

## **ANNEX 4**

### **Part A**

#### **Billing and Payment**

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#### **1 DEFINITIONS**

- 1.1 In this Annex, a reference to a paragraph, unless stated otherwise, is to a paragraph of this Annex. Words and expressions have the meaning given in Clause 1.

#### **2 RECORDING OF BILLING INFORMATION**

- 2.1 Subject to paragraph 2.2, each party shall for those Calls for which it is the Billing Party collect for each individual Call, record (whether in bulk or on an itemised Call basis) and process in accordance with paragraph 2.4 the Billing Information.
- 2.2 The parties acknowledge that APS or other Billing System(s) may not be capable of collecting and/or recording and/or processing all types of Calls. KCH or the Operator (as applicable) shall, as appropriate, collect (for each individual Call), record (whether in bulk or on an itemised Call basis) and process (in accordance with paragraph 2.4) Billing Information for the types of Call for which APS or other Billing System(s) are not operational and in respect of which the other party is the Billing Party.
- 2.3 The types of Calls for which APS or other Billing System(s) are not operational are as described from time to time in the Billing Manual.
- 2.4 There shall be recorded for each Call for which there is an entry in the Kingston Interconnection Price List the following:
- 2.4.1 Interconnect Link Identifier (unless otherwise specified in the Billing Manual); and
  - 2.4.2 the dialled digits and/or such other information as may be agreed; and
  - 2.4.3 CLI (if available); and
  - 2.4.4 the date and time when the Answer Signal is received by the party providing the Billing Information;

2.4.5 Chargeable Call Duration (whether measured or derived).

2.5 The Billing Party shall provide with the invoice appropriate support Billing Information as described in the Billing Manual to enable the non-billing party to validate the invoice.

### **3 EXCHANGE OF BILLING INFORMATION**

3.1 The Billing Party shall process the information specified in paragraph 2.4 so as to produce such information (including, if applicable, the call segments listed from time to time in the Kingston Interconnection Price List) by the applicable time of day/period in summary form and to complete and carry out in the matrix comprising of generic Interconnect Usage Report as shown in Table 1.

3.2 The Operator shall supply KCH with Billing Information recorded by it pursuant to paragraph 2.2 not later than 10 Working Days after the end of each Billing Period. Subject to receipt pursuant to paragraph 3.3.1 of the necessary TIBS Information (if any) from KCH, the Operator shall, not later than 10 working days after the end of each Billing Period, supply to KCH the latest TIBS Billing Information and Refund Report.

3.3 KCH shall supply the Operator with Billing Information as follows:

3.3.1 KCH shall use its reasonable endeavours to supply to the Operator on average four times each week the latest TIBS Information and such other relevant information as may be agreed from time to time in writing. Without prejudice to any dispute resolution provision in this Agreement it is hereby acknowledged that TIBS Information shall be relied upon by the Operator to calculate charges payable by Operator Customers using the Operator System.

3.3.2 KCH shall supply to the Operator the Carrier Chargeband Reference Data together with such other data as the parties may agree. Such Carrier Chargeband Reference Data (including changes thereto) shall be supplied on a quarterly basis at such times as shall be agreed on public access Internet or by dial-up modem.

**Table 1**

Call Type	Daytime			Evening			Weekend			Total		
as per Kingston Interconnection Price List	Call# N <sub>D</sub>	Duration M <sub>D</sub>	Revenue R <sub>D</sub>	Call# N <sub>E</sub>	Duration M <sub>E</sub>	Revenue R <sub>E</sub>	Call# N <sub>W</sub>	Duration M <sub>W</sub>	Revenue R <sub>W</sub>	Call# N	Duration M	Revenue R
TOTAL	ΣN <sub>D</sub>	ΣM <sub>D</sub>	ΣR <sub>D</sub>	ΣN <sub>E</sub>	ΣM <sub>E</sub>	ΣR <sub>E</sub>	ΣN <sub>W</sub>	ΣM <sub>W</sub>	ΣR <sub>W</sub>	ΣN	ΣM	ΣR

or such other form of Interconnect Usage Report as the parties may from time to time reasonably agree.

Where: N = the total number of Calls

M = the total Chargeable Call Duration

F = appropriate rate per Call

G = appropriate rate per minute for the relevant entry in the Kingston Interconnection Price List

and where R = N x F; or

R = M x G; or

R = (N x F) + (M x G)

as appropriate in accordance with the Kingston Interconnection Price List being the amount to be shown on the relevant invoice.

