

# Standard Interconnection Agreement



[DATED]

[OPERATOR] [LIMITED][PLC]

AND

Epic Communications Limited

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## INTERCONNECTION AGREEMENT

Relating to the Interconnection of the Epic Communications Limited Public Communications Network and the Public Communications Network operated by [insert name of operator] (the Operator).

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**THIS AGREEMENT** is made on the [insert date]

Between

**Epic Communications Limited** having company registration number C 10865 and having its registered office at Skyparks Business Centre Malta International Airport, Luqa LQA 4000 Malta (hereinafter referred to as "Epic")

and

[insert name of operator] **[LIMITED][PLC]** having company registration number C XXXXX and having its registered office at [insert registered address] (hereinafter referred to as "the Operator");

individually referred to as "Party" and collectively as "Parties"

## **WHEREAS**

- A. Epic is authorised under the Electronic Communications (Regulation) Act Chap. 399 of the Laws of Malta ('ECRA') to provide electronic communications networks and/or electronic communications services.
- B. Epic has been designated by the MCA as having significant market power in the markets for wholesale fixed call termination and for the wholesale mobile voice call termination provided over its own network, pursuant to Regulation 8 of the ECNSR. According to the MCA Decisions relating to the said markets and in accordance with its respective obligations at law, Epic shall comply with the relevant access and interconnection obligations.
- C. The Operator is authorised under the ECRA to provide electronic communications networks and/or electronic communications services.
- D. The Parties have agreed to interconnect their respective Networks, in accordance with the principles set out in the ECRA and applicable legislation, and to supply related services and facilities on the terms and conditions laid down in this Interconnection Agreement.
- E. The Parties entering into this Interconnection Agreement recognise the necessity of effective Interconnection of their Networks in the provision of quality telecommunications services to their respective customers.

## 1 INTRODUCTION

### **The Parties believe and agree that:**

- 1.1 Interconnection should not be unnecessarily constrained by technical issues or limitations which have no justifiable basis.
- 1.2 The Parties shall exchange technical information in order to make Interconnection effective, subject to commercial confidentiality and to the provisions of Annex F hereof, such technical information shall be included in the Technical Framework Document agreed by and between the Parties; the final Technical Framework Document shall be annexed hereto and shall form an internal part of this Interconnection Agreement
- 1.3 In implementing services and facilities under this Interconnection Agreement, both Parties should endeavour to minimise the attendant costs, provided that this does not result in additional cost attribution to other products and services provided by either Party and is consistent with agreed quality standards.
- 1.4 The quality of interconnect services should be optimized to bring benefits to customers and the Parties should aim continuously to improve shared targets for quality of service, operations and maintenance, provisions and network performance in interconnection.
- 1.5 The Parties should at all-times act so as to facilitate the speedy and effective operation of this Interconnection Agreement to the benefit of customers and their mutual advantage.

In consideration of the mutual covenant and obligations contained in this Interconnection Agreement, the Parties HEREBY AGREE AS FOLLOWS:

## 2 DEFINITIONS AND INTERPRETATION

- 2.1 Unless otherwise provided at law, in this Interconnection Agreement (including any of its Annexes, Appendixes or Schedules) and except if the context requires otherwise, words and expressions are as defined in Annex A hereof.
- 2.2 References to "Epic" and "the Operator" shall include their respective employees, agents, successors (whether by operation of the law or otherwise) and legally permitted assignees, transferees or sub-contracted persons.
- 2.3 The headings of the Clauses of this Interconnection Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of any of the said Clauses.
- 2.4 References to acts and any regulations made thereunder are to such legislation as amended from time to time.
- 2.5 References to Clauses, Schedules, Annexes and Appendices are to clauses in and schedules, annexes and appendices to this Interconnection Agreement. Provided that all Clauses, Schedules, Annexes and Appendices form an integral part of this Interconnection Agreement and shall be coterminous with the Main Body of this Interconnection Agreement such that the event of the termination for whatsoever cause of the Main Body shall bring about the termination of this Annex, and the event of the continuation in force of the Main Body shall imply the continuation in force of this Annex.

- 2.6 The Interpretation Act, Chapter 249 of the Laws of Malta shall apply for the purpose of interpreting this Interconnection Agreement as if it were an Act of Parliament.
- 2.7 The following documents form part of this Interconnection Agreement and, in the event of any inconsistencies between them, the order of precedence shall (unless the contrary is expressly stated) be as follows:
- 2.7.1 Main Body of this Interconnection Agreement
  - 2.7.2 Technical Framework Document
  - 2.7.3 Annex A, Definitions
  - 2.7.4 Annex B, Billing and Payments
  - 2.7.5 Annex C Service Schedules
  - 2.7.6 Annex D, Service Level Agreement
  - 2.7.7 Annex E, The Network Plan
  - 2.7.8 Annex F, Non-Disclosure Provisions
  - 2.7.9 Annex G, Operations and Maintenance Manual
  - 2.7.10 Annex H, Technical Manual
  - 2.7.11 Price Lists

Any reference to the Annex D, Annex E, Annex G or Annex H or to any provision or information included therein shall mean and be interpreted as a reference to Technical Framework Document if the same information is covered by the Technical Framework Document.

For the avoidance of any doubt, in case of conflict between the provisions of the Annexes and the Technical Framework Document, or any information included therein, the Technical Framework document shall prevail.

### **3 COMMENCEMENT, DURATION & TERMINATION**

- 3.1 This Interconnection Agreement shall come into force on the Date hereof and, without prejudice to the provisions for earlier termination contained in this Interconnection Agreement, it shall remain in force for an initial period of one (1) year (Term) and shall continue thereafter until terminated by either Party in accordance with Clause 4.

