



**INSTITUT BELGE DES SERVICES POSTAUX  
ET DES TÉLÉCOMMUNICATIONS**

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Référence:

**DECISION DU 17 JUIIN 2009 RELATIVE A UN AMENDEMENT A L'OFFRE  
DE REFERENCE BROTSOLL**

## **OBJET**

Suite à la communication du Conseil du 06/05/2009, Belgacom a transmis un amendement à ces Conditions Générales et à l'annexe Pricing et Billing, documents repris ci-après.

Les modifications sont totalement conformes à la communication du 06/05/2009. Il s'y ajoute quelques corrections rédactionnelles et l'annexe des conditions de prépaiement est renumérotée Annex 3.

L'Institut constate que la question de l'usage du numéro de TVA pour la localisation des extrémités n'est pas repris dans la proposition et ne peut donc encore être considéré comme une obligation contractuelle entraînant d'éventuelles pénalités.

En conséquence l'Institut accepte la proposition de Belgacom.

## **VOIES DE RECOURS**

Conformément à la loi du 17 janvier 2003 relative au statut du régulateur des secteurs des postes et des télécommunications belges, vous avez la possibilité d'interjeter appel de cette décision devant la cour d'appel de Bruxelles, Place Poelaert 1, B-1000 Bruxelles dans un délai de soixante jours à compter de la notification de celle-ci. L'appel est formé 1° par acte d'huissier de justice signifié à partie; 2° par requête déposée au greffe de la juridiction d'appel en autant d'exemplaires qu'il y a de parties en cause; 3° par lettre recommandée à la poste envoyée au greffe; 4° par conclusions à l'égard de toute partie présente ou représentée à la cause. Hormis les cas où il est formé par conclusions, l'acte d'appel contient, à peine de nullité, les indications de l'article 1057 du code judiciaire.

M. VAN BELLINGHEN  
Membre du Conseil

G. DENEFF  
Membre du Conseil

C. RUTTEN  
Membre du Conseil

E. VAN HEESVELDE  
Président du Conseil

BROTSoLL

Annex 1

# **General Terms and Conditions**

## General information

This document constitutes an integral part of the Belgacom Offer for Terminating Segment of Leased Line. It includes the General Terms and Conditions applicable to the provision of Terminating Segment of Leased Line that encompass "Partial Circuit" link service and "Backhaul" link service. These Terminating Segments of Leased Line are provided in conformity with the relevant laws and decrees in effect. The present Terms and Conditions shall remain applicable until they are replaced by other terms and conditions.

A distinction should be made between the following:

### The General Terms and Conditions

The General Terms and Conditions comprehensively list the rights and obligations of Belgacom and the Beneficiary with regard to the provision of the Terminating Segment of Leased Line.

### The Order Form

The order form lists the information requested by Belgacom to enable it to provide the Terminating Segment of Leased Line. It is signed by the Beneficiary or by his authorized agent

### The Service Descriptions

The Service Descriptions define the specificities of the Services

### The Technical Conditions

The technical conditions define the technical specifications and the quality standards.

### The Planning & Operations Manual

The Planning & Operations Manual describes the conditions of delivery of the Terminating Segment of Leased Line.

### The Operational Software Systems (OSS)

Description of the Tools to be used for operational purposes

The Belgacom price list

The price lists indicate the rates for the Terminating Segment of Leased Line.

\* \* \*

The [Contract Order Form](#), General Terms and Conditions, Main body, relevant Service Descriptions, the relevant sections of the Planning and Operations Manual, Pricing and Billing document, [Prepayment terms and conditions](#) and, if any, the specific terms and conditions agreed upon by the Parties constitute [the complete Contract concluded by the Beneficiary and Belgacom relating to each Terminating Segment of Leased Line.](#)

\* \* \*

Anyone may examine the General Terms and Conditions relating to the Belgacom Reference Offer for Terminating Segment of Leased Line, and the up-dated price lists as they are applicable at the time of consultation. These may be obtained either from Belgacom's Internet site or from Belgacom's Customer service department. The other Annexes are available on the Secured website of Belgacom and may be consulted further to the signature of a non-disclosure Agreement.

BIPT's decisions regarding this offer can be referred by Belgacom to the Court of Appeal of Brussels that can declare it void, in part or totally. In such a case, except otherwise agreed by the parties, the Contract shall be adapted in accordance with Belgacom's initial offer before its modification by the BIPT.

With a view to the signature of the Contract, the BROTSOLL can be negotiated by the parties and does not substitute for the parties' will.

Except otherwise agreed by the parties, the Contract shall be adapted if the BROTSOLL is modified. This adaptation shall be in accordance with this BROTSOLL's modification.

## Glossary

The capitalized terms in the present General Terms and Conditions for Belgacom Reference Offer for Terminating Segment of Leased Line have the meaning as defined below:

BROTSoLL	The Belgacom Reference Offer for Terminating Segment of Leased Line as it is submitted to the BIPT
Terminating Segment of Leased Line	All the Services described in the Belgacom Reference Offer for Terminating Segment of Leased Line that are ordered by the Beneficiary
Contract	An agreement concluded between Belgacom and a Beneficiary in accordance with the present General Terms and Conditions, technical, operational, billing, planning and financial conditions for the provision of Terminating Segment of Leased Line as described in the Reference Offer for Terminating Segment of Leased Line and relevant Service Descriptions of Belgacom. The Contract is concluded as mentioned in the first chapter of the present General Terms and Conditions and the Planning and Operations.
Party/Parties:	Collectively, Belgacom and Beneficiary
Request:	The Beneficiary's demand concerning the delivery of a Terminating Segment of Leased Line as described in this Reference Offer.

