

CUSC - SECTION 7

CUSC DISPUTE RESOLUTION

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CUSC DISPUTE RESOLUTION

7.1 INTRODUCTION

- 7.1.1 This section of the **CUSC** sets out how disputes under the **CUSC**, **Bilateral Agreements**, **Mandatory Services Agreements** and **Construction Agreements** are to be dealt with.
- 7.1.2 Under the **ESO Licence**, and in accordance with the power within section 7(3)(c) of the **Act**, it is provided for such matters arising under the **CUSC** as may be specified in the **CUSC** to be referred to the **Authority** for determination. Determining such matters also reflects consideration of utilisation of the power the **Authority** has under section 25 of the **Act** to take enforcement action in respect of any contravention of a licence obligation which would include any contravention of the obligations in respect of **Connection Charges** and **Use of System Charges** contained in the **ESO Licence**. The **Charging Disputes** provisions of the **CUSC** reflect the role under section 7(3)(c) of the **Act** and provide for such issues to be so referred to the **Authority**.

7.2 DISPUTES

Subject to any contrary provision of the **Act**, any **Licence** or the **Regulations**, or an **EMR Document**, or the rights, powers, duties and obligations of the **Authority** or the **Secretary of State** under the **Act**, any **Licence** or otherwise howsoever, any dispute or difference between **CUSC Parties** of whatever nature howsoever arising under, out of or in connection with:-

- 7.2.1 whether **Connection** and/or **Use of System Charges** have been applied and/or calculated in accordance with the **Charging Statements** (including in all cases whether the dispute or difference does arise under, out of or in connection with such issues and therefore falls within this Paragraph 7.2.1) utilising the **Authority's** role under section 7 of the **Act** (a "**Charging Dispute**") shall be resolved in accordance with Paragraph 7.3;
- 7.2.2 the **Construction Agreement** shall be resolved in accordance with the specific provisions in that **Construction Agreement**;
- 7.2.3 the **CUSC** and **Bilateral Agreements**, and **Mandatory Services Agreements** not being a dispute of a type described in Paragraph 7.2.1 or 7.2.2 above (an "**Other Dispute**") shall be resolved in accordance with Paragraph 7.4;
- 7.2.4 a matter which relates to issues where a **Customer** has raised a dispute which may involve another **CUSC Party** (a "**Third Party Dispute**") shall be resolved in accordance with Paragraph 7.5, and

insofar as **The Company** and a **User** are parties to an agreement related to the **CUSC** and that agreement contains any dispute resolution provision to which the procedure in this section 7 does not apply, **The Company** and that **User** agree that such provision shall be subject to any contrary provision of an **EMR Document**.

7.3 CHARGING DISPUTES:

7.3.1 Initial Discussions

Where a **Charging Dispute** arises, a representative of **The Company** and each **User** concerned who has authority to resolve the dispute shall meet (including by agreement by telephone) within 10 **Business Days** of a request by either party (or within such longer period as may be agreed, acting reasonably) and seek to resolve it. If the parties to the dispute are unable to resolve it within 10 **Business Days** of the meeting (or within such longer period as they may agree within that initial 10 **Business Day** period, both parties acting reasonably as to the length of the period), then the parties' obligations under this paragraph to undertake such discussions shall no longer apply in relation to that **Charging Dispute**.

Reference to Authority

7.3.2 Subject to Paragraph 7.3.1, **Charging Disputes** shall be referred by either **CUSC Party** to the **Authority** for determination in accordance with Paragraph 7.2.1 above and shall not be capable of being referred to arbitration pursuant to the rules of the **London Court of International Arbitration** or otherwise, or to any court.

7.3.3 Charging Disputes During Other Disputes

- (a) Where, in conducting an arbitration under this Section 7, an arbitrator or panel of arbitrators finds themselves or itself considering a **Charging Dispute** (whether or not forming part of an **Other Dispute**), they or it shall have no jurisdiction to determine such **Charging Dispute** (with any dispute on whether it is a **Charging Dispute** being determined by the **Authority** as soon as reasonably practicable in accordance with the definition of **Charging Dispute**) and the parties shall immediately refer such **Charging Dispute** to the **Authority** for determination pursuant to Paragraph 7.2.1 above.
- (b) In such circumstances, if there are issues (the "**Discrete Issues**") under the **Other Dispute** which are entirely discrete from and can be determined without reference to the issues in the **Charging Dispute**, then resolution of the **Discrete Issues** can continue in

accordance with the provisions of Paragraph 7.4; provided that if there is no **Discrete Issue** or issues under the **Other Dispute** the resolution of the **Other Dispute** shall be suspended until after the determination of the **Charging Dispute**.

Application of Determination

- 7.3.4 It is expected that in most circumstances the **Authority's** determination of a **Charging Dispute** will set out the effect of the determination in terms of the charges in dispute. Where such effect is not set out in detail (for example where a clear principle is stated which should be capable of clear application) then if there is a dispute as to the quantification of any amounts to be calculated by applying the determination that dispute shall be an **Other Dispute**. However, any dispute on the principles reflected in the determination shall be a **Charging Dispute**.
- 7.3.5 If the determination of the **Charging Dispute** is that there has been an over or under payment of a **Connection Charge** and/or **Use of System Charge**, **The Company** shall, subject to what the determination may state, pay to the relevant **User**, or the **User** shall pay to **The Company**, as the case may be, an amount equal to the over or under payment, together with interest thereon from the date the charges were paid until the date of payment of such interest. Such interest shall accrue from day to day at the rate specified in Paragraph 6.6.5.
- 7.3.6 The **Authority's** determination of a **Charging Dispute** shall (without prejudice to any ability to apply for judicial review of any determination) be final and binding on the parties to the dispute and shall be enforceable in the courts.

