

Part 1

CHAPTER 1 – Introduction, Background and Scope

1.1 Preliminary

- 1.1.1 This Access Reference Document is made by HeiTech Padu Berhad (Company No: 310628-D), (“**HeiTech**”) a company incorporated under the laws of Malaysia and having its registered address of business at Level 15, Menara HeiTech Village, Persiaran Kewajipan USJ 1, UEP Subang Jaya, 47600 Selangor Darul Ehsan on xxxxxxxxxxxx pursuant to section 5.3.2 of the Commission Determination on the Mandatory Standard on Access Determination No. 2 of 2005, as amended by the Variation to Commission Determination on Mandatory Standard on Access (Determination No.2 of 2009) (“MSADetermination”).
- 1.1.2 This Access Reference Document is hereby referred to as HeiTech’s ARD.
- 1.1.3 The service description are set out in Chapter 3.
- 1.1.4 The technical and operational matters for all of the Facilities and/or Services are set out in Chapter 8.

1.2 MSA Determination Obligations

- 1.2.1 The MSA Determination deals with access to network facilities and network services included in the Access List Determination and sets out obligations that apply to Operators concerning various access issues which include:
- (a) Disclosure obligation (Section 5.3 of the MSA Determination);
 - (b) Negotiation obligations (Section 5.4 of the MSA Determination); and
 - (c) Content obligation (Section 5.5 to 5.19 of the MSA Determination).

1.2.2 Disclosure Obligations

Pursuant to the Disclosure Obligations in Section 5.3 of the MSA Determination, HeiTech is required to:

- (a) prepare and maintain an Access Reference Document;
- (b) make the Access Reference Document available;
- (c) follow prescribed procedures after acceptance of the Access Reference Document; and
- (d) follow prescribed procedures for any amendment of the Access Reference Document.

1.2.3 Negotiation Obligations

The negotiation obligations in Section 5.4 of the MSA Determination sets out the requirements and principles of negotiation where among others both Operators are required to:

- (a) negotiate and co-operate in good faith and commercially reasonable

- manner;
- (b) protect from disclosure any confidential information provided by one Operator to another;
- (c) use only such intellectual property and information provided by one Operator to another for purpose of providing access to the requested network services or facilities.

1.2.4 Content Obligations

The content obligations in Section 5.5 of the MSA Determination sets out among others the following obligations of HeiTech:-

- (a) Forecasting, Ordering and Provisioning
- (b) Network Conditioning
- (c) Point of Interface Procedures
- (d) Decommissioning
- (e) Network Changes
- (f) Network Facilities Access and Co-location
- (g) Billing and Settlement
- (h) Operations and Maintenance
- (i) Technical
- (j) Term, suspension and termination

1.2.5 The role of Standard Access Obligations

1.2.5.1 Pursuant to sections 55 and 145 of the Act, the Commission may determine the list of network facilities and network services, which may be listed in the access list. Accordingly the Commission has issued the Access List Determination.

Pursuant to section 149 of the Act, HeiTech is required to comply with the standard access obligations in providing the network facilities and network services that are included in the Access List Determination.

1.2.5.2 The standard access obligations facilitate the provision of access to the network facilities and network services listed in the Access List Determination by Access Seekers so that HeiTech can provide network facilities, network services, and other facilities and/or services which facilitate the provision of network services or applications services, including content applications services.

1.2.5.3 Section 149 of the Act specifies the terms and conditions upon which HeiTech must comply with the standard access obligations. Section 149(2) provides that the access provided by HeiTech shall be:

- (a) of at least the same or more favourable technical standard and quality as the technical standard and quality on the HeiTech's network facilities or network services; and
- (b) on an equitable and non-discriminatory basis.

1.2.5.4 The paraphrasing of any statutory provisions in this HeiTech's ARD does not amount to any party agreeing to waive any of their rights under the paraphrased provisions and those statutory provisions continue to apply in full.

