

## **Schedule 4 – Billing**

### **1. Charging Principles**

- 1.1 Charges for the Services provided under the Reference Offer by the Access Provider (including any Charges for the installation of any equipment, apparatus, or other material in relation to the Services as well as any chargeable activity or work conducted by the Access Provider under the terms of the Agreement) will be invoiced and paid according to the principles and procedures defined in this Schedule 4 – Billing, unless different principles and procedure are otherwise specified in the specific Service Description and/or the respective Operations Manual.
- 1.2 Payment of undisputed amounts in any Invoice is fundamental to the provisioning of Services by the Access Provider to the Access Seeker. Any failure to pay undisputed amounts by the Access Seeker on or by the Due Date in accordance with the Billing Period (as further defined below) will be considered as a Material Breach of the Access Seeker's obligations under the Agreement.

### **2. Charging and invoicing**

- 2.1 The Access Provider (the "**Billing Party**") shall invoice the Access Seeker (the "**Billed Party**") for Services in accordance with the rates, principles or mechanisms for the calculation of the amount of Charges as set out in this Schedule and in Schedule 3 – (Pricing), or any other Charges applicable to the specific Services which may be set out in the Service Descriptions, of the Reference Offer.
- 2.2 For each Service or a Connection, as applicable, charging shall commence upon the Actual RFS Date.
- 2.3 Where the delivery of the Service ordered by the Billed Party and in particular but without limitation any new Service activation, is unreasonably delayed by or for reasons on the side of the Billed Party, the Billing Party shall be entitled to:
  - i. Invoice the Billed Party for any applicable Non-Recurring, Additional or other Charges, following either (i) the date that corresponds to the latest delivery or RFS Date corresponding to the relevant service level stipulated in Schedule 7 (Service Levels), or (ii) another date that have been agreed with the Billed Party as the RFS Date or a delivery date pursuant to the Agreement, if applicable; and

- ii. Start invoicing the Billed Party for the applicable Recurring Charges following expiry of two (2) calendar months after the date mentioned in this Clause 2.3i) above, unless the respective Service Order has been cancelled by the Billed Party pursuant to this Agreement. For avoidance of doubts, this clause excludes the possibility of applying Clause 5 (Billing in case of Service Order suspension) to the same Service Order or its part.

2.4 Where justified by objective technical reasons to be demonstrated by the Billed Party, the Billing Party and the Billed Party may agree that the Billing Party will be charging and billing the Billed Party for the final Service type to be delivered once the Billed Party is technically ready for it, whereas the Billing Party will in the meantime provide a temporary solution based on another Service type (e.g., the Billing Party will provide ten (10) 1Gbps links as a temporary solution which will be eventually replaced by one 10Gbps link as the final solution once the Billed Party is technically ready for using the 10 Gbps link). This is subject to the commitment by the Billed Party to move to such final Service type within a specific timeline as will be agreed between the Parties and which shall not exceed 12 months. The Billing Party shall be entitled to request a minimum term commitment for such final Service type to cater for the difference in any applicable Charges, which shall not exceed 24 months. As soon as agreed, any such arrangement must be made available and transparently communicated to all Licenced Operators via the ECTC or otherwise.

### 3. **Billing for Recurring Charges**

- 3.1 Recurring charges for Services will be payable in advance on a monthly basis (the "**Billing Period**"). Charges for the first month in which a Service is supplied to the Billed Party shall be pro-rated from the Actual RFS Date to the end of the first month in which the Actual RFS Date occurred.
- 3.2 The Billing Party shall issue to the Billed Party during the Calendar Month preceding the commencement of each Billing Period, an Invoice in electronic form (i.e., PDF or another form as may be agreed in writing by the Parties from time to time).

### 4. **Billing for Non-Recurring, Additional or other Charges**

- 4.1 Invoice for Non-Recurring, Additional or other Charges will be sent within 30 Calendar Days from the Actual RFS Date for the respective Service.
- 4.2 The Non-Recurring, Additional or other Charges related to Services supplied or any

activity or work provided by the Billing Party to the Billed Party, shall be invoiced within 30 Calendar Days of all Services supplied, activities completed and/ or, where applicable, handed over to the Billed Party, in the preceding month.