## Contract procedure

### ***Request by the Beneficiary***

1. The Beneficiary must submit his request for a Service to the Customer Service department of Belgacom by completing and signing the appropriate order form. The specific terms and conditions for delivering the Services are described here-after.
2. The Beneficiary shall consult the General Terms and Conditions and the relevant Services Descriptions as well as the list of technical requirements. These can be obtained from Belgacom's Internet site or by requesting them from Belgacom's Customer Service department.
3. Belgacom may not refuse to realize the Beneficiary's request, conform the BROTSoLL, without prejudice to the negotiations between Belgacom and the Beneficiary except on one of the following grounds:
  - a) the Beneficiary or his authorized agent refuses to provide Belgacom with official documents to identify himself;
  - b) in an emergency situation (i.e., exceptional cases of *force majeure*), for the purpose of ensuring the safe operation of the network, after all necessary measures taken by Belgacom to ensure access to the service are without effect;
  - c) following the Beneficiary's failure to observe obligations arising from the present General Terms and Conditions for the use of the service, subject to the prior consent of the BIPT.
  - d) for the purpose of maintaining network integrity or the interoperability of the services or for any other technical reasons that must be specified that make the delivery of a Terminating

Segment of Leased Line impossible.

- e) the Beneficiary has refused to provide proof of the existence of the unconditional financial guarantee as specified in the provision Financial Guarantees here-under.
- 4. In the event of a refusal, Belgacom shall notify within 3 working days the Beneficiary of its decision and the grounds for the decision by ordinary mail. A copy will be sent to the BIPT in the same delay.
- 5. The Beneficiary may lodge an appeal against this decision by following the procedure provided under the Dispute Resolution Procedure and in accordance with these General Terms and Conditions.

## Conclusion, entry into force and duration of the Contract

- 6. The provision of the Terminating Segment of Leased Line is subject to the conclusion of a Contract between Beneficiary and Belgacom according to the present General Terms and Conditions and the negotiations between the Parties.
- 7. Unless otherwise stipulated, the Contract takes effect on the day after the date on which a Terminating Segment of Leased Line is made available to the Beneficiary. Belgacom shall confirm this date to the Beneficiary in writing.
- 8. The Terminating Segment of Leased Line is made available to the Beneficiary for an indefinite term [unless a defined term was chosen by the Beneficiary for the concerned line In both cases, the line must remain in force for a minimum one year duration](#)

## Services covered by these General Terms and Conditions

### *Terminating Segment of Leased Line*

- 8. The services covered by the present General terms and Conditions are the Terminating Segment of Leased Line provided by Belgacom as described in the Service Descriptions and in the Technical Conditions describe in the present offer.

## Obligations of the Parties

### *Obligations of Beneficiary*

- 9. Beneficiary shall, independently of Belgacom, manage all aspects of the relationship with its own Users unless otherwise explicitly agreed upon between the Parties. Beneficiary shall therefore be fully responsible for all User inquiries, including but not limited to inquiries concerning product information, service, fault reports, technical issues and settlement.
- 10. Beneficiary shall take all necessary measures to ensure that the use of the Terminating Segment of Leased Line by the User of a Beneficiary will not cause any disturbance, interruptions or the like to the traffic in the public telecommunications network.
- 11. Beneficiary shall be liable to Belgacom for ensuring that the equipment connected to Belgacom's Terminating Segment of Leased Line by Beneficiary's Users comply with the requirement of the R&TTE Directive.
- 12. Beneficiary shall be liable to Belgacom for ensuring that Beneficiary's Users do not in any way dispose of, sell, rent out, pledge, Belgacom's equipment and installations and Beneficiary shall ensure that Beneficiary's Users do not in any way interfere with the

installations. Beneficiary further guarantees that his Users will at all times maintain the marking of equipment or installations indicating that they belong to Belgacom.

13. Beneficiary shall furthermore, independently of Belgacom, undertake all other customer services towards its own Users.
14. Beneficiary shall comply with reasonable instructions issued from time to time by Belgacom to ensure secure and proper use of the Terminating Segment of Leased Line, of Belgacom network and of any other infrastructure used to provide the Terminating Segment of Leased Line. In case of unsolved dispute BIPT will be called for a decision.
15. Beneficiary shall also comply with the Belgacom Customer Site installation requirements, in particular with regard to the following aspects:
  - a) Space and dimensions: Beneficiary shall ensure that there is sufficient space for Belgacom to be able to install the equipment required to be able to provide the Terminating Segment of Leased Line;
  - b) Power supply: Beneficiary shall, at its own expense and on its own initiative, be responsible for providing the power supply necessary to launch and operate the Terminating Segment of Leased Line. To this end, Beneficiary shall provide an easily visible and easily accessible power switch;
  - c) Ambient conditions (temperature, humidity, dust, etc.): the ambient conditions shall not be such as to prevent proper performance of the Belgacom equipment.

The Customer Site Installation Requirements are available from the Belgacom Internet Site or from the Customer's Belgacom contact person, and shall form an integral part of the Contract.

Belgacom shall not be liable for any disruption of the Service that is

attributable to a failure by the Customer to comply with the terms and conditions set out in the Customer Site Installation Requirements.

### **Obligations of Belgacom**

16. Belgacom shall provide to Beneficiary a Terminating Segment of Leased Line according to Beneficiary's order to be transmitted from time to time to Belgacom under the terms and conditions set forth in the present General Terms and Conditions and/or its Annexes.
17. Belgacom shall use all reasonable endeavours to correct any trouble affecting the quality of the service of Belgacom. In this respect in case of urgency and acting in good faith, Belgacom shall be entitled to:
  - a) disconnect a Terminating Segment of Leased Line immediately and without prior consultation with Beneficiary, provided that Belgacom can identify that the use of the Terminating Segment of Leased Line has caused a breakdown of networks or services, or if there is imminent risk of such breakdown. Belgacom will inform the BIPT, and Beneficiary, about the disconnection, at the latest 24 hours after the disconnection.
  - b) contact the Users directly with a view to maintaining or ensuring Belgacom's ownership of equipment and installations. Only Belgacom may carry out service works on equipment belonging to Belgacom. Belgacom shall act in accordance with the general standard of integrity that it has internally developed and enforced. In case of application of this provision, Belgacom will immediately inform Beneficiary about the operation before its execution.
18. Belgacom will not undertake customer handling of the Users of Beneficiary.

