



The Bahamas Telecommunications Company Limited

Broadband Resale Offer

(Amended)
May 4, 2018

Table of contents

Broadband Resale Offer.....	3
Broadband Resale Agreement.....	5
Annex A – Service Schedule	20
Annex B – Ordering Processes	22
Annex C – Operations and Maintenance	27
Annex D – Billing.....	29
Annex E – Dispute Resolution.....	34
Annex F – Price List	37
Annex G – Quality of Service Standards	38
Annex H – Definitions	40
Schedule 1 - Contact details.....	43

The Bahamas Telecommunications Company Limited

Broadband Resale Offer

The Bahamas Telecommunications Company Limited of John F. Kennedy Drive, Nassau, New Providence, The Bahamas (“BTC”) offers to enter into an Agreement with qualified telecommunications operators and service providers who are licensed to provide public electronic communications services in The Bahamas to provide the Broadband Resale Service as described in Annex A.

The Agreement will comprise the following documents:

- Main Terms and Conditions
- Annex A – The Services Schedule
- Annex B – Ordering Processes
- Annex C – Operations and Maintenance
- Annex D – Billing and Payment
- Annex E – Dispute Resolution
- Annex F – Price List
- Annex G – Quality of Service Standards
- Annex H – Definitions
- Schedule 1 – Contact Details

The Broadband Resale Offer (“the BRO”) and attached pro forma agreement in accordance with the Final Determination Resale Broadband Obligation ECS 09/2018 takes effect from the date on which the terms of the Offer are approved by the Utilities Regulation and Competition Authority (“URCA”)

Operators wishing to negotiate under this Broadband Resale Offer must first enter into a Non-Disclosure Agreement with BTC and agree to credit verification. The method to be used by BTC for credit verification may change from time to time and will be applied consistently to all Operators.

BTC reserves the right to review and to amend the BRO as required by changing circumstances, subject to any approvals required from URCA, and shall review and revise the BRO when lawfully required to do so by URCA acting in exercise of the powers conferred on it by the Communications Act 2009.

Immediately following an amendment to the BRO, the same change shall be made to any existing Agreement entered into between BTC and an operator or service provider pursuant to the BRO.

This Broadband Resale Offer shall be withdrawn in respect of services pertaining to any market if URCA formally determines that BTC no longer has significant market power in that market. Should the BRO be withdrawn in respect of such services, any obligation to provide such services under the Agreement shall cease, but BTC will, at the request of the other party, offer to negotiate for the supply of the same services on commercial terms.

Dated 2018

.....

for **The Bahamas Telecommunications Company Limited**

Broadband Resale Agreement

Main Terms and Conditions

The Parties

This Agreement is made at Nassau this _____ day of _____ 201X (the “Effective Date”) between:

- **The Bahamas Telecommunications Company Limited** of John FKennedy Drive, Nassau, New providence, The Bahamas (“BTC”),

and

- *[Operator of (address)]* (“the Access Seeker”)

which are sometimes collectively referred to as “Parties” or “Operators” and individually as “Party” or “Operator” as will be apparent from the context.

1 Introduction

1.1 By a Decision dated July 31, 2018 of the Utilities Regulation and Competition Authority of The Bahamas made under ECS 09/2018 section 2(1), BTC was designated as having significant market power in Geographic Market 2 and has been obliged to publish a Broadband Resale Offer in respect of certain wholesale services relevant to those markets.

1.2 This Agreement is entered into pursuant to the Broadband Resale Offer.

1.3 The services offered under this Agreement will be available to all Licensed Operators on a non-discriminatory basis.

1.4 Terms used in this document as defined terms shall have the meanings set out in Annex H

2 Contractual documents

2.1 The following documents, along with the Schedules attached to them, form an integral part of this Agreement:

- Main Terms and Conditions
- Annex A – The Services Schedule
- Annex B – Ordering Processes
- Annex C - Operations and Maintenance
- Annex D – Billing and Payment
- Annex E – Dispute Resolution
- Annex F – Price List
- Annex G – Quality of Service Standards
- Annex H – Definitions

- Schedule 1 – Contact Details

22 In the event of any inconsistency between parts of this Agreement, the language of the part listed higher in the following table shall prevail over that in any lower part:

- Main Body, including the definitions in Annex H and the dispute resolution procedures in Annex E
- Annex A
- Annex B
- Annex C
- Annex D
- Annex E
- Annex F
- Annex G
- Annex H
- Schedule 1.

3. Scope of Agreement

3.1 BTC agrees to provide the Services to the Access Seeker on the terms and conditions set out in this Broadband Resale Agreement.

4 Commencement and duration

4.1 This Agreement shall take effect on the Effective Date.

4.2 The Agreement shall continue in effect, unless otherwise agreed between the Parties, unless the entire Agreement is terminated in accordance with one of the circumstances set out in Clause 14.

4.3 Without prejudice to Clause 4.2, the minimum term for the provision of the Broadband Resale Service shall be one year

5 Prices

5.1 For the provision of the Broadband Resale Service, the Parties agree to pay the prices set out in Annex F– Price List.

5.2 The Parties shall use the processes set out in Annex D – Billing to charge and reimburse each other for the provision of the Service.

5.3 All prices are expressed exclusive of any VAT or sales tax or other tax imposed by law.

6 Process and standards

6.1 The Parties agree to use the processes set out in Annex B – Ordering Processes for the provisioning of Broadband Resale Service.

6.2 The Parties agree to comply with the standards, specifications and procedures set out in Annex C – Operations and Maintenance.

7 Quality of service

7.1 BTC shall supply the same quality of service for a Service as it supplies to its own Customers or to its subsidiaries or affiliated companies for the same service or a similar service.

7.2 This agreement is subject to URCA's Quality of Service Regulations (ECS 42/2016 issued 22 December 2016).

8 Management of Broadband Resale Agreement

8.1 The Parties accept the need to provide quality telecommunication services to their respective Customers, and, accordingly, undertake to:

8.1.1 act in good faith and in a professional manner in relation to each other in the provision of Services

8.1.2 exchange information necessary for the fulfilment and continued operation of this Agreement, but without prejudice to obligations to protect Customer privacy and commercial confidentiality

8.1.3 act at all times, as far as is reasonably possible, so as to facilitate the speedy and effective provision and operation of the Services, to the benefit of Customers and to their mutual advantage

8.1.4 use their best efforts to resolve disputes in an efficient and professional manner.

8.2 Each Party shall nominate members of their staff to act as the first point of contact for the other Party for the management and implementation of the Agreement. These names, contact details and responsibilities shall be set out in Schedule 1, as amended from time to time.

9 Network safety and protection

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

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

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

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

10 Operations and maintenance

10.1 BTC shall correct faults which occur in its Network which affect the provision of Services in accordance with its normal engineering practices. For the avoidance of doubt, BTC does not warrant that its Network is, or will be, free from faults.

11 Retail customer relationships

11.1 Each Party shall instruct its staff, contractors, agents and employees to refrain from any public criticism of the other Party or from any criticism of the other Party to a Customer in relation to any matter that has arisen as a result of the operation of the Agreement. Each Party shall instruct its staff, contractors, agents and employees to concentrate their energies on resolving the issue cooperatively with the other Party.

11.2 Neither Party shall represent expressly or by omission or implication that:

11.2.1 it is approved by or an agent of or affiliated with the other Party;

11.2.2 it has a special relationship with the other Party or is charged preferential prices by the other Party for the provision of the Broadband Resale Service; or

11.2.3 the services provided by it to Customers are the other Party's services.

11.3 The Access Seeker has no right to withhold any payment due to BTC on account of any non-payment of debts owed to the Access Seeker by its Customers.

11.4 The Parties agree to co-operate with each other in order to detect and prevent fraudulent use, theft or misuse of each other's services or equipment. If one Party becomes aware of possible fraudulent use, theft or misuse of the other Party's services or equipment, it shall promptly inform the other Party.

11.5 The Access Seeker shall require its Customers not to use the Broadband Resale Service in a way that contravenes any law or regulation issued in The Commonwealth of The Bahamas or that is connected to a criminal or fraudulent activity. In the event BTC brings it to the Access Seeker's attention that its Customers are using its network to engage in fraudulent activities and the Access Seeker fails to take any action to stop this use within seven (7) Working Days, BTC shall be entitled to bring this Agreement to an end, and the Access Seeker shall be liable for all damages and charges as a result of the fraud.

12 Dispute resolution

12.1 In the event of a dispute between the Parties over the provision of the

Broadband Resale Service Services or any other matter related to this Agreement, the Parties agree to use the procedures set out in Annex E – Dispute Resolution (or, in the case of billing disputes, Clause E.6) in order to resolve the dispute.

13 Breach and suspension of Service and Agreement

If a Party is suspected of being in material breach of any of the terms of this Agreement, the other Party may send it a notice (the Breach Notice) specifying the nature of the breach, a reasonable timescale for its remedy, and the consequences of a failure to remedy the suspected breach (including the suspension and termination of the Agreement).

13.1 Subject to giving URCA five (5) Working Days' notice, a Party may suspend the provision of a Service in any of the following circumstances:

13.1.1 Where suspension is warranted by the failure of the other Party to take action to rectify a fault condition, including fraudulent Customer behavior that threatens the safety of the first Party's Network.

13.1.2 A failure to correct a material breach of the terms of this Agreement, following the serving of a Breach Notice and the expiry of the term set out in the Breach Notice under the procedure set out in Clause 13.1.