### **4 BREACH, SUSPENSION AND TERMINATION**

- 4.1 If one Party's Network adversely affects the normal operation of the other Party's Network, 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 it may consider reasonable to ensure the normal operation of its Network or to reduce the threat to safety.
- 4.2 If either Party shall be in breach of a material obligation under this Interconnection Agreement and such breach is capable of remedy, the other Party ("the Terminating Party") shall send the Party in breach a written notice giving full details of the breach and requiring the Party in breach to remedy the breach within thirty (30) days starting on the day after receipt of such written notice or in the case of an urgent need to remedy the breach so as

to safeguard end-to-end connectivity within such shorter period as the Party not in breach may reasonably specify.

- 4.3 If the Party in breach does not remedy the breach within the time period stipulated in the said notice, this Interconnection Agreement may be suspended at the option of the Party not in breach.
- 4.4 If the Party in breach does not remedy the breach within three (3) months from the date of receipt of the written notice, this Interconnection Agreement may be terminated at the option of the Party not in breach ("the Terminating Party").
- 4.5 This Interconnection Agreement may be terminated by either Party by written notice forthwith (or on termination of such other period as such notice may specify) if the other Party:
  - 4.5.1 is unable to pay its debts; or
  - 4.5.2 ceases to carry on business; or
  - 4.5.3 has a liquidator or an administrator appointed; or
  - 4.5.4 has an order made or a resolution passed for its winding-up (other than for the purpose of amalgamation or reconstruction); or
  - 4.5.5 ceases to hold an authorization in accordance with ECRA.
  - 4.5.6 is the subject of a force majeure event for a continuous period exceeding 2 months in accordance with Clause 23.
- 4.6 In any event, either Party may terminate this Interconnection Agreement at any time by giving to the other Party not less than six (6) months' prior written notice to terminate.

Provided that if the Terminating Party is the Operator, and such Operator terminated within twelve (12) months of ordering an Interconnection Path, the Operator will still be bound to pay the full twelve (12) month charge for the Interconnection Path ordered in accordance with this Interconnection Agreement.
- 4.7 The Interconnection Agreement shall be immediately terminated when the Terminating Party informs the Party in breach by written notice of its decision to terminate or upon expiration of such notice as applicable in accordance with the provision of this Clause 4 this Interconnection Agreement and this without the need of any authorization or confirmation by any court or authority.
- 4.8 Without prejudice to this Clause, the Parties shall use their best endeavours to enter into a new interconnection agreement pursuant to the obligation to provide to the other Party Interconnection in accordance with any authorization granted under the ECRA.
- 4.9 Upon termination of this Interconnection Agreement:
  - 4.9.1 the Parties shall co-operate with each other to ensure that such steps are taken as are necessary for recovery by each Party of telecommunications apparatus (if any) supplied by the other Party (even where that apparatus is on the premises of the other Party).
  - 4.9.2 each Party shall be entitled after reasonable prior notice in writing to the other to enter the premises of the other for the purposes of carrying out necessary disconnection works and repossessing any plant, equipment or apparatus of that Party or a Third Party installed by or for that Party. The Party on whose premises

such plant equipment or apparatus was installed shall be responsible for compensating the other for any such plant, equipment, apparatus or things belonging to the other or such Third Party which are not so delivered in good condition (fair wear and tear excepted) and the Party carrying out such disconnection works shall indemnify the other Party in respect of any damage thereby caused to the premises fixtures and fittings, apparatus and equipment of such other Party;

4.9.3 such termination shall not be deemed a waiver of a breach of any term or condition of this Interconnection Agreement and shall be without prejudice to a Party's rights, liabilities or obligations that have accrued prior to such termination

4.9.4 Clauses 4.10, 17, 20, 21 and 24 inclusive shall continue in full force and effect;

4.10 The Parties' right to terminate or suspend performance of this Interconnect Agreement pursuant to the above is without prejudice to any other rights available to the Parties in particular the referral of the matter to the Authority for determination. The said remedies available to the Party alleging a breach pursuant to the above shall not be exercised by either Party pending adjudication of the matter by the Authority.

## **5 NETWORK INTERCONNECTION**

- 5.1 Interconnection between the Operator's Network and the Epic Network will be achieved through a number of Interconnection Links. Each Interconnection Link will identify a connection between one of the Operator Interconnection Nodes and one of the Epic Interconnection Nodes. Details of the manner in which this shall be achieved are set out in Annex E hereof and/or in Technical Framework Document, as may be amended from time to time. The technical standards supported by either Party for the purposes of this Interconnection Agreement are set out in Annex H and/or in Technical Framework Document as may be amended from time to time.
- 5.2 Interconnection Paths will be provided and operated in the manner described in Service Schedule 1 of Annex C and/or in other Annexes, if applicable.
- 5.3 The actual Point of Interconnection shall be where the one Party's Network connects with the other Party's Network and shall be a physical point at the site of the either Party, where the connection can be disconnected in order to conduct testing. Each Party shall be wholly responsible for providing sufficient capacity on its respective transmission medium from the Point of Interconnection to meet the agreed forecasted requirements in Annex E hereof and/or in Technical Framework Document. Each Party shall be wholly responsible for the operation and maintenance on its respective transmission medium.
- 5.4 Either Party shall have the right at any time during the duration of this Interconnection Agreement to indicate the Interconnection Node in its Network so as to provide optimal network connectivity with the rest of its Network. In the eventuality that the Requesting Party insists upon a particular Interconnection Node and the Requested Party encounters any technical problems in regard to such Interconnection Node, the Requested Party reserves the right to refuse such Interconnection Node and to offer the Requesting Party an alternative Interconnection Node.
- 5.5 The Requesting Party shall bear half the cost of the installation of the Interconnection Path provided by the Requested Party and bear a charge equal to half the Requested Party's normal tariff for an equivalent quantity of Interconnection Paths. Provided that if the



Requesting Party cancelled the order prior to the Ready for Service Date, the Requesting Party shall be liable to pay the full installation charge of the Interconnection Path. Only in the event that neither Party is able to provide any part of such infrastructure shall the Parties undertake to find an alternative Third Party provider of the same.

