



Reference Interconnect Offer

Draft Legal Framework

Version 1.0

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This Agreement is made this [] day of []**BETWEEN**

- A) [Telco], a company incorporated and existing under the laws of Jersey, having its registered office at [registered address] (the "Telco"); and
- B) Jersey Telecom Limited, a limited liability company duly incorporated and existing under the laws of Jersey, registered number 83487, having its registered office at 1 The Forum, Grenville St., St. Helier, Jersey JE4 8PB ("Jersey Telecom").

WHEREAS

- A) The Jersey Competition Regulatory Authority ("JCRA") has granted the Telco a licence to establish, operate and maintain a Licensed Telecommunications System and provide Telecommunications Services within, to and from the Bailiwick of Jersey;
- B) Under such licence, and pursuant to the provisions of the Telecommunications (Jersey) Law 2002 ("the Telecommunications Law"), the Telco is entitled to connect its public voice network to and with Jersey Telecom in accordance with the Telecommunications Law.
- C) Pursuant to the Telecommunications Law, Jersey Telecom agrees to interconnect with the Telco upon the terms and conditions contained in this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:**1. Definitions and Applicability**

- 1.1. In this Agreement, unless the context otherwise requires or explicitly states, the terms used shall have the meanings assigned to them in the Definitions schedule.
- 1.2. In this Agreement, unless the context otherwise requires or explicitly states:
 - 1.2.1. The singular includes the plural and vice versa;
 - 1.2.2. Reference to an agreement or other instrument includes any variation or replacement to or of either of them;
 - 1.2.3. Reference to any Clause, Schedule, Annex or other Attachment is a reference to a clause of or schedule, annex or attachment to this Agreement and any reference to this Agreement includes any such Schedule, Annex or other Attachment. Reference to any Paragraph is a reference to a paragraph of a Schedule, Annex or Attachment.
 - 1.2.4. Reference to any statute, ordinance, code or other law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements thereof at any time;
 - 1.2.5. The expression "person" includes any individual, firm or company;
 - 1.2.6. All references to £ or other payable amounts refer to Pounds Sterling unless otherwise stated; and
 - 1.2.7. If a day on which payment of money falls due is not a Business Day, the due day for such payment shall be deemed to be the next following Business Day.
- 1.3. References in this Agreement to either Party shall include any legitimate successors or assignees of that Party pursuant to Clause 34.
- 1.4. Headings are included for convenience and do not affect the interpretation of this Agreement.
- 1.5. In the event of any inconsistency between the numbered Clauses of this Agreement and the Schedules, Annexes or other Attachments, the numbered Clauses of this Agreement shall prevail. In any other event the following order of priority will apply:
 - 1.5.1. Definitions
 - 1.5.2. Service Descriptions

- 1.5.3. Technical Manual
- 1.5.4. Operations and Maintenance ("O&M") Manual
- 1.5.5. Service Schedule
- 1.5.6. Tariff Schedule

2. Duration

- 2.1. This Agreement takes effect on the date of signature and continues in full force and effect unless terminated in accordance with Clause 25 or otherwise varied in accordance with the provisions of Clause 23. In the event of any variation pursuant to Clause 23, the Agreement as amended shall continue in full force and effect unless terminated in accordance with Clause 25 or further otherwise varied in accordance with the provisions of Clause 23.

3. Interconnection

- 3.1. Jersey Telecom shall connect and use its reasonable endeavours to keep connected the Jersey Telecom System to the Telco System and the Telco shall connect and use its reasonable endeavours to keep connected the Telco System to the Jersey Telecom System in the manner described in this Agreement in order to convey Calls to, from or in transit over their respective System. Whilst the Parties will use their reasonable endeavours to maintain such connections at all times, neither Party makes any representation or gives any warranty in relation thereto.
- 3.2. Subject to Clause 15, Points of Connection shall be established at or near the Interconnect Switch Locations specified in the Service Schedule in accordance with the In-Span Interconnection Service as more particularly described in the Service Descriptions.
- 3.3. Each Party shall ensure that its equipment and facilities at each relevant Interconnection Switch Location conform to the technical requirements set out in the Technical Manual.

4. Forecasting, Ordering and Provisioning of Interconnect Capacity

- 4.1. The Parties will exchange forecasts for each Service as required in the Service Descriptions in accordance with the procedures set out in the O&M Manual and shall comply with all the applicable provisions of the O&M Manual relating to forecasting.
- 4.2. The Parties will order and provide capacity in accordance with the procedures set out in the O&M Manual and comply with all applicable provisions of the O&M Manual relating to ordering and provision.

5. Testing

- 5.1. The Parties will carry out the Acceptance Testing and commissioning procedures described in the O&M Manual.

6. Operation and Maintenance

- 6.1. Subject to Clause 9.1, each Party shall be responsible for planning, providing, operating and maintaining all equipment and facilities located on its side of the interface at the Point of Connection.
- 6.2. Each Party shall manage traffic on its System so as to avoid disruption to the other Party's System to the maximum extent reasonably practicable and each Party shall take all necessary steps as are reasonably practicable to minimise service failures and congestion and signalling system disturbances within its own System which would affect the ability of the other Party to carry Calls across such other Party's System in accordance with the routing principles set out in the Technical Manual.
- 6.3. Each Party shall advise the other Party of any Faults or planned maintenance in accordance with the procedures set out in the O&M Manual and shall resolve the Faults or conduct the maintenance in accordance with the O&M Manual.