19. Belgacom shall respect all service levels, timers and other guarantees mentioned in the SLA-document or otherwise shall conform to the applicable penalties.

- suspension of any SLA obligations that are not foreseen in the Basic SLA;
- refusal in writing of any new Services.

## Financial Conditions

### **Billing and Payments**

20. In consideration for the Terminating Segment of Leased Line provided by Belgacom under these General Terms and Conditions, Beneficiary shall pay the charges and fees provided in Annex 2 Pricing and Billing.

### **Financial Guarantees**

#### **General Principle - Pre-payment**

21. Notwithstanding anything to the contrary in the present General Terms and Conditions, in order to guarantee the payment by Beneficiary of the prices due for the Terminating Segment of Leased Line provided by Belgacom that are invoiced on a monthly basis, Beneficiary will provide Belgacom with a monthly (1) pre-payment based on the average of the monthly amount due by Beneficiary. The amount of the pre-payment shall be based on the average of the invoices for the Terminating Segments of Leased Line, ordered in accordance with the present General Terms and Conditions, issued by Belgacom during three (3) months. The amount of the pre-payment shall be reviewed every three (3) months. The terms and conditions of this pre-payment are described in Annex 3.

22. Without prejudice to any other legal or contractual remedies and notwithstanding anything to the contrary in the present General Terms and Conditions, in the event Beneficiary fails to pay in due time any undisputed amount due under the pre-payment conditions as defined in the present section and in Annex 3, Belgacom shall be entitled to execute the following alternatives until full payment is made:

#### **Sufficient Creditworthiness**

23. This monthly pre-payment will not be required in the following circumstances:

24. Beneficiary has sufficient creditworthiness as evidenced by either of the following alternatives:

- Beneficiary has obtained a "Ba2" rating or above for its debt (Moody's);
- Beneficiary has obtained a rating similar to Moody's "Ba2" rating, provided that (i) such rating is generally accepted by the market as giving similar reliability as Moody's, (ii) such rating is generally reviewed and updated on a regular basis.

#### **Other Financial Guarantees**

25. In the event that, in the course of the Contract, Beneficiary would lose the above described credit worthiness (either through the loss of "Ba2" credit rating or similar or upon the occurrence of any default or delay of payment), Beneficiary will have to provide Belgacom with a pre-payment or with another financial guarantee as defined in the present chapter within ten (10) working days from Belgacom's request thereto.

26. The Beneficiary obtains an irrevocable and unconditional parent corporation guarantee for the debts incurred by Beneficiary in the application of the Contract, provided that such parent company is issued by a company that has sufficient creditworthiness as defined above. In the event that, in the course of the Contract, the Parent Company would lose the above described creditworthiness (either through the loss of "Ba2" credit rating or similar or upon the occurrence of any default or delay of payment), the Beneficiary will provide Belgacom with a pre-payment or with another financial guarantee as described in the present chapter within ten (10)

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working days of the request of Belgacom;

27. The Beneficiary has constituted a Deposit on an escrow account with a reputable bank or financial institution established in the EU. The amount of that deposit will be equal to an estimate of three (3) months of net amount due by Beneficiary for the Services ordered in accordance with the present Terms and Conditions, provided. The amount of the deposit will be equal to an estimate of three (3) months of Belgacom's invoices for the Services. Based on the actual evolution of the amounts due for the Services; the Beneficiary and Belgacom will have the right to require an adaptation of the amount of the deposit every three (3) months. Upon the request for adaptation of the amount or deposit, necessary steps will be taken to ensure adaptation within ten (10) working days. In case of default by Beneficiary to pay sums due under the contract, the sums deposited on the escrow account will accrue to Belgacom. The interests accrued on the escrow account will be payable to Beneficiary. In the event the sums deposited are accrued to Belgacom, Beneficiary will provide Belgacom with a pre-payment or with another financial guarantee as defined in the present chapter within ten (10) working days of the request of Belgacom.
28. Beneficiary has provided Belgacom with an irrevocable and unconditional bank guarantee on first demand issued by a reputable bank or financial institution established in the EU. That bank guarantee will be issued for a minimum period of three (3) years and for an amount equal to an estimate of three (3) months of net amount due by Beneficiary for the Services ordered in accordance with the present General Terms & Conditions. The amount of the bank guarantee will be equal to an estimate of three (3) months of ULL invoices. Based on the actual evolution of the amounts due for the Services, Beneficiary and Belgacom will have the right to require an adaptation of the amount of the bank guarantee every three (3) months.

Upon the request for adaptation of the amount of bank guarantee, necessary steps will be taken to ensure adaptation within ten (10) working days. Upon the expiration of the bank guarantee or after Beneficiary has called upon the bank guarantee, Beneficiary shall provide Belgacom with a pre-payment or with another financial guarantee as defined in the present chapter, within ten (10) working days of the request thereto from Belgacom.

## Principles

### ***Retail Pricing & Billing***

29. Beneficiary shall be responsible for the setting of the tariffs that Beneficiary will apply to the Users to whom Beneficiary will sell telecom service using the Terminating Segment of Leased Line and for the billing and invoicing of such Users.
30. Except as provided otherwise in the present General Terms and Conditions or its Annexes, no deductions or reductions shall be made from the payment of any charges or fees due for the Terminating Segment of Leased Line for any bad or unpaid debts or any unrecoverable claims (including, in particular, claims arising from fraud cases) that Beneficiary may have against Users or any other third parties in relation with these Services.

### ***Branding***

31. The Parties agree not to offer any service under any brand, including any trademark, trade name or company name, of the other Party unless the use of the brand(s) of the other Party is explicitly provided under the present General Terms and Conditions. Such use of the brand will then be strictly limited to the service at stake.
32. Beneficiary shall offer telecom services to Users under its own brand without any use of, or reference to Belgacom's brands.

