

**APPENDIX 18**

**DIRECTED AMENDMENTS TO SCHEDULE 16**

**SCHEDULE 16**

**BILLING**

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## SCHEDULE 16

### BILLING

#### 1. GENERAL

- 1.1 This Billing Schedule describes the general billing and settlement procedures in respect of Charges for Services provided under this ICO Agreement, as well as the procedures for settling any disputes relating to Billing (“**Billing and Settlement Procedures**”). More detailed Billing requirements and Manuals relating to individual services are contained in the individual service Schedules.

#### 2. BILLING AND SETTLEMENT

##### **CLAUSE 2.1 – DIRECTED AMENDMENT**

- 2.1 OpenNet (“**the Invoicing Party**”) shall employ its reasonable endeavours to issue to the Requesting Licensee (“**the Invoiced Party**”) within fourteen (14) Calendar Days of ~~each~~ calendar month an Invoice in electronic form and in writing for amounts due in respect of the Mandated Services supplied during the previous calendar month.

##### **CLAUSE 2.2 - APPROVED**

- 2.3 2.2 The Invoicing Party shall generate the Invoice of the Invoiced Party on the first week of the following month. The Invoicing Party shall send Invoices by way of emails (summarised PDF format) to the Invoiced Party’s given email account and/or through facsimile transmission on the date of issue of the Invoice, followed by a hard copy via ordinary post. The Invoicing Party will send emails with Invoices to the Invoiced Party. The Invoiced Party has the option to retrieve the latest three (3) months’ Invoices along with the associated reconciliation files from the Invoicing Party’s Service Portal. The Invoiced Party can also query the charges associated with a particular Request stated in the Invoice via Service Portal. All Charges payable shall be calculated according to the Charges contained in Schedule 15.

##### **CLAUSES 2.4 AND 2.5 – APPROVED**

- 2.4 All Invoices shall contain the necessary information for the Invoiced Party to verify the accuracy of the amount charged on the Invoice. Such information shall include the Billing Verification Information as stipulated in the individual service Schedules. The Billing Verification Information shall be used by the Invoiced Party only for the purposes of verifying the accuracy of amounts charged on an Invoice.
- 2.5 The Invoiced Party shall pay the Charges payable under this ICO Agreement, and upon the terms, and subject to the conditions, set out in this ICO Agreement, no later than thirty (30) Calendar Days from the date of the relevant Invoice (“**Due Date**”). The relevant requirements of clause 5 of the main body of this ICO Agreement (“**Main Body**”) shall apply in relation to such payments. For the avoidance of doubt, the Invoiced Party shall pay these Charges to the Invoicing Party regardless of whether the Invoiced Party has received payment from its customers.
- 2.6 In addition to charging interest in accordance with this Schedule or exercising any other rights the Invoicing Party has at law or under this ICO Agreement, where an undisputed amount is outstanding and remains unpaid for more than seven (7) Calendar Days after it is due for payment, the Invoicing Party reserves the right to take action, without further notice to the Invoiced Party, to recover any such amount as a debt due to the Invoicing Party. The Invoicing Party will not, however, take such action if it amounts to suspension or termination of this ICO Agreement without following the procedures outlined in clauses 11 and 12 respectively of the Main Body.

#### **CLAUSE 2.7 - DIRECTED AMENDMENT**

2.7 Payments are deemed to be received on the date the payment is received by the Invoicing Party, unless the payment is subsequently dishonoured, in which case, payment is deemed not to have been made in full until all cheques are cleared and/or monies paid into OpenNet’s specified account unconditionally together with all dishonoured fees and late payment interest ~~and bank charges~~.