- 4.3 The Charges that are payable by the Billed Party due to termination, cessation or cancellation of a particular Service, shall be invoiced and payable upon occurrence of each such event which gives rise to such payment obligation. The Billing Party shall provide the Billed Party with an Invoice for payment within 30 Calendar Days following occurrence of any such event.

## 5. **Billing in case of Service Order suspension**

- 5.1 The Billed Party shall be entitled to request in writing the Billing Party to suspend processing of a particular Service Order (and the delivery of the specific Service covered by it) following its submission to the Billing Party subject to the following:

- i. The request for suspension in writing is submitted to the Billing Party before the relevant RFS Date; and
- ii. The period of suspension does not exceed two (2) months; and
- iii. The request for suspension in relation to a particular Service Order or any Connection covered by it can be made only once.

- 5.2 Any Service Order suspended for the period that does not exceed two months pursuant to Clause 5.1 above shall not be, during such suspension period, subject to any applicable Charges provided that the Billed Party, prior to the expiry of such suspension period, requests in writing the Billing Party to complete the Service Order and activate the relevant Service. Billing of the Service Order shall begin on the Actual RFS Date.

- 5.3 During the suspension, the Billed Party may decide to cancel the Service Order completely, in which case the Billed Party shall submit a Cancellation Request in writing to the Billing Party before the expiry of the suspension period of two months. Such cancellation will be subject to the corresponding Cancellation Charge as stipulated in Schedule 3 – (Pricing).

- 5.4 In case the Access Seeker fails to submit (i) a written request to complete the delivery of the Service Order suspended pursuant to Clause 5.1 above or (ii) a Cancellation Request as per Clause 5.3 above, prior to the expiry of the suspension period, the Service Order shall be deemed cancelled and the Access Seeker shall be obliged to pay the cost incurred by the Access Provider in processing the Service Order until that date.

## 6. **Issuing Invoices**

- 6.1 The Billing Party shall provide the Billed Party with an Invoice setting out the Charges

payable by the Billed Party in respect of the relevant Billing Period.

6.2 Unless mutually agreed otherwise, the Billing Party shall deliver each Invoice by e-mail to the Billed Party's Billing Representative. For this purpose, the Billed Party shall provide the Billing Party with the relevant email ID(s) of its Billing Representative. A delivery of the Invoice sent by e-mail shall be deemed received by the Billed Party if the Billing Party receives, at least an automatic system generated email receipt or confirmation.

6.3 The Billing Party shall ensure that all Invoices comply with the following requirements and include the following information:

- a. all amounts are stated in Bahraini Dinars;
- b. total amount without the VAT including information as to which part is subject to the VAT;
- c. the VAT Amount at the rate applicable at the time;
- d. total amount including the VAT Amount payable by the Billed Party;
- e. each Invoice has an Invoice unique reference number;
- f. the name and address of the Billing Party;
- g. the Due Date for payment and the time limits for raising any Billing Dispute;
- h. the available payment methods;
- i. bank details of the Billing Party;
- j. any mandatory information stipulated by the applicable law,
- k. sufficient information to enable the Billed Party to verify the amount of the Charges specified in the Invoice, including an itemised breakdown of the individual Services and Charges covered by the Invoice.

An Invoice cannot be rejected for formatting reasons, if all information above is provided in the Invoice.

6.4 The Billing Party shall be obliged to use all reasonable endeavours to issue accurate and complete Invoices to avoid unnecessary Billing Disputes.

## 7. **Payment**

7.1 The Billed Party must pay the amount mentioned on any Invoice in respect of which no Billing Dispute is raised by the Billed Party within the Billing Dispute Notification Period, by the Due Date. For the avoidance of doubt, the Billed Party must pay this amount to the

Billing Party regardless of whether the Billed Party has received payment from its Customers or any third parties.

