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MP292 ‘DSP DBT Finance Facility’

Annex A

Legal text – version 1.0

About this document

This document contains the redlined changes to the SEC that would be required to deliver this Modification Proposal.

Section A ‘Definitions and Interpretations’

These changes have been redlined against Section A version 24.0.

Amend Section A.1 as follows:

4G Communications Hub	means a Communications Hub which is capable of using 4G mobile cellular radio technology to connect to the SM WAN.
4G DBT/DSP DBT Finance Acceleration Event	means, in respect of each 4G DBT/ DSP DBT Finance Facility, that: (a) an acceleration of repayment of the indebtedness thereunder occurs such that it is immediately due and payable by the borrower in circumstances where the DCC is liable for the same under the Direct Agreement; or (b) the DCC becomes liable under the Direct Agreement to immediately pay the unamortised asset value (and any associated finance costs in respect) of any assets to which that facility relates.
4G DBT/DSP DBT Finance Charges	means, in respect of each 4G DBT/ DSP DBT Finance Facility, the DCC’s charge to recover the applicable 4G DBT/ DSP DBT Finance Costs (being a subset of the Fixed Charges), in an amount each month determined by the DCC at the time it produces an Invoice for that month (having regard to the requirements of Condition 36.5 of the DCC Licence).
4G DBT/DSP DBT Finance Costs	means, in respect of each 4G DBT/ DSP DBT Finance Facility, the costs the DCC incurs in respect of that facility.
4G DBT Finance Facility	means a facility, other than a Communications Hub Finance Facility <u>or a DSP DBT Finance Facility</u> , arranged by the DCC or a DCC Service Provider with an Approved Finance Party for the funding of the development costs (including design, build and testing costs) of any solutions or services which DCC procures in order to enable or facilitate its provision and/or operation of 4G Communications Hubs, such costs being incurred in respect of activities undertaken up to the point of volume manufacture of the 4G Communications Hubs (such point as further described in the plan produced pursuant to condition 13B of the DCC Licence), and being costs which DCC is entitled to recover via the Fixed Charges under this Code, including by way of a loan facility, an equity subscription, or an assignment or sale of receivables.
[...]	
DCC Finance Facility	means a Communications Hub Finance Facility or a 4G DBT Finance Facility <u>or a DSP DBT Finance Facility</u> .
[...]	

Direct Agreement

means, in respect of each ~~DCC Communications Hub~~ Finance Facility ~~or 4G DBT Finance Facility~~, any agreement entered into by the DCC in relation to that facility under which the DCC owes direct payment obligations.

[...]

Draft Budget

has the meaning given to that expression in Section C8.11 (Preparation of Draft Budgets).

Draft Proposal

DSP DBT Finance Facility

has the meaning given to that expression in Section D1.2 (Modifications).

means a facility, other than a 4G DBT Finance Facility or a Communications Hub Finance Facility, arranged by the DCC or a DCC Service Provider with an Approved Finance Party for the funding of the development costs (including design, build and testing costs) of any solutions or services which DCC procures in order to enable or facilitate its provision and/or operation of limb (b) of the definition of the Network Evolution Arrangements under the DCC Licence, such costs being incurred in respect of activities undertaken up to the point of "Data Systems – Transition and Migration Complete" (such point as further described in the plan produced pursuant to condition 13B of the DCC Licence), and being costs which DCC is entitled to recover via the Fixed Charges under this Code, including by way of a loan facility, an equity subscription, or an assignment or sale of receivables.

Section J ‘Charges’

These changes have been redlined against Section J version 12.0.