***IDA has carefully considered OpenNet’s submissions and considers that OpenNet has not shown why it is necessary introduce “bank charges”. In particular, OpenNet has not provided any justification on why it has proposed to include such a charge. In view of the above, IDA does not view that it is reasonable to allow the introduction of this new charge. Accordingly, IDA directs OpenNet to amend this clause by incorporating the directed amendments as annotated above.***

### **3. INTEREST ON OVERDUE AMOUNTS**

- 3.1 If the Invoiced Party does not pay a sum payable under this ICO Agreement by the Due Date, the Invoicing Party may charge interest on the amount from time to time outstanding in respect of that overdue sum for the period beginning on its Due Date and ending on the date of the receipt of the overdue sum by the Invoicing Party (both before and after judgement) in accordance with this clause. The Invoiced Party agrees to pay such interest on demand.

#### ***CLAUSE 3.2 – APPROVED***

- 3.2 Interest shall accrue on that overdue sum at a fluctuating rate per annum (as determined by the Invoicing Party) equal to the sum of six (6%) percent and the arithmetic mean of the respective Prime Lending Rates of the Development Bank of Singapore Limited, Overseas Chinese Banking Corporation Limited and United Overseas Bank Limited prevailing from time to time during that period. Where interest in respect of any due and unpaid amount is due to the Invoicing Party, the Invoicing Party may add the amount of such interest to its next Invoice.

#### ***CLAUSE 4 – APPROVED***

### **4. OTHER PAYMENT TERMS AND CONDITIONS**

- 4.1 The Invoiced Party shall bear and pay all applicable taxes.
- 4.2 All Invoices will be dispatched by Invoicing Party to the Invoiced Party:
- (i) by delivery or ordinary post to the official address (in Singapore) of the Invoiced Party; and
  - (ii) where the Invoiced Party has subscribed to eBill, the Invoice will be made available through eBill.
- 4.3 Any such Invoice so dispatched to the Invoiced Party will be deemed to have been received by the Invoiced Party:
- (i) in the case of dispatch by delivery to the address of the Invoiced Party, on the date and at the time it was so delivered or left at that address;
  - (ii) in the case of dispatch by post, to any address in Singapore, on the next day after it was posted by the Invoicing Party; or

- (iii) in the case of dispatch by making available such Invoice through eBill, on the date and at the time of transmission by the Invoicing Party.
- 4.4 Subject to clause 14.3 of the Main Body, the Invoiced Party may file a claim with the Invoicing Party for the Invoicing Party's failure to provide or maintain Mandated Services pursuant to the Service Level Guarantee under the ICO Agreement. The Invoiced Party must file the claim with the Invoicing Party within thirty (30) Calendar Days from the first day immediately after the completion of the relevant calendar month on which the Service Level Guarantees are measured. The Invoicing Party will investigate the claim and compensate the Invoiced Party the amount in respect of the claim in the form of a credit in the next Invoice if the claim is valid. The guarantee and rebates provided by the Invoicing Party under the Service Level Guarantee are of ex-gratia nature and personal to the Invoiced Party, and are non-transferrable.
- 4.5 The Invoiced Party shall not commence or prosecute any action or proceeding in any jurisdiction outside the Republic of Singapore.

## **CLAUSE 5 – APPROVED**

### **5. INVOICE ERRORS**

- 5.1 If the Invoiced Party discovers an error in an Invoice issued by the Invoicing Party, it shall notify the Invoicing Party in accordance with the procedure set out in clause 6.1 below. The Invoicing Party shall make the adjustment necessary to correct that error in its next Invoice, if it is able to verify the error.
- 5.2 If the Invoicing Party has omitted from or miscalculated Charges in an Invoice, the Invoicing Party shall inform the Invoiced Party as soon as practicable and may include or amend (respectively) those Charges in a later Invoice, as long as the Invoicing Party is able to substantiate these Charges to the Invoiced Party and the inclusion or amendment is made within six (6) months of the issuing date of the Invoice.
- 5.3 If the Invoiced Party makes an overpayment in error, it shall notify the Invoicing Party accordingly within thirty (30) Calendar Days of the date on which the overpayment was made with sufficient details for the Invoicing Party to be able to identify the overpayment. The Invoicing Party will investigate and if the Invoiced Party's claim is found to be legitimate, the Invoicing Party shall return or credit the amount overpaid to the Invoiced Party in the Invoicing Party's next Invoice to

the Invoiced Party following such investigation in accordance with the Invoicing Party's billing cycle.