- 6.4. Each Party may make reasonable tests and inspections of any services and facilities it provides to the other and may upon such notice as is specified in the O&M Manual temporarily interrupt services carried on the facilities or equipment being tested or inspected in accordance with the provisions of the O&M Manual relating to planned maintenance. Where a test or inspection will affect telecommunications traffic originating or terminating on or transiting the other Party's System, the testing or inspection shall be carried out in such a way as to minimise disruption to the other Party's System.

7. System Changes

- 7.1. Each Party shall as soon as reasonably practicable notify the other Party of developments within its System that may impact on the routing and forecasting of traffic promptly upon finalisation of a decision to make such changes.
- 7.2. Neither Party shall make or permit to be made any alteration, adjustment or addition to its System in such a way as to materially impair the operation of the other Party's System or otherwise to materially affect the conveyance of Calls over a Point of Connection unless the Party provides reasonable prior written notice to enable the other Party to make modifications to its own System which are necessary to maintain interconnection at the agreed standards. Each Party shall take appropriate and reasonable steps to minimise the impact on the other Party of such alteration, adjustment or addition (including the costs).
- 7.3. In the event that at any time either Party proposes to change any standards or implement additional standards or standards with different features which may affect the operation of the other Party's System, the Party shall so notify the other Party as soon as practicable and in any event at least three months in advance, so that the other Party has a reasonable opportunity to attempt to meet such standards or adjust its System accordingly. Each Party shall take appropriate and reasonable steps to minimise the impact on the other Party of such alteration, adjustment or addition (including the costs).
- 7.4. Subject to the limitations in Clauses 7.2 and 7.3, nothing in this Agreement shall limit either Party's ability to upgrade its System through the incorporation of new equipment, new software or otherwise or to change, in part or in whole, the design, function, operation or layout of its System.
- 7.5. The applicable standards of operation of each Party's System for the purpose of the Services will be those specified in the Technical Manual and, in the absence of any specified standards, will be such applicable international standards as the Parties may agree.

8. Telecommunication Services

- 8.1. Each Party shall provide the other with the Services for which that Party is indicated as being the Service Supplier in the Service Schedule, provided that each Party's System and all relevant Points of Connection are suitable for the conveyance of Calls pursuant to the relevant Service Description. Subject to Clause 15 the Services shall be provided in accordance with the Service Descriptions, the Technical Manual and the O&M Manual
- 8.2. For the avoidance of doubt, and notwithstanding the interconnection of the Parties' Systems, neither Party shall hand over to the other Party, nor have an obligation to convey Calls of any category, unless there is express provision to convey Calls of that category in a Service Description PROVIDED ALWAYS THAT each Party shall, notwithstanding that the conveyance of such category of Calls may be provided for in a Service Description, have an absolute discretion as to the conveyance of and may refuse to convey or block calls made to Freephone Numbers. In the event that Calls not expressly provided for are handed over for conveyance and the conveying party elects to carry those Calls and there is a retail rate for a functionally-equivalent retail service, a charge equivalent to the prevailing non-discounted retail rate charged by the other Party for such service shall be applied.
- 8.3. Each Party shall be solely responsible for the switching and routing of all telecommunication services on its System and shall not be liable for telecommunications

services provided by a Third Party Telecoms Provider. Such switching and routing shall be consistent with the principles in the Technical Manual.

9. Charges and Payment

- 9.1. Each Party shall pay to the other the relevant Charges applicable to each Service as more particularly described in the Service Descriptions and set out in the Tariff Schedule.
- 9.2. Unless agreed otherwise between the Parties, and notwithstanding contributions towards Jersey Telecom's Access Deficit, Charges payable by Jersey Telecom to the Telco for a Service shall be the same as the Charges payable by the Telco to Jersey Telecom for the same Service. In the event that Jersey Telecom's Charges for a Service are varied pursuant to Clause 10, the Telco will vary its Charges for the same Service to ensure they remain the same.
- 9.3. Payments shall be made in Pounds Sterling in an agreed manner and will be deemed made on the date of receipt of such payments in cleared funds.
- 9.4. All Charges payable under this Agreement shall be payable within 30 days of deemed receipt of an invoice. In the event that either Party shall fail to pay any amount due hereunder within such 30 day period, the payee shall be entitled to charge and receive interest at the average two month London Inter-Bank Offer Rate (LIBOR) prevailing on the date on which the Charges were due plus 3%, from and including the day following the due date for payment until the date of payment in full, and whether before or after any court judgement or other award.
- 9.5. In the event that either Party disputes the specific amount of any invoice delivered by the other Party under this Agreement the Parties shall resolve the dispute in accordance with the investigation and determination procedures set out in the O&M Manual. Notwithstanding any dispute as to any payment, the Parties shall remain obliged to continue to observe and perform the provisions of this Agreement.
- 9.6. Where appropriate, any value added or other applicable tax shall not form part of the Charges payable under this Agreement, but shall be paid by the Party responsible for paying such value added or other applicable tax, and shall not be added to the Charges or paid by the Party paying the Charges.
- 9.7. If Jersey Telecom agrees that the Telco may pay any applicable One-off Charges in instalments, these will be payable subject to such terms and conditions as are stipulated by Jersey Telecom.
- 9.8. The Charges contained in the Tariff Schedule shall, in any case, be reviewed on an annual basis, in accordance with the review process set out in Clause 23.