13.1.3 Where the other Party has failed to pay an undisputed invoice for the Services following the elapse of ninety (90) Working Days after the Due Date.

13.1.4 Where the other Party has been declared bankrupt or gone into liquidation.

13.1.5 Where the other Party ceases to be a Licensed Operator;

13.1.6 Where the first Party is formally directed to do so by URCA;

13.1.7 Where the first Party is requested by formal notice in writing to do so by the other Party.

13.2 **Effect of suspension:** If the provision of a Service is suspended, then:

13.2.1 the Service to which the suspension relates will no longer be provided by the first Party;

13.2.2 the provision of other Services, not covered by the suspension, shall continue and not be affected;

13.2.3 the term of the Agreement shall not be affected by the period of suspension; and

13.2.4 the first Party shall not be liable to the other Party for any losses or damage that the other Party may have suffered as a result of the suspension.

13.3 Subject to giving URCA five (5) Working Days' notice, a Party may suspend this Agreement under any of the following circumstances:

13.3.1 Where suspension is warranted by the continuing failure of the other Party to take action to rectify a fault condition that threatens the safety of the first Party's Network in accordance with Clause 8 and the fault condition relates to the provision of all Services in the Agreement

13.3.2 A failure to correct a material breach of the terms of this Agreement, following the serving of a Breach Notice and the expiry of the term set out in the Breach Notice under the procedure set out in Clause 13.1

13.3.3 Where the other Party has ceased to operate the business of the provider of telecommunications services to Customers

13.3.4 Where the other Party has failed to provide or renew reasonable financial security where required and as provided for under the terms of Clause 19

13.3.5 Where the other Party has been declared bankrupt or gone into liquidation.

13.4A Party shall suspend this Agreement where it is formally directed to do so by URCA.

13.5 If this Agreement is suspended, then:

13.5.1 all Services under this Agreement will no longer be provided by the first Party

13.5.2 the term of the Agreement shall not be affected by the period of suspension; and

13.5.3 the first Party shall not be liable to the other Party for any losses that the other Party may have suffered as a result of the suspension.

14 Termination of Services and Agreement

14.1 Subject to the approval of URCA, a Party may terminate the provision of a Service under this Agreement in any of the following circumstances:

14.1.1 Where termination is warranted by the continuing failure of the other Party to take action to rectify a fault condition that threatens the safety of the first Party's Network in accordance with Clause 13

14.1.2 A failure to correct a material breach of the terms of this Agreement, following the serving of a Breach Notice and the expiry of the term set out in the Breach Notice under the procedure set out in Clause 13.1

14.1.3 Where the other Party has ceased to trade either generally or in relation to the provision of telecommunications services to Customers or other services with

which the Service is associated

14.1.4 Where the other Party has been declared bankrupt by a Court of competent jurisdiction or entered into liquidation or an analogous process in the jurisdiction in which it was incorporated or has appointed, or suffered the appointment of, a Receiver or Administrator or official with similar powers in another jurisdiction

14.1.5 Where a Party fails to pay any amount due under the terms of this Agreement by the due date or fails to pay any amount payable as determined on the basis of the billing dispute resolution procedures under Clause D.6, and fails to remedy such default within fifteen (15) Working Days of written notice to do so

14.1.6 Where the other Party ceases to be a Licensed Operator in respect of any service to be provided to a Customer to which the Service relates

14.1.7 Where the first Party is formally directed to do so by URCA

14.1.8 Where BTC decides to stop providing the Broadband Resale Service, subject to written approval from URCA

14.1.9 Where the first Party is requested by formal notice in writing to do so by the other Party.

14.2 Effect of termination of Service: If the provision of a Service is terminated, then:

14.2.1 the Service to which the termination relates will no longer be provided by the first Party

14.2.2 the provision of other Services, not covered by the termination, shall continue and not be affected

14.2.3 the terms of this Agreement in relation to other Services shall not be affected by the termination; and

14.2.4 the first Party shall not be liable to the other Party for any losses that the other Party may have suffered as a result of the termination.

14.3 Subject to the written approval of URCA, a Party may terminate this Agreement in any of the following circumstances:

14.3.1 Where the other Party has been declared bankrupt by a Court of competent jurisdiction or entered into liquidation or an analogous process in the jurisdiction in which it was incorporated or has appointed, or suffered the appointment of, a Receiver or Administrator or official with similar powers in another jurisdiction

14.3.2 Where the other Party has ceased to be a Licensed Operator in respect of any service to be provided to a Customer to which the Services being provided pursuant to this Agreement relates

14.3.3 A failure to correct a material breach of the terms of this Agreement, following the serving of a Breach Notice and the expiry of the term set out in the Breach Notice under the procedure set out in Clause 13.1.

14.4 **Effect of termination of Agreement:** Where this Agreement is terminated under Clause 14.3, then

14.4.1 all Services under this Agreement will cease to be provided by the first Party

14.4.2 the first Party shall not be liable to the other Party for any losses or damage that the other Party may have suffered as a result of the suspension

14.4.3 the other Party shall be responsible for and bear all direct costs reasonably incurred by both Parties in the removal of equipment and cabling at all relevant switches, shared sites and shared facilities that have been terminated; and

14.4.4 all outstanding invoices and debts between the Parties (including for any period during which the first Party, as a concession, continued to provide service despite termination of the Agreement) shall become due and payable.

14.5 Except in the case of a clear emergency relating to safety or potential risk of major network failure, the first Party shall obtain the written approval of URCA before the implementation of the steps set out in Clause 19.

15 Force majeure

15.1 No Party to this Agreement shall be liable for any failure to fulfil its obligations hereunder where such failure is caused by circumstances outside the reasonable control of such Party, including, without limitation, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of Government, labour disputes of any kind (whether or not involving the Party's employees), fire, lightning, explosion, earthquake, volcano or any other such cause (each an "event of force majeure").

15.2 The Party initially affected by the event of force majeure shall promptly notify the other Party in writing of the estimated extent and duration of such inability to perform its obligations ("Force Majeure Notice").

15.3 Upon cessation of circumstances leading to the event of force majeure, the Party affected by such event of force majeure shall promptly notify the other of such cessation.

15.4 If as a result of a force majeure, the performance by the Party of its obligations under the Agreement is affected, such Party shall, subject to the provisions of Clause 15.7, perform those of its obligations not affected by a force majeure. In performing those of its obligations not affected by a force majeure, the Party initially affected by a force majeure shall use its reasonable endeavours to deploy its resources such that (when taken together with other obligations to its Customers and third parties) there is no undue discrimination against the other Party.

15.5 If the event of force majeure continues for a period of 6 months or less from the date of any notification thereof in terms of Clause 15.2, any and all obligations outstanding shall be fulfilled by the Party affected by the event of force majeure as soon as possible after cessation of the event of force majeure, save to the extent that such fulfilment is no longer practically possible or is not required by the other Party.

15.6 If the event of force majeure continues for more than 6 months from the date of the Force Majeure Notice and notice of cessation in terms of Clause 15.3 has not been given and such event of force majeure prevents the affected Party from performing its obligations in whole or in part during that period, the unaffected Party shall be entitled (but not obliged) to terminate this Agreement by giving not less than 30 days written notice to the other Party after expiry of such 6 month period to that effect; provided that such notice shall be deemed not to have been given if a notice of cessation given in terms of Clause 15.3 of the event of force majeure is received by the unaffected Party prior to the expiry of such 30 Working Days.

15.7 If this Agreement is not terminated in terms of the provisions of Clause 15.6, any obligations outstanding shall be fulfilled by the Party affected by the event of force majeure as soon as reasonably practicable after the event of force majeure has ended, save to the extent that such fulfilment is no longer possible or is not required by the unaffected Party.

16 Review

16.1 A Party may seek to amend this Agreement by serving on the other Party a Review Notice if:

16.1.1 either Party's licence is materially modified (whether by amendment or replacement);

16.1.2 a material change occurs in the law or regulations governing telecommunications in The Commonwealth of The Bahamas;

16.1.3 a material change occurs, including enforcement action by any regulatory authority, which affects or reasonably could be expected to affect the commercial or technical basis of this Agreement;

16.1.4 there is a general review pursuant to Clause 16.3.

16.2 A Review Notice shall set out in reasonable detail the issues to be discussed between the Parties.

16.3 A Party may initiate a general review of this Agreement by sending a Review Notice to the other Party on the anniversary of the date in Clause 1.

16.4 The terms set out in Annex C – Operation and Maintenance, Annex D - Billing and Payment and Annex F – Price List may be reviewed by BTC at any time. If BTC concludes that any such terms should be varied, it may issue a Review Notice at any time.

16.5 On service of a Review Notice, the Parties shall forthwith negotiate in good faith the matters to be resolved with a view to agreeing the relevant amendments to the Agreement.

16.6 For the avoidance of doubt, the Parties agree that notwithstanding service of a Review Notice the Agreement shall remain in full force and effect as it was before service of the Review Notice until agreement is reached or the matter is determined under Clause 16.7.

16.7 If the Parties fail to reach agreement on the subject matter of a Review Notice within 3 calendar months from the date of the Review Notice, either Party may initiate a dispute procedure as set out in Annex E – Disputes.

16.8 Subject to the procedures approved by URCA, if any amendment is made to the Broadband Resale Offer, the Parties shall be deemed to have agreed an equivalent amendment to the terms of this Agreement with effect from the date on which the amendment to the Broadband Resale Offer takes effect, and no further formality shall be required to give effect to such an amendment of this Agreement.

