

**TERMS AND CONDITIONS  
OF CONTRACT FOR SERVICES**

**The Department of Enterprise, Trade and Investment**

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This **Contract** is made the 7<sup>th</sup> day of April 2004.

**BETWEEN:**

The **DEPARTMENT OF ENTERPRISE TRADE AND INVESTMENT NORTHERN IRELAND** of Netherleigh, Massey Avenue, Belfast (being the Contracting Authority and hereafter called the "Department" which expression shall include its successors and assigns) of the one part and

**BRITISH TELECOMMUNICATIONS plc** of 81 Newgate Street, London England EC1A 7AJ (hereinafter called "the Contractor" which expression shall include its successors and permitted assigns) of the other part.

(herein singularly referred to as a "Party" or collectively "Parties")

**Background**

1. By the ITN (as hereafter defined) the Department invited tenders from prospective service providers to provide the Services (as hereafter defined).
2. A number of tenders were submitted, one of which was that of the Contractor.
3. After evaluation of all tenders in accordance with the terms of the ITN, the response (as hereafter defined) of the Contractor was selected for further negotiations in accordance with the provisions of the ITN and which were successfully concluded.
4. One of the requirements of the ITN was that the successful bidder would enter into this Contract which the parties hereto have agreed to do subject to and upon the terms and conditions hereinafter set forth.

**IT IS HEREBY AGREED AS FOLLOWS:-**

**1. DEFINITIONS AND INTERPRETATION**

**1.1** In this Contract and the Schedules hereto, save where the context so admits or requires, the following definitions shall have the following meanings:

**"Acceptance"** shall mean confirmation in writing by the Department that the Coverage from Services in accordance with the Milestones and permitting any Payment (hereafter defined) to be made has been accepted by the Department;

**"Authorised Representative"** shall mean the representative or representatives nominated from time to time by the Department in connection with this Contract or with respect to examination of any records and subject to Clause 6.1.15, by an appropriate independent competent person.

**"Approved Form"** shall mean in relation to any deed or document that form which shall be approved by or on behalf of the Department;

**“Commencement Date”** shall mean the 7<sup>th</sup> day of April 2004.

**“Competent Authority”** shall mean any local or national or supra-national agency, commission, authority, department, inspectorate, ministry, official or public or statutory person (whether autonomous or not) of the Government of Northern Ireland or of the Government of the United Kingdom or of the European Union and where the context so admits or requires shall include the Department but shall not include any court or tribunal of competent jurisdiction;

**“Contract”** shall, subject to Clause 1.2.12, mean the ITN (Appendix 1), the Response (as hereafter defined) (Appendix 2), this Contract (including the Schedules attached hereto), operational requirements and drawings (Appendix 3), if any, the Payments (as hereafter defined) and where the context so admits or requires any one or more of them or any part or parts thereof;

**“Coverage”** shall mean the coverage which the Contractor shall provide in accordance with the Milestones in the provision of the Services and more particularly described in the First Schedule hereto;

**“Directive”** shall mean any present or future legislation, statutory instrument, regulation, directive, requirement, instruction, direction or rule of any Competent Authority binding on either or both of the Department and the Contractor and shall include any modification, extension or replacement thereof then in force;

**“End Users”** shall mean those businesses and households who contract with the Contractor for the Services;

**“End User Prices”** shall mean those prices which the Contractor shall charge End Users for the provision of the Services and more particularly set out in the Second Schedule hereto;

**“End User Terms and Conditions”** shall mean those terms and conditions upon which the Contractor shall provide the Services to End Users and more particularly set out in the Third Schedule hereto;

**“Equipment”** shall mean all materials, plant, equipment, hardware, software, applications and all other peripheral items to be used by the Contractor in the provision of the Services and where the context so admits or requires any part or parts thereof;

**“ERDF Regulations”** shall mean the following EU regulations:

Regulation 1260/1999 (General Regulation);  
Regulation 1159/2000 (Publicity and Information);  
Regulation 1145/2003 (Eligible Expenditure Regulation);  
Regulation 438/2002 (Control & Management Systems);  
Regulation 2355/2002 amending Regulation 438/2002; and  
any national measures giving further and better effect thereto.

**“ITN”** shall mean the Invitation To Negotiate dated the 13<sup>th</sup> day of October 2003 issued by the Department for the provision of the Services and shall include all additional materials and

conditions which may be issued or approved by the Department in connection therewith as part of the process;

**“Legal Requirements”** shall mean in relation to a Party in question any of the following:

- (a) any legislation or statutory instruments or order made thereunder
- (b) any European Union or international Statute, Regulation, directive, Decision or other legal requirement or obligation
- (c) any Relevant Consent (as hereafter defined)
- (d) any Directive
- (e) any requirement imposed by any industry code, (other than a code which the Contractor has reasonably refused to be bound). European national or equivalent international standards
- (f) any interpretation of law or finding contained in any judgment given by a court or tribunal of competent jurisdiction in respect of which the period for making an appeal has expired which requires any Legal Requirement falling within subparagraphs (b) or (c) above to have effect in a way different to that in which it previously had effect, other than in relation to the health or safety of persons at work;

**“Milestones”** mean those specific dates set out in the Programme (as hereafter defined) in respect of which the Contractor must achieve full compliance;

**“Other Service Providers”** shall mean such other service providers who wish to provide the Services;

**“Payments”** shall mean the payments to be made by the Department to the Contractor in accordance with Clause 12 and the Fifth Schedule hereto and where the context so admits or requires shall include any part or parts thereof;

**“Programme”** shall mean the agreed programme for the roll out and provision of the Services;

**“Relevant Consent(s)”** means all consents, permissions, approvals, authorizations, certificates licences, permits, exemptions, filings, registrations, notarisations and other matters, official or otherwise, which are required (or which would, in accordance with prudent utility practice, normally be obtained) in connection with the right to commence, carry out, test, maintain, complete and bring into operation the Services and the exercise of rights or discharge of obligations under this Contract (including advice that there is no objection to a particular proposal or that a particular proposal is not inconsistent with policy or guidelines), of or from a Competent Authority and, where a Competent Authority is authorized to prohibit a proposal the passing of the time limit for such prohibition without the proposal being prohibited. Without limiting the foregoing, Relevant Consents shall include planning and environmental consents, compliance with Legal Requirements, consents under health and safety legislation;

**“Response”** shall mean the response dated the 12<sup>th</sup> day of November 2003 of the Contractor to the ITN and any clarifications provided thereon to and by the Contractor;

**“Party”** means a party to this Contract and their respective successors or permitted assigns;

**“Services”** shall mean the service provided by the Contractor to End Users and to Other Service Providers and more particularly set out in the Seventh and Tenth Schedules hereto and where the context so admits or requires any part or parts thereof;

**“Specifications”** shall mean the specifications for the roll out and provision of the Services accepted by the Department and more particularly set out in the Eighth Schedule hereto;

**“Support Services”** shall mean the support and maintenance services to be provided by the Contractor to End Users in the provision of the Services and more particularly set out in the Ninth Schedule hereto;

**“Term”** shall mean the period of five years from the Commencement Date and more particularly expanded upon in Clause 3.1;

**“Wholesale Offering”** shall mean the terms and conditions upon which the Contractor shall permit the use of its network to Other Service Providers to provide the Services to its own customers and more particularly set out in the Tenth Schedule hereto.

## **1.2 INTERPRETATION**

- 1.2.1 Any reference to any Legal Requirement shall include any modification, amendment, re-enactment or extension thereof for the time being in force or any statutory instruments or orders made thereunder.
- 1.2.2 The masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa and words importing persons shall include firms or companies.
- 1.2.3 Word such as hereunder, hereof and herein and other words commencing with "here" shall, unless the context clearly indicates the contrary, refer to the whole of this Contract and not to any particular section or clause thereof.
- 1.2.4 Save as otherwise provided herein, any reference to a clause, paragraph, sub-paragraph or schedule shall be a reference to a clause, paragraph, subparagraph or schedule (as the case may be) of this Contract and any reference in a clause to a paragraph or sub-paragraph shall be a reference to a paragraph or sub-paragraph of the clause or paragraph in which the reference is contained, unless it appears from the context that a reference to some other provision is intended.

