

## Part 2

Where the Access seeker fails to so procure additional capacity and the demand exceeds the capacity on the Access Seeker's Network, HeiTech must notify the Access seeker in writing and the Access seeker and HeiTech must meet ( no later than 5 Business days after receipt of the notice from HeiTech) attempt to identify alternative sources of capacity. If the matter cannot be resolved within 10 Business Days of the date of that meeting, HeiTech may bar or block calls to the Access seeker's network extent necessary to minimize congestion within the HeiTech's Network.

### **6.2.21 Other uses**

HeiTech shall permit capacity installed in connection with the provision of network service to be used, to the extent technically feasible, in connection with another network service, at the Access seeker's option.

### **6.2.22 Delivery dates**

HeiTech shall deliver the ordered access to Facilities or Services by the date specified in the notice of acceptance (as provided under subsection 6.2.13)

### **6.2.23 Early delivery dates**

If HeiTech 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 or Services or both at earlier delivery date.

### **6.2.24 Delayed delivery dates**

HeiTech 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 HeiTech becomes aware of the possible delay;
- (b) permit the Access Seeker notified under paragraph 6.2.24 (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 6.2.33.

### **6.2.25 Cancellation and variation of Orders**

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

### **6.2.26 Cancellation penalty**

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

#### **6.2.27 Testing and provisioning**

HeiTech shall:

- (a) co-operate with the Access Seeker in relation to the testing and provisioning of ordered Facilities or Services or both; and
- (b) treat an Access Seeker's testing and provisioning on an equivalent basis to that which HeiTech treats itself.

#### **6.2.28 Resource charge**

HeiTech may charge the Access Seeker a one-off fee, to be determined by reference to the costs incurred by HeiTech for allocation of manpower and other resources to enable the Access seeker to test and provide a new Facilities and Services for purposes of interconnection.

#### **6.2.29 Queuing policy**

HeiTech 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 HeiTech treats its own Orders for similar Services; and
- (c) shall seek to maximize the efficiency of its Ordering and provisioning process.

#### **6.2.30 Acceptance on queue**

HeiTech shall promptly notify an Access Seeker at the time of providing an acknowledgement of receipt of the Order under subsection 6.2.5 of their acceptance on HeiTech queue.

#### **6.2.31 Constrained capacity**

If HeiTech reasonably believes that the capacity in any Facilities or Services required by :

- (a) the Access seeker pursuant to the relevant Forecast;
- (b) other Access Seeker, pursuant to their relevant Forecasts; and
- (c) HeiTech for its own purposes

Would in aggregate, exceed the capacity which HeiTech will be in a position to be able to provide, HeiTech 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 HeiTech Capacity Allocation Policy.

### **6.2.32 Capacity Allocation Policy**

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

- (a) shall be disclosed, free of charge, to any other Operator on request;
- (b) shall set out principles in accordance with which HeiTech 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 HeiTech, its related bodies corporate and other Operator or Operators.
- (c) Shall:
  - (i) be fair and reasonable;
  - (i) be consistent, so far as practicable with HeiTech general duty of non-discrimination in accordance with subsection 149(2) of the Act;
  - (ii) Treat the requirement of the access Seeker and third parties on an equivalent basis to HeiTech own requirement; and
  - (iii) Allocate the available capacity in the relevant Facilities or Services or both in proportion to each Operator's Forecast requirement.

### **6.2.33 Late delivery**

If HeiTech fails to meet any timeframe in subsection 6.2.14 with respect to the delivery of access to Facilities or services pursuant to an Order made in accordance with subsection 6.2 except where such failure has been caused solely by the Access seeker's delay, HeiTech shall without limitation to any other rights the Access seeker may have under subsection 6.2 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 or services over a period equal to the period of HeiTech delay.

## **CHAPTER 7 - BILLING AND SETTLEMENT OBLIGATIONS**

### **7.1 BILLING**

#### **7.1.1 General Principle**

Unless otherwise agreed HeiTech 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 and/or Services 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 HeiTech. If HeiTech made such error, it shall make the necessary adjustment to correct that error in the next Invoice.

#### **7.1.4 Currency**

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

#### **7.1.5 Summarized Invoice and billing information**

HeiTech shall provide the Access Seeker on written request with an aggregated summary of billings for access to the Facilities and Services provided to the Access Seeker, in monthly tranches.

