

Reference Leased Line Offering

From

Gibtelecom Limited

(Gibtelecom)

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Version Control

Version	Status	Update	Effective Date
1.0	Live	1 st AGREEMENT version. Cleaning all references etc	01/12/17

1. Preface

- 1.1 The Reference Leased Line Offer (“Agreement”), which is presented in the form of a standard contract, deals with specific national Wholesale Leased Line Services which Gibtelecom offers to operators authorised under the Communications Act 2006, operating in the Gibraltar market.
- 1.2 Gibtelecom will not be responsible for the content of data conveyed through its Wholesale Leased Line Service.
- 1.3 This Agreement takes effect from [] and shall continue in effect until superseded by a revised Agreement or is terminated in accordance with the provisions of this Agreement.
- 1.4 Gibtelecom reserves the right to review and to revise this Agreement on a regular basis.
- 1.5 Any revision of the terms of this Agreement shall be subject to clause 22 of the Agreement.
- 1.6 References to legislative provisions herein are to be construed as references to such provisions as the same may be amended from time to time.

WHOLESALE LEASED LINE AGREEMENT

Between

Gibtelecom Limited

and

[]

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This Agreement is made on []

between

[] having its registered office at []
(hereinafter referred to as “**Operator**”)

and

Gibtelecom Limited having its address at 15/21 John Mackintosh Square, Gibraltar (hereinafter referred to as “Gibtelecom”)

1. Introduction

Whereas

- A. The Operator is authorised under the Communications Act 2006 to provide an electronic communications network or electronic communication service in Gibraltar.
- B. Gibtelecom has been designated by the Authority as having Significant Market Power (within the meaning of the Communications Act 2006) and is authorised pursuant to the provisions of the Communications Act 2006.
- C. The Parties entering into this Agreement recognise the necessity of effective provision of quality telecommunications services to their respective customers and that accordingly:
 - a. the Parties should exchange technical information willingly in order to make the provision of Wholesale Leased Line Services effective, without prejudice to commercial confidentiality;
 - b. the Parties should at all times act so as to facilitate the speedy and effective operation of this Agreement, to the benefit of customers and to their mutual advantage;
 - c. in implementing services and facilities under this 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.

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

2. Definitions and Interpretation

- 2.1 In this Agreement, except if the context requires otherwise, words and expressions are as defined in Annex A or Annex C Service Schedule.
- 2.2 References to Acts, Statutory Instruments and other legislation including European Community legislation are to such legislation as amended from time to time, any legislation of which it is a re-enactment and also includes any sub-ordinate legislation made from time to time under that legislation.
- 2.3 Terms defined in relevant European Union legislation concerning the provision of electronic

communications networks and/or services or in consequent Gibraltar implementing legislation (which, for the avoidance of doubt includes Directions and/or Decisions published by the Authority shall, where used in this Agreement, have the meanings ascribed to them in such legislation.

2.4 The following documents form part of this Agreement and, in the event of any inconsistencies between them, the order of precedence shall (unless expressly stated to the contrary) be as follows:

1. Main body of the Agreement including
 - Annex A Definitions
 - Annex B Billing and Payments
 - Annex C Service Schedule
2. Product Description(s)
3. Process Manual(s)
4. Gibtelecom Network Price List
5. Service level Agreement
6. Non-Disclosure Agreement

2.5 This Agreement encompasses and governs all Wholesale Leased Line Services, including, but not limited to, the ordering; provisioning; testing; commissioning and charging of each Wholesale Leased Line Service provided by Gibtelecom over the Gibtelecom Network.

3. Commencement and Duration

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

3.1.1 the Operator ceases to be authorised to provide an electronic communications network or electronic communications service, pursuant to the provisions of the Communications Act 2006; or

3.1.2 termination pursuant to this Agreement.

4. Wholesale Leased Line Services

4.1 The Service Schedule attached at Annex C provides details on the Wholesale Leased Line Services which Gibtelecom will provide under this Agreement.

5. Charging for Wholesale Leased Line Services

5.1 The charging structure and charging levels applicable to the Service Schedule are as published in the Gibtelecom Network Price List on the Gibtelecom website at www.gibtele.com

6. Billing and Payment

6.1 Gibtelecom shall bill the Operator and the Operator shall remit payment to Gibtelecom in accordance with the provisions outlined in Annex B.

6.2 Invoices are payable within thirty (30) calendar days from the date of issue of the invoice.

6.3 Gibtelecom shall provide invoices of all amounts due to it, calculated in accordance with the

provisions of this Agreement, including any associated documents hereof and the Gibtelecom Network Price List.

7. Network Safety and Protection

7.1 Each Party is responsible for the safe operation of its Network and shall take all reasonable and necessary steps in its operation and implementation of this Agreement to ensure that its Network does not:

7.1.1 endanger the safety or health of employees, contractors, agents or customers of the other Party, or

7.1.2 damage, interfere with or cause any deterioration in the operation of the other Party's Network.

7.2 Neither Party shall connect or knowingly permit the connection to its Network of any equipment or apparatus, including, but not limited to, any terminal equipment that is not approved by the relevant approvals authority for attachment to its Network.