- 1.2.5 The section headings to the clauses in this Contract are inserted for convenience of reference only and shall not be considered as part of or affect the construction or interpretation of this Contract.
- 1.2.6 This Contract may be executed in any number of counterparts and by the different Parties hereto on separate counterparts, each of which when executed and delivered shall constitute an original all such counterparts together constituting but one and the same instrument.
- 1.2.7 Amendments to or modifications of this Contract may be made only by mutual agreement of the Parties in writing and shall be subject to whatever approvals of appropriate authorities as may be required by law.
- 1.2.8 A waiver by either Party of any breach by any other Party of any of the terms, provisions or conditions of this Agreement or the acquiescence of such Party and any act (whether of commission or omission) which but for such acquiescence would be a breach as aforesaid shall not constitute a general waiver of such term, provision or condition or of any subsequent act contrary thereto.
- 1.2.9 This Contract shall not constitute any Party, the legal representative, partner or agent of the other Party nor (save as expressly provided in this Agreement) shall any Party or any successor of any Party have the right or authority to assume, create or incur any liability or obligation of any kind expressed or implied against or in the name of or on behalf of any other Party.
- 1.2.10 Save as provided herein, this Contract and all rights and obligations hereunder shall for all purposes be treated and construed as being separate and apart from any other agreement or agreements or any rights and obligations thereunder save only insofar as the express provision requires the contrary.
- 1.2.11 Where the Contractor consists of two or more persons the covenants and agreements by the Contractor shall be deemed to be by such persons jointly and severally.
- 1.2.12 In the event of any conflict or obvious inconsistency between this Contract and the ITN or the Response, the provisions of this Contract shall prevail. In the event of any conflict between the terms and conditions of this Contract and the Schedules attached hereto, the terms and conditions shall prevail unless expressly stated in a Schedule that the Schedule or such part thereof is to prevail.
- 1.2.13 This Contract the ITN and the Response and Appendix 3 represent the entire of the understanding of the Parties concerning the subject matter hereof and override and supersede all prior promises, representations, understandings, arrangements, or agreements concerning the same which are hereby revoked by mutual consent of the Parties.
- 1.2.14 This Agreement shall become effective only upon the same being executed by or on behalf of the Parties hereto.
- 1.2.15 Words denoting an obligation on a Party to do any act, matter or thing include an obligation to procure that it be done and words placing a Party under a restriction include an obligation not to permit or allow infringement of the restriction.

- 1.2.16 Any reference to time shall be construed as a reference to whatever time is statutorily in force in Northern Ireland.

## **2. AGREEMENT**

- 2.1 In consideration of the Payments, the ITN and the Response and the selection of the Contractor thereunder, the Contractor agrees with the Department:-
- 2.1.1 to rollout and provide the Services for the Term in accordance with the Specifications, the ITN, the Response, the Milestones, the Programme, the Legal Requirements and the provisions of this Contract.
  - 2.1.2 in compliance with all statutory orders and regulations made under or deriving validity from them and any requirements and codes of practice of Local Authorities and Competent Authorities affecting the Services.
  - 2.1.3 with due diligence.
- 2.2 The Contractor shall not amend, deviate or depart from the provision of the Services except with the consent of the Department Provided that the Contractor shall not require the prior consent of the Department to amend or withdraw any of the Services so long as the Contractor complies with the following conditions:-
- 2.2.1 any withdrawn Service is replaced with an alternative service which is equivalent or better than the withdrawn Service;
  - 2.2.2 any amended Service is equivalent or better than the Service prior to its amendment;
  - 2.2.3 any replaced or amended Service continues to comply with the provisions of Clause 9.
  - 2.2.4 the Contractor notifies the Department of the occurrence of any of the aforesaid within five days of the introduction of the amended or replaced Service and gives the Department such information and details thereof as the Department might, acting reasonably, request.

In the event of any dispute between the parties as to whether an amended or replaced Services is equivalent or better than the Service amended or replaced, the dispute shall be referred to arbitration in accordance with Clause 34.

## **3. TERM**

- 3.1 This Contract shall take effect on the Commencement Date and shall remain in force for the period of five years therefrom, unless it is otherwise terminated in accordance with the provisions of this Contract.



**4. Redacted**

**5. CONFIRMATIONS**

5.1 The Contractor hereby warrants, represents and confirms to the Department as follows:-

- 5.1.1 that the representations and warranties contained in the Response are true, valid and correct, complete and accurate as of the date hereof and to the extent that they are capable of continuing will continue to be so;
- 5.1.2 the Contractor is a company duly organised, validly existing and in good standing under the laws of the country in which it is established and has full power and authority to carry on its business as intended by this Contract;
- 5.1.3 the Contractor has the corporate power and authority to enter into this Contract and the transactions provided for and contemplated in it;
- 5.1.4 having made all reasonable and necessary enquiries and taken all reasonable and necessary advices, the execution and performance of this Contract does not conflict with or constitute a breach or default under any contract or agreement of any kind to which the Contractor is a party or any judgment, order, statute or regulation which is applicable to the Contractor or its assets;
- 5.1.5 all Governmental consents and authorisations and all other Relevant Consents that are required to enable the Contractor fulfill any of its obligations under this Contractor have been obtained (or where the same may be required during

the operation of this Contract will be obtained) and are in full force and effect and all conditions of these Governmental consents and authorisations and all other Relevant Consents have been complied with;

- 5.1.6 that the rollout and provision of the Services and the achievement of the Milestones are of the prime importance for the Department;
- 5.1.7 the Contractor is entering into this Contract with a full understanding of its material terms and risks and is capable of assuming those risks;
- 5.1.8 the Contractor has fully satisfied itself as regards the nature and extent of the Services and the suitability of the Equipment necessary for the performance of the Services;
- 5.1.9 the Contractor has acquainted itself with any and all legal requirements or such other laws, recommendations, guidance or practices as may affect the provision of the Services;
- 5.1.10 the Contractor has acquainted itself with British/European Standards, codes or practice as may be relevant to this Contract.

## **6. PROVISION OF THE SERVICES**

6.1 The Contractor hereby agrees and undertakes with the Department as follows:-

- 6.1.1 to provide everything reasonably necessary for the proper provision of the Services according to the true intent and meaning of the Specifications and the Equipment whether the same may or may not be particularly shown or described therein provided the same is reasonably inferred therefrom and if the Contractor shall find any discrepancy therein, the Contractor shall immediately and in writing refer same to the Authorised Representative. The Parties shall then, acting reasonably decide the course to be followed. In default of any joint decision, the matter shall be referred to arbitration in accordance with Clause 34;
- 6.1.2 to liaise and keep the Authorised Representative fully informed of the progress of the rollout and provision of the Services or of any matter which the Contractor might be or become aware which might affect the observance and performance of the Contractor's obligations herein;
- 6.1.3 to obtain all necessary Relevant Consents, certificates, examinations and all other documents and pay all taxes, fees, import and export duties in connection with the rollout and provision of the Services;
- 6.1.4 subject to Clause 25, to indemnify and keep indemnified the Department against all claims, proceedings, actions, loss, (excluding any indirect or consequential loss), damage, expenses, legal costs (including but not limited to legal costs and disbursements on a solicitor and client basis) sustained by reason or on account of the breach, default, neglect, non-performance, non-observance by the Contractor and their and each of their servants, agents,

contractors, sub-contractors or either of them, of the covenants, agreements, conditions, stipulations herein contained and on the part of the Contractor to be performed and/or observed including the provision of the Services and Support Services;

- 6.1.5 that the Contractor has complied with and given all notices as may be required by any national, European Economic Community or international statute or statutory instrument, regulations, directives, rules, orders or bye-laws or any amendment or re-enactment thereof insofar as it relates to the rollout and provision of the Services and will, during the Term, continue to so comply;
- 6.1.6 to comply with all Legal Requirements which relate to this Agreement and the rollout and provision of the Services;
- 6.1.7 to provide all Equipment reasonably necessary for the provision of the Services and keep the Equipment at all times in good order and serviceable condition;
- 6.1.8 that the Equipment is of merchantable quality, fit for the purpose for which it is intended, is of high quality, is proven technology, is free from material defects in materials or workmanship, will be fully supported and capable of providing an efficient and effective service, shall not become technologically obsolete in terms of no longer being able to support the purpose for which the Equipment was originally intended (in which case it shall be replaced to comply with such purpose) for at least 5 years and complies with all Legal Requirements;
- 6.1.9 to provide the Services and the Support Services in a good, proper, efficient and workmanlike manner, with due care, skill and diligence and in accordance with good industry practice;
- 6.1.10 that the provision of the Services will not infringe the intellectual property rights of any third party and where the infringement does occur that it will be remedied pursuant to the provisions of Clause 15.2;
- 6.1.11 that the Contractor will, at all times,
  - 6.1.11.1 use appropriate experienced qualified, skilled and trained personnel;
  - 6.1.11.2 use due care, skill and diligence;
  - 6.1.11.3 comply with (and procure all other personnel to do likewise) the regulations from time to time of the Department relating to security, health and safety;
  - 6.1.11.4 remove any person employed on this Contract who in the reasonable opinion of the Authorised Representative considers to be unsatisfactory;

- 6.1.12 that, if in the event any Payment in whole or in part is made to the Contractor by way of funds governed by the ERDF Regulations, and the Department notifies the Contractor in advance of such Payment being made thereof and which the Department undertakes to do to comply insofar as it relates to the Contractor with the ERDF Regulations and to co-operate with the Department in the compliance by the Department therewith.
- 6.1.13 that the Contractor is not aware of any matter or conflict or circumstance which might restrict or impede it from entering into and performing this Contract, and shall, if any such matter, conflict or circumstance at any time come to light, inform the Authorised Representative immediately;
- 6.1.14 that the Contractor has the capability, expertise and resources to comply with all the award criteria set out in the ITN;
- 6.1.15 to keep detailed records of all matters undertaken by the Contractor in relation to the discharge of its obligations under this Contract and at the reasonable request of the Department or the Authorised Representative to make them available for inspection and/or provide copies to the Authorised Representative. In the case of inspection by the Authorised Representative, being, in this case, an independent competent person, the costs of same shall be paid by the Contractor in respect of the first two occasions in any year of the Term for which inspection is requested and undertaken, and, thereafter for the third and other occasions in any year of the Term shall be borne by the Department;
- 6.1.16 to give fair and proper priority to the provision of the Services;
- 6.1.17 to bring to the attention of End Users, and to inform and encourage Other Service Providers availing of the Wholesale Offering for the Services likewise to bring to the attention of the end users of the Other Service Providers, through without limitation, marketing material, advertising, banner advertising, website or other media, communications, billing invoices that the Services are being provided through and with the support of the Department and to brand the Services as the "DETI Services" (or other equivalent description).
- 6.1.18 to take all measures necessary to comply with the provisions of any Legal Requirement relating to security which may be applicable to the Contractor in the provision of the Services and supply all documents, records or other material which may be reasonably required by the Authorised Representative to verify such compliance as aforesaid.