### **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, HeiTech 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 HeiTech if agreed by HeiTech

#### **7.2.3 Billing Disputes**

In the event the Access Seeker wishes to dispute an Invoice, the Access Seeker shall notify HeiTech in writing within fourteen (14) days after the date of receipt of such Invoice, otherwise, the Access Seeker shall be deemed to have accepted the Invoice and the Charges there under shall be payable in accordance with Section 7.2.1 above.

The dispute notification shall provide the following information: -

- (a) the reasons for which the Access Seeker disputes the Invoice;
- (b) the amount in dispute;
- (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; and
- (d) evidence in the form of the invoiced Party's outgoing report, indicating the relevant traffic data which is in dispute.

#### **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 HeiTech where there is no genuine dispute.

#### **7.2.5 Billing Dispute Resolution**

HeiTech and Access Seeker must use their reasonable endeavors to promptly resolve any dispute notified under Section 7.2.3 herein and where relevant the parties must comply with the Dispute and Resolution Procedures in Annexure A of the MSA Determination which are applicable to the billing disputes.

### **7.2.6 Late Payment Charges**

Upon resolution of the dispute, if the Access Seeker is found to be liable for the payment disputed, the Access Seeker shall pay the amount due together with the late payment charges calculated from the expiry date of thirty (30) days of the invoice date, in accordance to Section 7.2.1 above.

## **CHAPTER 8 - TECHNICAL AND NETWORK OPERATIONAL OBLIGATIONS**

### **8.1 NETWORK CONDITIONING OBLIGATIONS**

#### **8.1.1 Non-discrimination**

HeiTech shall perform Network Conditioning on an equivalent basis to that which HeiTech performs for itself for the same or similar Services.

#### **8.1.2 Commencement**

HeiTech will commence Network Conditioning immediately following:

- (a) confirmation of an Order from the Access Seeker; and
- (b) agreement by HeiTech and the Access Seeker on:
  - (i) geographical coverage;
  - (ii) origins from or destinations to which access is required, if relevant;
  - (iii) network routes (including which party is responsible for provisioning Interconnect Link); and
  - (iv) handover arrangements and relevant Points of Interface.

### **8.2 POINT OF INTERFACE PROCEDURES**

#### **8.2.1 Interconnection**

Each party shall interconnect its Network with the Network of the other party in accordance with the terms of the Access Agreement.

#### **8.2.2 Point of Interface locations**

Subject to subsection 8.2.3, HeiTech shall publish on its website and keep updated a list of the general locations:

- (a) at which physical co-location is available;
- (b) in respect of which virtual co-location is available; and
- (c) in respect of which in-span interconnection is available on and from the date of publication for the following 12 months.

#### **8.2.3 Virtual and in-span interconnection**

Each Operator shall offer virtual co-location or in-span interconnection at all technically feasible points.

#### **8.2.4 Lack of space.**

If there are space constraints at a particular location, HeiTech shall take reasonable steps to optimise its usage of the space, including through the upgrading of Facilities. If HeiTech has used its best efforts to accommodate all Access Seekers and it is not physically possible for any further Access Seekers to be accommodated, HeiTech shall be excused from providing physical interconnection at such location.

#### **8.2.5 Access Seeker requested Point of Interface**

HeiTech shall reasonably consider a request by an Access Seeker to interconnect at a point other than that specified under Section 8.2.2. HeiTech shall promptly accept or reject a request by an Access Seeker under this Section, and provide the Access Seeker with reasons if it rejects the Access Seeker's request.

#### **8.2.6 Network responsibility**

Each Operator is responsible for the provisioning and maintenance of Facilities (including those Facilities which form part of the Interconnect Links and the transmission equipment) on its side of the Point of Interface.

#### **8.2.7 Third Party Point of Interface**

HeiTech shall permit an Access Seeker to nominate a Point of Interface of a third party for the purposes of interconnection and access between HeiTech and the Access Seeker provided that the Access Seeker remains responsible for the costs of such interconnection and access and for the third party's act and omissions at the Point of Interface.

#### **8.2.8 Point of Interface factors**

When determining which locations are to be listed under Section 8.2.2, or when determining a request under Section 8.2.5, each Access Provider shall have regard to the following:

- (a) HeiTech shall offer interconnection and co-location at any other technically feasible point;
- (b) HeiTech may offer more than one form of interconnection in relation to a particular location (e.g. physical interconnection and virtual interconnection);
- (c) HeiTech shall not reserve space other than for its own current needs, its future needs (calculated by use of a reasonably projected rate of growth over 2 years) and the needs of other Access Seekers who are currently occupying or have Ordered additional space from HeiTech; and
- (d) any possible re-arrangement of its Equipment configuration to eliminate space inefficiencies.