- 3.4 The Operator shall supply Billing Information in respect of the Operator System to KCH such information, being the Operator's equivalent of the Billing Information contained in paragraph 3.3.1, to be supplied at such time and in such form as KCH may reasonably require. All Billing Information provided under paragraphs 3.2 to 3.4 shall be sent by such means as are described in the Billing Manual.
- 3.5 The Operator shall process the TIBS Information as soon as practicable. If the Operator asks questions about the TIBS Information, it shall use its reasonable endeavours to do so as soon as practicable after receipt of the tapes or receipt by electronic transfer, as applicable. The Operator shall return tapes (if any) to KCH when the TIBS Information has been processed.
- 3.6 The parties acknowledge that the primary method of exchanging Billing Information is the completion by the Billing Party of the appropriate Interconnect Usage Report and the sending of such reports (or a summary thereof) to the other party.
- 3.7 The Billing Party shall store Billing Information in such summary format and in such amounts as shall be sufficient to recalculate the amounts due from one party to the other to take account of changes in the relevant entries of the Kingston Interconnection Price List.
- 3.8 If the System or the Billing System of either party malfunctions and fails to provide all of the Billing Information necessary for the Billing Party to prepare an invoice, the other party shall at the request and reasonable expense of the Billing Party use its reasonable endeavours to supply the missing Billing Information to the Billing Party. There shall be no legal liability on the Billing Party for the preparation of an incorrect invoice resulting from inaccuracies in such Billing Information provided by the other party to the Billing Party. The parties acknowledge that Billing Information supplied by the other party pursuant to this paragraph shall have been supplied via a verification system (rather than a Billing System) and such other party cannot warrant that the information is free of error.
- 3.9 If the parties' monitoring of their respective Billing Information indicates a persistent inconsistency in reconciling Billing Information provided by the parties' respective Billing System(s), the parties shall use their reasonable endeavours to ascertain the cause of such inconsistency, including, subject to the parties agreement, the reference of the matter for investigation and resolution by such appropriate independent consultant as the parties may agree, or in default of agreement, as may be nominated by the President of the Institute of Chartered Accountants in England and Wales. Such independent consultant shall act as an expert and not as arbitrator and whose decision, in the absence of manifest error, shall be final and binding. The parties shall cooperate in such investigation. The independent consultant's costs for such investigation shall be paid by the parties in such proportions as the independent consultant shall decide.
- 3.10 Save as may be otherwise provided in a Schedule, charges shall not be payable under this Agreement by either party to the other for the conveyance of

a Call if the Call is not connected when there is a "ring" tone with no reply, an "engaged" tone or "number unobtainable" tone.

- 3.11 For the avoidance of doubt, if a Chargeable Call Duration extends over 2 or more charge rate periods the Call shall be recorded as a single Call in the charge rate period applying at the commencement of the Call and the Chargeable Call Duration shall be apportioned and recorded in each of the charge rate periods applicable to that Call.

#### **4 INVOICES**

- 4.1 At the end of each Billing Period the Billing Party shall use its reasonable endeavours to submit to the other party, within a reasonable time, invoices for charges for Calls and other services for which the Billing Party is entitled to charge the other party during such Billing Period.

- 4.2 Following the end of each Billing Period and provided that the relevant Billing Information has been supplied in accordance with paragraph 3:

4.2.1 the Operator shall use its reasonable endeavours to submit to KCH invoices for charges for Calls and other services for which the Operator is entitled to charge KCH during such Billing Period; and

4.2.2 KCH shall use its reasonable endeavours to submit to the Operator invoices for charges for services provided to the Operator by KCH (being services the subject of TIBS Billing Information and Refund Reports) during such Billing Period and save for international Transfer Charge Calls (to the extent not previously invoiced) the two immediately preceding Billing Periods;

4.2.3 for international Transfer Charge Calls the provisions of paragraph 4.2.2 shall apply save that subject to the provisions of 4.2.4 KCH shall submit an invoice for an international Transfer Charge Call not later than 10 months from the date of such a Call;

4.2.4 KCH shall use its reasonable endeavours to notify in writing the Operator of any notification which KCH has received from an Overseas System, as a result of which notification, KCH reasonably expects that KCH would not be capable of submitting invoices for international Transfer Charge Calls within the period specified in paragraph 4.2.3. Any such notification to be sent to the Operator by KCH shall be given not later than 6 months from the date of the relevant international Charge Calls. If such notification is given, KCH may submit an invoice after 10 months from the date of the relevant international Transfer Charge Call.