33. Notwithstanding the foregoing, Parties acknowledge that, as provided in the Offer, the installation of equipment on the site of the relevant Users who have subscribed to an offering of Beneficiary will be realized by Belgacom personnel. Both Parties agree that Belgacom shall have no obligation to unbrand or rebrand its service technicians or trucks. Belgacom will act in accordance with its general standard of integrity that it has internally developed and enforced.
34. In any case, Belgacom will not make any publicity or remarks to the detriment of the Beneficiary or its image. Belgacom must in all circumstances stay neutral, in accordance with the technical nature of its intervention. Where Belgacom makes use of standard documents vis-à-vis users, it will submit these for prior approval by BIPT.

### ***User Terms and Conditions***

35. Beneficiary shall cause the terms and conditions governing Beneficiary's contractual relationships with Users to be compliant with the rules and principles set out in the Contract and its appendices. Notwithstanding the above, nothing in the present Reference Offer can be construed as creating or evidencing a contractual relationship of any kind between Belgacom and Beneficiary's Users, nor a right for Belgacom to supervise the contractual terms of the relation between Beneficiary and its Users.
36. Beneficiary shall bear all the consequences of the breach of the above obligation.

## **Coordination between the Parties**

### ***Single Points of Contact***

37. Beneficiary and Belgacom will both appoint an individual as their respective single point of contact ("SPOC") who will act, within its

organization, as the other Party's contact person.

38. The SPOC of either Party will have full authority to act and decide on behalf of the respective Party on all technical and operational matters regarding the day-to-day management of the performance of their contracts. All the decisions taken by any working group constituted by the Parties during the performance of this agreement will need to be expressly and formally validated by the SPOC of either Party to be binding on such Party. This validation (or refusal of validation) has to be given at the latest within three working days. The absence of response in this delay will be escalated. Except as otherwise expressly provided by the relevant Party, each Party's SPOC will have no authority to modify the conditions described in the present General Terms and Conditions, or to act outside the day-to-day management of the performance of the Terminating Segment of Leased Line.

39. Each Party will be authorized to replace its SPOC by notice sent to the other Party. Such notice will have immediate effect.

## **Liability**

### ***General rules***

40. Taking into account the nature of the respective activities of the parties, the risks and potential profits associated with these activities and the consideration obtained by each Party from the present General Terms and Conditions, Parties expressly agree that their respective liability shall be limited as follows.
41. If either Party is held liable to the other Party (including such other Party's employee(s) and contractor(s)) under the present General Terms and Conditions, that liability shall be limited to the following:
- if such liability results from any personal injury or death incurred as a direct result of the

non-performance of the relevant Party's obligations under these Terms and Conditions, then such liability shall be only subject to the limitation provided in article 42;

- if such liability results from any conduct attributable to the relevant Party, which is, under Belgian law, characterized as being gross negligence (faute lourde - zware fout) or intentional negligence (dol - bedrog), then such liability shall be subject to no limitation, except as provided by law;
  - if such liability results from any material damage, other than those referred to above, arising out of or in any way connected with the performance by the relevant Party of the Terminating Segment of Leased Line or the breach of such Party's obligations under the present General Terms and Conditions, then the total amount which can be recovered from such Party for all acts or omissions shall, in no event, exceed an aggregate amount equal to EUR 1,250,000 (one million two hundred fifty thousand euro), subject to the limitation provided in article 42.
42. Neither Party shall be liable for indirect damages (pure and consequential), including without limitation loss of profit, loss of revenue, loss of data, loss of use, loss of savings, loss of goodwill, interruption of business or claim by third parties.
43. In the event of a complaint by a Beneficiary's User, the liability of Belgacom may only be questioned by the Beneficiary if Belgacom, or a person Belgacom is responsible for, is at fault or has committed a gross negligence (faute lourde - zware fout).
44. In addition, and notwithstanding the above, each Party will indemnify the other Party against any claim or loss related to the illegal use, or the use for illegal purpose of Terminating Segment of Leased Line by the End User of one or the other Party.

### **Force Majeure**

45. Neither Party will be liable for any delay or failure to fulfil its obligations under these General Terms and Conditions arising from any event beyond its reasonable control, such as for instances but without limitation natural disasters and strikes (all such events being hereafter referred to as "Force Majeure").
46. The Party claiming Force Majeure shall as soon as possible send to the other Party a Notice of the Force Majeure. Such Notice shall contain adequate evidence of the occurrence and extent of the Force Majeure, as well as an estimate of the expected duration of the Force Majeure. As soon as practicable after receipt of such Notice, the Parties shall consult with each other in order to find an equitable solution to the problems and difficulties caused by the Force Majeure.
47. The Party claiming Force Majeure shall use all reasonable endeavours to minimise the consequences of such Force Majeure, and to ensure, in as far as reasonably possible, the continuity of the services provided under the present General Terms and Conditions, and shall perform those of its obligations not affected by a Force Majeure. To the extent that a Party is prevented as a result of Force Majeure from providing one or several of the services or facilities to be provided under the present General Terms and Conditions, the other Party shall be released to the equivalent extent from its obligations to make payment for such services or facilities or complying with its obligations in relation thereto.
48. Upon cessation of the effects of the Force Majeure, the Party initially affected by such Force Majeure shall promptly notify the other Party of such cessation.

### **Accidents at work and Safety Rules**

49. Each Party hereby undertakes to provide insurance cover against accidents at work for its own

employees in conformity with the applicable legal requirements. Each Party hereby renounces any possible claim against the other Party, and undertakes to procure that its insurer shall not pursue against the other Party, or against any third party for whose acts or omissions the other Party may be responsible, any claim relating to accidents at work.

50. Each Party shall comply with safety practices and procedures reasonably applicable when entering the premises and installations of the other Party in order to carry out work. Each Party undertakes to ensure that its personnel, while upon the premises and installations of the other Party, will respect any internal rules and codes of conduct therein applicable, provided that such rules and/or codes shall have been made available to them in advance. Without prejudice to the provisions of the chapter relating to liability, each Party shall indemnify and hold harmless the other Party for any and all damage, costs or expenses incurred as a result of any act or omission of a Party's personnel while upon the premises and installations of the other Party.