## **7. MONITORING**

- 7.1 The Contractor shall at four weekly intervals or at such other times as the Parties may agree furnish to the Authorised Representative a progress report, outlining progress by reference to the Programme and the Milestones and any proposed significant alteration to the Specifications or deviation from the Milestones or material problems

or delays affecting the rollout of the Services. The progress report shall include where appropriate, copies of minutes taken of any meetings held relating to the provision of the Services. The Contractor shall make available to the Authorised Representative copies of all test certificates, test reports, test results and any specialist reports as may be reasonably required from time to time by the Authorised Representative in connection with the provision of the Services.

- 7.2 The Contractor shall promptly report to the Authorised Representative any problem or delays which may become apparent to the Contractor and provide the Authorised Representative with such papers and explanations relating to the Contract that the Authorised Representative may reasonably require to satisfy himself that the Contractor is complying fully with its obligations under this Contract.
- 7.3 The submission and receipt of any reports by the Contractor to the Department shall not in any way diminish or prejudice the rights of the Department.
- 7.4 The performance of the Contractor's obligations under this Contract will be subject to monitoring and review against agreed quality aspects.
- 7.5 The Contractor shall ensure that information records and documentation reasonably necessary to monitor effectively the performance of this Contract are maintained and are available at reasonable times to the Authorised Representative.
- 7.6 The Contractor shall keep secure and maintain until three years after the final Payment of all sums due under this Contract has been paid or such longer period as may be agreed between the Parties, full and accurate records of the Services and all payments made by the Department. The Contractor shall grant the Authorised Representative, such access to those records as the Authorised Representative may reasonably require from time to time.

## **8. INDEMNITY AND INSURANCE**

- 8.1 The Contractor shall indemnify the Department to a limit of **Redacted** in respect of any one incident or series of incidents arising out of his performance of this Contract against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities in respect of any loss of or damage to property which is caused directly or indirectly by any act or omission of the Contractor. Indemnity in respect of death or personal injury shall be unlimited. This Clause 8.1 shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage, was not caused or contributed to by his negligence or default, or the negligence or default of his staff or sub-contractors, or by any circumstances within his or their control.
- 8.2 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of this Contract, in respect of death or personal injury, or loss of or damage to property. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

- 8.3 The Contractor shall hold employer's liability insurance in respect of staff in accordance with any legal requirement for the time being in force.
- 8.4 The Contractor shall produce to the Authorised Representative, on request, copies of all insurance policies referred to in this Clause 8 or other evidence confirming the existence and extent of the cover given by those policies, together with written confirmation that the premia payable thereon have been paid up to date for the purposes of the Contract.
- 8.5 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in this Clause 8.

## **9. END USERS/END USER PRICES**

- 9.1 The Contractor shall provide the Services to End Users at the End Users Prices in accordance with the End User Terms and Conditions.
- 9.2 The Contractor recognises the Department's requirement for the delivery of fair and equitable Broadband Coverage and End User Prices under this Contract. The Contractor therefore agrees not to increase End User Prices above those stated in the Second Schedule without the prior consent in writing of the Department, such consent not to be unreasonably withheld, save where the Contractor is complying with a direction or decision of OFCOM or any other Competent Authority having equivalent powers. The Parties accept that the withholding of consent will be 'unreasonable' if it results in the Department or the Contractor failing to meet the Legal Requirements or if, actually or potentially, it distorts competition. Subject to the Contractor notifying the Department, nothing herein shall prevent the Contractor from lawfully reducing the End User Prices. The Contractor will, additionally, facilitate regular quarterly Broadband Market Review meetings with the Department where these, and other relevant, matters may be discussed.
- 9.3 The End User Terms and Conditions may be, from time to time, amended by the Contractor provided same are not more restrictive or more detrimental for End Users and being terms and conditions generally accepted in the market.

## **10. WHOLESALE OFFERING**

- 10.1 The Contractor shall make at all times to Other Service Providers the Wholesale Offering for the Services in accordance with the licensing and regulatory obligations of the Contractor.
- 10.2 The terms and conditions of the Wholesale Offering may be amended from time to time by the Contractor provided same are not more restrictive or more detrimental than heretofore and being terms and conditions generally accepted in the market.

## **11. SUPPORT SERVICES**

- 11.1 The Contractor shall make available at all times the Support Services to End Users and where applicable, to Other Service Providers.

## **12. PAYMENTS**

- 12.1 The Department shall make the payments to the Contractor in the manner computed in accordance with the provisions of the Fifth Schedule hereto and within 30 days of the invoice of the Contractor and the delivery of an Acceptance by the Department to the Contractor.

## **13. VALUE ADDED TAX**

- 13.1 The Department shall pay to the Contractor, in addition to the Payment due under this Contract, a sum equal to the value added tax as may be properly chargeable on the value of the supply of services provided in accordance with this Contract.
- 13.2 Any invoice or other request for payment of monies due to the Contractor under this Contract shall, if he is a taxable person, be in the form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Finance Act 1972.
- 13.3 The Contractor shall, if so requested by the Department, furnish such information as may reasonably be required by the Department as to the amount of value added tax chargeable on the value of services supplied in accordance with this Contract and payable by the Department to the Contractor in addition to the charges for the Services. Any over payment by the Department to the Contractor shall be a sum of money recoverable from the Contractor.

## **14. SHARING IN BENEFIT**

- 14.1 The Contractor shall make the payments set out in and computed in accordance with the Fourth Schedule hereto should the circumstances more particularly described in the Fourth Schedule hereto apply.
- 14.2 Should the Contractor fail to make the said payments, then the Contractor shall pay in addition to the said unpaid payments interest from and including the day after the same shall become due (whether demanded or not) to the date of the actual payment at the rate of **Redacted** per annum or if greater at the rate which shall be highest interest rate charged from time to time by the Northern Bank in Northern Ireland on overdrafts to individual customers by **Redacted** per cent (or if there shall be no such rate the corresponding or nearest appropriate rate thereto) at the date upon which the said sums fall due or become payable and such interest shall accrue from day to date and to accrue after as well as before any judgement.

## **15. INTELLECTUAL PROPERTY**

15.1 The Contractor will indemnify the Department and keep the Department fully and effectively indemnified on demand against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the provision of the Services infringes the intellectual property rights of any unaffiliated third party and being in breach of clause 6.10 hereof.

15.2 If the provision of the Services is held by a court of competent jurisdiction to constitute an infringement of the intellectual property rights of a third party or if the Contractor is advised by legal counsel that the Contractor has likely infringed the intellectual property rights of a third party then the Contractor shall promptly at its own expense and sole discretion;

15.2.1 procure the right to continue the provision of the Services to End Users; or

15.2.2 modify or replace the Services so as to avoid the infringement of the intellectual property rights of any third party.

## **16. TRANSFER, SUBCONTRACTING AND ASSIGNMENT**

16.1 The Contractor shall not transfer or assign this Contract or any part thereof unless such transfer or assignment is within the Contractor's group of companies and such transferee or assignee is an entity of satisfactory financial standing and capable of independently complying with the obligations of the Contractor herein, and shall not sub-contract any part of the provision of the Services without the prior written consent of the Department which consent in the case of sub-contracting shall not be unreasonably withheld.

16.2 If consent to engage a sub-contractor is given by the Department, it shall be a condition of such consent that the Contractor inform the Department when the sub-contract has expired or been terminated.

16.3 Any consent to sub-contract will not release the Contractor from any liability to the Department in respect of the sub-contracted section and the Contractor shall be responsible for the acts, defaults or neglect of any sub-contractor or their agents or employees in all respects as if they were the acts, defaults or neglect of the Contractor or its agents, or employees.

16.4 Where the Contractor enters a sub-contract with a sub-contractor for the purpose of performing this Contract, the Contractor shall cause a term to be included in such sub-contract which requires payment to be made to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

16.5 The Department may assign or in any other way dispose of its rights and obligations under this Contract or any part of it to any Department, Office or Agency of the Crown or any other body provided that any such assignment or other disposal shall not increase the burden of the Contractor's obligations under this Contract.



## **17. EQUALITY OF OPPORTUNITY**

17.1 The Contractor shall comply with the Fair Employment and Treatment (Northern Ireland) Order 1998 , the Sex Discrimination (Northern Ireland) Order 1976, the Equal Pay (Northern Ireland) Act 1970, the Disability and Discrimination Act 1995, the Race Relations (Northern Ireland) Order 1997, the Employment Relations (Northern Ireland) Order 1999 and the Employment Rights (Northern Ireland) Order 1996 and shall use his best endeavours to ensure that in his employment policies and in the delivery of the services required of the Contractor under this Contract there shall be no unjustifiable inequality of treatment of:

- a. people of different religious beliefs or political opinions;
- b. men or women or married or unmarried people;
- c. people with or without dependants (including women who are pregnant or on maternity leave);
- d. people of different ethnic groups;
- e. people with or without a disability;
- f. people of different ages; or
- g. people of differing sexual orientation.