### **8.3 DECOMMISSIONING OBLIGATIONS**

#### **8.3.1 Decommissioning notice**

Except where HeiTech is required to vacate the site where a Point of Interface is located as a result of a third party landlord's notice (under an arm's length tenancy agreement), HeiTech shall provide no less than:

- (a) 1 year's notice in writing to all relevant Access Seekers prior to the decommissioning of a Point of Interface; or
- (b) 6 month's notice in writing to all relevant Access Seekers prior to the decommissioning of any other Facilities or Services.

Where HeiTech is required to vacate the site where a Point of Interface is located as a result of a third party landlord's notice (under an arm's length tenancy agreement), HeiTech shall provide all relevant Access Seekers with as much notice as possible in relation to the matters in Sections 8.3.1(a) and 8.3.1(b) above.

### **8.3.2 Co-operation**

HeiTech shall co-operate and negotiate with all relevant Access Seekers in relation to the timetable for decommissioning of the relevant Point of Interface, Facilities or Services.

### **8.3.3 Alternative arrangements**

HeiTech shall notify an Access Seeker of its intention:

- (a) to decommission a Point of Interface and shall provide to the Access Seeker functionally equivalent interconnection at another Point of Interface on terms and conditions and at a recurring charge which are not disadvantageous to the Access Seeker, relative to the terms and conditions and recurring charge applying in respect of the Point of Interface that is proposed to be decommissioned, for a period not less than 3 years from the date of decommissioning; or
- (b) to decommission another Facilities or Services and shall provide to the Access Seeker access to an alternative Facilities or Services on terms and conditions and at a recurring charge which are not disadvantageous to the Access Seeker, relative to the terms and conditions and recurring charge applying in respect of the Facilities or Services that is proposed to be decommissioned, for a period not less than 3 years from the date of decommissioning.

### **8.3.4 Decommissioned Facilities/Service compensation**

Except where decommissioning is caused by Force Majeure, HeiTech shall pay the Access Seeker's reasonable costs, necessarily incurred in:

- (a) moving the Access Seeker's Equipment from the decommissioned Facilities to the alternative Facilities offered in accordance with Section 8.3.3; or
- (b) re-arranging Equipment to connect to the alternative network services offered in accordance with Section 8.3.3.

## **8.4 NETWORK CHANGE OBLIGATIONS**

### **8.4.1 Scope**

This Section 8.4 applies where an Operator proposes to implement a Network Change of a type referred to in subsection which necessitates a change in the hardware or software (including interface software) of the other Party's Network in Order to ensure the continued proper operation and compatibility of the Parties' respective Networks, services and procedures.

#### **8.4.2 Types of changes**

The following kinds of proposed Network Changes maybe within the scope of Section 8.4.1:

- (a) any change by the Party proposing to make the change (Notifying Party) to any technical specification of the interconnection interface between their respective Networks (Interface Change);
- (b) any change by the Notifying Party to any technical specification or characteristic of the Facilities or Services to which the other Party (Recipient Party) has access which will or might affect:
  - (i) the Recipient Party's Network;
  - (ii) the Recipient Party's use of the Facilities or Services provided by the Notifying Party (Service Change);
- (c) any change by the Notifying Party to any technical specification or characteristic of that Notifying Party's Network which will or might affect the Recipient Party's Network (Network Change);
- (d) any change by the Notifying Party to any of the operational support systems used in inter-carrier processes, including without limitation:
  - (i) the billing system;
  - (ii) the Ordering and provisioning systems; or
  - (iii) the Customer Churn process (OSS Change); and
- (e) any enhancement by the Notifying Party of the features, functions or capabilities of the Facilities or Services to which the Recipient Party has access, which enhancement the Notifying Party proposes to make available either:
  - (i) to itself; or
  - (ii) to any other Operator (Functionality Change),  
(collectively referred to as Relevant Changes).

