

BT STANDARD PPC HANDOVER AGREEMENT

ANNEX B

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 Annex D.

2. INVOICES

- 2.1 At the beginning (in respect of payment in advance) or at the end (in respect of payment in arrears) of each Billing Period as appropriate BT shall use reasonable endeavours to submit to the Operator, within a reasonable time (using first class post or other agreed method), invoices for charges for which BT is entitled to charge the Operator during such Billing Period for services and facilities.

- 2.2 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 Carrier Price List. Invoices for charges shall be invoiced and paid for in accordance with paragraphs 10 and 11 of the main body of this Agreement together with Annex E, the relevant Schedule and the Carrier Price List, as appropriate.

- 2.3 For the avoidance of doubt, an invoice shall be dated as of the date of despatch of that invoice.

- 2.4 BT shall provide with the invoice appropriate Billing Information to enable the Operator to process accurately the invoice for such services.

- 2.5 BT shall store Billing Information in such summary format and in such amounts as shall be sufficient to recalculate the amounts due from the Operator to take account of changes in the relevant entries of the Carrier Price List.

- 2.6 BT shall use the e-billing system, where available, to issue all invoices in relation to this Agreement. The Operator shall use the e-billing system, where available, to obtain all invoices in relation to this AgreementContract.

- 2.7 BT shall provide a minimum of six months' notice of any changes to the regular billing date.

3. PAYMENT

- 3.1 Subject as stated below, all charges due by the Operator to BT under this Agreement shall be payable by the Due Date.
- 3.2 If, pursuant to paragraph 4.1, the Operator shall have notified BT of a dispute relating to an invoice and such dispute shall not have been resolved before the Due Date, and if the amount in dispute represents:
- 3.2.1 a sum less than £250,000 and less than 5 per cent of the total amount of the relevant invoice (excluding VAT), the total amount invoiced shall be due and payable on the Due Date; or
- 3.2.2 a sum of at least £250,000 (excluding VAT) or 5 per cent or more of the total amount of the relevant invoice (excluding VAT), the amount in dispute may be withheld until the dispute is resolved and the balance shall be due and payable on the Due Date.
- 3.3 Notwithstanding notification of a dispute pursuant to paragraphs 4.1 or 4.5, if the Operator fails to pay on the Due Date any amount due under this Agreement or ~~shall overpay~~ owed any amount by BT, the Operator shall (subject to paragraph 4.5) pay or be paid interest at the ~~Default Interest Rate~~ Interest Rate as at the Due Date or date of the overpayment in respect of any such amount outstanding.
- 3.4 Interest at the ~~Default Interest Rate~~ Interest Rate shall be payable as follows:
- 3.4.1 for moneys which are not paid by the Due Date, from and including the day after the Due Date ending on the date of payment;
- 3.4.2 in the case of a refund, from the Due Date of the original amount, ending on the date of the refund in full;
- 3.4.3 such interest shall accrue day by day and shall not be compounded;
- 3.4.4 if interest at the ~~Default Interest Rate~~ Interest Rate pursuant to paragraph 3.4.1 is to be charged, it shall commence to be invoiced not later than seven months after the appropriate Due Date, and may be invoiced quarterly.
- 3.5 If ~~such overpayment~~ BT owes the Operator any amount as a result of an over payment that results from information provided by the Operator (which is not attributable to information provided by BT), BT shall be under no obligation to pay any interest at the ~~Default Interest Rate~~ Interest Rate on the amount overpaid.
- 3.6 If a recalculation and adjustment is required pursuant to paragraph 9 of the main body of this Agreement, the amount of such adjustment together with interest calculated at the ~~OfTel Interest Rate~~ Adjustment Interest Rate shall be calculated and paid accordingly.
- 3.7 Without prejudice to the provisions of paragraphs 3.1 to 3.5 (inclusive) a Party shall pay pursuant to paragraph 3.6 to the other the amount of the adjustment together with interest

calculated at the ~~Ofel Interest Rate~~Adjustment Interest Rate calculated from the Due Date to the date on which the adjustment is paid (both dates inclusive).

3.8 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.

4. **BILLING DISPUTES**

4.1 Each Party shall use its reasonable endeavours to resolve disputes with the other. If the Operator disputes the accuracy of an invoice delivered under this Agreement it shall, as soon as practicable, notify in writing the Operator'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 Operator may invoke the formal billing dispute procedures set out in paragraph 4.2 by written notification to BT, such notification to be given not later than five Working Days after the Due Date of the relevant invoice. The Operator shall include with such notice all details reasonably necessary to substantiate its claim, which details shall be reasonably capable of being verified by BT.

4.2 Following a notification made under paragraph 4.1 that the Operator 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 4.7, 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.

4.3 Notwithstanding the provisions of paragraph 4.1, if the Parties fail to resolve any dispute either, in not less than two months (for a dispute notified pursuant to paragraph 4.2), or, in not less than three months (for a dispute notified pursuant to paragraph 4.5) 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 co-operate 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 3.3), as the case may be, within 10 Working Days from the date of resolution or earlier settlement between the Parties.

4.4 The costs of the chartered accountant agreed or nominated pursuant to paragraph 4.3 shall be paid by the Operator 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 BT shall pay such costs.

SUBJECT TO CONTRACT

- 4.5 Notwithstanding the provisions of paragraph 4.1 a Party may by written notice raise a dispute regarding any invoice delivered under this Agreement at any time following five Working Days after the Due Date. If notice under this paragraph 4.5 is given after the latest date for giving notice specified in paragraph 4.1, the preceding provisions of this paragraph 4 shall apply mutatis mutandis, save that in paragraph 4.2 in relation to the number of Working Days “15” and “10” shall be substituted by “30” and “20”, respectively.
- 4.6 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.
- 4.7 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 a Condition, any matter relating to this Annex or any dispute arising in relation to this Annex, to OFCOM requesting it to make a determination or take other appropriate steps for its resolution.