- 5.4 Notwithstanding any other provision in this Schedule, interest shall not accrue or become payable in respect of sums added to an Invoice in error. Any overpayment by the Invoiced Party with respect to any amount, item, entry or matter stated in the Invoice shall be credited by the Invoicing Party, without interest, to the Invoiced Party account after the Invoicing Party has completed its investigations and is satisfied as to the error or inaccuracy of that amount, item, entry or matter. For the avoidance of doubt, the Invoiced Party is not liable for any interest for any sums that it underpaid owing to any omission or error by the Invoicing Party.
- 5.5 The Parties acknowledge that Invoices cannot be warranted as being free from errors.

## **CLAUSE 6 – APPROVED**

### **6. PROCEDURES FOR BILLING DISPUTE NOTIFICATION**

- 6.1 If the Invoiced Party wishes to dispute in good faith an Invoice prepared by the Invoicing Party (“**Billing Dispute**”), the Invoiced Party must notify the Invoicing Party in writing (“**Billing Dispute Notice**”) within thirty (30) Calendar Days after the date of that Invoice (“**Billing Dispute Notification Period**”). Such notices must be sent to the Invoicing Party's Billing Representatives nominated in clause 9 of this Schedule by fax or email. Without prejudice to clause 5 of this Schedule, the Invoiced Party shall be deemed to have accepted any Invoice from the Invoicing Party if no dispute is raised within the Billing Dispute Notification Period in respect thereof.
- 6.2 A Billing Dispute may only arise where the Invoiced Party has reasonable grounds to believe that an error has arisen from one of the following circumstances:
- (a) the Invoicing Party's Billing System is, or has been, defective or inaccurate in respect of the recording of the services acquired by the Invoiced Party which are the subject of the dispute;
  - (b) there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Invoiced Party Billing System;



- (c) there is, or has been, a fraud perpetrated by the Invoicing Party; or
  - (d) the Invoicing Party has made some other error in respect of the recording or the calculation of the Charges which are the subject of the dispute.
- 6.3 A Billing Dispute Notice given by the Invoiced Party under this clause 6 must specify:
- (a) the reasons for which the Invoiced Party disputes the Invoice;
  - (b) the amount in dispute; and
  - (c) details required to identify the relevant Invoice and Charges in dispute including:
    - (i) the account number;
    - (ii) the Invoice reference number;
    - (iii) the Invoice date;
    - (iv) the Invoice amount; and
    - (v) the Detailed Billing Verification Information as specified in the individual service Schedules.

## **CLAUSE 7 – APPROVED**

### **7. PROCEDURES FOR BILLING DISPUTE RESOLUTION**

- 7.1 The Invoiced Party agrees to pay the undisputed portion of any Invoice in accordance with the normal payment procedures. If the dispute is resolved against the Invoiced Party, the Invoiced Party shall be required to pay interest at the rate specified in clause 3.2 on the amount payable by the Invoiced Party.
- 7.2 Where the Invoiced Party paid the Invoice in full while the Billing Dispute is in progress, the Invoicing Party is not required to pay interest on any amount if the dispute is resolved against the Invoicing Party.