#### **8.4.3 Notification of change**

If a Notifying Party proposes to make a Relevant Change to its Network, services or procedures, the Notifying Party shall provide the Recipient Party with notice in writing (Change Notice) of:

- (a) the nature, effect, technical details and potential impact on the Recipient Party's Network of the proposed Relevant Change, described at a sufficient level of detail to enable the other Party to identify and begin planning such changes as may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant Change; and
- (b) a date, which shall be no later than 10 Business Days from the date of the notice under this clause, on which representatives of the Notifying Party will be

available to discuss with representatives of the Recipient Party the proposed Relevant Change and the changes that may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant Change, as soon as reasonably practicable and, in any event, with not less than the relevant notice period set out in the table below:

<b>Relevant Change</b>	<b>Notice Period</b>
Interface Change	3 months
Network Change	3 months
Service Change	3 months
OSS Change	3 months
Functionality Change	3 months

#### **8.4.4 Post-notification procedures**

The Notifying Party shall:

- (a) meet with representatives of the Recipient Party on the date set out in the Change Notice or as soon as practicable thereafter (but no later than the notice period set out in the table in Section 8.4.3), for the purpose of discussing the Relevant Change and any changes that may be necessary or desirable for the Recipient Party to make to its Network, services or procedures in consequence of the Relevant Changes;
- (b) provide any additional information reasonably requested by the recipient Party no later than 10 Business Days after the Recipient Party's request for such additional information; and
- (c) take reasonable account of concerns raised and proposals made by the Recipient Party to minimise any adverse impact of the Relevant Changes on the Recipient Party and revise the Change Notice accordingly.

#### **8.4.5 Testing**

A Notifying Party shall, bearing its own costs in doing so:

- (a) co-operate with a Recipient Party in relation to the development of procedures for testing the impact of the Relevant Changes on the proper operation and compatibility of the Parties' respective Networks;
- (b) jointly carry out testing with the Recipient Party no less than 20 Business Days before the Notifying Party proposes to effect the Relevant Changes. The testing shall be conducted in accordance with the testing procedures developed under Section 8.4.5(a).

#### **8.4.6 Testing failure**

Subject to the Recipient Party having co-operated with the Notifying Party in relation to the conduct of tests under Section 8.4.5, if such tests:

- (a) are not accepted by 10 Business Days prior to the date when the Notifying Party proposes to effect the Relevant Changes; or
- (b) do not provide reasonable assurance of the continued proper operation and compatibility of the Parties' respective Networks, services and procedures the Notifying Party shall postpone implementation of the Relevant Changes. The period of postponement will be the period necessary to allow the Parties to repeat the steps in Sections 8.4.3 to 8.4.5 above.

## **8.5 NETWORK CO-LOCATION SERVICES**

### **8.5.1 Scope**

This subsection 8.5 applies where co-location or access is to be provided to or at the Facilities under this HeiTech's ARD.

### **8.5.2 Inspection**

HeiTech shall allow nominated employees or contractors of a potential Access Seeker to physically inspect the Facilities of HeiTech 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.

### **8.5.3 Physical access**

- (a) HeiTech shall allow an Access Seeker, its employees and contractors to physically access its Facilities and have physical control over the Access Seeker's Equipment located at such Facilities, twenty-four (24) hours a day, seven (7) days a week. subject to the terms and conditions of any tenancy agreement provided always, the HeiTech is given five (5) Business Days prior written notice.
- (b) Where access to the HeiTech network facilities/premises is required for emergency maintenance and repairs, the Access Seeker shall provide HeiTech with a verbal notice on the day access is required and a facsimile confirmation within twenty four (24) hours.
- (c) Notwithstanding Condition 8.5.3(a) and 8.5.3(b) above, access to HeiTech network facilities/premises shall at all times be subject to the terms and conditions of the respective tenancy agreement which shall be made known to the Access Seeker by HeiTech at the time of fulfillment of an Order.

### **8.5.4 Escorts**

If HeiTech determines that it is necessary to have an escort present when employees or contractors wish to enter onto HeiTech's property, HeiTech 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 HeiTech's property) outside ordinary business hours; and
- (c) bear the costs of such escort service.

#### **8.5.5 Absence of escort**

For the purposes of subsection 8.5.4, if an escort does not arrive at HeiTech property within 30 minutes of the scheduled commencement of the visit by the Access Seeker, the Access Seeker's staff may proceed to enter HeiTech's property without an escort subject always to security requirements of HeiTech's and the terms and conditions of any tenancy agreement. If the tenancy agreement requires that the Access Seeker be escorted by HeiTech in order to gain physical access to the HeiTech network facility, HeiTech shall escort the Access Seeker.

#### **8.5.6 Site register**

The Access Seeker must establish and maintain a register of all persons who visit HeiTech's property, which must be made available for inspection by HeiTech, upon request. If the Access Seeker does not maintain or properly maintain a site register, HeiTech may prohibit any representatives of the Access Seeker from entering the premises.

#### **8.5.7 Reservation of space**

HeiTech shall not reserve space other than for its own current needs, its future needs, (calculated by use of a reasonably projected rate of growth over 2 years) and the needs of other Access Seekers who are currently occupying or have ordered space from HeiTech.

