use their best endeavours to conclude this Access Agreement within:
 - i) Where there is no Access Agreement in place between the Operators, four (4) months or
 - ii) Where there is already a commercial agreement or an Access Agreement in place between the Operators, three (3) months, after a written request by the Access Seekers to commence negotiations and the TerasMil response confirming it is willing to proceed to negotiate;
- c) If the negotiations are not completed within the applicable timeframe under paragraph 4.9.2 (b) of this RAO :
 - i) the parties may jointly apply to the Commission for an extension of time to negotiate and if the extension of time is not granted by the Commission, there shall be deemed to be a dispute between the parties and the Dispute Resolutions Procedure shall take effect; or
 - ii) the parties may initiate the Dispute Resolutions Procedures; and
- d) If the Commission grants an extension of time under paragraph 4.9.2 (c) i of this RAO, it may do so subject to such conditions as it specifies (such an ongoing requirement to provide update on negotiations at specified intervals and the right to reduce or extend any extension).

4.9.3 Unless otherwise agreed between the Operators, each Operator shall ensure that its representatives meet on the date notified and that such representatives:

- a) Agree on a timetable for the negotiations, including milestones and dates for the subsequent meeting with the applicable timeframe for negotiations under paragraph 4.9.2 (b) of this RAO;
- b) Agree on negotiating procedures, including:
 - i) calling and chairing meeting
 - ii) responsibility for keeping minutes meeting
 - iii) clearly defined pathways and timetables for escalation and resolutions by each Operator of matters not agreed in the meetings;
 - iv) procedures for consulting, and including in the negotiating process, relevant experts from each of Operators; and
 - v) procedures for preparing and exchanging positions papers;
- c) Review the information requested and provided to date and identify information yet to be provided by each Operator; and
- d) Identify what technical investigations, if any, need to be made and by whom such investigations should be made.

Chapter 5 – Forecast, Ordering and Provisioning Obligations

5.1 Forecast Obligations

5.1.1 General

The Access Seeker shall provide Forecasts in good faith over a certain period of supply of Facilities it seeks to access in relation to the following:-

- a) Capacity requirement;
- b) Period of requirement;
- c) Network and/or operational area

5.1.2 Confirmation of Forecast

In the event Access Provider incurs significant costs to ensure that access can be provided in accordance with the Forecast, TerasMil may request the Access Seeker to confirm the relevant Forecast. Once confirmed, the Forecast is deemed to be an Order for the purposes of this RAO and Section 5.2 will apply.

5.1.3 Forecast Request

TerasMil may request an Access Seeker to provide, with a sufficient level of detail to enable TerasMil to carry out Network planning, the following information (forecast information): -

- a) The Facilities in respect of which Forecast are required;
- b) The total period of time covered by each Forecast which period:
 - i. Shall be determined having regard to TerasMil own planning and provisioning cycles and the Forecasting requirements which apply to the Access Seeker' own business units in using the relevant Facilities ; and
 - ii. Shall be no longer than one year, unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities.
- c) The intervals or units of time to be used in making the Forecast, which shall be one (1) year unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities;
- d) The Network area or operational area to which Forecast shall relate which area shall correspond to that which TerasMil uses for its own Network planning;
- e) The frequency with which a Forecast shall be updated or further Forecast made, which shall be once a year unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities ; and
- f) Such other information that TerasMil reasonably requires in order providing access to Facilities requested by the Access Seeker.

5.1.4 Forecast Provision

TerasMil may only require an Access Seeker to provide Forecast in accordance with a Forecast Request:

- a) No sooner than four (4) weeks after receipt of a Forecast Request; and
- b) Until such time as TerasMil notifies the Access Seeker in writing that it withdraws the relevant Forecast Request.

5.1.5 Use of Forecast Information

Forecast Information provided by the Access Seeker shall be treated by TerasMil as The Confidential Information of the Access Seeker and shall only be used by TerasMil whose role is within either:

- a) The Access Provider's wholesale or interconnection group; or
- b) That part of the Network engineering group of the TerasMil responsible for interconnection

For the purposes of responding to and planning for the Forecast. TerasMil must maintain records that indicate which persons are provided with access to Forecasts information.

5.1.6 Distribution of Forecast Information

TerasMil may only distribute Forecast Information of an Access Seeker outside the people necessary for the purpose referred to in section 5.1.5 if:

- a) The Forecast Information of the Access Seeker is aggregated with Forecast provided by other Operators and TerasMil own requirements (so as to protect the confidentiality of the Forecast Information); and
- b) The Forecast Information of its use does not otherwise identify the Access Seeker in any manner

5.1.7 Time for acceptance

TerasMil shall notify the Access Seeker:

- a) Within five (5) Business Days of receiving the Forecast if TerasMil considers that the Forecast does not comply with a Forecast Request; specifying in that notice the additional information which the Access Seeker is to provide; and
- b) Within fifteen (15) Business Days of receiving a Forecast which complies with the Forecast Request, that the Forecast is accepted.

5.1.8 Reasons for Rejection

TerasMil may only reject a Forecast where TerasMil reasonably believes that the Forecast is inaccurate, having regarded to:

- a) Total current usage of the Facilities;
- b) The current rate of growth of the Access Seeker's usage of the Facilities
- c) The current rate of growth of total usage of the Facilities; and
- d) The amount of capacity in the Facilities that TerasMil currently has available and can reasonably provision over the Forecast period, which shall be at least equivalent than that which TerasMil can reasonably provision for itself.

5.1.9 Time for Rejection

TerasMil shall give notice of any rejection to the Access Seeker:

- a) Within fifteen (15) Business Days of receipt of the relevant Forecast; and
- b) Such notice of rejection must specify;
 - i. The grounds on which the TerasMil rejects the Forecast in accordance with subsection 5.1.8 at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re- assessment of the Forecast; and
 - ii. An offer to meet within five (5) Business Days of the notice of rejection of the Forecast to discuss the reasons for rejection and alternative methods of compliance. The meeting shall take place between TerasMil and Access Seeker if the offer is accepted by the Access Seeker (Rejection Notice).

5.1.10 Reconsideration by Access Seeker

TerasMil shall allow an Access Seeker to reconsider its Forecasts following a Rejection Notice and allow the Access Seeker within twenty one (21) Business Days of receipt of a rejection Notice, either:

- a) To confirm its rejected Forecast and explain why the Access Seeker regards the Forecast as being reasonable; or
- b) To submit a new forecast which the Access Seeker regards as meeting the TerasMil concerns.

5.1.11 Reconsideration by TerasMil

TerasMil shall reconsider any amended Forecast provided pursuant to subsection 5.1.10 and subsections 5.1.7 to 5.1.9 shall re-apply.

5.1.12 Recovery for over-Forecasting

TerasMil shall not seek to recover any costs or expenses incurred due to its acceptance of a Forecast from an Access Seeker if the Forecast is not met by Access Seeker unless:

- a) Such costs and expenses were reasonably and necessarily incurred by TerasMil.
- b) TerasMil reasonably seeks to mitigate its loss over a six month period (including through its own usage); and
- c) TerasMil only recovers from the Access Seeker 75% of such costs and expenses which could not be mitigated under paragraph 5.1.12(b) above.

5.1.13 Meeting Forecast

Subject to subsection 5.1.7 to 5.1.9, TerasMil shall carry out network planning in order to enable the Forecast Requested to be met. If an Access Seeker has confirmed a forecast under subsection 5.1.2, it will be binding on the Access Seeker.