- 5.6 The ordering periods for new Interconnection Links shall be as defined in Annex D hereof and/or in Technical Framework Document.
- 5.7 The requirements for connection and capacity available at each Point of Interconnection shall be as set out in Annex E hereof and/or in Technical Framework Document. The Requested Party shall, upon written request by the Requesting Party, provide within a reasonable period additional capacity at any of the Interconnection Nodes in the Requested Party's Network as may be appropriate should this be considered technically possible and feasibly acceptable by the Requested Party to enable the Requesting Party to operate its Network efficiently and effectively.
- 5.8 The Parties will not be responsible for the content of traffic conveyed through their respective Networks.

## **6 INTERCONNECTION SERVICES**

- 6.1 The Service Schedules attached at Annex C provide detail on the Interconnection Services that one Party provides to the other Party with regard to Interconnection under this Interconnection Agreement and the terms and conditions relating thereto.
- 6.2 For the avoidance of doubt and notwithstanding the Interconnection between the Operator Network and the Epic Network neither Party shall hand over to the other Party, nor have an obligation 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 Service Schedule in Annex C hereof.
- 6.3 The Service Level Agreement provided at Annex D hereof provides details on the procedures and timescales for delivery of the Interconnection Services.
- 6.4 For the avoidance of doubt, this Interconnection Agreement relates solely and exclusively to the provision by the Parties to one another of the Interconnection Services contemplated herein.

## **7 CHARGING FOR INTERCONNECTION SERVICES**

- 7.1 The charging structure for each Interconnection Service is described in the Service Schedules at Annex B and/or Annex C.
- 7.2 Charges applicable for each Interconnection Service are as published in either Party's respective Interconnection Services Price List. The method of reviewing these charges is described in Clause 22 hereunder.
- 7.3 The chargeable time for each Call shall be the "conversation time", unless otherwise specified. For the purpose of this clause, "conversation time" shall refer to the duration of each Call in respect of which the called person's Answer Signal is returned across the interface between the Networks. Charges shall commence when the called person's answer condition is transmitted to the Network originating the Call.
- 7.4 For the purposes of this clause and without prejudice to the provisions of the law and any directive or decision of the Authority were the Authority so mandates, "Calls" shall not

include other services such as premium rate services and/or special services as applicable, for example, the full range of directory services, televoting, donations and information services where such are actually provided by Requested Party.

- 7.5 Provided that this clause is limited solely to the charging and/or revenue sharing for the termination, origination and/or transit of premium rate services, special services and/or other unregulated services and is without prejudice to the obligation related to regulated charges on the part of the Requested Party to terminate, originate and/or transit these services where such services are regulated at law in accordance with any directive or decision of the Authority.

## **8 NEW SERVICES**

- 8.1 Either Party ('Requesting Party') to this Interconnection Agreement may, at any time, request from the other Party ('Requested Party') an agreement to interconnect their respective Networks for the provision of any service or facility which the Requested Party provides under Interconnection Agreements with other operators.
- 8.2 Following a request pursuant to Clause 8.1, the Requested Party shall offer to amend this Interconnection Agreement or to enter into a new interconnection agreement so as to allow for the provision of the service or facility on its then current standard terms as provided to other operators.

Provided that if the Requested Party is not obliged to provide the requested service or facility under its respective access and interconnection obligations at law, it shall be at a sole discretion of the Requested Party's whether it agrees and allows to provide the requested services or facilities and the terms of the service or facility shall be subject to commercial negotiations between the Parties.

- 8.3 If a Party requests from the other Party a provision of a service which the Requested Party does not make available to Third Parties, but the Requested Party is obliged to provide such a service, the Requested Party shall enter into good faith negotiations on such terms and conditions, including consideration as may be agreed between the Parties, for the provision of such service.
- 8.4 The procedure for ordering new services in accordance with this Clause shall be that laid down in Annex D hereof.

## **9 MEASUREMENT OF TRAFFIC**

- 9.1 The responsibility for traffic measurement shall reside with the Billing Party responsible for that particular Interconnection Service.
- 9.2 Each Party shall ensure that it records measurements of traffic in sufficient detail to meet its obligations as outlined in Annex B and Annex C hereof.

## **10 BILLING AND PAYMENT**

- 10.1 Each Party shall bill and reimburse the other Party in accordance with Annex B hereof.
- 10.2 No charges shall be payable under this Interconnection Agreement by one Party to the other unless the levy of such charges is contemplated in this Interconnection Agreement.

- 10.3 The charges in the Epic Price List are quoted net of VAT or any other similar tax that may be applicable from time to time. Any such VAT or other similar tax shall be charged over and above such quoted charges.
- 10.4 Invoices are due and payable in Euros (€) by the Due Date.
- 10.5 In addition, each Party shall provide to the other invoices of all amounts due to it calculated in accordance with the provisions of Annex B.
- 10.6 If any Dispute arises between the Parties in regard to the accuracy of the invoices, the Parties should follow the Dispute resolution procedure contemplated in Clause 18 hereunder.

## **11 NETWORK DESIGN AND PLANNING**

- 11.1 Network design and planning of the Network Interconnection between the Parties is as outlined at Annex E hereof which shall be known as the Network Plan and which shall be reviewed and updated from time to time. The Network Plan shall be updated if so required by the Authority.
- 11.2 The Forecasts provided between the Parties shall be regulated by the provisions of Annex E and Annex G hereof.
- 11.3 The Network Plan shall be reviewed and updated as may be necessary or if an update is necessary to comply with and/or to implement directions of requirements of the Authority.