#### **8.5.8 Allocation of space**

HeiTech shall allocate space at each location where co-location is to be permitted in a non-discriminatory way and will treat other Access Seekers as it treats itself.

#### **8.5.9 Re-configuration**

If there are space constraints at a particular location, HeiTech shall take reasonable steps to optimise its usage of the space, including through the upgrading of Facilities or endeavouring to transfer the Equipment to an alternative location.

#### **8.5.10 Advice to the Commission**

HeiTech shall notify the Commission every twelve (12) months of its space requirements over a three (3) year period from the date of notification, together with a reconciliation of its reservation over the previous twelve (12) months with its actual space needs.

#### **8.5.11 Preparatory work by the Access Seeker**

If preparatory work is necessary for the purposes of allowing the Access Seeker to obtain access to or co-locate at or on HeiTech's Facilities, HeiTech shall permit the Access Seeker's employees or contractors to perform such preparatory work if the Access Seeker satisfies HeiTech (acting reasonably and in accordance with the guidelines referred to below) that such employees or contractors have the necessary qualifications.

HeiTech shall publish and make available a policy about the necessary qualifications of employees and contractors who will be permitted to perform preparatory work under this subsection 8.5.11, such policy to be non-discriminatory in its application to HeiTech and the Access Seeker personnel who perform similar functions.

If the Operators agree that HeiTech shall carry out the Preparatory Work on behalf of the Access Seeker, then HeiTech shall undertake the Preparatory Work and the Access Seeker shall furnish all necessary and sufficient cooperation to HeiTech to complete the Preparatory Work. The Access Seeker agrees to pay HeiTech for undertaking the Preparatory Work.

#### **8.5.12 Preparatory work by HeiTech**

If HeiTech agrees to perform preparatory work and does so on the basis of an estimated charge (e.g. based on a time and materials basis):

- (a) HeiTech shall not exceed the estimate without providing the Access Seeker with prior written notice that:
  - i. the estimate will likely be exceeded; and
  - ii. a further estimate of the charges for the work necessary to complete the preparatory work;
- (b) HeiTech shall permit the Access Seeker to withdraw the request for preparatory work without penalty if the revised estimate exceeds the original estimate by more than 10% of the original estimate within fourteen (14) days of the notice given by HeiTech under Condition 8.5.12(a). If the Access Seeker fails to withdraw the request within the said time period, the Access Seeker is deemed to have accepted the revised estimate charges.
- (c) Notwithstanding Condition 8.5.12, where the actual cost incurred by HeiTech exceeds an estimate or revised estimate for a specific scope of works provided by HeiTech due to information or facts which are inaccurate or erroneous, or which were not disclosed or provided by the Access Seeker, or due to a change in the scope of work by the Access Seeker, the Access Seeker shall be obliged to pay HeiTech for the actual cost incurred.

#### **8.5.13 Delays**

If HeiTech agrees to perform preparatory work and HeiTech is or is likely to be unable to perform such work within the agreed timeframe, HeiTech shall:

- (a) notify the relevant Access Seeker of the delay to a delivery date, together with the reasons for the delay, as soon as practicable after HeiTech becomes aware of the possible delay;
- (b) permit the Access Seeker notified under paragraph 8.5.13(a) to cancel the preparatory work without penalty if the delay is longer than fourteen (14) days; and
- (c) compensate the Access Seeker for the costs it has incurred as a result of delay, subject to the Access Seeker using reasonable endeavours to mitigate those costs.

#### **8.5.14 Utilities and ancillary services**

If HeiTech has permitted access or physical co-location at a particular location or Facilities HeiTech must, where the relevant utilities and ancillary services are within HeiTech's control,

ensure that all necessary utilities and ancillary services are provided to enable the Access Seeker to benefit from such access or co-location, including but not limited to:

- (a) access to roads;
- (b) access to land;
- (c) power, including the provision of back up power;
- (d) environmental services (including but not limited to heat, light, ventilation and air-conditioning, fire protection);
- (e) security, taking care to ensure that its agents, representatives or subcontractors do not damage any Equipment, and keeping the location secure and protected from vandalism or theft; and
- (f) site maintenance.

#### **8.5.15 Equipment allowance**

Subject to any restrictions under any tenancy agreement and/or terms and condition agreed by the Operators, HeiTech shall permit an Access Seeker to locate Equipment on or at HeiTech's Facilities which is necessary for the purposes of obtaining the benefit of access to the Facilities and Services provided, including but not limited to multi-functional Equipment which may also be used for purposes other than those specified in this subsection 8.5.15.