5.2 Ordering and Provisioning Obligations

5.2.1 Contact Point

TerasMil shall designate a person to whom Orders for access to Facilities are to be delivered and shall notify the Access Seeker of the designated person from time to time

5.2.2 Order Content

Prior to access being provided, TerasMil may require an Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. TerasMil may request an Access Seeker to fill up a Letter of Offer in Annexure 1. The following information shall be provided at a level of detail (sufficient for planning provisioning) for access to Facilities and Services:

- a) The Facilities or Services or both to which access is requested;
- b) A requested time for delivery
- c) The location of the infrastructure
- d) Equipment of the Access Seeker to be used in connection with the Order; and
- e) Such other information that TerasMil reasonably requires in order for it to plan for the provision of access to the Facilities as requested by the Access Seeker.

5.2.3 Use of ordering information

Ordering Information provided by the Access Seeker shall be treated by TerasMil as Confidential Information of the Access Seeker and shall only be used by those persons within the TerasMil whose role is within:

- a) TerasMil's wholesale or interconnection group; and
- b) the part of the network engineering group of the TerasMil responsible for interconnection or access,

for the purpose of responding to and provisioning for the Order.

5.2.4 Treatment of Order and Service Qualifications

TerasMil shall give the same priority to the handling of Orders from the Access Seeker and any Service Qualification that may be required for that Access Seeker as it gives to its own Orders and Service qualifications and any Orders and Services Qualifications that may be required Customers who are similarly situated to the Access Seeker in all relevant respects.

5.2.5 Acknowledgement of Receipt

TerasMil shall acknowledge receipt of the Order, in writing (or any other material or electronic form agreed by the parties) within two (2) Business Days of receipt of an Order from Access Seeker.

5.2.6 Notice of Receipt

TerasMil shall include in its Notice of Receipt the following information:

- a) The time and date of receipt.
- b) A list of any additional information reasonably required by TerasMil from the Access Seeker to clarify the Order; and
- c) If the relevant Facilities are below the capacity required to provide the relevant Facilities, TerasMil shall inform the Access Seeker of the available capacity and timeframe for fulfillment of the Order.

5.2.7 Further Information

TerasMil shall allow the Access Seeker a period of up to fourteen (14) Business Days after a request for additional information to provide TerasMil with such additional reasonable information that is reasonably to clarify an Order.

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5.2.8 Acceptance Obligation

TerasMil shall use its reasonable efforts to accept and fulfil Orders from the Access Seeker for Facilities which comply with a Forecast accepted by TerasMil pursuant to subsection 5.1.7(b).

5.2.9 Time for acceptance/rejection

TerasMil must notify the Access Seeker within fourteen (14) days of receiving an Order that the Order is accepted or rejected, save where TerasMil undertakes a Service Qualification as contemplated in subsection 5.2.8 in which case the time periods in subsection 5.2.9 are to be added to this fourteen (14) days period. If TerasMil notifies the Access Seeker that an Order is rejected, TerasMil must advise the Access Seeker if it would be able to accept the Order in a modified form.

5.2.10 Notice of acceptance

TerasMil notice of acceptance to the Access Seeker must contain the following information:

- a) The delivery date which must be the date is requested by the Access Seeker or if the date cannot be met by TerasMil shall be no later than indicate delivery timeframes set out in subsection 5.2.11;
- b) The charges applicable to fulfilment of the Order;
- c) Such information as is reasonably necessary for the Access Seeker to benefit from access to the network services and network facilities; and
- d) A validity period of the acceptance of the Order which shall be no less than 90 days after acceptance.

5.2.11 Indicative delivery times

For the purposes of Section 5.2.10 (a) the following are the indicative delivery time frames for the following aspects of a Facilities:

Order Type	Indicative Delivery
All Orders involving the provision of new facilities and infrastructure relevant to the Services that are the subjects of the Order.	8 months
All Order involving augmentation of capacity on existing facilities and infrastructure relevant to the Services that are the subject of the Order	40 Business Days

- a) The indicative delivery timeframes specified in Section 5.2.11 shall commence from the date the Access Seeker confirms an Order in accordance with Section 5.2.12.
- b) Where a delay in the delivery of an Order is caused by Access Seeker, the delivery date specified in the confirmed Order or indicative delivery time set out above shall be extended for a further period as may be reasonably necessary by TerasMil

5.2.12 Access Seeker Confirmation

TerasMil shall permit an Access Seeker to confirm its agreement to proceed with the Order within the validity period of TerasMil acceptance of such Order (as described in paragraph 5.2.10 (d)). Upon such confirmation, TerasMil shall fulfill the Order in accordance with the notice of acceptance provided under subsection 5.2.10.

5.2.13 Estimated Charges

If the notice of acceptance provided by TerasMil under subsection 5.2.10 contains estimates of charges (e.g. based on time and materials):

- a) TerasMil shall not exceed the estimate without providing the Access Seeker with written notice prior to exceeding the estimate that:
 - i. The estimate will likely be exceeded
 - ii. An explanation of the reasons for exceeding the estimate; and
 - iii. A further estimate of the charges for the work necessary to fulfil the Order.
- b) TerasMil shall permit the Access Seeker to withdraw the Order without penalty if the revised exceeds the original estimate by more than 10% of the original estimate within fourteen (14) days of the notice given by TerasMil under subsection 5.2.13(a).
- c) Where the actual cost incurred by TerasMil exceeds an estimate or revised estimate for the specific scope of work provided by TerasMil due to:
 - i. Information or facts provided by the Access Seeker which are inaccurate or erroneous or disclosed by the Access Seeker; and
 - ii. A change in the scope of work by the Access Seeker the Access Seeker shall be obliged to pay TerasMil for the actual cost incurred.
- d) TerasMil shall commence work after the Access Seeker confirms it is agreeable to the estimate or revised estimate, such confirmation to be provided by the Access Seeker within fourteen (14) days from the notice given by TerasMil under subsection 5.2.13 (a).

5.2.14 Reasons for rejection

TerasMil may only reject an Order from an Access Seeker where:

- a) It is not technically feasible to provide access to the Facilities requested by the Access Seeker;
- b) TerasMil has insufficient capacity to provide the requested Facilities;
- c) Subject to Section 5.2.16, the Order is in excess of agreed Forecast levels;
- d) The Order or variation request duplicates an Order awaiting fulfillment;
- e) An Access Seeker has not obtained necessary approved work permit from TerasMil (e.g. Facilities access for a new Site);
- f) There are reasonable grounds to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions of the Access Agreement; or
- g) There are grounds to believe that the Access Seeker would fail, in connection with the supply of the Facilities to protect the integrity of a Network, or the safety of individuals working on, or using services supplied by means of a Network or Equipment.

5.2.15 Notice of rejection

TerasMil notice of rejection to the Access Seeker must:

- a) Set out the grounds on which TerasMil rejects the Order, at a sufficient level of detail to enable the Access Seeker to understand the basis of the rejection and to undertake its own re-assessment of the Order; and
- b) Offer to meet if the offer is accepted by the Access Seeker within five (5) Business days of the notice of rejection of the Order to discuss the reasons for rejection and alternative methods of compliance

5.2.16 Order in excess of Forecast

Notwithstanding paragraph 5.2.14 (b), TerasMil must use its reasonable efforts to provide sufficient capacity to enable TerasMil to accept and fulfil Orders from an Access Seeker for Facilities which are in excess of the relevant forecast.

TerasMil is only required to do so if the meeting the Forecasts requirement of other Operators and of its own business units, there is available capacity or TerasMil could readily upgrade existing capacity. TerasMil shall allocate the available capacity on a non-discriminatory

5.2.17 Delivery dates

TerasMil shall deliver the ordered access to Facilities by the date specified in the notice of acceptance (as provided under subsection 5.2.10

5.2.18 Early delivery dates

If TerasMil in the normal course of business is able to offer a delivery date earlier than the delivery date that would otherwise apply, it must advise the Access Seeker and if requested by the Access Seeker, deliver access to the relevant Facilities at earlier delivery date.