## Operational Matters

### **Operational Matters and Network Management**

51. The Terminating Segment of Leased Line provided under these General Terms and Conditions shall be implemented and provided by the Parties in accordance with the technical specifications set forth in The Main Body and the operational rules and procedures contained in Annex "Planning and Operations".
52. Both Parties shall cooperate to install and maintain reliable services. Both Parties shall exchange appropriate information as provided in the Offer (including, in particular, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government and such other information as the Parties

shall mutually agree) to achieve this desired reliability.

53. Each Party shall apply sound network management principles by invoking network management controls to ease the operation of their respective systems and to alleviate or to prevent congestion. Each Party shall ensure that the network management controls are applied in such a way as to ensure that there is no discrimination in favour of that Party's own traffic.

### **Essential Requirements**

54. The Parties shall ensure that the Essential Requirements, as defined and applicable under the regulatory framework, are adequately and sufficiently protected, in as far as the establishment, maintenance and operation of the services offered under the present General Terms and Conditions are concerned.
55. It is acknowledged that the Main Body, the present General Terms and Conditions and its Annexes (in particular, the sections related to Service Descriptions and the Annex "Planning and Operations") contain a number of specific principles and rules that have been developed to ensure the protection of the Essential Requirements. Furthermore, the Parties shall consult with each other in order to ensure that the Essential Requirements are protected in an adequate and sufficient manner.
56. It is a condition for the provision by Belgacom of Terminating Segment of Leased Line under this Document that Beneficiary's request under the provisions of the Main Body is not detrimental to the operation of the telecommunications networks and telecommunications services in question or to their integrity or interoperability, and that the protection of service and internal data, network equipment, software and stored data, including personal data, confidential information and privacy can be sustained.

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57. The conditions for and restrictions on use applying at any time appear from the Main Body to the Offer.

58. Belgacom shall further be entitled to cause interruptions, disturbances or modifications of Belgacom's public network and services to the detriment of the supply of the services under these Terms and Conditions in connection with measures that are deemed necessary for technical, maintenance and operating reasons taking into account the balance of the interests of both Parties or that are ordered by the regulatory authorities. Belgacom shall give in good faith Beneficiary the longest possible notice of interruptions, disturbances and modifications and state the reason for them. In these cases, Belgacom shall, in writing, immediately inform the User of Belgacom's intentions.

illegal purposes, or if Beneficiary by its action or omission causes, or could reasonably be expected to cause a damage to the working or the security of the telecommunication network of Belgacom, and Beneficiary fails to take appropriate measures in order to remedy to the situation within a period of thirty (30) days from the receipt of a Notice sent by Belgacom, Belgacom will have the right to suspend the provision of some Terminating Segment of Leased Line contracts or of the whole Terminating Segment of Leased Line. Notwithstanding the foregoing, Belgacom will have the right to suspend Terminating Segment of Leased Line prior to sending the above mentioned Notice in urgent cases where such suspension will be reasonably required under the circumstances. In that case, Belgacom will inform the BIPT and the parties involved about the suspension of the Services at the latest 24 hours after the suspension.

**Deleted:** Annex "Technical specifications Document"

**Deleted:** e present General Terms and Conditions.

## Amendments and Revisions

### General Principles

59. Except as otherwise provided in these General Terms and Conditions or its Annexes, any agreement departing from the present Terms and Conditions or its Annexes shall only be valid if duly agreed upon in writing by the respective representatives of the Parties by both parties in writing.

## Termination and Suspension

### Termination

60. Beneficiary has the right to terminate one or more Terminating Segment of Leased Line contract as provided in the Offer, i.e. in the relevant Annex 2 related to Pricing and Billing annexed to this Offer.

### Suspensions

61. In the event Beneficiary uses or allows the use of Services provided under these General Terms and Conditions in an illegal manner or for

62. Belgacom will have the right to suspend Terminating Segment of Leased Line in the event that it is requested to do so by an order of a court or a competent authority. Belgacom will inform Beneficiary as soon as possible of the cause of such suspension.

63. In the event that Beneficiary fails to pay outstanding invoice for any amount due under these Terms and Conditions for a period of 15 calendar days as from the Due Date of the relevant invoice, or fails to provide, renew, adapt or reconstitute the financial guarantee as provided in the chapter on Financial Guarantee here-above, Belgacom shall be entitled, after having duly informed the BIPT, to suspend the Services with immediate effect subject to a prior Notice sent at least 7 calendar days before the end of the above mentioned delay of 15 days. This provision does not apply to disputed amounts.

**Deleted:** ese General Terms and Conditions.

### Termination for Cause

64. In the event that either Party defaults in the payment of sums due

for the Services offered under these Terms and Conditions or is in default to provide a financial guarantee as provided in the relevant chapter here-above and such default is not substantially cured within thirty (30) days after written notice is given specifying the default, then the non-defaulting Party may by giving notice to the other Party and after having duly informed the BIPT, terminate all the Terminating Segment of Leased Line with immediate effect. This provision does not apply to disputed amounts.

65. In the event that either Party is declared bankrupt or enters into liquidation, then the other Party may terminate all the Terminating Segment of Leased Line, without any further legal or other procedures, by sending Notice of termination with immediate effect to the other Party.

### **Consequences of Termination**

66. The provisions in this chapter on Termination of the Services are without prejudice to any other right or claim for compensation to which one of the Parties may be entitled to in the event of termination of the Services, [as provided namely in the relevant Annex 2 of this Offer related to Pricing and Billing](#)
67. In the case of termination of the Services for any reason, Belgacom shall be entitled to payment for all Services performed prior to such termination in accordance with the conditions that were applicable between the parties at the time of termination.
68. The provisions of the present General Terms and Conditions which by their nature are determined to survive the termination of the Services (including, in particular but without limitation, the provisions on Confidentiality and Applicable Law and Jurisdiction), shall remain in full force and effect after the termination.
69. In the event of termination of the Services, Beneficiary will be responsible to inform the relevant

User of the consequences of the termination of these Services.