## **18. HEALTH AND SAFETY**

18.1 The Contractor's attention is drawn to the provision of the Health and Safety at Work (Northern Ireland) Order 1978 and in particular to Article 4 "General Duties of Employers to their Employees".

18.2 The Contractor shall adequately train, instruct and supervise staff to ensure that so far as is reasonably practicable, the health and safety of all persons who may be affected by the Services provided under the Contract. Before commencing work on the Contract the Contractor, shall prepare a written policy of the health and safety of staff employed in connection with this Contract together with written organisational arrangements for carrying out the policy.

## **19. SOCIAL SECURITY SYSTEM**

19.1 The Contractor shall not employ any person whom he knows or ought reasonably to know is by reason of his employment engaged in any unlawful procurement of social security benefits or tax exemptions and the Contractor shall not make, facilitate or participate in the procurement of, any unlawful payments whatsoever, whether in the nature of social security fraud, or evasion of tax, or otherwise.

19.2 The Contractor shall prepare and maintain such records of his staff and all other persons engaged in the performance of this Contract by the Contractor as the Department may from time to time reasonably require.

19.3 Without prejudice to Condition 19.2 the Contractor shall (upon the Department providing the Contractor with reasonable grounds therefor) forthwith on demand by the Department furnish the Department with the names, addresses and national insurance numbers of all persons employed by him under the contracts of service and shall forthwith on demand furnish the Department with the names, addresses, periods

of employment and exemption certificates of all persons employed by him under contracts for services.

- 19.4 The Contractor shall permit the Department, its servants or agents at all reasonable times to enter on any premises of the Contractor for the purpose of inspection and investigation of the employment, social security and tax records of any person employed by the Contractor or engaged by him to carry out any services under this contract.

## **20. DATA PROTECTION ACT 1988**

- 20.1 Neither Party shall disclose or allow access to any personal data provided by a Party or acquired by a Party during the course of tendering for or executing this Contract, other than to a person employed or engaged by a Party or any sub-contractor, agent or other person concerned with the same.
- 20.2 Any disclosure of or access to personal data allowed under Condition 20.1 shall be made in confidence and shall extend only so far as that which is specifically necessary for the purpose of the Contract.
- 20.3 If a Party ("Defaulting Party") fails to comply with any provision of this Contract, then the other Party may summarily determine the Contract by notice in writing to the Defaulting Party provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the other Party.
- 20.4 If a Party or any employee, servant agent or sub contractor of a Party, having obtained without the consent of the other Party personal data within the meaning of the Data Protection Act, directly or indirectly discloses or publishes the data to any other person or allows improper access to the data, or in any event directly or indirectly causes the loss, damage, or destruction of such data, he shall indemnify the other Party against all claims, proceedings, costs and expenses in respect of any damage or distress suffered thereby by any person.

## **21. CONFIDENTIALITY**

- 21.1 Each Party:
- 21.1.1 shall treat as confidential all information obtained from the other Party under or in connection with this Contract;
- 21.1.2 shall not disclose any of that information to any third party without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of this Contract; and
- 21.1.3 shall not use any of that information otherwise than for the purposes of this Contract.
- 21.2 Each Party shall take all necessary precautions to ensure that all information obtained from the other Party under or in connection with this Contract:

- 21.2.1 is given only to the minimum number of staff and then only to the extent necessary for each member of staff's activities in the provision of the Services; and,
- 21.2.2 is treated as confidential and Redacted (without prior approval) or used by any staff otherwise than for the purposes of this Contract.
- 21.3 Where it is considered necessary in the opinion of the Authorised Representative, the Contractor shall ensure that staff sign a confidentiality undertaking before commencing work in connection with the provision of the Services.
- 21.4 The provisions of Condition 21.1 and 21.2 shall not apply to any information:
- 21.4.1 which is or becomes public knowledge (otherwise than by breach of this Clause 21), or
- 21.4.2 which is in the possession of the Party concerned, without restriction as to its disclosure, before receiving it from the disclosing Party, or
- 21.4.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.
- 21.5 Nothing in this Clause 21 shall prevent the Department:
- 21.5.1 disclosing such information relating to the outcome of the procurement process for this Contract as may be required to be published in the Supplement to the Official Journal of the European Communities in accordance with EC directives or elsewhere in accordance with requirements of United Kingdom government policy on the disclosure of information relating to government contracts or where the provisions of Clause 31 apply;
- 21.5.2 disclosing any information obtained from the Contractor:
- 21.5.2.1 to any other department, office or agency of the Crown, or
- 21.5.2.2 to any person engaged in providing any services to the Department for any purpose relating to or ancillary to this Contract.
- provided that in disclosing information under sub-paragraph 21.5.2.1 or 21.5.2.2 the Department discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given, where appropriate.
- 21.6 Nothing in this Clause 21 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business, to the extent that this does not result in a disclosure of confidential information or an infringement of any Intellectual Property Rights.

21.7 The Contractor shall not use any confidential information obtained from the Department for the solicitation of business from the Department or any other part of the Crown.

21.8 The obligations imposed by this Clause 21 shall continue to apply after the expiry or termination of this Contract for a further period of two years.

## **22. CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

22.1 The Contractor shall not:

22.1.1 offer or give or agree to give any person in Her Majesty's Service or agent thereof any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this Contract or any other contract for Her Majesty's Service and/or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other contract for Her Majesty's Service;

22.1.2 enter into this Contract or any other contract with any Government Department in connection with which commission has been paid or agreed to be paid by him, or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Department.

22.2 Any breach of this Clause 22 by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf, (either with or without the knowledge of the Contractor) under the Prevention of Corruption Acts, 1889 to 1916, in relation to this Contract or any other contracts for Her Majesty's Service, shall entitle the Department to determine this Contract and recover from the Contractor the amount of any loss resulting from such determination and/or to recover from the Contractor the amount or value of any such gift, consideration or commission.

22.3 Any dispute, difference or question arising in respect of either the effect or the interpretation of this clause or the amount recoverable hereunder by the Department from the Contractor or the right of the Department to determine this Contract, or the amount or value of any such gift, consideration or commission shall be decided by the Department whose decision shall be final and conclusive.

## **23. OFFICIAL SECRETS ACT**

23.1 The provisions of the Official Secrets Act 1911 - 1989 in general and the provisions of the Official Secrets Act 1989 in particular shall apply to the Contractor, the staff and all persons engaged whether as agents or sub-contractors by the Contractor on any work under this Contract, and shall continue to apply without limitation of time after the expiry or termination of this Contract, and the Contractor shall bring to the notice of each and every such person the provisions of the said Acts.

- 23.2 If the Department shall at any time so direct, a declaration of knowledge of these provisions in such terms as the Department shall require shall be signed by every such person as the Department shall direct and be delivered to the Department by the Contractor.

## **24. FORCE MAJEURE**

- 24.1 Neither Party shall be liable to the other Party by reason of any failure or delay in performing its obligations under this Contract which is due to Force Majeure, where there is no practicable means available to the Party concerned to avoid such failure or delay.
- 24.2 If either Party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that Party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other Party of the period for which it estimates that the failure or delay will continue.
- 24.3 For the purposes of this Condition, "Force Majeure" means any event or occurrence which is outside the control of the Party concerned and which is not attributable to any act or failure to take preventive action by the Party concerned, but shall not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation. For the avoidance of doubt, Force Majeure shall include the acts or actions of any Competent Authority and actions relating to the Contract taken by a third party any court or tribunal of competent jurisdiction, including but not limited to investigations or proceedings which could affect or objectively inhibit the proper performance of either Party's obligations under this Contract.
- 24.4 Any failure or delay by the Contractor in performing his obligations under this Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with an obligation to the Contractor by Force Majeure.
- 24.5 The Parties, shall, insofar as each Party is able to do, use all reasonable endeavours to resolve the event of Force Majeure as soon as practicable. If the Force Majeure shall continue for a period, in excess of 120 days then, subject to any extension which may be mutually agreed by the Parties, either Party shall be entitled by notice in writing to the other Party to terminate the Contractor at any time thereafter provided the Force Majeure is continuing at the date notice is given. Any termination shall be without prejudice to any Party's rights or remedies in respect of any antecedent breach of contract. Where the event of Force Majeure is the act or actions of a Competent Authority or action relating to the Contract taken by a third party before a court or tribunal, then the entitlement to terminate shall only arise if the Force Majeure continues for a period in excess of eighteen months.

