

**KINGSTON COMMUNICATIONS (HULL) PLC
REFERENCE INTERCONNECT OFFER**

**NOTICES
TO RECIPIENTS OF THE
KINGSTON COMMUNICATIONS (HULL) PLC
REFERENCE INTERCONNECT OFFER**

1. **Public Operators.** Persons entitled as Schedule II Public Operators to interconnection with the KCH System may be subject to amendment depending upon proposed changes by the DTI to the Telecommunications (Interconnection) Regulations 1997 (SI 1997/2931).
2. **Significant Market Power.** Clause 12 of the RIO assumes that the Operator does not have Significant Market Power ("SMP") for the purposes of the Interconnection Regulations. Where the Operator has SMP appropriate modifications to this RIO will be required.
3. **Operator Agreement.** Where the Operator seeking interconnection to the KCH System currently has or proposes to have a separate interconnection agreement with KCH in order for KCH to interconnect to the Operator's System (an "Operator Agreement"), this RIO will be modified accordingly. Modifications may include:
 - (a) appropriate recitals including a clear statement that Operator Services are provided to KCH pursuant to a separate agreement; and
 - (b) an order of precedence between the agreement formed by this RIO once negotiated and agreed (the "KCH Agreement") and the Operator Agreement expressly constituting an amendment to the Operator Agreement. Such order of precedence will determine which agreement shall apply in the event of conflict between the terms of the two agreements, 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.
4. **Telecommunications Services.** Part 1 of Annex 1 to this RIO sets out the full list of Telecommunications Services available to an Operator seeking interconnection with the KCH System. It is intended that any final agreement reached between an Operator and KCH will contain an amended selection of Telecommunications Services reflecting only those Telecommunications Services to be provided by KCH to the Operator.

Dated _____ 1999

[OPERATOR]

- and -

KINGSTON COMMUNICATIONS (HULL) PLC

**KINGSTON COMMUNICATIONS
REFERENCE INTERCONNECT
OFFER**

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BETWEEN:-

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

RECITALS

- (A) A licence was granted to the Operator on ● 19●● under section 7 of the Telecommunications Act 1984 to run the Operator System and the Operator is a European Public Operator.
- (B) A licence was granted to KCH on 30 November 1987 under section 7 of the Telecommunications Act 1984 to run the KCH System. Kingston Communications Limited ("KCL") operates the KCH system pursuant to a Deed of Agency dated 17 August 1998 on behalf of KCH as KCH's agent.
- (C) The parties have agreed to connect the Operator System to the KCH System and to the supply of services and facilities, on the terms and conditions of this Agreement.

THE PARTIES AGREE AS FOLLOWS:-

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, except if the context requires otherwise, words and expressions are as set out below:-

"Access Code" means a three, four or five digit code which initiates a Telecommunications Service (such as an Indirect Access Call);

"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;

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

"Act" means the Telecommunications Act 1984;

"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 Kingston Interconnection Price List, the Operator Price List, the Annexes, Schedules, Appendices and Specifications;

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

"APS" means the Kingston Communications Account Production System;

"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 named contact responsible for dealing with billing queries;

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

"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 a Message (being a Message of the type which the KCH System and the Operator System are capable of conveying) for the purposes of conveyance of that Message and a reference to conveyance of a Call by a party means the establishment by that party of such a transmission path and the conveyance in accordance with this Agreement of a Message (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 to be made available at an Interconnect Route;

"Capacity Charges" means charges for Capacity as specified in Kingston Interconnection Price List or Operator Price List, as applicable;

"Capacity Order" means an order for Capacity 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;

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

"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 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 in the "Code of Practice for Network Operators in relation to Calling Line Identification Display Services and other Related Services" dated December 1996 as the same may be amended or replaced from time to time;

"CLI Display Service" means the delivery to the Customer's Network Termination Point of information that allows that customer to gain access to the Calling Party's CLI. This could be in the form of information that is displayed, recorded, interpreted by a database or provided by means of an audio message or by other means;

"Competitive Standard Service" means a Standard Service the market for which is determined by the Director General to be competitive pursuant to [ICD 8.15] [Condition 47.10 of the KCH Licence];

"Condition" means a condition of the KCH Licence or the Operator Licence as the case may be 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; 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 ten per cent (10%) above LIBOR. Such interest shall be calculated on a daily basis;

"Director General" means the Director General of Telecommunications;

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

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

"Due Date" means a date which is 30 calendar days after the date of an invoice;

"Effective Date" means a date referred to by that name in the Kingston Interconnection Price List being the date on which a charge or variation of a charge referred to in the Kingston Interconnection Price List takes effect in accordance with the notice procedures referred to in [standard] Condition [ICD 8.14] [47.5] in KCH's Licence.