5.2.19 Delayed delivery dates

TerasMil shall:

- a) Notify an Access Seeker of the delay to a delivery date and the revised delivery date, together with the reasons for the delay, as soon as practicable after TerasMil becomes aware of the possible delay;
- b) Permit the Access Seeker notified under paragraph 5.2.19 (a) above to cancel the Order without penalty if the delay is longer than fourteen (14) days; and
- c) Provide the Access Seeker with a remedy in accordance with subsection 5.2.27

5.2.20 Cancellation and variation of Orders

TerasMil shall allow an Access Seeker to cancel or vary an Order at any time.

5.2.21 Cancellation penalty

Except where this RAO provides that cancellation is to be at no penalty, TerasMil shall only charge an Access Seeker which has cancelled or varied an Order no more than the costs necessarily incurred by TerasMil in relation to the cancelled or varied Order, reduced by the level at which those costs have been or would have been (had TerasMil used its best endeavours to do so), mitigated over a six (6) month period after the date of cancellation or variation.

5.2.22 Testing and provisioning

TerasMil shall:

- a) Co-operate with the Access Seeker in relation to the testing and provisioning of ordered Facilities; and
- b) Treat an Access Seeker's testing and provisioning on an equivalent basis to that which TerasMil treats itself.

5.2.23 Queuing policy

TerasMil shall establish and demonstrate and maintain a queuing policy system which:

- a) Shall be non-discriminatory
- b) Shall treat the Order of Access Seeker on an equivalent basis to that which TerasMil treats its own Orders for similar Services; and
- c) Shall seek to maximize the efficiency of its Ordering and provisioning process.

5.2.24 Acceptance on queue

TerasMil shall promptly notify an Access Seeker at the time of providing an acknowledgement of receipt of the Order under subsection 5.2.5 of their acceptance on TerasMil queue.

5.2.25 Constrained capacity

If TerasMil reasonably believes that the capacity in any Facilities required by:

- a) The Access Seeker pursuant to the relevant Forecast;

- b) Other Access Seeker, pursuant to their relevant Forecasts; and
- c) TerasMil for its own purposes

Would in aggregate, exceed the capacity which TerasMil will be in a position to be able to provide, TerasMil must:

- i. Notify the Access Seeker and other persons to whom relevant capacity is supplied; and
- ii. Allocate the available capacity between itself, the Access Seeker and other Access Seekers in accordance with TerasMil Capacity Allocation Policy.

5.2.26 Capacity Allocation Policy

If TerasMil claims or likely to claim that it has insufficient capacity to meet an Access Seeker's Forecast or Order, TerasMil shall maintain a Capacity Allocation Policy which:

- a) Shall be disclosed, free of charge, to each Access Seeker upon entry into an Access Agreement, the Commission upon the Effective Date, to both Access Seekers with whom the TerasMil has an Access Agreement and the Commission each time it is amended, any other Operator on request;
- b) Shall set out principles in accordance with which TerasMil shall determine how to allocate capacity between itself (including its related bodies corporate) and other Operator or Operators, in circumstances where the amount of capacity available is less than the aggregate of capacity required by TerasMil, its related bodies corporate and other Operator or Operators, shall;
 - i. Be fair and reasonable;
 - ii. Be consistent, so far as practicable with TerasMil general duty of non- discrimination in accordance with subsection 149(2) of the Act;
 - iii. Treat the requirement of the Access Seeker and third parties on an equivalent basis to TerasMil own requirement; and
 - iv. Allocate the available capacity in the relevant Facilities in proportion to each Operator's Forecast requirement

5.2.27 Late Delivery

If TerasMil fails to meet any timeframe in subsection 5.2.11 with respect to the delivery of access to Facilities pursuant to an Order made in accordance with subsection 5.2 except where such failure has been solely by the Access Seeker's delay, that TerasMil shall without limitation to any other rights the Access Seeker may have under subsection 5.2 or law, provide a rebate to the affected Access Seeker. The rebate shall be for an amount equivalent to the recurring charges payable for access to the Facilities over a period equal to the period of TerasMil delay.

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Chapter 6 – List of Access Services

Section A - List of Facilities/Services

6.1 General

This chapter lists down the Facilities which may be provided by TerasMil to the Access Seeker.

6.2 The followings are the Facilities/Services which may be provided by TerasMil:

Item	Facilities/ Services	Capacities/ Size
1.	Infrastructure Sharing □ In-building cellular system □ Tower / pole	□ 18 buildings, 1000 Omni Antenna 20 sites

Section B - Facilities Description

6.3 Infrastructure Sharing Services

Section 6.3 sets out the specific terms and conditions which are applicable to Infrastructure Sharing Service which may be provided by TerasMil to the Access Seeker.

a)To provide Infrastructure Sharing to the Access Seeker which includes the following:

- i. Provision of physical access, which refers to the provision of space at specified network facilities such as tower and pole and Associated Tower sites to enable an Access Seeker to install and maintain its own equipment; or
- ii. Provision of access to in-building Cellular Systems and physical access to central equipment room.

6.4 Provisions of Services

6.4.1 Network Facilities

- (a) Subject to the Access Seeker complying with the Ordering and Provisioning Obligations in Chapter 5, TerasMil will provide Infrastructure Sharing service requested by the Access Seeker in accordance with TerasMil's RAO and the Access Agreement including the terms and conditions in Chapter 8.
- (b) TerasMil shall ensure Infrastructure Sharing service conform to the QoS Standards and Technical Specifications, subject to the Access Seeker's use of those Infrastructure Sharing service in accordance with the Technical Specifications and other agreed requirements.
- (e) The minimum period in which the Access Seeker may lease network facilities is seven (7) years.
- (f) The Access Seeker shall pay to TerasMil for infrastructure sharing service stated in this Section 6.3 provided by TerasMil, Charges in accordance with the applicable provisions set out in Chapter 10.

6.4.2 Charging Principles for Access Services

Please refer to Chapter 10 on the details of charges and charging principles for the Facilities offered by TerasMil.

Chapter 7 - Billing and Settlement Obligations

7.1 Billing

7.1.1 General Principle

Unless otherwise agreed TerasMil will invoice Charges in advance based on each Billing Period. Each Invoice will be issued 30 days before the commencement of each Billing Period. Charges shall be payable from the date the Facilities are provided.

7.1.2 Billing Information

Each Invoice will state the Charges for the Billing Period and will be accompanied by information as may be reasonably necessary for the Access Seeker to verify rates and Charges contained in the bill.

7.1.3 Billing Error

If an Access Seeker discovers an error in an invoice, it must notify TerasMil. If TerasMil made such error, it shall make the necessary adjustment to correct that error in the next Invoice.

7.1.4 Back Billing

Unless otherwise agreed by the TerasMil and Access Seeker in an Access Agreement, TerasMil may include omitted or miscalculated charges from an earlier Invoice in a later invoice, or issue an Invoice for charges which have previously not been invoiced provided that TerasMil is able to substantiate the charges to the Access Seeker and such inclusion, amendment or issuance is made within three (3) months from the end of the Billing Cycle in which the calls were made or in which other Facilities were provided..