Amend Section J1.2 as follows:

Invoicing of Charges

- J1.2 Following the end of each month in which one or more Parties incurs Charges in accordance with the Charging Statement, the DCC shall prepare and submit to each such Party one or more invoices or one or more invoices with a separate accompanying statement (in either case, an “**Invoice**”) showing:
- (a) in respect of all Charges other than those referred to in Section J1.2(b):
 - (i) the date by which payment is due pursuant to Section J1.5;
 - (ii) a breakdown (in reasonable detail) of the Charges incurred by that Party in that month;
 - (iii) subject to Section J1.4, the amount of VAT payable on the above amounts;
 - (iv) any adjustment required pursuant to Section J1.9; and
 - (v) the total amount payable by that Party in respect of the above; and
 - (b) (only following a DSP DBT Finance Acceleration Event) in respect of any Communications Hub Finance Charges and/or DSP DBT Finance Charges (as applicable) which are required to be invoiced separately under the terms of a Direct Agreement with an Approved Finance Party:
 - (i) the date by which payment is due pursuant to Section J1.5;
 - (ii) a breakdown (in reasonable detail) of the Charges incurred by that Party in that month;
 - (iii) subject to Section J1.4, the amount of VAT payable on the above amounts;
 - (iv) any adjustment required pursuant to Section J1.9; and;
 - (v) the total amount payable by that Party in respect of the above.

Amend Section J1.7 as follows:

Payment of Charges

- J1.5 Each Party shall pay the amount set out in an Invoice issued to it by the DCC by the “**Due Date**” for payment; being the later of:
- (a) 5 Working Days following receipt of such invoice; and
 - (b) 8 Working Days following the end of the month to which such invoice relates.
- J1.6 Without prejudice to a Party’s right to dispute the Charges in accordance with Section J2 (Payment Default and Disputes), each Party shall pay the amount set out in each Invoice

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addressed to it by the Due Date for such payment regardless of any such dispute. Nevertheless, where the DCC agrees that an Invoice contains a manifest error, the DCC shall cancel that Invoice (which will not therefore be payable) and promptly issue a replacement Invoice.

- J1.7 Payments shall be made in pounds sterling by transfer of funds to the credit of the account specified in the Invoice, and shall not be deemed to be made until the amount is available as cleared funds. Each payment shall identify within its reference the Invoice number to which that payment relates. The paying Party shall be responsible for all banking fees associated with the transfer of funds. The DCC may at its discretion specify a different account for amounts payable by way of the Communications Hub Finance Charges or DSP DBT Finance Charges relating to each Approved Finance Party (separately from amounts payable in relation to each other Approved Finance Party and/or all other Charges). The accounts specified by the DCC for the purposes of amounts payable by way of the Communications Hub Finance Charges or DSP DBT Finance Charges may be accounts held in the name of the relevant Approved Finance Party.

Section K 'Charging Methodology'

These changes have been redlined against Section K version 18.0.

Amend Section K3.15A as follows:

Determining the Fixed Charges

K3.15A In determining the Fixed Charges, the DCC shall have regard to the need, for the purposes of making a prudent estimate in accordance with Condition 36.5 of the DCC Licence, to provide for the availability at all times of a contingency fund in respect of the 4G DBT ~~/DSP DBT~~ Finance Charges relating to each ~~Communications Hub~~ Finance Facility that is equal to the DCC's estimate of three months of the 4G DBT ~~/DSP DBT~~ Finance Costs relating to that facility.

Amend Section K9.7 as follows:

Within-Year Adjustment for ~~Communications Hub~~ Finance Acceleration Events

K9.7 For the purposes of Section K9.6:

- (a) a Communications Hub Finance Acceleration Event and a 4G DBT ~~/DSP DBT~~ Finance Acceleration Event are each a Liability Event;
- (b) the amount due and payable by the DCC as a result of a Communications Hub Finance Acceleration Event and/or 4G DBT ~~/DSP DBT~~ Finance Acceleration Event is a Liability Sum to the extent the DCC estimates that such amount will be recoverable by the DCC as Allowed Revenue;
- (c) the reference to "Charges" in the definition of LS_{pl} shall (in the case of a Communications Hub Finance Acceleration Event) be interpreted as a reference to "Communications Hub Charges" and in the case of a 4G DBT ~~/DSP DBT~~ Finance Acceleration Event be interpreted as a reference to "Fixed Charges"; and
- (d) the amount payable by each Party in respect of such Liability Event shall (for the purposes of invoicing and payment under Section J (Charges) or Section M11.5(b) (Third Party Rights)) be treated as an amount due by way of Communications Hub Finance Charges relating to the Communications Hub Finance Facility in respect of which the Communications Hub Finance Acceleration Event has occurred and/or as an amount due by way of 4G DBT ~~/DSP DBT~~ Finance Charges in respect of which the 4G DBT ~~/DSP DBT~~ Finance Acceleration Event has occurred (as the case may be).