#### **8.5.16 Marking**

All Operators shall mark or label their Equipment in such a manner that they can be easily identified as the Equipment of the Operator.

#### **8.5.17 Maintenance**

HeiTech shall permit, and do all things reasonably necessary to allow an Access Seeker to maintain its Equipment at or on the Facilities to which access has been granted. This may include, for example, the provision of physical access. For the purposes of this subsection 8.5.17 and subject to any restrictions under any tenancy agreement, an Access Seeker shall be permitted to maintain its Equipment at or on the network facilities if HeiTech allows external contractors or other third parties to maintain similar Equipment on the Facilities.

#### **8.5.18 Extensions**

HeiTech shall reasonably permit the Access Seeker, at the Access Seeker's cost, to extend Facilities of HeiTech as may reasonably be required to meet the Access Seeker's requirements in the circumstances and to the extent technically feasible. Prior to any extension works being carried out, the Access Seeker shall submit a written proposal to HeiTech detailing the works to be carried out and the impact of such works on HeiTech's network.

#### **8.5.19 Cost**

The utility costs in respect of the Facilities as contemplated in this subsection 8.5.19 shall be apportioned (in accordance with fair and equitable principles) against the utility and ancillary costs charged to other Access Seekers at the relevant location.

#### **8.5.20 Conditional supply**

HeiTech shall not require an Access Seeker to acquire other Facilities and Services from HeiTech as a condition of providing access to Facilities or Services under HeiTech's ARD. For example,

HeiTech shall not make access to network facilities conditional on the acquisition of network services (such as transmission services) or any other service (e.g. a maintenance service).

## **8.6 Operations And Maintenance Obligations**

### **8.6.1 Operations & maintenance responsibility**

Each Operator shall be responsible for the operations and maintenance of its own Facilities and Services.

### **8.6.2 Fault reporting systems**

Each Operator shall establish and maintain a fault reporting service that allows Customers who are directly connected to the Network of that Operator and to whom that Operator supplies services (inter alia), to report faults relating to any Network or support system.

### **8.6.3 Customer notification**

Each Operator will advise all of its directly connected Customers to report all faults to the fault reporting service described in Section 8.6.2.

### **8.6.4 Non-discriminatory fault reporting and identification**

An Operator shall perform fault reporting and identification on a nondiscriminatory basis.

### **8.6.5 Cross-referrals**

If a Customer reports a fault to an Operator:

- (a) when the Customer is directly connected to another Operator; or
- (b) which clearly relates to a Network or support system of another Operator that Operator shall promptly inform the other Operator of the reported default, or refer that Customer to the other Operator's fault reporting service.

### **8.6.6 Network fault responsibility**

The Operator in whose Network the fault occurs is responsible for rectifying it and restoring services.

### **8.6.7 Transmission service faults**

The Operator that supplies transmission services is responsible for maintaining and repairing that transmission service, notwithstanding that the transmission service may be used in another Operator's Network.

### **8.6.8 Major inter-working faults**

If a major fault occurs which affects a communication that crosses or is to cross both Operators' Networks, initial responsibility for identifying the fault rests with the Operator who first becomes aware of the fault.

#### **8.6.9 Faults affecting other Networks or Equipment**

If an Operator identifies a fault occurring in its Network or with its network facilities which may have an adverse effect on the other Operator's Network, network facilities, network services or Equipment, the first-mentioned Operator shall promptly inform the other Operator of:

- (a) the existence of the fault;
- (b) the actions being taken by the first mentioned Operator to restore service and to further identify and rectify the fault; and
- (c) the outcome of those actions.

#### **8.6.10 Bear own costs**

Each Operator is responsible for establishing and maintaining a fault reporting service at its own cost irrespective of the location of the fault.

#### **8.6.11 Fault priority**

Each Operator shall give priority to faults which have:

- (a) the highest service loss impact in terms of the number of Customers affected; or
- (b) those which have been reported on previous occasions and have reoccurred.