## **12 NETWORK ALTERATION AND IMPAIRMENT OF SERVICE**

- 12.1 A Party wishing to make a Network Alteration ('Requesting Party') to its own or to the other Party's Network ('Requested Party'), which Network Alteration adversely affects the other Party's Network, the Requesting Party shall give to the Requested Party as much notice prior to the date of the anticipated Network Alteration as possible, and in any event not shorter than as specified in Annex D.
- 12.2 If a Requested Party believes that it is not in a position to proceed with the requested Network Alteration, either within the timescales requested or in any circumstances, the Requesting Party shall be advised within five (5) Working Days of receipt of the request. In these circumstances the Parties shall make all reasonable efforts to resolve the situation, including recourse to the Dispute resolution procedure in accordance with Clause 18 hereunder.
- 12.3 The time periods stipulated in the two preceding Clauses 12.1 and 12.2 may be shortened, in exceptional circumstances at the discretion of the Requesting Party, where the integrity of the Requesting Party's Network is at stake. In such an eventuality, the Requesting must indicate the shortened time periods and explain the nature of the exceptional circumstances in the notice referred to in Clause 12.1 above.
- 12.4 In the event of any interruption of Interconnection, the Party within whose Network the interruption arises shall use reasonable endeavours to ensure restoration of service to the standards required by this Agreement. However, if that interruption was directly caused by a Network Alteration by the Requesting Party in breach of Clause 12.1, both Parties shall use reasonable endeavours to restore the service as aforesaid.
- 12.5 In the event that either Party causes an impairment of service, the Party whose Network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing or

permitting the impairment of service (the "Impairing Party") of the nature and location of the problem and that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to resolve promptly the impairment of service. If the Impairing Party is unable to remedy promptly the impairment of service, then the Impaired Party may discontinue the use of the affected circuit, facility or equipment until such time as there is no impairment of service.

### **13 NETWORK SAFETY AND PROTECTION**

- 13.1 Each Party is responsible for the safe operation of its Network and all equipment relating thereto and shall take all reasonable and necessary steps in its operation and implementation of this Interconnection Agreement to ensure that its Network and all equipment relating thereto does not:
  - 13.1.1 endanger the safety or health of all persons including each other's employees, contractors, agents or customers of the other Party and in this respect each Party shall be responsible for the safe operation of the equipment within its System on its side of the Point of Interconnection between the Operator System and the Epic System; or
  - 13.1.2 damage, interfere with or cause any deterioration in the operation of the other Party's Network or any equipment relating thereto.
- 13.2 If one Party's Network is a threat to any person's safety, the other Party may suspend, to the extent that is strictly necessary, such of its obligations hereunder, and for such period as is necessary to eliminate or ensure the normal operation of its Network or to reduce the threat to safety.
- 13.3 Neither Party shall do or permit anything to be done or omit or permit the omission of anything in relation to the other Party's Network which either causes damage to the other Party's Network or will, save as permitted under or pursuant to this Interconnection Agreement, result in modification of the proper and normal operation of the other Party's Network.
- 13.4 Either Party shall upon reasonable written request made to it by the other Party provide the Party making the request with all necessary facilities including the rights of access to any Point of Interconnection in order that the said Party may ensure that the other Party is complying with its obligations under this Clause 13, provided that the Party making the request shall not in so doing do anything which may inhibit or interfere with the proper and normal operation of the other Party's Network. Provided further that the Party making the request shall notify the other Party in good time to accede to such request.
- 13.5 Each Party shall ensure that Interconnection by it pursuant to this Interconnection Agreement, including its apparatus used to establish and provide Interconnection, shall conform with national and international standards and operating guidelines including but not limited to those of the International Telecommunication Union (ITU) and the European Telecommunications Standards Institute (ETSI).
- 13.6 Interconnection Signalling protocols used by the Parties shall, where practicable, follow the ITU Signalling System No. 7 standards.

- 13.7 Neither Party shall connect, or knowingly permit the connection, to its Network any equipment which does not meet the requirements specified in Clauses 13.5 and 13.6 or which shall degrade the quality of the other Party's Network.

## **14 NUMBERING & CLI**

- 14.1 Nothing in this Interconnection Agreement shall be construed in any manner to limit or otherwise adversely impact upon either Party's right pursuant to its authorisation to be assigned numbers in accordance with the National Numbering Plan. Each Party shall use numbers in accordance with the National Numbering Plan.
- 14.2 It shall be the responsibility of each Party to programme and update its own Network to recognise and route traffic to the other Party's assigned numbers at all times in accordance with the MCA's numbering plan. Neither Party shall impose any fees or charges whatsoever on the other Party for such programming and updating of the Services contemplated in Annex C hereof. Provided that nothing in this Interconnection Agreement shall prejudice the principles of number portability.
- 14.3 The Operator shall ensure that the Operator System shall (to the extent that the Operator System is able to do so) generate and convey to the Epic System the CLI associated with all Calls passed from the Operator System to the Epic System where that Call has originated in Malta. Where the Call originates from outside Malta, the Operator should present CLI to Epic where it is commercially available from the originating network. Epic shall be entitled to use such CLI (subject to Clause 14.4 below) for presentation purposes and to pass such CLI to third party electronic communications operators for such purposes.
- 14.4 The provision of CLI for presentation purposes shall be subject to such restrictions and arrangements as may be established between the Parties from time to time.
- 14.5 Any arrangements which the Parties make with regard to CLI shall be subject to any obligation or condition under either Party's licence/authorisation or any statutory or legal obligation or restriction with regard to confidentiality or otherwise, including the Data Protection Legislation.
- 14.6 Each Party shall comply with the reasonable requests of the other made for the purposes of complying with the applicable laws and regulations mentioned in Clause 14.5 above.
- 14.7 If there is a change in any 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.
- 14.8 Nothing in this Interconnection Agreement shall prejudice the applicability of any relevant legislation relating to Data Protection Legislation.

## **15 QUALITY OF SERVICE**

- 15.1 The Parties shall meet the target service standards as specified in Annex H hereto.

## **16 PROVISIONING, OPERATION AND MAINTENANCE**

- 16.1 The procedures for the installation and testing of the initial Interconnection as well as for the continued operation and maintenance thereof shall be governed by the provisions of Annex G, Annex H and/or of the Technical Framework Document hereto.

