

Kingston Communications (HULL) PLC REFERENCE OFFER for NARROWBAND NETWORK ACCESS

NOTICES TO RECIPIENTS OF THE Kingston Communications (HULL) PLC REFERENCE OFFER

1. **Public Operators.** This Reference Offer is made available to those persons entitled as Public Electronic Communications Networks (as defined in Clause 1 of this Reference Offer) to access the Kingston Communications (HULL) PLC ("KCH") System (as defined in Clause 1 of this Reference Offer).
2. **Director General Notification.** This Reference Offer for network access is made available pursuant to the notification given by the Director General of Telecommunications in accordance with section 48(1) and section 79 of the Communications Act 2003 in relation to the market for call origination on a public fixed narrowband network (market 8 of the European Commission's recommendations on relevant markets) and the market for call termination of individual public networks at fixed locations (market 9 of the European Commission's recommendations on relevant markets).
3. **Hull Area.** This Reference Offer by KCH for Telecommunication Services in the Hull Area (as defined in Clause 1 of this Reference Offer)
4. **Significant Market Power.** Clause 12 of the Reference Offer (Operator Charges) assumes that the Operator does not have Significant Market Power ("SMP") in the narrowband network access market. Where the Operator has SMP in the narrowband network access market the parties agree that modifications to this Reference Offer will be required.
5. **Operator Agreement.** Where the Operator seeking interconnection to the KCH System currently has or proposes to have a separate access agreement with KCH in order for KCH to access the Operator's System (an "**Operator Agreement**"), the parties agree that modifications to this Reference Offer will be required. Such modifications may include (but not be limited to):
 - (a) recitals making it clear that Operator Services are provided to KCH pursuant to a separate agreement; and
 - (b) an order of precedence between this Reference Offer (once executed by the parties) (the "KCH Agreement") and the Operator Agreement. Such order of precedence will determine which agreement shall apply in the event of conflict between the KCH Agreement and the Operator Agreement, the principle being that in the event of any conflict, the Operator Agreement will govern the supply of services and capacity to KCH and the KCH Agreement will govern the supply of services and capacity to the Operator.

6. **Telecommunications Services.** Part 1 of Annex 1 to this Reference Offer sets out the full list of Telecommunications Services available to the Operator. The Reference Offer executed by the parties will contain only those Telecommunications Services agreed to be provided by KCH to the Operator.

Dated _____ 200[]

[OPERATOR]

- and -

Kingston Communications (HULL) PLC

**REFERENCE
OFFER for NARROWBAND NETWORK
ACCESS (RONNA)**

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BETWEEN:-

- (1) **[OPERATOR]** registered in ● (Company No. ●) whose registered office is at ● ("**Operator**"); and
- (2) **Kingston Communications (HULL) PLC** registered in England (Company No. 2150618) whose registered office is at 37 Carr Lane, Kingston-upon-Hull, HU1 3RE. ("**KCH**")

RECITALS

- (A) The Operator provides a Public Electronic Communications Network.
- (B) KCH provides a Public Electronic Communications Network.
- (C) The parties have agreed to connect the Operator System to the KCH System and to the supply of services and facilities in and from the Hull Area, on the terms and conditions of this Agreement.
- (D) The terms used in these Recitals shall have those meanings given to them in Clause 1 below.

THE PARTIES AGREE AS FOLLOWS:-

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, except if the context requires otherwise, words and expressions shall have the meanings set out below:-

"Access Code" means a three, four or five digit code which initiates a Telecommunications Service (such as an Indirect Access Call). For clarity KCH do not consider 0800 to be an Indirect Access code;

"ACO Period" means the period covered by an Advance Capacity Order;

"Act" means the Communications Act 2003;

"Address Complete Message" means a signalling message required by the originating System to indicate that sufficient address digits have been received and that a transmission path should be set up;

"ADR" means an alternative dispute resolution body;

"Advance Capacity Order" or **"ACO"** means that part of the Capacity Profile which sets out the Capacity ordering intentions of the relevant party over the first four months of the Capacity Profile and has the contractual consequences outlined in Annex 3;

"Agreement" means this agreement, the Narrowband Network Access Price List, the Operator Price List, the Annexes, Schedules, Appendices and Specifications;

"Ancillary Service" means either:

- a) a service which does not solely comprise the conveyance of Calls; or

- b) a Call, except a Transfer Charge Call, where the Calling Party is not required to pay all of the charges associated with that Call; or
- c) a Call where the Calling Party is charged at a rate which includes an element over and above the charge for conveyance of that Call;

"Annex" means the annex 1, 2, 3, 4 or 5 as attached to this agreement;

"Answer Signal" means the signal required by the originating network to indicate that the transmission path is complete;

"Appendix" means an appendix to a Schedule to this agreement;

"APS" means the Kingston Communications Account Production System;

"Artificial Inflation of Traffic" or "AIT" means a situation where the flow of Calls to any particular Revenue Share Service is as a result of any activity on or on behalf of the party operating that Revenue Share Service disproportionate to the flow of Calls which would be expected from good faith commercial practice and usage of the network;

"ASR" means the Answer Seize Ratio expressed as a percentage of Calls, which were successfully switched and which received an answer, compared to Call attempts, during a particular measurement period;

"Billing Information" means such information provided pursuant to Annex 4 by one party to the other including, without limitation; (a) such information as is necessary to ascertain the charges payable by each party under this Agreement; and (b) Interconnect Usage Reports;

"Billing Liaison Contact" means the contact named as being responsible for dealing with billing queries in the Billing Manual;

"Billing Manual" means the invoicing procedures published by KCH from time to time for the purposes of charging in respect of the Telecommunications Services ;

"Billing Party" means the party to whom charges are payable by the other party pursuant to this Agreement;

"Billing Period" means, unless otherwise agreed in writing, the period of a calendar month commencing on the first day of a month;

"Billing System" means a system to collate Billing Information and prepare invoices relating to charges payable by each party under this Agreement;

"Call" means a transmission path through a Telecommunications System, for the sending of Signals (being a Signal of the type which the KCH System and the Operator System are capable of conveying) and a reference to conveyance of a Call by a party means the establishment by that party of a transmission path through that party's System and the conveyance by that party in accordance with this Agreement of a Signal (if any) over such transmission path;

"Called Party" means a person who receives a Call;

"Calling Party" means a person who initiates a Call;

"Capacity" means the telecommunication capacity made available at an Interconnect Route;

"Capacity Charges" means charges for Capacity as specified in the Narrowband Network Access Price List or the Operator Price List, as applicable;

"Capacity Order" means an order for Capacity placed by one party on the other pursuant to Paragraph 5 of Annex 3;

"Capacity Profile" means a profile of future Capacity ordering intentions pursuant to Paragraph 5 of Annex 3;

"Capacity Re-arrangement" means the re-use of Capacity on Interconnect Links previously provided by one party to the other, where in each case the Point of Interconnection and the buildings containing the Switch Connections of the providing party remain the same;

"Capped" means a Switch which has reached maximum loading and will remain operational but will not provide additional Capacity;

"Carrier Charge Band Reference Data" means such reference data (including APS complimentary files and associated files) as KCH shall from time to time make available to the Operator, being data for the preparation and validation of Billing Information for Calls;

"Chargeable Call" means a Call for which a charge is made pursuant to this Agreement;

"Chargeable Call Duration" means the duration of a Chargeable Call measured:

- (a) for a Call (other than an International Call), to the nearest second (or such greater accuracy as the parties may agree in writing);
- (b) for an International Call to not less than the nearest second,

in each case commencing with the receipt of an Answer Signal and ceasing with the receipt of a Release Signal at the point of recording by the party recording the relevant Billing Information;

"Charge Change Notice" has the meaning given to it in Clause 12.2;

"Charge Rate" means the rate at which a Chargeable Call is charged;

"Charge Rate Period" means the period of time for which a Charge Rate applies;

"Circuit" means a telecommunications transmission circuit which has Capacity of one unit of two Mbit/s;

"CLI" has the meaning given to Calling Line Identification data in the "Guidelines for the Provision of Calling Line Identification Facilities and Other Related Services over

Electronic Communications Networks version 2" dated 11 December 2003 as the same may be amended or replaced from time to time (the "**CLI Guidelines**");

"CLI Display Service" means the delivery to a Customer's Network Termination Point of information that allows that Customer to gain access to the Calling Party's CLI;

"Communications Provider" means a person who provides an Electronic Communications Network or an Electronic Communications Service;

"Condition(s)" means General Condition(s) or a condition other than a General Condition which is expressly stated to apply to either KCH and/or the Operator as the case may be, being a condition as in force at the date of this Agreement, unless otherwise stated;

"Confidential Information" means any information, in whatever form, which in the case of written or electronic information is clearly designated as confidential and which, in the case of information disclosed orally, is identified at the time of disclosure as being confidential or is by its nature confidential and including such Confidential Information already disclosed by either party to the other prior to the date of this Agreement but excluding any information which:

- (a) is in or comes into the public domain other than by reason of a breach of this Agreement; or
- (b) is previously known on a non-confidential basis to the Receiving Party at the time of its receipt other than by reason of a breach of this Agreement; or
- (c) is independently generated, developed or discovered at any time by or for the Receiving Party; or
- (d) is subsequently received from a Third Party without any restriction on disclosure;

"Customer" means as the context requires:

- (a) a person having a contract with either or both parties for the provision of telecommunication services by means of that party's System; or
- (b) a user of telecommunication apparatus directly connected to the KCH System or the Operator System; or
- (c) a person having a contract with a reseller of telecommunication services to be provided by means of either the KCH System or the Operator System or a user of telecommunication apparatus authorised by that person;

"Customer Service Plan" means a document containing details of individuals, addresses and telephone numbers for ordering or maintenance of the services provided pursuant to this Agreement;

"Data Management Amendment" means such reconfiguration of the KCH System or the Operator System as is necessary for access, routing and charging of Calls;

"Daytime" means the period of time between 0800 and 1800 on Monday to Friday or such other period of time as shall be agreed between the parties;

"Default Interest Rate" means eight per cent (8%) above the rate per annum as designated by LIBOR. Such interest shall be calculated on a daily basis;

"Directory" means a printed document containing Directory Information on Subscribers of Publicly Available Telephone Services in the United Kingdom which is made available to members of the public;

"Directory Information" means, in the case of a Directory, the name and address of the Subscriber and the Telephone Number assigned to the Subscriber for their use of Publicly Available Telephone Services and, in the case of a Directory Enquiry Facility, shall be either such a Telephone Number of the Subscriber or information that such a Telephone Number of the Subscriber may not be supplied;