16.9 A Party may amend its own contact information in Schedule 1 - Contact Details at any time by informing the other Party of the amendments.

17 Provision of information

17.1 Each Party shall provide the other with the information required by the terms of the Agreement and shall do so in a timely manner. Each Party shall use reasonable endeavours to provide the other with information that may be reasonably necessary to the operation of this Agreement.

17.2 The Party disclosing information will use reasonable endeavours to ensure that the information disclosed is correct to the best of its knowledge at the time of its provision.

17.3 If a Party disclosing information provides information to the other Party, the first Party may rely on the other Party to have obtained all appropriate Third Party consents.

17.4 Subject to Clause 18, the Party receiving information shall indemnify the disclosing Party and keep it indemnified against all liabilities, claims, demands, damages, costs and expenses arising as a consequence of any failure by the Party receiving information to comply with any conditions or restrictions on use or disclosure of the information supplied in cases where those conditions or restrictions were notified to it in writing prior to the time of disclosure.

18 Confidentiality and information protection

18.1 The Parties shall not divulge to any third party the contents of this Agreement, unless required to do so by law, order of a court of competent jurisdiction or URCA's regulations or decisions. For the avoidance of doubt, URCA and any person specifically authorised by law is not a third party for the purposes of this Clause.

18.2 The Parties shall treat as confidential within their respective organisations the contents and terms of this Agreement and, accordingly, shall take all reasonable steps to ensure that only those staff, employees, contractors and agents that need to know the contents or terms of any part of this Agreement for the purpose of implementing this Agreement shall have access to the relevant contents and terms and to information provided by the other Party under the terms of this Agreement.

18.3 Information provided by one Party to the other shall only be used for the purpose for which it was provided. For the avoidance of doubt, such information may not be used for the commercial advantage of the recipient Party in its retail business operations or be given to any staff, employee, contractor or agent with retail sales or marketing responsibilities or to any subsidiary or associated company of the Party.

18.4 The Parties shall take all necessary steps to preserve the confidentiality of Customer information relating to any Customer that is passed between them and to protect the privacy of individual Customers. In particular, where instructions from Customers relevant to information confidentiality and privacy have been received by one Party they shall be communicated to, and respected by, the other Party.

18.5 The provisions of Clauses 18.1 to 18.4 inclusive do not apply to information that one Party is required to disclose in order to satisfy legal requirements or the regulations of URCA, to comply with the requirements of any recognised Stock Exchange, or to information that is already in or becomes available in the public domain through the actions of a third party.

18.6 The provisions of this Clause 18 will apply with effect from the date that the Agreement is signed until 60 months after the date of termination or expiry of the Agreement.

19 Credit rating and bank guarantee

19.1 Should the result of the credit vetting of a prospective Operator confirm that the provision of Services poses a financial risk which is greater than can be controlled by an appropriate credit limit, BTC has the right to request a form of

19.2 financial security, including a bank guarantee for an amount representing three months of forward-looking revenues associated with the Broadband Resale Service. The level of security requested shall be proportional to the risk involved. The level of security shall take account of factors such as the estimated value of services to be provided, and the projected liability. The financial security may be provided by a means such as bank deposit or guarantee or any other form of security reasonably acceptable to BTC.

19.3 The financial security will be subject to quarterly review. Failure to provide a suitable guarantee for payment of sums due for actual levels of service within 30 days (or such longer period as BTC may reasonably allow) will be sufficient reason for BTC to suspend this Agreement under Clause 13.4.

19.4 BTC may also carry out credit vetting of an existing Operator where BTC has reasonable concern about the ability of the Operator to cover debts including without limitation where BTC has evidence of a poor payment history or the Operator's credit rating has been downgraded or threatened to be downgraded. The method to be used will be communicated to the Operator and will be standard to all Operators.

19.5 A bank guarantee may be presented to the relevant bank for payment provided that:

19.11 the Access Seeker has accumulated debts overdue by 30 Calendar Days or more in relation to the Broadband Resale Service equal to or in excess of the amount of the guarantee;

19.12 the debts are not subject to dispute; and

19.13 the Operator concerned has been formally notified of the Access Provider's intention to present the guarantee.

19.6 BTC may seek a new bank guarantee once it has presented a bank guarantee for payment.

20 *Intellectual property rights*

20.1 Nothing contained in this Agreement shall be construed to confer or be deemed to confer on either Party any rights or licences in the intellectual property of the other Party.

20.2 For the purposes of this clause "Intellectual Property" means whatever trademarks, (registered or not) inventions, patents (both registered and unregistered), copyrights, registered and unregistered designs, know-how and other intellectual property vesting in a Party by the operation of law.

21 *Notices*

21.1 All notices provided for in this Offer shall be in writing and shall be delivered to the relevant contact persons nominated for various purposes in Schedule 1 -

Contact Details from time to time. Each party shall provide updated contact information in the event there are organizational changes.

21.2 Written notices shall include paper-based writing and electronic means of written communication such as writing communicated by facsimile (fax) and electronic mail (e- mail).

21.3 The Party receiving a notice pursuant to this Agreement shall confirm receipt of the notice within 24 hours of such receipt. The manner of confirmation shall be the same as that used for the notice, whether paper-based or electronic.

22 Limitation of liability

22.1 Neither Party has an obligation of any kind to the other Party beyond an obligation to exercise the reasonable skill and care of a competent telecommunications operator in performing its obligations under the Agreement.

22.2 Subject to Clause 22.4, if a Party is in breach of any of its obligations under the Agreement to the other Party (excluding obligations arising under the Agreement to pay moneys in the ordinary course of business), or otherwise (including liability for negligence or breach of statutory duty) such Party's liability to the other shall be limited to US\$5,000,000 for any one event or series of connected events and US\$10,000,000 for all events (connected or unconnected) in any period of 12 calendar months.

22.3 Neither Party shall be liable to the other in contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or other consequential loss whatsoever arising in connection with the operation of the Agreement, howsoever caused, unless otherwise explicitly provided for in the Agreement.

22.4 Each provision of this Clause 22 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.

23 Severability

23.1 If any term, condition, agreement, requirement or provision contained in this Agreement is held by any court having jurisdiction to be unenforceable, illegal, void or contrary to public policy, such term, condition, agreement, requirement or provision shall be of no effect whatsoever upon the binding force or effectiveness of any of the remainder of this Agreement, it being the intention and declaration of the Parties that had they or either of them known of such unenforceability, illegality, invalidity or that the provision was contrary to public policy, they would have entered into a contract, containing all the other terms and conditions set out in this Agreement.

24 Assignment of rights and obligations

24.1 Subject to Clause 24.2, no rights, benefits or obligations under this Agreement may be assigned or transferred, in whole or in part, by a Party without the prior written consent of the other Party.

24.2 Subject to Clause 24.3, no consent is required under Clause 24.1 for an assignment of rights, benefits or obligations under this Agreement (in whole or in part) to a successor to all or substantially all of the assigning Party's Network or to an associated company provided that such successor or Associated Company shall have had a licence granted to it to run the Network of the assigning Party.

24.3 The assigning Party shall promptly give notice to the other Party of any assignment permitted to be made without the other Party's consent. No assignment shall be valid unless the assignee or successor agrees in writing to be bound by the provisions of this Agreement.

25 *Whole agreement*

25.1 This Agreement constitutes the whole Agreement between the Parties as to the subject matter of this Agreement and, unless otherwise agreed in writing between the Parties, supersedes all previous agreements, understandings, representations or warranties whatsoever, whether oral or written.

26 *Variation*

26.1 No addition to or variation, consensual cancellation or novation of this Agreement no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by both the Parties or their duly authorised representatives.

27 *Relaxation*

27.1 No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other on any occasion in respect of the performance of any obligation hereunder or the enforcement of any right arising from this Agreement, and no single or partial exercise of any right by either Party, shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of, or arising under, this Agreement or estop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term of this Agreement.

28 *Necessary approvals and consents*

28.1 Each Party warrants to the other Party that it has the necessary rights, licences and authorities to enter into and perform its obligations in terms of this Agreement.

28.2 Each Party indemnifies the other Party against any loss, claim, expense, damage or action, suffered or sustained by such other Party pursuant to a breach by such Party of its warranty in terms of Clause 28.1, notwithstanding anything to the contrary contained in this Agreement.