## **17 PROVISION OF INFORMATION**

- 17.1 Subject to any confidentiality obligations, either Party shall provide appropriate information including, but not limited to, information regarding Network control and management, as is reasonably required by the other Party for Interconnection of the respective Party's Network and provision of Interconnection Services, provided that such information is reasonably attainable by the Party requested to provide it.
- 17.2 The Parties shall consult each other on a timely basis in relation to the operation of this Interconnection Agreement and apply their best endeavours to resolve any problems arising from such consultation or otherwise encountered in relation to this Interconnection Agreement.
- 17.3 Without prejudice to the provisions of Clause 17.1 each Party shall appoint a representative for the purposes of overseeing the organisation of the day-to-day practical implementation of this Interconnection Agreement; each of them shall liaise with the other and report to the Party appointing him on any problem which has not proved capable of resolution. On receipt of such report the Parties shall consult with a view to achieving a mutually acceptable solution to such problem.
- 17.4 The disclosing Party will use reasonable endeavours to ensure that information disclosed is correct to the best of its knowledge at the time of provision of such information.
- 17.5 Subject to Clause 24 hereof, the Receiving Party shall indemnify the disclosing Party and keep it indemnified against all liabilities, claims, demands, damages, costs and expenses arising as a consequence of any failure by the receiving Party to comply with any written conditions imposed, including those relating to confidentiality as per Clause 20 or arising as a consequence of any failure by the receiving Party or by any Third Party authorised by the receiving Party to comply with any obligation of confidentiality in accordance with the said Clause 20 or with any obligation under the Data Protection Legislation and any regulations made thereunder.
- 17.6 Nothing in this Interconnection Agreement shall require a Party to do anything in breach of any statutory or regulatory obligation of confidentiality, including without prejudice to the generality of the foregoing, any obligation pursuant to the ECRA, the Data Protection Legislation or any other relevant legislation.

## **18 RESOLUTION OF DISPUTES**

- 18.1 The Parties undertake to carry out this Interconnection Agreement in the spirit of mutual co-operation and good faith.
- 18.2 The Parties agree that they shall use their best endeavours to resolve amicably any Disputes that may arise between them concerning the implementation, application or interpretation of this Interconnection Agreement.
- 18.3 In the event that the Parties fail to resolve any such Dispute within twenty (20) working days from the date that either Party notifies the other in writing that the Dispute has arisen, then either Party has the right to refer the Dispute to the Authority, and this without prejudice to any other right or remedy available to that Party in terms of law.
- 18.4 In the event of a dispute between the Parties arising out of or in connection with this Interconnection Agreement and which falls outside the scope of Clause 18.6, either Party may call an extraordinary meeting of the Parties for the purpose of resolving such dispute

within five (5) Working Days from written notice by either Party, and each Party binds itself to ensure that designated representative(s) from its management team shall attend all extraordinary meetings called in accordance with this Clause 18.4.

- 18.5 The members of the extraordinary meeting shall endeavour in good faith to resolve disputes arising out of this Agreement. If any dispute referred to a meeting is not resolved at that meeting then either Party, by notice in writing to the other, may refer the dispute to the persons listed hereunder, who shall co-operate in good faith to resolve the dispute in an amicable manner within fourteen (14) Working Days from such notice. If such persons fail to resolve the dispute in the allotted time, then this dispute resolution procedure shall be deemed exhausted.

For the Requested Party:-

[Designation] [Name]

[Contact Details]

For the Requesting Party:-

[Designation] [Name]

[Contact Details]

- 18.6 Without prejudice to anything contained in this clause, the following Dispute resolution procedure shall apply to any billing Dispute including but not limited to a Dispute relating to the accuracy of any invoices. In such circumstances, the Parties shall in the first place consult with each other to try and resolve the Dispute. Failing resolution, the Parties shall jointly select an independent auditor of international standing to review the matter forming the subject of the Dispute. The auditor shall determine such matter including who of the Parties is to bear the costs of the Dispute. Both Parties shall be bound by the auditor's decision.
- 18.7 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.
- 18.8 Nothing herein shall prevent a Party from:
- 18.8.1 seeking (including obtaining or implementing) interlocutory or other immediate relief;
  - 18.8.2 referring the dispute to the MCA or to the courts of competent jurisdiction in accordance with any right (if any) either Party may have to request a determination or other appropriate steps for its resolution.
- 18.9 Without prejudice to Clause 4, during any period of dispute, before or until resolution in accordance with this Clause 18 a Party shall not disrupt services being provided to the other Party, change any level of service being provided to that Party or take any other actions which might materially and adversely affect that Party's service.

## 19 CONDITION PRECEDENT

- 19.1 Unless otherwise agreed to by Epic in writing, it is a condition precedent to this Interconnection Agreement and to the provision of the services by Epic hereunder that the

Operator shall provide to Epic such financial security as in the reasonable and fair opinion of Epic is appropriate as security against the Operator's non-compliance with or non-observance of any of the provisions of this Interconnection Agreement (including without limitation the failure to pay charges).

## **20 CONFIDENTIALITY**

- 20.1 The Parties agree to treat the contents of this Interconnection Agreement and all Confidential Information defined as such in Annex F hereof as confidential in accordance with the terms and conditions outlined in Annex F hereof.
- 20.2 Without prejudice to the preceding sub-clause, either Party shall be entitled to deliver a copy of this Interconnection Agreement and any related documents to the MCA

## **21 INTELLECTUAL PROPERTY RIGHTS**

- 21.1 Except as expressly otherwise provided in this Interconnection Agreement, Intellectual Property rights shall remain the property of the Party creating or owning the same and nothing in this Interconnection Agreement shall be deemed to confer any assignment or right or title whatsoever or licence of the Intellectual Property Rights of one Party to the other Party, and nothing in this Interconnection Agreement shall be deemed to restrict the rights of any Party to own, use, enjoy, licence, assign or transfer its own Intellectual Property.
- 21.2 Where the intellectual property is developed in connection with performance of this Agreement then in the absence of any other agreement between the Parties, the ownership of the intellectual property so developed shall remain with the Party who developed the same.