10. Variation of Charges

- 10.1. Jersey Telecom may from time to time notify the Telco of changes to Charges. Such notice shall specify the date on which the variation is to become effective. The changes will take effect from the date set out in the notice as being the effective date, such date being at least 4 weeks from the date such notice is deemed to be received, except that where Charges are to be changed as a result of changes made by a Third Party Telecoms Provider to its charges or payments to Jersey Telecom and Jersey Telecom does not receive sufficient notice from the Third Party Telecoms Provider to enable Jersey Telecom to give at least 4 weeks' notice of any changes Jersey Telecom will give as much notice as is reasonably practicable.
- 10.2. In the event that there shall at any time be a change to the international settlement rates received and/or the Usage Charges paid by Jersey Telecom for the Telco Terminating Access Service such that the international settlement rate is less than or equal to the sum of the Usage Charges paid by Jersey Telecom for the Telco Terminating Access Service and the Jersey Telecom retention from the Off Island Transit service, Jersey Telecom and the Telco will review the Charges and the charging regime for the Telco Terminating Access Service and agree an alternative regime in accordance with Clause 23.

Notwithstanding anything contained herein, the regime agreed to between Jersey Telecom and the Telco shall permit Jersey Telecom and the Telco to recover their costs.

- 10.3. For the avoidance of doubt, the Charges for new services will be agreed pursuant to Clause 18.

11. Billing

- 11.1. Each Party shall be responsible for invoicing its own Subscribers.
- 11.2. Each Party shall be entitled to invoice the other Party for the relevant Usage Charges and Recurring Charges following the expiration of each Billing Period. Each Party shall use reasonable endeavours to deliver invoices in a timely manner in accordance with the Technical Manual.
- 11.3. Subject to Clauses 11.2, each Party shall be entitled to invoice the other Party for applicable One-off Charges and any other amounts expressed as being payable in accordance with the specific provisions of this Agreement.
- 11.4. Any failure to deliver invoices in accordance with Clause 11.2 or 11.3 shall not be deemed to be a waiver of the invoicing Party's rights in respect of payment or a breach of a material obligation of the invoicing Party.
- 11.5. For the purpose of reconciling accounts, each Party shall use all reasonable endeavours to provide the other with Billing Data in respect of Calls conveyed from its System and handed over to the other Party at a Point of Connection in accordance with the Technical Manual.
- 11.6. Notwithstanding the above, in the event that:
- 11.6.1. Billing Data is temporarily or permanently unavailable; or
 - 11.6.2. a billing error is discovered that occurred in the previous Billing Period
- the Parties shall follow the procedures set out in the O&M Manual.

12. Co-location

- 12.1. Except as specifically provided herein, nothing in this Agreement shall be taken as requiring a Party to share any telecommunications facilities or to provide co-location.

13. Calling Line Identity (CLI)

- 13.1. The Parties will pass CLI in accordance with the Technical Manual and any agreed code of practice for CLI from time to time in force. For the avoidance of doubt, neither Party is required to pass CLI for any Call in respect of which it is not available.
- 13.2. Where CLI is made available to end-users, such presentation shall comply with all the requirements of the Data Protection (Jersey) Law 1987 and any amendment thereto, any regulations adopted hereunder, or any other relevant data protection legislation that may be enacted from time to time.

14. Numbering

- 14.1. Each Party shall make the necessary adjustments to its System to route Calls to the other Party's System in accordance with the number ranges and other numbers assigned to the other Party under the United Kingdom National Numbering Scheme as administered by OFTEL and in accordance with the Service Descriptions and the Service Schedule.
- 14.2. Each Party shall use numbers in accordance with the United Kingdom National Numbering Scheme.

15. Service Performance and Standards

- 15.1. Subject to Clause 15.3, the Parties shall use reasonable endeavours to comply with the provisions relating to quality of service set out in the Technical Manual, the Service Schedule and the O&M Manual.

- 15.2. Subject to Clause 15.3, the Parties shall use reasonable endeavours to at all times apply standards (including signalling standards) and operating guidelines which are consistent with the Technical Manual and the O&M Manual.
- 15.3. Save as is set out in Clause 15.1 and 15.2, Jersey Telecom provides no other warranties, representations, undertakings or commitments in respect of quality of service including, but not limited to, warranties, representations, undertakings or commitments in respect of difficulties or faults which result in a failure to establish service, in-service interruption or loss of or distortion of communication and all implied warranties are hereby excluded, save those implied by statute.

16. Safety and System Protection

- 16.1. Each Party shall be responsible for the safe operation of its System and shall take all steps reasonably necessary or required by law to ensure that such operation and the implementation of this Agreement:
- 16.1.1. comply with any specific safety and protection requirements contained in this Agreement (including, without limitation, the Technical Manual);
 - 16.1.2. do not endanger the safety or health of the officers, employees, contractors, representatives, agents, invitees or Subscribers of the other Party;
 - 16.1.3. do not damage, interfere with or cause any impairment to or deterioration in the operation of the other Party's System; and
 - 16.1.4. do not interfere with the use or provision of licensed telecommunication services provided by the other Party, provided that this principle shall not preclude the taking of action by either Party in the normal operation of its System to protect its System, on condition that any such action is in compliance with the Technical Manual and the O&M Manual.
- 16.2. In the event that it is agreed by one of the Parties (the "Grantor") to be necessary for representatives of the other Party (the "Visitor") to access the Grantor's premises, each Party shall use its reasonable endeavours to comply with all reasonable security and safety practices and procedures applicable to access to and operations on the premises of the Grantor as notified to it by the Grantor. Subject to the indemnified Party complying with Clause 28.6 each Party shall indemnify and keep indemnified the other against all risks and damages, costs, claims and expenses arising out of any breach by the indemnifying Party of this Clause 16.2.