8. Provisioning, Operation and Maintenance

8.1 The procedures for the provisioning of the Wholesale Leased Line Services as well as for the continued operation and maintenance thereof shall be as described in the Service Schedule and the associated Product Description, Process Manual and Service level Agreement.

9. Resolution of Disputes

9.1 Each Party shall use its reasonable endeavours to resolve any Disputes between them concerning the implementation, application or interpretation of this Agreement, including those covered by Annex B, in the first instance through negotiation between the Parties through the normal contacts, hereinafter referred to as Level 1.

9.2 In the event of the Parties failing to resolve the Dispute at Level 1 Negotiation within two (2) weeks either Party shall have a right to invoke the dispute procedures specified herein on the service of notice to that effect upon the other Party. The Party serving the notice (the "**Disputing Party**") shall include with such notice all relevant details including the nature and extent of the Dispute.

9.3 Upon service of such notice the Dispute shall be escalated to Level 2. The Parties shall consult at Level 2 in good faith to endeavour to resolve the Dispute.

9.4 If the endeavours of the Parties to resolve the Dispute at Level 2 are not successful within two (2) weeks of escalation of the Dispute to Level 2, either Party may upon service of notice to the other escalate the Dispute for determination by the Authority in accordance with their Dispute Resolution Procedures, hereinafter referred to as Level 3. All relevant details with regard to the nature and extent of the Dispute shall be furnished to the Authority together with a record of matters which have been agreed or not agreed at Levels 1 and 2.

9.5 The name of each Party's liaison contact and representative at each level of consultation shall be as specified in the clause 18. No change to a liaison contact or representative shall be effective until it has been notified to the other Party.

- 9.6 The time limits specified at clauses 9.2 and 9.4 above may be extended by mutual agreement between the Parties.
- 9.7 The above procedures are without prejudice to any rights and remedies that may be available to the Parties in respect of any breach of any provision of this Agreement.
- 9.8 Nothing herein contained shall prevent a Party from:
- (a) seeking (including obtaining or implementing) interlocutory or other immediate or equivalent relief; or
 - (b) automatically referring the dispute to the Authority without recourse to Level 1 or Level 2 Negotiation in accordance with any right (if any) either Party may have to request a determination or other appropriate steps for its resolution. Without prejudice to the foregoing each Party undertakes to avail of the Level 1 and Level 2 procedures set out herein, prior to referring the dispute to the Authority, save in exceptional circumstances.

10. Breach, Suspension and Termination

- 10.1 If the Operator's Network adversely affects the normal operation of the Gibtelecom Network, or is a threat to any person's safety, Gibtelecom 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 the Gibtelecom Network or to reduce the threat to safety.
- 10.2 If either Party is in material breach of this Agreement (for the avoidance of doubt failure to pay an undisputed sum due hereunder constitutes a material breach), the other Party may serve a written notice (the "**Breach Notice**") on the Party in breach specifying the breach and requiring it to be remedied within:
- 10.2.1 thirty (30) calendar days from the date of receipt of such Breach Notice; or
 - 10.2.2 in case of emergency (excluding financial obligations) within such shorter period as the Party not in breach may reasonably specify.
- 10.3 If the Party in breach fails to remedy the breach within such period as may be specified by the Party not in breach pursuant to clause 10.2 the Party not in breach may, until such breach is remedied, suspend performance of such of its obligations under this Agreement as is reasonable in the circumstances.
- 10.4 If the Party in breach fails to remedy the breach within the period stated in the Breach Notice, the other Party may terminate this Agreement on two (2) weeks' written notice provided always that if the Party in breach remedies the breach within such two (2) weeks' notice period, this Agreement shall not terminate as a result of such notice.
- 10.5 Gibtelecom may immediately, without prior notice to the Operator, but without prejudice to any subsisting right of action of Gibtelecom under this Agreement:
- 10.5.1 restrict, suspend or terminate all or any part its obligations under this Agreement or;
 - 10.5.2 terminate this Agreement

if any one or more of the instances listed under sub-clause 10.6 should occur.

10.6 Gibtelecom may take the action set out in sub-clause 10.5 in any one or more of the following instances:

10.6.1 if the Operator is in breach of this Agreement, including the provisions of clause 11 and particularly, but without prejudice to the generality of the foregoing, if the Operator is in persistent late and or non-payment of any charges payable under this Agreement. For the avoidance of doubt, persistent late and or non-payment is defined as the Operator not having settled four out of the twelve preceding invoices (as measured against the issue date of the most current invoice) issued under this Agreement by their respective Due Dates.

10.6.2 if Gibtelecom has evidence of fraud or misconduct by the Operator in connection with the services being provided under this Agreement;

10.6.3 if Gibtelecom has evidence of fraud or misconduct in connection with the services being provided under this Agreement with or without the Operator's knowledge or approval, by any third party whatsoever;

10.6.4 if the Operator negligently or knowingly and with intent to deceive provides Gibtelecom with any false, inaccurate or misleading information;

10.6.5 if a judgement or conviction is made against the Operator, with reference to the business conducted under this Interconnection Agreement.

