

APPENDIX 16

REQUIRED MODIFICATIONS 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

- 2.1 OpenNet (“**the Invoicing Party**”) shall employ its reasonable endeavours to issue to the QP (“**the Invoiced Party**”) within fourteen (14) Calendar Days of each month an invoice in electronic form and in writing for amounts due in respect of the Mandated Services supplied during the month.
- 2.2 The Invoicing Party may send invoices by way of facsimile transmission on the date of issue of the invoice, followed by a hard copy via post.

IDA Directed Modifications: IDA directs OpenNet to clarify the process in clause 2.2, to make clear how the Invoicing Party is to receive invoices which are transmitted in electronic form.

- 2.3 All Charges payable shall be calculated according to the Charges contained in Schedule 15.
- 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.

IDA Directed Modifications: For consistency, IDA directs OpenNet to bold the phrase “Main Body” at the fifth line of this clause 2.5.

- 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.
- 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 received until cleared funds are received by the Invoicing Party together with all dishonoured fees and charges.

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.
- 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.

4. OTHER PAYMENT TERMS AND CONDITIONS

4.1 The Invoiced Party shall bear and pay all applicable taxes.

4.2 All bills will be dispatched by Invoicing Party to the Invoiced Party:

- (i) by delivery or post to the official address (in Singapore) of the Invoiced Party; and
- (ii) where the Invoiced Party has subscribed to eBill, the bill will be made available through eBill.

IDA Directed Modifications: The ICO currently does not have a definition for “eBill” or any provision describing the eBilling process. IDA directs OpenNet to propose, for IDA’s approval: (a) a definition of “eBill” to be incorporated into Schedule 18 (Dictionary) and (b) all necessary modifications to the ICO to incorporate a process for the dispatch of eBills.

4.3 Any such bill 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 bill through eBill, on the date and at the time when notice of the same is deemed to have been received by the Invoiced Party.

IDA Directed Modifications: For purposes of certainty, IDA requires OpenNet to revise the drafting of clause 4.3(iii), to clarify when the eBill is “deemed to have been received by the Invoiced Party”.

For example, if OpenNet’s eBilling system provides for a “read receipt” notification upon the Invoiced Party opening the eBill, OpenNet should consider revising the ICO to the effect that the Invoiced Party should confirm receipt through that notification. Upon such confirmation, the eBill is considered received.

Another example could be for OpenNet to state that the eBill is considered dispatched when it enters an information system outside OpenNet's control and, (a) where the Requesting Licensee has designated a particular information system for receiving such eBills, the invoice is taken to be received at the time it enters the designated information system; or (b) received at the time the eBill is retrieved by the Requesting Licensee if an information system is not designated.

In this respect, IDA directs OpenNet to propose, for IDA's approval, a notification process and appropriate modifications to clause 4.3(iii) to incorporate the above requirements.

4.4 The Invoiced Party may file a claim from the Invoicing Party for its 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 14 calendar days from the completion of the provisioning or maintenance work online through the OpenNet Platform. 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 bill 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. Except for the claims that the Invoiced Party may make as above, the Invoicing Party shall not be liable to the Invoiced Party or any person claiming through the Invoiced Party for any direct, indirect, consequential or incidental damages or losses or expenses whatsoever, such as, but not limited to, loss of profits or business.

IDA Directed Modifications: IDA notes a typographical error in the first line, and directs OpenNet to make the following modifications (as underlined) to render the clause sensible:

"The Invoiced Party may file a claim from ~~with~~ the Invoicing Party for ~~its~~ the Invoicing Party's failure..."

For purposes of consistency, IDA also directs OpenNet to amend this clause to reconcile it with clauses governing similar subject-matter in all other Schedules (e.g. clause 2.2 of Schedule 1 (Residential End-User Connection)), such that the time period to submit a claim for rebates is measured from the first day immediately after the end of the relevant calendar month in which the Service Level Guarantees are measured. IDA also refers to the change in clause 2.2 of Schedule 1, from fourteen (14) Calendar

Days to thirty (30) Calendar Days, and requires OpenNet to make the same modification here as well.

IDA is also of the view that Schedule 16 (Billing) is for purposes of addressing billing processes and therefore issues of nature and limitation of liability should not be included in this Schedule, especially since this is already addressed in other parts of the ICO. Therefore, IDA requires OpenNet to remove the phrase “Except for the claims that the Invoiced Party may make as above ... loss of profits or business” from clause 4.4.

Lastly, IDA requires OpenNet to (a) change the phrase “service level guarantee” in this Schedule to “Service Level Guarantee”, where applicable, since such term is defined in Schedule 18 (Dictionary); and (b) replace “14 calendar days” in the fourth line of this clause with “fourteen (14) Calendar Days” since this is a term defined in Schedule 18 (Dictionary).