"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 telecommunications networks and publicly/available telecommunication services and whose name has been notified to the European Commission as an organisation qualifying for rights and obligations to interconnect under Annex II to the Interconnection Directive (97/33/EC);

"European Public Operator System" means that 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 in Schedule 1 Part 1 of the KCH Licence 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);

"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' 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' 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' 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' agreement;

"GSM" means Global System for Mobile Communications;

"GSM MoU" means a memorandum of understanding signed between holders of GSM licences, as may be amended from time to time;

"ICD" means a condition inserted in a Licence pursuant to Schedule 6 of the Interconnection Regulations;

"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;

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

"Interconnection Directive" means Directive 97/33/EC of the European Parliament and of the Council on Interconnection in Telecommunications with regard to ensuring Universal Service and Interoperability through Application of the Principles of Open Network Provision;

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

"Interconnection Regulations" means the Telecommunications (Interconnection) Regulations 1997 (SI No 2931);

"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;

"ISI" or "In-span Interconnect" 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 Standardization Sector of the International Telecommunication Union (Constitution and Convention Geneva, 1992);

"KCH Licence" means the licence issued on 30 November 1987 granted to KCH pursuant to section 7 of the Act;

"KCH System" means the applicable system described in Annex A of the KCH Licence as in force at the date of this Agreement;

"KCH Basic International Incoming Call" means a Call, received by the Operator System from an 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 Messages;

"KCH Basic International Outgoing Call" means a Call, destined for an 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 Kingston Interconnection Price List, being a Call available for the conveyance of Messages;

"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 Messages;

"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 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 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 ISDN International Incoming Call" means a Call, received by the Operators 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 messages;

"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 Kingston Interconnection Price List, being a call for the conveyance of messages;

"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 Messages;

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

"KCH Payphone Access Levy" means the charge payable by the Operator for the use of a KCH Public Call Box or a KCH Temporary Call Box (each as defined in [Condition 10]/[Schedule 1 Part 1] of the KCH Licence) 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 Retail Price List" means the retail price list published by KCH from time to time pursuant to [Condition 15][Condition 7] of the KCH Licence;

"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 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 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;

"Kingston Interconnection 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;

"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;

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

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

"Link" means telecommunication apparatus (which has the meaning in Clause 1 (1) of schedule 2 to 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;

"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 KCH Switch Connection;

"Message" means anything falling within paragraphs (a) to (d) of Section 4(1) of the Act ;

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

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

"Network Termination Point" means a network termination point as defined, in the case of KCH, in Annex A of the KCH Licence and, in the case of any other Operator, the equivalent provision in that Operator's Licence being in each case a Licence 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 in KCH's case to [Condition 12][Condition 9] of the KCH Licence and in the Operator's case to the equivalent condition in the Operator Licence) 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 in respect of which the location of the called Customer cannot be determined by reference only to the telephone number called;

"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 (a) for geographical numbers, four digits (b) for non-geographic numbers, 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, Local Call Fee Access Services Calls, Freephone Calls, National Call Services Calls (all as defined in the relevant schedule) and other specially charged services;

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

"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 Messages;

"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 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 Messages;

"Operator Licence" means the government authorisation or licence 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 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 as appropriate;

"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 Telecommunication System run by the Operator pursuant to the Operator Licence as in force at the date of 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 appropriate;

"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 pursuant to Schedule 3 (or equivalent provisions) of its Licence;

"PDH" means plesiochronous digital hierarchy;

"PNO-IG" means 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;

"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;

"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;

"PRS" or "Premium Rate Service" 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;

"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;

"Public Operator" means person authorised to run publicly available telecommunications systems and the provision of publicly available telecommunications services whose licensed activities fall under Schedule II of the Telecommunications (Interconnection) Regulations 1997 (SI 1997/2931) and who is included in the Annex II list held by OFTEL;

"Re-arrangement Charges" means those charges listed in the Kingston Interconnection 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;

"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;

"SDH" means synchronous digital hierarchy;

"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 the Generic Electrical and Physical Interface Specification, the Generic C7 Signalling Interface Specification, the Generic Transmission Interface Specification and the Generic SDH Interface Specification;

"Standard Service" means a service which a Public Operator has required from KCH and which KCH is obliged to provide, or to enter into an agreement to provide, under [Condition 12 and ICD 2.1] [Condition 9] of the KCH Licence;

"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;

"Telecommunication System" means a telecommunication system as defined in section 4(1) of the Act;

"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;

"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.