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

10.7.1 is unable to pay its debts within the meaning of the Companies Act; or

10.7.2 has a Receiver or Examiner appointed or has been subject to an application for the appointment of a Receiver or an Examiner in relation to all or any of its assets or an encumbrancer has taken possession of all or a material part of its assets; or

10.7.3 has an order made or a resolution passed for its winding up (other than for the purpose of amalgamation or reconstruction); or

10.7.4 enters into a voluntary arrangement with creditors under the Companies Act; or

10.7.5 ceases to carry on business.

10.8 In the event the Parties fail to reach agreement on a matter arising pursuant to clause 14.1.2 where the material change removes a regulatory obligation(s) from Gibtelecom in accordance with the terms of clause 14, Gibtelecom shall be entitled to issue a termination notice to take effect in thirty (30) days in respect of that portion of the Agreement (or Wholesale Leased Line Service(s)) which relates to the removal of the regulatory obligation. Any termination notice pursuant to this clause shall not be issued earlier than three (3) months, or such other period as may be agreed between the Parties acting reasonably, from the service of the review notice pursuant to clause 14.1.2.

10.9 Upon termination or expiry of this Agreement each Party shall take such steps and provide such

facilities as are necessary for recovery by the other Party of equipment (if any) supplied by that other Party. Each Party shall use reasonable endeavours to recover equipment made available by it.

- 10.10 If thirty (30) calendar days after the termination or expiry of this Agreement, a Party fails to recover equipment in good condition (fair wear and tear excepted) because of the acts or omissions of the other Party (or a Third Party appearing to have control of a site where such equipment is situated) the first Party may demand reasonable compensation from the other Party which shall be paid by the other Party within ten (10) calendar days of the date of the demand.
- 10.11 Termination of this Agreement shall not be deemed a waiver of a breach of any term or condition of this Agreement and shall be without prejudice to a Party's rights, liabilities or obligations that have accrued prior to such termination.
- 10.12 Notwithstanding the termination or expiry of this Agreement, clauses 10.9, 10.10, 11, 12, 13 and 16 inclusive shall continue in full force and effect for a period of six (6) years from the date of termination unless otherwise agreed by the Parties.
- 10.13 Gibtelecom's right to terminate or suspend performance of this Agreement pursuant to this clause 10 is without prejudice to any other rights or remedies available to either Party. In particular nothing contained herein shall prevent a Party who has been served with a Breach Notice pursuant to clause 10.2 hereof (and who is of the reasonable opinion that no such material breach has occurred) referring the matter to the Authority for determination. The Parties shall use their best endeavours to ensure that the Authority shall determine the issue as expeditiously as possible after hearing submissions and representations from both Parties. The remedies available to the Party alleging a breach under this clause 10 by the other Party shall not be exercised by it pending adjudication on the matter by the Authority.

11. Compliance, Credit Assessment and Credit Risk Management

- 11.1 Prior to its first use of the same and on an on-going basis during the term of this Agreement the Operator shall ensure that it holds all necessary licences, permissions, consents, approvals and authorisations to enter into and carry out its obligations under this Agreement and to authorise its use of the Wholesale Leased Line Services and of any services used or activities conducted in connection with the Wholesale Leased Line Services, whether in or outside Gibraltar.
- 11.2 The Operator warrants, represents and undertakes that it will comply with all applicable Gibraltar and international laws and regulations relating to its business, instructions or guidelines issued from time to time by regulatory and other statutory authorities; relevant licences; and any other codes of practice which apply to the Operator.
- 11.3 The Operator shall provide such evidence of its compliance with 11.1 and 11.2 Gibtelecom may require, which may include but is not limited to the supply of information, documentation and correspondence, providing escorted access to any Operator equipment and/or demonstrating the set-up or configuration of such equipment, such evidence to be provided within five (5) Business Days of any request.
- 11.4 The Operator will not do nor omit to do anything which Gibtelecom reasonably believes to be disreputable, or which is otherwise capable of damaging the reputation or goodwill of Gibtelecom or any of its Affiliates and/or associates.
- 11.5 The Operator acknowledges that Gibtelecom may at any time and from time to time during the

term of this Agreement conduct due diligence in respect of: (i) the financial standing of the Operator; (ii) the ownership of the Operator and of relevant Affiliates; and/or (iii) the activities and behaviour of the Operator and of its Affiliates to the extent that Gibtelecom considers the same is required to protect Gibtelecom's reputation. The Operator shall co-operate with any due diligence exercise and shall provide such information and documentation as Gibtelecom may require (which may include, but not limited to, company profiles; directorships; shareholdings; ultimate beneficiaries; financial statements; and accounts), in each case promptly within five (5) Business Days of request.

- 11.6 It is a condition precedent to this Agreement that the Operator shall provide to Gibtelecom such guarantees as in Gibtelecom's reasonable and fair opinion demonstrates that the Operator is in good financial standing. The operator shall also provide to Gibtelecom such financial security (whether by way of deposit, guarantee or otherwise) as Gibtelecom in its reasonable and fair opinion considers appropriate as proportionate security against the Operator's non-compliance with or non-observance of any of the provisions hereof (including without limitation the failure to pay charges), unless otherwise agreed by Gibtelecom in writing.
- 11.7 Gibtelecom may, at any time, require the Operator to enter into bank or other guarantees or to provide some other form of financial security, (for example a deposit) which in the reasonable and fair opinion of Gibtelecom is/are appropriate as proportionate security against Operator's non-compliance with or non-observance of any of the provisions hereof (including failure to pay charges due). Gibtelecom reserves the right to treat refusal to provide such security or failure to provide such security within thirty (30) days (or such longer period as Gibtelecom may reasonably allow) of the date of Gibtelecom request for the security as a breach of this Agreement by Operator.
- 11.8 The financial security will be subject to quarterly review during the first twenty four (24) months of operation of this Agreement.