## **22 REVIEW**

- 22.1 Subject to the provisions of Clause 22.3 hereunder, a Party may seek to amend this Interconnection Agreement at any time by serving on the other a review notice if:
  - 22.1.1 either Party's authorization is materially modified (whether by amendment or replacement); or
  - 22.1.2 a material change occurs in the law or regulations (including codes of practice whether or not having the force of law) governing electronic communications in Malta; or
  - 22.1.3 a material change occurs, including enforcement action by any regulatory
  - 22.1.4 authority, which affects or reasonably could be expected to affect the commercial or technical basis of this Interconnection Agreement; or
  - 22.1.5 this Interconnection Agreement is assigned or transferred by the other Party except if prior written consent to the assignment or transfer is not required under Clause 25 hereof; or
  - 22.1.6 a Party wishes for any reason to amend any particular Clause of this Interconnection Agreement.
- 22.2 A review notice shall set out in reasonable detail the issues to be discussed between the Parties.



- 22.3 A Party may initiate a general review of this Interconnection Agreement by serving a ninety (90) days prior review notice.
- 22.4 Without prejudice to anything contained in this Clause, either Party may amend the charges set out in either of its Price Lists or add new charges thereto at any time in its sole discretion, subject to any applicable regulatory obligations, provided that such new charges and/or amendments will (unless regulatory obligations otherwise require) only become effective on the lapse of fifteen (15) days from the date on which the Party making the amendments or adding the new charges notifies the other Party of such amendments and/or new charges subject to any other directive or decision issued by the Authority in relation to the matter in which case the charges shall have immediate effect in accordance with such decision or directive.
- 22.5 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 Interconnection Agreement.
- 22.6 For the avoidance of doubt, the Parties agree that notwithstanding service of a review notice this Interconnection Agreement shall remain in full force and effect.
- 22.7 If the Parties fail to reach agreement on the subject matter of a review notice within ninety (90) days a Dispute shall be deemed to have arisen and the Dispute resolution procedure laid down in Clause 18 above shall apply.
- 22.8 The Parties may, at any time, agree in writing a variation to the time periods specified above in relation to a particular review notice.
- 22.9 In all cases, the Parties shall modify or replace this Interconnection Agreement as required by any decision or directive of the Authority.

## **23 FORCE MAJEURE**

- 23.1 Neither Party to this Interconnection Agreement shall be liable for any delay or failure in performance of any part of this Interconnection Agreement from any cause beyond its reasonable control and without its fault or negligence including, without limitation, acts of God, acts or omissions of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, floods, compliance with any statutory, regulatory or legal obligation, work stoppages, industrial disputes of any kind (whether or not involving that Party's employees), major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers, subsidence, acts or omissions of persons or bodies for whom the Party affected by the force majeure is not responsible or any other cause whether similar or dissimilar outside the reasonable control of that Party.
- 23.2 The Party affected by a force majeure shall as soon as reasonably practicable notify the other Party in writing of the force majeure, the date on which the force majeure started and the effects of the force majeure on its ability to perform its obligations under this Interconnection Agreement.
- 23.3 If the Party affected by a force majeure does not comply with the preceding sub-clause, it forfeits its right to have its obligations under this Interconnection Agreement suspended while the force majeure continues and to the extent that it is so prevented, hindered or delayed.

- 23.4 Upon cessation of the effects of the force majeure the Party affected by a force majeure shall promptly notify the other Party of such cessation.
- 23.5 If as a result of a force majeure the performance by either Party of such Party's obligations under this Interconnection Agreement is only partially affected, such Party shall, nevertheless remain liable for the performance of those obligations not affected by the force majeure.
- 23.6 If, as a result of a force majeure as contemplated in this Clause 23, the performance by either Party of its obligations under this Interconnection Agreement is affected to such an extent that such Party is completely unable to perform such obligations, and the force majeure continues for more than two (2) months from the date on which the force majeure is notified to the other Party, either Party may terminate this Interconnection Agreement by giving the other Party not less than thirty (30) days written notice of its intention to so terminate.
- 23.7 Provided that if as a result of a force majeure the performance by either Party of its obligations under this Interconnection Agreement is only partially affected, then the provisions of Clause 23.5 shall apply to the extent that a Party is prevented as a result of force majeure from providing all of the services or facilities to be provided under this Interconnection Agreement, the other Party shall be released to the equivalent extent from its obligations to make payment for such services or facilities or complying with its obligations in relation thereto.

## **24 LIMITATION OF LIABILITY**

- 24.1 Neither Party has an obligation of any kind to the other Party beyond an obligation to exercise the reasonable skill and care of a competent electronic communications operator in performing its obligations under this Interconnection Agreement.
- 24.2 If a Party is liable to the other Party for the breach of any of its obligations under this Interconnection Agreement (excluding the liability to settle any charges incurred in relation to any Interconnection Service contemplated by this Interconnection Agreement) such Party's liability to the other shall be limited to one million one hundred sixty four thousand five hundred Euros (€1,164,500) for any one event or series of connected events and two million three hundred twenty nine thousand Euros (€2,329,000) for all events, whether connected or not, in any period of twelve (12) calendar months.
- 24.3 Subject to Clause 24.4 below, the Operator shall not be liable to Epic for claims, proceedings or actions brought or made against Epic by a user of electronic communications equipment which is connected to the Epic System nor shall Epic be liable to the Operator for claims, proceedings or actions brought or made against the Operator by a user of electronic communications equipment which is connected to the Operator System
- 24.4 The provisions of the preceding sub-clause shall not apply and either Party ("the Indemnifying Party") shall defend and fully indemnify the other Party ("the Indemnified Party"), its officers, directors, employees and permitted assignees and hold such Indemnified Party harmless against any loss to the indemnified Party or to any Third Party arising out of the negligence or wilful misconduct by the Indemnifying Party, its employees, agents, customers, contractors, or others retained by such parties, in connection with its provision of services under this Interconnection Agreement or arising out of the Indemnifying Party's failure to comply with the provisions of any law.