7.1.5 Provisional Billing

Where the Access Provider is unable to issue an Invoice, it may issue an Invoice to an Access Seeker for a provisional amount, based on the last Invoice (provisional invoice). In such circumstances, Access Provider may invoice an Access Seeker for a provisional amount for a period of not more than three successive Billing Periods, provided the amount of the provisional Invoice is no more than the average of the most recent three Invoices. Where there have not been three (3) past Invoices for access to the relevant Facilities, Access Provider may issue a provisional Invoice up to the full value of the amount based on the most recent Invoice. The Access Seeker shall pay the Provisional Amount by the Due Date. The Provisional Amount will be adjusted in the next invoice or as soon as practicable but not later than sixty (60) days after the month in which the charges were incurred or such other time period as may be agreed in writing ("Adjustment Period"). If an adjustment is not made within the Adjustment Period, the Access Seeker shall treat the Provisional Amount as the actual invoice.

7.1.6 Currency

Unless otherwise agreed, all Charges shall be in Ringgit Malaysia and the Access Seeker shall make payment in Ringgit Malaysia.

7.2 Settlement

7.2.1 Payment Period

The Access Seeker shall make payment for the Charges within thirty (30) days from the date of the Invoice without set-off counter claims or deduction unless otherwise agreed in writing by both Operators.

In the event that the Charges remain unpaid after becoming due, TerasMil shall be entitled for late penalty charges on the overdue payment at a rate specified in the Access Seeker's invoice.

7.2.2 Method of Payment

The Access Seeker must pay an Invoice by electronic funds transfer or exceptionally, by bank cheque to the nominated accounts of TerasMil if agreed by TerasMil

7.2.3 Billing Disputes

In the event the Access Seeker wishes to dispute an invoice, the Access Seeker shall notify Access Provider in writing within thirty (30) business days after the date of receipt of such invoice. The dispute notification shall provide the following information: -

- a) The reasons for which the Access Seeker disputes the Invoice;
- b) The amount in dispute; and
- c) details required to identify the relevant invoice and Charges in dispute including the account number, the invoice reference number, the invoice date, the invoice amount; and the billing verification information.

7.2.4 Withholding of Disputed Amounts

For the avoidance of doubt, the Access Seeker shall not use the dispute resolution procedure to avoid or delay payment due to TerasMil where there is no genuine dispute. TerasMil shall allow an Access Seeker to withhold payment of any amount disputed in good faith by the Access Seeker if;

- a) the Access Seeker notifies TerasMil within the fifteen (15) Business Days from the date of receipt of the Invoice of such dispute (unless otherwise agreed by TerasMil and Access Seeker in an Access Agreement); and
- b) the Access Seeker's notification specifies the information referred to in section 7.2.3 of the RAO

7.2.5 Late Payment Charge

Subject to withholding of amounts being disputed in good faith in accordance to section 7.2.4, TerasMil may charge interest in any amount outstanding from the Access Seeker from time to time, in respect of that overdue sum at the rate of two percent (2%) per annum above Maybank Berhad's Base Rate calculated daily from the due date until the date of actual payment. Payments which are overdue by more than sixty (60) days will bear interest at the rate of three percent (3%) per annum above Maybank Berhad's Base Rate calculated from the due date until the date of receipt of the full payment by TerasMil.

Chapter 8 – Operational Obligations

8.1 Inspection

TerasMil shall allow nominated employees or contractors of a potential Access Seeker to physically inspect network facilities of TerasMil during normal business hours provided that:

- (a) the Access Seeker has provided no less than five (5) Business Days' notice of its request to perform a physical inspection and details of its nominees; and
- (b) the nominations made by the Access Seeker are reasonable, having regard to the position of each person and the number of persons nominated.

8.2 Physical Access to TERASMIL's Facilities

TerasMil shall allow an Access Seeker, its employees and contractors to physically access TerasMil network facilities and have physical control over the Access Seeker's

Equipment located at such network facilities, twenty-four (24) hours a day, seven (7) days a week.

8.3 Escorts during Access

TerasMil may at its discretion and at its costs, for security purposes, assign escorts (who may either be its own employees or third parties) to be present when the authorized employees of the Access Seeker wish to enter onto TerasMil's property for a specific stated purpose, such as maintenance or repair works. TerasMil shall:

- (a) make such escort service available at all times during ordinary business hours;
- (b) have such escort service on call (with no longer than a thirty (30) minute response time to attend at the Access Provider's property) outside ordinary business hours; and
- (c) bear the costs of such escort service.

8.4 Site Register

The Access Seeker must establish and maintain a register of all persons who visit TerasMil's property using TerasMil valid work permit which must be made available for inspection by TerasMil upon request.

8.5 Utilities and Ancillary Services

If TerasMil has permitted access or physical co-location at a particular TerasMil location or network facilities, TerasMil will, subject to the parties reaching a prior agreement as to applicable cost that are apportioned in accordance with fair and equitable principles, make available the under mentioned utilities and ancillary services where such utilities and ancillary services are within the control of TerasMil and TerasMil is able and has capacity to provide:

- (a) access to roads
- (b) access to land
- (c) power, including the provision of backup power

Teras Millennium's RAO

- (d) environmental services (including but not limited to heat, light, ventilation, air conditioning, fire protection)
- (e) security, taking care to ensure that its agents, representative or sub-contractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft; and
- (f) site maintenance.

The utility charges imposed by TerasMil will be RM 600 per Operator but can increase at any time if there is increase in tariff set by TNB/SESB/SESCO.

8.6 Access for Maintenance

TerasMil will allow reasonable access to the Access Seeker's personnel for the purposes of maintaining the Access Seeker's Equipment provide that the Access Seeker first notifies TerasMil of the names of its personnel who will require access to carry out such maintenance, and TerasMil's has approved that those Access Seeker's personnel may access those facilities or location via TerasMil valid work permit.

Chapter 9 - Term, Termination and Suspension

9.1 Term

The Operators shall unless otherwise required by the Access Seeker enter into an Access Agreement for a term of no less than seven (7) years from the execution date of the said Access Agreement.

9.2 Term of Supply

Unless otherwise agreed, and subject to TerasMil not being able to provide access as a result of Force Majeure, the Access Seeker shall only access to the Services under an Access Agreement for a minimum period as follows as per section 9.1:

Services	Minimum term
Infrastructure Sharing	7 Years

9.3 Termination

TerasMil may terminate an Access Agreement or part thereof if any of the circumstances referred to in Section 9.3(a), 9.3(b) or 9.5(c) below apply and TerasMil has notified the Access Seeker of its intention to terminate the Access Agreement:-

- (a) the Access Seeker has materially breached the Access Agreement and TerasMil has notified the Access Seeker that it will terminate the said agreement in no less than 30 days if the Access Seeker does not remedy its breach by the end of that period; or
- (b) the Access Seeker is subject to a winding up order; or
- (c) a Force Majeure has continued for a period of more than 90 days.

TerasMil shall forward to the Commission a copy of the notice of termination at the same time as providing the notice of termination to the Access Seeker. Prior the issuance of the notice of termination, TerasMil must notify the Commission in writing of the action the TerasMil proposed to take and the reason why it considers such action is appropriate, in accordance with subsection 5.14.6 of the MSA. The Commission may invite any affected Access Seeker to make submission to the Commission regarding the proposed termination, suspension or material variation. TerasMil:

- (a) shall only give effect to the proposed termination, suspension or material variation with the Commission's written consent and subject to any time delay or conditions which the Commission may specify (if any).
The Commission will endeavour to respond to TerasMil's notice within ten (10) Business Days or such other period that the Commission considers is reasonable;
- (b) must not give effect to the proposed termination, suspension or material variation unless TerasMil has received written consent from the Commission to such termination, suspension or material variation; and
- (c) shall take all steps practicable to minimize disruptions and inconvenience to the Customers of the Access Seekers, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the suspension or termination of the Access Agreement, or access to Facilities provided under it.