17. Prevention of Fraud

- 17.1. To the extent permitted by law, the Parties will promptly upon becoming aware of or suspecting fraudulent use, theft or misuse of the Parties' respective Services and associated equipment inform the other of such circumstances.
- 17.2. If requested by one of the Parties, the other Party shall co-operate in a reasonable manner and in accordance with any relevant legislation in the provision of information to the other Party in relation to fraudulent use, theft, illegal use or misuse of the requesting Party's Services and associated equipment.

18. New Services

- 18.1. Either Party may, at any time, request from the other Party an agreement to interconnect their respective System for the provision of any service or facility which the other Party provides under interconnection agreements to another public voice carrier in accordance with the Telecommunications Law.
- 18.2. Following a request by a Party pursuant to Clause 18.1, the other Party shall enter into good faith negotiations with the requesting Party to agree terms for interconnection of the Parties' respective Systems for the provision of the service or facility by the other Party to the requesting Party on fair and reasonable terms. Upon terms being agreed, this Agreement shall be amended by the addition of a relevant Service Description, together with a revised Service Schedule and Tariff Schedule and, if applicable, a revised

Technical Manual and O&M Manual to give effect to the agreed terms or, if appropriate, the Parties shall agree and enter into a new interconnection agreement.

- 18.3. If a Party requests from the other Party an agreement for interconnection for the provision of a service or facility which is not made available by such other Party to another Public Voice Carrier and such agreement is one which the other Party is obliged to provide under the Telecommunications Law, the Parties shall enter into good faith negotiations to enter into an agreement for interconnection for the provision of such service or facility and this Agreement may be amended by the addition of a relevant Service Description, together with a revised Service Schedule and Tariff Schedule and, if applicable, a revised Service Schedule, Technical Manual and O&M Manual to give effect to the new terms or, if appropriate, the Parties shall agree and enter into a new interconnection agreement. Nothing in this clause shall require either Party to make a new service available if it is not required by the Telecommunications Law.
- 18.4. In the event that Jersey Telecom develops a new service falling within Clause 18.3, Jersey Telecom will announce that the service will be available to all interconnecting parties pursuant to Clause 18.2 promptly following the time the deployment decision is made.

19. Confidentiality

- 19.1. Subject to the following provisions of this Clause 19, a Receiving Party shall keep in confidence Confidential Information and will not (and will use its best endeavours to ensure that its directors, employees, agents, representatives, affiliates and professional advisers will not) disclose such information to any third party.
- 19.2. A Receiving Party shall exercise no lesser security or degree of care over Confidential Information than that Party applies to its own Confidential Information and in any event such security or degree of care shall be no less than would be exercised by a reasonable person with knowledge of the confidential nature of the information.
- 19.3. A Receiving Party shall restrict disclosure of Confidential Information relating to the other Party to those who have a reasonable need to know. Confidential Information shall be used solely for the purposes for which it was disclosed.
- 19.4. A Receiving Party may disclose Confidential Information to a contractor or agent, subject to the contractor or agent having a reasonable need to know and undertaking to the Disclosing Party and to the Receiving Party to comply with obligations equivalent to those contained in this Clause 19.
- 19.5. A Receiving Party may disclose Confidential Information to an Associated Company, subject to the Associated Company having a reasonable need to know and undertaking to the Disclosing Party and to the Receiving Party to comply with obligations equivalent to those contained in this Clause 19.
- 19.6. Unless otherwise agreed in writing, a Receiving Party shall not use the other Party's Confidential Information to provide commercial advantage to its Customer Facing Divisions.
- 19.7. All Confidential Information is acknowledged by the Receiving Party to be the property of the Disclosing Party and the disclosure of the Confidential Information shall not be deemed to confer any rights to that Confidential Information on the Receiving Party.
- 19.8. The Disclosing Party may request in writing at any time any written Confidential Information (and/or Confidential Information in machine readable form) disclosed pursuant to the terms and conditions of this Clause 19 and any copies thereof be returned with a written statement to the effect that upon such return the Receiving Party has not knowingly retained in its possession or under its control, either directly or indirectly, any Confidential Information or copies thereof and the Receiving Party shall comply with any such request within fourteen (14) days of receipt of such request.
- 19.9. The obligation of confidentiality under this Clause 19 shall not apply to information:

- 19.9.1. which is publicly available or becomes available through no act of the Receiving Party, or which the Receiving Party is compelled by a competent court or authority to disclose; or
- 19.9.2. which was in the possession of the Receiving Party prior to its disclosure; or
- 19.9.3. which is disclosed to a Party by a third party who did not acquire that information under an obligation of confidentiality; or
- 19.9.4. which is required to be disclosed by law.

