

REFERENCE INTERCONNECT OFFER

INTERCONNECTION AGREEMENT BETWEEN VIDEOCON d2h LIMITED AND BROADCASTER FOR CARRIAGE OF CHANNEL/S ON DIRECT TO HOME PLATFORM OF VIDEOCON d2h LIMITED (IN TERMS OF THE TELECOMMUNICATION (BROADCASTING AND CABLE,) SERVICES INTERCONNECTION (ADDRESSABLE SYSTEMS) REGULATIONS, 2017

This Reference Interconnect Offer (**'Agreement'**) along with its Schedules and Annexure is executed on this _____ day of _____ 201_ by and between:

Videocon d2h Limited, a company incorporated under the Companies Act, 1956, and having its Office at Plot No.1D, Udyog Vihar, Industrial Area, Greater Noida, District: Gautam Budh Nagar,(U.P)–201301 and Corporate Office at 1st Floor, Techweb Centre, New Link Road, Oshiwara, Mumbai – 400 102, India (hereinafter referred to as "**VDL**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its acquiring entity, associate companies, subsidiaries, successors in business and permitted assigns) of the First Part;

AND

_____, through its Authorized Signatory, hereinafter referred to as the "**Broadcaster**", which expression shall unless repugnant to the context or meaning thereof, be deemed to include its successors-in business, permitted assignees, of the Other Part.

VDL and the **Broadcaster** are hereinafter individually referred to as '**Party**' and collectively referred to as "**Parties**".

WHEREAS VDL operates a DTH (Direct-To-Home) platform;

AND WHEREAS the Broadcaster is inter alia engaged in the business of providing content/transmitting television channel under a valid and subsisting permission from the Ministry of Information and Broadcasting;

AND WHEREAS the Broadcaster has obtained necessary permission for uplinking and downlinking the channel in India (copy of which shall be provided to VDL by the Broadcaster).

AND WHEREAS the Broadcaster is desirous to access the DTH platform of VDL for the purpose of distribution of its Channel (as defined herein-below) in India in accordance with the applicable regulations and terms and conditions which govern such provision;

AND WHEREAS VDL has agreed to distribute the Channel(s) of the Broadcaster, as described in this Agreement, on the terms and conditions of this Agreement.

AND WHEREAS the Parties have agreed to record the terms under which the Broadcaster's content shall be carried on the VDL platform of VDL.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the Parties agree as follows: -

1. **DEFINITIONS AND INTERPRETATIONS**

1.1 In this Agreement, unless the context otherwise requires, the following words shall have the meaning ascribed thereto when used in capitalized form elsewhere in this Agreement:

- (a) **"Agreement" or "This Agreement"** means this Distribution Agreement together with its Schedules and Annexure as may be amended from time to time.
- (b) **"Subscriber"** means any person or entity including Hotels, restaurants, clubs, institutions etc. which has officially subscribed to the DTH services of VDL in accordance the Subscription form duly filled by it and is contractually bound by the Subscriber T&C and does not include any third party using/seeking to use the said service for further distribution, re-sale or commercial purpose.
- (c) **"Direct to Home service" or DTH service"** means re-transmission of signals of television channels, by using a satellite system, directly to subscriber's premises without passing through an intermediary such as local cable operator or any other distributor of television channels.
- (d) **"VDL Platform"** means the DTH network of VDL through which DTH services are being provided to the Subscribers of VDL.
- (e) **"Intellectual Property Rights"** means all intellectual property rights owned and licensed, to be owned and licensed by the Broadcaster and/or the Channel owners including but not limited to any patent, copyright, trademark or any mark, any right in the nature of the aforementioned rights, trade secrets, rights of attribution, integrity and similarly afforded "moral rights," rights in unpatented know-how, inventions and technology, and any other intellectual or proprietary rights of any nature whatsoever in any part of the world,
- (f) **"Satellite"** means the satellites used for up linking or down linking or operating DTH services.
- (g) **"Set Top Box" or "STB"** means a device, which is connected to or is part of a television receiver and which enables a subscriber to view subscribed channels
- (h) **"Territory/Target Market"** shall mean geographical region of the Republic of India.