- 24.5 Nothing in this Clause shall be interpreted as an exclusion or restriction by either Party of its liability for death or personal injury caused by its own negligence or for any fraudulent mis-statement or fraudulent misrepresentation made by it in connection with this Interconnection Agreement.
- 24.6 Neither Party shall be liable for any loss of profits, business revenues, missed opportunities or anticipated savings whether incurred directly or indirectly, or for any indirect or consequential damage whatever either in contract, tort or otherwise (including negligence or breach of statutory duty).
- 24.7 Each provision of this Clause limiting or excluding liability operates separately and survives independently of the others.

## **25 ASSIGNMENT OF RIGHTS AND OBLIGATIONS**

- 25.1 This Interconnection Agreement is personal to the Parties hereto and unless otherwise agreed in writing, and subject to Clause 25.2, no rights, benefits or obligations under this Interconnection Agreement may be assigned, sub-contracted or transferred, in whole or in part, by a Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 25.2 Provided that each Party ("the Sub-Contracting Party") may sub-contract this Interconnection Agreement in whole or in part to an entity under its direct or indirect control ("the Sub-contracted Party") without the consent required under this Clause 25.1, unless the Sub-contracted Party is not in possession of a general authorization under the ECRA, in which case the aforementioned consent of the other Party shall be required.
- 25.3 The Sub-Contracting Party shall promptly give notice to the other Party of any sub-contracting arrangement permitted to be made in accordance with this Clause. Nevertheless, no such notification shall be required in the case of a sub-contracting arrangement which may be made in accordance with this Clause without the other Party's consent, provided that in such cases the Sub-contracting Party shall remain exclusively liable vis-à-vis the other Party for the due and proper performance of all its obligations under this Interconnection Agreement, and provided further that no relationship whatsoever shall be created between the Sub-contracted Party and such other Party.
- 25.4 Without limiting the generality of the foregoing, this Interconnection Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assignees. No assignment shall be valid unless the assignee/successor agrees in writing to be bound by the provisions of this Interconnection Agreement.

## **26 NOTICES**

- 26.1 A notice or other communication required to be given by one Party to the other under this Interconnection Agreement shall be in writing and shall be deemed duly served if:
  - 26.1.1 delivered personally by hand during office hours: at the time of actual delivery;
  - 26.1.2 sent by facsimile: upon its receipt being confirmed, provided that such receipt takes place on a Working Day;
  - 26.1.3 sent by registered post (return receipt to be requested): three (3) Working Days after the day of posting.

26.1.4 Sent by electronic mail: upon receipt in terms of the Electronic Commerce Act (Chap. 426 of the Laws of Malta)

26.2 Except if otherwise specifically provided all notices and other communications relating to this Interconnection Agreement shall be in writing and shall be addressed to:

Operator: [insert Operator details]

Epic: The Chief Executive Officer  
Epic Communications Limited  
Skyparks Business Centre,  
Malta International Airport,  
Luqa  
LQA 4000  
Malta

or to such other designated officials, addresses or facsimile numbers as either Party shall designate by proper notice.

## **27 WORKS**

27.1 All equipment provided by either Party in connection with this Agreement shall remain the property of that Party and shall form part of that Party's System.

27.2 Neither Party shall, and shall procure that none of its employees or agents shall, interfere with the equipment of the other Party.

27.3 If either Party wishes to enter and carry out connection, disconnection or maintenance works (either itself or by means of agents or subcontractors) on the premises of the other Party, the Party wishing to carry out the works shall notify the other Party and obtain the written consent of the other Party for the carrying out of such works prior to entering into the premises and commencing any such work. Such consent shall not be unreasonably withheld or delayed. Where either Party enters the premises of the other Party for the purpose of carrying out any such works: -

27.3.1 it shall comply with the requirements of Schedule 4 (Service Level Agreement) and the Epic Malta Technical Manual;

27.3.2 it shall indemnify the other Party in respect of any loss or damage thereby caused by the other Party including its agents and sub-contractors; and

27.3.3 it shall observe the reasonable requirements of the other Party in respect of health and safety whilst at the premises.

## **28 CREDIT ASSESSMENT AND CREDIT RISK MANAGEMENT**

28.1 Where Epic has reasonable concern about the ability of the Operator to cover debts, including without limitation, where Epic has evidence of a poor payment history or the Operator's credit rating has been downgraded, Epic may require the Operator to enter into a bank or other guarantees (or to provide some other form of financial security, for example a deposit) which in the opinion of Epic is/are appropriate as security against the

Operator's non-compliance with or non-observance of any of the provisions hereof (including failure to pay charges due).

- 28.2 The level of security requested shall be proportional to the risk involved and shall take due account of historic levels of interconnection payments, liability, payment frequency and credit terms.
- 28.3 Refusal to provide such security or failure to provide such security within thirty (30) days (or such longer period as Epic may reasonably allow) of the date of Epic's request for the same shall be deemed to be a breach of this Interconnection Agreement by the Operator.
- 28.4 Any security or guarantee that may be imposed in accordance with Clause 28.1 shall be subject to quarterly review and will be removed or reduced where the security level is no longer justified.
- 28.5 For the avoidance of doubt, if the parties fail to reach agreement on matters relating to credit vetting and/or the amount of the security requested, either Party may request in writing the Authority to determine such matters.