1.3 Scope of HeiTech's ARD

- 1.3.1 HeiTech is a licensed individual network facilities and network services provider under the Act. Pursuant to these licences, HeiTech may offer network facilities and network services within the territory of Malaysia.
- 1.3.2 Pursuant to Section 5.3.2 of MSA Determination, HeiTech is obliged to prepare and maintain an Access Reference Document in relation to network facilities or network services on the Access List Determination which HeiTech provides to itself or third parties.
- 1.3.3 HeiTech's ARD:
- (a) contains terms and conditions which are consistent with the rights and obligations set out in the MSA Determination; and
 - (b) does not include terms and conditions which are inconsistent with the rights and obligations set out in the MSA Determination.
- 1.3.4 Where relevant, the rights and obligations set out in the MSA Determination shall be applicable to HeiTech's ARD.
- 1.3.5 HeiTech's ARD are consistent with:
- (a) the standard access obligations stipulated under Section 4.1.1 of the MSA Determination and section 149 of the Act; and
 - (b) the principles of non-discrimination stipulated under Sections 4.1.5 and 4.1.6 of the MSA Determination.
- 1.3.6 For the purposes of clarification, the terms and conditions of HeiTech's ARD is applicable to the Facilities and/or Services and which is relevant to the provisioning of facilities and services within HeiTech's licenses only. If the Access Seeker requests network facilities and/or network services outside HeiTech's ARD, the terms and conditions for the provision of such network facilities and/or network services shall be negotiated and shall remain outside the scope of HeiTech's ARD.
- 1.3.7 In addition, the Operators are free to consider HeiTech's ARD when negotiating the terms and conditions for the supply of other network facilities or network services that are not listed in the Access List Determination.

1.4 Commencement and Duration of the Access Reference Document

- 1.4.1 HeiTech's ARD 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 any of the following:
- (a) the expiry of the ARD Term; or
 - (b) a Review; or
 - (c) the withdrawal of HeiTech's ARD in accordance with the terms of HeiTech's ARD.
- 1.4.2 HeiTech's ARD has no effect on contractual arrangements for the supply of Facilities and Services by HeiTech to an Access Seeker prior to the Commencement Date unless such contractual arrangement is subsequently renegotiated and agreed between the Operators.

1.5 Amendment to HeiTech's ARD

- 1.5.1 HeiTech shall, within ten (10) Business Days of making any amendment to HeiTech's ARD, provide a copy of the amendments, or an amended copy of HeiTech's ARD to:
- (a) the Access Seeker who is being provided with Facilities and/or Services; and
 - (b) the Access Seeker who has requested HeiTech's ARD within the period of ninety (90) days prior to the making of such amendments, unless the Access Seeker has already indicated that it does not wish to proceed with the Access Request.

1.6 Notice of Withdrawal, Replacement and Variation of HeiTech's ARD

- 1.6.1 If the Commission revokes, varies or replaces the Access List Determination relating to the Facilities or Services, HeiTech may, by giving written notice to all Access Seekers to whom it is supplying Facilities or Services under HeiTech's ARD, withdraw or replace HeiTech's ARD with effect from a date no earlier than the effective date of the Commission's revocation.
- 1.6.2 HeiTech shall comply with Sections 6.4.2 and 6.4.3 of the MSA Determination where it withdraws or varies HeiTech's ARD pursuant to Section 1.5.3.1.
- 1.6.3 In addition to Section 1.6.2 above, HeiTech may give the Access Seekers to whom it is supplying Facilities and Services under HeiTech's ARD a notice of a variation or replacement of HeiTech's ARD to effect such variations that are necessary or appropriate in the event of:
- (a) the occurrence of a Legislative Event that materially affects the rights or obligations of HeiTech under HeiTech's ARD; or
 - (b) the occurrence of a Regulatory Event that relates to HeiTech; or
 - (c) a review by the Commission of the MSA Determination pursuant to Section 6.5 of the MSA Determination.
- 1.6.4 Notwithstanding Sections 1.6.1, 1.6.2 and 1.6.3 above, HeiTech may subject to Section 1.6.2 above, replace HeiTech's ARD at any time.

1.7 Availability

- 1.7.1 HeiTech's ARD shall be made available to an Access Seeker:
- (a) on written request, at HeiTech's principal place of business at address stated in paragraph 1.8 below; and
 - (b) on a publicly assessable website at www.HeiTech.net.my.