2. **DESCRIPTION OF CHANNEL:**

DESCRIPTION OF THE CHANNEL

3. **RIGHTS GRANTED**

3.1. Subject to the provisions hereof, the Broadcaster grants to VDL, the non-exclusive right during the term of this Agreement:

- a. to receive;
- b. to decrypt, turnaround, encrypt (without interfering in its contents) either itself or through the Associate Company(ies), subsidiaries and acquiring entity;
- c. to redistribute/transmit the Channel through VDL's DTH platform in, for reception by the Subscribers through STB as per their request and choice which may or may not have storage capacity;
- d. to sell/market the channel(s) on a la carte basis or as an add on or a top up or as part of any one or more of the packages of channels; and
- e. to charge a subscription fee as decided by VDL from Subscriber subscribing to the channel or package of channels including channel(s) owned by the Broadcaster.

4. **RATE OF CARRIAGE FEE AND MANNER OF CALCULATION:**

4.1. Rate of carriage fee:

- a. The rate of carriage fee per standard definition channel per subscriber per month to be paid by the Broadcaster to VDL shall be twenty paisa plus applicable taxes;
- b. The rate of carriage fee per high definition channel per subscriber per month to be paid by the Broadcaster to VDL shall be forty paisa plus applicable taxes;

4.2. Manner of calculation of carriage fee: The manner of calculation of carriage fee payable by the Broadcaster to VDL is provided in Annexure A of this Agreement.

4.3. The manner of payment of carriage fee by Broadcaster to VDL will be based on the invoice raised by VDL every month as per Annexure A of this Agreement, payable on or before the 7th day of subsequent month. Any delay in such payment by the Broadcaster shall entail an interest at the rate of 18% per annum.

5. **OBLIGATIONS OF THE BROADCASTER:**

5.1. The Broadcaster hereby grants to VDL, the non-exclusive re-distribution rights to the Channel during the Term of this Agreement to receive, decrypt, turnaround, encrypt (without interfering with its content) and to redistribute/broadcast the Channel via the DTH services, to all its subscribers in a securely encrypted manner without interruption, editing, interference or alteration, except as necessary in relation to the platform's EPG, Interactive guide, platform functionality and related services.

5.2. Broadcaster shall ensure continuous transmission of the Channel on a 24x7 basis with an uptime of 99.5%. In case, the transmission of the Channel is not available for a continuous period of more than 24 hours in a month, then VDL shall be entitled to

take such steps which are in the interest of the subscribers of the DTH services and also not in prejudice to the interest of Broadcaster.

- 5.3. The Broadcaster acknowledges that the execution of this Agreement and the carriage of the Channel on VDL's Platform is conditional upon Broadcaster providing to VDL certified true copy(s) of the following documents namely: Broadcaster's Channel license, Uplinking and Downlinking licenses issued by Ministry of Information and Broadcasting ("MIB") along-with copy of the teleport agreement and any other document as required by VDL in order to ascertain the technical requisites before confirmation of date of launch of the Channel by VDL on its Platform.
- 5.4. Broadcaster shall provide 2 Viewing Cards (VC) and required PIRD (Professional Integrated Receiver Decoders or CAM Modules (CAM) of the Channel to VDL to enable down-linking of the same. The VC & PIRD/CAM shall be and remain the property of the Broadcaster. In case of defect in any VC & PIRD/CAM, Broadcaster shall arrange to replace the same within 72 hours of receiving notice from VDL.
- 5.5. In the event Broadcaster desires to change the Name, Genre, Type of Content, Language and Quality of the Content transmitted on the FTA/Pay Channel then it shall give prior written notice of at least forty five (45) days to VDL.
- 5.6. If the Broadcaster decides to convert FTA channel into Pay channel or Pay channel into FTA channel then the Broadcaster shall continue to provide such converted channel to VDL in terms of this Agreement and continue to pay the Carriage Fee agreed hereunder till the expiry of the Term and/or till such mutually extended Term thereafter.
- 5.7. If the Broadcaster decides to convert Standard Definition ("SD") channel into High Definition ("HD") channel or vice versa then the Broadcaster shall continue to provide such converted channel to VDL in terms of this Agreement and continue to pay the Carriage Fee agreed hereunder till the expiry of the Term and/or till such mutually extended Term thereafter.
- 5.8. Broadcaster shall be responsible to obtain all necessary rights, permissions, public performance license or any other licenses from all third parties including but not limited to Indian Performing Rights Society Limited, Phonographic Performance Limited and / or copyright owners and / or societies, trade unions, guilds, associations (collectively referred to as "Right Holders") that may be required to enable VDL to exploit the content on the Channel/s or otherwise including without limitation all underlying works in all literary, dramatic or musical materials written or composed for use in the content.
- 5.9. In the event any notices, demand or claims are raised in connection with the Channel or content thereof, the Broadcaster shall be liable, at its own costs, to promptly and diligently settle such notices, demands and claims. In case of breach of this Clause 5.4 by the Broadcaster, Broadcaster shall indemnify VDL and make the losses good. It is agreed that for all payments such as royalties the Broadcaster shall be solely