## **29 WAIVER**

- 29.1 A failure to exercise or delay in exercising a right or remedy provided by this Interconnection Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies or in any way affects the validity of this Interconnection Agreement. No single or partial exercise of a right or remedy provided by this Interconnection Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

## **30 SEVERABILITY**

- 30.1 The invalidity, illegality or unenforceability of any Clause of this Interconnection Agreement or part thereof for any reason whatsoever shall not affect the validity, legality or enforceability of the remaining Clauses of this Interconnection Agreement.
- 30.2 If further lawful performance of this Interconnection Agreement or any part hereof shall be rendered impossible by the final judgment 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 forthwith thereupon use their best endeavours to agree on an amendment or amendments to this Interconnection Agreement or on modifications of their practices hereunder in such manner as will fully comply with such judgment or order and render further performance lawful.

## **31 AMENDMENTS**

- 31.1 Save for the Parties' respective Price Lists, amendments and supplements to this Interconnection Agreement shall, in order for them to be valid, have been drawn up in writing, dated and signed by the duly authorised representatives of each Party. Such amendments and supplements shall not affect the validity or enforceability of any of the remaining Clauses of this Interconnection Agreement.
- 31.2 Provided that if such amendments are amendments of the Operations and Maintenance Manual or of the Technical Manual, it is sufficient, in order for them to be valid, that such amendments are drawn up in writing and dated and signed by both Parties.

- 31.3 Any amendments to this Interconnection Agreement pursuant to directives or decisions of the Authority shall be automatically incorporated into any interconnection agreement, shall with immediate effect from the effective date of the directive or decision be deemed to be automatically incorporated into this agreement.

## **32 RIGHTS OF THIRD PARTIES**

- 32.1 Except in the case of any permitted assignment pursuant to Clause 25 this Agreement is made solely and specifically between and for the benefit of the Parties and is not intended to be for the benefit of and shall not be enforceable by any person who is not named at the date of this Interconnection Agreement as a Party to it and neither Party shall be entitled to declare itself a trustee of the rights under it for the benefit of any third party.

## **33 NO PUBLICITY**

- 33.1 Without prejudice to the right of either Party to publish this Agreement or any part of this Agreement in order to comply with any legal or regulatory obligation upon it: -
- 33.1.1 neither Party shall make any press announcements or publicise this Agreement or any part of it in any way except with the written consent of the other Party;
  - 33.1.2 both Parties shall take all reasonable steps to ensure the observance of the provisions of this Interconnection Agreement, including in particular Clause 15 hereof by all their employees, agents, sub-contractors and consultants.

## **34 RELATIONSHIP OF PARTIES**

- 34.1 The relationship between the Parties is that of independent contractors. Nothing in this Interconnection Agreement shall be construed as making either Party hereto an agent, joint venture or partner of or with the other. Neither Party is granted any right of authority or agency, expressly or implicitly, on behalf of, or in the name of, the other, nor any right to legally bind the other in any manner whatsoever. Neither Party shall become liable through any representation, act or omission of the other which is contrary to or unauthorised by the provisions of this Interconnection Agreement.

## **35 COSTS**

- 35.1 Except where this Interconnection Agreement provides otherwise, each Party shall pay its own costs relating to the negotiation, preparation, execution and implementation by it of this Interconnection Agreement and of each document referred to in it.

## **36 DATA PROTECTION:**

- 36.1 The Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 36 shall be construed to be an addition to, and does not relieve, remove or replace, either party's obligations under any applicable Data Protection Legislation. This Clause 36 specifies the data protection obligations of the parties, their employees and or representatives and any third parties acting on their behalf, and applies to all data process by the Parties in connection with the provision of the Services under this Interconnection Agreement.

- 36.2 It is acknowledged that for the purposes of this Agreement, personal data held by either Party shall be held by each Party at all times as Data Controller subject to the terms of this Agreement.
- 36.3 Each party shall, in relation to the sharing of any Personal Data or the processing of such Personal Data in connection with the performance of its obligations under this Agreement and any of its Annexes:
- 36.3.1 comply with the Data Protection Legislation (including without limitation ensuring it has a lawful basis for sharing or processing contemplated by this Agreement);
  - 36.3.2 update its end user agreements and privacy policy as necessary to comply with the Data Protection Legislation relating to, without limitation, the Personal Data that it receives from or transfers to, the other party under this Agreement or any of its annexes;
  - 36.3.3 adhere in all material respects with its end user agreements and privacy policy.
- 36.4 The clauses contained within this Article shall continue to apply until the expiration or termination of the Agreement.

## **37 GOVERNING LAW AND JURISDICTION**

- 37.1 The interpretation, validity and performance of this Interconnection Agreement shall be governed in all respects by Maltese law.
- 37.2 The Parties irrevocably submit to the jurisdiction of the Maltese courts.
- Provided that this Clause shall be without prejudice to any other remedies available to the parties at law, in particular the option to request the Authority to investigate and determine any dispute arising between the Parties.

## **38 PREVIOUS AGREEMENTS**

- 38.1 This Interconnection Agreement shall supersede and prevail over all previous agreements, understandings or commitments made between the Parties or representations made by either Party whether oral or written relating to the subject hereof.

## **39 GOOD FAITH**

- 39.1 Each Party will at all times act in good faith to achieve the objectives of this Interconnection Agreement.

## **40 ENTIRE AGREEMENT**

- 40.1 The provisions of this Interconnection Agreement constitute the entire agreement between the Parties in relation to the subject matter of this Interconnection Agreement, and any previous Interconnection agreements between the Parties shall cease to have effect upon the coming into force of this Interconnection Agreement, subject to any rights that may have already accrued thereon.

**IN WITNESS** WHEREOF THIS AGREEMENT WAS ENTERED INTO THE DAY AND YEAR FIRST ABOVE WRITTEN.





**Signed for and on behalf of Epic:**

\_\_\_\_\_

\_\_\_\_\_

**Name (BLOCK CAPITALS):**

\_\_\_\_\_

**Position:**

\_\_\_\_\_

**Date:**

**Signed for and on behalf of Operator:**

\_\_\_\_\_

\_\_\_\_\_

**Name (BLOCK CAPITALS):**

\_\_\_\_\_

**Position:**

\_\_\_\_\_

**Date:**