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 in accordance with section 416 et seq of the Income and Corporation Taxes Act 1988;
- (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.

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 between the Clauses, the Annexes and the Schedules, the Clauses shall prevail over the Annexes which shall prevail over the Schedules.

2. **COMMENCEMENT AND DURATION**

2.1 This Agreement takes effect on the date hereof and shall continue until:-

- (a) either party ceases to hold a Licence; or
- (b) termination pursuant to this Agreement.

2.2 A party may terminate this Agreement by giving at any time to the other not less than 12 months' written notice to terminate.

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 its Licence to enter into a new interconnection agreement with the other party then the parties shall carry on good faith negotiations with a view to entering into a new agreement to take 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 the provisions of Paragraph 3 of Annex 3 (to the extent permitted by the relevant Operator Licence).

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 the other and holds it 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.

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) 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 their Licences including, without limitation, any conflict with [Condition 12][Condition 9] of the KCH Licence (or the equivalent Operator condition) or any conditions imposed by the Director General based on his powers in relation to essential requirements pursuant to Regulation 7 of the Interconnection Regulations;

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.

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 [Condition 12] [Condition 9] of the KCH Licence; or
- (b) the Operator, is an agreement which the Operator is required to enter into under the equivalent condition of the Operator Licence.

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 interconnection agreement.

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 the requested party's Licence; 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 the Director General under the provisions of the requested party's Licence.
- 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 the Director General as referred to in Clause 7.8.
- 7.10 The provisions of this Clause 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 their Licences.

8. **FORECASTS AND CAPACITY**

8.1 The parties shall supply to each other forecasts in accordance with Paragraph 4 of Annex 3.

8.2 The parties shall order and provide Capacity in accordance with Paragraph 5 of Annex 3.

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.

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 routing Calls; and

10.2.2 compilation of (a) inter party bills, and (b) Customer bills subject to such CLI not being disclosed on the Customer bill;

10.2.3 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, compilation of statistics relating to call origin and PRS Fraud prevention and detection; and

10.2.4 display to Customers subject to compliance with the "Code of Practice" as referred to in the definition of CLI in Clause 1 as such code may be amended or replaced from time to time.

10.3 A party conveying Calls handed over from the system of a Third Party Operator shall convey, to the extent received, the CLI associated with those Calls.

10.4 Notwithstanding other provisions of this Agreement a party may 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 paragraph 10 pursuant to paragraph 14.1(c) on each 1 April.
- 10.7 If there is a change in applicable law or regulation materially affecting the operation of 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 Kingston Interconnection Price List.
- 11.2 KCH may from time to time vary the charge for Telecommunication Services or Capacity provided by KCH by publication in the Kingston Interconnection Price List and such new charge shall take effect on the Effective Date. Notwithstanding the aforesaid, KCH may vary the charge which has retrospective effect for Telecommunications Services or Capacity provided by KCH by publication in the Kingston Interconnection 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 the Director General or any other regulatory authority or body of competent jurisdiction.
- 11.3 The date of publication in the Kingston Interconnection Price List shall be the date that KCH first makes the contents of the Kingston Interconnection Price List [available on the Internet or] commences distribution of the printed version of the Kingston Interconnection 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 Kingston Interconnection Price List available on the Internet and] the contents of the printed version of the Kingston Interconnection Price List, the contents of the printed version of the Kingston Interconnection 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 the Director General.
- 12.6 If the Director General upholds the Charge Change Notice without modification it shall take effect on the date specified in the Charge Change Notice and the parties shall forthwith modify the Agreement accordingly.
- 12.7 If the Director General 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 the Director General 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 the Director General and the parties shall forthwith to modify the Agreement accordingly.
- 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 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 appropriate) shall, as soon as reasonably practicable following publication in the Kingston Interconnection Price List or submission by the Operator of an amended Operator Price List (as appropriate), 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 Kingston Interconnection Price List or the Operator Price List (as appropriate) the relevant party shall send a copy of the alterations to the Kingston Interconnection Price List or the Operator Price List (as appropriate) to the other party.