## **25. LIABILITY**

- 25.1 Notwithstanding as detailed herein, other than the provisions of Clauses 8 and 25.2, the total liability of each Party under this Contract shall be limited to an amount equal to **Redacted** % of the aggregate of the Payments made by the Department to the Contractor.
- 25.2 Nothing in this Contract shall exclude or limit the liability of either Party in respect of death or personal injury to any person arising as a result of the negligence or wilful acts or omissions of a Party, its servants, agents, contractors or sub-contractors or any other person for which that Party has responsibility.
- 25.3 **Redacted**
- 25.4 The provision of this Clause 25 shall not apply to any claim or remedy pursuant to Clause 15 hereof.
- 25.5 **Redacted**

## **26. MARKET POSITION OF THE CONTRACTOR**

- 26.1 Given the market position and/or market power of the Contractor, as determined by the regulatory body, OfCom, or by reason of national or EU competition laws in respect of its wholesale electronic communications business (excluding wireless) or such relevant or applicable parts thereof in Northern Ireland, nothing in this Contract shall prejudice the Contractor strictly by reason of the aforesaid from:
- 26.1.1 doing such acts or things which it is legally obliged to do;
- 26.1.2 refraining to do such acts or things which it is legally obliged to refrain from doing; and/or,
- 26.1.3 complying with any direction of OFCOM or any other Competent Authority,
- and the provisions of this Contract shall be construed accordingly but not further or otherwise.
- 26.2 The Contractor shall inform the Department in writing and give such reasonable details and information (including the reasons being relied upon) to the Department and such further information as the Department might reasonably request, where the Contractor seeks to invoke the provisions of Clause 26.1 and said invocation gives rise to possible non-compliance (in whole or in part) with any provision of this Contract.

## **27. BANKRUPTCY**

- 27.1 In the event of the Contractor becoming bankrupt or making a composition or arrangement with his creditors or having a winding up order made or (except for the purpose of reconstruction) a resolution for voluntary winding up passed or a receiver or manager of his business or undertaking duly appointed, or possession taken, by or on behalf of the holders or any debentures secured by a floating charge of any property comprised in or subject to the floating charge, the Department may at its discretion forthwith determine the employment of the Contractor under this Contract. The said employment may be reinstated and continued by the Department and the Contractor, if his trustee in bankruptcy, liquidator, receiver or manager, as the case may be, so agree.

## **28. TERMINATION ON DEFAULT**

- 28.1 The Department may terminate this Contract, or terminate the provision of any part of the Services, by written notice to the Contractor with immediate effect if the Contractor is in default of any obligation under this Contract and:

28.1.1. the Contractor has not remedied the default to the reasonable satisfaction of the Department within 30 days, or such later period as may be specified by the Department, after service of written notice specifying the default and requiring it to be remedied; or

28.1.2 the default is not capable of remedy; or

28.1.3 the default is a fundamental breach of the Contract.

- 28.2 The Contractor may terminate this Contract by written notice to the Department with immediate effect if the Department is in default of any obligation under this Contract and the Department has not remedied the default to the reasonable satisfaction of the Contractor within 30 days or such later period as may be specified by the Contractor after service of written notice specifying the default and requiring it to be remedied.

## **29. BREAK**

- 29.1 The Department shall have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time by giving 3 months' written notice to the Contractor. The Department may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

## **30. CONSEQUENCES OF TERMINATION**

- 30.1 If the Department terminates the Contract under Clause 28, or terminates the provision of any part of the Services under that Clause, and then makes other arrangements for the provision of the Services, the Department shall be entitled to recover from the Contractor the reasonable cost of making those other arrangements and any additional expenditure incurred by the Department throughout the remainder of the Term. Where the Contract is terminated under Clause 28, no further Payments

shall be payable by the Department until the Department has established the final cost of making those other arrangements. **Redacted**

- 30.2 If the Department terminates the Contract, or terminates the provision of any part of the Services, under Clause 29, the Department shall reimburse the Contractor in respect of any loss, not including loss of profit, actually and reasonably incurred by the Contractor as a result of the termination, provided that the Contractor takes immediate and reasonable steps, consistent with the obligation to provide the Services during the period of notice, to terminate all contracts with sub-contractors on the best available terms, to cancel all capital and recurring cost commitments, and to reduce equipment and labour costs as appropriate.
- 30.3 For the purposes of Clause 30.2 the Contractor shall submit to the Authorised Representative, within 14 working days after service of the notice, a fully itemised and costed list, with supporting evidence, of all losses incurred by the Contractor as a result of the termination of the Contract, or the termination of any part of the Services, to be updated only in respect of ongoing costs each week until the Contract is terminated.
- 30.4 The Department shall not be liable under Clause 30.2 to pay any sum which, when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the provision of the Services had been completed in accordance with this Contract.

## **31. PUBLICITY**

- 31.1 Neither Party shall make any public statement relating to the performance of this Contract without prior approval, which shall not be unreasonably withheld. Provided Always that the Department shall not be precluded from making any public statement or announcement in the normal discharge of its duties or responsibilities as a Government Department and to keep the public informed of its activities.
- 3.1.2 In the case of a Party wishing to issue a public press release relating to this Contract, such Party shall furnish a draft thereof to the other Party, and, subject to the other Party responding within twenty four hours of the receipt of such draft (or, in the case of emergency, such lesser time on the Party might stipulate) that Party, acting reasonably, shall take into account any reasonable comments or proposals of the other Party.

## **32. SEVERANCE**

- 32.1 If any provision of this Contract shall be found by any court or administrative body of competent jurisdiction or upon arbitration or by any other Competent Authority to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Contract which shall remain in full force and effect.
- 32.2 If any provision of this Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall be deleted with such modification(s) as may be necessary to make it valid.



- 32.3 The Parties agree, in the circumstances referred to in sub-clause 32.1 and if Clause 32.2 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the Parties under any invalid or unenforceable provision of this Contract shall be suspended while an attempt at such substitution is made.

### **33. CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this Contract has no right under the Contract Rights of Third Parties) Act, 1999 to enforce any term of this Contract but does not affect any right or remedy.

### **34. NOTICES**

#### **34.1 Mode of Service**

Subject to Clause 34.3 notices and other communications to the other Party to this Agreement required or permitted hereunder or any proceedings relating hereto shall be in writing and will be sufficiently served:

- 34.1.1 if delivered by hand; or
- 34.1.2 if sent by facsimile; or
- 34.1.3 if sent by prepaid registered post; or
- 34.1.4 if sent by electronic mail

to the address specified below in this Clause or to such other address as is from time to time notified to the other Party in accordance with the provisions of this Clause:

#### **the Department**

Netherleigh,  
Massey Avenue,  
Belfast.  
(Attention Anne Conaty)

#### **And copied to:**

Netherleigh  
Massey Avenue,  
Belfast  
(Attention Trevor Forsythe)

#### **the Contractor**

[Insert address]

**And copied to:**

[Insert details]

### **34.2 Time of Service**

Subject to Clause 34.3 any such notice or communication shall be deemed to have been served,

- 34.2.1 if delivered by hand, on the date of delivery;
- 34.2.2 if sent by facsimile, on the date the sender receives a valid facsimile transmission receipt or when the recipient confirms receipt of the facsimile, whichever is the earlier;
- 34.2.3 if sent by pre-paid registered post, on the third business day after the date of posting; or
- 34.2.4 if sent by electronic mail, on the date when the recipient has (by electronic mail or otherwise) acknowledged receipt of the communication,

provided that, if in accordance with the above provisions, any such notice or communication is delivered or received outside working hours on any business day, such notice or communications shall be deemed to have been served at the start of the working hour on the next business day thereafter.

### **34.3 Facsimile and e-mail notices**

Each person giving a notice or making a communication hereunder by facsimile or electronic mail shall promptly confirm such notice or communication by post to the person to whom such notice or communication was addressed but the absence of any such confirmation shall not affect the validity of any such notice or communication or time upon which it is deemed to have been served.

### **35. ARBITRATION**

- 35.1 All disputes, differences or questions between the Parties with respect to any matter arising out of or relating to this Contract, other than a matter of things as to which the decision of the Department is under this Contract to be final and conclusive, shall after written notice by either Party to the other Party be referred to a single arbitrator agreed for that purpose or in default of such agreement within twenty-one (21) days, appointed at the request of either Party by the President of the Law Society of Northern Ireland. The decision of such arbiter shall be final and binding on the Parties.
- 35.2 The provision of the Arbitration Act 1996 shall apply to any arbitration under this contract and such arbitration shall be conducted solely within Northern Ireland.

### **36. GOVERNING LAW**

- 36.1 This Contract and any matter arising out of or related to this Contract shall, in all respects, be governed by and construed in accordance with the laws of Northern Ireland and the Parties hereby agree that, subject to Clause 35 the Courts of Northern Ireland shall have exclusive jurisdiction to hear and determine any dispute arising out of or in connection with this Contract.

**IN WITNESS** whereof the Parties hereto have executed this Contract the day and year first herein **WRITTEN**.

## **FIRST SCHEDULE**

## **FIRST SCHEDULE**

### **COVERAGE**

#### **1. Coverage Required.**

The Contractor will provide broadband service, as described in Schedule 8, to 100% of the 'Service Area'. Service Area is defined as the entire landmass of Northern Ireland excluding areas agreed as not requiring service due to their lack of houses or business premises. Figure 1.1, portrays the Service Area and those areas of Northern Ireland where service is not required under the Contract.

#### **2. Rate of Service Coverage Profiled over Time.**

The Contractor will provide a minimum of 85% coverage of the properties within the Service Area within twelve months of the Commencement Date. The Contractor will provide all remaining service coverage of the Service Area of Northern Ireland, i.e., 100% coverage in total, by December 2005.

