

APPENDIX 17

REQUIRED MODIFICATIONS TO SCHEDULE 17

SCHEDULE 17
DISPUTE RESOLUTION

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DISPUTE RESOLUTION

1. GENERAL

- 1.1 The terms and conditions in this Schedule (**Dispute Resolution Procedures**) apply to any disputes (other than Billing Disputes, which are to be dealt with in accordance with Schedule 16) that arise under or in connection with this ICO 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 ICO 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 ICO Agreement during the pendency of a dispute or any procedures in this Schedule.

2. INITIAL ESCALATION PROCEDURES

- 2.1 The Parties will initially raise issues arising under this ICO Agreement with each other by exchanging correspondence setting out clearly and in reasonable detail the basis and justification of the dispute.
- 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.

IDA Directed Modifications: In certain cases, a period of ten (10) Business Days may be too short a time for the parties to resolve their dispute through correspondence. Hence, IDA considers it useful that the Parties be allowed to mutually agree to an extension of the timeframe. Accordingly, IDA directs OpenNet to modify clause 2.2 to incorporate the requirements specified above.

- 2.3 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 to:
 - (a) an Inter-Working Group established under clause 3;

- (b) dispute resolution by the Authority under clause 4;
- (c) Mediation, such Mediation to be conducted in accordance with clause 5 of this Schedule; or
- (d) Arbitration, such Arbitration to be conducted in accordance with clause 6 of this Schedule.

2.4 If both Parties agree on the forum of dispute resolution under clauses 2.3(a), 2.3(c) or 2.3(d), the issue shall be referred to such forum in accordance with the applicable provisions of this Schedule. If both Parties fail to reach any such agreement, or if clause 2.3(b) applies, then the issue shall be referred to the Authority for dispute resolution under clause 4.

2.5 If the Authority declines to intervene to resolve an issue referred to it under clause 2.4:

- (a) the Parties may, by mutual agreement refer the dispute to:
 - (i) an Inter-Working Group established under clause 3; or

IDA Directed Modifications: IDA clarifies that clauses 2.5(a) and (b) are disjunctive, and clauses 2.5(a)(i) to (iii) are also meant to be read disjunctively. Therefore, for clarity, IDA directs OpenNet to remove the word “or” in clause 2.5(a)(i).

- (ii) Mediation, such Mediation to be conducted in accordance with clause 5 of this Schedule; or
 - (iii) Arbitration, such Arbitration to be conducted in accordance with clause 6 of this Schedule; or
- (b) either party may submit the matter to be determined by a court of competent jurisdiction.

3. INTER-WORKING GROUP

3.1 In the event that a dispute is referred to an Inter-Working Group under clauses 2.3(a) or 2.5(a)(i), the Parties shall promptly form a committee with an equal number of appropriate representatives from each Party (**Inter-Working Group**).

- 3.2 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 clauses 2.3(a) or 2.5(a)(i).
- 3.3 If the Inter-Working Group has not resolved an issue within twenty (20) Business Days after it first meets to review that issue under clause 3.2:
- (a) either Party may refer the dispute to the Authority in accordance with section 6.6 of the Code, such dispute to be resolved in accordance with clause 4 of this Schedule; or

IDA Directed Modifications: IDA directs OpenNet to insert the correct reference to Section 13 of the Code and not Section 6.6.

- (b) the Parties by mutual agreement may refer the dispute to Mediation, such Mediation to be conducted in accordance with clause 5 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 6 of this Schedule.

4. AUTHORITY DISPUTE RESOLUTION

- 4.1 The resolution of a dispute referred to the Authority will be conducted in accordance with the Code and be subject to any binding resolution imposed on the Parties by the Authority.
- 4.2 If the Authority does not have the power under the Act or the Code, or is unwilling to resolve the dispute, the Authority will notify the Parties forthwith, and the provisions of clause 2.5 shall apply.

5. MEDIATION

- 5.1 A dispute will only be referred to Mediation if the provisions in clause 2 have been complied with.
- 5.2 Any referral of a dispute to Mediation must be made by notice, including a statement of the matters in the dispute.
- 5.3 The Mediation must be conducted in accordance with the Mediation Rules of the Singapore Mediation Centre for the time being in force which rules are incorporated by reference into this clause 5. In the event of any inconsistency

between this clause 5 and the Mediation Rules, the provisions of this clause 5 shall prevail.

