

## **BILLING DISPUTES PROCEDURE**

### **DEFINITION**

For the purpose of this document;

- (a) an “invoice” means the same as a “bill” and both words are interchangeable and have the same meaning;
- (b) reference to “Procedure” means this Billing Disputes Procedure
- (c) reference to “you” means the Customer responsible for the Charges
- (d) reference to “us”, “we” or “AINS” means Australia Internet Solutions Pty Ltd (A.C.N 59 076 598 582)

### **PURPOSE**

This document sets out the obligations of the parties in resolving a Billing Dispute including lodgment, analysis and resolution of a Billing Dispute arising from the provision of Invoices to you by us.

You must notify a Billing Dispute to us in accordance with the process set out in this document. Subject to clause 1 below, any Charges recorded on an Invoice which is not submitted in accordance with this process is payable in full to us by the Due Date of the Invoice.

For the avoidance of doubt the parties acknowledge and agree that:

1. An Undisputed Amount cannot be withheld for any reason (including without limitation when that amount is on an invoice with a Disputed Amount) (defined below).
2. Only Billing Disputes can trigger the Billing Disputes Procedure (and the potential right to withhold payment of Disputed Amounts from us).
3. Billing Enquiries and Complaints are not Billing Disputes and do not trigger the Billing Disputes Procedure.

## **BILLING DISPUTES PROCEDURE**

### **1. Notice**

In the event that you reasonably believe that you are not liable to pay a Charge in an Invoice, you may lodge a Billing Dispute Notice up to six (6) months from the date of the relevant Invoice. For the avoidance of doubt and in accordance with the Agreement, you cannot dispute a Charge on the basis that you did not authorise the particular use of the Services by another person.

## 2. Withholding Payment

If you deliver the Billing Dispute Notice at least 5 Business Days prior to the Due Date of the Invoice you may withhold payment of the Disputed Amount otherwise you must pay the Disputed Amount and the Undisputed Amount (as defined below) by the Due Date in accordance with the terms of the Billing Disputes Procedure.

## 3. Continuing Obligations

Subject to clause 2 above, the rights and obligations of each party under the Agreement continue pending resolution of a Billing Dispute invoked under this Billing Disputes Procedure. For the avoidance of doubt we continue to have the right to terminate or suspend the Service in accordance with our rights under the Agreement.

## 4. The Billing Dispute Notice

The Billing Dispute Notice must include, as a minimum, the following information:

- (e) Invoice number and date;
- (f) the amount in dispute (“Disputed Amount”);
- (g) the amount not in dispute (“Undisputed Amount”); and
- (h) details of the dispute:
- (i) the Service or numbers used in connection with the Service relating to the Disputed Amount; and
- (j) dispute category and details (eg: missing details, terminated services, wrong account details and wrong addresses, incorrect charges).

At our discretion we may direct you to submit any billing disputes using a prescribed Billing Dispute Notice which may change from time to time and be in hardcopy or electronic format.

## 5. Rejecting a Billing Dispute Notice

We have the right to reject a Billing Dispute Notice and will have no further obligations in relation to that Billing Dispute Notice if:

- (a) The Billing Dispute Notice is not received by us within 6 months from the date of the relevant Invoice;
- (b) The Billing dispute Notice does not contain all of the information set out in clause 4 of this Procedure;
- (c) You have not made payment in accordance with clause 2 of this Procedure and do not have a right to withhold payment in accordance with clause 2;
- (d) We have confirmation from you that the dispute the subject of the Billing Dispute Notice has been resolved;
- (e) You are disputing the Charges on the basis that you did not authorise the particular use of the Services by another person; or

- (f) We reasonably believe that you do not have a bona fide dispute in relation to the Charges.

## 6. Responding to a Billing Dispute Notice

Subject to clause 5 of this Procedure, we must, within 10 Business Days of receipt, respond to the Billing Dispute Notice or notify you of a date upon which we will respond.

## 7. Referral to Senior Management Committee

If you are not satisfied with our response under clause 6 of this Procedure then you must notify us within 10 Business Days of receiving our response that you want the matter referred to the Senior Management Committee (SMC). Subject to you complying with this clause 7 of the Procedure, both parties agree:

- (a) to ensure that the SMC meet to resolve the dispute within 10 days of us receiving the SMC request;
- (b) any agreement of the SMC must be unanimous; and
- (c) any unanimous decision of the SMC will be final and binding on both parties.