- 4.3 All charges payable under this Agreement shall be calculated in accordance with this Agreement and at the rates specified from time to time in the Kingston Interconnection Price List. Invoices for charges shall be invoiced and paid for in accordance with Clause 13 of the main body of this Agreement together with the relevant Schedule and the Kingston Interconnection Price List, as appropriate. Detailed invoicing procedures are described in the Billing Manual.

- 4.4 For the avoidance of doubt, an invoice (including an invoice based on estimated information) shall be dated as of the date of despatch of that invoice.
- 4.5 For services (other than Calls) the Billing Party shall provide with the invoice appropriate Billing Information as described in the Billing Manual to enable the non-billing party to accurately process the invoice for such services. Detailed invoicing procedures are described in the Billing Manual.
- 4.6 If the Operator fails to supply to KCH pursuant to paragraph 2 or paragraph 3.2 Billing Information necessary for KCH to deliver an invoice under paragraph 4.2.2 (other than due to an act or omission of KCH) the following provisions shall apply:
- 4.6.1 KCH may deliver an invoice ("estimated invoice") for an amount due to KCH for such period, such amount being equal to the relevant amount contained in KCH's invoice for the immediately preceding Billing Period as increased for decreased by the Relevant Percentage. For the purpose of this paragraph "Relevant Percentage" means the percentage increase or decrease in the aggregate amounts due to KCH under this Agreement over the last two months for which Billing Information shall have been supplied by the Operator in accordance with paragraphs 2 or 3.2.
- 4.6.2 Following the supply by the Operator of the necessary Billing Information relating to the Billing Period for which an estimated invoice has been delivered to KCH the amounts due to KCH in respect of any subsequent invoice(s) submitted to the Operator shall be adjusted accordingly by the amount over or under paid by the Operator in respect of the estimated invoice, save to the extent already paid or refunded:
- 4.6.3 Any payment due to KCH (or any refund due to the Operator) as appropriate shall be made pursuant to paragraph 4.6.2 together with interest on such additional payment or refund, such interest calculated at the Default Interest Rate as at the date being 30 calendar days from the date of despatch of the estimated invoice. Such interest shall be payable (in the case of an additional payment due) from and including the day after the Due Date, or (in the case of a refund) the later of the date of payment of the original amount to be refunded and the Due Date, in each case ending on the date of payment or, as the case may be, the date of refund in full. Such interest shall accrue from day to day and shall not be compounded.
- 4.7 A calculation of interest at the Oftel Interest Rate shall be calculated on a daily basis from and including the date of payment of the original amount to be adjusted up to and including the date on which the adjusted amount is paid.

## **5 PAYMENT**

- 5.1 Subject as stated below, all charges due by one party to the other under this Agreement shall be payable by the Due Date.
- 5.2 If, pursuant to paragraph 6.1, either party shall have notified the other of a dispute relating to such invoice and such dispute shall not have been resolved before the Due Date, and if the amount in dispute represents:

5.2.1 less than 5 per cent. of the total amount (excluding VAT) of the relevant invoice, the total amount invoiced; or

5.2.2 5 per cent. or more of the total amount (excluding VAT) of the relevant invoice, the amount in dispute may be withheld until the dispute is resolved and the balance;

shall be due and payable on the Due Date.

5.3 Notwithstanding notification of a dispute pursuant to paragraphs 6.1 or 6.5, if a party fails to pay on the Due Date any amount due under this Agreement or shall overpay any amount, the payee or, as the case may be (subject to paragraph 5.5) the over-payer, shall pay or be paid interest at the Default Interest Rate as at the Due Date or date of the overpayment in respect of any such amount outstanding.

5.4 Interest at the Default Interest Rate shall be payable (for late payment) from and including the day after the Due Date or (in the case of a refund) the later of the date of payment of the original amount to be refunded and the Due Date, in each case ending on the date of payment or, as the case may be, refund in full. Such interest at the Default Interest Rate shall accrue day by day and shall not be compounded.