12. Confidentiality

- 12.1 The Parties agree to treat as confidential all information defined as such in the Non-Disclosure Agreement.
- 12.2 The contents of this Agreement, either in one or more parts or in its entirety, may not be divulged to any Third Party, with the exception of the Authority under its legal powers, without the written consent of both Parties.

13. Intellectual property rights

- 13.1 Except as expressly otherwise provided in this Agreement, Intellectual Property Rights shall remain the property of the Party creating or owning the same and nothing in this Agreement shall be deemed to confer any assignment or right or title whatsoever or licence of the Intellectual Property Rights of one Party to the other Party, and nothing in this Agreement shall be deemed to restrict the rights of any Party to own, use, enjoy, licence, assign or transfer its own Intellectual Property.

14. Review

- 14.1 Without prejudice to clause 22, a Party may seek to amend this Agreement by serving on the

other a review notice (a “**Review Notice**”) if:

- 14.1.1 either Party's authorisation is materially modified (whether by amendment or replacement); or
 - 14.1.2 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 Gibraltar or the EU; or
 - 14.1.3 a material change occurs, including enforcement action by any regulatory authority, which affects or reasonably could be expected to affect the commercial or technical basis of this Agreement; or
 - 14.1.4 this Agreement is assigned or transferred by the other Party except if prior written consent to the assignment or transfer is not required under clause 17 hereof.
- 14.2 A Review Notice shall set out in reasonable detail the issues to be discussed between the Parties.
- 14.3 On service of a Review Notice, the Parties shall forthwith negotiate in good faith the matters to be resolved with a view to agreeing the relevant amendments to this Agreement.
- 14.4 For the avoidance of doubt, the Parties agree that notwithstanding service of a Review Notice this Agreement shall remain in full force and effect.
- 14.5 Save for a Review Notice served pursuant to clause 14.1.2 where the material change removes a regulatory obligation from Gibtelecom, if the Parties fail to reach Agreement on the subject matter of a Review Notice within three (3) calendar months (the “**Relevant Period**”) in each case from the date of service of such Review Notice, either Party may, not later than one (1) calendar month after the expiration of the Relevant Period, request in writing the Authority to determine:
- 14.5.1 the matters upon which the Parties have failed to agree;
 - 14.5.2 whether this Agreement should be modified to take account of such matters; and, if so
 - 14.5.3 the amendment or amendments to be made.
- 14.6 The Parties shall enter into an Agreement to modify or replace this Agreement in accordance with what is agreed between the Parties to conform to the Authority's determination.
- 14.7 Any failure to reach Agreement on the subject matter of a Review Notice pursuant to clause 14.1.2 where the material change removes a regulatory obligation from Gibtelecom shall be subject to clause 10.8 of this Agreement.
- 14.8 The Parties may, at any time, agree in writing a variation to the time periods specified above in relation to a particular Review Notice.

15. Force Majeure

- 15.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligation

under this Agreement caused by a Force Majeure Event.

- 15.2 The Party initially affected by a Force Majeure Event shall promptly notify the other of the circumstances in question and their effect on the performance of obligations under this Agreement, and the estimated extent and duration of its inability to perform or delay in performing its obligations (“**Force Majeure Event Notification**”).
- 15.3 Upon cessation of the service effects of the Force Majeure Event the Party initially affected by a Force Majeure Event shall promptly notify the other of such cessation.
- 15.4 If as a result of a Force Majeure Event, the performance by the Party, initially affected, of its obligations under this Agreement is affected, such Party shall, subject to the provisions of clause 15.6, perform those of its obligations not affected by a Force Majeure Event. In performing those of its obligations not affected by a Force Majeure Event, the Party initially affected by a Force Majeure Event shall deploy its resources such that (when taken together with other obligations to its customers and Third Parties) there is no undue discrimination against the other Party.
- 15.5 Each Party shall use its reasonable endeavours: (i) to avoid or remove the circumstances constituting Force Majeure, and (ii) to mitigate the effect of the Force Majeure as and when it exists.
- 15.6 To the extent that a Party is prevented as a result of a Force Majeure Event from providing all of the services or facilities to be provided under this Agreement, the other Party shall be released to the equivalent extent from its obligations to take payment for such services or facilities or complying with its obligations in relation thereto.
- 15.7 Following a force Majeure Event Notification and if the effects of such Force Majeure Event continue for:
- 15.7.1 a continuous period of not more than six (6) months from the date of the Force Majeure Event Notification (whether or not notice of cessation has been given pursuant to clause 15.3) any obligation outstanding shall be fulfilled by the Party initially affected by the Force Majeure Event as soon as reasonably possible after the effects of the Force Majeure Event have ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party;
 - 15.7.2 a continuous period of six (6) months or more from the date of the Force Majeure Event Notification (and notice of cessation has not been given pursuant to clause 15.3), the Party receiving the Force Majeure Event Notification shall be entitled (but not obliged) to terminate this Agreement by giving not less than thirty (30) Working Days written notice to the other Party, provided that such notice shall be deemed not to have been given if notice of cessation is received by the Party receiving the force majeure notification prior to the expiry of the thirty (30) Working Days’ notice. If this Agreement is not terminated in accordance with the provisions of this clause 15.7.2, any obligations outstanding shall be fulfilled by the Party initially affected by the force majeure as soon as reasonably possible after the effects of the force majeure have ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party.