responsible and liable and VDL shall always stand indemnified in this regard by the Broadcaster.

5.10. The Broadcaster shall not disconnect the signals of TV Channels, without giving three weeks' notice to VDL clearly specifying the reasons for the proposed disconnection as envisaged in the Interconnection Regulation. However the Broadcaster shall be under obligation to pay the Carriage Fee under this Agreement to VDL in its entirety.

6. **TERM OF THE AGREEMENT:**

The Agreement shall commence on ___[dd/mm/yyyy] and remain in force till ___[dd/mm/yyyy], unless terminated by either Party as per the terms and conditions of this Agreement.

7. **TERMINATION OF THE AGREEMENT:**

7.1. Either Party has a right to terminate the Agreement by serving an advance notice of 21 days in writing to the other Party in the event of:-

- (i) material breach of the Agreement by the other Party which has not been cured within 15 days of being required in writing to do so; or
- (ii) the bankruptcy, insolvency or appointment of receiver over the assets of other Party; or

7.2. This Agreement may be terminated by VDL in case the parties fail to enter into new interconnection agreement at least 30 days before the expiry of the existing interconnection agreement, the distributor of television channels may not carry such television channels on expiry of the existing interconnection agreement

7.3. If the Broadcaster does not comply with the Applicable laws/regulations/codes, including but not limited to the Advertisement Code, Programme Code as prescribed in the Cable Television Networks Act 1995, VDL shall be at liberty to immediately discontinue the Channel from its DTH platform and terminate the Agreement. It is clarified that in such a situation, the Broadcaster shall be fully liable for such defaults/non-compliance and shall indemnify VDL for all the cost and consequences arising therefrom.

7.4. If the Broadcaster decides to discontinue the business of distribution of TV channels in the Territory for any reason, it shall give a notice in writing, specifying the reasons for such decision, to VDL at least 90 days prior to such discontinuation.

7.5. If VDL decides to discontinue its business of providing signals of TV channels to the subscriber in the territory, it shall give a notice in writing, specifying the reasons for such decision, to the Broadcaster at least 90 days prior to such discontinuation.

7.6. Notwithstanding any contained elsewhere in this Agreement, it shall be permissible to VDL to discontinue carrying of a television channel in terms of the applicable regulation, in case the monthly subscription percentage for the Channel is less than five percent of the monthly average active subscriber base of VDL in the target market in each of the immediately preceding six consecutive months.