5.5 If such overpayment results from information provided by the overpayer (which is not attributable to information provided by the payee party), the payee party shall be under no obligation to pay any interest at the Default Interest Rate on the amount overpaid.

5.6 If a recalculation and adjustment is required pursuant to Clauses 11, 12 or 13 of the main body of this Agreement, the amount of such adjustment together with interest calculated at the OfTel Interest Rate shall be calculated and paid accordingly.

5.7 Without prejudice to the provisions of paragraphs 5.1 to 5.5 (inclusive) a party shall pay pursuant to paragraph 5.6 to the other the amount of the adjustment together with interest calculated at the OfTel Interest Rate calculated from the Due Date to the date on which the adjustment is paid (both dates inclusive).

5.8 VAT shall be added to all or any part of the charges under this Agreement and shall be paid by the party responsible for making such payment.

## 6 DISPUTES

6.1 Each party shall use its reasonable endeavours to resolve disputes with the other. If either party ("**the disputing party**") disputes the accuracy of an invoice delivered under this Agreement **the disputing party** shall, as soon as practicable, notify in writing the other party's billing liaison contact of the nature and extent of the problem. If the problem remains unresolved on the last but one Working Day before the date when the relevant invoice is due for payment, **the disputing party** may invoke the formal billing dispute procedures set out in paragraph 6.2 by written notification to the other, such notification to be given not later than 5 Working Days after the Due Date of the relevant invoice. **The**

**disputing party** shall include with such notice all details reasonably necessary to substantiate its claim, which details shall be reasonably capable of being verified by the other party.

- 6.2 Following a notification made under paragraph 6.1 that either party wishes to invoke the formal billing dispute procedures, the parties shall consult and endeavour to resolve the dispute at level 1 of consultation and if agreement cannot be reached within 15 Working Days, shall escalate the disagreement to level 2. If agreement cannot be reached within 10 Working Days at level 2, the matter shall be escalated to level 3. Each party shall inform the other in writing of the name of its representative at each level of consultation. Subject to paragraph 6.7, each party shall use the above dispute resolution procedure for any dispute under this Annex to the fullest extent to try to resolve such dispute. The parties may agree in writing to extend the above timescales.
- 6.3 Notwithstanding the provisions of paragraph 6.1, if the parties fail to resolve any dispute either, in not less than two months (for a dispute notified pursuant to paragraph 6.2), or, in not less than three months (for a dispute notified pursuant to paragraph 6.5) in each case from the Due Date of the relevant disputed invoice (or such extended period as the parties may agree) either party may (by written notice to the other to such effect) refer the dispute for investigation and resolution by such chartered accountants as the parties may agree, or in default of agreement, as may be nominated by the President of the Institute of Chartered Accountants in England and Wales. Such chartered accountants shall act as an expert and not as arbitrator and whose decision, in the absence of evidence of manifest error, shall be final and binding. The parties shall cooperate in such investigation and, if any sums are found to be due or overpaid in respect of the disputed invoice such sum shall be paid or refunded (with interest payable or paid pursuant to paragraph 5.3), as the case may be, within 10 Working Days from the date of resolution or earlier settlement between the parties.
- 6.4 The costs of the chartered accountant agreed or nominated pursuant to paragraph 6.3 shall be paid by **the disputing party** unless the relevant invoice is established to have been incorrect by more than the lesser of (a) 5 per cent. of the total amount of the charges (excluding VAT) specified in the invoice and (b) £5,000 (excluding VAT), when the Billing Party shall pay such costs.
- 6.5 Notwithstanding the provisions of paragraph 6.1 a party may by written notice raise a dispute regarding any invoice delivered under this Agreement at any time following 5 Working Days after the Due Date, save that no such notice shall be given more than 12 months after the date of the relevant invoice. If notice under this paragraph 6.5 is given after the latest date for giving notice specified in paragraph 6.1, the preceding provisions of this paragraph 6 shall apply mutatis mutandis, save that in paragraph 6.2 in relation to the number of Working Days "15" and "10" shall be substituted by "30" and "20", respectively.
- 6.6 The above procedures are without prejudice to any other rights and remedies that may be available in respect of any breach of any provision of this Agreement.