"Directory Enquiry Facility" means Directory Information provided by means of a Public Telephone Network (as defined in the Schedule (Part 1) to the General Conditions);

"Disclosing Party" means a party disclosing information to the other party;

"Dispute" means a disagreement between the parties excluding breaches of this Agreement;

"Due Date" means a date which is 30 calendar days after the date of an invoice or if such date falls on a date other than a Working Day the date of the previous Working Day;

"Effective Date" means a date referred to by that name in the Narrowband Network Access Price List or a Schedule being the date on which a charge or variation of a charge referred to in the Narrowband Network Access Price List or a Schedule takes effect;

"Effective End Date" means the date on which a charge or variation of a charge ceases to have effect as referred to in the Narrowband Network Access Price List;

"Electronic Communications Network" means-

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of Signals of any description; and
- (b) such of the following as are used, by the person providing the System and in association with it, for the conveyance of the Signals
 - (i) apparatus comprised in the System;
 - (ii) apparatus used for the switching or routing of the Signals; and
 - (iii) software and stored data;

"Electronic Communications Service" means any service consisting in, or having as its principal feature, the conveyance by means of an Electronic Communications Network of Signals, except in so far as it is a Content Service;

"Emergency Call" means a 999 or 112 Call handed over from the Operator System to the KCH System;

"Emergency Centre" means premises where KCH Operators answer Emergency Calls;

"Emergency Organisation" means the relevant local public police, fire, ambulance and coastguard services and other similar organisation providing assistance to the public in emergencies;

"ETSI" means the European Telecommunications Standards Institute;

"European Public Operator" means a person authorised in another member state to provide Public Electronic Communications Networks and Publicly Available Telephone Service and whose name has been notified to the European Commission as an organisation qualifying for rights and obligations in relation to network access;

"European Public Operator System" means the system run by a European Public Operator.

"Evening" means periods of time not being either Daytime or Weekend or such other period of time as shall be agreed between the parties;

"Exchange Line" has the meaning given to it in schedule 2 of the Notification setting the SMP (fixed narrowband wholesale) Services Conditions dated 28 November 2003 as in force at the date of this Agreement;

"Footway Box" means apparatus housing a Point of Interconnection for the purposes of In-Span Interconnection;

"G703 Interface" means an interface meeting the requirements of ITU-T Recommendation G703 (Geneva 1991);

"General Conditions" means the general conditions set under section 45 of the Act;

"Generic C7 Signalling Interface Specification" means the Specification of the Generic Signalling System for Interconnection Specification 4 attached at Annex 2, as amended or substituted from time to time with the parties' written agreement;

"Generic Electrical and Physical Interface Specification" means the Specification of the Generic Electrical & Physical Interface Specification 3 attached at Annex 2, as amended or substituted from time to time with the parties' written agreement;

"Generic SDH Interface Specification" means the Specification of the Generic Synchronous Digital Hierarchy Interface Specification 2 attached at Annex 2, as amended or substituted from time to time with the parties' written agreement;

"Generic Transmission Interface Specification" means the Specification of the Generic Transmission Interface Specification 1 attached at Annex 2, as amended or substituted from time to time with the parties' written agreement;

"GSM" means the Global System for Mobile Communications;

"Hull Area" means the geographic area defined as the 'Licensed Area' in the KCH Licence;

"Incoming Calls" means Calls handed over at a Point of Interconnection by KCH to the Operator other than Indirect Access Calls;

"Indirect Access Call" means a Call where a Calling Party on one party's System has chosen to convey that Call to the other party's System by prefixing that Call with an Access Code;

"Intellectual Property Rights" means any patent, petty patent, registered design, registered trade or service mark, copyright, design right, semi-conductor topography right, know-how or any similar right exercisable in any part of the world including any application therefor;

"Interconnect Design" the agreed design of a Point of Interconnection as specified in Paragraph 3 of Annex 3;

"Interconnect Extension Circuit" or "IEC" means a Link, being part of a 2Mbit/s In-Span Interconnection Interconnect Link, between the Multiplexor in a Remote Switch Connection and the Multiplexor terminating the In-Span Interconnection Interconnect Link;

"Interconnect Link" means a Link connecting a KCH Switch Connection and an Operator Switch Connection passing through a Point of Interconnection;

"Interconnect Link Identifier" means a unique code which identifies a particular Interconnect Link;

"Interconnect Route" means a transmission path (which traverses of Point of Interconnection) from a Switch location in the KCH System to a Switch location in the Operator System (for carrying specified Telecommunication Services);

"Interconnect Usage Report" means a report in the same or substantially the same form as that specified in the Billing Manual;

"Interconnection" means the interconnection of the Operator System and the KCH System in accordance with this Agreement;

"International Call" means:

a Call received by the KCH System from:

- (a) an Overseas System; or
- (b) the Operator System destined for an Overseas System; or

a Call received by the Operator System from:

- (a) an Overseas System destined for the KCH System, or

(b) the KCH System destined for an Overseas System;

"In-span Interconnect" or "ISI" means Interconnection at a Point of Interconnection which is not located in a building housing either the KCH or the Operator Switch;

"Intrabuilding Link" means a connection between a KCH or an Operator Switch Connection and the G703 Interface on the Multiplexor forming part of an Interconnect Link;

"ITU-T" means the Telecommunications Standards Bureau (previously the International Telegraph and Telephone Consultative Committee) of the International Telecommunications Union;

"KCH Basic International Incoming Call" means a Call, received by the Operator System from an authorised Overseas System, comprising the minimum service features necessary to support a speech path through the KCH System, handed over from the Operator System to the KCH System, destined for a telephone number of a Network Termination Point on the KCH System, being a Call available for the conveyance of Signals;

"KCH Basic International Outgoing Call" means a Call, destined for an authorised Overseas System, comprising the minimum service features necessary to support a speech path through the KCH System, handed over from the KCH System to the Operator System if a rate for such a Call is specified from time to time in the Narrowband Network Access Price List, being a Call available for the conveyance of Signals;

"KCH Basic Telephony Call" means a Call, comprising the minimum service features necessary to support a speech path through the KCH System, handed over from the Operator System to the KCH System, destined for a telephone number of a Network Termination Point on the KCH System, being a Call available for the conveyance of Signals;

"KCH Charge Group" means a geographical area designated from time to time by KCH, and used for retail charges as specified in the KCH Retail Price List;

"KCH DLE" or "KCH Local Exchange" means a digital Switch in the KCH System which Switch connects by that Switch alone Calls to and from other exchanges in the KCH System from remote concentrator units or Exchange Lines directly connected to that Switch;

"KCH DLTE" or "KCH Tandem Exchange" means a digital Switch in the KCH System which Switch connects by that Switch alone Calls to and from other Operators networks, and provides access to other exchanges in the KCH System and to and from remote concentrator units or Exchange Lines directly connected to that Switch;

"KCH Exchange" means a KCH Local Exchange, a KCH DLE or a KCH Tandem Exchange and such other Switch which the parties may from time to time agree is a KCH Exchange;

"KCH International Incoming Call" means either a KCH Basic International Incoming Call or a KCH ISDN International Incoming Call;

"KCH International Outgoing Call" means either a KCH Basic International Outgoing Call or a KCH ISDN International Outgoing Call;

"KCH ISDN International Incoming Call" means a Call, received by the Operator's System from an authorised Overseas System, comprising service features additional to the minimum features necessary to support a speech path through the KCH System, being service features described as bearer services, teleservices or supplementary services in the ETSI MoU on the Implementation of European ISDN Service, handed over from the Operator System to the KCH System, destined for a telephone number of a network terminating point on the KCH System, being a call for the conveyance of Signals;

"KCH ISDN International Outgoing Call" means a Call, destined for an authorised Overseas System, comprising service features additional to the minimum features necessary to support a speech path through the KCH System, being service features described as bearer services, teleservices or supplementary services in the ETSI MoU on the Implementation of European ISDN Service, handed over from the KCH System to the Operator System, if a rate for such a Call is specified from time to time in the Narrowband Network Access Price List, being a call for the conveyance of Signals;

"KCH ISDN Telephony Call" means a Call, comprising service features additional to the minimum features necessary to support a speech path through the KCH System, being service features described as bearer services, teleservices or supplementary services in the ETSI MoU on the Implementation of European ISDN Service, handed over from the Operator System to the KCH System, destined for a telephone number of a Network Terminating Point on the KCH System, being a Call for the conveyance of Signals;

"KCH Licence" means the licence issued on 30 November 1987 granted to KCH as amended by the "Continued Provisions" as set out in schedule 2 continuation notice to KCH under Paragraph 9 of schedule 18 to the Act which have effect from 25 July 2003 as in force at 19 December 2003;

"KCH Operator" means a person who answers Calls for directory enquiry or operator assistance, Emergency Calls and other similar Calls for KCH;

"KCH Payphone Access Charge or Levy" means the charge payable by the Operator for the use of a KCH Public Call Box (as defined in General Condition 6) to originate a Call;

"KCH PRS Call" means a Call to a PRS:

- (a) for which if such Call originated on the KCH System, the person responsible for payment would pay a charge higher than that which would apply to a directly dialled KCH Telephony Call of equivalent distance and duration; and
- (b) where payment is made by KCH to a KCH PRS Service Provider and where payment takes into account the number or duration of Calls to that KCH PRS Service Provider;

"KCH PRS Service Provider" means a person having a contract with KCH for the delivery of KCH PRS Calls;

"KCH PRS Sub Service Provider" means a person having an arrangement for the delivery of KCH PRS Calls, whether or not legally binding, with a KCH PRS Service Provider;

"KCH Retail Price List" means the retail price list published by KCH from time to time pursuant to General Condition 10;

"KCH Switch Connection" means a KCH Exchange at which Calls handed over:

(a) from the Operator System are initially switched; or

(b) to the Operator System are finally switched;

by KCH;

"KCH System" means the Public Electronic Communications Network provided by KCH for connection to the Operator System pursuant to this Agreement;

"KCH Telecommunications Service" means a Telecommunication Service supplied to the Operator by KCH pursuant to this Agreement;

"KCH Telephony Call" means either a KCH Basic Telephony Call or a KCH ISDN Telephony Call;

"KCH Web Site" means the Internet web page of Kingston Communications (HULL) PLC (accessed at: <http://www.kcom.com>);