#### **3. Technology to be Deployed.**

The Contractor will deploy a combination of ADSL technology and radio broadband technology (based on equipment operating in the 5.8Ghz spectrum range) sufficient to deliver the service coverage as stated in paragraph 1, above

The Contractor, with the agreement of the Department, not to be unreasonably withheld, may introduce new technology, which may include technologies other than ADSL and radio broadband to fulfil its obligations under the Contract, provided that the coverage, service quality, cost and other attributes of that technology are equal to or better than the ADSL and radio broadband technologies as set out in this Paragraph 3.

#### **4. Derogation From Requirement to Provide Service within Service Area: Exception Cases**

Notwithstanding the commitment of the Contractor to provide broadband service coverage to 100% of the Service Area of Northern Ireland, the Department accepts that there may be occasions where the provision of service within that area is not possible immediately, or in some cases, ever at all. In such circumstances, the Department will require the Contractor to provide valid and acceptable reasons for its inability to provide service in each individual case. Without taking away from the generality of the aforesaid, the requirement to use better available technology would not be a valid or acceptable reason. Where the Department accepts that a reason(s) in whole or in part is/are valid, the Contractor will not be regarded as being in breach of its contractual obligations regarding coverage in that particular case or in the case of part acceptance for such part. Such acceptance or part acceptance will be confirmed in writing by the Department, and these cases will be termed 'exception cases'. Where the Department finds no valid reason for the Contractor's inability to provide Services in The Service Area, the Contractor will be obligated to provide service or in the case of part acceptance for the balance not accepted. The Contractor will raise any exceptional cases with

the Department as soon as possible, and will make all reasonable attempts to ensure service to the customer within the lifetime of the contract.

5. Good reason will include an absence of access to the site, and health and safety reasons, such as working on unsafe structures or in the presence of dangerous animals, machinery or processes. The Contractor will notify any cases where they are unable to provide service to the Department. Reasons which will not be considered acceptable include, but are not limited to; mistakes in network planning, equipment failure / absence, the use of better technology generally available and reliance on a competitor to make service.

6. Coverage will be rolled out in accordance with the Programme and Milestones as provided in the ITN. The Programme will set out in cells of 2 \*2 square kilometres the cells to be covered pursuant to this Agreement ("the Payment Cells") and in addition, the cells which the Contractor has confirmed have been enabled and the cells which the Contractor has undertaken to enable. Whilst no Payment will be made for those cells which have been enabled or which the Contractor has undertaken to enable (herein together the "Non-Payment Cells"), the Contractor shall nevertheless be required to demonstrate within twelve months of the Commencement Date to the reasonable satisfaction of the Department that the Non-Payment Cells comply in all respects and in the same manner as the Contractor is required to demonstrate for the purpose of Payment for the Payment Cells. The Milestones will set out the date(s) by which the Payment Cells and the Non Payment Cells shall provide the Services. Reference is made to the Fifth Schedule dealing with the Payments and more particularly deals with the payment cell area. In the event of any conflict between this paragraph 6 and the Fifth Schedule, the provisions of the Fifth Schedule shall prevail.



## **SECOND SCHEDULE**



## **SECOND SCHEDULE**

### **END USER PRICES: RETAIL**

1. Wholesale and Retail Service Availability At all times throughout the Term, the Contractor must make available both a Wholesale and a Retail service offering. The remainder of this Schedule sets out the conditions relating to the Retail offering of the Contractor to End-Users. The Seventh and Tenth Schedules address the Wholesale Service offering to be made available to Other Service Providers.

2. Set-up/Installation Fee (exclusive of VAT).

The following Retail Set-up/Installation prices shall apply for the Term:

Consumer Service - £59.50  
Small Business Service - £50  
Small/Medium Business Service - £50

Any change to the above and subsequent prices will be subject to Clause 9 of the Contract

3. Monthly Service Rental Charge (exclusive of VAT).  
The following Retail Monthly Service Rental prices shall apply for the Term:

Consumer Service - £22.98  
Small Business Service - £29.99  
Small/Medium Business Service - £65

Any change to the above and subsequent prices will be subject to Clause 9 of the Contract

4. Basis On Which Charges Will Be Made To The End-User.  
Consumer Service – Monthly in arrears via invoice  
Small & Small/Medium Business Service – Quarterly in advance by invoice.  
The End User must sign Terms and Conditions of Service including a 12-month minimum term contract as per the Third Schedule.

5. **Proposal For Publishing Tariffs**

Tariffs will be published on the Contractor's Website and in all marketing literature associated with the Contract.

## **6.     Publicity**

The Contractor shall, in providing the Services to End-Users, make all reasonable efforts to ensure that the End-User is informed that the Services are being provided by reason of the Department (“the DETI Service”), and shall be able to demonstrate such efforts to the Department

### **THIRD SCHEDULE**

### **THIRD SCHEDULE**

#### **END USER TERMS AND CONDITIONS**

1. Terms and Conditions for the Contractor for the business broadband service are as stated in Appendix D04 of the Contractor's submission to DETI, dated 12<sup>th</sup> November 2003, and shall be deemed to form part of this Schedule as if the same were set forth ad longum herein, subject always to Clause 9 of the Contract.
2. The Broadband Consumer Service Conditions of Use are as stated in Appendix D05 of the Contractor's submission to DETI, dated 12<sup>th</sup> November 2003, and shall be deemed to form part of this Schedule as if the same were set forth ad longum herein subject always to Clause 9 of the Contract. For avoidance of doubt the "Consumer" product is not restricted to domestic use and no classification of customer, such as "business" will be barred from contracting for it.
3. The Contractor will provide comparable End User Terms and Conditions for Radio Broadband users, subject always to Clause 9 of the Contract.

#### **FOURTH SCHEDULE**

## **FOURTH SCHEDULE**

### **SHARING IN BENEFIT**

#### **1. Purpose and application**

This Schedule gives effect to Clause 14 of the Contract and describes the mechanism for ensuring that the Department shares in any benefit by way of a reduction in or repayment in whole or in part of the Payments by the Contractor to the Department which derives from the Department having made the payments to the Contractor in the first instance to provide the Services

**Redacted**



## **FIFTH SCHEDULE**



## **FIFTH SCHEDULE**

### **PAYMENTS**

#### **Total Cost**

1. The maximum total cost to the Department of the Payments is £9,290,000.

#### **Departmental Objective – Need for Proxy**

2. Whilst the objective of the Department is to ensure that any premises in Northern Ireland, subject only to ‘exception cases’ (as mentioned in the First Schedule) should be able to access broadband on an equitable basis, proof of this is excessively onerous and therefore the Department will make payment against demonstrated availability of service on the basis set out in 4. below

#### **Explanatory note:**

It is a feature of the payment mechanism that it acts only as a means of dispensing the Payments on a basis that is simple, measurable and incentivising of roll-out and customer acquisition. The payment mechanism should not be confused with the objective of the Contract. Payment under the mechanism will not be for what is being measured – any more than regular payments are for ‘achieving’, say, July. Similarly payment of the entire Payments against the proxy variable (in the Payment mechanism) does not imply that the Contract has been fulfilled to the Department’s satisfaction.

#### **Service Area and Payment Area**

3. Service Area is defined in Schedule 1

Note that the Service Area includes areas that are already served by the Contractor and by others (‘competitors’). In requiring the Contractor to ensure that broadband is everywhere in the populated areas of Northern Ireland, the Department understands that some areas are already covered. Whilst these areas are within the intended coverage area the Department is not paying for provision in those areas, as it already exists (“the Non-Payment Cells). The cost to the Department inherently reflects this existing coverage, by all service providers.