16. Limitation of Liability

- 16.1 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 Agreement.

- 16.2 Subject to clause 15.4, if a Party is in breach of any of its obligations under this Agreement to the other Party (excluding obligations arising under this Agreement to pay moneys in the ordinary course of business), or otherwise (including liability for negligence or breach of statutory duty) such Party's liability to the other shall be limited to £1,000,000 (Pounds one million).
- 16.3 Neither Party shall be liable to the other in contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings, wasted expenditure or for any indirect or other consequential loss whatsoever arising in connection with the operation of this Leased Line Agreement, howsoever caused.
- 16.4 Each provision of clause 16 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.

17. Assignment of Rights and Obligations

- 17.1 Unless otherwise agreed in writing, and subject to clause 17.2, no rights, benefits or obligations under this Agreement may be assigned or transferred, in whole or in part, by the Operator without the prior written consent of Gibtelecom. Such consent shall not be unreasonably withheld.
- 17.2 No assignment shall be valid unless the assignee/successor agrees in writing to be bound by the provisions of this Agreement.

18. Notices

- 18.1 A notice shall be duly served if:
- 18.1.1 delivered by hand, at the time of actual delivery;
 - 18.1.2 sent by facsimile, upon its receipt being confirmed;
 - 18.1.3 sent by recorded delivery post, four (4) calendar days after the day of posting.
- 18.2 Except if otherwise specifically provided all notices and other communications relating to this Agreement (Level 1) shall be in writing and shall be sent as follows:

If to the Operator:

Contact,
Address,
Address,
Address,
Telephone
email

If to Gibtelecom:

Dwayne Lara

Corporate & Regulatory Manager
15/21 John Mackintosh Square
Gibraltar
Tel: +350 20052278
Email: dwayne.lara@gibtele.com

or to such other addresses as the Parties may notify from time to time pursuant to this clause 18.

18.3 The level 2 escalation points within the Parties in relation to resolution of Disputes shall be as follows;

If to the Operator:

Contact
Address,
Address,
Address,
Telephone: xxxxxxxxx
email: yyyyyyyyy

If to Gibtelecom:

Director, Technology
15/21 John Mackintosh Square
Gibtelecom
Telephone: +350 20052200

19. Entire Agreement

19.1 This Agreement represents the entire understanding of an Agreement between the Parties in relation to the subject matter of this Agreement, and, unless otherwise agreed in writing, supersedes all previous understandings, commitments, Agreements or representations whatsoever, whether oral or written.

20. Waiver

20.1 The waiver of any breach of, or failure to enforce, any term or condition of this Agreement shall not be construed as a waiver of any other term or condition of this Agreement. No waiver shall be valid unless it is in writing and signed on behalf of the Party making the waiver.

21. Severability

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

22. Amendments

22.1 Amendments and supplements to this Agreement, including its Annexes, Appendices and Service Schedule shall in order for them to be valid, have been drawn up in writing, dated and signed by both Parties. Such amendment and supplements shall not affect the validity or enforceability of any of the remaining provisions of this Agreement.

23. Relationship of Parties

23.1 The relationship between the Parties is that of independent contractors. Nothing in this Agreement shall be construed to make 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 Party 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 Agreement.

24. Governing Law

24.1 The interpretation, validity and performance of this Agreement shall be governed in all respects by the laws of Gibraltar and the Parties submit to the exclusive jurisdiction of the Gibraltar Courts.

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

SIGNED for and on behalf of
Operator:

[SIGNATURE]

[NAME (BLOCK CAPITALS)]

[POSITION]

[DATE]

SIGNED for and on behalf of
Gibtelecom:

[SIGNATURE]

[NAME (BLOCK CAPITALS)]

[POSITION]

[DATE]

ANNEX A

DEFINITIONS

In this Agreement, words and expressions have the following meanings:

