

**IDA ANNOTATION – 13 DECEMBER 2000**

**SINGTEL RESPONSE – 11 JANUARY 2001**

**SCHEDULE 11**  
**DISPUTE RESOLUTION**

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### *IDA General Comments*

*Sub-section 5.7 of the Code provides that any party to a RIO Agreement may refer any dispute arising out of the Agreement to IDA. IDA, at its discretion, may impose a binding resolution on the parties. Sub-section 5.3.2(q) of the Code requires the Dominant Licensee to include in the RIO a provision stating that the licensees will refer disputes arising from the implementation of RIO Agreements to IDA.*

*SingTel must modify Schedule 11 to provide that, in addition to any remedies currently provided in Schedule 11, either party may unilaterally refer disputes arising out of the implementation of the RIO Agreement to IDA, and that both parties will be subject to any binding resolution imposed by IDA.*

**SingTel comments : Agreed.**

## SCHEDULE 11

### DISPUTE RESOLUTION

#### ***CLAUSE 1 – CONDITIONAL APPROVAL***

##### **1. GENERAL**

- 1.1 The terms and conditions in this Schedule (the "**Dispute Resolution Procedures**") apply to any disputes (other than Billing Disputes, which are to be dealt with in accordance with Schedule 10) that arise under or in connection with this RIO Agreement.
- 1.2 The procedures set out in this Schedule are without prejudice to any other rights and remedies that may be available in respect of any breach of any provisions of this RIO Agreement including urgent interlocutory relief.
- 1.3 Any time limits or provisions contained in this Schedule may only be varied by agreement of the Parties.
- 1.4 Each Party will continue to fulfil its obligations under this RIO Agreement during the pendency of a dispute or any procedures in this Schedule.

#### ***CLAUSE 2 – MODIFICATION REQUIRED***

##### **2. INITIAL ESCALATION PROCEDURES**

#### ***CLAUSE 2.1 – MODIFICATION REQUIRED***

- 2.1 The Parties will initially raise issues arising under this RIO Agreement with each other by exchanging correspondence setting out clearly and in reasonable detail the basis and justification of the dispute ~~with a view to resolving any such issues through those means.~~

***SingTel must modify Clause 2.1 by specifying that the correspondence must set out clearly and in reasonable detail the basis and justification of the dispute.***

**SingTel comments : Agreed.**

#### ***CLAUSE 2.2 – MODIFICATION REQUIRED***

- 2.2 If the Parties do not reach an agreement on an issue raised through correspondence under Clause 2.1 within ten (10) Business Days, either Party may give ten (10) Business Days

written notice (“**Notice Period**”) to the other Party of its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice Period, then either Party may notify the other Party (“**Receiving Party**”) that it wishes to refer the issue for discussion to an Inter-Working Group established under clause 2.3.

- 2.3 In the event that a dispute is referred to an Inter-Working Group under clause 2.2 the Parties shall promptly form a committee with an equal number of appropriate representatives from each Party (**Inter-Working Group**).
- 2.4 The Inter-Working Group to which an issue has been raised will meet within ten (10) Business Days of the receipt by the Receiving Party of a notice under Clause 2.2.
- 2.5 If the Inter-Working Group has not resolved an issue twenty (20) Business Days after it first meets to review that issue under Clause 2.4, ~~the Parties by mutual agreement may:~~
- (a) either Party may refer the dispute to the Authority in accordance with section 4.3.2 of the Code, such dispute to be resolved in accordance with clause 3 of this Schedule; or

*Please refer to IDA’s General Comments to Schedule 11. SingTel must modify Schedule 11 to provide that either party shall have the right to unilaterally refer disputes arising out of the implementation of the RIO Agreement to IDA and be subject to any binding resolution imposed on the parties by IDA.*

**SingTel comments : Agreed.**

- (b) the Parties by mutual agreement may refer the dispute to Mediation, such Mediation to be conducted in accordance with clause 4 of this Schedule; or
- (c) the Parties by mutual agreement may refer the dispute to Arbitration, such Arbitration to be conducted in accordance with clause 5 of this Schedule.

### **3. AUTHORITY DISPUTE RESOLUTION**

~~3.1A dispute will only be referred to the Authority if the provisions in Clause 2 have been complied with.~~

3.23.1 The resolution of a dispute referred to the Authority will be conducted in accordance with the COP Code and be subject to any binding resolution imposed on the parties by the Authority.