"LIBOR" means the London Inter Bank Offered Rate being the rate per annum of the offered quotation for sterling deposits for delivery on the due date for payment for a period of three months as displayed on the Telerate Service at or about 11 am London time on the due date of payment provided that if such a rate is not so displayed London Inter Bank Offered Rate shall mean the rate quoted by National Westminster Bank PLC to leading banks in the London interbank market at or about 11 am London time on the due date of payment for the offering of sterling deposits of a comparable amount for a period of three months;

"LIECS" means a Location Independent Electronic Communications Service;

"Line" means the transmission medium between the two LTE's forming part of the 2Mbit/s Path;

"Link" means electronic communication apparatus (which has the meaning given to it in section 151(1) of the Act as in force at the date of this Agreement) necessary to establish (by way of fibre, cable or use of radio frequency) one or more transmission paths;

"LTE" means line terminating equipment;

"Multiplexor" means the multiplexing equipment which serves an Intrabuilding Link and where appropriate an IEC;

"Narrowband Network Access Price List" means the price list having that name which contains charges for KCH Telecommunications Services and Capacity published by KCH from time to time;

"National Call" means a Call (other than a Non-Geographical Call, a Number Translation Services Call, a LIECS Call or a Call to a mobile handset) which has been addressed to a Network Termination Point in the UK;

"Network Termination Point" has the meaning given to it in schedule 2 of the Notification setting the SMP (fixed narrowband wholesale) Services Conditions dated 28 November 2003 as in force at the date of this Agreement;

"New Service" means any Telecommunication Service which a party is obliged to provide to the other (pursuant to Condition 1 of the General Conditions) and which is not specified in Annex 1;

"New Services Manual" means the manual published by KCH from time to time;

"NICC" means the Network Interoperability Consultative Committee;

"Non-Geographic Call" a Call (other than a National Call, International Call, LIECS Call or a Call destined for a mobile handset) in respect of which the location of the called Customer cannot be determined by reference only to the telephone number called;

"Number" means either:

- (a) a geographic number; or
- (b) a non-geographic number

as defined in schedule (Part 1) of the General Conditions;

"Number Range" means NNG, DE and/or DEF as appropriate; and

- (a) **"NNG"** means a national number group being the code (excluding the leading zero) comprising for United Kingdom telephone numbers (i) for geographical numbers, three or four digits (ii) for non-geographic numbers, two or three digits;
- (b) **"DE"** means the first two digits immediately following the NNG; and
- (c) **"DEF"** means the first three digits immediately following the NNG;

"Number Translation Services Call" means a Call to non-geographic telephone numbers (other than a Call destined for a mobile handset) if the party receiving the Call translates the dialled digits and routes the Call in accordance with such translation, including without limitation, PRS Calls, LowCall Rate Services Calls, Free Phone Service Calls, National Rate Services Calls (all as defined in the relevant schedule) and other specially charged services;

"Ofcom" means the Office of Communications;

"OfTel Interest Rate" means three eighths of one per cent (3/8%) above LIBOR. Such interest shall be calculated on a daily basis;

"Operations and Maintenance Manual" means the procedures published by KCH from time to time relating to the operation and maintenance of the Telecommunications Services under this Agreement;

"Operator Basic Telephony Call" means a Call, comprising the minimum service features necessary to support a speech path through the KCH System, handed over from the KCH System to the Operator System, destined for a telephone number of an Operator Network Termination Point, being a Call available for the conveyance of Signals;

"Operator Exchange" means an Operator Local Exchange or Operator Tandem Exchange and such other Switch which the parties may from time to time agree is an Operator Exchange;

"Operator ISDN Telephony Call" means a Call, comprising service features additional to the minimum features necessary to support a speech path through the KCH System, being service features described as bearer services, teleservices or supplementary services in the ETSI Memorandum of Understanding on the Implementation of European ISDN Service, handed over from the KCH System to the Operator System, destined for a telephone number of an Operator Network Termination Point, being a Call available for the conveyance of Signals;

"Operator Licence" means the government authorisation entitling the Operator to run the Operator System it seeks to interconnect with the KCH System;

"Operator Local Exchange" means a digital Switch in the Operator System which Switch connects by that Switch alone Calls from Network Termination Points in the Operator System

"Operator's Operator" means a person who answers Calls for directory enquiry or operator assistance or other similar Calls for the Operator;

"Operator Price List" means the list of prices for Operator Telecommunication Services and Capacity set out in Part II of Annex 1 or the Operator Price List;

"Operator PRS Call" means a Call to a PRS:

- (a) for which if such Call originated on the Operator System, the person responsible for payment would pay a charge higher than that which would apply to a directly dialled Operator Telephony Call of equivalent distance and duration; and
- (b) where payment is made by the Operator to an Operator PRS Service Provider and if payment takes into account the number or duration of Calls to that Operator PRS Service Provider;

"Operator PRS Service Provider" means a person having a contract with the Operator for the delivery of Operator PRS Calls;

"Operator PRS Sub Service Provider" means a person having an arrangement for the delivery of Operator PRS Calls, whether or not legally binding, with an Operator PRS Service Provider, directly or indirectly;

"Operator System" means the Public Electronic Communications Network provided by the Operator for connection to the KCH System pursuant to this Agreement;

"Operator Switch Connection" means an Operator Exchange at which Calls handed over:

- (a) from the KCH System are initially switched; or
- (b) to the KCH System are finally switched;

by the Operator;

"Operator Tandem Exchange" means a digital tandem Switch in the Operator System which provides access to Operator Local Exchanges;

"Operator Telecommunications Service" means a Telecommunication Service supplied to KCH by the Operator pursuant to this Agreement;

"Operator Telephony Call" means either an Operator Basic Telephony Call or an Operator ISDN Telephony Call;

"Order" means an order for the provision of Capacity pursuant to Paragraph 5 of Annex 3;

"Order Cancellation Charges" means the charges specified in Paragraph 5 of Part B of Annex 4 or the Operator Price List as applicable;

"Outgoing Call" means a Call handed over at a Point of Interconnection by the Operator to KCH;

"Overseas System" means a telecommunications system (including a European Public Operator System) to or from which KCH and/or the Operator is authorised to provide international services;

"PNO-IG" means the Public Network Operators – Interest Group;

"Point of Interconnection" means a physical point described in Paragraph 3 of Annex 3 where the KCH System and the Operator System are connected for Calls to be handed over from one System to the other;

"Premium Rate Service" or "PRS" means an entertainment or information service

- (a) which is accessed by means of a Call and consists of, or includes the sending of, speech, music, other sounds or signals to the Calling Party; and
- (b) for which payment is made by means of Call charges; and
- (c) which is prefixed by the digits "09" in the national numbering plan;

"Privacy Regulations" means the Privacy and Electronic Communications (EC Directive) Regulations as in force at 11 December 2003;

"Private Circuits from a Point of Connection (PCPOC)" means a digital private circuit of 2 Mbit/s Capacity provided by KCH from the same physical location as a Point of Interconnection to the premises of an Operator's Customer;

"Provisioning Manual" means the procedures published by KCH from time to time relating to the provision of Telecommunication Services and New Services under this Agreement;

"PRS Fraud" means either:

- (a) a loss suffered by the Operator because of the non payment of charges for KCH PRS Calls, in circumstances when the KCH PRS Service Provider or the KCH PRS Sub Service Provider organises or arranges for KCH PRS Calls to be made to his PRS in circumstances when there is a reasonable expectation that the Calling Party or the person responsible for payment does not intend to pay or will seek to avoid payment of all or part of the Call charges; or
- (b) a loss suffered by KCH because of the non payment of charges for Operator PRS Calls, in circumstances when the Operator PRS Service Provider or the Operator PRS Sub Service Provider organises or arranges for Operator PRS Calls to be made to his PRS in circumstances when there is a reasonable expectation that the Calling Party or the person responsible for payment does not intend to pay or will seek to avoid payment of all or part of the Call charges;

"Public Electronic Communications Network" means an Electronic Communications Network provided wholly or mainly for the purpose of making Electronic Communications Services available to members of the public;

"Public Electronic Communications Service" means any Electronic Communications Service that is provided so as to be available for use by members of the public;

"Public Operator" means a person authorised to run a Public Electronic Communications Network or provide a Public Communications Service and the provision of Publicly Available Telephone Service pursuant to the Act;

"Publicly Available Telephone Service" means a service as described in part 1 of the schedule to the notification setting the General Conditions;

"Re-arrangement Charges" means those charges listed in the Narrowband Network Access Price List as payable by the party requesting Capacity re-arrangement;

"Receiving Party" means a party receiving information from a Disclosing Party;

"Related Person" means in relation to any party its holding companies and the subsidiaries, subsidiary undertakings and associated companies from time to time of such holding company, all of them and each of them as the context admits;

"Release Signal" means a signal which indicates that the transmission path of a Call has been disconnected;

"Remote Switch Connection" means a KCH Switch Connection or an Operator Switch Connection which:

- (a) is accessed via a KCH or Operator building notified from time to time as being suitable for supporting IECs; and
- (b) is connected by a KCH IEC or an Operator IEC, as the context requires;

"Revenue Share Service" means an Ancillary Service:

- (a) where a network operator pays to its Customer operating such service an element of the conveyance charges which that operator receives for Calls to such service, or
- (b) operated by a network operator, and for which if operated by a Customer the network operator would pay to such Customer an element of the conveyance charges which that operator receives for Calls to such service;

"RFS Date" means the date on which Capacity is successfully tested and is ready for service and **"Ready for Service"** means, in Annex 1, the date on which the relevant Telecommunications Service is successfully tested and is ready for service;

"RFT Date" means the date on which Capacity is ready for testing and **"Ready for Testing"** means the date on which the relevant Telecommunications Service is ready for testing;

"Route Type" means the segregation of Capacity within a Traffic Route for the conveyance of certain Traffic Types;

"Schedule" means a schedule in Annex 1 of this Agreement;

"SDH" means synchronous digital hierarchy;

"Signal" has the meaning given to it in section 32 of the Act;

"Signalling Link" means a 64 kbit/s digital path within a 2 Mbit/s Interconnect Link between two ITU-T C7 signalling nodes which is used for signalling;

"Signalling Link Set" means a pair of Signalling Links each within a separate 2 Mbit/s system on an Interconnect Link;

"Single Signalling Link" means a Signalling Link being the only Signalling Link between a specific KCH Switch Connection and a specific Operator Switch Connection;

"Specification" means one of:

- (a) the Generic Electrical and Physical Interface Specification;
- (b) the Generic C7 Signalling Interface Specification;
- (c) the Generic Transmission Interface Specification; and
- (d) the Generic SDH Interface Specification;

"Subscriber" means any person who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services;