20. Use of Directory Information

- 20.1. Information on one Party's Subscribers passed to the other Party in order to keep its Directory Information Database up to date will not be used by the receiving Party for any other purpose.
- 20.2. Jersey Telecom shall ensure that procedures undertaken for entry and on-going maintenance of the information on the Telco's Subscribers on its Directory Information Database shall be materially the same as those procedures undertaken for entry and on-going maintenance of information on Jersey Telecom's Subscribers.
- 20.3. Each Party shall ensure that procedures undertaken for provision of information on the other Party's Subscribers to BT, or any other sub-contractor, for the compilation of the Directory Information Database shall be materially the same as those procedures undertaken for information on that Party's own Subscribers.
- 20.4. Each Party shall ensure that procedures undertaken for entry and on-going maintenance of the information on the other Party's Subscribers on its Emergency Services Database shall be materially the same as those procedures undertaken for entry and on-going maintenance of information on that Party's own Subscribers.

21. Intellectual Property Rights

- 21.1. Where any IPR is developed in connection with performance of this Agreement then, in the absence of any other Agreement between the Parties, the owner of the IPR shall remain the Party who developed the IPR.
- 21.2. Each Party ("the IP Indemnifying Party") agrees to indemnify the other Party ("the IP Indemnified Party") against all liability or loss arising from, and all reasonable costs, charges and expenses incurred in connection with, any claim, action, suit or demand alleging infringement by the IP Indemnified Party of the rights in Jersey of a third person arising from the use by the IP Indemnified Party of IPR disclosed or licensed by the IP Indemnifying Party under this Agreement except where such IPR has been modified or used other than in accordance with this Agreement subject to the IP Indemnified Party complying with Clause 28.7.
- 21.3. If a Party becomes aware of an infringement or threatened infringement of IPR belonging to the other Party ("the IP Owner") disclosed or licensed by the IP Owner under this Agreement, then that Party shall promptly notify the IP Owner of all the relevant details relating to the infringement, or threatened infringement.
- 21.4. The IP Owner may take such steps and proceedings as it considers necessary or desirable to protect its rights in respect of the IPR, and any rights of the other Party in the IPR, and the other Party must render all reasonable assistance to the IP Owner in this regard at the IP Owner's expense.
- 21.5. If a Party ("the Infringing Party") licenses IPR to the other Party for the purposes of this Agreement and that IPR infringes the rights of a third Party, then the Infringing Party must:
 - 21.5.1. at its own expense take such steps as are necessary to cure the infringement, or
 - 21.5.2. if compliance with 21.5.1 is unreasonable having regard to the likely costs and other relevant matters, provide alternative technology as soon as reasonably practicable.

- 21.6. The Parties acknowledge that this Clause sets out the only remedies and forms for compensation available in respect of any infringement of third Party rights by IPR licensed for the purpose of this Agreement.
- 21.7. A Party must not use a trademark belonging to another Party without the prior written consent of that other Party.

22. Authorised Representatives

- 22.1. Each Party shall appoint the representatives referred to in the O&M Manual to be responsible for the matters indicated in the O&M Manual. Each Party shall notify the other of the identity of the representative(s) in writing no later than 5 Business Days following signature of this Agreement.
- 22.2. Except as otherwise provided herein, all correspondence, meetings and other communications (including notification of matters in dispute) pertaining to issues pertaining to their responsibilities shall be directed to and conducted by and through those representative(s). The representative(s) shall keep an appropriate record of all communication with their counterpart(s).
- 22.3. Each party is entitled to change the representative(s) by notice in writing to the other Party.

23. Review and Amendment

- 23.1. Without prejudice to the provisions of Clause 10, either Party may seek to amend this Agreement by serving on the other a review notice if:
- 23.1.1. a material change occurs in the law or regulations governing telecommunications in Jersey (including, without limitation, licence changes and court decisions that necessitate the amendment of this Agreement);
 - 23.1.2. a material change occurs (including, without limitation, enforcement action by any regulatory authority and changes to the corporate constitution of the Parties) which affects or reasonably could be expected to affect the commercial or technical basis of this Agreement;
 - 23.1.3. JCRA exercises its powers under Article 16 of the Telecommunications Law; or
 - 23.1.4. both Parties agree in writing that there should be a review.
- 23.2. A review notice shall set out in reasonable detail the events giving rise to the review required by the notice and the nature of the amendments sought by the Party serving the notice.
- 23.3. With the exception of reviews arising under Clause 23.1.4, a Party must serve a review notice within 3 months of the event giving rise to the review.
- 23.4. 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. If nevertheless the Parties shall disagree on the nature or extent of the modification(s) required in any such case, they shall resolve the dispute in the manner provided in Clause 23.5.
- 23.5. If, after a period of 30 days from commencement of such review, the Parties fail to reach Agreement, the Parties shall resolve the dispute in accordance with the provisions of Clause 36 of this Agreement.
- 23.6. For the avoidance of doubt, the Parties agree that the terms and conditions for this Agreement shall remain in full force and effect during such review until the Parties complete an agreement replacing or amending this Agreement or until such time as this Agreement is terminated in accordance with its terms.

24. Suspension

- 24.1. Jersey Telecom may (without prejudice to any other right or remedy) suspend limit or cancel (whether permanently or temporarily) the provision of any part of the services

provided under this Agreement to the Telco without penalty and with immediate effect in the event of Force Majeure subject always to the provision of Clause 27.