#### **Redacted**

**Payment Basis**

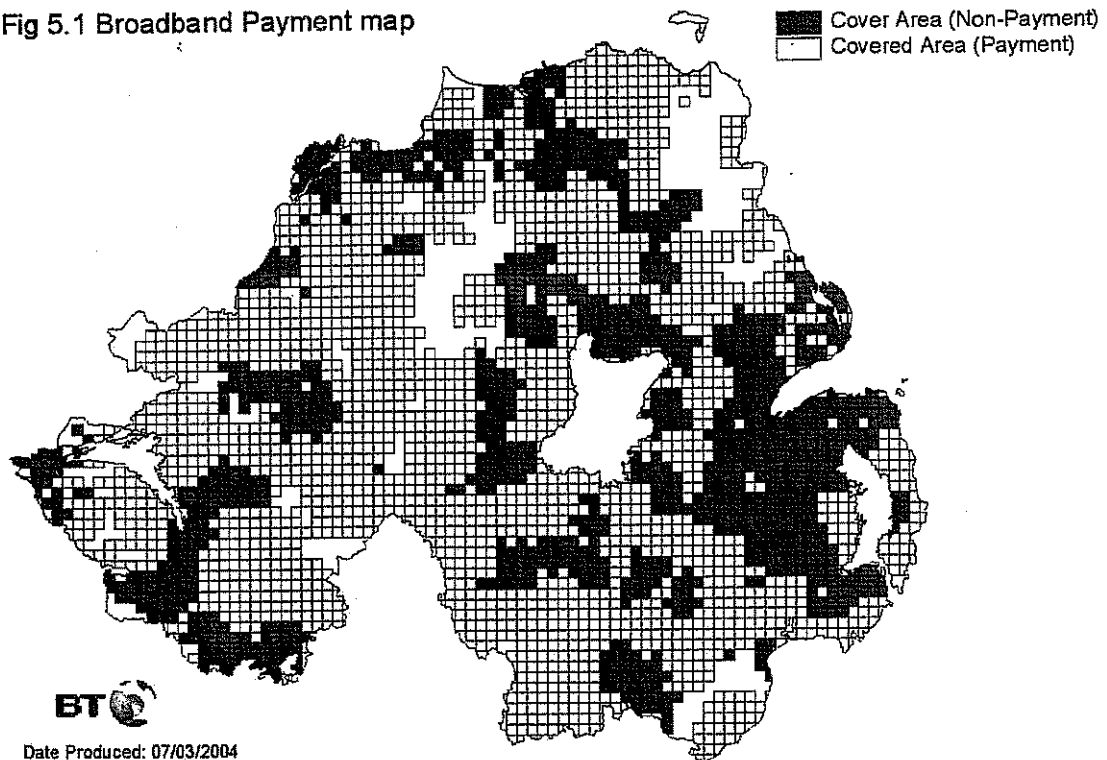
**Redacted**

**Payment Mechanism**

**Redacted**

## **SIXTH SCHEDULE**

Fig 5.1 Broadband Payment map



Date Produced: 07/03/2004  
In Commercial Confidence

## **SIXTH SCHEDULE**

**Redacted**







## **SEVENTH SCHEDULE**

## SEVENTH SCHEDULE

### THE SERVICES

1. Duration of Service Offering.  
The duration of the service offering will be 5 (Five) years from the Commencement Date.

2. **DETI Broadband Service Specification**

The Contractor will provide services to the following **minimum** specification, subject to Clause 9 of the Contract.

DETI Consumer Service

Will be always on

Will be asymmetrical

Will be capable of a downstream data rate of 512kbps

Will be capable of an upstream data rate of 256kbps

Will have a contention ratio of no greater than 50:1

Will be available on both fixed wire and radio broadband platforms where offered

Will have a minimum availability of **Redacted**

DETI Small Business Service

Will be always on

Will be asymmetrical

Will be capable of a downstream data rate of 512kbps

Will be capable of an upstream data rate of 256kbps

Will have a contention ratio of no greater than 50:1

Will be available on both fixed wire and radio broadband platforms where offered

Will have a minimum availability of **Redacted**

Will include 10 e-mail addresses

Will include 20Mbytes of hosted Web space

DETI Small/Medium Business Service

Will be always on

Will be asymmetrical

Will be capable of a downstream data rate of 512kbps

Will be capable of an upstream data rate of 256kbps

Will have a contention ratio of no greater than 20:1

Will be available on both fixed wire and radio broadband platforms where offered

Will have a minimum availability of **Redacted**

Will include an intelligent Gateway package

Will have an advanced high security firewall with

Access Control

Remote diagnosis

Automatic detection for Ethernet devices

Will include 10 e-mail addresses

Will include 20 Mbytes of hosted Web space.

**3. End User Services**

End Users (Consumer, Small Business and Small/Medium Business) will be provided with access to a wide range of applications and services that are normally associated with a Broadband Internet connection.

Typical uses that must be facilitated by the broadband provider in relation to this Contract are as follows (this is not an exhaustive list)

Web Surfing  
E-mail  
File upload and download  
File sharing  
Instant Messaging and Chat  
Newsgroups  
Online gaming  
Best endeavour telephony/video telephone over IP  
School, educational and research materials  
Online software downloads and updates  
Music/Movie downloads  
Internet TV, radio and webcasts  
Tele-working, shopping, browsing and banking

**4. End User Support and Service Support will be as detailed in the Ninth Schedule**

**5. Equipment specifications will be as detailed in the Eight Schedule**

**6. Wholesale Services**

Wholesale services are defined in the Tenth Schedule

A Service Provider or Other Licensed Operator (OLO) will be able to provide the full range of DETI Broadband Services to their consumer and business customers using the BT's Wholesale offerings.

BT Wholesale ADSL

BT Wholesale Radio broadband.

The Wholesale Radio broadband offering will be based on making the technology proposed available to third parties.

## **EIGHTH SCHEDULE**

## **EIGHTH SCHEDULE**

### **SPECIFICATIONS**

#### **1. Product Offering**

As detailed in the seventh schedule – The Services.

#### **2. ADSL service Offering**

The Contractor's ADSL offering rollout will be achieved by the enabling of BT's entire network of customer serving exchanges throughout Northern Ireland within 12 months of the commencement date.

The design proposed by BT incorporates leading edge technical functionality in order to provide an optimised Network Design topology – Clustering back to core Synchronous Digital Hierarchy (SDH), SDH routing to ATM. Multi-Service Internet Platform (MSIP) routing to Glasgow/Manchester, Colossus routing to central ISP interconnect.

Once the DSLAM traffic is appropriately aggregated it is switched via ATM switches and Core SDH transmission to one of 8 Broadband IP PoPs (Colossus).

End-Users sessions are then routed across BT's Internet Core network to the ISP's Home Gateway Router. The ISP then takes aggregated access possibly involving a further transit across the MSIP platform to reach an exchange where the ISP has a geographic presence.

#### **3. Radio broadband service Offering**

Based on point to multipoint radio technology using Orthogonal Frequency Division Multiplex (OFDM) technology.

OFDM technology uses multiple frequency/phase radio paths to provided excellent tolerance to multi-path prorogation, reflections and interference. It also provides non-line of site capability.

Customers Subscriber Unit (SU) communicates back to a central Access Unit (AU)

The BT Radio broadband offering will provide coverage for the remainder of the Service Area that is unable to avail of fixed line ADSL services from BT exchanges.

The Radio broadband service will be provided from a network of sites throughout Northern Ireland and will provide, by 31<sup>st</sup> December 2005, the remaining coverage of the Service Area of Northern Ireland that is not possible to cover using fixed line ADSL technology.

The Radio broadband network topology will be resilient and consist of a backhaul network based on full SDH resilience. All backhaul will be provided using existing BT Fibre.

There is no requirement for line of sight.

The radio broadband network shall be deployed in such a way as to minimise the need for new masts.

Wholesale compatible.

Leading technology.

Operating in the recently opened 5.8Ghz Band C spectrum offering licensed access to radio broadband

Where the Response of the Contractor more fully expands on and enhances the Specifications described in this Eight Schedule, such shall be deemed to be incorporated herein. The obligations of the Contract in respect of the Equipment shall have precedence.

The Contractor with the agreement of the Department, not to be unreasonably withheld, may introduce new technology to fulfil its obligations under the Contract, provided that the coverage, service quality, cost and other attributes of that technology are equal to or better than the ADSL and wireless technologies as set out in paragraphs 2 and 3 of this Schedule or where technology deployment acceptably avoids an 'exception case' as defined in Schedule One.

## **NINTH SCHEDULE**

## **NINTH SCHEDULE**

### **USER SUPPORT AND SERVICE SUPPORT**

#### **1. Service Management and Service Support Procedures**

##### **Fixed line broadband services:**

The installation and in-life support offered to Business and Consumer customers (“retail customers”) who take a fixed line broadband service from BT will be identical to that offered to customers in areas where fixed line broadband services are already available.

The installation and in-life support offered to ISP customers (“wholesale customers”) will be identical to that offered by BT Wholesale for existing broadband products.

##### **“Retail” Customer Ordering Process – Fixed Line**

Customers will be able to order the service via a number of BT channels, including online, telephone or customer account teams. The online order process can be experienced at [www.bt.com](http://www.bt.com), note that this experience is subject to change in line with BT’s operational requirements

##### **Telephone Ordering**

Consumer Customers – Dial 150

Business Customers – Dial 152 or 0800 800060

Contact numbers for Radio Broadband will initially be dedicated to the service.

Radio Broadband – During the ordering process the customers line will be checked to ensure that they cannot receive the fixed line product first. If they can receive the fixed line product, that will be provided in place of Radio broadband.

##### **Installation Process – Fixed Line**

During the ordering process the customers line will be tested to ensure that it is within specification for standard fixed line Broadband service. This is currently set at 6km for the local BT exchange. If the line is suitable the order can be progressed and an appointment with the customer made to provide the service.

On a new installation, an engineer will make an initial visit to install an ordinary BT line, which will then be converted to Broadband on an agreed date.

If the customer has an existing line an appointment will be made for the “Self Install” conversion of the line and they will also be sent all the equipment required prior to the appointment date. On the agreed appointment day they should install the software, fit the modem and filters according to the complete and easy directions provided with the equipment. Should they have any problems help is available from [www.bt.com](http://www.bt.com) or by calling 0845 600 7020. For an additional charge, to be at a price equitable to BT’s market rate for such charges, the customer can arrange for an engineer to visit and install the Broadband service.



Self Install is not available for Radio Broadband products.

**Self Install Customer Assistance**

Customer assistance via the Internet at [www.bt.com](http://www.bt.com)

Telephone – 0845 6007020

**“Wholesale” Ordering Process – Fixed Line**

Customers of other ISP’s (via Wholesale offering) will place orders via the ISP’s own procedures.