- 5.4 Mediations are to be conducted in private.
- 5.5 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.
- 5.6 In addition to the qualifications of the mediator contemplated by the Mediation Rules of the Singapore Mediation Centre, the mediator should:

IDA Directed Modifications: IDA refers OpenNet to its directed modification in clause 7.10 of Schedule 16 (Billing). For the same reasons as therein stated, IDA directs OpenNet to replace references to “mediator” in this Schedule to “Mediator”, where applicable.

- (i) have an understanding of the relevant aspects of the telecommunications industry; and
 - (ii) not be an officer, director or employee of a telecommunications company or otherwise have a potential for conflict of interest.
- 5.7 The Parties must notify each other no later than forty-eight (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 Party’s chosen representatives or to limit other representatives from the Parties attending the Mediation.
- 5.8 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 to by the Parties.

IDA Directed Modifications: IDA notes that clauses 5.5 and 5.8 are repetitive, and directs OpenNet to remove clause 5.8 and renumber the subsequent clauses accordingly.

- 5.9 The Mediation will terminate in accordance with the Mediation Rules of the Singapore Mediation Centre.

- 5.10 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.
- 5.11 Any agreement from Mediation will bind the Parties on its terms.
- 5.12 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 6.

6. ARBITRATION

IDA Directed Modifications: IDA notes that the governing law and seat of Arbitration has not been expressly specified in this Schedule 17 (Dispute Resolution). For purposes of clarity, IDA directs OpenNet to include in Schedule 17 references to Singapore law as the substantive law of the Arbitration, and that the seat of Arbitration is Singapore.

- 6.1 A dispute will only be referred to Arbitration if the provisions in clause 2 have been complied with.
- 6.2 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 incorporated by reference to this clause 6. In the event of any inconsistency between the SIAC Rules and this clause 6, the provisions of this clause 6 shall prevail.
- 6.3 Once a dispute is referred to Arbitration, it may not be referred to Mediation.
- 6.4 The arbitral tribunal will consist of one Arbitrator to be appointed by agreement of the Parties. The Arbitrator:
- (i) will have the appropriate qualifications and experience to arbitrate the dispute, including knowledge of the telecommunications industry and legal qualifications;
 - (ii) need not be a Singapore citizen or resident; and
 - (iii) will not be an officer, director, or employee of a telecommunications company or otherwise have a potential for conflict of interest.

6.5 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 (SIAC).

6.6 The following procedure will apply to the Arbitration:

- (i) the Parties will present written submissions to the Arbitrator and each other within fifteen (15) Business Days of the appointment of the Arbitrator;

IDA Directed Modifications: For clarity, IDA directs OpenNet to include the word “and” after the semi-colon at the end of clause 6.6(i).

- (ii) 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.

6.7 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.

IDA Directed Modification: As currently drafted, the circumstances under which an arbitral hearing will be conducted are unclear. For clarity, IDA directs OpenNet to modify, for IDA’s approval, this clause 6.7.

6.8 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.

6.9 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.

6.10 The Arbitrator will not have the power to appoint any experts.

IDA Directed Modifications: Pursuant to public consultation, one respondent has suggested that the Arbitrator be given the power to appoint an additional expert for arbitral proceedings. After careful consideration, IDA considers that there is merit in giving the Arbitrator such a power, provided that both Parties consent to the appointment.

Even though the Parties have the right to each appoint their own Expert, a third expert will lend additional objectivity should the Arbitrator receive conflicting expert opinions from the Parties' Experts. Further, in the case where one Party (or both Parties) declines to engage their own Experts, the Arbitrator should have the opportunity to obtain professional opinion regarding the subject-matter at hand.

Based on the above considerations, IDA directs OpenNet to amend clause 6.10 to allow for the Arbitrator to appoint its own expert, where both Parties consent to such appointment.

6.11 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.

6.12 Every dispute referred to Arbitration will be arbitrated separately such that time limits for each dispute are complied with.

6.13 The language to be used and all written documents provided in any such arbitration shall be in English.

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).

6.14 OpenNet shall not be precluded from applying for urgent interlocutory relief from any court of competent jurisdiction.

IDA Directed Modifications: IDA is of the view that it is fair and reasonable for the Requesting Licensee to also be allowed to seek urgent interlocutory relief, should the need arise. In this respect, IDA directs OpenNet to modify this clause to mutualise the right to apply for such relief.

6.15 The Arbitrator's decision will be binding on the Parties (in the absence of manifest error of fact or law).