

BILLING DISPUTES PROCEDURE

PURPOSE

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

The Customer must notify a Billing Dispute to PowerTel in accordance with the process set out in this Billing Dispute Procedure. Subject to section 1 below, any Charge recorded on an Invoice the subject of a Billing Dispute which is not submitted in accordance with this process is payable in full to PowerTel by the Due Date of the Invoice.

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

1. An amount that is not in dispute (“Undisputed Amount”) can not 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 Dispute Procedure (and the potential right to withhold payment of Disputed Amounts from PowerTel).
3. Billing Enquiries and Complaints are not Billing Disputes and do not trigger the Billing Dispute Procedure.

BILLING DISPUTE PROCEDURE

1. Notice

If the Customer reasonably believes that it is not liable to pay a Charge in an Invoice, the Customer may lodge a Billing Dispute Notice up to six months from the date of the relevant Invoice. For the avoidance of doubt the Customer cannot dispute a Charge on the basis that the Customer did not authorise the particular use of the Services by another person. The Customer must lodge this Billing Dispute Notice using the CSP.

2. Withholding Payment

If PowerTel receives the Billing Dispute Notice at least 5 Business Days prior to the Due Date, the Customer may withhold payment of the Disputed Amount, otherwise the Customer must pay the Disputed Amount and the Undisputed Amount (as defined below) in accordance with the terms of this Billing Dispute Procedure.

3. Continuing Obligations

Subject to clause 2 of this Billing Dispute Procedure, the rights and obligations of each party under the Billing Dispute Procedure continue pending resolution of a Billing Dispute invoked under this Billing Dispute Procedure. For the avoidance of doubt this includes that PowerTel continues to have the right to terminate or suspend the Service in accordance with PowerTel’s rights under the agreement that you have with PowerTel.

4. The Billing Dispute Notice

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

- (a) Invoice number and date;
- (b) the amount in dispute (“**Disputed Amount**”);
- (c) the Undisputed Amount; and
- (d) details of the dispute:

- (i) the Service or numbers used in connection with the Service relating to the Disputed Amount; and
- (ii) dispute category and details (eg: missing details, terminated services, wrong account details and wrong addresses, incorrect charges).

5. Rejecting a Billing Dispute Notice

PowerTel has 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 PowerTel 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 Billing Dispute Procedure;
- (c) The Customer has not made payment in accordance with and does not have a right to withhold payment in accordance with clause 2;
- (d) PowerTel has confirmation from the Customer that the dispute the subject of the Billing Dispute Notice has been resolved;
- (e) The Customer is disputing the Charges on the basis that the Customer did not authorise the particular use of the Services by another person; or
- (f) PowerTel reasonably believes that the Customer does not have a bona fide dispute in relation to the Charges.

6. Responding to a Billing Dispute Notice

Subject to clause 5 of this Billing Dispute Procedure, PowerTel must, within 10 Business Days of receipt, respond to the Billing Dispute Notice or notify the Customer of a date on which it will respond.

7. Referral to Senior Management Committee

If the Customer is not satisfied with PowerTel's response under clause 6 of Billing Dispute Procedure then, the Customer must notify ("**SMC Request**") PowerTel within 10 Business Days of receiving PowerTel's response that the Customer wants the matter referred to the Senior Management Committee ("**SMC**"). Subject to the Customer complying with this clause 7 of Billing Dispute Procedure, both parties agree:

- (a) to ensure that the SMC meet to resolve the dispute within 10 days of PowerTel 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 PowerTel does not receive a notification from the Customer in accordance with this clause 7 then the Billing Dispute will be deemed to have been resolved and PowerTel will have no further obligations in relation to the Billing Dispute.

8. Composition of Senior Management Committee

The nominated members of the Senior Management Committee are:

PowerTel: PowerTel Account Manager

Customer: [.....]

9. Expert Committee

If the Senior Management Committee does not agree on a resolution to the Billing Dispute within 5 Business Days then the Customer must notify PowerTel 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 PowerTel does not receive a EC Request from the Customer in accordance with this clause 9 then the Billing Dispute will be deemed to have been resolved and PowerTel 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 PowerTel;
- (b) a representative nominated by the Customer;;
- (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 PowerTel receiving the EC Request, the Customer may request that the Australian Commercial Dispute Centre (“**ACDC**”) selects the Independent Expert. If the Customer does not make a request to the ACDC within this timeframe then the Billing Dispute will be deemed to have been resolved and PowerTel 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 Service Schedule;
 - (ii) any Charges subject of the Billing Dispute Notice which have not been paid by the Customer will be deemed to be a debt for

the purposes of any legal proceedings brought by PowerTel to recover that debt; and

- (iii) PowerTel 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

- (a) If the SMC agree on a resolution or the Expert Committee reach a decision that the Customer must make payment of disputed Charges, the Customer must within 5 Business Days of the date of the determination pay the disputed amount together with interest calculated in accordance with the agreement for services that you have with PowerTel.
- (b) If the SMC agree or the Expert Committee reach a decision that PowerTel must withdraw the disputed Charge or refund a disputed Charge previously paid, PowerTel must as soon as practicable:
 - 1. provide the customer as soon as practicable with an adjustment to its account reflecting the decision above. It is intended that this adjustment will appear on the next invoice issued to the Customer (which the Customer must pay in accordance with the agreement for services that it has with PowerTel) but the parties acknowledge that this may be delayed due to timing issues with the decision and PowerTel's standard billing runs; and
 - 2. credit any disputed amount already paid by the Customer together with interest calculated on a daily basis from the date payment was received by PowerTel until reimbursed to the Customer, at a rate equal to 3% above the Westpac 30 day bank bill business loan rate.
- (c) If the SMC agree on a resolution or the Expert Committee make a determination in accordance with clauses 12(a) or (b) subject to either party meeting the payment obligations under clauses 12(a) or (b) the Billing Dispute will be deemed to be resolved and PowerTel 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 1 for any purpose other than to resolve the particular Billing Dispute.

15. Definitions

Billing Dispute means an instance where a customer states in good faith that its bill contains incorrect charges, payments or adjustments.

Billing Dispute Notice means a notice issued pursuant to the Billing Disputes Procedure.

Billing Disputes Procedure means this billing dispute procedure for the initiation and resolution of Billing Disputes.

Billing Enquiry means the situation where the Customer seeks information or clarification relating to an Invoice including without limitation seeking clarification of charges or sources of usage. For the avoidance of doubt, this is not a Billing Dispute.

Business Day means any day other than a Saturday, Sunday or public holiday in Sydney.

Complaint means an expression of dissatisfaction or grievance made by a Customer with an applicable authority including a Regulator, but does not include a request for information. A Complaint is not a Billing Dispute.