14. **REVIEW**

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

- (a) either party's Licence is modified (whether by amendment or replacement); or
- (b) a change occurs in the law or regulations (including codes of practice whether or not having the force of law) governing telecommunications 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 except if prior written consent to the assignment or transfer is not required under Clause 20.2; or
- (f) either party wishes to initiate a general review of this Agreement,

provided that in the case of each of Clauses 14.1(a), 14.1(b) and 14.1(d) such modification or change has a material effect upon a party's ability to perform its obligations in accordance with this Agreement.

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

14.3 Save for a review under Clause 14.1(f), a party shall serve a review notice within 6 (six) months of the relevant event or date.

14.4 A party may initiate a review under Clause 14.1(f) by serving a review notice during the period of 3 (three) months commencing on 1 April 1999 and/or 1 April every (2) two years thereafter and 1 October 2001.

14.5 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.

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

15. **DIRECTOR GENERAL'S DETERMINATION**

15.1 If the parties fail to reach agreement on the subject matter of a review notice pursuant to Clause 14 within 3 (three) months (or 6 (six) months in the case of a review notice under Clause 14.1(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 the Director General to determine the matters upon which the parties have failed to agree.

15.2 On receipt of a request for a determination the Director General may make an order, direction, determination or consent (for the purposes of this Clause 15, a "determination") if he is satisfied that:

(a) the requirements of the relevant provisions of Clause 14.1 have been satisfied; and

(b) the modifications sought to this Agreement are material.

15.3 The parties shall modify or replace the Agreement in accordance with any determination of the Director General unless such determination is subject to a legal challenge.

15.4 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 the Director General's determination and the result of the legal proceedings.

16. **CONFIDENTIALITY**

16.1 Subject to the following provisions of this Clause 16, 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.

16.2 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.

16.3 A Receiving Party shall restrict disclosure of Confidential Information relating to the other party to those persons who have a reasonable need to know. Confidential Information shall be used solely for the purposes for which it was disclosed.

- 16.4 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 16.
- 16.5 A Receiving Party may disclose Confidential Information to a contractor or agent, subject to the contractor or agent undertaking to comply with obligations equivalent to those contained in this Clause 16.
- 16.6 The following shall not constitute a breach of this Clause 16:
- (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 pursuant to the KCH Licence or publication in the Kingston Interconnection Price List except in so far as the Director General has consented to the exclusion of any matter pursuant to the KCH Licence; or
 - (d) a disclosure which is properly made pursuant to the Operator Licence or the KCH Licence or a relevant statutory or other regulatory obligation; or
 - (e) a disclosure properly and reasonably made to the Director General under Clause 15, 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 any recognised stock exchange,
- subject to in the case of any disclosure specified in Clauses 16.6(d) to 16.6(f) the Receiving Party informing the Disclosing Party as soon as reasonably practical, after such disclosure.
- 16.7 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.

17. **FORCE MAJEURE**

- 17.1 "**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.

- 17.2 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
- 17.3 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.
- 17.4 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.
- 17.5 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 17.6, 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.
- 17.6 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.

18. **LIMITATION OF LIABILITY**

- 18.1 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.
- 18.2 Subject to Clause 18.4 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.
- 18.3 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.
- 18.4 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 or other consequential loss whatsoever arising in connection with the operation of this Agreement, howsoever caused.

18.5 Each provision of this Clause 18 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.

18.6 The amounts specified in Clause 18.2, as adjusted pursuant to this Clause 18.6, 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.

19. **INTELLECTUAL PROPERTY RIGHTS**

19.1 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.

20. **ASSIGNMENT**

20.1 Unless otherwise agreed in writing, and subject to Clause 20.2, 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.

20.2 No consent is required under Clause 20.1 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 or to an associated company provided that such successor or associated company shall have had a government, permission, licence, consent or concession granted to it to run the Telecommunication System of the assigning party.

20.3 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.

21. **DISPUTES**

21.1 Either party (the "**disputing party**") may invoke the dispute procedure specified in this Clause, 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.