29 *Governing law*

29.1 The law governing this Agreement shall be the law of The Commonwealth of The Bahamas.

IN WITNESS WHEREOF, the Parties have in the presence of witnesses set their respective hands to this Agreement on the date first written above

For and on behalf of _____

For and on behalf of _____

Signed

Signed

Name

Name

Title

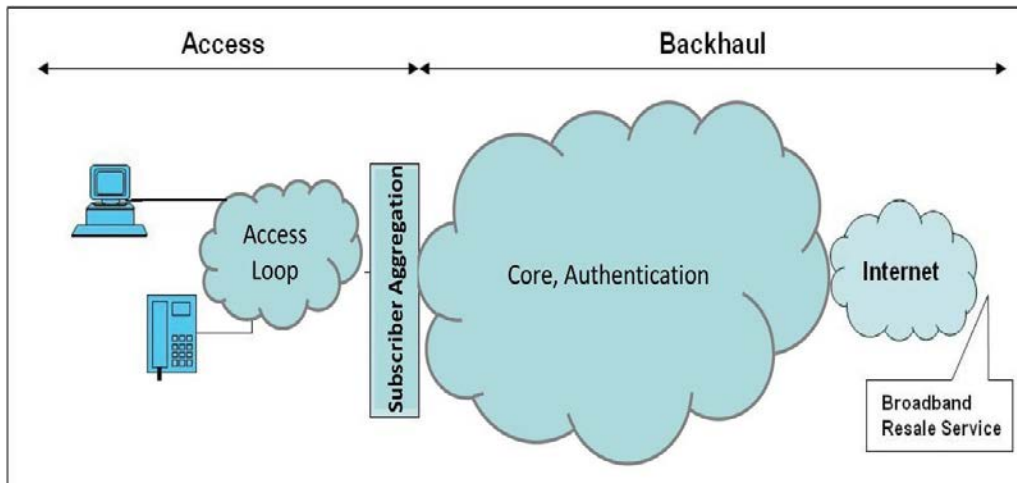
Title

Annex A – Service Schedule

The Broadband Resale Service

A.1 **Service definition:** The Broadband Resale Service is an asymmetric, white label (i.e. unbranded) broadband service for providing high speed “bursty” access to the Internet for end Customers with the same bandwidths as BTC’s mass-market asymmetric broadband service. It is designed to provide faster “downstream” speeds towards the Customer than “upstream” speeds. The availability, speed and quality of the Broadband Resale Service depends on the technology used, and specifications of the infrastructure. The service includes backhaul from BTC’s subscriber aggregation point, the use of BTC’s subscriber remote access and authentication systems and connectivity to the internet across BTC’s IP network.

Diagram A1: Broadband Resale Service



A.2 The speeds currently available on this Service are as shown in Table A2. Availability of any specific speed service may vary by location.

Table A2: Broadband Resale Services

Service	Speeds	
	Downstream	Upstream
Residential Customers	Up to 8 Mbps	Up to 3 Mbps
	Up to 16 Mbps	Up to 3 Mbps
	Up to 25 Mbps	Up to 10 Mbps
	Up to 50 Mbps	Up to 10 Mbps
	Up to 75 Mbps	Up to 25 Mbps
	Up to 150 Mbps	Up to 45 Mbps
Business Customers	Up to 300 Mbps	Up to 100 Mbps
	Up to 8 Mbps	Up to 3 Mbps
	Up to 16 Mbps	Up to 3 Mbps

This table is subject to revision from time to time as BTC introduces new speeds

A.3 The Service will only be available on access lines connected to a BTC

subscriber access point. If no access line is available to the Customer's premises, the Access Seeker must make application to BTC for an access line and be provided with the line before the Broadband Resale Service can be ordered.

A.4 Some PSTN lines may not be suitable for the Broadband Resale Service for reasons such as long line length or poor line quality. BTC reserves the right to refuse to supply the Broadband Resale Service to lines where in its opinion the availability or the quality of service will be significantly impaired.

A.5 The provision of the Broadband Resale Service is subject to the availability of sufficient capacity at BTC's subscriber access point.

A.6 The Access Seeker shall ensure that its Customers use the Broadband Resale Service in accordance with any applicable law or regulation, and shall not affect the quality of service provided by BTC to its own or to other Customers. BTC reserves the right to impose download limits at its own discretion inline with policy governing Fair Usage Policy (FUP). For the avoidance of doubt, any download limits should not discriminate against the reseller, compared to BTC's own retail broadband customers.

A.7 **Responsibilities of the operators:** The operator requiring the Broadband Resale Service shall be responsible for ordering the Service in accordance with Annex B.

A.8 The Access Seeker will be able to brand, price and market the service, and will take full responsibility for first-line Customer care and billing, including the collection of revenues from its Customers.

A.9 BTC is responsible for the delivery and maintenance of the service, for the provision of equipment on Customer's premises necessary to connect Customers to the service (broadband modem and filter), for the allocation of user names, passwords and IP addresses, and for fault repairs to the Broadband Resale Service. BTC shall not be responsible for testing, provisioning, supplying, purchasing, installing or maintaining any equipment to be installed on the Customer's premises other than the broadband modem and filter. BTC's responsibilities for the maintenance of Customer Equipment shall be as set out in Clause C.5.

A.10 **Quality of service:** BTC will ensure that the Broadband Resale Service meets quality of service parameters that are similar to its own retail service.

A.11 **Provisioning:** The Broadband Resale Service shall be ordered and provided in accordance with Annex B.

A.12 **Charging:** The Access Seeker shall pay the charges for the Broadband Resale Service as specified in Annex F - Price List.

A.13 **Planned maintenance:** The Parties shall provide each other with a notice of ten (10) Working Days prior to any planned maintenance work which will cause an outage to take place on a Broadband Resale Service.

A.14 **Transfer and cancel** The Access Seeker may at any time give notice that it requires BTC to cancel the Broadband Resale Service provided to a Customer or to transfer the Service to another address.

Annex B – Ordering Processes

B.1 Requests for Service

B.1.1 This Annex sets out the procedures that will apply for handling requests from the Access Seeker for the Broadband Resale Service.

B.1.2 The Access Seeker must obtain the necessary licences from URCA and sign this Agreement before submitting orders for the Broadband Resale Service.

B.1.3 In following the general application and response procedures outlined in this Annex the Parties shall act with all reasonable expedition and not take the full time permitted for each part of the process unless the action occupies all of that time.

B.1.4 The Parties shall do all things reasonably necessary to ensure that, to the maximum practical extent, Orders for the Broadband Resale Service are fully accepted. Without limiting the meaning of this requirement, it may include informal meetings between staff and employees of the parties to clarify and otherwise facilitate the Orders and their implementation. The Parties shall not limit themselves to formal communications where informal and other processes appear to either Party to be sensible and useful.

B.2 Ordering processes for Broadband Resale Service

B.2.1 **Forecasting and resourcing:** The Access Seeker may provide BTC with forecasts of its likely orders for the Broadband Resale Service. If these forecasts are provided as set out below, BTC will use its best efforts to meet the quality of service standards set out in Annex G - Quality of Service Table G.1. If the Access Seeker does not provide the forecasts, BTC will use reasonable efforts to meet the quality of service standards. If the Access Seeker decides to provide forecasts, it must provide the forecasts every three months, and show for each month of the next six months the number of orders anticipated by DSLAM area.

B.2.2 The Access Seeker shall order the Broadband Resale Service by letter, fax or email to BTC's Interconnection Manager (as described in Schedule 1 - Contact Details) setting out the following information:

- Date of Order
- Access Seeker's name and order number
- Customer's name
- Customer's name and phone number for contact regarding the order
- Name and phone number of on-site contact (if different from above)
- Address of premises where the Broadband Resale Service is to be installed
- Broadband product required (name, downstream and upstream speeds)
- Name and position of Access Seeker's representative authorising the order
- Signature of Access Seeker's representative.

BTC will refrain from contacting broadband resale retail customers other than to facilitate service migration/delivery where necessary. Information collected will be used for the purpose for which it was intended only.

The Order will constitute a commitment by the Access Seeker to pay the charges for the provision of the Broadband Resale Service to the Customer described in the Order

On receipt of a request for broadband resale BTC shall confirm receipt of the service request within one (1) Working Day

B.2.3 Within five (5) Working Days of receiving the Order, BTC will advise the Access Seeker of:

- either the acceptance of the order and BTC's Order Number and
- the expected Ready for Service date (if different from the timescales set out in Annex G- Quality of Service Standards), or
- the need for additional information when the information provided in the Order is unclear or missing, or
- an inability to provide the service to some or all of the Customers because of technical reasons (including, but not limited to, unsuitability of PSTN line, lack of PSTN line and unavailability of Ports).

If additional information is required, the Access Seeker will be required to update the Order with the additional information.

B.2.4 Once it has accepted the Order, BTC will then provide the Broadband Resale Service in co-ordination with the Customer or the Customer's contact person (as described on the Order). BTC's objective is that the Ready for Service date should be ten (10) Working Days after the order has been accepted. Any delay caused by the Customer or the Access Seeker shall be added to this and the other targets set out in Annex G - Quality of Service Clause G.2. If there is a likelihood of a material delay in the Ready for Service date, BTC will inform the Customer and the Access Seeker.

If a new PSTN line has to be installed in order to provide the Broadband Resale Service, the target for the Ready for Service date shall not apply, and BTC will inform the Customer and the Access Seeker of the Ready for Service date when the order is accepted.

B.2.5 BTC will carry out testing of the Broadband Resale Service and inform the Customer and the Access Seeker that the service is operational and Ready for Service.

The Customer or Access Seeker may reject the service by giving a notification of rejection up to five (5) Working Days after the Ready for Service Date if the Broadband Resale Service does not meet the specifications set out in this Agreement. BTC will then take the necessary steps to ensure that the Service complies with the relevant Specifications. The Access Seeker will be liable for any costs of re-testing incurred by BTC if it subsequently finds that the service did not comply with the relevant specifications.

B.2.6 If the Access Seeker makes a material change to the information submitted with an Order, the Order shall be treated as a new Order.

B.3 Order cancellation

B.3.1 The Access Seeker may cancel an Order before the Ready for Service Date by sending a Cancel Order to BTC's Interconnection Manager by letter, fax or email. The Cancel Order must include:

- Date of Cancel Order
- Access Seeker's name and order number
- BTC's Order Number
- The Access Seeker's Order Number
- The Customer's name, address and fixed line phone number for the premises where the Service is installed
- Name and position of Access Seeker's representative authorising the order
- Signature of Access Seeker's representative.