1.8 Notices

Any notices or communications in respect of HeiTech's ARD should be made in writing to:

Attention : General Counsel and Company Secretary Department,
Corporate Services Division

Address : Level 15, Menara HeiTech Village,
Persiaran Kewajipan, USJ 1,
UEP Subang Jaya, 47500
Selangor Darul Ehsan

Telephone : 03-8026 8888
Facsimile : 03-80247997

CHAPTER 2 – Definitions and Interpretation

2.1 Definitions

The following words have these meanings in this HeiTech's ARD unless the contrary intention appears: -

“Act” means the Communications and Multimedia Act 1998.

“Access Agreement” means an agreement:

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

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

“Access List Determination” means the Commission Determination on Access List, Determination No.1 of 2005 and as amended by the Variation to Commission Determination on Access List (Determination No.1 of 2005), Determination No. 1 of 2009.

“Access Request” means a request made by the Access Seeker to HeiTech for access to Facilities or Services and containing the information in Section 5.1.1.

“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 or Services.

“Access Service” means a service for the carriage of agreed Communications along HeiTech's Facilities and Services between the POIs/POPs.

“Bank Guarantee” means a guarantee in a form acceptable to HeiTech, executed in favour of HeiTech by a licensed bank in Malaysia approved by HeiTech pursuant to Section 5.3 on behalf of the Access Seeker.

“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 access to Facilities and/or Services 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, Sunday or a public holiday.

“Charges” means the sums payable by the Access Seeker to HeiTech for accessing and/or being provided the provision Facilities and/or Services.

“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 and 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 Licence(s).

“Confidentiality Agreement” means a Confidentiality Agreement entered into between HeiTech and the Access Seeker in accordance with Section 5.3.7 of the MSA Determination which template is provided herein in Annexure I.

“Creditworthiness Information” means the information required by HeiTech to assess the creditworthiness of the Access Seeker which are more particularly described in Section 5.2 of HeiTech’s ARD 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.

“Effective Date” means the date on which the relevant portions of the Access Agreement requiring registration is duly registered with the Commission under Section 150 of the Act in its entirety (and such registration is notified by the Commission in writing to either of the Operators).

“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 HeiTech’s ARD.

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

“Fast Track Application Service” means a Facility or Service that is subjected to the fast track application process which is more particularly set out in Section 5.11.

“Invoice” means the invoice for amounts due in respect of the supply of requested Facilities or Services during a Billing Period

“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 HeiTech is required or obliged to comply;
- (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 HeiTech's ARD contravenes any provision of any law, except to the extent that the making of such determination, direction or finding constitutes a Regulatory Event.

"Licence" means an individual licence 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 and Services provided (based on the most recent amounts invoiced for those requested Facilities and Services) or new facilities and/or services to be provided by HeiTech to the Access Seeker for a ninety (90) day period.

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

"MylX" means the Malaysia Internet Exchange.

"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.

"Network Conditioning" means the conditioning, equipping and installation of facilities at HeiTech's Network to enable the provision of one or more Access Services.

"Operators" means HeiTech and the Access Seeker collectively.

"Other Operator" means either:

- (a) HeiTech; 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 HeiTech by the Commission relating to HeiTech's ARD; and/or
- (c) the giving of a lawful direction to HeiTech by the Minister relating to HeiTech's ARD.

"Review" means a review of the MSA Determination pursuant to Section 6.5 of the MSA Determination.

"RM" means Ringgit Malaysia which shall be the monetary currency used in HeiTech' ARD unless otherwise provided.

"Security Sum" means the security:

- (a) in the form of a Bank Guarantee, deposited with HeiTech in accordance with Section 5.* for the supply of Facilities or Services; and
- (b) 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 HeiTech’s ARD.

2.2 Interpretation

In HeiTech’s ARD except where the contrary intention appears;

- (a) the singular includes the plural and vice versa; and
- (b) a document includes all amendments or supplements to that document, or replacements or novations of it; and
- (c) a reference to 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
- (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
 - (i) a reference to a third party is a reference to a person who is not a party to HeiTech’s ARD; and
 - (j) in relation to an Access Service for the carriage of a communication it refers to the carriage of a communication between the POIs/POPs long HeiTech’s Network but does not include any Communication for which the Access Service is provided with the assistance a third party’s Facilities or Services; and
- (k) 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 HeiTech’s ARD; and
- (l) headings are included for convenience and do not affect the interpretation of HeiTech’s ARD.