9.4 Change In Law

Where the continued operation of the Access Agreement or access to any Facilities provided by TerasMil is or will be unlawful (as a result of a legislative change), the Access Seeker and TerasMil shall meet within 5 Business Days of becoming aware of the relevant change in law to review whether access to the relevant Facilities may be provided by TerasMil on different terms and conditions (which are acceptable to the Access Seeker). If the Operators cannot agree to the provision of access on different terms and conditions, TerasMil may terminate the provision of access to the relevant Facilities.

9.5 Suspension

TerasMil may only suspend access to any Facilities in the following circumstances:

- (a) the Access Seeker is in breach of a material obligation and fails to remedy such breach within 30 days (or 7 days for breach of payment obligations) of receiving written notice from TerasMil to remedy such breach;
- (b) the Access Seeker's Facilities materially adversely affect the normal operation of TerasMil's Network or are a material threat to any person's safety;
- (c) the Access Seeker's Facilities or the supply of Facilities pose an imminent threat to life or property of TerasMil, its employees or contractors;
- (d) the Access Seeker's Facilities cause material physical or technical harm to any Facilities of TerasMil or any other person;
- (e) where the Access Seeker has failed to pay Invoices in accordance with Section 7 of this RAO;
- (f) where Force Majeure applies; or
- (g) the Access Seeker breaches any laws, regulations, rules or standards which has a material adverse effect on TerasMil or the provision by TerasMil of Facilities under the Access Agreement.

For the purposes of this Section 9.5, TerasMil must provide the Access Seeker 5 Business Days' notice in writing, including written reasons, prior to suspending access to any Facilities.

TerasMil shall forward to the Commission a copy of the notice of suspension at the same time as providing the notice of suspension to the Access Seeker. Prior the issuance of the notice of suspension, TerasMil should notify the Commission in writing of the action the TerasMil proposed to take and the reason why it considers such action is appropriate, in accordance with subsection 5.14.6 of the MSA. The Commission may invite any affected Access Seeker to make submission to the Commission regarding the proposed termination, suspension or material variation. TerasMil:

- (d) shall only give effect to the proposed termination, suspension or material variation with the Commission's written consent and subject to any time delay or conditions which the Commission may specify (if any).
The Commission will endeavour to respond to TerasMil's notice within ten (10) Business Days or such other period that the Commission considers is reasonable;
- (e) must not give effect to the proposed termination, suspension or material variation unless TerasMil has received written consent from the Commission to such termination, suspension or material variation; and
- (f) shall take all steps practicable to minimize disruptions and inconvenience to the Customers of the Access Seekers, including providing the Access Seeker with a reasonable period to make alternative arrangements prior to the suspension or termination of the Access Agreement, or access to Facilities provided under it.

9.6 Post-termination fees

TerasMil shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any Facilities provided under it except:

- (a) Charges invoiced in arrears and not yet paid; or
- (b) Charges arising during an applicable minimum contractual period (as described in Section 9.2 above) provided that:
 - i. Such charges must be reduced to reflect any cost savings to TerasMil from not having to supply the Facilities to the extent that they have been terminated or suspended; and
 - ii. TerasMil must use reasonable endeavours to mitigate its costs of termination or suspension and maximize cost saving under subsection 9.6 (b) (i) above.

9.7 Upfront charges refund

On termination of an Access Agreement or access to any Facilities provided under it, TerasMil shall refund to the Access Seeker all amounts paid in advance to the extent that the amount (or part of the amount calculated on a pro-rata basis) relate to the period after the date of effect of such termination.

9.8 Deposits and guarantees

Notwithstanding the obligation in Section 9.6, TerasMil shall:

- (a) within 60 days of termination of the Access Agreement refund to the Access Seeker any deposit paid (without interest) provided all other amounts payable by the Access Seeker to TerasMil have been paid; and
- (b) immediately upon termination of the Access Agreement unconditionally waive any rights under any guarantees provided by the Access Seeker except in respect of amounts payable by the Access Seeker to TerasMil as at the date of termination.

9.9 Intellectual Property Rights

The Operators agree not to use any patent, trade mark, trade name, house mark, service mark, designs, copyright, database rights, know-how and any other type of intellectual property rights belonging to the Other Operator or any of its affiliates without the prior written consent of the Other Operator for purposes including but not limited to any advertising, publicity releases or sales presentations.

9.10 Interconnect Steering Group ("ISG")

9.10.1 Establishment of the ISG

The Operators will establish a body to be known as the "Interconnect Steering Group" or "ISG" which will be responsible for coordinating the activities of the Operators, the operation of the Access Agreement and any matter specifically referred to the ISG under this RAO. The ISG may establish such working groups as it thinks fit to report to it on particular issues.

9.10.2 Representation

TerasMil and the Access Seeker will be equally represented on the ISG and such representatives shall fully represent and shall be authorized to bind the Parties with regard to decisions made by the ISG.

9.10.3 Timing

The ISG shall be established within 14 days from the Commencement Date and thereafter shall meet within 14 days from the date of written request by either Party.

9.11 Force Majeure

9.11.1 If a Party ("Affected Party") is prevented from performing any of its material obligations under this Agreement (but shall not include any of the Customer's payment obligations) by reason of Force Majeure, it must immediately notify the other Party ("Other Party") in writing of the circumstances constituting the event of Force Majeure and must keep the Other Party regularly informed of the progress in resolving the event of Force Majeure and use all reasonable steps to minimize the adverse effects of the event of Force Majeure on the performance of its obligations under this Agreement

9.11.2 If the delay in performance or non-performance of the Affected Party's obligations due to the event of Force Majeure is continuous for a period of 3 month from the date of the Affected Party's written notification under Section 9.11.1, then either Party shall have the right to terminate this Agreement with immediate effect and neither Party shall have any claim against the other in respect of such termination save for antecedent breaches.

9.12 Review

An Access Agreement shall be reviewed upon the occurrence of the following events:

- (a) If the Minister issues a direction or determination relating to its subject matter;
- (b) If the Commission issues a direction or determination relating to its subject matter;
- (c) If the Act or the MSA is amended in relation to its subject matter;
- (d) By Agreement of both parties;
- (e) If a condition of the Operator's license is amended or deleted or a new condition is imposed in relation to its subject matter.

9.13 Costs and expenses

Each Operator shall bear its own costs and expenses in relation to the preparation, negotiation and execution of an Access Agreement.

9.14 Governing Law

This RAO shall be governed by and interpreted in accordance with the laws of Malaysia.

9.15 Assignment

Neither party shall be entitled to assign, transfer or novate any of its rights, obligations or liabilities without the prior written consent of the other party.

Chapter 10 – Charges and Charging Principles

10.1 General

These Sections in this chapter sets out the type of Charges and charging principles for the Facilities provided by TerasMil to the Access Seeker.

10.2 Type of Charges

10.2.1 In consideration of the Access Provider's obligations in the provision of the Facilities in the Access Agreement Access Seeker shall pay to Access Provider the following Charges:

Type of Services	Type Of Charges	Details	Billing Period
Network Facilities Leasing	Recurring Charges	Rental	Monthly

10.2.2 The recurring Charges including rental Charges shall commence to be payable from the date Service is provided, and shall be paid according to the Billing Period elected by the Access Seeker in the Service Order Form and payments shall be made in advance on or before the payment periods.

10.2.3 In relation to rental Charges, Access Seeker shall also be liable to pay any government taxes (including sales tax) relevant to the Service provided it is legally required to be paid by the Access Seeker. Where applicable such taxes shall be added to the invoice and shall be paid to TerasMil at the same time as the relevant invoice is settled in accordance with chapter 7 of TerasMil's RAO.

10.2.4 In relation to the One –Time Charges for each Service, Access Seeker shall pay the Charges no later than the Ready For service Date or Handover Date, whichever is relevant.