B.3.2 Within two (2) Working Days of receiving the Order, BTC will advise the Access Seeker of:

- either the acceptance of the Cancel Order or
- the need for additional information when the information provided in the Order is unclear or missing.

If additional information is required, the Access Seeker will be required to update the Order with the additional information included

B.3.3 BTC will then cease providing the Broadband Resale Service, and the Access Seeker shall be liable for any costs incurred by BTC in the provisioning of the Service and the cancellation of the Order.

B.4 Service Disconnection

B.4.1 The Access Seeker may cancel the Broadband Resale Service provided to a Customer at any time after the Ready for Service Date by sending a Disconnect Order to BTC's Interconnection Manager by letter, fax or email. The Disconnect Order must include:

- Date of Disconnect Order
- Access Seeker's name and order number
- BTC's Order Number
- The Access Seeker's Order Number
- The Customer's name, address and fixed line phone number for the

- premises where the Service is installed
- The requested date for disconnection
- Name and position of Access Seeker's representative authorising the order
- Signature of Access Seeker's representative.

B.4.2 Within two (2) Working Days of receiving the Disconnect Order, BTC will advise the Access Seeker of:

- either the acceptance of the Disconnect Order or
- the need for additional information when the information provided in the Order is unclear or missing.

If additional information is required, the Access Seeker will be required to update the Disconnect Order with the additional information included.

B.4.3 BTC will then disconnect the Broadband Resale Service within five (5) Working Days of accepting the Order and, at its discretion, recover any equipment provided to the Customer under the Broadband Resale Service. The Access Seeker will be liable for any charges listed in Annex F - Price List up to the date of disconnection.

B.5 Transfer of Customers

B.5.1 When a Customer taking the Broadband Resale Service transfers to a new Access Seeker, the new Access Seeker shall submit an Order with the following information:

- Date of Order
- Access Seeker's name and order number
- Customer's name
- Customer's name and phone number for contact regarding the order
- Name and phone number of on-site contact (if different from above)
- Address of premises where the Broadband Resale Service is to be installed
- Address of premises where the Broadband Resale Service is to be removed
- Phone number of premises where the Broadband Resale Service is to be removed
- Name and position of Access Seeker's representative authorising the order
- Signature of Access Seeker's representative.

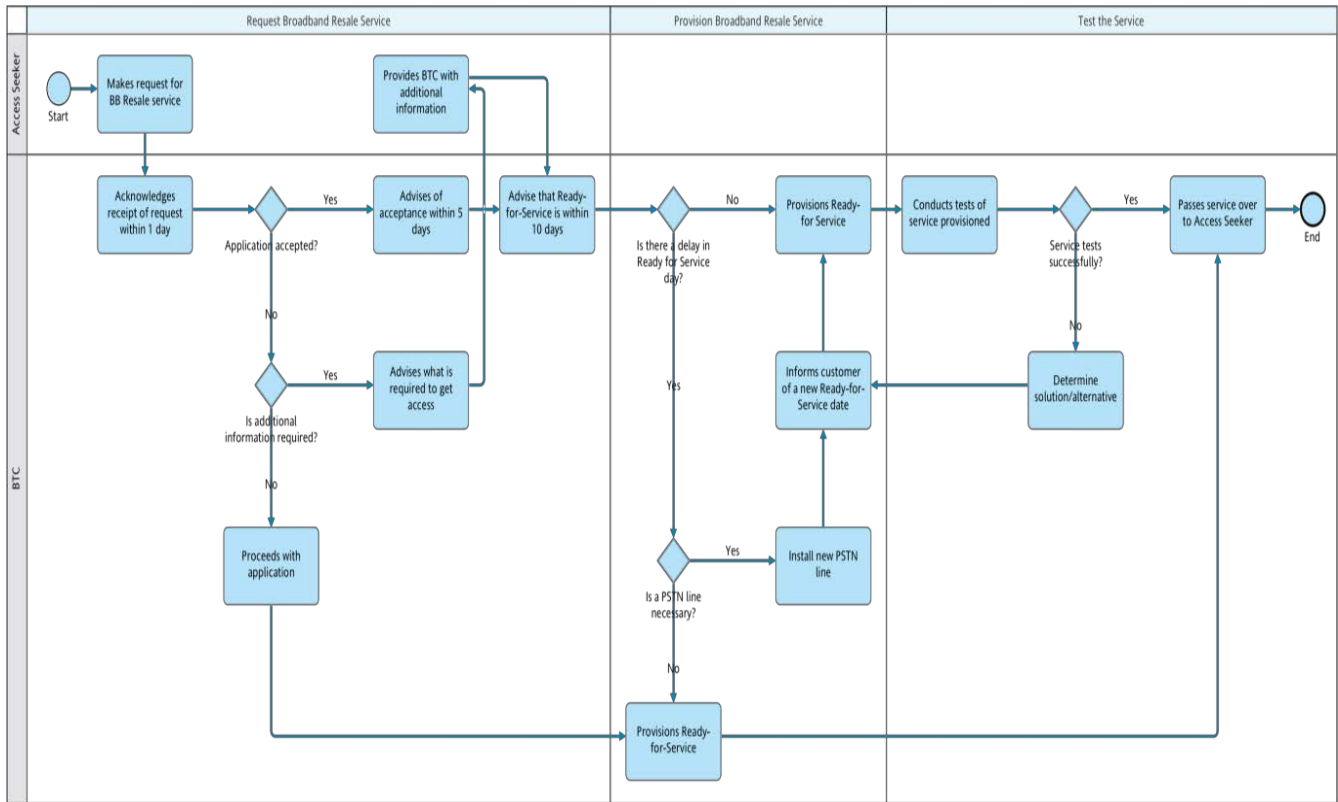
B.5.2 BTC shall handle the Order as set out in Clauses B.2.3 - 5.

B.5.3 During the transfer the Access Seeker shall continue to pay the charges for the Service as set out in Annex F - Prices.

B 6 Service upgrade

B.6.1 When a Customer taking the Broadband Resale Service wishes to upgrade to a faster speed, the Access Seeker shall submit an Order as set out in Clauses B.2.2, and BTC shall handle the Order as set out in Clauses B.2.3 - 5.

Diagram B1: Broadband Resale Ordering Process



Annex C – Operations and Maintenance

C.1 Management of Service

C.1.1 The Parties will nominate a Service Manager as the main point of contact within their organisations for each other. The prime purpose of the Service Manager will be to ensure that communications between the Parties is effective. A Service Manager may request a meeting with the other Service Manager to discuss any issue, and the Service Managers will meet within five (5) Working Days of the request being made.

C.1.2 Each Party shall establish a contact person to whom all factors relevant to the proper functioning of the Service (generally of a technical nature, including faults) are to be reported. The contact person's telephone numbers are included in Schedule 1 – Contact Details, which will be updated as and when changes occur.

C.2 Customer fault reporting

C.2.1 Each Party shall be responsible for examining the operations of its own Networks before reporting the existence of faults to the other Party.

C.2.2 **Fault reporting systems:** Each Party shall establish and maintain a fault reporting service that allows Customers who are directly connected to the Network of that Party and to whom that Party supplies services to report faults relating to any Network or service.

C.2.3 **Customer notification:** Each Party will advise all of its directly connected Customers to report all faults to its fault reporting service, as described in Clause C.2.2.

C.2.4 **Non-discriminatory fault reporting and identification:** Each Party shall perform fault reporting and identification on a non-discriminatory basis.

C.3 Fault management and service restoration responsibility

C.3.1 The Access Seeker shall be responsible for receiving any faults reported to it by its Customers, and if these faults are in BTC's network, for reporting them to BTC in accordance with Clause C.1.2.

C.3.2 If BTC detects a fault on an access line that is subject to the Broadband Resale Service or in the backhaul network or IP network used by the Broadband Resale Service, it shall follow the same processes and quality of service standards as for its own retail customers.

C.3.3 BTC will, at its sole discretion, classify the fault as either a Service Affecting Fault or a Service Interrupting Fault, and will use its reasonable endeavours to repair the fault in line with the timescales set out in Annex G – Quality of Service.

C.3.4 **Registration and numbering:** All faults affecting the provision of the Broadband Resale Service shall be registered and given a unique identification number to assist the

parties in monitoring fault response and rectification. The tracking numbers used by each Party shall be available to the other Party to minimise confusion in the fault response and fault recognition.

C.3.5 If the Access Seeker notifies BTC of a fault in BTC's Network, and the fault notice is subsequently found to be erroneous, it shall be liable for any costs incurred by BTC as a result of the erroneous information.

C.3.6 **Fault history:** BTC shall maintain records, preferably electronic, containing details of all faults and the corresponding restoration times which were handled between it and the other Party for a running twelve month period. These records should be used to assess the fault performance of the Service.

C.3.7 **Escalation process:** The Parties will agree an escalation process for faults that are not cleared within the timescales given in Annex G - Quality of Service, so that the problem can be drawn to the attention of more senior management. The names and contact details of staff in the escalation process will be set out in Schedule 1 - Contact details.