CHAPTER 3 – LIST OF FACILITIES AND/OR SERVICES

Network Co-Location Services

3 Types Of Network Co –Location Services

3.1 The types of Co-Location Services provided by HeiTech are :-

- (a) Physical Co-Location, which refers to the provision of space at HeiTech's premises to enable the Access Seeker to install and maintain equipment necessary for the provision of the Access Seeker's services through the facilities and/or services of HeiTech. Physical Co-Location includes physical space, power, environmental services, (such as heat, light, ventilation and air-conditioning), security, site maintenance and access for the personnel of the Access Seeker; and
- (b) Virtual Co-Location, which refers to the provision of facilities or services at HeiTech's premises to enable the acquisition by the Access Seeker of Facilities and Services, where equipment is owned and maintained by HeiTech.

3.2 Pre-Requisites For Applying For Network Co-Location Services

3.2.1 General Pre-Requisites

HeiTech shall not be obliged to provide Network Co-Location at the designated sites ("Designated Sites") in accordance with the terms of HeiTech's ARD and the Access Agreement unless :-

- (a) HeiTech :
 - (i) is the legal owner of the Designated Sites; or
 - (ii) has exclusive rights of the use of the Designated Sites pursuant to a lease or tenancy agreement and HeiTech has been granted the requisite approval by the owner or landlord of the Designated Sites to permit Access Seeker to use space for physical co-location in accordance with the terms herein contained;
- (b) The Access Seeker has the appropriate license under the Act and its subsidiary legislation to operate the service for the purpose for which the equipment is to be installed and other approvals from relevant authority, where required.
- (c) there is sufficient space at the Designated Sites; and
- (d) that it is not technically infeasible to implement Network Co-Location at the Designated Sites.

CHAPTER 4 – PRINCIPLES OF ACCESS

4.1 Application of HeiTech's ARD

HeiTech's ARD sets out the terms and conditions upon which Access Seekers may access HeiTech's Facilities and/or Services. HeiTech's ARD applies only to the Facilities and/or Services.

4.2 Eligibility for Access of Services

4.2.1 HeiTech 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, determine on a case by case basis whether to provide to Access Seeker with access to the Facilities and/or Service (s)

4.2.2 Consistent with Government policy and Determinations by the Commission (and its predecessor), an Access Seeker may only request for access to any or all of the Facilities and/or Services where the Access Seeker has been granted:-

- (i) an individual network facilities provider license and/or;
- (ii) an individual network services provider license and/or;
- (iii) an individual content applications services provider license,;
and such individual licences 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 network facilities, network services and/or 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 and/or content applications services.

An Access Seeker may not request for the Facilities and/or Services where the requested Facilities and/or Services are to be used in connection with an activity or activities in which the Access Seeker is not licensed to provide.

4.2.4 Consistent with Government policy and Determinations by the Commissions (and its predecessor), where HeiTech provides the Access Seeker with access to the Facilities and/or Services pursuant to **Section 4.2.1**, the charges for the requested Facilities or Services shall be negotiated between the Operators subject to any mandatory standard on access pricing determined by the Commission.

4.3 Availability of Facilities and Services

4.3.1 Consistent with Government policy and the Access List Determination, HeiTech shall be required to provide Domestic Network Transmission Service until the Sunset Date only. After the Sunset Date, the automatic transition of Domestic Network Transmission service shall be in accordance with the provisions set out in **Section 3.2B**.

4.4 Standard Access Obligations

4.4.1 Access Terms and Conditions

Subject to Sections 4.2 and 4.3, HeiTech shall if requested to do so by the Access Seeker, supply a Facility and/or Service to the Access Seeker reasonable terms and conditions.

4.3.2 Principles of non-discrimination

In supplying a Facility and/or Service, HeiTech shall treat an Access Seeker on a non-discriminatory basis as required by the Standard Access Obligations relation to the supply of a Service(s).