8. **EFFECT OF TERMINATION AND EXPIRY:** In the event of termination or expiry of the term of the Agreement, as the case may be, at the instance of either Party, Broadcaster shall pay to VDL all amounts due and payable up to the date of termination or expiry and VDL shall be entitled to not to carry the Channel on its DTH platform.
9. **RIGHTS OF VDL:**
- 9.1. VDL shall have the right to finalize the distribution retail price of each channel, as payable by the subscriber in compliance with the provisions of applicable laws and rules, regulations and tariff orders and the Broadcasters shall have no objection thereto.
- 9.2. VDL shall have the right to package the channels offered on the network, as per its business plan and as per prevailing norms, policies, the applicable laws and rules, regulations and tariff orders and the Broadcasters shall have no objection thereto.
- 9.3. VDL shall have the right to finalize the rates of bouquets of channels, if offered by the Broadcaster, in compliance with the provisions of the applicable tariff orders and regulations notified by the Authority.
- 9.4. VDL shall have the right to get all requisite information from the Broadcaster for the purpose of fulfilling its responsibilities under the Agreement, and the applicable orders and regulations.
10. **RIGHT OF THE BROADCASTER:** The Broadcaster shall have right to get all the requisite information from VDL for the purpose of fulfilling its responsibilities under the Agreement, and the applicable orders and regulations.
11. **REPRESENTATION AND WARRANTY OF THE BROADCASTER:**
- 11.1. The Broadcaster hereby agrees, represents, warrants and covenants that: -
- a. It has requisite power and authority to enter into this Agreement and to fully perform respective obligation hereunder;
- b. The content of the Channel shall be in compliance with all the laws which are applicable for Content in television channels including but not limited to Advertisement Code, Programme Code as prescribed in the Cable Television Networks Act 1995, all Regulations made applicable to broadcasters by any Governmental authority.
- c. It is in compliance of and shall always comply with the provisions of the Applicable regulations including but not limited to the requirements of transparency and non-discrimination and if the Broadcaster, at any time during the Term of this Agreement, offers a better arrangement to any other distributor of TV channel for carriage of the Channels on their distribution platform including but not limited to payment of any sum in any other form and nomenclature, the Broadcaster shall immediately offer the same to VDL and the

terms of this Agreement shall change accordingly if VDL so chooses to accept such offer.

11.2. The Parties represent to each other that each warranty which is set out in this Article or which could be treated as a separate warranty shall be construed independently of any other. Each of the warranties is a separate and independent warranty, representation and undertaking and the rights of the Broadcaster under, and the meaning given to, any one such warranty shall not be restricted by reference to any other warranty.

12. **INDEMNIFICATION & LIMITATION ON LIABILITY:**

12.1. Broadcaster shall indemnify, defend and hold harmless VDL and its officers, directors, employees, and agents against and from any and all third party claims, lawsuits, costs, liabilities, judgments, damages and expenses (including, without limitation, reasonable attorneys' fees) arising out of or in connection with:

- (i) Breach of any of the warranties and representations provided by Broadcaster, other provisions of this Agreement, applicable laws, rules, regulations and Codes such as Programming and Advertising Codes etc.,
- (ii) The distribution by VDL of the Channel through the DTH services, in accordance with the terms of this Agreement which if results in a violation of the rights of any third party, including any intellectual property rights.

12.2. Under no circumstances shall either Party be liable to the other for any indirect, special or consequential loss or damages arising under this Agreement.

13. **CONFIDENTIALITY:**

13.1. VDL and the Broadcaster will keep in confidence any information of a confidential nature obtained under this Contract and will not divulge it to any person (other than their employees who need to know the information and subject to their employer making them fully aware of and causing them to comply with the provisions of this Article) without the consent of the other party.

13.2. Article 13.1 will not apply to:

- a. Information in the public domain otherwise than in breach of this Contract;
- b. Information in the possession of the receiving party prior to its disclosure to them under the terms of this Contract;
- c. Information obtained from a third party who is free to divulge it;
- d. Information which is independently developed by the receiving party without any breach of confidentiality under this Contract or otherwise; or
- e. Disclosure of information as required by a court of law or other competent authority.

14. **AMENDMENT:** No amendment to this Agreement will be valid unless confirmed mutually by the parties to this Agreement.