Both parties acknowledge and agree that if we do not receive a notification from you in accordance with this clause 7 then the Billing Dispute will be deemed to have been resolved and we will have no further obligations in relation to the Billing Dispute.

## 8. Composition of Senior Management Committee

For the purposes of this Procedure the composition of the Senior Management Committee shall include 1 person at Director level, your Account Manager and 1 member of our Finance team.

## 9. Expert Committee

If the Senior Management Committee does not agree on a resolution to the Billing Dispute within 5 Business Days then you must notify us in writing on the 5th day that it wants the Billing Dispute to be referred to an Expert Committee (EC Request). Both parties acknowledge and agree that if we do not receive an EC Request from you in accordance with this clause 8 then the Billing Dispute will be deemed to have been resolved and we will have no further obligations in relation to the Billing Dispute.

## 10. Composition of the Expert Committee The Expert Committee will comprise of:

- (a) a representative nominated by us;
- (b) a representative nominated by you; and
- (c) an independent person agreed between the parties who has expertise in the area of billing disputes in the telecommunications industry ("Independent Expert"). If the

parties cannot agree on the Independent Expert within 5 Business Days of us receiving the EC Request, you may request that the Australian Commercial Dispute Centre (“ACDC”) selects the Independent Expert. If you do not make a request to the ACDC within this timeframe then the Billing Dispute will be deemed to have been resolved and we will have no further obligation in relation to the Billing Dispute.

## 11. Procedure of the Expert Committee

The parties acknowledge and agree:

- (a) each member of the Expert Committee will be entitled to one vote;
- (b) a decision can only be reached if at least 2 members of the Expert Committee agree on a resolution;
- (c) the parties must use their best endeavours to ensure that the Expert Committee meets and reaches a decision in relation to the dispute within 15 Business Days of the appointment of the Independent Expert. If the Expert Committee is unable to reach a decision then:
  - i. both parties have the right to bring legal proceedings in accordance with clause 13 of this Schedule;
  - ii. we may commence legal proceedings for the recovery of any Charges the subject of the Billing Dispute Notice which have not been paid by you; and
  - iii. we will also have the right to immediately suspend or terminate the Service pending resolution of the Billing Dispute by a court of law.
- (d) the Expert Committee must give reasons for its decision to the parties within 5 Business Days of reaching a decision;
- (e) before the Expert Committee meets, the parties must agree whether or not any decision of the Expert Committee will be final and binding on the parties except in the event of manifest error or fraud. If the parties are unable to agree the decision will not be binding; and
- (f) the costs of the Independent Expert and the performance of the Expert Committee will be shared by the parties provided that each party will bear the costs of its own legal counsel (if any) and representative

## 12. Agreement or Determination

If the SMC agree on a resolution or the Expert Committee reach a decision that you must make payment of disputed Charges, you must within 5 Business Days of the date of the determination pay the disputed amount together with interest calculated in accordance with the Agreement. If the SMC agree or the Expert Committee reach a decision that we must withdraw the disputed Charge or refund a disputed Charge previously paid, we must, as soon as practicable:

- (a) provide you as soon as practicable with an adjustment to your account reflecting the decision above. It is intended that this adjustment will appear on the next invoice issued to you (which you must pay in accordance with the agreement for services that you have with us) but the parties acknowledge that this may be delayed due to timing issues with the decision and our standard billing runs;
- (b) credit any disputed amount already paid by you

(c) If the SMC agree on a resolution or the Expert Committee make a determination in accordance with 12(a) or 12(b) subject to either party meeting the payment obligations under 12(a) or 12(b) the Billing Dispute will be deemed to be resolved and we will have no further obligations in relation to the Billing Dispute.

### 13. Legal Proceedings

A party may not start legal proceedings in any court or start any arbitration in respect of a Billing Dispute unless:

- (a) the proceedings are for urgent interlocutory relief; and
- (b) the Expert Committee reaches a decision and the parties agreed prior to the matter being referred to the Expert Committee that its decision would not be final and binding.

### 14. Confidentiality

A party must not use any information obtained from the other party during the course of any dispute resolution process invoked under this Schedule for any purpose other than to resolve the particular Billing Dispute.