Section M 'General'

These changes have been redlined against Section M version 11.0.

Amend Section M11.5 as follows:

Third Party Rights

M11.5 The following persons shall be entitled to enforce the following rights in accordance with the Contracts (Rights of Third Parties) Act 1999:

- (a) the person referred to in Sections C3.12 (Protections for Panel Members and Others) and M2.13(a) (Other Matters) shall be entitled to enforce the respective rights referred to in those Sections;
- (b) the Approved Finance Party for each Communications Hub Finance Facility shall be entitled to exercise and/or enforce the following rights of the DCC in respect of the Communications Hub Finance Charges relating to that facility where a Communications Hub Finance Acceleration Event has occurred in respect of that Communications Hub Finance Facility and the Authority has determined that the DCC is unwilling or unable to do so:
 - (i) the right to calculate the amount of the Communications Hub Finance Charges arising as a result of that event (provided in such circumstances that the Approved Finance Party must demonstrate to the satisfaction of the Authority that the amount of the charges so calculated will in aggregate be no more than the amount contractually due and payable (but unpaid) by the DCC to the Approved Finance Party in respect of that event);
 - (ii) the right to invoice the Users in respect of the Communications Hub Finance Charges arising as a result of the Communications Hub Finance Acceleration Event (whether in the amount calculated by the DCC in accordance with this Code, or in the amount calculated by the Approved Finance Party and approved by the Authority under Section M11.5(b)); and/or
 - (iii) the right to enforce payment by the Users in accordance with this Code of the amount of Communications Hub Finance Charges invoiced in accordance with this Code, and the payment of any amount by a User to an Approved Finance Party pursuant to this Section M11.5(b) shall satisfy that User's obligation to pay that amount to the DCC; and

- (c) the Approved Finance Party for each 4G DBT ~~/DSP DBT~~ Finance Facility shall be entitled to exercise and/or enforce the following rights of the DCC in respect of the 4G DBT ~~/DSP DBT~~ Finance Charges relating to that facility where a 4G DBT ~~/DSP DBT~~ Finance Acceleration Event has occurred in respect of that 4G DBT ~~/DSP DBT~~ Finance Facility and the Authority has determined that the DCC is unwilling or unable to do so:
 - (i) the right to calculate the amount of the 4G DBT ~~/DSP DBT~~ Finance Charges arising as a result of that event (provided in such circumstances that the Approved Finance Party must demonstrate to the satisfaction of the Authority that the amount of the charges so calculated will in aggregate be no more than the amount contractually due and payable (but unpaid) by the DCC to the Approved Finance Party in respect of that event);
 - (ii) the right to invoice the Users in respect of the 4G DBT ~~/DSP DBT~~ Finance Charges arising as a result of the 4G DBT ~~/DSP DBT~~ Finance Acceleration Event (whether in the amount calculated by the DCC in accordance with this Code, or in the amount calculated by the Approved Finance Party and approved by the Authority under Section M11.5(c)); and/or
 - (iii) the right to enforce payment by the Users in accordance with this Code of the amount of 4G DBT ~~/DSP DBT~~ Finance Charges invoiced in accordance with this Code,

and the payment of any amount by a User to an Approved Finance Party pursuant to this Section M11.5(c) shall satisfy that User's obligation to pay that amount to the DCC; and

- (d) AltHANCo (as defined in Section Z (Alt HAN Arrangements)) shall be entitled to enforce all rights which are conferred upon it under Section Z4 (Alt HAN Costs and Budgets), and shall (notwithstanding Section M11.8) be entitled to assign the benefit of these rights.