## **Confidentiality**

### **Confidential Information**

70. For the purpose of this Chapter, the term "Confidential Information" shall mean:
- information communicated by one Party (or from any of its Associated Companies) (the "Disclosing Party") to the other Party (or to its employees and advisors) (the "Receiving Party"), or obtained by the Receiving Party in connection with the performance of the Services, provided that such information is, at the time of its disclosure, reasonably designated "confidential" or with an equivalent term. If such information was disclosed orally, it shall constitute Confidential Information provided that the Disclosing Party informs the other Party at the time of such disclosure, that such information is confidential and that (i) a written notice containing a summary of the information disclosed orally and mentioning that such information is confidential, is issued by the Disclosing Party to the other within five Working Days from the date of disclosure, or (ii) such disclosure is recorded in minutes of a meeting that are designated, labelled or marked "confidential" or designated, labelled or marked with an equivalent term;
71. For purposes of these General Terms and Conditions, "Confidential Information" does not include:
- a. information that is properly and lawfully in the public domain otherwise than by breach of these Terms and Conditions or any other obligation of confidence;
  - b. information that was disclosed by a third party to the Receiving Party without restriction on

disclosure or use, unless the Receiving Party knew or should reasonably have known that this information was acquired unlawfully or by a breach of contract or fiduciary relationship.

72. Except as specified in writing, by the Disclosing Party at the time of disclosure, Confidential Information shall continue to be deemed as such until the end of a period of three years after its initial communication under the present General Terms and Conditions.

### **Non-Disclosure**

73. The Receiving Party shall refrain from disclosing the Confidential Information to any third party and shall use the Confidential Information only for the performance of the Services offered in accordance with the present General Terms and Conditions. In addition, the Receiving Party shall take any reasonable measures to ensure the confidentiality of this information. In any event, the Receiving Party shall use efforts at least commensurate with those that such Party uses for protecting the confidentiality of its own Confidential Information.
74. Notwithstanding the foregoing and without prejudice to the provisions regarding the Disclosure to Personnel, Advisors or Suppliers here-under, either Party shall be allowed to disclose the Confidential Information to third parties provided it has obtained the prior written consent of the other Party. Such written consent will be given case-by-case upon a discretionary basis. Such written consent shall only be valid and enforceable for the specific information listed therein. The written consent to disclose Confidential Information shall identify the third party or parties to which the information can be disclosed and shall set forth the terms and conditions to which such disclosure is subject.
75. The Disclosing Party shall remain free to disclose to any third party

Confidential Information disclosed to the Receiving Party.

### **Disclosure to Personnel, Advisors or Suppliers**

76. A Receiving Party shall disclose the Confidential Information received from the other only to its directors, employees, suppliers, agents, advisors, resellers or contractors who have a need to know such information. Such Party shall ensure that such directors, employees, suppliers, agents, advisors or contractors are bound by the obligations of confidentiality in respect of the Confidential Information that are set forth in these General Terms and Conditions. For this purpose, the Beneficiary shall conclude a similar Non Disclosure Agreement with the above authorized parties not on his payroll that contains at least the same provisions as the NDA the beneficiary concluded with Belgacom.
77. Notwithstanding anything to the contrary in the foregoing provisions, the Receiving Party shall not disclose or use the Confidential Information, with the aim of providing commercial advantage to business divisions of the Receiving Party, or business divisions of the Receiving Party's Associated Companies, which are engaged in activities competing with the other Party.
78. Either Party may disclose Confidential Information that they received from the other Party, to their suppliers or contractors provided and to the extent that such suppliers or contractors effectively require to have access to such information in order to supply the relevant goods and services. The Parties shall do whatever is necessary in order to impose on the suppliers or contractors which have obtained access to Confidential Information obligations to keep this information confidential, which are at least equivalent to the obligations imposed under the present General Terms and Conditions.

79. Each Party shall be liable under the limitations provided in the Chapter relating to Liability here-above, for any unauthorized disclosure or use of the Confidential Information by its directors, employees, suppliers, agents, advisors or contractors. The Party responsible for an unauthorized disclosure or use of the Confidential Information shall, in any event, take any reasonable measures (including but not limited to court proceedings) to mitigate the damage resulting there-from.

### ***Disclosure Required by Law***

80. If the disclosure of Confidential Information to third parties is required by reason of legal, accounting or regulatory requirements beyond the control of the Receiving Party, the Receiving Party may disclose such information to the extent necessary to comply with such requirements. Without prejudice to the application of the foregoing, the Parties shall endeavour to ensure the confidential treatment of the Confidential Information by the third parties receiving such information as a result of such requirement.

81. Without limitation to the generality of the foregoing, either Party will have the right to disclose Confidential Information to the BIPT, whenever required by law, or deemed reasonably necessary in the context of any proceedings or discussions held in front or with the BIPT. If any such disclosure of Confidential Information is made, the Party communicating the information will ensure that the attention of the BIPT is properly drawn to the fact that the information is confidential and that the information needs to be kept confidential.

## **Dispute Resolution and Applicable Resolution**

### ***Dispute resolution procedure***

82. The SPOC shall, on an ongoing basis, attempt to solve any dispute, controversy or claim between the

Parties concerning the interpretation, application and implementation of the present General Terms and Conditions and its Annexes (a "Dispute") through discussions held in good faith.

83. In the event that the Parties have been unable to solve any Dispute, then upon Notice of either Party, each of the Parties will appoint a designated senior business executive (other than their respective SPOC) whose task it will be to meet for the purpose of endeavouring to resolve the Dispute. Each Party shall ensure that their respective designated executive has sufficient authority or decision-making power concerning the matter at stake. The designated executives will meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate in connection with its resolution. Such executives will discuss the Dispute and will negotiate in good faith in an effort to resolve the Dispute without the necessity of any formal proceeding relating thereto.

84. In the event the Parties fail to reach such a solution and/or settlement within fifteen (15) Working Days as from the receipt of the above Notice, they shall escalate the matter to a higher level within their respective organizations. Discussions at that level will be conducted as described in article 83. The Parties may, at any given escalation level, agree to extend the time limits described in this article and in article 83 when they consider it necessary in order to facilitate that an agreement be concluded on the subject-matter of the dispute.