"Switch" means telecommunication apparatus within a System which performs the function of switching and routing Calls between two or more points within such System and/or between one such point and another System;

"Switch Connection" means a KCH Switch Connection or, as the context requires, an Operator Switch Connection;

"System" means the KCH System or, as the context requires, the Operator System;

"System Alteration" means a change (other than a Data Management Amendment) to a party's System, which requires a change to be made to the other party's System to allow the continuance of the conveyance of Calls across a Point of Interconnection pursuant to this Agreement;

"Technical Master Plan" means a document recording details of the Points of Interconnection and the plans for development of further Points of Interconnection;

"Telecommunications Services" means the telecommunications services specified in Annex 1 of this Agreement;

"Telecommunication System" means an Electronic Communications Network within the UK as defined in section 32 of the Act or an authorised Overseas System;

"Third Party" means a person other than KCH or the Operator;

"Third Party Operator" means a Public Operator or an operator of an Overseas System being neither the Operator nor KCH;

"TIBS" means KCH's Telecommunications Input Billing System, which records information on certain Calls which use the services of a KCH Operator or the operator of a Third Party;

"TIBS Billing Information and Refund Report" means the reports in the same or substantially the same form as in the Billing Manual;

"TIBS Information" means the itemised Call records of the services provided by KCH Operators, or the operator of a Third Party, to the Operator which would have resulted in a charge from KCH had the Calling Parties been KCH Customers, together with reports relating to Transfer Charge Calls, ineffective calls, and any other records which will result in charges to be paid by or to the Operator for such services;

"Traffic Forecast" means a forecast of traffic at a KCH Switch Connection or Operator Switch Connection such forecast provided by one party to the other pursuant to Paragraph 4 of Annex 3;

"Traffic Route" means the discrete and identifiable units of Capacity within an Interconnect Link;

"Traffic Stream" means a group of Calls carried from a specific place in one party's System to a specific place in the other party's System;

"Traffic Type" means a different identifiable type of Call;

"Transfer Charge Call" means a Call for which the Called Party is requested and agrees to pay the cost of a Call from the Calling Party;

"Transit Call" means a Call, comprising the minimum service features necessary to support a speech path through the Operator's System, handed over from the KCH System to the Operator's System destined for a Third Party Operator's System, being a Call available for the conveyance of Messages;

"VAT" means United Kingdom Value Added Tax;

"Verification System" means a Call record data system not used in the production of Billing Information;

"Voluntary Register of Public Electronic Communications Networks" means the register maintained by Ofcom to facilitate the negotiation of interconnection rights and obligations between Communications Providers who provide Public Electronic Communications Networks;

"Weekend" means the period of time between 2400 on Friday and 2400 on Sunday or such other period of time as shall be agreed between the parties;

"Working Day" means any day other than Saturdays, Sundays, public or bank holidays in the United Kingdom;

"Working Hours" means between 9.00 a.m. and 5.00 p.m. on any Working Day.

"2Mbit/s Interconnect Link" means a portion of an Interconnect Link comprising a 2Mbit/s Path, and, as appropriate, a Signalling Link;

"2 Mbit/s Path" means the transmission layer (comprising the Multiplexors, line terminating equipment and a Line) between 2.048Mbit/s G703 interfaces of the Multiplexor located at Operator premises (housing the Point of Interconnection) and the Multiplexor located at a KCH Switch Connection;

1.2 In this Agreement unless otherwise specified, reference to:

- (a) a **"subsidiary undertaking"** is to be construed in accordance with section 258 of the Companies Act 1985, a **"subsidiary"** or **"holding company"** is to be construed in accordance with section 736 of the Companies Act 1985 and an **"associated company"** is to be construed as a party, its holding company, its subsidiary companies and any subsidiaries of its holding company;
- (b) a party means a party to this Agreement and includes its permitted assignees and/or successors in title;
- (c) a person includes any person, individual, company, firm, corporation, government, state or agency of a state or any undertaking (whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);

- (d) Recitals, Clauses, Paragraphs, Annexes, Schedules or Appendices are to Recitals, Clauses and Paragraphs of and Annexes, Schedules and Appendices to this Agreement;
 - (e) writing shall include typewriting, printing, lithography, photography and other modes of representing words in a legible form other than writing on an electronic or visual display screen or in other non-transitory form;
 - (f) words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
 - (g) Any reference to any legislature provision shall be deemed to include any subsequent re-enactment or amending provision.
- 1.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.4 In the event, and to the extent only, of any conflict or inconsistencies between the Clauses, the Annexes and the Schedules, the main body of this Agreement Clause shall prevail over the Annexes and the Schedules; the Annexes shall prevail over the Schedules; and all of the main body, the Annexes and the Schedules shall prevail over the Narrowband Network Access Price List.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement takes effect on the date hereof and shall continue until termination pursuant to this Agreement.
- 2.2 In the event that either party's entitlement to provide all or a material part of its Public Electronic Communications Network is suspended by Ofcom, the party whose entitlement is not so suspended may terminate this Agreement (or such part thereof as that party deems reasonable) on notice to the other;
- 2.3 After a notice has been given pursuant to Clause 2.2 a party may request the other party to carry on good faith negotiations with a view to entering into a new agreement and if, on termination of this Agreement either party would be obliged under a Condition or General Condition to enter into a new agreement with the other party then the parties shall carry on good faith negotiations within a reasonable period with a view to that agreement taking effect on termination of this Agreement.

3. INTERCONNECTION

- 3.1 KCH shall connect and keep connected the KCH System and the Operator shall connect and keep connected the Operator System at Points of Interconnection in accordance with this Agreement.

3.2 Each party shall comply with the Specifications in so far as they apply to the provision of services pursuant to this Agreement.

3.3 Each party warrants and undertakes that it is a Public Operator or European Public Operator and in the event that a party fails to become or subsequently fails to qualify as a Public Operator or European Public Operator each party indemnifies keeps indemnified and holds the other harmless against all liabilities, claims, costs, damages and expenses (including, without limitation, reasonable legal costs) arising out of the difference between wholesale (interconnect) prices obtained for the Telecommunications Services by virtue of being a Public Operator or European Public Operator and retail prices for the same Telecommunications Services.

4. TELECOMMUNICATIONS SERVICES

4.1 Subject to Clause 4.2, KCH and the Operator shall provide to each other the Telecommunications Services in accordance with this Agreement.

4.2 Neither party shall be under any obligation:

- (a) to convey Calls to or from Telecommunications Systems run by a Third Party Operator unless the party has the requisite agreement with that Third Party Operator;
- (b) for conveyance of any Call to the extent that it is not conveyed by means of its own System;
- (c) to do any act or permit the doing of any act which would prejudice the rights, liabilities and obligations of the parties created by and under the General Conditions or any conditions imposed by Ofcom based on his powers in relation to essential requirements pursuant to the Act.

4.3 For the avoidance of doubt and notwithstanding the interconnection of the KCH System and the Operator System, neither party shall hand over to the other party, nor have any obligations to convey Calls of any category, unless the other party has agreed to convey Calls of that category and there is express provision to convey Calls of that category in a Schedule to this Agreement.

5. SYSTEM ALTERATION

5.1 The parties shall comply with the provisions of Paragraph 6 of Annex 3 with regard to alterations to their respective Systems.

6. **QUALITY OF SERVICE**

- 6.1 KCH and the Operator shall each use all reasonable endeavours to meet the performance standard as set out in the Generic Transmission Interface Specification or as otherwise agreed between the parties from time to time.
- 6.2 Neither party warrants that its System is or will be free from faults. The parties shall comply with the fault identification and reporting guidelines set out in Paragraph 9 of Annex 3.

7. **NEW SERVICES**

- 7.1 Either party (the "requesting party") may, at any time, request from the other party (the "requested party") an agreement to interconnect their respective Systems for the provision of any New Service which the requested party provides under interconnection agreements to Third Party Operators which, in the case of a request to:
- (a) KCH, is an agreement which KCH is required to enter into under an express Condition of the KCH Licence or a Condition; or
 - (b) the Operator, is an agreement which the Operator is required to enter into under a General Condition.
- 7.2 The requested party shall, following a request by the requesting party, enter into good faith negotiations with the requesting party to agree terms for interconnection of the parties' respective Systems for the provision of the New Service by the requested party to the requesting party on fair and reasonable terms. Upon terms being agreed, this Agreement shall be amended to give effect to the agreed terms or, if appropriate, the parties shall agree and enter into a new agreement for network access.
- 7.3 If the requesting party requests from the requested party an agreement for interconnection for the provision of a New Service which is not made available by the requesting party to Third Party Operators, the parties shall enter into good faith negotiations to enter into an agreement for interconnection for the provision of such New Service in accordance with Clauses 7.4 to 7.8 (inclusive) or otherwise as the parties may agree.
- 7.4 The requesting party shall provide at the time of such request the requested party with a written statement of its requirements addressing the matters contained in the New Services Manual.
- 7.5 Not later than 5 Working Days after receipt by the requested party of the statement of requirements, the requested party shall acknowledge such receipt in writing.
- 7.6 Not later than 30 calendar days after the acknowledgement under Clause 7.5, the requested party shall confirm whether or not the statement of

requirements is sufficient for the purpose and, if not, the requested party shall request and the requesting party shall provide such further clarification of the statement of requirements as the requested party may reasonably require. The parties shall use their reasonable endeavours to ensure that the requested party shall be in a position to confirm the sufficiency of the statement of requirements (with clarification, if any) within such 30 calendar day period.

7.7 Subject to the requested party confirming the sufficiency of the requesting party's statement of requirements under Clause 7.6, the requested party shall not later than:

(a) 60 calendar days after the acknowledgement under Clause 7.5, confirm in writing to the requesting party whether it accepts an obligation to enter into an agreement to meet those requirements in accordance with the cost and other principles embodied in this Agreement; and

(b) if it does accept an obligation to do so, 75 calendar days after the acknowledgement under Clause 7.5, endeavour to agree with the requesting party a plan which addresses:

(i) the testing of the feasibility of the requirements and, if so feasible, the implementation of those requirements;

(ii) the terms and conditions, including price, applicable to the requirements; and

(iii) any other relevant matter.

7.8 If the requested party does not accept under Clause 7.7(a) an obligation to meet the requesting party's requirements or the requested party does accept under Clause 7.7(a) an obligation to meet the requesting party's requirements but the parties fail to agree on any aspect of the plan within the timescales referred to in Clause 7.7(b), then the requesting party without prejudice to its other rights and remedies may immediately request a determination from Ofcom.

