

# CHANGES TO DTSA

## SECTION 1 - INTERPRETATION

### Clause 1.1 Definitions

In this Agreement, including the recitals and the Schedules, except where the context otherwise requires:

**"Connection Date"**

means:

(i) for Users that are Users as at 14 September 2003, the relevant date shall be 14 September 2003;

(ii) for all Parties that become or became Users after 14 September 2003, the relevant date shall be the date on which that Party completes their User Preconnection Acceptance Test to the satisfaction of the Service Controller

~~**"Minimum Connection Period"**~~

~~means in respect of a Gateway the minimum period of five years from the date of the successful completion of the User Preconnection Acceptance Tests for that Gateway, save in respect of an Unsupported Trading Station in which case the minimum period is 12 months from the date of the successful completion of the User Preconnection Acceptance Tests relating to that Unsupported Trading Station, or such other period as is specified in the Local User Agreement relating to such Unsupported Trading Station;~~

**"Termination Charge"**

means those charges for Gateways terminated within 6 months of the Connection Date or between 6 and 36 months, depending on whether a High Volume Gateway, a Low Volume Gateway or a Remote User Gateway is being terminated.

These charges are calculated in accordance

with the Charging Principles requirement for User Charges specifically "Additional Charges" and specified in the Schedule of Charges as published within the Data Transfer Handbook.

## **SECTION 8 - CHARGING**

### **Clause 8.1**

Each User agrees to pay all Charges incurred by it in relation to its connection to and termination of its use of the Data Transfer Network, in accordance with the Charging Principles.

## **SECTION 13 - TERMINATION**

### **Clause 13.6**

On termination of this Agreement in respect of a User pursuant to Clause 13 the Service Controller shall issue an invoice in respect of any outstanding Charges, and such invoice shall be payable in accordance with Clause 9. Such Charges shall include any Termination Charges relating to any Gateway ~~for the Minimum Connection Period.~~

## SCHEDULE 8

### CHARGING PRINCIPLES

In setting the level of any Charges the Service Controller shall have reference to the following principles:

#### A. User Charges

1. Each User will be charged :

- (i) Service Standing Charges relating to one or more Gateway Options that are provided to that User;
- (ii) Charges for Traffic and Local Traffic sent by that User;
- (iii) Charges for any Additional Services provided to that User from time to time; and
- (iv) an appropriate share of the Service Controller's administration costs.

Charges in categories (i) to (iii) above shall be calculated on the basis of Charges invoiced or to be invoiced by the Network Service Provider to the Service Controller. The Charges in category (iv), above, shall be calculated as a contribution to the Service Controller's costs for providing the Data Transfer Service.

- 2. The Service Standing Charges shall be invoiced quarterly in advance.
- 3. Traffic Charges will be calculated on the basis of the volume of Traffic and Local Traffic as measured on input to a User's Gateway in Kbytes, from the User's side of the Gateway, and shall be invoiced monthly in arrears.
- 4. ~~Save for the Remote User Service,~~ Users will ~~commit to paying the Service Standing Charges for a Minimum~~ pay a Termination Charge on any Gateway terminated within 36 months of the Connection Period of 20 Quarters Date. The ~~Remote User Service has a Minimum Connection Period~~ rate of 4 Quarters Termination Charge payable in the event of premature termination of the DTSA is set out in the Schedule of Charges published within the Data Transfer Handbook. ~~Other Gateway Options may have different Connection Periods~~ The Users agree and acknowledge that these amounts are liquidated damages which represent a true and fair estimate of the probable cost to Electralink of early termination by a User of its participation in the DTSA.
- 5. Any Service Credits received by the Service Controller under its agreement with the Network Service Provider shall be credited against the total cost of the Service.

#### B. Supplier Charges

- 1. In addition to User Charges, Suppliers will also pay Supplier Charges that will enable the Service Controller to recover the costs of setting up and continuing to provide the Data Transfer Service.

2. Supplier Charges will be levied monthly in arrears based on the Unit Charge and the Units attributed to a Supplier in relation to the preceding month.
3. The total amount to be recovered from all Suppliers in any year will be the aggregate of:
  - (i) any charges from the Network Service Provider to the Service Controller not recovered as a User Charge;
  - (ii) any operating costs of the Service Controller not recovered as a User Charge;
  - (iii) charges consistent with full recovery over a five year period of the costs of procuring and setting up the Data Transfer Service and an appropriate rate of return.
4. The total Charges across all Suppliers in any year of account will be calculated as:

$$SC = P_s + C_s + A_s$$

5. The calculation will follow the principles set out below:

$$P_s = P + P^1 - P_u$$

where:

$P_s$  is the revenue to be recovered from Suppliers to cover Network Service Provider charges;

$P$  is the total estimated charge from the Network Service Provider for the year of account;

$P_u$  is the estimate of Network Service Provider charges to be recovered in total as Users Charges; and

$P^1$  is the adjustment necessary to reflect the difference between estimated and actual costs for previous years.

$$C_s = C + C^1 - C_u$$

where:

$C_s$  is the revenue to be recovered from Suppliers to cover the costs of operating the Service Controller function;

$C$  is the estimate of the total Service Controller operating costs for the year of account;

$C^1$  is any adjustment necessary to reflect the difference between estimated costs and actual costs for previous years; and

$C_u$  is the estimate of Service Controller Charges to be recovered as User Charges.

$A_s$

where  $A_s$  is the capital recovery element including an appropriate rate of return on investment based on full recovery over a five year period of the costs of procuring and setting up the Data Transfer Service.

6. The Unit Charge for any year of account will be calculated as:

$$[SC/(\text{Service Controller's forecast of Total Units})] + K$$

where K adjusts for any error in estimating Total Units for previous years.

7. The above Charging Principles are based on the assumption that the Service Controller will amend the Charges on an annual basis to reflect a balance between revenues and costs.

Without prejudice to the Service Controller's ability to vary charges at any time under Clause 8.4 in accordance with the Charging Principles, following discussions with the Authority, the Service Controller will endeavour to maintain the Charges at consistent levels for periods of longer than one year. The Service Controller will keep the Charges under review with a view to achieving the investment recovery over a five year period.