10.2.5 All amounts payable by Access Seeker pursuant hereto shall be paid in full free and clear of all bank or transfer charges imposed by the Access Seeker bank(s) to such account(s) as TerasMil may by notice to Access Seeker designate without reduction for any deduction or withholding for or on account of any tax, duty or other charge of whatever nature imposed by any taxing authority. If Access Seeker is required by law to make any deduction or withholding from any payment hereunder, Access Seeker shall pay such additional amount to TerasMil so that after such deduction or withholding the net amount received by TerasMil will be not less than the amount TerasMil would have received had such deduction or withholding not been required. Access Seeker shall make the required deduction or withholding, shall pay the amount so deducted or withheld to the relevant governmental authority and shall promptly provide TerasMil with evidence of such payment.

10.2.6 Any type of Charges chargeable to the Access Seeker shall be determined and made known to the Access Seeker before the commencement of the Service and shall not be changed for the duration of the Service period unless mutually agreed between the Operators or unless provided otherwise in the Access Agreement.

10.3 Charging Principle on Rental

10.3.1 The rental charge for network facilities leasing service are varying depending on location, facility type and number of customer.

10.3.2 In relation to network facilities leasing service the rate of charge for rental are based on the following factors:

- a) Cost to build the facility that includes but not limit to civil cost, manpower cost, site access fee and local authority fee.
- b) Number of existing customer leasing the facility
- c) Leasing period

10.4 Charging Principle For Service Outside TerasMil's Existing Network Topology

Any request for Service located outside of TerasMil's existing Network Topology and subsequently provided to the Access Seeker shall be subject to other charges including third party charges, if any.

10.5 TerasMil's charges for Services

In consideration of the TerasMil's obligations in the provision of the Facilities the Access Seeker shall pay to TerasMil the following Charges.

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TABLE A: RENTAL CHARGES

Type of Facility	Number of Customer	Monthly Charge Range (RM)
In-building Cellular	1	RM75.00 – RM 100.00 per antenna
	2	RM 50.00 – RM 74.00 per antenna
	3 or more	RM 25.00 – RM49.00 per antenna
	1	RM 14,001.00 – RM 20,000.00 per antenna
Tower	2	RM 7,001.00 – RM 14,000.00 per antenna
	3 or more	RM 4,00.00 – RM 7,000.00 per antenna

Subject always to the availability of space in the Associated Tower Site and the loading of the Tower, an Access Seeker may upon agreement by the Access Provider be allowed to install three (3) RF antennas and one (1) microwave antenna/dish with a maximum diameter of 0.6 meters or 1.2 meters (depending on the Tower) per Associated Tower Site and may be provided land space for a cabin not more than 3.6 meters x 2.7 meters in diameter. In any case, the Equipment to be allowed per Tower and Associated Tower Site shall be upon agreement of the parties

ANNEXURES

Annexure 1 – Letter of Offer (Service Order Form)

Ref No:

Date:

.....
.....
.....
.....

Attn:

OFFER TO PARTICIPATE BUILD AND LEASE PROJECT FOR [Site Name]_____

We, the Licensor(s) are pleased to offer the License of part of the above mentioned property subject to the following terms and conditions for your acceptance:

1. Licensee : _____
2. Main Licensor/Landlord : Teras Millennium SDN BHD
3. The Demised Premises : _____
4. Monthly Rent : RM..... rental is fixed for the first 7 years with a 20% discount from the 8th year onwards. Power payment is charged separately.
5. Utility Payment : A flat rate of _____ Ringgit Malaysia (RM.....) is payable to Teras Millennium on top of the Monthly Rent for Power Supply for the equipment. Teras will reserve the right to increase the costs to recover upon the renewal of tenancy in the event electricity costs rise up.
6. Equipment : CME Structures and Power Supply
7. License Period : For an Initial Period of seven (7) years with an option to renew for a further period of eight (8) years ("Renewal Term")
8. The Renewal Term : Upon the Renewal Term, the Monthly Rent shall be adjusted with a reduction of 20% of the existing Monthly Rent that is fixed for 7 years.
9. Rental Commencement Date : Upon site handover
10. Security & Utility Deposit : To deposit in the sum of three (3) months Monthly Rent as a security and utility deposit and one (1) month's advance Monthly Rent upon the installation of the equipment and airing of mobile coverage with respect to that Site as security for

the due observance and performance by Maxis of the stipulations, terms and conditions of the Letter of Offer.

11. Monthly Payment : The monthly payment to licensor shall commence upon the date of handing over of the respective sites to the licensee and shall be paid on a monthly basis.
12. Mutual Termination Notice : Either party shall have the right to terminate the License by giving six (6) months prior written notice to the other party or fees in lieu of the notice period without assigning any reason thereto. Thereafter, the Licensor shall refund the Security Deposit or any monies paid in advance for the Fees or any additional deposit to the Licensee. For the avoidance of doubts, both parties shall not be entitled to terminate the License during the Initial Period of ten (10) years.
13. Purpose of the License : The Licensee is to install, maintain and operate the equipment and apparatus (hereinafter referred to as "Equipment") for transmitting and/or receiving telecommunications services and/or other related services. For the avoidance of doubt, there shall be no increase in Fees or any additional charges that will be imposed on the Licensee, in the event that the Equipment including without limitation is varied, revised, upgraded or downgraded, changed and/or replaced by the Licensee during the License.
14. Responsibilities of the Licensor : The Licensor is to perform the needful in order for the installation of the In-Building Cellular Infrastructure which will be leased out to the Licensee for them to transmit or receive their services. The needful includes site acquisition, negotiation with and approval of the building management, site survey, site design, commercial proposition, operation and maintenance of the In-Building Cellular infrastructure installed.
15. Stamp Duty : All stamping costs shall be borne by the Licensee and the parties shall bear their own legal costs relating to the preparation and the execution of the License Agreement (if any). If parties decide that there shall be no License Agreement, Licensee shall then stamp his Letter of Offer.
16. Indemnity : The Licensee shall indemnify and keep the Licensor Indemnified against all actions, proceedings, claims, costs, charges, expenses and demands arising directly from the Licensee's installation of the Equipment. The Licensee will not be liable for any indirect, special, economic or consequential loss or damage, without limitation, loss of revenue, profits, goodwill, reputation or otherwise arising from the License.
17. Approval from Relevant Authorities : The Licensee shall apply, pay for, obtain and keep in force all licenses and approvals required for the Purposes of

installing and operating the Equipment at the Demised Premises.

18. Submission of Documents : The Licensor shall provide a copy of NRIC, the latest copy of Quit Rent & Assessment, copy of Land Title; Building Plans (If a property belongs to a company, Form 24 & 49 and Director's Resolution is required to be submitted). The Licensor is to sign the drawing plans prepared by the Licensee for the purpose of submission to the Local Authorities.
19. Access : The Licensee shall have 24 hours access to and within the Demised Premises subject to compliance with the Licensor Access Management Procedures.
20. Termination due to Restriction: Prohibitions and Obstructions In the event if there is any restriction, prohibition and/or obstruction to the Licensee's installation of the Equipment and access road to the Demised Premises, the Licensee reserves the right to terminate, without indemnity of any nature, the License by giving thirty (30) days written notice to the Licensor whereupon the Licensor shall immediately refund the Security Deposit and any monies paid in advance as the Fees or any other deposit paid to the Licensor.
21. Payment of the Monthly Rent for the Above License shall be made to : Account Name: Teras Millennium Sdn Bhd
Name of Bank: Malayan Banking Berhad
Account No.: 5112 8900 9402

Please note that the rental proceeds for this project and the rights relating to them have been assigned to HONG LEONG ISLAMIC BANK BHD as part of our security and financing arrangement.