The access provided by HeiTech 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

4.3.3 Customer Principles

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

4.4 Negotiation Principles

4.4.2 Good faith and Dispute Resolution

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 endeavours to resolve any disputes arising from or in connection with HeiTech's ARD.

If any dispute or difference of any kind shall arise between the parties in connection with or arising out of HeiTech's ARD, the Dispute Resolution Procedure in Annexure A of the MSA Determination shall be adhered to.

4.4.3 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 HeiTech's ARD in accordance with the Confidentiality Agreement signed between the parties.

CHAPTER 5 – ACCESS REQUEST PROCEDURES

5.1 Application for Access to Services

5.1.1 Where an Access Seeker makes a request to HeiTech to supply Facilities and/or Services, the Access Seeker shall serve an Access Request on HeiTech setting out the information listed in below:

- (a) the name and contact details of the Access Seeker,
- (b) the Facilities and/or Services in respect of which access is sought ;

- (c) whether the Access Seeker wishes to accept HeiTech's ARD or negotiate an Access Agreement;
- (d) the information (if any) set out in Section 5.3.6 of the MSA determination that the Access Seeker reasonably requires HeiTech 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 HeiTech as in Annexure 1;
- (f) forecast of the capacity the Access Seeker will reasonably require, in accordance with the forecasting procedures stated in Chapter 6;
- (h) relevant information relating to the Access Seeker and functionality of its Services, to the extent that Access Seeker is aware that such information may affect HeiTech Network;
- (i) contain confirmation that the Access Seeker is not currently being supplied with the requested Facility or Service;
- (i) specify the type of communications licensed held by the Access Seeker and a copy of the licence where a copy had not been previously provided;
- (i) creditworthiness information in accordance with HeiTech requirement as set out in subsection 5.2;
 - a. security in accordance with HeiTech security requirement as set out in subsection 5.3;
 - b. insurance information in accordance with HeiTech insurance requirement as set out in subsection 5.4;
 - c. relevant technical information relating to the interface standards of the Access Seeker; and
 - d. such other information as HeiTech may reasonably request.

5.1.2 The purpose of such Access Request is to provide HeiTech with sufficient information to assess the Access Seeker's request for the supply of Facilities or Services under HeiTech's ARD.

5.2 Creditworthiness Information

5.2.1 The Creditworthiness Information that is required to accompany an Access Request include but shall not be limited to:

- (a) a letter, signed by the executive director of the Access Seeker, stating that the Access Seeker is not insolvent and is not under any external administration or under similar form of administration under any laws applicable to it in any jurisdiction;
- (b) a copy of the Access Seeker's most recently published audited balance sheet and audited profit and loss statement; and
- (c) such other information as may be reasonably requested by HeiTech provided that such information are information which are publicly available.

CHAPTER 6 - FORECAST, ORDERING AND PROVISIONING OBLIGATIONS

6.1 Forecast Obligations

6.1.1 General

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

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

6.1.2 Confirmation of Forecast

If HeiTech, acting reasonably will incur significant costs to ensure that access can be provided in accordance with a Forecast, HeiTech 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 ARD and Section 6.2 will apply.

6.1.3 Alternative Procedure

Notwithstanding Section 6.1.1, HeiTech and an Access Seeker may agree to alternative Forecasting and Ordering procedure whereupon HeiTech and the Access Seeker will be bound by the terms of that alternative procedure and not this Section 6.1.

6.1.4 Non-binding

Subject to Section 6.1.2, HeiTech shall not require an Access Seeker:

- a) to provide Forecasts that are legally binding on the Access Seeker, subject to Section 6.1.14; or
- b) to provide information in its Forecast that identifies or would allow identification of Customers.

6.1.5 Forecast Request

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

- (a) the Facilities or Services or both 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 HeiTech own planning and provisioning cycles and the Forecasting requirements which apply to the Access Seeker' own business units in using the relevant Facilities or Services; and
 - ii) shall be no longer than one year, unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services.
- (c) The intervals or units of time to be used in making the Forecast, which shall be no longer than (3) months unless reasonably justified on grounds of the special Network management requirements of the relevant Facilities or Services;
- (d) The Network area or operational area to which Forecast shall relate which area shall correspond to that which HeiTech uses for its own Network planning;
- (e) the frequency with which a Forecast shall be updated or further Forecast made, which shall not be more frequently than every 3 months unless reasonably

justified on grounds of the special Network management requirements of the relevant Facilities or Services; and

- (f) Such other information that HeiTech reasonably requires in order to provide access to Facilities or Services requested by the Access Seeker.