7.4 OTHER DISPUTES

Initial Discussions

- 7.4.1 Where an **Other Dispute** arises, a representative of **The Company** and each **User** concerned who has authority to resolve the dispute shall meet (including by agreement by telephone) within 10 **Business Days** of a request by either party (or within such longer period as may be agreed, acting reasonably) and seek to resolve it. If the parties to the dispute are unable to resolve it within 10 **Business Days** of the meeting (or within such longer period as they may agree within that initial 10 **Business Day** period, both parties acting reasonably as to the length of the period), then the parties' obligations under this paragraph to undertake such discussions shall no longer apply in relation to that **Other Dispute**. Either party may then refer the **Other Dispute** to arbitration pursuant to the

rules of the **London Court of International Arbitration** in force from time to time.

- 7.4.2 Whatever the nationality, residence or domicile of any **CUSC Party** and wherever the **Other Dispute** or any part of it arose, the law of England shall be the proper law of reference to arbitration under this paragraph and in particular (but not so as to derogate from the generality of the foregoing) the provisions of the Arbitration Act 1996 shall apply to any such arbitration wherever it or any part of it shall be conducted.
- 7.4.3 Any arbitrator or panel of arbitrators appointed under this Paragraph 7.4 shall determine such issues as are referred to them consistently with any determination by the **Authority** of a **Charging Dispute**, whether or not relating to the same or different facts.
- 7.4.4 Subject to paragraph 7.4.5 the **CUSC Parties** hereby consent to the President of the **London Court of International Arbitration** deciding, at their discretion and ensuring, so far as practicable, that the proceedings relating to such a decision are managed effectively, fairly and expeditiously:
- (a) following the same process as set out in the **London Court of International Arbitration** rules in respect of pending arbitrations, that two or more disputes referred to it for arbitration (whether pending or underway), be consolidated or otherwise heard together (whether or not such disputes are all **Other Disputes** or an **Other Dispute** and any dispute(s) referred under the **STC**), where **The Company** or a **CUSC Party** (or a party to a dispute under the **STC**) so requests in writing to the **London Court of International Arbitration** copied to each of **The Company** and/or the other **CUSC Parties** (as the case may be) and relevant **STC** parties setting out the reasons for such consolidation; or
 - (b) that a dispute referred to it (whether pending or underway and whether another dispute or a dispute referred to it under the **STC**) be stayed for a period not exceeding three months after the referral of such dispute to the **London Court of International Arbitration**, pending resolution of another dispute referred to it (whether pending or underway and whether an **Other Dispute** or a dispute referred under the **STC**).
- 7.4.5 The consent of the **CUSC Parties** under paragraph 7.4.4(a) shall be deemed not to have been given where a request for consolidation thereunder is received by the **London Court of International Arbitration** more than three months (or such other period as the **London Court of International**

Arbitration may at its discretion determine) after the referral of any **Other Dispute** or the **STC** dispute to the **London Court of International Arbitration** which is the subject of such request.

7.5 THIRD PARTY CLAIMS

- 7.5.1 Subject to Paragraph 7.5.4, if any **Customer** brings any legal proceedings in any court against one or more persons, any of which is a **CUSC Party** ("**Defendant Party**") and the **Defendant Party** wishes to make a **Third Party Claim** (as defined in Paragraph 7.5.3 below) against any **CUSC Party** ("**Other Party**") which would but for this paragraph have been a dispute or difference referred to arbitration by virtue of Paragraph 7.4 above then, notwithstanding the provisions of Paragraph 7.4, which shall not apply and in lieu of arbitration, the court in which the legal proceedings have been commenced shall hear and completely determine and adjudicate upon the legal proceedings and the **Third Party Claim** not only between the **Customer** and the **Defendant Party**, but also between either or both of them and any **Other Party** whether by way of third party proceedings or otherwise as may be ordered by the court.
- 7.5.2 Where a **Defendant Party** makes a **Third Party Claim** against any **Other Party** and such **Other Party** wishes to make a **Third Party Claim** against a further **CUSC Party**, the provisions of Paragraph 7.5.1 shall apply mutatis mutandis as if such **CUSC Party** had been the **Defendant Party** and similarly in relation to any such further **CUSC Party**.
- 7.5.3 For the purpose of this Paragraph 7.5, "**Third Party Claim**" shall mean:
- (a) any claim by a **Defendant Party** against any **Other Party** (whether or not already a party to the legal proceedings) for any contribution or indemnity; or
 - (b) any claim by a **Defendant Party** against such an **Other Party** for any relief or remedy relating to or connected with the subject matter of the legal proceedings and substantially the same as some relief or remedy claimed by the **Customer**; or
 - (c) any requirement by a **Defendant Party** that any question or issue relating to or connected with the subject matter of the legal proceedings should be determined not only as between the **Customer** and the **Defendant Party**, but also as between either or both of them and an **Other Party** (whether or not already a party to the legal proceedings).

- 7.5.4 Paragraph 7.5.1 shall apply only if at the time the legal proceedings are commenced no arbitration under Paragraph 7.4 has been commenced between the **Defendant Party** and an **Other Party** raising or involving the same or substantially the same issues as would be raised by or involved in the **Third Party Claim**. The tribunal in any arbitration or the **Authority** in any determination which has commenced before the commencement of the legal proceedings shall determine the question, in the event of dispute, whether the issues raised or involved are the same or substantially the same.

END OF SECTION 7