**Customer Repair Process – Fixed Line**

Fault Reports via the Internet at [www.bt.com](http://www.bt.com)

Consumer Customers – Dial 151

Business Customers – Dial 154 or 0800 800060

Customers of Other ISP (via Wholesale offering) – Faults reported via the ISP’s own procedures.

**Self Install Customer Assistance**

Customer assistance via the Internet at [www.bt.com](http://www.bt.com)

Telephone – 0845 6007020

The Contractor will aim to respond to all identified “line” fault reports within its standard contractual times of 5 (five) hours for Business Customers and 9 (nine) hours for Consumer Customers or by any agreed appointment with the customer.

See below for Service Level Agreements for identified Broadband service faults.

**Radio Broadband services:**

A new set of installation and in-life support processes will be delivered to support Business and Consumer customers (“retail customers”) who take a Radio Broadband service from BT. These processes will draw upon processes that exist for Satellite Broadband and Fixed Line Broadband.

A new set of installation and in-life support processes for ISP customers (“wholesale customers”) will be delivered.

**“Retail” Customer Ordering Process - Radio**

Customers will be able to order the service via a number of BT channels, including online, telephone or customer account teams. Before the sale of a Radio Broadband service is made, a service availability check will be performed. The service availability check will check that a fixed line broadband service is not available to the customer, and then a check on Radio Broadband availability will be made. If the Radio availability check indicates that the service is available, an order will be taken subject to survey.

### **“Wholesale” Ordering Process - Radio**

Customers of other ISP's (via Wholesale offering) will place orders via the ISP's own procedures for radio broadband services. BT will provide a B2B XML interface that enables ISP's to place an order for end user installation of the Radio Broadband service.

### **“Retail” Customer In Life Support Process - Radio**

Customers will be able to contact BT via telephone via a dedicated helpdesk to report service problems that they are experiencing with the Radio Broadband service. BT will then perform diagnostic checks, and take ownership of service problems that impact the radio and back-haul elements of the service.

### **“Wholesale” In-Life Support Process - radio**

Customers of other ISP's (via Wholesale offering) will report faults using the ISP's own procedures for radio broadband services. BT will provide a B2B XML interface that enables ISP's to report faults relating to their individual end users.

## **Billing**

For fixed line and radio broadband services, BT will invoice the customer for the service they receive.

In the case of ISP customers, bills will be produced that cover service to all their end users. ISP customers will be responsible for billing their customers for broadband service provided to them by the ISP.

The Contractor's Customers – Both Consumer and Business customers will be charged for their Broadband service as part of the normal Telephone Bill carried out on Contractor's standard billing cycle. Charges will apply for line rental, calls made during the period and the Broadband service. Customers are also able to utilise the Contractor's Web based account management facilities at <http://www.bt.com>.

Radio broadband Customers – In some cases, Radio Broadband customers may receive a dedicated bill for this service (for example if they do not have a BT line)

Wholesale Customers – Billing will be via normal Service Providers arrangements with BT Wholesale.

Customers are also able to utilise the Contractor's Web based account management facilities at <http://www.bt.com>.

## **2. Customer Support**

### Wholesale Support

Customers have a choice, they can either place fixed line orders or report faults through our e-commerce application, eCo Gateway. Customers can use either a GUI interface or an API interface using xml as the transfer protocol. This is the Contractor's preferred option as it benefits both the Contractor and the customer by not only offering streamlined operations but also significantly reduces the cost of sale for both the Contractor and Service Providers. Further details are provided in Section C Part 2 page 36 of 47 of the Contractor's submission made to the Department on the 12<sup>th</sup> of November 2003

BT Radio Broadband customers can place orders or report faults through a dedicated service provider interface

For ISP customers, service handbooks will be provided for the fixed line and radio broadband services. Monthly service reports will be produced to highlight performance on provision and repair.

BT Wholesale will offer a wide range of support services to ISPs. These services will include published monthly reports highlighting performance on provision and repair.

The Contractor will provide a number of comprehensive support services for both "Retail" Consumer and Business Broadband Customers at the BT Web site [www.bt.com](http://www.bt.com)

Other Support will be available from:

BT Openworld Broadband Support – 0845 600 7020

BT Broadband Helpdesk – 0800 800060

Customer Installation Support – 0845 600 7020

All these services will be available 24 hours/day 365 days/year.

### **3. Escalation Procedures**

As detailed in Appendix D06 of the Contractor's submission to DETI dated 12<sup>th</sup> November 2003

### **4. Service Level Agreements.**

#### Standard Care Product

This service level is available as standard on all DETI Service products.

The Standard Care Product includes the following features:

40 clock hour (BT Wholesale) clearance of faults.

Service Level Guarantees (Not applicable for Broadband Symmetric products).

Unrestricted availability for all SP's and end-users across most of the Broadband portfolio.

Minimum operational cover between 07:00 and 21:00 Mon – Sun.

Engineering visits Mon – Fri 08:00 to 18:00 excluding Bank Holidays.

BT Wholesale provides wholesale services to all, on a non-discriminatory basis, our standard terms of business apply nevertheless, e.g. credit, purchase of BT Central, etc.

The Standard Care Product will be available at time of ordering product.

### Enhanced Care Product

The Enhanced Care Product is available as an option, for an additional monthly rental charge of £6.90 across the full range of fixed line DETI Service Products. An equivalent service may be available in due course for Radio Broadband customers if there is sufficient demand. This will be kept under review.

The Enhanced Care Product includes the following features:

Maximum 3-hour response time to faults (BT Wholesale).

20 clock hour (BT Wholesale) clearance of faults.

Service Level Guarantees (Not applicable for Broadband Symmetric products).

Available for all SP's and end-users across most of the Broadband portfolio.

Chargeable service option. This product will not be offered within tariff for any product.

### Total Care

The BT Central and Central Plus offerings to Wholesale customers, as well as the Customer Access links with the DataStream service are provided with Total Care service level within tariff. Total Care provides a guaranteed response within 4 clock hours, 24/365.

### Radio Broadband Service Offering

The Radio Broadband services Offering will mirror existing service management and support procedures already in place for ADSL based products. There may be some specific implementations whilst full integration is carried out with existing business as usual systems. Where different arrangements are initially necessary their operational procedures will take ADSL as their guide.

Radio broadband will be initially backed up by a dedicated sales and support desk. This will be carefully hooked into existing ADSL support locations to ensure that all synergies are exploited.

## **5. Service Availability Levels**

Subject to Force Majeure, 'Always On' services will provide a minimum availability of  
**Redacted**

## **6. Other Information**

All customer orders for BT Broadband services will be dealt with by one of BT's Call Centres in England and Scotland. BT is actively seeking to have all of these calls dealt with by BT's Call Centre in Belfast.

**TENTH SCHEDULE**

## **TENTH SCHEDULE**

### **WHOLESALE OFFERING**

#### **1. Pricing Structure for ADSL Wholesale Offering**

BT Central provides the Core of the network where all end user connections are aggregated for provision of the service. The level of service required by the wholesale buyer depends on the number of end users and the level of resilience required.

BT Central Pricing, BT Central Plus Pricing and BT DataStream pricing are as detailed in BT's submission to DETI on the 12<sup>th</sup> of November 2003 (Section C Part 2 Page 39/40 of 47), subject always to Clause 10 of the Contract.

##### **End-User Element Connection Charges (ex VAT)**

- IP Stream Home 500 (Consumer and Small Business Service) - £50
- IP Stream Office 500 (Small/Medium Business Service) - £50

##### **End-User Element Monthly Rental Charges (ex VAT)**

- IP Stream Home 500 (Consumer and Small Business Service) - £13
- IP Stream Office 500 (Small/Medium Business Service) - £18

#### **2. Pricing Structure Radio broadband Wholesale Offering**

##### **End-User Element Connection Charges (ex VAT)**

- BT Radio Broadband Home 500 (Consumer and Small Business Service) - £50
- BT Radio Broadband Office 500 (Small/Medium Business Service) - £50
- End-User Element Monthly Rental Charges (ex VAT)
- BT Radio Broadband Home 500 (Consumer and Small Business Service) - £13
- BT Radio Broadband Office 500 (Small/Medium Business Service) - £18

#### **3. Basis on Which Charges To the Wholesale Buyer are Made**

BT Wholesale Services will be billed either monthly or quarterly depending on the Service Provider's preference. All services will be billed quarterly or monthly on advance.

#### **4 Assumptions Underlying the Pricing Structure**

Pricing of BT DataStream and BT IPStream are subject to regulatory requirements.

The Radio Broadband wholesale services have been priced in line with the ADSL equivalent services as outlined in Sections 1 and 2 of this Schedule

**5. Availability to Wholesale Buyers**

Services will be made available in a wholesale form to any Service Provider who signs up to the relevant Terms & Conditions for the service.

**6. Other Information**

BT proposes that the Radio broadband Wholesale Offering will only be made available for use in locations that have been identified as requiring radio broadband coverage.

**SIGNED on behalf of  
the Department**  
In the presence of:-

Witness:

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Occupation: \_\_\_\_\_

**SIGNED on behalf of  
the Contractor**  
In the presence of:-

Witness:

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Occupation: \_\_\_\_\_