- 21.2 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 21 no change to a commercial contact shall be effective until it has been notified to the other party.
- 21.3 Following notice under Clause 21.1, the parties shall consult in good faith to try to resolve the Dispute. If agreement is not reached within 14 days, the Dispute will be escalated under Clause 21.4.
- 21.4 If the Dispute is not resolved under Clause 21.3, 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.
- 21.5 Following notice under Clause 21.4, the parties shall work in good faith to try to resolve such Dispute, involving appropriate senior managers.
- 21.6 If the Dispute is not resolved within 90 (ninety) days of receipt of an acknowledgement under Clause 21.4, either party may refer the Dispute to the Director General for resolution and shall forthwith send a copy of the referral to the other party. In the event of a reference to the Director General, 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 the Director General and each other within 28 days of the referral.
- 21.7 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.
- 21.8 Nothing herein shall prevent a party from:
- (a) seeking (including obtaining or implementing) interlocutory or other immediate relief;
 - (b) referring the Dispute to the Director General in accordance with any right (if any) either party may have to request a determination or other appropriate steps for its resolution.
- 21.9 The dispute procedure specified in this Clause shall not apply to disputes arising out of the service of a Charge Change Notice.

22. **BREACH, SUSPENSION AND TERMINATION**

- 22.1 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.
- 22.2 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.
- 22.3 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 22.2 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.
- 22.4 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.
- 22.5 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.
- 22.6 This Agreement may be terminated in relevant part by either party by:-

- (a) twelve month's 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 the Director General or other relevant regulatory or legal authority

if that party ceases to be obliged pursuant to its Licence to provide some or all Telecommunications Services or Capacity to the other party.

- 22.7 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.
- 22.8 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.
- 22.9 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.
- 22.10 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.
- 22.11 Notwithstanding the termination or expiry of this Agreement Clauses 16, 18, 22.7 to 22.12 inclusive shall continue in full force and effect.
- 22.12 Each of the parties' right to terminate or suspend performance of this Agreement pursuant to this Clause 22 is without prejudice to any other rights or remedies available to either party.

23. NOTICES

- 23.1 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 (air mail if posted to or from a place outside the United Kingdom):-

If to the Operator:

#[Operator]

If to KCH:

Sales and Marketing Director
Kingston Communications Limited
Telephone House
Carr Lane
Kingston-upon-Hull HU1 3RE

Fax: 01482 602066

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;
- (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.

23.2 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 23.1 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.

24. ENTIRE AGREEMENT

24.1 This Agreement together with any other documents expressly referred to in this Agreement embodies the entire agreement between the parties relating to the subject matter hereto. There are no other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof and the parties agree that any standard terms and conditions of business (save as expressly incorporated or referred to herein) of either of them shall not apply to such subject matter.

25. VARIATIONS

25.1 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 KCL Sales and Marketing Director (or in his absence his successor or an equivalent officer); and
- (b) the Operator, by a director or the company secretary (or equivalent office holder) of the Operator.

26. WAIVER

- 26.1 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.
- 26.2 The rights and remedies herein provided are cumulative with and not exclusive of any rights or remedies provided by law.

27. RESTRICTIVE TRADE PRACTICES [UNTIL 1 MARCH 2000]

- 27.1 Notwithstanding any other provision of this Agreement no provision of this Agreement, by virtue of which this Agreement is subject to registration (if such be the case) under the Restrictive Trade Practices Acts 1976 and 1977, shall take effect until the day after the date on which particulars of the Agreement have been furnished to the Director General of Fair Trading pursuant to the requirement of those Acts. In this Clause the expression "this Agreement" includes any agreement or arrangement of which this Agreement forms part and which is registrable, or by virtue of which this Agreement is registrable, under those Acts.

28. INDEPENDENT CONTRACTORS AND AGENCY

- 28.1 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, association, joint venture or other co-operative entity.
- 28.2 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.

29. **INVALIDITY**

29.1 If any provision of this Agreement is or becomes (whether or not pursuant to any judgment or otherwise) invalid, illegal or unenforceable in any respect under the law of any jurisdiction:-

- (a) the validity, legality and enforceability under the law of that jurisdiction of any other provision; and
- (b) the validity, legality and enforceability under the law of any other jurisdiction of that or any other provision,

shall not be affected or impaired in any way thereby.

30. **COUNTERPARTS**

30.1 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.

31. **COSTS**

31.1 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.

32. **GOVERNING LAW**

32.1 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.

32.2 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)
)
for and on behalf of **[OPERATOR]** in the)
presence of:-)
)

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