- 24.2. Jersey Telecom may (without prejudice to any other right or remedy) temporarily suspend or limit or cancel the provision of any part of the services provided under this Agreement to the Telco without penalty and with immediate effect if the Telco does or allows to be done anything which in Jersey Telecom's opinion has the effect of critically jeopardising the operation of the telecommunications system provided by Jersey Telecom to any of its Subscribers.
- 24.3. Jersey Telecom may (without prejudice to any other right or remedy) permanently suspend or limit or cancel the provision of any part of the services provided under this Agreement to the Telco without penalty and with immediate effect if the Telco does or allows to be done anything which in Jersey Telecom's reasonable opinion has the effect of critically jeopardising the operation of the telecommunications system provided by Jersey Telecom to any of its Subscribers.
- 24.4. If Jersey Telecom should suspend, limit or cancel the provision of any part of the services provided under this Agreement to the Telco pursuant to the provisions of clause 24.2 or 24.3 hereof, Jersey Telecom will as soon as reasonably practicable, and where practicable, prior to such suspension, limitation or cancellation contact the Telco to provide:
 - 24.4.1. a technical explanation of the need to limit or suspend the services; and
 - 24.4.2. an opportunity for the Telco to take corrective action that in Jersey Telecom's opinion is satisfactory.
- 24.5. For the purposes of this clause 24 "temporarily" shall mean a time period not exceeding 24 hours.

25. Termination

- 25.1. Either Party may terminate this Agreement:
 - 25.1.1. by at least nine months notice in writing to the other Party; or
 - 25.1.2. immediately on notice in writing to the other Party, in the event that any Telecommunications Licence necessary to entitle a Party to interconnection or to enable a Party to carry out its obligations under this Agreement at any time expires or is revoked by the JCRA and is not immediately replaced or re-issued.
- 25.2. Either Party may terminate this Agreement by notice in writing to the other ("the Defaulting Party") if the Defaulting Party:
 - 25.2.1. engages in conduct that is unlawful or interferes with the obligations of the other Party under any relevant Telecommunications Licence or the Telecommunications Law;
 - 25.2.2. fails to pay any undisputed invoice or payable undisputed portion of an invoice when due and has failed to remedy such non-payment within 30 days of receipt of a notice from the billing Party that the Agreement will be terminated for non-payment;
 - 25.2.3. is in breach of any other material obligation contained in this Agreement, and has not remedied that breach within 30 days after receipt of a written notice from the non-defaulting Party specifying the breach and requiring it to be remedied;
 - 25.2.4. is engaged in acts or omissions which impair or jeopardise the integrity of the other Party's System and has failed to remedy such jeopardy or impairment within 5 days of receiving written notice from the other Party of such impairment; or
 - 25.2.5. ceases or threatens to cease to carry on business, enters into liquidation (other than for the purpose of merger or reconstruction where the emergent company assumes its obligations hereunder) or is dissolved or becomes bankrupt within

the meaning of Article 13 of the Interpretation (Jersey) Law 1954 or otherwise commits any act indicative of insolvency under the law of any jurisdiction or enters into any composition with its creditors in Jersey or elsewhere.

26. Effects of Termination

- 26.1. Termination on expiry of this Agreement shall be without prejudice to the rights and obligations of the Parties accruing prior to such termination and such termination shall not affect the continuance in force of any provision of this Agreement which is expressly or by implication intended to continue in force (including but not limited to Clauses 1, 9, 11, 19, 21, 26 and 28 and Paragraphs xxx of the O&M Manual).
- 26.2. Termination or expiry of this Agreement shall not operate as a waiver of any breach by a Party of this Agreement and shall be without prejudice to any rights, liabilities or obligations of either Party which have accrued up to the date of termination.

27. Force Majeure

- 27.1. Neither Party shall be liable to the other for any delay or failure to perform or observe any provision of this Agreement by reason of Force Majeure.
- 27.2. The Party affected by any Force Majeure shall promptly notify the other of the estimated extent and duration of its inability to perform its obligations under this Agreement. Upon cessation of the delay or failure resulting from Force Majeure, the Party affected shall promptly notify the other of such cessation.
- 27.3. If, as a result of Force Majeure, performance by either Party of its obligations under this Agreement is only partially affected, that Party shall nevertheless remain liable for the performance of those obligations not affected by Force Majeure.
- 27.4. If the Force Majeure lasts for six months or less from the date of any notification under Clause 27.2, any obligation outstanding shall be fulfilled by the Party affected as soon as possible after cessation of the Force Majeure, save to the extent that such fulfilment is no longer practically possible or is not required by the other Party.
- 27.5. If the Force Majeure lasts for more than six months from the date of any such notification and notice of cessation has not been given and such Force Majeure prevents the affected Party from performing its obligations in whole or in part during that period, the unaffected Party shall be entitled (but not obliged) to terminate this Agreement by giving not less than 30 days written notice to the other after expiry of such six month period, unless notice of cessation of the Force Majeure is received by the unaffected Party prior to the expiry of such 30 days notice. If this Agreement is not so terminated under the provisions of this Clause 27, any obligations outstanding shall be fulfilled by the Party affected by the Force Majeure as soon as possible after the Force Majeure has ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party.

28. Liability

- 28.1. 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.
- 28.2. Neither Party shall be liable to the other in respect of any action, claim, suit or demand brought or made against the other by any third person pursuant to a contractual relationship with that other Party, where and to the extent that liability resulting in any such proceeding was or ought reasonably to have been excluded or limited by such other Party.
- 28.3. Notwithstanding any other provision of this Agreement, neither Party shall be liable to the other for indirect, purely economic, special or consequential loss or damage, foreseeable or not, arising from its performance or non-performance of its obligations under this Agreement, including through negligence to the extent permitted by law, unless caused by wilful acts or omissions.