“Accessible”	means the locations and addresses at which Gibtelecom currently has the capability, and authorisation, to provide Wholesale Leased Line Services.
“Actual Date of Delivery”	means the date on which Wholesale Leased Line Services actually come into service, following the delivery of a Ready for Service Notice.
“Affiliate”	of a Party means any entity that is now or in the future (i) under the control of such Party; (ii) controls such Party; or (iii) is under the control of a controlling entity referred to in (ii) immediately above.
“Agreement”	means this Agreement between Gibtelecom and the Operator for the purposes of providing Leased Line Services which shall include all the documents listed in clause 2.4 and the associated forms on the Gibtelecom website.
“Associated Company or Associate”	means a Subsidiary and Holding Company of such Party, the terms Subsidiary and Holding Company having the meanings ascribed thereto in the Companies Act or any subsidiary of any such Holding Company.
“Amendment”	shall have the meaning given to it under Clause 22 of the Main Body
“Authorised Operator”	means an undertaking other than Gibtelecom which is authorised to provide electronic communications networks and/or services in Gibraltar.
“Authority”	The Gibraltar Regulatory Authority
“Billing Dispute”	shall have the meaning given to it in paragraph 5 of Annex B.
“Billing Information”	means that information which must be provided by the Billing Party in support of invoices issued under this Agreement as agreed by the Parties to enable the billed Party to validate an invoice.
“Billing Party”	means the Party who is issuing any particular invoice.
“Billing Period”	means the agreed intervals at which billing takes place under this Agreement.
“Breach Notice”	shall have the meaning ascribed to it in clause 10.2

“Commencement Date of Charging”	means the date upon which charging for a Wholesale Leased Line Services commences.
“Default Interest Rate”	means two (2) per cent per month applied to amount in default.
“Disclosing Party”	means a Party disclosing information covered by this Agreement.
“Dispute”	means any disagreement between the Parties in respect of the interpretation or resolution of any provision of this Agreement (excluding breaches of this Agreement).
“Disputing Party”	shall have the meaning ascribed to it in clause 9.2.
“Due Date”	means a date which is thirty (30) calendar days after the date of an invoice.
“Gibtelecom Network”	means the total infrastructure operated by Gibtelecom to provide electronic communications services.
“Gibtelecom Network Price List”	means the price list at www.gibtele.com which sets out the prices applicable to the Wholesale Leased Line Services.
“End User”	means the Operator or the customer of the Operator on whose behalf the Wholesale Leased Line Service is ordered.
"Force Majeure Event"	means any event beyond the reasonable control of a Party, including act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority, compliance with any statutory, regulatory or legal obligation industrial disputes of any kind (whether or not involving either Party's employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, acts or omission of persons for whom neither Party is responsible or any other cause whether similar or dissimilar outside its reasonable control.
“Force Majeure Event Notification”	shall have the meaning ascribed to it in clause 15.2.
“Initial Term”	means the period initially contracted by the Operator, as specified on the relevant Order.
“Intellectual Property”	means any patent, copyright, design, trade, name, trademark, service mark or other intellectual property right (whether registered or not) including without

limitation ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, tracings, diagrams, models and other information relating to any such intellectual property.

- “Leased Line or Wholesale Leased Line”** shall have the meaning ascribed to it in paragraph 1.1 of the Service Schedule

- “Wholesale Leased Line Services or Service”** means the services available under this Agreement, as more particularly set out in the Service Schedule.

- "Main Body"** means clauses 1 through 24 of this Agreement.

- “Non-Disclosure Agreement”** means the non-disclosure Agreement signed between the Parties which is incorporated into this Agreement.

- “Operator”** means the undertaking entering into this Agreement with Gibtelecom.

- “Operator Equipment”** means equipment belonging to or in the possession of the Operator and for which the Operator is wholly responsible.

- “Operator Network”** means the infrastructure operated by the Operator.

- “Order Validation”** shall have the meaning ascribed to it under the Process Manual “

- “Party”** means a party to this Agreement.

- “Premises”** means the premises at which the Wholesale Leased Line Service is to be provided.

- “Product Description”** means the product descriptions at www.gibtele.com which sets out to define the products applicable to the Wholesale Leased Line Services.

- “Ready for Service Notice”** means the notice that may be given by Gibtelecom to the Operator upon commencement of the Service, following Gibtelecom conducting such tests as it deems appropriate to determine that all necessary work has been completed to provide the Wholesale Wholesale Leased Line Service to the Operator

- “Receiving Party”** means a Party who received any information from the other Party in relation to the Wholesale Leased Line Services.

- “Renewal Term”** has the meaning given in clause 5.

“Requested Party”	means the Party who has been requested by the other Party to carry out some activity in relation to the Wholesale Leased Line Services.
“Requesting Party”	means the Party who is requesting the other Party to carry out some activity in relation to the Wholesale Leased Line Services.
“Review Notice”	shall have the meaning ascribed to it in clause 14.1.
“Service Schedule”	means the schedule attached at Annex C which describe the Wholesale Leased Line Services and the basis on which they are provided.
“Third Party”	means any entity or individual other than the Parties to this Agreement.
“Working Day”	means the time between 09:00 - 17.00 on any day other than Saturdays, Sundays or Public Holidays in Gibraltar.

ANNEX B

BILLING AND PAYMENT

INDEX

- 1 Definitions
- 2 Leased Lines, Transport Links and End User Links Billing
- 3 Invoices
- 4 Payment
- 5 Disputes

This Annex B is effective from the date of signature of this Agreement and shall remain in effect until amended following Agreement of the Parties to such amendment.

1. Definitions

- 1.1 In this annex, a reference to a clause or appendix unless stated otherwise, is to a clause or appendix of this annex. Words and expressions have the meaning given in Annex A.