C.4 Outages

C.4.1 **Unplanned outages:** If BTC detects an unplanned outage which is likely to affect the Service, the technical contact person of the other Party must be notified. BTC will notify the technical contact person of the other Party within 30 minutes of becoming aware of the unplanned outage. At the time of notification, the outage could have ceased to exist or could still be persisting. In cases where the outage has ceased to exist, the contact persons will note the occurrence, duration and details of the failure. BTC will keep the technical contact person of the other Party informed at mutually agreed upon intervals of the progress of the repair until restoration of full service whereupon the technical contact person will note the outage duration and details of the failure.

C.4.2 **Planned outages:** BTC shall endeavour to limit such planned outages to the hours between 11.00 p.m. and 6.00.a.m, and will inform the contact person of the other Party 10 (ten) Working Days in advance (this timescale can be reduced by mutual agreement).

C.5 Customer Equipment

C.5.1 BTC shall only be responsible for the maintenance of the Equipment (broadband modem and filters) that it provides to a Customer. With the exception of costs caused by normal wear and tear, BTC may charge the Access Seeker for the costs of maintenance of Equipment, including but not limited, to those caused by:

- failure to use the Equipment in accordance with this Agreement;
- any act of willful damage or interference by a party other than BTC, its employees or agents
- negligent use or misuse of the Equipment by a party other than BTC, its employees or agents

- any failure or fluctuation of the electrical power supply to that Equipment, or any external electromagnetic interference, or any failure of air conditioning and humidity control for the Equipment; or
- the performance of maintenance service by a party other than BTC

If an event of Force Majeure results in a loss or damage to the Equipment, then BTC shall rectify such loss or damage to the extent required by the Reseller, subject to agreed limits, provided that any cost of rectification (less any insurance proceeds received by BTC for the loss or damage) is borne by the Reseller and BTC having taken reasonable steps to mitigate the Cost. .

C52 BTC shall not be responsible for correcting faults in Customer Equipment which:

- do not affect satisfactory working of the Equipment; or
- are of a minor or intermittent nature which do not significantly affect use of the Equipment
- involve the loss of Customer or third party generated software.

Annex D – Billing

D.1 Charging principles

D.1.1 Delivered services and related installation and usage charges for the Broadband Resale Service will be invoiced according to the principles and procedures defined in this Annex. The value of charges will be calculated using the prices as defined in Annex F - Price List.

D.1.2 Each Party shall be responsible for billing its own Customers and for the collection of debts from its own Customers.

D.2 Billing process

D.2.1 Recurring rental charges will be invoiced in arrears with installation and activation and any other one-off charges will be invoiced in advance.

D.2.2 The Invoicing Party shall issue to the other party (the Invoiced Party) within 30 Calendar Days of each billing period an invoice in writing or in such electronic form as may be agreed from time to time.

D.2.3 The billing period is a calendar month unless otherwise determined by the Invoicing Party and notified to the Invoiced Party in advance.

D.2.4 The Invoicing Party shall send invoices by way of electronic exchange or, if agreed between the Parties, by facsimile transmission on the date of issue of the invoice followed by a paper copy via post.

D.3 Payment process

D.3.1 Subject to Clause E.5, the Invoiced Party shall pay the amount of the invoice no later than twenty (20) Working Days from the date of receipt of the relevant invoice (due

date). For the avoidance of doubt, the Invoiced Party shall pay this amount to the Invoicing Party regardless of whether the Invoiced Party has received payment from its Customers.

D.3.2 In addition to exercising any rights, the Invoicing Party has at law or under the agreement, where an undisputed amount is outstanding and remains unpaid for more than seven calendar days after it is due for payment, the Invoicing Party reserves the right to take action, upon notice to the Invoiced Party, to recover any such amount as a debt due to the Invoicing Party.

D.3.3 Payments are deemed to be received on the date the payment is received by the Invoicing Party, unless the payment is subsequently dishonoured, in which case, payment is deemed not to have been received until cleared funds are received by the Invoicing Party together with all dishonoured fees and charges.

D.4.4 If the Invoiced Party does not pay a sum payable by the due date, the Invoicing Party may charge a penalty on the amount from time to time outstanding in respect of that overdue sum for the period beginning on its due date and ending on the date of the receipt of the overdue sum by the Invoicing Party (both before and after judgement) in accordance with this clause. The Invoiced Party agrees to pay the penalty on demand.

D.4.5 The penalty shall be calculated as 1.5 per cent of the overdue sum for each month or part month that the sum is overdue. Where a penalty in respect of any due and unpaid amount is due to the Invoicing Party, the Invoicing Party may add the amount of such penalty to its next invoice.

D.4.6 Each Party may set off amounts owed to it by the other Party against amounts invoiced to it.

D.5 Billing errors

D.5.1 If the Invoiced Party discovers an error in an invoice given by the Invoicing Party, it shall notify the Invoicing Party as soon as practicable. The Invoicing Party shall make the adjustment necessary to correct that error in its next invoice, if it is able to verify the error.

D.5.2 If the Invoicing Party has omitted or miscalculated charges from an invoice, the Invoicing Party may include or amend (respectively) those charges in a later invoice, as long as the Invoicing Party is able to substantiate these charges to the Invoiced Party and the inclusion or amendment is made within six months of the issuing of the invoice.

D.5.3 If the Invoiced Party makes an overpayment in error, it shall notify the Invoicing Party accordingly within thirty calendar days of the date on which the overpayment was made with sufficient details for the invoicing party to be able to identify the overpayment. If the Invoicing Party verifies the overpayment, the Invoicing Party shall return the amount overpaid to the Invoiced Party.

D.5.4 Notwithstanding any other provision in this Annex, a penalty shall not accrue or become payable in respect of sums added to an invoice in error.

D.5.5 The parties acknowledge that invoices cannot be warranted as being free from errors.

D.6 Billing disputes

D.6.1 Where a Party (the “Disputing Party”) disputes the invoice of the Invoicing Party, the Disputing Party shall send a written “notice of dispute” within ten (10) Working Days of the date of receipt of the disputed invoice to the Invoicing Party. Failure to submit a notice of dispute within the ten (10) Working Day period shall be deemed to be indisputable confirmation of the correctness of the invoice.

D.6.2 The notice of dispute must:

- clearly identify aspects of the invoice being disputed;
- state the specific reason(s) with reference to the information required

D.6.3 If Invoicing Party determines that the information is insufficient to identify the disputed amount, the invoicing Party shall request and the Disputing Party must supply within within three (3) Working Days of such request the relevant evidence and indicate the discrepancy in the Invoicing Party’s invoice.

D.6.4 The Disputing Party’s unavailability of records shall not constitute an acceptable basis for disputing an invoice under this Agreement and any notice of dispute issued on that basis shall not be valid.

D.6.5 The Parties shall endeavour to settle amicably any such billing dispute and shall use reasonable efforts to agree upon an escalation procedure. If the Parties fail to resolve their billing dispute for any reason within five (5) Working Days of the Disputed Party’s receipt of the information submitted under Clause D.6.3 or within ten (10) Working Days of the Invoicing Party’s receipt of the notice of dispute, whichever shall first occur, the Disputing Party shall issue a “Notice of Failure of Dispute Resolution” within five (5) Working Days.

D.6.6 In the Notice of Failure of Dispute Resolution, the Disputing Party shall be required to state a date and venue for its Chief Executive and the Chief Executive of the Invoicing Party or appointed delegates to meet. The date of such meeting shall be not more than five (5) Working Days after the date the Notice of Failure of Disputed Resolution is issued. If the dispute is not resolved with ten (10) Working Days of such meeting, the Chief Executives or delegates shall refer such dispute for investigation and determination by a firm of independent auditors, chosen by the Parties, with expertise in billing matters in the telecommunications industry. Such independent auditors shall not be the auditors of either of the Parties.

D.6.7 In the event that the Parties cannot agree on a firm of independent auditors within five (5) Working Days, the Parties shall, on the expiration of the five (5) Working Days, appoint a firm of independent auditors nominated by the President for the time being of the Bahamas Institute of Chartered Accountants. Such entity shall be recognised and commissioned by both Parties as the “Third Party Expert” within ten (10) Working Days of such recommendation, during which time the final terms of reference and fees shall be agreed. The auditors shall, in their determination of the dispute; act as experts and not as arbitrators and their decision shall be final and binding on the Parties.

The Chief Executives of the Parties or their appointed delegates shall separately provide the Third Party Expert with all written correspondence exchanged with the other Party, together with all relevant information requested by the Third Party Expert within five (5) Working Days of commissioning.

D.6.9. Failure of the Disputing Party or the Invoicing Party to meet obligations within the duration provided in relevant Clauses, or an inability to produce records or refusal to agree to the fees quoted by the Third Party Expert, shall not prevent the commissioning of the Third Party Expert.

D.6.10 The Third Party Expert shall produce and deliver to the Chief Executives of the Parties a report on its findings not later than thirty (30) Working Days after receiving all written correspondence and other requested relevant information. Such a report shall be delivered by courier and facsimile to the Disputing Parties. Failure of either of the Parties to supply information requested will not prevent the Third Party Expert from carrying out his/her duties.

D.6.11 Both Parties shall be entitled to comment on the findings of the Third Party Expert within five (5) Working Days after the report on the findings has been delivered by the Third Party Expert.

D.6.12 The Third Party Expert shall consider the comments, after which a final decision shall be made.