- 7.3 Where the Invoiced Party has paid an amount and subsequently notifies the Invoicing Party of a Billing Dispute in relation to that amount within the Billing Dispute Notification Period, the Invoicing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount. Where the dispute is resolved against the Invoicing Party, the Invoicing Party is not required to pay interest on any amount refunded.
- 7.4 The Parties agree to use their reasonable endeavours to promptly resolve any Billing Dispute notified under clause 6.
- 7.5 If the Parties are unable to resolve any Billing Dispute within thirty (30) Calendar Days (or such other period as the Parties may agree) from the date on which the Billing Dispute Notice is received by the Invoicing Party (“**Negotiation Period**”), either Party may seek the consent of the other Party to extend the period for resolution of the Billing Dispute stating the exceptional reasons for such extension. The other Party is, however, under no obligation to agree to such extension.
- 7.6 Where the Parties failed to resolve the dispute within the Negotiation Period or any extension period granted under clause 7.5, either Party may escalate the dispute to Senior Management by informing the other Party according to the procedure described in clause 7.7 (“**Billing Dispute Escalation Procedure**”).
- 7.7 The Invoiced Party may refer a Billing Dispute to the Billing Dispute Escalation Procedure under this clause 7.7 by notifying the Invoicing Party’s Billing Representative. Each of the Parties shall then appoint Senior Management, who has authority to settle the Billing Dispute, to have direct responsibility to settle the dispute and administer the ICO Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one Party to the other Party shall be honoured.
- 7.8 If the issue is not resolved, then either Party may notify the other Party that it wishes to refer the issue to Mediation or Arbitration.
- 7.9 Referral of a dispute to Mediation must be made by notice, including a statement of the matters in dispute. The Mediation must be conducted in accordance with the Mediation Rules of the Singapore Mediation Centre.

- 7.10 In addition to the qualifications of the Mediator contemplated by the Mediation Rules of the Singapore Mediation Centre, the Mediator should have an understanding of the relevant aspects of the telecommunications industry but not be an officer, director or employee of a telecommunications company or otherwise have a potential for conflict of interest.
- 7.11 Mediation settlement agreements or the information in them are to be published or publicised only with the consent of all Parties and on terms agreed to by the Parties.
- 7.12 The Parties will bear their own costs for the mediation and both parties will each bear half the costs of the Mediator.
- 7.13 If the Parties fail to reach an agreement in Mediation, they may, by mutual agreement, refer the matter to Arbitration.
- 7.14 Arbitration will be referred to and finally resolved by Arbitration in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Centre. Once a dispute is referred to Arbitration, it may not be referred to Mediation.
- 7.15 The arbitral tribunal will consist of one Arbitrator to be appointed by agreement of the Parties. The Arbitrator will have the appropriate qualification and experience to arbitrate the dispute, including knowledge of the telecommunications industry and legal qualifications, and shall not be an officer, director or employee of a telecommunications company or otherwise have a potential for conflict of interest.
- 7.16 If the Parties fail to appoint an Arbitrator within ten (10) business days of referral of a dispute to Arbitration, the Arbitrator is to be appointed by the Chairman of the Singapore International Arbitration Centre.
- 7.17 The language to be used and all written documents provided in any such Arbitration shall be in English. The Invoicing Party shall not be precluded from applying for urgent interlocutory relief from any court of competent jurisdiction.
- 7.18 The Arbitrator's decision will be binding on the Parties in the absence of manifest error of fact or law.
- 7.19 Once any Billing Dispute has been resolved to the Parties' satisfaction, any sum to be paid or repaid shall be paid immediately by the relevant Party.

7.20 Although it is the good faith intention of the Parties to use the above Billing Dispute Resolution Procedures to the fullest extent to try to solve Billing Disputes, nothing in this Schedule shall prevent either Party pursuing any other remedy in law or equity that may be available to them if a Billing Dispute cannot be resolved to their satisfaction.

7.21 For the avoidance of doubt, and as stipulated in Schedule 17, Billing Disputes may not be referred to the general Dispute Resolution Procedures provided in that Schedule.

## **CLAUSE 8 – APPROVED**

### **8. JOINT INVESTIGATION OF INVOICE DISCREPANCIES**

8.1 A Party may request a joint investigation of Invoice discrepancies after that Party has conducted comprehensive internal investigation, including an examination of its own Billing System. The joint investigation may include the generation of Sample Test Invoices.

### **9. BILLING REPRESENTATIVES**

9.1 Enquiries relating to Billing, collecting and settlement arrangements or in relation to Network and operation issues may be directed to either of these nominated Billing Representatives with a Singapore telephone number and address. Billing Dispute Notices must be sent to these representatives:

[OpenNet: ]

[Requesting Licensee: ]

9.2 Either Party may at any time nominate another Billing Representative, provided that fourteen (14) Calendar Days' prior notification of such appointment is given to the other Party.