#### **8.6.12 Fault rectification**

Each Operator shall rectify faults on a non-discriminatory basis. In undertaking service restoration, the Operators shall have regard to matters including the following:-

- (a) service restoration shall take priority over Equipment repair;
- (b) available standby capacity shall be automatically brought it and/or undertaking network management actions shall be undertaken to restore service;
- (c) performing testing to determine the nature and location of the fault in cooperation with the distant end as necessary;
- (d) immediate rectification of an identified fault, if possible;
- (e) where the source of a fault cannot be quickly identified and rectified, the Operator who has identified the fault shall notify the other Operator of the problem and keep that other Operator informed of progress in relation to the identification and rectification of the fault;
- (f) where the source of a fault has been identified by an Operator but immediate rectification is not feasible, the Operator responsible for rectification shall immediately notify the other Operator of the estimated fault rectification time (based on the Operator rectifying the fault using its best endeavours in view of the nature of the fault and its effect on services);
- (g) where an Operator has rectified a fault on a temporary basis, that Operator shall inform the other Operator of this fact and provide the

- (h) timeline required for permanent rectification; and faults unresolved within stipulated target times shall be discussed at regular operation and maintenance meetings;

For the avoidance of doubt, any spares which are required to rectify a fault shall be provided by the Operator which owns the relevant Equipment.

### **8.6.13 Target times**

Each Operator shall respond to and rectify faults of a type listed in the following table in accordance with the relevant response and rectification time frames:

Explanatory Notes to Section 8.5.13:

- (a) All faults reported shall be ascribed with a "Priority Level" as set out in the above table for response and restoration purposes and the Operators involved shall cooperate with one another to achieve the given time targets based on the severity of the fault reported.
- (b) Some of the common "Fault Types" are listed as examples in the above table.
- (c) "Response Time" refers to the time for the Operator whose Network or service is faulty to respond to and appropriately attend to the fault.

Response Times are to be measured from either the time the fault is notified by the other Operator or from the time when the Operator first becomes aware of the Fault, whichever is the earlier.

- (d) "Restoration Time" refers to the time taken by the Operator to restore a faulty service and is determined by the period between the reporting of a fault to the respective IFRC/NMC of the Operator and the restoration of the faulty service.

#### **8.6.14 Planned maintenance**

If an Operator (Maintenance Operator) intends to undertake planned maintenance which may affect an Access Seeker's Network, the Maintenance Operator shall:

- (a) provide at least 10 Business Days notice of the planned maintenance;
- (b) use its reasonable endeavours to minimise any disruption to the carriage of communications which cross or are to cross both Operators' Networks, and which are caused by the maintenance or rerouting; and
- (c) where practicable and agreed by the Operators, provide alternative outing or carriage at no additional cost to the Access Seeker.
- (d) in the event that both Operators are involved in the planned maintenance activities, interconnect testing must be carried out by both Operators on completion of the planned maintenance activity to ensure no interworking problems arise. If only one Operator is involved in the planned maintenance activities, then only that Operator is required to perform the interconnect testing and such testing shall be determined on a case by case basis; and
- (e) if the planned maintenance is not restored to full service within the expected duration, the additional maintenance time shall be regarded as an unplanned outage occasioned by a planned outage and the procedure for dealing with unplanned outages applies. The Operator responsible for the outage shall inform the other Operator of the cause of the unplanned outage.

#### **8.6.15 Planned maintenance windows.**

An Operator shall undertake planned maintenance within windows of time agreed with other Operators, and where the windows of time for such planned maintenance have the least effect on end-users.

#### **8.6.16 Emergency maintenance**

If an Operator (Maintenance Operator) needs to undertake emergency maintenance which may affect the other Operator's Network, the Maintenance Operator shall, if it is able to:

- (a) provide at least 24 hours notice of the planned maintenance;
- (b) use its reasonable endeavours to minimise any disruption to the carriage of communications which cross or are to cross both Operator's Networks, and which are caused by the maintenance or rerouting; and
- (c) where practicable and agreed by the Operators, provide alternative routing or carriage at no additional cost to the other Operator.

#### **8.6.17 Hours of fault reporting and rectification**

HeiTech shall maintain a 24 hours a day, 7 days a week fault reporting and rectification service.

#### **8.6.18 Complaints Handling**

The Operators shall report all interconnection outages that relate to Facilities and/or Services to the respective Fault Reporting Centre.

#### **8.6.19 Routine Testing**

The Operators shall conduct interconnection service tests at agreed half yearly intervals to ensure the maintenance of interconnection services at agreed services levels in accordance with standards as agreed by both parties or such other standards as may be determined by the Commission.

### **8.7 TECHNICAL OBLIGATIONS**

#### **8.7.1 Compliance**

Operators shall adhere to the relevant guidelines issued by the Commission from time to time to the extent that they have not been expressly revoked or are not inconsistent with any technical obligations set out in this ARD.