22. Structures : In Building Cellular System
23. Expected Handover Date of : Within 90 days of signing of the agreement the Structure.
-

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

Yours faithfully,
Teras Millennium Sdn Bhd

Witness by,

.....
Name:
Designation:

.....
Name:
Designation:

201

Teras Millennium's RAO

We, _____ hereby confirm acceptance of the above terms and conditions for the License of the above mentioned Demised Premises.

Signed on this _____ day of _____ 2014

FOR AND ON BEHALF OF [client name]

.....
Name:
Designation:

Annexure 2 – Existing Infrastructure Sharing List

In-Building Cellular System

Sarawak

No	Site Name
1.	Plaza Merdeka, Kuching
2.	CityONE Megamall, Kuching
3.	SIMC Sarawak, Kuching
4.	The Summer Shopping Mall, Kota Samarahan

Selangor

No	Site Name
1.	Jaya One, Petaling Jaya

Cyberjaya & Kuala Lumpur

No	Site Name
1.	D'Pulze Cyberjaya
2.	St Regis Hotel, Kuala Lumpur

Sabah

No	Site Name
1.	Imago Mall, Kota Kinabau
2.	Oceanus Waterfront, Kota Kinabalu

Tower / Pole

1. Lot 815, Hutan Simpan Bukit Mertajam, Seberang Perai Tengah, Bukit Mertajam, Pulau Pinang.
2. ASIAN AND PACIFIC DEVELOPMENT CENTRE (APDC), L2224, Persiaran Duta, Wilayah Persekutuan, 50770 Kuala Lumpur
3. Universiti Malaysia Sabah (UMS), Kampus Kota Kinabalu & Labuan
4. Universiti Malaysia Perlis (UniMAP), Kampus Wang Ulu & Pauh.
5. Ambangan Tower, Sungai Petani, Kedah
6. Masjid Semeling, Sungai Petani, Kedah,
7. UiTM Sungai Petani, Kedah

Latest list of TerasMil Infrastructure Sharing location can be access via website;

<http://www.terasmil.com.my>

Annexure 3 – Non-Disclosure Agreement

THIS AGREEMENT is made on

BETWEEN

Teras Millennium Sdn. Bhd. (Company No: 814926-H), a company incorporated under the laws of Malaysia and having its principal place of business at Lot 6800-6801, 1st Floor, Wisma Instacom Lorong 37, Jalan Stampin Baru, Kuching, Sarawak (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 network facilities provider under the Communications and Multimedia Act 1998. Pursuant thereto, the Access Provider may offer network facilities in the state of Johor.

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.

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 authorization 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 above written.

SIGNED by}
}
for and on behalf of }
the Access Provider }
in the presence of:- }

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

ANNEXURE 4: DISPUTE RESOLUTIONS PROCEDURES

1. Definitions

- 1.1 In the Dispute Resolutions Procedures set out in this Annexure 4:
- (a) **"Billing Dispute"** means the dispute of an Invoice issued by one party to the other party, which is made in good faith;
 - (b) **"Billing Dispute Notice"** means the written notification made by one party to other party in relation to a Billing Dispute in accordance with subsection 6.4 of this Annexure;
 - (c) **"Billing Dispute Notification Period"** means the period after the date of receipt of an Invoice during which a Billing Dispute may be raised in relation to that Invoice, as specified in subsection 6.2 of this Annexure;
 - (d) **"Billing Representatives"** means a representatives of the party appointed in accordance with the billing procedures set out in subsection 6.15 of this Annexure;
 - (e) **"Billing System"** means a system to issue Invoices relating to charges payable by each party under an Access Agreement;
 - (f) **"Dispute"** has the meaning given to it in subsection 2.1 of this Annexure;
 - (g) **"Technical Expert"** has the meaning given to it in subsection 5.2 of this Annexure.

2. Introduction

- 2.1 Subject to subsection 2.2 (b) of this Annexure, TerasMil and an Access Seeker shall adopt and comply with the Dispute Resolution Procedures in relation to any dispute which may arise between the TerasMil and an Access Provider in relation to or in connection with the supply of Facilities to which this Standard applies ("Dispute").
- 2.2 The following dispute resolutions mechanisms are discussed in this section:
- (a) Inter-party working group; and
 - (b) Subject to specific resolutions of disputes, being:
 - i. Technical disputes (which must follow the procedure set out in section 5 of this Annexure if they cannot be resolved through the application of the general dispute resolutions provisions in sections 3 and 4 of this Annexure);
 - ii. Billing Disputes (as defined in subsection 1.1 of this Annexure), which must follow the procedures set out in section 6 of this Annexure, or
 - iii. Any other types of disputes, which, if cannot be resolved through the application of general dispute resolutions provisions in section 3 and 4 of this Annexure, must be referred to the Commission for resolution.
- 2.3 A Dispute shall first be attempted to be resolved by negotiation between the Parties. If the parties to the Dispute cannot or otherwise fail to reach an agreement, the Parties shall always be entitled to seek resolution of the Dispute by the Commission in accordance with section 151 of the Act, and the Commission will decide the dispute if it is satisfied that:
- (a) the Parties will not reach agreement, or will not reach agreement in a reasonable time;
 - (b) the notification of the Dispute is not trivial, frivolous or vexatious; and
 - (c) the resolutions of the Dispute would promote the objects in the Act.

The TerasMil shall not prevent the Access Seeker from notifying a Dispute to the Commission in accordance with the Act.

2.4 For clarification, unless stated otherwise, all reference to the sections, subsections and paragraphs in this Annexure are reference to sections, subsections and paragraphs of this Annexure.

3. General

- 3.1 An operator may not commence court proceedings relating to a Dispute which is the subject of these Dispute Resolution Procedures until it has complied with each applicable process in these Dispute Resolutions Procedures, other than application for urgent interlocutory relief. Nothing in this subsection shall be constructed as ousting the jurisdiction of any court.
- 3.2 Both parties to a Dispute shall ensure that their representatives acting in relation to a Dispute are of sufficient seniority and have authority to settle a Dispute on their behalf. At the commencement of the Dispute Resolution Procedures, each party must notify the other party of the scope of the authority of each of their representatives. If, in the course of the Dispute Resolution Procedures, it is identified that the matters to be resolved are outside the initial term of reference for which authority was given to the representatives, a party may require that those matters be referred to more senior officers of that party who have authority to settle those matters.
- 3.3 During a Dispute and any dispute resolutions process invoked in accordance with this Annexure, the TerasMil and Access Seeker must continue to fulfil their obligations under the Access Agreement between them.
- 3.4 Subject to subsection 3.5 of this Annexure, the Parties to a Dispute shall exchange information of a type described in this Standard during the course of, and to facilitate, resolution of the Dispute.
- 3.5 Confidential information of a party which is disclosed, and any other oral or written submissions made by a party or party's representatives during the course of any dispute resolution process will be subject to the confidentiality restrictions in relevant confidentiality provisions contained in the Confidentiality Agreement prepared in accordance with subsection 5.3.8 of the MSA.
- 3.6 A party must not use information obtained under subsection 3.4 of this Annexure or described in subsection 3.5 above or any purpose other than to resolve the Dispute.
- 3.7 Subject to Chapter 7 of Part V of the Act, an arbitrator of a Dispute (including Technical Expert or the Commission, in accordance with this Annexure) may decide not to determine the Dispute if the arbitrator considers that the Dispute is trivial, frivolous or vexatious, or if there is insufficient evidence before the arbitrator to determine the Dispute.
- 3.8 The costs of the arbitration are to be shared equally between the parties, unless the arbitrator of the Dispute has decided not to determine the Dispute in accordance with subsection 3.7 above. If an arbitrator decides not to determine the Dispute, the party that initiated the Dispute must pay the other party's cost.