2. Wholesale Leased Line Services Billing

- 2.1 Wholesale Leased Line Services billing shall be carried out in accordance with the charging structure as outlined in the Gibtelecom Network Price List and shall conform to the terms and conditions of this annex.
- 2.2 The Commencement Date of Charging for Wholesale Leased Line Services will be in accordance with the Service Schedule to this Agreement. The Billing Period for Wholesale Leased Line Services shall be monthly commencing on the first day of each month.
- 2.3 Wholesale Leased Line Services billing shall involve an initial invoice for installation costs and rental costs from the Commencement Date of Charging to the start of the next Billing Period. Thereafter invoicing will be monthly in advance.
- 2.4 The Billing Information for Wholesale Leased Line Services shall be based on the information provided for in Table 1 below.

Table 1

CIRCUIT NUMBER	A-END ADDRESS	B-END ADDRESS	CIRCUIT TYPE	CONNECTION FEE	RENTAL

3. Invoices

- 3.1 All charges payable under this Agreement shall be calculated in accordance with this Agreement and at the rates specified from time to time in the Gibtelecom Network Price List. Invoices raised under this Agreement shall be paid in accordance with clause 6 of the Main Body of this Agreement.

- 3.2 For the avoidance of doubt, an invoice shall be dated as of the date of despatch of invoice.
- 3.3 It may be necessary from time to time to issue an additional Invoice or credit note (in accordance with the terms of this Agreement) in order to recover charges arising from the under or over-billing of Wholesale Leased Line Services or as a result of Agreement between the Parties. The issuing Party shall also provide a reasonable level of detail to support the additional invoice or credit note. Such invoices or credit notes may be subject to paragraph 5 of this Annex B in the event of a Dispute.
- 3.4 In the event of undetected errors in the Billing Information which result in either under or over invoicing and payment, either Party may request a review of the Billing Information for any Billing Period within twelve (12) months of the date of the end of that Billing Period. When either Party becomes aware of an error in the process, they must undertake all reasonable endeavours to make the necessary correction and where possible an estimate of the financial impact of these undetected errors should be provided.

4. Payment

- 4.1 Subject as stated below, all charges due by one Party to the other under this Agreement shall be payable by the Due Date.
- 4.2 If, pursuant to paragraph 5.1 of this Annex B, either Party shall have notified the other Party of a Dispute relating to such invoice and such Dispute shall not have been resolved before the Due Date, the Disputing Party shall:
- 4.2.1 pay the total amount of the invoice if the amount in Dispute is less than three (3) per cent of the total amount of the relevant invoice and less than £500 of the total amount invoiced; or
- 4.2.2 be entitled to withhold the disputed amount if it represents three (3) per cent or more of the total amount (excluding VAT) of the relevant invoice or greater than £500 until the dispute is resolved and the balance paid.

Payments above shall be due and payable on the Due Date. The amounts quoted in paragraphs 4.2.1 and 4.2.2 shall be cumulative over any twelve (12) month period in relation to any particular area of dispute.

- 4.3 Notwithstanding notification of a dispute pursuant to paragraphs 5.1 or 5.5 of this Annex B, if a Party fails to pay on the Due Date any amount due under this Agreement, the payee shall pay interest at the Default Interest Rate as at the Due Date or date of the overpayment in respect of any such amount outstanding.
- 4.4 Interest at the Default Interest Rate shall be payable (for late payment) from and including the day after the Due Date. Such interest at the Default Interest Rate shall accrue day by day and shall not be compounded.

5. Billing Disputes

- 5.1 A billing dispute can only be raised where a financial value can be identified as a Dispute and where the Operator maintains, through reasonable comparison methods that their equivalent financial values are different to those contained on the invoice ("**Billing Dispute**"). Financial

values can differ, for example, where, products included and/or rates charged, do not correspond. Any Billing Dispute raised that is not in accordance with the procedures of this paragraph set out below will not be accepted by Gibtelecom and will not be governed by this Annex. Each Party shall use its reasonable endeavours to resolve Billing Disputes.

- 5.2 A Billing Dispute under this Agreement shall be subject to the Dispute resolution provisions of clause 9 of the Main Body.
- 5.3 Subject to the above, all disputed amounts shall be payable on resolution of the relevant Billing Dispute within ten (10) Working Days (together with applicable interest at the Default Interest Rate on any amount withheld by the Disputing Party in the event that Gibtelecom is found not to be at fault). The amount owed and the interest owed on that amount will be billed on separate invoices.
- 5.4 Though it is the good faith intention of the Parties to use the Billing Dispute resolution procedures to the fullest extent to try to resolve Billing Dispute, nothing in this annex shall prevent either Party seeking, obtaining or implementing interlocutory or other immediate relief in respect of any Billing Dispute or referring any matter relating to this Annex or any Billing Dispute arising in relation to this Annex, to the Authority requesting it to make a determination or take other appropriate steps for its resolution.
- 5.5 A formal acceptance of Billing Dispute closure is necessary for the specific Billing Dispute, notwithstanding either Party's right to Dispute other parts of the same invoice.