7.9 If the requested party does not accept under Clause 7.7(a) an obligation to meet the requesting party's requirements, negotiations to agree terms for interconnection for the provision of the service or facility may nevertheless continue, whether by further clarification of the statement of requirements or otherwise and without prejudice to the requesting party's right to request a determination from Ofcom as referred to in Clause 7.8.

7.10 The provisions of this Clause 7 are intended to establish a framework for the interconnection of the parties' respective Systems for the provision of any New Services, but are not intended to prejudice the rights, liabilities and

obligations of the parties created by and under a Condition or General Condition.

8. FORECASTS AND CAPACITY

8.1 The parties shall supply to each other forecasts in accordance with Paragraph 4 of Annex 3 and as may be required in a Schedule.

8.2 The parties shall order and provide Capacity in accordance with Paragraph 5 of Annex 3 and as may be required in a Schedule.

9. PROVISION OF INFORMATION

9.1 Each party shall provide to the other such information and assistance as is reasonably requested from time to time by the other party to enable it to perform its obligations pursuant to this Agreement.

9.2 Notwithstanding any provision of this Agreement a party shall not be obliged to provide information which is subject to a confidentiality obligation to a Third Party unless such Third Party consents to such disclosure.

9.3 Each party will use reasonable endeavours to ensure that information provided by it is correct to the best of its knowledge at the time of provision of such information.

9.4 Nothing in this Agreement shall prevent the furnishing of traffic data (as defined in the Privacy Regulations) to a person who is a competent authority for the purposes of any provision relating to the settlement of disputes (by way of legal proceedings or otherwise) in, or made by virtue of any enactment.

9.5 Nothing in this Agreement shall require a party to do anything in breach of any statutory or regulatory obligation of confidentiality.

10. CLI

10.1 If a party's System requests CLI from the other System the originating System shall generate and convey CLI to the System requesting it to the extent that the originating System has such a capability.

10.2 A party whose System receives CLI following a request pursuant to Clause 10.1 shall only use the CLI for the following purposes:

10.2.1 the management of traffic; and

10.2.2 the management of billing;

10.2.3 to the extent that it relates to the management of traffic or billing agreed administrative use in accordance with accepted industry

practice from time to time (which includes, at the date of this Agreement, call trace, malicious call identification,) and in anonymised form, the compilation of statistics relating to call origin; and

- 10.2.4 display to Customers subject to compliance with the CLI Guidelines;
 - 10.2.5 activities relating to Customer enquiries;
 - 10.2.6 prevention and detection of fraud (including Artificial Inflation of Traffic (AIT)).
- 10.3 A party conveying Calls handed over from the system of a Third Party Operator shall subject to law and the CLI Guidelines convey, to the extent received, the CLI associated with those Calls.
- 10.4 Notwithstanding any other provisions of this Agreement and any preference expressed by a calling user or Subscriber, a party may present the identity of the calling line when an Emergency Call is made and use CLI to pass telephone numbers to Emergency Organisations.
- 10.5 The cost of generating and conveying CLI is included in the relevant conveyance rates for Calls. Neither party shall apply additional charges for CLI.
- 10.6 If a party desires to charge separately for the generation or conveyance of CLI such party may initiate a review of this Clause 10 pursuant to Clause 16.1(c) on each 1 April.
- 10.7 If there is a change in law or regulation relating to CLI, the parties shall change the operation of CLI to the extent necessary to comply with the applicable law or regulation.

11. **KCH CHARGES**

- 11.1 For Telecommunication Services or Capacity provided by KCH the Operator shall pay to KCH the charges specified from time to time in the Narrowband Network Access Price List.
- 11.2 Subject to Clause 13.7 KCH may from time to time vary the charges for Telecommunication Services or Capacity by publication in the Narrowband Network Access Price List. Such new charge shall take effect on the Effective Date.
- 11.3 Notwithstanding the aforesaid, KCH may vary the charge which has retrospective effect for Telecommunications Services or Capacity provided by KCH by publication in the Narrowband Network Access Price List if the variation is as a result of:-

- (a) a variation of a charge which has retrospective effect payable by or to KCH in respect of any European Public Operator or Public Operator; or
 - (b) an order, direction, determination or requirement of Ofcom or any other regulatory authority or body of competent jurisdiction.
- 11.4 The date of publication in the Narrowband Network Access Price List shall be the date that KCH first makes the contents of the Narrowband Network Access Price List available on the Internet or commences distribution of the printed version of the Narrowband Network Access Price List containing the relevant entries to persons other than KCH including, without limitation the Operator, whichever is earlier. If there is a difference between the contents of the Narrowband Network Access Price List available on the KCH Web Site and the contents of the printed version of the Narrowband Network Access Price List, the contents of the printed version of the Narrowband Network Access Price List shall prevail.

12. OPERATOR CHARGES

- 12.1 For a Telecommunications Service or Capacity provided by the Operator KCH shall pay to the Operator the charges specified from time to time in the Operator Price List.
- 12.2 The Operator may from time to time by sending to such person, as KCH may notify to the Operator from time to time, a notice in writing in duplicate requesting a variation to a charge for an Operator Telecommunication Service or Capacity together with details specifying the new charge and the proposed effective date of such variation ("Charge Change Notice"). KCH shall within 4 Working Days of receipt of such notice acknowledge receipt and within a reasonable time notify the Operator in writing of acceptance or rejection of the proposed variation. If KCH has not accepted the Charge Change Notice within 14 days of receipt of such notice (or such longer period as may be agreed in writing) the proposed variation shall be deemed to have been rejected.
- 12.3 KCH may from time to time by sending to such person, as the Operator may notify to KCH from time to time, a notice in writing in duplicate requesting a variation to a charge for an Operator Telecommunications Service or Capacity together with details specifying the new charge and the proposed effective date of such variation ("Charge Change Notice"). The Operator shall within 4 Working Days of receipt of such notice acknowledge receipt and within 14 days of receipt of such notice notify KCH in writing of acceptance or rejection of the proposed variation. If the Operator has not accepted the Charge Change Notice within 14 days of receipt of such notice (or such longer period as may be agreed in writing) the proposed variation shall be deemed to have been rejected.

- 12.4 If the party receiving a Charge Change Notice accepts it the parties shall forthwith modify the Agreement accordingly.
- 12.5 If the party receiving a Charge Change Notice rejects it the parties shall forthwith negotiate in good faith. If following rejection of a Charge Change Notice and negotiation, the parties fail to reach agreement within 14 days of the rejection of the Charge Change Notice, either party may, not later than 1 month after the expiration of such 14 days period, refer the matters in dispute to Ofcom or an agreed alternative dispute resolution body.
- 12.6 If Ofcom or the agreed ADR body upholds the Charge Change Notice without modification such new charge shall take effect on the date specified in the Charge Change Notice and the parties shall forthwith modify the Agreement accordingly.
- 12.7 If Ofcom or the agreed ADR body does not uphold the Charge Change Notice without modification then that Charge Change Notice shall cease to be of any effect. In the event that Ofcom or the ADR body proceeds to make an order, direction, determination or requirement following a referral pursuant to Clause 12.5 then the party who sent the Charge Change Notice shall send a further Charge Change Notice in accordance with the order, direction, determination or requirement of Ofcom and the parties shall forthwith execute a variation to the Agreement in accordance with Clause 27.1.
- 12.8 If, before it comes into effect, a party withdraws a Charge Change Notice, or extends or changes the effective date or period, then that party shall send to the other party written notice of the withdrawal, extension or change forthwith.

13. **CHARGES, BILLING AND PAYMENT**

- 13.1 Each party shall pay the charges calculated in accordance with, and within the time specified in, this Agreement.
- 13.2 The charges in this Agreement are exclusive of VAT unless such charges are stated to be inclusive of VAT.
- 13.3 Invoices are due and payable in pounds sterling.
- 13.4 Each party shall comply with the billing and payment procedures set out in Annex 4.
- 13.5 If any charge (or the means of calculating that charge) for a Telecommunications Service or Capacity has retrospective effect (for whatever reason) then KCH or the Operator (as applicable) shall, as soon as reasonably practicable following publication in the Narrowband Network Access Price List or submission by the Operator of an amended Operator Price List (as applicable), adjust and recalculate the charges in respect of such Telecommunications Service or Capacity using the new charge and

calculate the interest for any sum overpaid or underpaid at the Oftel Interest Rate.

- 13.6 As soon as reasonably practicable following an alteration to the Narrowband Network Access Price List or the Operator Price List (as applicable) the relevant party shall send a copy of the alterations to the Narrowband Network Access Price List or the Operator Price List (as applicable) to the other party.
- 13.7 Where KCH sets an "interim" rate for a Telecommunications Service or Capacity it will publish such rate not less than 90 calendar days, (except in the case of Wholesale Residential ISDN 2 and Wholesale ISDN 30 exchange line services in which instance such rates shall be published not less than 28 calendar days prior to the Effective Date), prior to the Effective Date. "Final" rates for such Telecommunications Service or Capacity will be published no later than 180 calendar days after the end of one calendar year following the Effective Date in respect of the applicable interim rate.

14. **ARTIFICIAL INFLATION OF TRAFFIC**

14.1 Each party shall use reasonable endeavours to:

- (a) detect Artificial Inflation of Traffic (AIT);
- (b) identify AIT;
- (c) notify the other party of AIT;
- (d) prevent AIT;

in accordance with this Clause 14 and Annex 5.

- 14.2 The provisions of this Clause 14 and Annex 5 shall apply to all Revenue Share Services under this Agreement.
- 14.3 The parties shall use reasonable endeavours to develop, implement and maintain appropriate procedures to identify and prevent AIT and shall document such procedures in a separate document ("the AIT manual").
- 14.4 If either party reasonably considers that the agreed safeguards in respect of AIT under this Agreement are not adequate, then such party may apply for a review of this Clause 14 and of Annex 5 pursuant to Clause 16.1(c).

15. **CREDIT VETTING**

15.1 For the purposes of this Clause 15:

- 15.1.1 "**calendar month invoice sum**" means in respect of either party, the aggregate sum of all invoices sent by the other party under the Agreement, which invoices each have an invoice date within the same calendar month.