D.6.13 The final decision of the Third Party Expert shall be binding on both Parties and may be made by an order of court pursuant to the laws of The Bahamas. The Invoicing Party shall have the right to raise a demand notice immediately and the Invoiced Party shall make payment within ten (10) Working Days of the demand notice. The Invoicing Party shall have the right to invoke Clause 14 of the Main Terms and Conditions should the breach continue for another fifteen (15) Working Days.

D.6.14 Both Parties shall contribute equally to pay any initial down payment required by the Third Party Expert prior to commencement of work.

D.6.15 If the final decision of the Third Party Expert is in favour of the Disputing Party, the final fees of the Third Party Expert shall be paid by the Invoicing Party in accordance with the Third Party Expert's payment terms. Where the final decision of the Third Party Expert is in favour of the Invoicing Party, the Disputing Party shall pay the Third Party Expert's final fees according to the payment terms and shall be required to refund any initial payment by the Invoicing Party within twenty (20) Working Days of the Third Party Expert's final findings.

D.6.16 The provisions of Clause E.6 constitute an irrevocable consent by the Parties to any proceedings described by this clause and neither Party shall be entitled to withdraw there from or claim that it is not bound by such provisions.

The Parties agree to keep the subject matter of their billing dispute and the evidence heard during any resolution by a Third Party Expert confidential and agree not to disclose such subject matter or evidence to anyone except in the event that the decision is made by an

order of court pursuant to the laws of The Commonwealth of The Bahamas, in which case such subject matter or evidence may be disclosed to the relevant court.

D.6.17 Notwithstanding the above, if the billing dispute is resolved without reference to a Third Party Expert, the Invoicing Party shall have the right to raise a demand notice immediately and the Invoiced Party shall make payment within five (5) Working Days of the demand notice.

D.7 Billing representatives

D.7.1 Enquiries relating to billing, collecting and settlement arrangements must be directed to the nominated billing representative of the other party as identified in Schedule 1 – Contact Details. Billing dispute notices must be sent to these representatives.

D.7.2 Either party may at any time nominate another billing representative, provided that ten (10) Working Days' prior notification of such appointment is given.

Annex E – Dispute Resolution

E.1 General process

E.1.1 The Parties will encourage their staff and employees to resolve disputes that arise in the provision of Services at the lowest practical levels in their respective organisations.

E.1.2 Notwithstanding Clause E.1.1, the Parties will instruct their staff and employees to escalate disputes that are not expeditiously resolved at lower working levels.

Billing disputes should be resolved according to the provisions of Clause D.6.

E.1.3 Nothing in this Annex shall reduce the Parties' rights to redress under the Laws of The Bahamas

E.2 Escalation of disputes

E.2.1 Either party may escalate a dispute to a higher level in the dispute resolution hierarchy outlined in the table below. Although it is expected that disputes that cannot be resolved at one level in the dispute resolution hierarchy should be escalated to the next higher level, a Party may decide to escalate the dispute more rapidly if in its consideration the severity and potential impact of the dispute on the provision of the Broadband Resale Service and on Customers warrants such accelerated escalation.

Table E.1 Dispute resolution process

Level in Dispute Resolution Hierarchy	Description	Disputes that are typically expected to be resolved at this level
1. (Lowest)	Operational level - involving the operational staff of each Party up to Field Supervisor level	Operational disputes associated with the interpretation and implementation of detailed operating processes and practices
2.	Management level - involving the managers in charge of operational units	Operational disputes escalated from the Operational level
3.	Senior management level	All disputes associated with the implementation of the Agreement, including disputes arising in the course of negotiations to change or amend the Agreement
4.	Chief Executive level - involving the CEOs of each Party	All disputes associated with the implementation of the Agreement, including disputes arising in the course of negotiations to change or amend the Agreement.
5.	Independent third party including URCA	Disputes that the Parties cannot resolve requiring, in the view of one or both of them, the involvement of an independent Arbitrator, Mediator, or URCA.

E.3 Resolution of disputes at Chief Executive level

E.3.1 Either Party may escalate a dispute to the Chief Executive level if it appears that there is little likelihood of middle and senior management (stages 2 and 3) resolving the matter and where the gravity and potential impact of the dispute on the timely provision of the Broadband Resale Service warrants such an escalation.

E.3.2 The Chief Executives shall adopt whatever process for examining and, if possible, resolving the dispute as appears to them to be appropriate having regard to the nature and complexity of the issues associated with the dispute and its possible means of resolution.

E.4 Independent arbitration and mediation

E.4.1 Should the Chief Executives of the Parties fail to reach unanimous agreement in the determination of any dispute referred to them as in Clause E.4 within fourteen (14) Working Days of such referral, the Parties undertake to meet promptly and consider whether or not the dispute should be referred to arbitration or mediation. If the Parties agree in writing that the dispute should be referred to arbitration or mediation, such dispute will be determined by arbitration or mediation in accordance with the remaining provisions of this clause, and either Party may then file a request for arbitration or mediation. If the Parties fail to reach agreement in writing to refer the dispute to

arbitration or mediation within a period of two (2) Working Days of meeting pursuant to this Clause, then either Party will be entitled to commence litigation proceedings against the other Party or to refer the dispute to URCA under Clause E.5.

E.4.2 Notwithstanding anything to the contrary contained in this Clause E.4, neither Party shall be precluded from obtaining interim relief from a court of competent jurisdiction pending the decision of an arbitrator or mediator appointed pursuant to this Clause. In the event of a reference to the arbitration panel or to a mediator, both Parties shall compile a detailed dispute report which shall include origin, nature, extent, issues and any proposals for resolution and make their respective reports available to the arbitrators and each other within fourteen (14) Working Days of the referral.

E.4.3 The arbitration panel shall consist of two (2) members, both of whom shall be appointed in accordance with the provisions of the Arbitration Act Chapter 180. The arbitration panel shall, in accordance with the Arbitration Act, decide upon and give directives as to all matters of procedure to be followed by the Parties in resolving the dispute and who shall bear the costs of the arbitration. The decision of the arbitrator shall be final and binding and may be made an order of court.

E.4.4 As an alternative to arbitration, both parties may agree to appoint a Mediator whose task will be to broker an agreement between the parties. The Mediator will be chosen as set out in Clauses E.4.1 - 2, and the Parties will be bound by any agreement made by the Parties resulting from the mediation. The Parties may request URCA to act as the Mediator.

E.4.5 The Parties agree to keep the arbitration or mediation, including the subject matter of the arbitration or mediation and the evidence heard during the arbitration or mediation, confidential and not to disclose the arbitration or mediation, its subject matter and the evidence heard to anyone except in the event that the decision is made by an order of court or of URCA, in which case the arbitration or mediation, its subject matter and the evidence heard may be revealed to the relevant court or to URCA.

E.5 Reference to URCA

E5.1 After the expiry of 30 Working Days after a dispute has been referred to the Chief Executives under step 4 above, either Party may refer the dispute to URCA. Each Party will bear its own costs of any reference to the URCA.

E5.2 Any decision in a Dispute which has been referred to URCA under Clause E.5.1 may be applied retrospectively to the date on which the Dispute was referred to URCA

Annex F – Price List

The prices of BTC’s Broadband Resale Services are set on the basis of a “retail minus” pricing methodology approved by URCA. The “retail minus” price discount is 18.5%, and in line with URCA’s Final Determination, ECS 09/2018. The prices of BTC’s Broadband Resale Service will be updated from time to time when changes are made to BTC’s existing retail broadband service or when new retail broadband services are introduced.

Based on BTC’s currently available broadband services, the following monthly prices apply for BTC’s Broadband Resale Services, where suitable network facilities are available.

Table G1: Resale Broadband Service Price List		
Retail-Minus Discount Rate = 18.5%		
Broadband Service Plan (down/upload speed) <i>(where available)</i>	Retail Price (VAT exc.)	Wholesale/Resale Price (VAT exc.)
RESIDENTIAL		
Hi-Speed Internet 8 Mbps /3 Mbps	\$29.99	\$24.44
Hi-Speed Internet 16 Mbps /3 Mbps	\$34.99	\$28.52
Turbo Charged 25 Mbps /10 Mbps	\$39.99	\$32.59
Turbo Charged 50 Mbps /10 Mbps	\$69.99	\$57.04
Turbo Charged 75 Mbps / 25 Mbps	\$99.99	\$81.49
Turbo Charged 150 Mbps / 45 Mbps	\$150.00	\$122.25
Turbo Charged 300 Mbps / 100 Mbps	\$229.99	\$187.44
BUSINESS		
ADSL 8 Mbps	\$59.99	\$48.89
ADSL 16 Mbps	\$79.99	\$65.19

Additional One Time or Recurring Charges (all of which are based on existing cost-based charges):

Should the result of the credit vetting of a prospective Operator confirm that the provision of Services poses a financial risk which is greater than can be controlled by an appropriate credit limit, BTC has the right to request a form of financial security as stipulated in Clause 19 of the Main Agreement.

Residential Customers:

Installation: \$32.32.

Modem Purchase: \$150.

Modem Rental: \$5.38 per month.

Business Customers:

Installation: \$150.

Modem: included.

Modem Rental: \$5.38 per month.

Annex G – Quality of Service Standards

G.1 Principles

G1.1 BTC will provide the Service to the Access Seeker at the same level of Quality of Service as for its own customers or those of its subsidiaries or companies.

G1.2 BTC will use its reasonable endeavours to meet the quality of service standards set out in this Annex. Both Parties agree that a consistent failure to achieve these targets is a ground for a Dispute under Annex E– Dispute Resolution.