Accordingly, IDA directs OpenNet to modify clause 4.4 to incorporate the requirements set out above.

4.5 The Invoiced Party shall not commence or prosecute any action or proceeding in any jurisdiction outside the Republic of Singapore.

5. INVOICE ERRORS

5.1 If the Invoiced Party discovers an error in an invoice given by the Invoicing Party under this clause 5, it shall notify the Invoicing Party as soon as practicable. 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 or miscalculated Charges from an invoice, the Invoicing Party 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 of the invoice.

IDA Directed Modifications: It is IDA’s position that both Parties have their own billing and verification systems, and therefore have the obligation to check their own bills for accuracy and veracity. As a result, a Party should not have the benefit of enjoying interest because of invoicing errors.

Hence, where OpenNet has undercharged the Requesting Licensee due to OpenNet's omission or miscalculation of the Charges, IDA considers it fair that any subsequent amendments or additions to Charges in a later invoice should not be subject to interest.

Similarly, the Invoicing Party must notify the Invoiced Party, as soon as practicable, of any overpayment by the Invoiced Party due to a miscalculation of Charges by the Invoicing Party, and return or credit such overpayment to the Invoiced Party without any interest.

Accordingly, IDA directs OpenNet to make the necessary modifications to clauses 5.2 and 5.3, to implement the requirements set out above.

For the avoidance of doubt, IDA will retain the six (6) month time period within which Invoices can be amended, as IDA recognises that the billing system is still new. However, as the Parties gain experience in ordering and provisioning of the Services, IDA expects that the six (6) month time period may be shortened and IDA reserves the right to specify a shorter period in the future.

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 Invoicing Party's claim is found to be legitimate, the Invoicing Party shall return or credit the amount overpaid to the Invoiced Party.

IDA Directed Modifications: IDA refers OpenNet to the directed modification at clause 5.2 and according directs OpenNet to make the necessary modifications, if any, to this clause 5.3. IDA also notes a typographical error in clause 5.3. The second reference to "Invoicing Party" in the fourth line should instead refer to "Invoiced Party", and IDA directs OpenNet to make the necessary amendment.

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 bill 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.

IDA Directed Modifications: Please refer to IDA's directed modifications to clause 5.2. OpenNet must clarify that the Invoiced Party is not liable for any interest for any sums

that it underpaid owing to any omission by the Invoicing Party. Accordingly, IDA directs OpenNet to modify clause 5.4 to incorporate the above requirement.

5.5 The Parties acknowledge that invoices cannot be warranted as being free from errors.

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.

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.

6.4 For the avoidance of doubt, no invoices may be disputed after the expiration of the Billing Dispute Notification Period.

IDA Directed Modifications: IDA requires OpenNet to clarify that the bar on Billing Disputes is without prejudice to clause 5 of this Schedule on invoice errors, and therefore directs OpenNet to propose, for IDA's approval, a modification to make clause 6.4 subject to clause 5 of this Schedule, except where the invoice has been paid.

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.

IDA Directed Modifications: IDA directs OpenNet to change the phrase "billing dispute in the first line of clause 7.2 to "Billing Dispute", since such term is already defined in clause 6.1 and Schedule 18 (Dictionary).

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 a representative of senior management position, 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.

IDA Directed Modifications: IDA directs OpenNet to replace “a representative of senior management position” in clause 7.7 with “Senior Management”, which is already defined in Schedule 18 (Dictionary) as “a representative who has authority to settle the dispute and who is at a higher level of management than the persons with direct responsibility of administering this ICO Agreement”. Also, IDA notes a typographical error in the fifth line of this clause, and accordingly directs OpenNet to change “ICO agreement “to ICO Agreement”.

- 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.

IDA Directed Modifications: For consistency with the term “Arbitrator”, IDA directs OpenNet to amend references to “mediator” in this Schedule to “Mediator”, where applicable. Further, IDA directs OpenNet to include a definition for “Mediator” in Schedule 18 (Dictionary).

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 will bear half the costs of the mediator.

IDA Directed Modifications: For clarity and consistency with clause 5.10 of Schedule 17, IDA directs OpenNet to modify clause 7.12, to state that 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.

IDA Directed Modifications: IDA directs OpenNet to change the term “arbitration” in the second line of this clause to “Arbitration”, since such term is already defined in Schedule 18 (Dictionary).

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.

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 test leases.

IDA Directed Modifications: For purposes of certainty, IDA directs OpenNet to clarify the meaning of the term “test leases” in clause 8.1.

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.

IDA Directed Modifications: For clarity, IDA directs OpenNet to modify clause 9.2, to clarify that the prior notification is to be given to the other Party.