- 6.7 Though it is the good faith intention of the parties to use the above dispute resolution procedures to the fullest extent to try to resolve such a dispute, nothing in this Annex shall prevent either party seeking, obtaining or implementing interlocutory or other immediate relief in respect of any dispute or referring, in accordance with any right it may have under the other party's Licence or its Licence, any matter relating to this Annex or any dispute arising in relation to this Annex, to the Director General requesting him to make a determination or take other appropriate steps for its resolution.

## **7 "TIBS" SYSTEM CHANGE NOTIFICATION**

- 7.1 KCH shall notify the Operator by giving not less than 6 months written notice if KCH is proposing a replacement of, or fundamental change in TIBS.

## ANNEX 4

### Part B

#### Interconnection Charges

##### INDEX

- 1 Prepayment Charges
- 2 Liquidated Damages in respect of Testing Capacity
- 3 Cancellation Charges in respect of Late Notification of Testing
- 4 Removal of Capacity
- 5 Order Cancellation

#### 1 PRE-PAYMENT CHARGES

- 1.1 If either party (the "**defaulting party**") in any ACO Period, places Capacity Orders on the other party for less than the minimum Capacity specified pursuant to Annex 3 paragraph 5.5, then the defaulting party shall pay to the other party not later than 30 Working Days from the end of such ACO Period the prepayment charges calculated in accordance with paragraph 1.2 of this Annex 4.

- 1.2 Prepayment charges are calculated in accordance with the following formula:

$$A = ((80\% \times B) - C) \times D$$

Where

- A is the prepayment charge payable;
- B is the aggregate Capacity provision (by a number of units 2Mbit/s Capacity) specified for the relevant ACO Period in the relevant ACO (not including if the defaulting party is the Operator, Capacity required for traffic handed over from the KCH System for which KCH has the responsibilities set out in Annex 2 paragraph 6.1.4);
- C is the Capacity (by number of units of 2Mbit/s Capacity) ordered during such ACO Period not including cancellations of Capacity Orders made during or after the relevant ACO Period;
- D is for Interconnect Links half the Intrabuilding Link connection charge applicable for the ACO Period, as detailed in the Kingston Interconnection Price List from time to time or for PCPOC the "fixed charge for subsequent circuits where KCH plant exists" as set out in the KCH Retail Price List from time to time.

#### 2 LIQUIDATED DAMAGES IN RESPECT OF TESTING CAPACITY

- 2.1 The liquidated damages in respect of testing Capacity shall be for 2Mbit/s Interconnect Links 1.5% of Intrabuilding Link connection charge specified from time to time in the Kingston Interconnection Price List or for PCPOC,

1.5% of the "fixed charge for subsequent circuits where KCH plant exists" as set out in the KCH Retail Price List for time to time for each 2Mbit/s unit of Capacity which is subject of the relevant Capacity Order, multiplied by the number of Working Days calculated from a date 25 Working Days after the date on which the Capacity should have been Ready for Testing pursuant to Annex 3 paragraphs 5.7, except that no liquidated damages shall be payable if the purchaser causes a delay to the Ready for Service date by failing to complete the testing of the Capacity in 25 Working Days.

### **3 CANCELLATION CHARGES IN RESPECT OF LATE NOTIFICATION OF TESTING**

- 3.1 If the notice of cancellation by the purchaser, pursuant to Annex 3 paragraph 5.10 is given less than five Working Days before the scheduled RFT Date, the purchaser shall pay, on demand, a cancellation charge of 20% of the relevant connection charge, or charges, specified from time to time in the Kingston Interconnection Price List and referred to in Schedule 1 of Annex 1.

### **4 REMOVAL OF CAPACITY**

- 4.1 If, pursuant to Annex 3 paragraph 5.12, Capacity is removed within the period Y which shall not exceed 10 years, a proportion of the relevant connection charge shall be repaid to the party requesting the removal. The amount to be repaid shall be:

$$R = (0.466 \times C) - \frac{(0.466 \times C \times Y)}{10}$$

where:

R is the amount to be repaid

C is the relevant connection charge referred to in Schedule 1 of Annex 1 and specified from time to time in the Kingston Interconnection Price List

Y is the number of years between the RFT Date for the relevant Capacity and the date of the removal order rounded up to the next whole year.

### **5 ORDER CANCELLATION**

- 5.1 The charge payable pursuant to Annex 3 paragraph 5.10 shall be 50% of the applicable connection charge specified from time to time in the Kingston Interconnection Price List.