85. Except in the cases of urgency, as determined in good faith by the Party calling the Dispute, no formal proceedings for the resolution of a Dispute may be started until the earlier to occur of (a) a good faith conclusion by the designated executives that amicable resolution through continued negotiation of the matter in issue does not appear likely or (b) the Parties have failed to

reach an agreement on the Dispute within 15 Working Days of the escalation of the Dispute as described in article [84](#)

86. Without prejudice to the above and without prejudice to the rights of each Party in case of Dispute, each Party shall be entitled to call on the BIPT for a decision for disputes regarding the interpretation of the present General Terms and Conditions and/or its Annexes. In consideration of the legal framework, the then relevant BROTSOLL and the then relevant decision of the BIPT on the BROTSOLL, BIPT will take decision within a reasonable term that shall not exceed one (1) month.

### **Applicable Law and Jurisdiction**

87. This Document shall be governed by Belgian law.
88. Without prejudice to article [85](#), any dispute concerning the validity, the interpretation, or the performance of the Terminating Segment of Leased Line, or of subsequent contracts derived here-from shall be finally submitted to the Courts of Brussels, Belgium. The above is without prejudice to the right of each of the Parties to submit the Dispute to the BIPT with a view to reach conciliation or to submit the Dispute to the Competition Council.

## **Miscellaneous**

### **No Assignment**

89. Neither of the Parties is entitled to assign the contracts concluded under the present General Terms and Conditions, in part or in its entirety, to any third party or to any other entity unless with the prior written approval of the other Party.
90. No approval will be required for an assignment of the Contracts in the event a Party assigns all the Terminating Segment of Leased Line concluded under the present General Terms and Conditions in their entirety to a successor, to which a transfer has taken place of, at least, the Assigning Party's activities

covered by the present General Terms and Conditions. In such a case, the assigning Party shall immediately give Notice to the other Party of any such assignment permitted to be made under the present General Terms and Conditions without requesting the other Party's consent.

91. Without prejudice to the foregoing, no assignment shall be valid under the present Terms and Conditions unless the assignee agrees in writing to be bound by the provisions of the present General Terms and Conditions and its Annexes.

### **Fraud**

92. The Parties accept to cooperate to the best of their respective abilities in order to prevent and eliminate any kind of fraud which involves Services provided under these General Terms and Conditions. If any of the Parties suspects such kind of fraud, the Parties shall co-operate in order to identify the origin of the fraud and to use any appropriate means in order to eliminate and prevent such fraud as soon as possible. For the purposes of the application of the present provision, fraud shall mean any manipulation of a communications network, including by Beneficiary connected to the network of one of the Parties, in order to obtain one or more telecommunication services without paying the proper charge for it, or to support other criminal activities (including, in particular, wiretapping, eavesdropping and gathering secret numbers).
93. It is explicitly acknowledged by the Parties that any cooperation in the context of the present provision will need to be in due compliance with the entire regulatory framework.

### **Independent Parties - Approvals**

94. Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, competent authorities, other operators, and any other persons that may be required in connection

with the performance of its obligations under the present General Terms and Conditions. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which other Party is responsible.

95. Each of the Parties is and shall remain at all times an independent contractor. Neither Party is authorized and neither of the Parties nor their employees, agents or representatives shall at any time attempt to act or act on behalf of the other Party to bind the other Party in any manner whatsoever to any obligations. Neither Party nor its employees, agents or representatives shall engage in any acts which may lead any person to believe that such Party is an employee, agent or representative of the other Party. Nothing in the present General Terms and Conditions shall be deemed to constitute a partnership between the Parties.

96. Should a conflict arise between the applicable BROTSOLL and the present General Terms & Conditions, the then applicable BROTSOLL shall prevail, unless otherwise specifically stated in these General Terms and Conditions. Should a conflict arise between these General Terms & Conditions and any or several Annexes, the General Terms & Conditions, shall prevail unless otherwise agreed by the Parties, in writing or otherwise specifically stated in these General Terms and Conditions or Annexes. Should a conflict arise between an Annex and an attachment or an appendix to this Annex, the Annex shall prevail unless otherwise agreed by the Parties, in writing or otherwise specifically stated.

97. If any part of this Reference Offer shall be held to be illegal, invalid or unenforceable for any reason, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality

and enforceability of the remaining provisions of this Offer shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall forthwith negotiate in good faith to amend this Offer and the Parties' practices hereunder in such manner and with such language as will fully reflect as closely as possible the intent of the Parties and render further performance lawful.

BROTSOLL

Annex 2

**PRICING AND BILLING**

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## **1. Pricing**

### **1.1 General remarks**

1. *The prices set below are those stated in the Decision of BIPT on quantitative aspects of BROTSoLL of September 3, 2008. Belgacom has introduced a claim before the Court of Appeal of Brussels requesting that said BIPT decisions of January 17, 2007, January 30, 2008 and September 3, 2008 are declared void.*

*In that respect, without prejudice to negotiations between the parties, Belgacom reserves the right to withhold the present specific offer and to apply retroactively to the concerned lines the formerly applicable standard rates and standard contractual terms and conditions (including to invoice the penalties and other compensation due in case of termination) in the event that the recourse before the Court of Appeal of Brussels related to the BIPT decision dd. January 17, 2007, would be successful or in the event the concerned decision is withdrawn.*

*Moreover, even if the recourse against the BIPT decision dd. January 17, 2007 would not be successful, the offer contained in this present addendum shall still be withdrawn and replaced respectively by the terms and conditions and/or rates formerly applicable to the concerned lines in the event that the recourse before the Court of Appeal of Brussels related to the BIPT decision dd. January 30, 2008 and/or September 3, 2008 would be successful or in the event the concerned decision(s) is (are) withdrawn. In that case, Belgacom also reserves the right either to claim damages or to apply retroactively to the lines terminated by the Customer to be replaced by BROTSoLL Lines the penalties and any other compensation due in case of termination, according to the former applicable terms and conditions.*

2. *Point-to-point connections that are said extra-area (end-points located in two different Acces Area) are not covered by this Price List. The exact location of the access areas can be found at Belgacom's website ([www.belgacom.be](http://www.belgacom.be)).*

3. *All prices included in this Price List are expressed in Euro, VAT excluded. Structure and prices of the below price list are subject to further adaptations.*

### **1.2 Terminating Segments of Leased Lines (hereafter "BROTSoLL Lines")**

#### **1.2.1 Installation fee**

##### **1.2.1.1 One-time installation charges**

The installation fees for BROTSoLL Lines indicated in the following table are due per end-point.