4. Inter –party working group

- 4.1 In the first instance the Access Seeker and TerasMil should attempt to resolve the Dispute between themselves.
- 4.2 The TerasMil and the Access Seeker shall establish a working group, or working groups, to fulfil the requirements of subsection 4.1 above. The working group shall comprise of representatives of the Parties, and be headed by a person who holds a position that is at least equivalent to the head of the TerasMil Wholesale Group.
- 4.3 The TerasMil shall provide for:
 - (a) Subject areas to be dealt with by each working group;
 - (b) Equal representation by the Access Seeker and the TerasMil;
 - (c) Chairmanship and administrative functions of the working group to be shared equally; and
 - (d) Formal notification procedures of the working group
- 4.4 The TerasMil and the Access Seeker shall use reasonable endeavours to attempt to settle the Dispute in the working group for a period of no longer than thirty (30) Business Days unless otherwise agreed by the Parties, subject always to a party's right to seek urgent interlocutory relief.

5. Use of a Technical Expert

- 5.1 Once a Dispute is referred to a Technical Expert, it may not be referred back to a working group.
- 5.2 The person to whom a technical dispute may be referred under this section 5;
 - (a) will be an expert appointed by agreement of the Parties or, if the Parties cannot agree, by the Commission;
 - (b) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the communications industry;
 - (c) need not be a Malaysia citizen or resident, and
 - (d) will not be an officer, director, or employee of a communications company or otherwise have a potential for conflict of interest,

("Technical Expert")

- 5.3 if the Parties fail to appoint a Technical Expert within ten (10) Business Days of the need to refer to a Dispute to a Technical Expert, a Technical Expert will be appointed by the Commission.
- 5.4 When relying on the services of a Technical Expert, the following dispute resolutions procedures will apply to the Technical Expert;
 - (a) the Parties will present written submission to the Technical Expert and each other within fifteen (15) Business Days of the appointment of the Technical Expert; and
 - (b) each party may respond to other party's submission in writing within fifteen (15) Business Days from the date of the other party's submission
- 5.5 At the request of either party and subject to the parties agreeing, or the Technical Expert deciding within five (5) Business Days of the last written submission, the arbitration by the Technical Expert should be by documents only, a Technical Expert hearing will be held within fifteen (15) Business Days of the last written submission.
- 5.6 Should a Technical Expert hearing be held, each party will have the opportunity of making an oral submission. This process will be conducted in private.

- 5.7 The procedure of hearing technical disputes will be determined by the Technical Expert (including number and duration of oral submissions by the Parties, but in any case, the Technical Expert's hearing will last no longer than three (3) Business Days.
- 5.8 The Technical Expert will not have the power to appoint any other experts.
- 5.9 The Technical Expert will deliver his or her award within fifteen (15) Business Days of the hearing or of the written submission where the arbitration is by documents only.
- 5.10 Every Dispute referred to a Technical Expert will be considered separately so that time limits for each Dispute are complied with.
- 5.11 The Technical Expert's decision will be binding on the Parties (in the absence of manifest error of fact or law).

6. Billing Dispute resolution

- 6.1 As outlined in the billing provisions of the MSA at subsection 5.11, a party ("**Invoicing Party**") shall provide to the other party ("**Invoiced Party**") an Invoice in writing, or in such electronic form as may be agreed from time to time, for amounts due in respect of the supply of Facilities during such Billing Cycle.
- 6.2 An invoicing Party shall allow an Invoiced Party to dispute an Invoice prepared by the Invoicing Party if:
 - (a) In case of any other Facilities , the Invoiced Party notifies the Invoicing Party within thirty Business Days after the date of receipt of such Invoice,

provided that, in any case specified above, the Invoiced Party's Billing Dispute Notice specifies the information in accordance with subsection 6.4 of this Annexure
- 6.3 A Billing Dispute may only arise where the Invoiced Party has reasonable grounds to believe that an error has arisen from one of the following circumstances:
 - (a) There is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoices Party's Billing System;
 - (b) There is, or has been, a fraud perpetrated by the Invoicing Party; or
 - (c) The Invoicing Party has made some other error in respect of the calculation of the charges which are the subject of the Billing Dispute.
- 6.4 A Billing Dispute Notice given under this section 6 must specify:
 - (a) The reasons for which the Invoice is disputed;
 - (b) The amount in dispute;
 - (c) Details required to identify the relevant Invoice and charges in dispute including:
 - i. the account number;
 - ii. the Invoice reference number;
 - iii. the Invoice date;
 - iv. the Invoice amount; and
 - v. billing verification information; and
 - (d) Evidence in form of a report.

- 6.5 The Invoiced Party may withhold payment of amount disputed in good faith in accordance with subsection 5.11.11 of the MSA. If the Billing Dispute is resolved against the Invoiced Party, that Invoiced Party shall be required to pay interest at the rate specified in subsection 5.11.15 of the MSA on the amount payable.
- 6.6 Where the Invoiced Party has paid an amount and subsequently notifies the Invoicing Party of a Billing Dispute in relation to that amount within the Billing Dispute Notification Period, the Invoicing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved, if the Invoicing Party is obliged to refund an amount of the Invoiced Party, interest will be payable on the refunded amount at the rate specified in subsection 5.11.15 of the MSA. In such circumstances, interest will be payable from the date of Invoiced Party paid the disputed amount to the date of the refund by the Invoicing Party
- 6.7 The parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under this section 6.
- 6.8 If the parties are unable to resolve any Billing Dispute within one (1) month (or such other period as the parties may agree) from the date on which the Billing Dispute Notice is received, either party may seek the consent of the other party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other party is, however, under no obligation to agree such extension.
- 6.9 To the extent that a Billing Dispute notified under this section involves a Billing Dispute with an international correspondent of the Invoicing Party, the Dispute Resolutions Procedures shall be suspended for a reasonable period of time pending resolution of the Billing Dispute with that international correspondent. As a general rule, the period of suspension will not exceed four (4) months. However, the parties shall recognize that some Billing Disputes with international correspondents may take longer to resolve, in which case the Invoicing Party must promptly inform the Invoiced Party of the likely period required for the resolution.
- 6.10 Once the negotiation under subsection 6.8 of this Annexure (including any extension agreed) and any suspension period under subsection 6.9 of this Annexure have expired, the Billing Dispute may be referred by the Invoiced Party to be procedure described in subsection 6.11 of this Annexure (**"Billing Dispute Escalation Procedure"**).
- 6.11 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this subsection 6.11 by notifying the Invoicing Party's Billing Representatives. Both parties shall then appoint a designated representatives who has authority to settle the Billing Dispute, and who is at a higher level of management than the persons with direct responsibility for administration of this Standard. The designated representatives shall meet as of the as they reasonably deem necessary to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable request for relevant information made by one party to the other party shall be honoured.

- 6.12 Once any Billing Dispute has been resolved to the other parties' satisfaction, any sum to be paid or repaid shall be paid by the relevant party within ten (10) Business Days from the date of resolution of the Billing Dispute.
- 6.13 Although it shall be the good faith intention of the parties to use the above Billing Dispute Resolution Procedures to the fullest extent to try to solve Billing Dispute, nothing in this Annexure shall prevent either party from pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.
- 6.14 Enquiries relating to billing, collecting and settlement arrangements or in relation to Network and operational issues may be directed to the Billing Representatives nominated by each party.
- 6.15 Either party may at any time nominate another Billing Representatives, provided that ten (10) Business Days prior notification of such appointment is given.
- 6.16 If the Billing Dispute Escalation Procedure has been exhausted, either party may refer the Billing Dispute to the Commission for resolution under Chapter 7 of Part V of the Act.

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