6.1.6 Forecast Provision

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

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

6.1.7 Use of Forecast Information

Forecast Information provided by the Access Seeker shall be treated by HeiTech as The Confidential Information of the Access Seeker and shall only be used by HeiTech 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 HeiTech responsible for interconnection for the purposes of responding to and planning for the Forecast. HeiTech must maintain records that indicate which persons are provided with access to Forecasts information.

6.1.8 Distribution of Forecast Information

HeiTech may only distribute Forecast Information of an Access Seeker outside the people necessary for the purpose referred to in section 6.1.7 if:

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

6.1.9 Time for acceptance

HeiTech shall notify the Access Seeker: -

- (a) Within five (5) Business Days of receiving the Forecast if HeiTech 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.

6.1.10 Reasons for rejection

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

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

6.1.11 Time for Rejection

HeiTech 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 HeiTech rejects the Forecast in accordance with subsection 6.1.10 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 HeiTech and Access seeker if the offer is accepted by the Access Seeker (Rejection Notice).

6.1.12 Reconsideration by Access Seeker

HeiTech 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 HeiTech concerns.

6.1.13 Reconsideration by HeiTech

HeiTech shall reconsider any amended Forecast provided pursuant to subsection 6.1.9, subsection 6.1.10, subsection 6.1.11 and subsection 6.1.12 shall re-apply.

6.1.14 Recovery for over-Forecasting

HeiTech 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 HeiTech.

- (b) HeiTech reasonably seeks to mitigate its loss over a six month period (including through its own usage); and
- (c) HeiTech only recovers from the Access Seeker 75% of such costs and expenses which could not be mitigated under paragraph 6.1.14(b) above.

6.1.15 Meeting Forecast

Subject to subsection 6.1.9 to 6.1.11, HeiTech 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 6.1.2, it will be binding on the Access Seeker.

6.2 ORDERING AND PROVISIONING OBLIGATIONS

6.2.1 Contact Point

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

6.2.2 Order Content

Prior to access being provided, HeiTech may require an Access Seeker to provide it with an Order which outlines the Access Seeker's access requirements. HeiTech may request an Access Seeker to fill up a Service Order Form (Annexure 2). 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 points of delivery
- (d) Equipment of the Access Seeker to be used in connection with the Order; and
- (e) Such other information that HeiTech reasonably requires in order for it to plan for the provision of access to the Facilities and Services as requested by the Access Seeker.

6.2.3 Use of ordering information

Ordering Information provided by the Access Seeker shall be treated by HeiTech as the Confidential Information of the Access Seeker and shall only be used by those persons for the purpose of responding to and provisioning for the Order.

6.2.4 Treatment of Order and Service Qualifications

HeiTech 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.

6.2.5 Acknowledgement of Receipt

HeiTech 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.

6.2.6 Notice of Receipt

HeiTech 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 HeiTech from the Access Seeker to clarify the Order; and
- (c) if the relevant Facilities or Services are below the capacity required to provide the relevant Facilities and Services, HeiTech shall inform the Access Seeker of the available capacity and timeframe for fulfillment of the Order.

6.2.7 Further Information

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

6.2.8 Service Qualifications

HeiTech shall only conduct Service Qualifications if:

- (a) HeiTech reasonably require information from such Service Qualifications which is not readily available; and
- (b) HeiTech notifies the Access Seeker that such Service Qualifications are necessary within five (5) Business Days of receiving the Order Date, or, if further information has been requested under subsection 6.2.7 within five (5) Business Days of the expiry of the period in subsection 6.2.7, together with the reasons for such Service Qualifications.

For clarification, an Access Seeker may also seek the consent of HeiTech to perform a Service Qualification itself, and such consent shall not be unreasonably withheld.