7.2 All payments must be:

- (a) made by electronic funds transfer directly to the nominated account of the Billing party, or by such other means as may be agreed by the Parties; and
- (b) subject to clause 7.7, made without any set-off or counterclaim and free of any withholding or deduction, unless otherwise agreed by the Parties in writing; and
- (c) made against a specific Invoice issued by the Billing Party using a unique Invoice reference number as provided by the Billing Party and the Billed Party shall provide the unique Invoice reference number in the payment confirmation to the Billing Party.

7.3 Payments are deemed to be received on the date the electronic funds are cleared in the Billing Party's bank account, unless the payment is subsequently dishonoured, in which case payment is deemed not to have been received until cleared funds are received by the Billing Party that are net of any associated bank charges or transfer fees, together with any dishonour fees and other related charges.

7.4 For any payment made by the Billed Party, which fails to expressly refer to the Invoice's unique reference number, the Billing Party shall allocate such payment to the oldest outstanding undisputed amount on any overdue Invoice of the same Billed Party in which case the relevant amount(s) on such Invoice will be deemed settled and the Billed Party shall no longer be entitled to raise any Billing Dispute in relation to such amount(s). For avoidance of doubt, such allocation cannot be made against an amount, which is already subject to a Billing Dispute, or the Billed Party raised a Billing Dispute about such Invoice within the Billing Dispute Notification Period. In such case the Billing Party will allocate such payment to the next oldest outstanding undisputed amount.

7.5 Notwithstanding the above, where the Billing Party fails to include any credit or deduction expressly confirmed by it in writing in the next Invoice, the Billed Party shall be entitled to off-set the same amount, which was expressly acknowledged by the Billing Party in writing, against such Invoice.

7.6 In addition to exercising any other rights the Billing Party may have under the Agreement or at law, where the amount of any Invoice in respect of which no Billing Dispute is raised within Billing Dispute Notification Period, is outstanding and remains unpaid for more than

thirty (30) Calendar Days after the Due Date, the Billing Party reserves the right to take action, upon notice to the Invoiced Party, to recover any such amount as a debt due to the Billing Party.

- 7.7 In case the Billing Party issues a Credit Note to the Billed Party, but fails to deduct the amount of that Credit Note in the subsequent Invoice to the Billed Party, the Billed Party may use such Credit Note to off-set the amount payable under such subsequent Invoice subject to the total amount of such subsequent Invoice is higher or equal to the total amount of the Credit Note. Where the total amount of the Credit Note is higher than the total amount of the subsequent Invoice to the Billed Party, the Billed Party may not use the Credit Note to off-set any amounts payable by the Billed Party and the Parties will discuss in good faith to agree on a reasonable instalment plan for any such off-set.

## **8. Billing Errors and Overpayment**

- 8.1 The Parties acknowledge that Invoices cannot be warranted as being free from errors. If the Billed Party discovers an error in an Invoice provided by the Billing Party, it must notify the Billing Party as soon as practicable. The Billing Party must make the adjustment necessary to correct that error in its next Invoice, if it is able to verify and correct the error.
- 8.2 If the Billing Party has omitted or miscalculated Charges from an Invoice, the Billing Party may include or amend (respectively) those Charges in a later Invoice, as long as the Billing Party is able to substantiate these Charges to the Billed Party and the inclusion or amendment is made within 90 (ninety) days of the issuing of the Invoice.
- 8.3 If the Billed Party makes an overpayment in error, it shall notify the Billing Party within ninety (90) Calendar Days after the date of the overpayment with sufficient details for the Billing Party to identify and verify the overpayment, including the invoice number, the amount that should have been paid and the reason for the overpayment.
- 8.4 The Billing Party shall, acting reasonably and in good faith, verify the overpayment within thirty (30) Working Days after receipt of notice of overpayment, and shall compensate the overpaid amount to the Billed Party within thirty (30) Working Days after the date of verification of the overpayment by (i) making a direct refund to the Billed Party or (ii) crediting the next Invoice issued to the Billed Party as per the choice of the Billed Party which choice must be documented in writing.