- 15.1.2 if a Due Date for payment (including a **"Due Date"** for an estimate which is subject to the advance payment regime in accordance with Clauses 15.10 and 15.19 below) falls on a day other than a Working Day, payment shall be due on the previous Working Day.
- 15.1.3 references to **"sum(s) due"** shall be deemed to exclude any sums which are the subject of an invoice dispute which shall be dealt within accordance with Paragraph 5.2 of Annex 4.
- 15.1.4 if the Operator supplies a deposit to KCH under this Clause 15, KCH shall pay interest on such deposit in accordance with the KCH Credit Vetting Policy.
- 15.1.5 reference to a party's obligation to **"vary an existing deposit"** in Clauses 15.6 and 15.15 refers to the obligation:
- (a) of that party to increase the deposit from time to time or of the parties to co-operate to decrease the deposit in accordance with changes of calendar month invoice sum(s) from month to month; and
 - (b) if at any time any part of a deposit is applied by a party to recover monies due but not paid by the other party, then the obligation of such other party to immediately arrange payment to such party to restore the amount of such deposit to the level required.
- 15.1.6 any failure of the Operator to supply security or to implement an advance payment option within 28 calendar days of written notice from KCH requiring the Operator to do so shall entitle KCH to suspend the performance of such of its obligations under this Agreement until such time as the requirement is fulfilled by the Operator;
- 15.1.7 the **"KCH Credit Vetting Policy"** shall mean the KCH credit vetting document published by KCH from time to time.
- 15.1.8 Any late payment sufficient to trigger provision of profile monitoring or other credit vetting procedure by either party will be notified to the other party on the first instance. Such written notice shall be taken as an official warning that action may be taken on future occurrences of late payment.
- 15.2 The Operator shall be subject to and comply with KCH's published Credit Vetting Policy. KCH shall use all reasonable endeavours to give the Operator not less than three months' written notice of any material changes to such Credit Vetting Policy.

- 15.3 Without prejudice to the profile monitoring provisions referred to in this Clause 15, KCH shall, at its discretion, be entitled to continue to apply its Credit Vetting Policy until such time as the Operator has made payment of not less than 75% of sums due in respect of each month for a rolling 12 month consecutive period. Such payment must have been made within 7 calendar days of the Due Date in each case.
- 15.4 If in any two calendar months within any six consecutive calendar month period the Operator fails to pay a sum or sums due and where such sum exceeds 25% of the respective calendar month invoice sum, within 7 calendar days after the relevant Due Date(s), but does pay such sums within 14 calendar days after such Due Date(s), then KCH shall be entitled at its discretion upon service of written notice to the Operator (the first "**Payment Period Notice**") to implement profile monitoring of the Operator in accordance with the KCH Credit Vetting Policy.
- 15.5 Without prejudice to any other rights or remedies available to KCH under this Agreement, if in any two calendar months within any twelve consecutive calendar month period the Operator fails to pay within 14 calendar days after the relevant Due Date(s), a sum or sums due which exceed the 25% threshold referred to above KCH shall be entitled at its discretion to issue a written notice to the Operator (a "**Security Notice**") requiring the Operator, at its own cost and expense, to proceed in accordance with Clause 15.6 below. Such Security Notice shall be issued by KCH not later than 90 calendar days after the end of the second such calendar month referred to in this Clause.
- 15.6 Further to Clause 15.5, KCH may require the Operator to:
- 15.6.1 prepare and implement a detailed programme (which shall include timeframes for payment) to KCH's satisfaction for the payment of all payments in arrears under this Agreement; and
 - 15.6.2 comply with profile monitoring in accordance with the Credit Vetting Policy; and
 - 15.6.3 either, with the prior approval of KCH and only when any credit vetting has indicated that such a provision should be applied:;
 - (a) provide a deposit, or vary an existing deposit, (which deposit shall be paid into an escrow bank account in the names of KCH and the Operator), as security for payment of monies arising under this Agreement; or,
 - (b) procure the provision of a guarantee in a form acceptable to KCH as security for payment of monies arising under this Agreement; or
 - (c) offer and implement an advance payment regime in accordance with Clause 15.10 below;

- 15.7 The maximum amount for security shall be no greater than a sum equivalent to the previous 3 months' total invoicing by KCH to the Operator under this Agreement.
- 15.8 The Operator shall comply with KCH's reasonable requirements under Clause 15.6 within 28 calendar days from date of service by KCH of the Security Notice.
- 15.9 Security under Clause 15.6 shall continue until payment in full has been made of:
- 15.9.1 all monies payable by the Operator to KCH which are due under any payment programme agreed pursuant to Clause 15.6.1, and
 - 15.9.2 sums due within 7 calendar days after the Due Date for 12 consecutive calendar months (other than a sum or sums due in any such month),
- 15.10 If the parties agree the introduction of an advance payment regime pursuant to Clause 15.6, the following shall apply:
- 15.10.1 for KCH services invoiced in advance, such services shall continue to be invoiced by KCH and payable by the Operator in accordance with this Agreement;
 - 15.10.2 for KCH services invoiced in arrears, KCH shall notify the Operator in writing not later than the 15th day of each month of KCH's reasonable estimate of the monies (being monies estimated by KCH for payment for services to be supplied under this Agreement by KCH to the Operator) due for the following month. Upon the receipt of such estimate, the Operator shall pay to KCH not less than 25% of that estimate before the 1st, 8th, 15th and 22nd calendar day of the next following month (for the purposes of this Clause 15.10.2, the "**Due Date**") in advance of invoice. Such payment regime shall continue until sums due have been paid by the Due Date (as described in this Clause 15.10.2) for 12 consecutive calendar months (unless KCH and the Operator shall agree to replace this advance payment regime with security pursuant to Clause 15.6), and all monies have been paid to KCH by the Operator which are due under any payment programme pursuant to Clause 15.6.1.
 - 15.10.3 For the avoidance of doubt if the actual use of the services differs from the estimated use the following shall apply:
 - (a) If the actual use exceeds the amount subsequently invoiced by KCH against the estimates paid by the Operator under Clause 15.10.2: the Operator shall, not

later than 7 Working Days after the relevant invoice date pay the difference to KCH;

- (b) if the actual use is less than the amount subsequently invoiced by KCH, KCH shall credit such over-payment against the next estimate (if any) payable by the Operator or the next invoice (as appropriate) payable by the Operator.

For the avoidance of doubt, and without prejudice to the application of the OfTel Interest Rate or Default Interest Rate as applicable in accordance with this Agreement, no OfTel Interest Rate or Default Interest Rate shall be payable in respect of any payment or credit adjustment made solely in accordance with this Clause 15.10.3.

- 15.11 Notwithstanding the provisions of anything else contained herein and subject to Clause 15.12, following the service of a Security Notice KCH shall be entitled (without prejudice to any other rights and remedies available to it) to suspend performance of such of its obligations under this Agreement as is reasonable in the circumstances.
- 15.12 The entitlement to suspend referred to in Clause 15.11 shall commence from the date of the expiry of the 14 calendar day period specified in the relevant breach notice issued pursuant to Clause 24.2 until the date the Operator has complied with KCH's reasonable requirements under Clause 15.6. For the avoidance of doubt, the remedy by the Operator for a breach the subject of a breach notice shall not prohibit KCH, following service of a Security Notice, from suspending performance of its obligations under this Agreement pursuant to Clause 15.11.
- 15.13 If in any two calendar months within any six consecutive calendar month period, KCH fails to pay a sum or sums due, which sum exceeds 25% of the respective calendar month invoice sum within 7 calendar days after the relevant Due Date(s), but does pay such sums within 14 calendar days after such Due Date(s) the Operator shall be entitled at its discretion upon service of written notice to KCH (the first "**Payment Period Notice**") to implement profile monitoring of KCH.
- 15.14 Without prejudice to any other rights or remedies available to the Operator under this Agreement, if in any two calendar months within any twelve consecutive calendar month period, KCH fails to pay within 14 calendar days after the relevant Due Date(s), a sum or sums due which exceed the 25% threshold referred to above the Operator shall be entitled to issue a written notice to KCH (a "**Security Notice**") requiring KCH, at its own cost and expense, to proceed in accordance with Clause 15.15 below.
- 15.15 Further to Clause 15.14, the Operator may require KCH to:

- 15.15.1 prepare and implement a detailed programme (which shall include timeframes for payment) to the Operator's satisfaction for the payment of all payments in arrears under this Agreement; and
- 15.15.2 comply with profile monitoring in respect of the Operator in accordance with the Credit Vetting Policy; and
- 15.15.3 either, with the prior approval of the Operator and only when any credit vetting has indicated that such a provision should be applied:
 - (a) provide a deposit, or vary an existing deposit, (which deposit shall be paid into an escrow bank account in the names of the Operator and KCH), as security for payment of monies arising under this Agreement; or,
 - (b) offer and implement an advance payment regime in accordance with Clause 15.19 below;

provided that such Security Notice served under Clause 15.14 shall be issued by the Operator not later than 90 calendar days after the last calendar day of the second such calendar month referred to in Clause 15.14.

- 15.16 The maximum amount for security shall be no greater than a sum equivalent to the previous 3 months' total invoicing by the Operator to KCH under this Agreement.
- 15.17 KCH shall comply with the Operator's reasonable requirements under Clause 15.15 within 28 calendar days from date of service by the Operator of the Security Notice.
- 15.18 Security under Clause 15.15 shall continue until payment in full has been made of:
 - 15.18.1 all monies payable by KCH to the Operator which are due under any payment programme agreed pursuant to Clause 15.15.1, and
 - 15.18.2 sums due within 7 calendar days after the Due Date for 12 consecutive calendar months (other than a sum or sums due in any such month),
- 15.19 If the parties agree the introduction of an advance payment regime pursuant to Clause 15.15, the following shall apply:
 - 15.19.1 for Operator services invoiced:- in advance, such services shall continue to be invoiced by the Operator and payable by KCH in accordance with this Agreement;
 - 15.19.2 for Operator services invoiced:- in arrears, the Operator shall notify KCH in writing not later than the 15th day of each month of the

Operator's reasonable estimate of the monies (being monies estimated by the Operator for payment for services to be supplied under this Agreement by the Operator to KCH) due for the following month. Upon the receipt of such estimate, KCH shall pay to the Operator not less than 25% of that estimate before the 1st, 8th, 15th and 22nd calendar day of the next following month (for the purposes of this Clause 15.19.2, the "**Due Date**") in advance of invoice. Such payment regime shall continue until all sums due have been paid by the Due Date (as described in this Clause 15.19.2) for 12 consecutive calendar months (unless the Operator and KCH shall agree to replace this advance payment regime with security pursuant to Clause 15.15), and all monies have been paid to the Operator by KCH which are due under any payment programme pursuant to Clause 15.15.1.