- 28.4. In addition to the other limitations contained in this Clause 28, the liability of each Party to the other in contract and for negligence, and otherwise in respect of its performance under this Agreement shall be limited, to the extent permitted by law, to £1 million for any one incident or series of events arising from a single incident and to £2 million for all events (connected or unconnected) in any period of 12 calendar months.
- 28.5. Nothing in this Agreement shall exclude or limit the liability of one Party to the other arising out of that Party's fraud or fraudulent misrepresentation or wilful acts or omissions.
- 28.6. Subject to Clause 28.7, each Party ("the Indemnifying Party") shall indemnify the other ("the Indemnified Party") against all liability or loss arising directly from, and any reasonable cost, charge or expense incurred in connection with:
- 28.6.1. damage to or loss of any equipment, facility or other property of the Indemnified Party caused by the gross negligence or wilful acts or omissions of the Indemnifying Party or its employees, directors, representatives or agents arising out of or in connection with this Agreement; and
 - 28.6.2. an action, claim, suit or demand by any person against the Indemnified Party in respect of or arising out of any gross negligence or wilful acts or omissions of the Indemnifying Party in the course of providing services to the Indemnified Party.
- 28.7. If any action, claim, suit or demand ("claim") is made by any person against the Indemnified Party which, if satisfied or paid by the Indemnified Party, would result in liability by the Indemnifying Party under the indemnity set out in Clause 28.6 or other clauses of this Agreement:
- 28.7.1. the Indemnified Party must give written notice of the claim to the Indemnifying Party as soon as practicable after the making of the claim; and
 - 28.7.2. within 30 days after receipt of that notice, the Indemnifying Party must:
 - 28.7.2.1. cause the Indemnified Party to be put in sufficient funds to satisfy or pay the claim; or
 - 28.7.2.2. give notice to the Indemnified Party directing it to take such action (including legal proceedings) in respect of the claim as notified at the Indemnifying Party's expense; and
 - 28.7.3. the Indemnifying Party must cause the Indemnified Party to be put, and therefore maintained, in sufficient funds in sufficient time to pay all reasonable costs and expenses of any action or settlement directed by the Indemnifying Party under Clauses 28.7.2 and 28.7.4; and
 - 28.7.4. the Indemnified Party:
 - 28.7.4.1. must take such action as the Indemnifying Party reasonably directs to avoid, dispute, defend, appeal, settle or compromise ("deal with") the claim and any adjudication thereof; and
 - 28.7.4.2. must not deal with the claims except as directed by the Indemnifying Party

PROVIDED ALWAYS THAT notwithstanding the foregoing provisions the Indemnified Party may refuse to deal with and / or may deal with such claims as itself considers appropriate where it reasonably considers this to be in its best interests including, without limitation, the maintenance or enhancement of its reputation or goodwill attaching to its business.

29. Relationship of the Parties

- 29.1. In giving effect to this Agreement, the relationship of the Parties to each other shall be that of independent contractors. Nothing in this Agreement shall be construed as or shall constitute the relationship of the Parties as an agency, partnership, franchise, employment, joint venture or other joint venture relationship between the Parties.

- 29.2. No Party shall have the right to enter into contracts or pledge the credit of or assume or incur expenses or liabilities or any obligation of any kind (including but not limited to the making of any representation or warranty), express or implied, on behalf of the other Party unless otherwise expressly permitted by such other Party.
- 29.3. The only Parties to this Agreement are the Telco and Jersey Telecom.
- 29.4. This Agreement confers benefits and imposes burdens only upon the Parties to this Agreement and does not confer any benefit of any kind whatsoever or impose any burden of any kind whatsoever upon any person or entity who is not a Party.
- 29.5. Subject to any express provision of this Agreement to the contrary, this Agreement does not provide any person or entity who is not a Party with any remedy, defence, claim, action, claim of action or other right of any kind, or impose any liability upon such person that that person did not have before this Agreement commenced.

30. Representations of the Parties

- 30.1. Each Party represents that it is now and will remain in compliance with all laws, regulations, and orders applicable to its performance of its obligations under this Agreement. Each Party shall promptly notify the other Party in writing of any governmental or regulatory action that suspends, cancels, withdraws, limits or otherwise materially affects its ability to perform its obligations under this Agreement.
- 30.2. Each Party represents and warrants to the other that it:
- 30.2.1. is a limited liability company duly incorporated or continued and validly existing under the laws of Jersey and has all necessary corporate power and capacity to own its properties and carry on its business in Jersey as presently carried on and is duly licensed, registered or qualified under the relevant company or corporate legislation in all jurisdictions where the character of its property owned or leased or the nature of the activities conducted by it makes such licensing, registration or qualification necessary or desirable;
 - 30.2.2. has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations in accordance with their terms subject to necessary regulatory approval, and that the execution and delivery of this Agreement have been duly authorised by all necessary corporate action on its part; and
 - 30.2.3. is duly qualified to operate a telecommunications system under class 2 or 3 licences issued pursuant to the Telecommunications Law and shall hold all valid licences or permits as deemed or granted under the Telecommunications Law to entitle it to interconnection and to own and operate the telecommunications facilities and to provide the specified services necessary to enable it to carry out its obligations under this Agreement.