## 9. **Billing Disputes**

9.1 If the Billed Party, acting reasonably and in good faith, wishes to dispute in whole or in part an Invoice issued by the Billing Party, the Billed Party must (i) notify the Billing Party in writing, or (ii) submit a Billing Dispute via the Billing Party's system as instructed by the Billing Party in writing, as applicable (the "**Billing Dispute Notice**") within forty five (45) Calendar Days of receipt of that Invoice (the "**Billing Dispute Notification Period**"). Such notice must be sent to the Billing Representative of the Billing Party as nominated from time to time or submitted via the Billing Party system as instructed by the Billing Party in writing (including by email), whichever is applicable.

9.2 The Billed Party may only lodge a Billing Dispute with the Billing Party where the Billed Party, acting reasonably and in good faith, has reasonable grounds to believe that an error has arisen from, without limitation, one of the following circumstances:

- i. the Billing Party's billing system is, or has been, defective or inaccurate in respect of generating accurate and complete records of the Services that are the subject of the Billing Dispute;
- ii. there is, or has been, a discrepancy between the Invoice in dispute and the records generated by the Billing Party's billing system;
- iii. there is, or has been, a fraud perpetrated by the Billing Party; or
- iv. the Billing Party has made another error in terms of records related to the Services or calculation of the Charges that are the subject of the Billing Dispute, or
- v. there is any other error, miscalculation, or other deficiency in applying or calculating any Charges or amounts on the Invoice.

9.3 A Billing Dispute Notice shall specify:

- (a) details of the amounts in dispute;
- (b) details required to identify the relevant Invoice and Charges in dispute including:
  - (i) the Invoice unique reference number;
  - (ii) the Invoice date;
  - (iii) the Invoice amount;
- (c) the detailed billing verification information; the reasons for which the Billed Party disputes the Invoice, which must include a copy of any records that the Billed Party

- is relying on to support its claims of a Billing Dispute; and
- (d) sufficient information for the Billing Party to be able to properly assess the disputed amounts in a timely manner.
- 9.4 The Billing Party shall confirm to the Billed Party receipt of the Billing Dispute in writing within five (5) Working Days following receipt of all the necessary information required for a Billing Dispute Notice as stipulated above.
- 9.5 The Billed Party may only invoke a Billing Dispute if it reasonably considers that a bona fide Billing Dispute exists and the total disputed amount exceeds BD50.
- 9.6 For the avoidance of doubt and unless the Parties agree otherwise, no Invoices may be disputed after the expiry of the Billing Dispute Notification Period. In case the Billed Party would attempt to raise a Billing Dispute including sending a Billing Dispute Notice to the Billing Party after the expiry of the Billing Dispute Notification Period, such action by the Billed Party shall be deemed void and the Billing Party is not obliged to respond to it.
- 9.7 Irrespective of any Billing Dispute, the Billed Party shall pay any undisputed amount in accordance with the normal payment procedures as set out in this Schedule 4 (Billing).
- 9.8 Where the Billed Party has paid any amount, including payment of any amount mentioned on an Invoice by the Due Date, and subsequently notifies the Billing Party of a Billing Dispute in relation to that same amount within the Billing Dispute Notification Period, the Billing Party is not obliged to refund any or all of that amount until the Billing Dispute is resolved in respect of that amount.
- 9.9 The Parties and in particular the Billing Representatives shall use all reasonable endeavours to resolve a Billing Dispute within thirty (30) Working Days after the date of receipt of the Billing Dispute Notice, or such other period that may be agreed by the Parties.
- 9.10 If the Parties are unable to resolve a Billing Dispute within thirty (30) Working Days after the date of receipt of the complete Billing Dispute Notice (or such other period that is agreed between the Parties), either Party shall be entitled to escalate the Billing Dispute by notifying the other Party's Billing Representative (the "**Billing Dispute Escalation Procedure**") for resolution by representatives of each Party that have full authority to settle the Billing Dispute (such representatives to be at a higher level of management than the Billing Representatives).