15.19.3 For the avoidance of doubt if the actual use of the services differs from the estimated use the following shall apply:

- (a) if the actual use exceeds the amount subsequently invoiced by the Operator against the estimates paid by KCH under Clause 15.19.2 KCH shall, not later than 7 Working Days after the relevant invoice pay the difference to the Operator;
- (b) if the actual use is less than the amount subsequently invoiced by the Operator, the Operator shall credit such over-payment against the next estimate (if any) payable by KCH or the next invoice (as appropriate) payable by KCH.

For the avoidance of doubt, and without prejudice to the application of the OfTel Interest Rate or Default Interest Rate as applicable in accordance with this Agreement, no OfTel Interest Rate or Default Interest Rate shall be payable in respect of any payment or credit adjustment made solely in accordance with this Clause 15.19.3.

15.20 Subject to Clause 15.21, following the service of a Security Notice the Operator shall be entitled (without prejudice to any other rights and remedies available to it) to suspend performance of such of its obligations under this Agreement as is reasonable in the circumstances.

15.21 The entitlement to suspend referred to in Clause 15.20 shall commence from the date of the expiry of the 14 calendar day period specified in the relevant breach notice issued pursuant to Clause 24.2 until the date KCH has complied with the Operator's reasonable requirements under Clause 15.15.

15.22 For the avoidance of doubt, the remedy by KCH for a breach the subject of a breach notice shall not prohibit the Operator, following service of a Security

Notice, from suspending performance of its obligations under this Agreement pursuant to Clause 15.20.

16 REVIEW

16.1 A party may seek to amend this Agreement by serving on the other a review notice if:

- (a) the KCH Licence or a Condition is materially modified (whether by amendment or replacement); or
- (b) a material change occurs in the law or regulations (including codes of practice whether or not having the force of law) governing electronic communications in the United Kingdom; or
- (c) this Agreement makes express provision for a review or the parties agree in writing that there should be a review; or
- (d) a change (including enforcement action by any regulatory authority) occurs which affects or reasonably could be expected to affect the commercial or technical basis of this Agreement; or
- (e) this Agreement is assigned or transferred by the other party in accordance with Clause 22.1 except if prior written consent to the assignment or transfer is not required under Clause 22.2; or
- (f) either party wishes to initiate a general review of this Agreement,

provided that in the case of each of Clauses 16.1(a), 16.1(b) and 16.1(d) such modification or change has a material effect upon a party's ability to perform its obligations in accordance with this Agreement.

16.2 A review notice shall set out in reasonable detail the issues to be discussed between the parties.

16.3 Save for a review under Clause 16.1(f), a party shall serve a review notice within 6 (six) months of the relevant event or date.

16.4 A party may initiate a review under Clause 16.1(f) by serving a review notice during the period of 3 (three) months commencing on 1 October 2006 and/or every (2) two years thereafter.

16.5 On service of a review notice, the parties shall forthwith negotiate in good faith the matters to be resolved with a view to agreeing the relevant amendments to this Agreement.

16.6 For the avoidance of doubt, the parties agree that notwithstanding service of a review notice this Agreement shall remain in full force and effect.

17 DETERMINATION

- 17.1 If the parties fail to reach agreement on the subject matter of a review notice pursuant to Clause 16 within 3 (three) months (or 6 (six) months in the case of a review notice under Clause 16.1(f)) in each case from the date of service of such review notice, either party may, not later than 3 months after the expiration of the relevant period, request in writing Ofcom to determine the matters upon which the parties have failed to agree.
- 17.2 On receipt of a request for a determination Ofcom may make an order, direction, determination or consent (for the purposes of this Clause 17, a "determination") if Ofcom is satisfied that:
- (a) the requirements of the relevant provisions of Clause 16.1 have been satisfied; and
 - (b) the modifications sought to this Agreement are material.
- 17.3 The parties shall modify or replace the Agreement in accordance with any determination of Ofcom unless such determination is subject to a legal challenge.
- 17.4 If the determination is subject to a legal challenge then the parties shall modify or replace the Agreement at the conclusion of the legal proceedings in accordance with Ofcom's determination and the result of the legal proceedings.
- 17.5 The provisions of Clause 16 and 17 are intended to establish a framework for the review and determination of the provisions of this Agreement but are not intended to prejudice the rights, liabilities and obligations of the parties created by and under the KCH Licence or a Condition.

18 CONFIDENTIALITY

- 18.1 Subject to the following provisions of this Clause 18, a Receiving Party shall keep in confidence Confidential Information and will not (and will use its reasonable endeavours to ensure that its directors, employees, and professional advisers will not) disclose such information to any Third Party.
- 18.2 A Receiving Party shall exercise no lesser degree of care of Confidential Information than would a reasonable person with knowledge of the confidential nature of the information. A Receiving Party shall exercise no lesser security or degree of care than that party applies to its own Confidential Information of an equivalent nature.
- 18.3 A Receiving Party shall restrict disclosure of Confidential Information relating to the other party to those persons who have a reasonable need to know or, in the case of CLI, to those employees to whom it is essential for permitted

purposes. Confidential Information shall be used solely for the purposes for which it was disclosed.

18.4 A Receiving Party may disclose Confidential Information to an associated company, subject to the associated company undertaking to comply with obligations equivalent to these contained in this Clause 18.

18.5 A Receiving Party may disclose Confidential Information to a contractor or agent, subject to the contractor or agent undertaking in writing to comply with obligations equivalent to those contained in this Clause 18.

18.6 The following shall not constitute a breach of this Clause 18:

- (a) a disclosure authorised in writing by the Disclosing Party to the extent of that authority; or
- (b) a disclosure to an Emergency Organisation; or
- (c) publication of all or part of this Agreement or details of it or publication in the Narrowband Network Access Price List except in so far as Ofcom has consented to the exclusion of any matter; or
- (d) a disclosure which is properly made pursuant to a Condition or a relevant statutory or other regulatory obligation; or
- (e) a disclosure properly and reasonably made to Ofcom under Clause 17, or to an arbitrator, expert or any person appointed by the parties for the resolution of a Dispute; or
- (f) a disclosure to obtain or maintain any listing on or required by the rules of any recognised stock exchange,

subject to in the case of any disclosure specified in Clauses 18.6(d) to 18.6(f) the Receiving Party informing the Disclosing Party as soon as reasonably practical, after such disclosure.

18.7 Unless otherwise agreed in writing, a Receiving Party shall not use the other party's Confidential Information to provide commercial advantage to its retail business.

19 FORCE MAJEURE

19.1 **"Event of Force Majeure"** means, in relation to either party, an event or circumstance beyond the reasonable control of that party (the **"Claiming Party"**) including, without limitation strikes, lock outs and other industrial disputes (in each case, whether or not relating to the Claiming Party's workforce), acts of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority (including, without limitation,

issuance of applicable codes of conduct or regulatory orders, determinations or directions), compliance with any statutory obligation, fire, lightning, explosion, flood, subsidence, weather of exceptional severity, interruption or failure of utility service (including but not limited to electric power, gas and water but excluding telecommunication services save those provided by a Third Party) or acts or omissions of persons for whom neither party is responsible.

- 19.2 The Claiming Party shall not be deemed to be in breach of this Agreement or otherwise liable to the other party (the "**Non-claiming Party**") for any delay in performance or any non-performance of any obligations under this Agreement (and the time for performance shall be extended accordingly) if and to the extent that the delay or non-performance is due to an Event of Force Majeure
- 19.3 The Claiming Party shall promptly notify the Non-claiming Party of the nature and extent of the circumstances giving rise to the Event of Force Majeure and of the estimated extent and duration of its inability to perform or delay in performing its obligations.
- 19.4 Upon cessation of the effects of the Event of Force Majeure the party initially affected by a Force Majeure shall promptly notify the other of such cessation.
- 19.5 If as a result of an Event of Force Majeure, the performance by the party initially affected of its obligations under this Agreement is affected, such party shall, subject to the provisions of Clause 19.6, perform those of its obligations not affected by the Event of Force Majeure. In performing those of its obligations not affected by an Event of Force Majeure, the party initially affected by an Event of Force Majeure shall deploy its resources such that (when taken together with other obligations to its Customers and Third Parties) there is no undue discrimination against the other party.
- 19.6 If the Event of Force Majeure in question prevails for a continuous period in excess of three months after the date on which it began, the Non-claiming Party may give notice to the Claiming Party terminating this Agreement. The notice to terminate must specify the termination date, which must be not less than 30 clear days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, this Agreement will terminate on the termination date set out in the notice. Neither party shall have any liability to the other in respect of termination of this Agreement due to an Event of Force Majeure, but rights and liabilities which have accrued prior to termination shall subsist.

20 LIMITATION OF LIABILITY

- 20.1 Neither party has an obligation of any kind to the other party beyond the obligations to exercise the reasonable skill and care of a competent telecommunications operator in performing its obligations under this Agreement.

- 20.2 Subject to Clause 20.4 if a party is in breach of any of its obligations under this Agreement to the other party (excluding obligations arising under this Agreement to pay monies in the ordinary course of business), or otherwise (including liability for negligence or breach of statutory duty) such party's liability to the other shall be limited to one million pounds sterling (Stg £1,000,000) for any one event or series of connected events and two million pounds sterling (Stg £2,000,000) for all events (connected or unconnected) in any period of 12 calendar months.
- 20.3 Neither party excludes or restricts its liability for death or personal injury caused by its own negligence or liability arising under Part I of the Consumer Protection Act 1987 or any other liability which cannot be excluded or limited by law.
- 20.4 Neither party shall be liable to the other in contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings, wasted expenditure or for any indirect special or other consequential loss and damage whatsoever arising in connection with the operation of this Agreement.
- 20.5 Each provision of this Clause 20 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.
- 20.6 The amounts specified in Clause 20.2, as adjusted pursuant to this Clause 20.6, shall be adjusted on each 1st April after the date of this Agreement by the percentage change in the retail price index (published in the General Index of Retail Prices (RPI) published by the Central Statistical Office (or any successor index)) for the month of September immediately preceding each 1st April compared with the RPI published in September in the previous year.

21 INTELLECTUAL PROPERTY RIGHTS

- 21.1 Except as expressly provided otherwise in this Agreement, Intellectual Property Rights shall remain the property of the party creating or owning the same and nothing in this Agreement shall be deemed to confer any assignment or licence of the Intellectual Property Rights of one party to the other party.

22 ASSIGNMENT

- 22.1 Unless otherwise agreed in writing, and subject to Clause 22.2, no rights, benefits or obligations under this Agreement may be assigned or transferred, in whole or in part, by a party without the prior written consent of the other party.
- 22.2 No consent is required under Clause 22.1 for an assignment of rights, benefits or obligations under this Agreement (in whole or in part) to a

successor to all or substantially all of the assigning party's System provided that such successor is an associated company.