15. **FORCE MAJEURE:** Failure on the part of the either party to perform any of its obligations shall not entitle the other party to raise any claim against the either party or be a breach hereunder to the extent that such failure arises from an event of force Majeure. If through force Majeure the fulfillment by either party of any obligation set forth in this Agreement will be delayed, the period of such delay will not be counted on in computing periods prescribed by this Agreement. Force Majeure will include any war, civil commotion, governmental action, accident, epidemic or any other event of any nature or kind whatsoever beyond the control of the either party. It is agreed between the Parties that lack of funds shall not in any event constitute or be considered an event of force Majeure. If the condition of force Majeure shall continue for a period exceeding sixty (60) days, then the Parties shall meet to decide upon the future performance of the Agreement. If the Parties are unable to agree upon a plan for future performance then the Agreement shall be terminated upon notice of either party to the other, on the thirtieth day after the notice is given.
16. **SEVERANCE:** In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications of the same are received by either of the parties from any relevant competent authority, the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or it may be severed from this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect unless the parties to this agreement decide that the effect of such declaration is to defeat the original intention of the parties in which event either Party to this Agreement shall be entitled to terminate this Agreement by 30 days' notice to the other Party and the provisions of this agreement shall apply accordingly.
17. **ENTIRE AGREEMENT:** The Parties to this Agreement acknowledge that this Agreement contain[s] the whole agreement between the parties and it either Party has not relied upon any oral or written representations made to it by either party or its employees or agents and has made its own independent investigations into all matters relevant to the Business. This Agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the Commencement Date but without prejudice to any rights, which have already accrued to either of the parties
18. **NOTICES:** Any Notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post or by telex/Fax/E-mail at the Notice Address as given below and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by telex/Fax or by electronic mail to the correct telex number (with correct answerback) of the addressee.

To VDL:
Videocon d2h Limited

To the Broadcaster:

1st Floor, Techweb Centre,
New Link Road, Oshiwara,
Mumbai – 400 102, India

Attention:
Phone:
E-mail:
Fax:

Attention:
Phone:
E-mail:
Fax:

Details of the person to be contacted for interconnection request and grievance redressal thereof are mentioned in **Annexure B**.

19. **NO PARTNERSHIP:** The parties are not partners nor joint ventures nor shall VDL act as an agent of Broadcaster. Either of the party shall not attempt to incur any liability on behalf of the other party and shall not hold itself out to any third party as being able to do so.
20. **WAIVER:** The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement
21. **APPLICABLE LAW, JURISDICTION, DISPUTE RESOLUTION:**
- 21.1. This Agreement shall be construed and the legal relations between the Parties hereto shall be determined and governed according to the laws of India and the Courts of Delhi shall have sole jurisdiction. All disputes, difference or disagreement arising out of, in connection with or in relation to this Agreement shall be mutually discussed and settled between the Parties. The parties acknowledge that TDSAT shall have exclusive jurisdiction in respect of any dispute between the parties, arising out of, in connection with or as a result of the Agreement.
- 21.2. It is clearly understood and agreed that the provisions of the TRAI Act & Regulations made there under, from time to time, and any regulation / policy laid down by Ministry of Information and Broadcasting, India from time to time shall be completely applicable to the present Agreement and none of the clauses contained herein shall be interpreted in a manner as may be in derogation of the said provisions and Regulations.

IN WITNESS WHEREOF, the parties have set their hands and seals to this Agreement in the presence of the below stated witnesses

For VDL INDIA LIMITED

For _____

By: _____

By: _____

Name:

Name:

Title:

Title:

WITNESS:

WITNESS:

Web Copy - Not for execution

ANNEXURE - A

Calculation of the carriage fee amount.