#### **8.7.2 Prevention of technical harm**

Each Operator is responsible for the safe operation of its Network and must take all reasonable and necessary steps to ensure that its Network, its Network operations and implementation of the Agreement:

- (a) do not endanger the safety or health of the officers, employees, contractors, agents or Customers of the other Operator and
- (b) do not damage, interfere with or cause any deterioration in the operation or impedes or interrupts the continuous use of the other Operator's Network

#### **8.7.3 Technical Standards**

An Operator shall comply with any applicable technical Standard adopted by the Commission under Chapter 3 of Part VII of the Act.

#### **8.7.4 No Interference**

An Operator shall not do anything, or knowingly permit any third person to do anything, in relation to a network facilities, network services or Equipment which:

- (a) causes interference; or
- (b) materially obstructs, interrupts or impedes the continuous use or operation of, the network facilities, network services or Equipment of another Operator.

#### **8.7.5 Notice of interference and rectification**

If an Operator (Notifying Operator) notifies another Operator that the other Operator's network facilities, network services or Equipment is causing interference to the Notifying Operator's network facilities, network services or Equipment:

- (a) the other Operator shall rectify the situation so that no interference is caused within 24 hours of receiving notice from the Notifying Operator; or
- (b) if the other Operator is not able to locate the source of the interference within 24 hours under Section 8.7.5(a), the other Operator shall promptly notify the Notifying Operator, and both Operators shall meet within 24 hours of such notice and jointly examine each other's network facilities, network services or Equipment to locate the source of the interference.

## **CHAPTER 9 – TERM, TERMINATION, SUSPENSION AND OTHER PROVISIONS**

### **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 3 years from the execution date of the said Access Agreement.

### **9.2 Term of Supply**

Unless otherwise agreed, and subject to HeiTech 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:

### **9.3 Termination**

Subject to Section 9.6, HeiTech 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 HeiTech has notified the Access Seeker of its intention to terminate the Access Agreement:-

- (a) the Access Seeker has materially breached the Access Agreement and HeiTech 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.

HeiTech 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.

### **9.4 Change In Law**

Where the continued operation of the Access Agreement or access to any Facilities and/or Services provided by HeiTech is or will be unlawful (as a result of a legislative change), the Access Seeker and HeiTech shall meet within 5 Business Days of becoming aware of the relevant change in law to review whether access to the relevant Facilities and/or Services may be provided by HeiTech 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, HeiTech may terminate the provision of access to the relevant Facilities and/or Services.

## **9.5 Suspension**

Subject to Section 9.6, HeiTech may only suspend access to any Facilities and/or Services 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 HeiTech to remedy such breach;
- (b) the Access Seeker's Facilities materially adversely affect the normal operation of HeiTech's Network or are a material threat to any person's safety;
- (c) the Access Seeker's Facilities or the supply of Facilities and/or Services pose an imminent threat to life or property of HeiTech, its employees or contractors;
- (d) the Access Seeker's Facilities cause material physical or technical harm to any Facilities of HeiTech or any other person;
- (e) where the Access Seeker has failed to pay Invoices in accordance with Section 7 of this ARD;
- (f) where Force Majeure applies; or
- (g) the Access Seeker breaches any laws, regulations, rules or standards which has a material adverse effect on HeiTech or the provision by HeiTech of Facilities and/or Services under the Access Agreement.

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

## **9.7 Post-termination fees**

HeiTech shall not recover any additional charges, costs or expenses on termination or suspension of an Access Agreement or access to any Facilities and/or Services 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 9.1 above).

## **9.9 Upfront charges refund**

On termination of an Access Agreement or access to any Facilities and/or Services provided under it, HeiTech 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.

### **9.10 Deposits and guarantees**

Notwithstanding the obligation in Section 9.7, HeiTech 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 HeiTech 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 HeiTech as at the date of termination.

### **9.11 Intellectual Property Rights**

The Operators agree not to use any patent, trade mark, trade name, housemark, 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.

### **9.12 Interconnect Steering Group (“ISG”)**

#### **9.12.1 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 ARD. The ISG may establish such working groups as it thinks fit to report to it on particular issues.

#### **9.12.2 Representation**

HeiTech 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.

#### **9.12.3 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.

### **9.13 Force Majeure**

**9.13.1** 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.

**9.13.2** 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 1 month from the date of the Affected Party's written notification under Section 9.13.1, 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.

#### **9.14 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.

#### **9.15 Costs and expenses**

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

#### **9.16 Governing Law**

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

#### **9.17 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.

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**END OF CONTENT**