*Please refer to IDA's General Comments to Schedule 11. SingTel must modify Schedule 11 to provide that either party shall have the right to unilaterally refer disputes arising out of the implementation of the RIO Agreement to IDA and be subject to any binding resolution imposed on the parties by IDA.*

**SingTel comments : Agreed.**

3.33.2 If the Authority:

- (a) does not have the power under the Act or the Code~~OP~~; or
- (b) is unwilling to resolve the dispute,

the Authority will refer the dispute back to the Inter-Working Group and clauses 2.4 and 2.5 will apply again.

#### **4. MEDIATION**

- 4.1 A dispute will only be referred to Mediation if the provisions in clause 2 have been complied with.
- 4.2 Any referral of a dispute to mediation must be made by notice, including a statement of the matters in the dispute.
- 4.3 The mediation must be conducted in accordance with the Mediation Rules of the Singapore Mediation Centre and this clause for the time being in force which rules are deemed to be incorporated by reference into this Clause. In the event of any inconsistency between them, the provisions of this clause shall prevail.
- 4.4 Mediations are to be conducted in private.
- 4.5 In addition to the qualifications of the mediator contemplated by the Mediation Rules of the Singapore Mediation Centre, the mediator should:
  - (a) have an understanding of the relevant aspects of the telecommunications industry (or have the capacity to come to such an understanding quickly); and
  - (b) not be an officer, director or employee of a telecommunications company or otherwise have a potential for conflict of interest.

- 4.6 The Parties must notify each other no later than 48 hours prior to mediation of the names of their representatives who will attend the mediation. Nothing in this sub-clause is intended to suggest that the Parties are able to refuse the other's chosen representatives or to limit other representatives from the Parties attending during the mediation.
- 4.7 Mediation settlement agreements or the information in them are to be published or publicised only with the consent of all Parties and in terms agreed by the Parties.
- 4.8 The mediation will terminate in accordance with the Mediation Rules of the Singapore Mediation Centre.
- 4.9 The Parties will bear their own costs of the mediation including the costs of any representatives and will each bear half the costs of the mediator.
- 4.10 Any agreement from mediations will bind the Parties on its terms.
- 4.11 If the parties fail to reach an agreement in a mediation held under this clause, they may, by mutual agreement, refer the matter to Arbitration under clause 5.

## 5. **ARBITRATION**

- 5.1 A dispute will only be referred to Arbitration if the provisions in Clause 2 have been complied with.
- 5.2 The Arbitration will be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Centre (**SIAC Rules**) for the time being in force which rules are deemed to be incorporated by reference to this Clause. In the event of any inconsistency between the SIAC Rules and this clause, the provisions of this clause shall prevail.
- 5.3 Once a dispute is referred to Arbitration, it may not be referred to conciliation.
- 5.4 The arbitral tribunal will consist of one Arbitrator to be appointed by agreement of the Parties. The Arbitrator:
- (a) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the telecommunications industry and legal qualifications;
  - (b) need not be a Singapore citizen or resident; and

- (c) will not be an officer, director, or employee of a telecommunications company or otherwise have a potential for conflict of interest.
- 5.5 Should 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 (**SIAC**).
- 5.6 The following procedure will apply to the Arbitration:
- (a) the Parties will present written submissions to the Arbitrator and each other within fifteen (15) Business Days of the appointment of the Arbitrator;
  - (b) each Party may respond to the other Party's submission in writing within fifteen (15) Business Days of the date of the other Party's submission.
- 5.7 At the request of either Party and subject to the Parties agreeing or the Arbitrator deciding within five (5) Business Days of the last written submission that the arbitration be by documents only, an arbitral hearing will be held within fifteen (15) Business Days of the last written submission.
- 5.8 Should a hearing be held, each Party will have the right to appoint one Expert to appear at the arbitral hearing and will have the opportunity of making an oral submission. The arbitration will be conducted in private.
- 5.9 The procedure of the arbitral hearing will be determined by the Arbitrator (including number and duration of oral submissions by the Parties and Experts) but in any case, the arbitral hearing will last no longer than three (3) Business Days.
- 5.10 The Arbitrator will not have the power to appoint any Experts.
- 5.11 The Arbitrator will deliver his award within fifteen (15) Business Days of the arbitral hearing or of the last written submission where the Arbitration is by documents only.
- 5.12 Every dispute referred to Arbitration will be arbitrated separately such that time limits for each dispute are complied with.
- 5.13 The Arbitrator's decision will be binding on the Parties (in the absence of manifest error of fact of law).