- 22.3 The assigning party shall promptly give notice to the other party of any assignment permitted to be made without the other party's consent. No assignment shall be valid unless the assignee/successor agrees in writing to be bound by the provisions of this Agreement.

23 DISPUTES

- 23.1 Either party (the "**disputing party**") may invoke the dispute procedure specified in this Clause 23, and if it wishes so to do it shall send written notice of the Dispute to the other party's commercial contact (the "**receiving party**"). The notice shall contain all relevant details including the nature and extent of the Dispute. The receiving party shall acknowledge the receipt of such notice of the Dispute within two Working Days. In the absence of acknowledgement from the receiving party within such timeframe, the disputing party may notify the receiving party that the notice has been deemed received.
- 23.2 The name of each party's commercial contact shall be as specified from time to time in the Customer Service Plan. For the purposes of this Clause 23 no change to a commercial contact shall be effective until it has been notified in writing to the other party.
- 23.3 Following notice under Clause 23.1, the parties shall consult in good faith to try to resolve the Dispute. If agreement is not reached within 14 working days from date of such written notice of Dispute, the Dispute will be escalated under Clause 23.4.
- 23.4 If the Dispute is not resolved under Clause 23.3, the parties shall send written notice to each other's respective commercial contact requiring the Dispute to be escalated and stating to whom each party has escalated the Dispute. The commercial contact receiving such a notice shall acknowledge the receipt of such notice in writing within four Working Days and state to whom the Dispute has been escalated.
- 23.5 Following notice under Clause 23.4, the parties shall work in good faith to try to resolve such Dispute, involving appropriate senior managers.
- 23.6 If the Dispute is not resolved within 90 (ninety) calendar days of receipt of an acknowledgement under Clause 23.4, either party may refer the Dispute to Ofcom or an agreed alternative dispute resolution body for resolution and shall forthwith send a copy of the referral to the other party. In the event of a reference to Ofcom or an ADR, both parties shall compile a detailed dispute report which shall include origin, nature, extent, issues and any proposals for resolution and make their respective reports available to Ofcom or the ADR and each other within 28 calendar days of the referral.

23.7 The above procedures are without prejudice to any other rights and remedies that may be available in respect of any breach of any provisions of this Agreement.

23.8 Nothing herein shall prevent a party from:

- (a) seeking (including obtaining or implementing) interlocutory or other immediate relief;
- (b) referring the Dispute to Ofcom in accordance with any right (if any) either party may have to request a determination or other appropriate steps for its resolution.

For the avoidance of doubt, any referral made to Ofcom by a party under a Condition shall be deemed to be with regard to a right referred to in Clause 23.8(b), without prejudice to the provisions of Clause 23.6

23.9 The dispute procedure specified in this Clause 23 shall not apply to disputes arising out of the service of a Charge Change Notice nor to disputes relating to invoices which shall be dealt with in accordance with Paragraph 6 of Annex 4, Part A.

24 BREACH, SUSPENSION AND TERMINATION

24.1 If a party's System adversely affects the normal operation of the other party's System, or is a threat to any person's safety, the other party may suspend, to the extent necessary, such of its obligations hereunder, and for such period as may be reasonable to ensure the normal operation of its System or reduce the threat to safety.

24.2 If a party is in material breach of (including failure to pay a sum due under) this Agreement, the other party may serve a written notice (the "**breach notice**") on the party in breach specifying the breach and requiring it to be remedied within:

- (a) 30 calendar days from the date of receipt of such breach notice; or
- (b) in case of emergency, within such shorter period as the party not in breach may reasonably specify.

24.3 If the party in breach fails to remedy the breach within such reasonable period as may be specified by the party not in breach pursuant to Clause 24.2 the party not in breach may, until such breach is remedied, suspend performance of such of its obligations under this Agreement as is reasonable in the circumstances.

24.4 If the party in breach fails to remedy the breach within the period stated in the breach notice the party not in breach may terminate this Agreement on three months' written notice provided always that if the party in breach remedies the

breach within such three months' notice period, this Agreement shall not terminate as a result of such notice.

24.5 This Agreement may be terminated by either party by written notice forthwith (or on the termination of such other period as such notice may specify) if the other party:

- (a) is unable to pay its debts within the meaning of section 123(1)(e) of the Insolvency Act 1986; or
- (b) has a receiver or administrative receiver appointed in relation to all or any of its assets; or
- (c) has an order made or a resolution passed for its winding up (other than for the purpose of amalgamation or reconstruction); or
- (d) has an administration order made in respect of its business; or
- (e) enters into a voluntary arrangement under section 1 of the Insolvency Act 1986; or
- (f) ceases to carry on business.

24.6 This Agreement may be terminated in relevant part by either party by:-

- (a) twelve months notice in writing to the other party; or
- (b) such other notice period specified in any order, direction, determination or any other enforcement action as regards Telecommunications Services or Capacity taken by Ofcom or other relevant regulatory or legal authority if that party ceases to be obliged pursuant to its Licence or entitlement to provide some or all Telecommunications Services or Capacity to the other party.

24.7 Upon termination or expiry of this Agreement each party shall take such steps and provide such facilities as are necessary for recovery by the other party of equipment (if any) supplied by that other party. Each party shall use reasonable endeavours to recover equipment made available by it.

24.8 If 30 calendar days after the termination or expiry of this Agreement, a party fails to recover equipment in good condition (fair wear and tear excepted) because of the acts or omissions of the other party (or a Third Party appearing to have control of a site where such equipment is situate) the first party may demand reasonable compensation from the other party which shall be paid by the other party within 10 calendar days of the date of the demand.

24.9 Without prejudice to a party's rights upon termination or expiry of this Agreement a party shall refund to the other a fair and equitable proportion of those periodic sums (if any) paid under the Agreement for a period extending

beyond the date of such termination or expiration unless the parties agree otherwise.

24.10 Termination or expiry of this Agreement shall not be deemed a waiver of a breach of any term or condition of this Agreement and shall be without prejudice to a party's rights, liabilities or obligations that have accrued prior to such termination or expiry.

24.11 Notwithstanding the termination or expiry of this Agreement Clauses 18, 20, 24.7 to 24.12 inclusive shall continue in full force and effect.

24.12 Each of the parties' right to terminate or suspend performance of this Agreement pursuant to this Clause 24 is without prejudice to any other rights or remedies available to either party.

25 NOTICES

25.1 Any notice given or made under this Agreement shall be in writing and shall be delivered by hand or sent by fax or prepaid first class post, including recorded delivery, (air mail if posted to or from a place outside the United Kingdom):-

If to the Operator:

[Operator]
[Operator Address]

If to KCH:

Group Director for Regulatory Affairs and Technology Development
Kingston Communications (HULL) PLC
37 Carr Lane
Kingston-upon-Hull HU1 3RE

Fax: 01482 210765

and copied to:

[]

and shall be deemed to have been duly given or made as follows:-

- (a) if delivered by hand, upon delivery at the address of the relevant party;
- (b) if sent by first class post, two Working Days after the date of posting or on the date of the recorded delivery receipt;
- (c) if sent by air mail, ten Working Days after the date of posting; and

- (d) if sent by fax, when the sender is in possession of a valid fax confirmation slip;

provided that if, in accordance with the above provision, any such notice, demand or other communication would otherwise be deemed to be given or made outside Working Hours, such notice, demand or other communication shall be deemed to be given or made at the start of Working Hours on the next Working Day.

25.2 A party may notify the other party to this Agreement of a change to its name, relevant addressee, address or fax number for the purposes of Clause 25.1 provided that such notification shall only be effective on:-

- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five Working Days after the date on which notice is given, the date falling five Working Days after notice of any such change has been given.

26 ENTIRE AGREEMENT

26.1 This Agreement contains the whole agreement between the parties and supersedes all previous understandings, commitments, agreements or representations whatsoever, whether oral or written, other than any fraudulent misrepresentation, in relation to the subject matter of this Agreement.

27 VARIATIONS

27.1 Except as expressly provided in this Agreement, (a) no variation or waiver of any term, provision or condition of, or consent granted under, this Agreement shall be effective and (b) no breach of any provision of this Agreement shall be waived or discharged unless agreed in writing by the parties and signed by a person nominated in writing on behalf of:

- (a) KCH, by the Group Director for Regulatory Affairs and Technology Development, a director or the company secretary of KCH; and
- (b) the Operator, by a director or the company secretary (or equivalent office holder or other person nominated in writing by the Operator) of the Operator.

28 WAIVER

28.1 No failure or delay on the part of any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Any effective waiver shall be effective only in the instance and for the purpose for which it is given.

28.2 The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law.

29 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

29.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than a party shall have rights under it nor shall it be enforceable by any person other than the party.

30 INDEPENDENT CONTRACTORS AND AGENCY

30.1 Each of the parties is and shall remain at all times an independent contractor fully responsible for its own acts or defaults (including those of its employees or agents). Neither party is authorised and neither of the parties nor their employees, agents or representatives shall at any time attempt to act or act on behalf of the other party to bind the other party in any manner whatsoever to any obligations. Neither party nor its employees, agents or representatives shall engage in any acts which may lead any person to believe that such party is an employee, agent or representative of the other party. Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute, or be deemed to constitute, between the parties a partnership, agency, association, joint venture or other co-operative entity.

30.2 If either party appoints an agent for the purposes of this Agreement, and notifies the other party, then the other party shall deal with the appointed agent for such purposes until the first party notifies the other party that the appointment has been terminated.

31 SEVERABILITY

31.1 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement.

32 COUNTERPARTS

32.1 This Agreement shall be executed in two counterparts which together shall constitute one agreement and this Agreement shall not take effect until it has been executed by both parties.

33 COSTS

33.1 Save as expressly otherwise provided in this Agreement each of the parties shall bear its own legal, accountancy and other costs, charges and expenses connected with the negotiation, preparation and implementation of this Agreement and any other agreement incidental to or referred to in this Agreement.

34 GOVERNING LAW

34.1 This Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its formation) shall be governed by and construed in accordance with English law.

34.2 Each of the parties to this Agreement irrevocably agrees that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or to settle any disputes, which may arise out of or in connection with this Agreement and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England.

IN WITNESS whereof this Agreement has been entered into on the date first above written

Signed by [name]) [signature]
)
for and on behalf of **[OPERATOR]** in the)
presence of:- [name]) [signature]
)

Signed by [name]) [signature]
)
for and on behalf of **KINGSTON**)
COMMUNICATIONS (HULL) PLC in the)
presence of:- [name]) [signature]
)