6.2.9 Completion of Service Qualification

HeiTech shall:

- (a) Complete any Service Qualification in respect of an Order within twentyone (21) Business Days of the commencement of the Service Qualification;
- (b) Inform the Access Seeker of the result of any Service Qualification within two (2) Business Days of the completion of such Service Qualification.

6.2.10 Withdrawal of Order following Service Qualifications

HeiTech shall permit an Access Seeker to withdraw its Order without penalty within fourteen (14) days after receiving the result of a Service Qualification under subsection 6.2.9.

6.2.11 Acceptance Obligation

HeiTech shall use its reasonable efforts to accept and fulfill Orders from the Access Seeker for Facilities and Services which comply with a Forecast accepted by HeiTech pursuant to subsection 6.1.9(b).

6.2.12 Time for acceptance/rejection

HeiTech must notify the Access Seeker within fourteen (14) days of receiving an Order that the Order is accepted or rejected, save where HeiTech undertakes a Service Qualification as contemplated in subsection 6.2.8 in which case the time periods in subsection 6.2.9 are to be added to this fourteen (14) days period. If HeiTech notifies the Access Seeker that an Order is rejected, HeiTech must advise the Access seeker if it would be able to accept the Order in a modified form.

6.2.13 Notice of acceptance

HeiTech 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 HeiTech shall be no later than indicate delivery timeframes set out in subsection 6.2.14;
- (b) the charges applicable to fulfillment 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.

6.2.14 Indicative delivery times

For the purposes of Section 6.2.13 (a) the following are the indicative delivery timeframes for the following aspects of a Facilities and Services:

Order Type	Indicative Delivery Timeframes
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	60 days

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- (a) The indicative delivery timeframes specified in Section 6.2.14 shall commence from the date the Access Seeker confirms an Order in accordance with Section 6.2.15.
- (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 the HeiTech.

6.2.15 Access Seeker Confirmation

HeiTech shall permit an Access Seeker to confirm its agreement to proceed with the Order within the validity period of HeiTech acceptance of such Order (as described in paragraph 6.2.13 (d)). Upon such confirmation, HeiTech shall fulfill the Order in accordance with the notice of acceptance provided under subsection 6.2.13.

6.2.16 Estimated Charges

If the notice of acceptance provided by HeiTech under subsection 6.2.13 contains estimates of charges (e.g based on time and materials):

- (a) HeiTech 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 fulfill the Order.
- (b) HeiTech 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 HeiTech under subsection 6.2.16(a).
- (c) Where the actual cost incurred by HeiTech exceeds an estimate or revised estimate for the specific scope of work provided by HeiTech 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 HeiTech for the actual cost incurred.

- (d) HeiTech 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 HeiTech under subsection 6.2.16 (a).

6.2.17 Reasons for rejection

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

- (a) it is not technically feasible to provide access to the Facilities or Services requested by the Access Seeker;
- (b) HeiTech has insufficient capacity to provide the requested Facilities or Services;
- (c) Subject to Section 6.2.19, 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 related agreements from HeiTech (e.g. Facilities access for a new Point of Interface);
- (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 or Services 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.

6.2.18 Notice of rejection

HeiTech notice of rejection to the Access seeker must:

- (a) set out the grounds on which HeiTech 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

6.2.19 Order in excess of Forecast

Notwithstanding paragraph 6.2.17 (b), HeiTech must use its reasonable efforts to provide sufficient capacity to enable HeiTech to accept and fulfill Orders from an Access Seeker for Facilities or Services or both which are in excess of the relevant Forecast.

HeiTech 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 HeiTech could readily upgrade existing capacity. HeiTech shall allocate the available capacity on a non-discriminatory basis to meet the over Forecast requirement of the Access seeker, other Operators and its own business units.

HeiTech is not required to supply Facilities and Services or both in excess of Forecast if, despite adopting any reasonable improvements (including upgrading capacity), this would cause a material degradation in the quality of Forecast Services provided to other Operators or its own business-or both.

6.2.20 Required extra capacity

HeiTech may require an Access Seeker to procure such additional capacity on the Access Seeker's side of the Network as HeiTech, in good faith and reasonable estimates, may be required by the Access Seeker to meet demand.