ANNEX C

INDEX OF WHOLESALE LEASED LINE SERVICES

SERVICE SCHEDULE NUMBER	SERVICE TITLE
001	Wholesale Leased Lines

Annex C

SERVICE SCHEDULE 001

Wholesale Leased Lines

This Service Schedule is effective from the date of signature of this Agreement and/or an Amendment and shall remain in effect until amended following Agreement of the Parties to such amendment or following determination by the Authority.

1. Definitions

1.1 In this Service Schedule, a reference to a paragraph, unless stated otherwise, is to a paragraph of this Service Schedule. Words and expressions have the meanings give in Annex A.

“Wholesale Leased Line” means the telecommunications facility which provides for transparent transmission capacity between network termination points and which do not include on-demand switching (switching functions which the user can control as part of the service provision) as described in the Wholesale Leased Line Product Description;

“Wholesale Leased Line Order Form” or “Order Form” or “Order Request Form” means the order form placed by the Operator requesting a Wholesale Leased Line and which triggers obligations for the Operator and Gibtelecom. The Order Form also designates the Wholesale Leased Line bandwidths available.

1.2 The controlling document is the latest version of the above titled document published on Gibtelecom's website, www.gibtele.com

2. Description of Service

2.1 Service shall consist of a point-to-point Wholesale Leased Line(s) as specified by the Operator in its Order Form. Available bandwidths are as specified from time to time in the Product Description and the charging principles set out in the Gibtelecom Network Price List.

2.2 The Service shall only be provided at locations Accessible to the Gibtelecom Network. At other locations not Accessible to the Gibtelecom Network, it will the Operator’s responsibility to make its own arrangements with third parties.

3. Conditions of Service

3.1 The provisioning and maintenance of Wholesale Leased Lines will be governed by the Process Manual.

3.2 The Wholesale Leased Line shall be provided to the Operator in accordance with the provisioning processes outlined in the Process Manual.

3.3 The provision and service availability of Wholesale Leased Lines shall be subject to the

Wholesale Leased Line SLA.

- 3.4 It is technically impracticable to provide a fault-free Service and Gibtelecom does not undertake to do so. The level of service availability is set out in the Wholesale Leased Line SLA.
- 3.5 The Operator agrees that from time to time it may be necessary for Gibtelecom to temporarily suspend Service on Wholesale Leased Line(s) during periods of repair, essential maintenance or alteration or improvement to Gibtelecom's Network.
- 3.6 Where possible Gibtelecom will give the Operator at least five (5) Working Days' notice prior to such suspension of service on Wholesale Leased Line(s) or as soon as possible after such temporary suspension.
- 3.7 Use of the Wholesale Leased Line may be restricted by Gibtelecom in accordance with applicable law or regulation.
- 3.8 The Operator shall report a fault in accordance with the procedures set out in the Process Manual.
- 3.9 The Operator shall be responsible for providing all the necessary active equipment and ports to connect the Operator's infrastructure to the Wholesale Leased Lines Service.

4. Wholesale Leased Line Charging

- 4.1 The charges and/or charging principles for Wholesale Leased Lines are as set out in the Gibtelecom Network Price List.
- 4.2 Gibtelecom shall be entitled to invoice the Operator and the Operator shall be obligated to pay for a Wholesale Leased Line from the Commencement Date of Charging. The Commencement Date of Charging shall be the Actual Date of Delivery. Rental charges shall be payable monthly in advance. Other charges shall be applied as set out in the Gibtelecom Network Price List,
- 4.3 In the event the Operator cancels an order for a Wholesale Leased Line following Order Validation and prior to the Commencement Date of Charging, Gibtelecom shall be entitled to invoice the Operator for the Connection Charges as set out in the Gibtelecom Network Price List.
- 4.4 The Operator shall be liable for charges associated with the Service Term as set out in clause 5, even if the Operator issues a termination request in accordance with sub-clause 5.2.
- 4.5 In the event that a Wholesale Leased Line is upgraded to a higher available bandwidth the charging for the original Wholesale Leased Line shall cease from the date of conversion and the charging for the new Wholesale Leased Line shall commence from that same date. A downgrade of a Wholesale Leased Line to a lower available bandwidth can only be requested during, and in accordance with, the termination period and requirements set out in sub-clause 5.2

5. Term

- 5.1 The period of service, and consequent charges, for any Wholesale Leased Line shall continue for the Initial Term and thereafter automatically for recurring periods of twelve (12) months (each a "Renewal Term") in each case subject to earlier termination in accordance with sub-clause 5.2.

- 5.2 In the event that the termination of a Wholesale Leased Line service is required, the Operator shall give to Gibtelecom at least three months' written notice before the end of the Initial Term or each Renewal Term, as the case may be. For the avoidance of doubt, the charges related to the Initial Term or Renewal Term, shall continue until the end of each respective Term.
- 5.3 Where the Operator requests to upgrade the Wholesale Leased Line to a higher available bandwidth and such request is delivered, a new Initial Term (and subsequent Renewal Term(s)) will apply to the upgraded Wholesale Leased Line.
- 5.4 Where the Operator requests to downgrade the Leased Line to a lower available bandwidth and such request is delivered, a new Initial Term (and subsequent Renewal Term(s)) will apply to the downgraded Leased Line, subject to the termination requirements set out in sub-clause 5.2.