G.2 Ordering and provisioning standards

G2.1 BTC will conform to the following timescales for Orders, Disconnect Orders, Transfer Orders and Upgrade Orders as set out in Annex B – Ordering Processes Clause B.2, B.4, B.5 and B.6.

Table G.1: Quality of service standards for Orders (Working Days)

Access Seeker submits Order	R
BTC accepts Order	R + 5
Ready for Service date	R + 10
Timescale for customer rejection of Ready for Service date	R + 5

R = Date of submission of Order

Any delay caused by the Access Seeker shall be added to the figures above. The above targets shall not apply when a new PSTN line has to be installed or upgraded.

G.3 Service restoration

G3.1 BTC shall repair faults on the Broadband Resale Service according to the following timescales:

Table G.2: Service restoration timescales for Broadband Resale Service (hours)

Event	Service Affecting fault	Service Interrupting fault
Requesting Party issues Fault Notice	T – 1	T – 1
Requested Party issues Fault Acknowledgement	T – 8	T - 4
Requested Party informs the Requesting Party of time for repair	T – 2	T + 1
Requesting Party may escalate fault	T + 8	T - 4
Requested Party completes fault repair and issues Repair Completion notice	R	R
Repair deemed completed or Requesting Party rejects	T + 4	R + 2
Requested Party issues Repair Clearance notice	R + 4 unless RP rejects Repair Completion notice	R + 2 unless RP rejects Repair Completion notice

T = Issue of Fault Acknowledgement
R = Repair completed by the providing operator
RP = Requesting Party

Any Customer Delays shall be added to the above table.

G.4 Penalties

G.4.1 The Access Provider shall be liable for penalty payments if it fails to meet the targets for ordering and service restoration (as set out in Tables G.1 and G.2 above). The amounts of the penalty payments are calculated with reference to the monthly recurring charge for relevant service, as set out in Annex F – Price List.

Table G.3: Penalties (Missed KPI Target)

Service	Key Performance Indicator	Penalty* (Missed KPI Target)
Approval of Application for Service	R + 5	2% of the monthly fixed wholesale/resale price of the broadband service plan
Service Activation after Approval	R + 10	2% of the monthly fixed wholesale/resale price of the broadband service plan
Response to Customer Complaints	T – 1	A credit of 2% of the monthly fixed wholesale/resale price of the broadband service plan
Consumer Complaints Resolutions	R	BTC will apply a credit equivalent to 5% of the monthly fixed wholesale/resale price of the broadband service plan
Fault Repair Time	R	BTC will compensate on a pro rated basis, with compensation equivalent to the daily rate equivalent to wholesale/resale price of the broadband service plan, commencing at the expiration of the period that the fault was due to be repaired and ending on the date the fault is fixed.

* Penalty is on a per customer basis.

G.4.2 Any Customer Delays or delays due to the Access Seeker will be added to the calculation of the key performance indicator.

G.4.3 The Access Seeker is responsible for initiating the reclaim of any penalty payments, which if agreed by the Access Provider, will appear as a credit on the next monthly invoice issued in accordance with Annex D – Billing Processes.

G.4.4 If the Parties dispute the applicability of a penalty or the amount of the penalty, they shall resolve the matter using the dispute resolution procedures set out in Annex E – Dispute Resolution.

Annex H – Definitions

In this Broadband Resale Agreement, the following terms shall have the meanings set out below next to those terms:

Access Seeker means a Licensed Operator of a public electronic network or public electronic services that requests or is provided with the Broadband Resale Service by BTC

Arbitrator means a person appointed under Annex E - Dispute Resolution Clause E.4 to decide how a dispute between the Parties should be resolved

Breach Notice means a notice sent by one Party to the other Party specifying a breach of the terms of the Agreement by the other Party, a period of time for its remedy and the consequences of a failure to remedy the breach, as set out in Clause 13.1

Broadband Resale Offer means the document with this title, along with supporting annexes and schedules, as published on the website of the Bahamas Telecommunications Company

Broadband Resale Service means the service as defined in Annex A – Service Schedule

Calendar Day means a period of 24 hours ending at midnight including weekends and public holidays.

Cancel Order means a contractual request from an Access Seeker to cancel an Order for the provision of the Broadband Resale Service to a Customer, submitted in accordance with Clause B.3

Customer means a party which has subscribed to a Licensed Operator for the provision of a telecommunications service, but which is not, for the purposes of this Agreement, a Licensed Operator

Customer Delay means any delay in meeting the standards set out in Annex G - Quality of Service, for ordering, provisioning, delivery and fault repairs which is due wholly or partly to the Access Seeker or its Customers for whom the service is being performed

Disconnect Order means a contractual request from an Access Seeker to disconnect a Customer from the Broadband Resale Service, submitted in accordance with Clause B.4

Disputing Party means a Party disputing an invoice raised by the Invoicing Party under Clause D.6.1

DSLAM means Digital Subscriber Line Access Multiplexer

Effective Date means the date on which the agreement is executed between BTC and the reseller

Equipment means the ADSL modem and filters provided by BTC to Customers, and shall not include any other equipment used in connection with the Broadband Resale Service by Customers

Fault means a condition that causes a Network to operate other than intended or to cease operating altogether

Fault Rectification means the correction of a Fault

Fault Response means the action of responding to a Fault, and includes responding remotely using electronic monitoring systems, and physical response at the location where the Fault is situated

Force majeure has the meaning ascribed to it in the Main Terms and Conditions Clause 15.1

Force Majeure Notice has the meaning ascribed to it in Main Terms and Conditions Clause 15.2

Invoiced Party means the Party which receives an invoice from the other Party

Invoicing Party means the Party which issues an invoice to the other Party

Licensed Operator means an organisation licensed by URCA to provide a telecommunications service

Mbps means megabits per second

Mediator means a person appointed under Annex E - Dispute Resolution Clause E.4 to assist the Parties in resolving a dispute between the Parties

Network means a network established for the conveyance of telecommunications traffic to and from Customers

Network Termination Point means the boundary of a Network, and, in context, usually refers to the specific case of the boundary between a Network and Customer equipment and wiring attached to a Network

Notice of Failure of Dispute Resolution means a notice issued under Clause E.6.5

Order means a contractual request made by the Access Seeker for the provision of the Broadband Resale Service to a Customer, submitted in accordance with Clause B.2

Party means the signatories to this Broadband Resale Agreement

Port means an interface location on BTC's DSLAM

Review Notice a notice served under Main Terms and Conditions Clause 21 by one Party to the other requesting a review of this Agreement

Service Affecting Fault means a fault which results in a total and continuous loss of the ability to use the Broadband Resale Service which is subject to the fault

Service Interrupting Fault means a fault which results in the degradation of the level, quality, functionality or operation of the Broadband Resale Service, but which does not result in a Service Affecting fault.

Service restoration means the restoring of a service and may occur whether or not the fault that gave rise to the fault affecting service has been rectified or not

Third Party Expert means an independent expert appointed under Clause D.7.1 to resolve a billing dispute

URCA means the Utilities Regulation and Competition Authority or any successor body

Voice Service means a service provided to a Customer of wholly or partly real time or nearly real time audio communications

Working Day means a period of 24 hours ending at midnight excluding weekends and public holidays. A weekend is defined as Saturday and Sunday

Schedule 1 - Contact details

This schedule sets out the key contact people for the administration of the Broadband Resale Agreement for both the Parties, with the following details:

Bahamas Telecommunications Company

Notices pursuant to Clause 21.1

Name

Title

Address

Email address

Telephone numbers (work fixed, mobile and after hours)

Name and mobile phone number of deputy (for cases of holidays etc.)

Interconnection Manager pursuant to Clause B2.2

Name

Title

Address

Email address

Telephone numbers (work fixed, mobile and after hours)

Name and mobile phone number of deputy (for cases of holidays etc.)

Service Manager pursuant to Clause C1.1

Name

Title

Address

Email address

Telephone numbers (work fixed, mobile and after hours)

Name and mobile phone number of deputy (for cases of holidays etc.)

Fault Contact Person pursuant to Clause C.1.2

Name

Title

Address

Email address

Telephone numbers (work fixed, mobile and after hours)

Name and mobile phone number of deputy (for cases of holidays etc.)

Billing Representative pursuant to Clause D.7.1

Name

Title

Address

Email address

Telephone numbers (work fixed, mobile and after hours)

Name and mobile phone number of deputy (for cases of holidays etc.)

Access Seeker

Notices pursuant to Clause 21.1

Name

Title

Address

Email address

Telephone numbers (work fixed, mobile and after hours)

Name and mobile phone number of deputy (for cases of holidays etc.)

Interconnection Manager pursuant to Clause B2.2

Name

Title

Address

Email address

Telephone numbers (work fixed, mobile and after hours)

Name and mobile phone number of deputy (for cases of holidays etc.)

Service Manager pursuant to Clause C.1.1

Name

Title

Address

Email address

Telephone numbers (work fixed, mobile and after hours)

Name and mobile phone number of deputy (for cases of holidays etc.)

Fault Contact Person pursuant to Clause C.1.2

Name

Title

Address

Email address

Telephone numbers (work fixed, mobile and after hours)

Name and mobile phone number of deputy (for cases of holidays etc.)

Billing Representative pursuant to Clause D.7.1

Name

Title

Address

Email address

Telephone numbers (work fixed, mobile and after hours)

Name and mobile phone number of deputy (for cases of holidays etc.)