- 9.11 The designated Billing Dispute Escalation Procedure representatives must exercise all reasonable efforts including by meetings to discuss the Billing Dispute and negotiate in good faith in an effort to resolve that Billing Dispute. Each Party must meet all reasonable requests for relevant information received from the other Party during these negotiations to assist with the resolution of the Billing Dispute.
- 9.12 If a Billing Dispute is not resolved within twenty (20) Working Days of the date of escalation, either Party may, by written notice to the other Party refer the Billing Dispute to the Authority as per the applicable dispute resolution procedures with the explanation as to why the Dispute Resolution process under this Schedule 4 (Billing) failed to resolve the Billing Dispute.
- 9.13 If the Billing Dispute is resolved:
- (a) against the Billed Party, the Billed Party shall pay any outstanding amount to the Billing Party within ten (10) Working Days after the date of resolution of the Billing Dispute; or
  - (b) in favour of the Billed Party, the Billing Party shall within ten (10) Working Days after the date of resolution of the Billing Dispute:
    - (i) refund any disputed amount previously paid by the Billed Party to the Billing Party, or
    - (ii) issue a Credit Note to be reflected in the subsequent Invoice to the Billed Party, corresponding to the outcome of the Billing Dispute in case the Billed Party did not pay the disputed amount pending the outcome of the Billing Dispute.
- 9.14 Although it is the best intention of the Parties to use the above process for resolving Billing Disputes to the fullest extent, nothing in this Schedule 4 (Billing) prevents either Party from pursuing any other remedy under this Agreement or at law that may be available to it if a Billing Dispute cannot be resolved to its satisfaction.

## 10. **VAT**

- 10.1 Unless expressly stated otherwise in this Agreement, any payments made by one Party to the other Party shall be inclusive of any tax, including the VAT.
- 10.2 If a Party wishes to charge the other Party VAT on a supply, it must first provide to the

other Party its tax registration number and (if requested) a copy of its VAT registration certificate. If at any time one Party ceases to be registered for VAT, it must notify the other Party immediately.

- 10.3 Where VAT is payable by one Party under this Agreement, the consideration for the supply (VAT exclusive) shall be increased by an amount equal to the amount of VAT applicable at the prevailing rate at the time the supply is made (the "**VAT Amount**").
- 10.4 Where one Party makes a taxable supply or deemed supply of goods or services to the other Party, the other Party shall pay the VAT in addition to the payment or other consideration for that supply on the earlier of: (a) when the payment or other consideration is made; or (b) when the supply is made. The Party making the taxable supply or deemed supply of goods or services shall issue to the other Party a valid VAT invoice.
- 10.5 If this Agreement allows for termination where one Party fails to pay what is due to the other Party, this shall include the invoiced amount plus the VAT Amount that will be payable on that sum due in accordance with this Agreement.
- 10.6 Where the consideration for any taxable supply of goods or services is adjusted, the Parties will make all appropriate adjustments to the corresponding VAT, including the repayment of VAT, the further payment of VAT and the issue of any Credit Note or further VAT invoice valid for VAT purposes.
- 10.7 If the Parties are in dispute (with each other or with the relevant tax authority) or uncertain about the VAT obligations or implications of any supplies of goods or services pursuant to this Agreement, or the relevant tax authority determines that the Parties' treatment of VAT on such supplies is incorrect in any respect, the Parties shall use all reasonable endeavours to cooperate and reach agreement with each other and with the tax authority keeping each other fully informed and shall make all appropriate adjustments.
- 10.8 If one party (the "**Payer**") has paid VAT to the other party (the "**Payee**") but, as the direct result of the non-compliance by the Payee with the applicable VAT law (including, without limitation, by reason of any error or omission, failure to register for VAT, or a defective VAT invoice), VAT is not recoverable by the Payer who has paid in full as input tax (the "**Irrecoverable VAT**"), the Payee will indemnify the Payer as soon as reasonably practicable for the irrecoverable VAT, and any direct reasonable costs and expenses (the "**Direct Costs**", together with the irrevocable VAT, the "**Losses**"), unless the Losses result primarily from the negligence of the Payer or the grounds on which VAT cannot be

recovered are disputed. The Payer shall keep the Direct Costs to a minimum and the Direct Costs shall be evidenced in writing. Immediately after the Payer becomes aware that VAT is not recoverable for the reason aforementioned, the Payer shall give notice in writing to the Payee of the matter, setting out the full details (including the grounds on which VAT cannot be recovered and the amount of the Irrevocable Costs and an estimate of the Direct Costs.