31. Severability

- 31.1. The individuality or enforceability for any reason of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement.
- 31.2. If further lawful performance of this Agreement or any part hereof shall be rendered impossible by the final judgement or final order of any court of competent jurisdiction, commission or governmental agency or similar authority having jurisdiction over either Party, the Parties undertake that they will exert their best efforts to agree on an amendment or amendments to this Agreement or on modifications of their practices hereunder in such manner as will fully comply with such judgement or order and render further performance lawful.
- 31.3. The enforceability of all rights or obligations of the Parties under this Agreement or the portion thereof judged invalid, illegal or otherwise unenforceable by such judgement or order, shall be suspended as from the date thereof pending the outcome of negotiations

between the Parties as aforesaid though without prejudice to all or any accrued rights of the Parties in respect of the past performance or observance thereof.

32. No Waiver

- 32.1. Failure or delay by either Party at any time to enforce any of the provisions of this Agreement shall not be construed by the other as a waiver of any such provision nor in any way affect the validity of this Agreement or any part thereof.
- 32.2. Subject to Clause 23, no variation, modification or waiver of any provisions of this Agreement shall in any event be of any force or effect, unless the same is in writing signed by each of the Parties hereto.
- 32.3. No forbearance, delay or indulgence by either Party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of such Party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either Party is exclusive of any right, power or remedy available to such Party and each such right, power or remedy shall be cumulative.

33. Entire Agreement

- 33.1. This Agreement and to the extent applicable governmental regulations, tariffs or rules constitutes the entire Agreement and understanding between the Parties and supersedes all previous Agreements, understandings and representations between the Parties, whether oral or written, as it relates to interconnection.

34. Assignment

- 34.1. Neither Party may assign the whole or any part of this Agreement or its rights or obligations hereunder other than with the prior consent in writing of the other Party, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, neither Party shall require the consent of the other Party to assign the whole or any part of this Agreement or its rights or obligations hereunder to a subsidiary, parent or Associated Company.
- 34.2. A Party may only perform an assignment under Clause 34.1 if:
 - 34.2.1. the assignee is granted all applicable Telecommunications Licences by the JCRA with respect to the ownership and operation of all or part of the facilities of the assigning Party and the provision of all or part of the telecommunications services of the assigning Party and necessary to entitle the assignee to interconnection;
 - 34.2.2. in cases where the assignee is a Associated Company of the assigning Party and ceases to be a Associated Company, the assigning Party shall give prior notification of that fact to the other Party hereto and shall procure that prior to such cessation such assignee reassigns such rights and obligations to it; and
 - 34.2.3. the assigning Party shall procure that the assignee enters into an agreement with the other Party whereby the assignee agrees to observe all of the terms and conditions of this Agreement and, if required by the other Party, the assigning Party shall join in such agreement to guarantee the performance of it by the assignee.
- 34.3. Either Party may subcontract for the provision of its services or obligations under this Agreement, provided that, in such case, it will not be relieved of its obligations as specified in this Agreement.

35. Notices

- 35.1. Any notice which may be given by either Party under this Agreement shall be deemed to have been duly given if left at or sent by registered mail or facsimile transmission (confirming the same by post) or, where the Parties expressly agree, by electronic mail, to

an address to which notices, invoices or other documents may be sent under Clause 35.3 below, or, if no such notification is given, its principal place of business as set out herein.

35.2. Any such notice shall be deemed to have been made to the other Party on the day on which such communication ought to have been received in due course by registered mail or facsimile transmission. Any communication by electronic mail shall be deemed to have been made on the day on which the communication is first stored in the receiving Parties electronic mailbox.

35.3. All notices under this Agreement shall be sent:

35.3.1. To: Jersey Telecom - -

Jersey Telecom Limited

PO Box 53

1 The Forum

St. Helier

Jersey

JE4 8PB

Attention: [Name and Title]

35.3.2. To: Telco

[Address]

[Address]

Attention: [Name and title]

36. Arbitration

36.1. Subject to Paragraphs xxx of the O&M Manual, all disputes in connection with the Agreement not settled under other terms of this Agreement shall, at the request of either Party, be finally settled by an Arbitrator that is mutually agreed by the Parties or, in the absence of mutual agreement and after one month of such request, by the JCRA acting in accordance with the powers granted to it under Article 22 of the Telecommunications Law.

36.2. The place of arbitration shall be Jersey or such other place as shall be agreed by the Parties and the proceedings shall be conducted in the English language.

36.3. Providing there is no fundamental error at law or no fundamental or manifest error of fact, the award shall be final and binding and the Parties.

36.4. The Arbitrator shall be authorised to determine any dispute between the Parties including, but not limited to, the construction, interpretation or application of this Agreement. In reaching a decision, the Arbitrator shall take into account the commercial relationship between the Parties the contentions of the Parties, previous dealings between the Parties and any other factors which may be relevant.

37. Governing law and jurisdiction

37.1. This Agreement shall be governed by and construed and interpreted in accordance with the laws of Jersey and the parties hereto irrevocably submit to the non-exclusive jurisdiction of the courts of the Island of Jersey.

Signed as an Agreement on [] of []

Signed for and on behalf of Jersey Telecom by

Signed for and on behalf of [Telco] by