The carriage fee amount, for each month or part thereof, during the term of the interconnection agreement shall be calculated as given below:-

Sl.	Calculation of the carriage fee amount
1	If monthly subscription for the Channel in the Target Market is less than five percent of the average active subscriber base of VDL in that month in the Target Market, then the carriage fee amount shall be equal to the rate of carriage fee of the Channel per subscriber per month, as provided in Clause 4 of this Agreement, multiplied by the average active subscriber base of VDL in that month in the Target Market.
2	If monthly subscription for the Channel in the Target Market is greater than or equal to five percent but less than ten percent of the average active subscriber base of VDL in that month in the Target Market, then the carriage fee amount shall be equal to the rate of carriage fee of the Channels per subscriber per month, as provided in Clause 4, multiplied by 0.75 times of the average active subscriber base of VDL in that month in the Target Market.
3	If monthly subscription for the Channel in the Target Market is greater than or equal to ten percent but less than fifteen percent of the average active subscriber base of VDL in that month in the Target Market, then the carriage fee amount shall be equal to the rate of carriage fee of the Channel per subscriber per month, as provided in Clause 4, multiplied by 0.5 times of the average active subscriber base of VDL in that month in the Target Market.
4	If monthly subscription for the Channel in the Target Market is greater than or equal to fifteen percent but less than twenty percent of the average active subscriber base of VDL in that month in the Target Market, then the carriage fee amount shall be equal to the rate of carriage fee of the Channel per subscriber per month, as provided in Clause 4, multiplied by 0.25 times of the average active subscriber base of VDL in that month in the Target Market.
5	If monthly subscription for the Channel in the Target Market is greater than or equal to twenty percent of the average active subscriber base of VDL in that month in the Target Market, then the carriage fee amount shall be equal to 'Nil'.

Note:-

- (1) For the purpose of calculation of carriage fee amount for a high definition channel, the average active subscriber base of VDL in that month in the Target Market shall be of the Subscribers capable of receiving high definition television channels.
- (2) The average active subscriber base of VDL in a month shall be calculated in the manner as prescribed in the Schedule VII of ‘The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017’ or any amendment thereto.
- (3) The monthly subscription for the Channel shall be calculated in the manner as prescribed in the Schedule VII of ‘The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017’ or any amendment thereto.
- (4) The Illustration-I (for standard definition channel) and Illustration-II (for high definition channels) given below explains the calculation of carriage fee amount:-

ILLUSTRATION-I

Suppose a distributor of television channels has an agreement with a broadcaster for carriage of a standard definition channel called ‘X’ at the rate of Rs. 0.20 per subscriber per month. The carriage fee amount payable by the broadcaster to the distributor would be calculated as follows:-

Month	Average Active Subscriber Base over the month	Monthly subscription percentage of the standard definition Channel ‘X’	Rate of Carriage Fee (in Paisa)	Multiplier	Carriage Fee Amount in (Rs.)
(A)	(B)	(C)	(D)	(E)	(F)=(B)x(D)x(E)
January	1000	4%	20	1	200.00
February	800	8%	20	0.75	120.00
March	1500	12%	20	0.50	150.00
April	2000	19%	20	0.25	100.00
May	3000	20%	20	0	0.00
June	4000	22%	20	0	0.00
July	10000	17%	20	0.25	500.00
August	20000	25%	20	0	0.00

ILLUSTRATION- II

Suppose a distributor of television channels has an agreement with a broadcaster for carriage of a high definition channel called 'Y' at a rate of Rs. 0.40 per subscriber per month then the carriage fee amount payable by the broadcaster to the distributor would be calculated as follows:-

Month	Average Active Subscriber Base, of high definition STBs, over the month	Monthly subscription percentage of the high definition Channel 'Y'	Rate of Carriage Fee (in paisa)	Multiplier	Carriage Fee Amount in (Rs.)
(A)	(B)	(C)	(D)	(E)	(F)=(B)x(D)x(E)
January	100	2%	40	1	40.00
February	80	5%	40	0.75	24.00
March	150	11%	40	0.50	30.00
April	160	16%	40	0.25	16.00
May	180	20%	40	0	0.00
June	200	22%	40	0	0.00
July	190	17%	40	0.25	19.00
August	170	25%	40	0	0.00

ANNEXURE - B

Details of the person to be contacted for interconnection request and grievance redressal thereof:

1. Name: Mr. Gajanfar A Khan
2. Telephone Numbers: 022 - 42555000
3. E-mail addresses: gajanfar.khan@d2h.com

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