The mentioned installation fees for capacities superior to 2Mbs are only valid in case fibre cable infrastructure is available in the access network. If this is not the case, Belgacom will make a specific offer taking the local situation into account.

<b>End-point location</b>	Outside a Belgacom building
<b>64kbit/s-128kbit/s</b>	619,73
<b>256kbit/s-1984kbit/s</b>	1239,47
<b>2.048 kbit/s</b>	2.107,10 (1.239,47 per additional line)
<b>34 Mbit/s</b>	2.479,94 (1.239,47 per additional line)
<b>155 Mbit/s</b>	2.479,94 (1.239,47 per additional line)
<b>622 Mbit/s</b>	On demand
<b>2,5 Gbit/s</b>	On demand

The one-time installation charge covers:

- a) travel costs of Belgacom employees;
- b) the installation of a connection point at each end of the BROTSOLL line and if necessary, the installation of the equipment and electronic devices required for access to the service;
- c) the pulling of cable in an existing duct or in an open trench that meets the technical requirements set by Belgacom, between the edge of the nearest public paved surface (not including highways and roadways) and the building where the line must be laid;
- d) any work on a public paved surface (or with any other hard layer), not including highways and roadways, and on Belgacom's premises.

#### 1.2.1.2 Other one-time charges

The following is billed to the Customer separately:

- a) all the costs including administrative costs, arising from the work and/or the laying of the cable in public or private property (including cabling inside a building) and that are not referred to in section 1.2.1.1 (including, but not limited to: any work on highways, roadways, trails, unpaved roads, harbors, parking lots, canals and other waterways, landing strips, forests, railroads, etc.);
- b) the costs of crossing a road to make a connection on a roadside or on the center divider strip inaccessible by cars and separating two or more paved roads;
- c) the costs of repair work following the Customer's failure to meet his obligations or following a service disruption not caused by equipment provided by Belgacom, or in the event that the Customer has improperly used the line or any other equipment provided by Belgacom;
- d) the cost of additional work carried out at the Customer's request and/or that is not generally part of the service. If this cost exceeds EUR 1000 per site, Belgacom will draw up a quote of the work to be carried out and submit it to the Customer for prior approval;

e) the costs of transferring, changing or decreasing the capacity of the lines referred to in section 1.5. If these costs exceed EUR 1000 per site, Belgacom will draw up a quote and submit it to the Customer for prior approval;

f) planning and survey costs

For the application of sections 1.2.1.1 and 1.2.1.2, the terms “paved surfaces”, “highways” and “roadways” must be understood as applied in the royal decree regarding the general regulations for road traffic.

If the Customer wishes the BROTSOLL lines to be installed differently than Belgacom's usual method, Belgacom will carry out this work insofar as technically possible. If the cost of this work exceeds EUR 1000 per site, Belgacom will draw up a quote of the work to be carried out and submit it to the Customer for prior approval;

The installation charges of the lines in service are payable in cash as soon as the contract takes effect.

## 1.2.2 Rental fee

The rental prices of BROTSOLL Lines depend on the respective location of the two end-points of the Leased Line. Belgium has been divided in a number of Access Areas. The exact location of the access areas can be found at Belgacom's website ([www.belgacom.be](http://www.belgacom.be)). The rental price will depend on location of the end-points of the BROTSOLL Line.

- If both end-points of the BROTSOLL Line are connected to the same distribution frame, the line will be *'local'*
- If the end-points of the BROTSOLL Line are connected to different distribution frames but are located in the same telephone zone, the line will be *'intra-zone'*
- If the end-points of the BROTSOLL Line are located to different telephone zones but in the same Access Area, the line will be *'intra-area'*

The monthly rental fee for a BROTSOLL Line is indicated in the following tables (*all values in EUR/month*). Rental fees for each bit rate depend on the site where the end-point is located : Belgacom site (Belgacom building) or external site (OLO POP or end-user)

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### 1.2.2.1 Between two Belgacom sites (BROTSOLL BGC-BGC)

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	local	intra-zone	intra-area
64k	41,92	61,31	79,84
128k	47,62	69,64	90,69
192k	53,32	77,98	101,55
256k	59,02	86,31	112,40
320k	64,72	94,65	123,26
384k	70,42	102,98	134,11
448k	76,12	111,32	144,97
512k	81,82	119,65	155,82
576k	87,52	127,99	166,68
640k	93,22	136,32	177,54
704k	98,92	144,66	188,39
768k	104,62	152,99	199,25
832k	110,32	161,33	210,10
896k	116,02	169,67	220,96
960k	121,72	178,00	231,81
1024k	127,42	186,34	242,67
1088k	133,12	194,67	253,52
1152k	138,82	203,01	264,38
1216k	144,52	211,34	275,23
1280k	150,22	219,68	286,09
1344k	155,92	228,01	296,94
1408k	161,62	236,35	307,80
1472k	167,32	244,68	318,65
1536k	173,02	253,02	329,51
1600k	178,72	261,36	340,36
1664k	184,42	269,69	351,22
1728k	190,12	278,03	362,08
1792k	195,82	286,36	372,93
1856k	201,52	294,70	383,79
1920k	207,22	303,03	394,64
1984k	74,81	147,35	246,60
E1	74,81	147,35	246,60
E3	294,15	985,43	3.230,68
STM-1	385,18	3.252,29	8.313,23
STM-4	811,14	9.462,06	14.914,81
STM-16	1.330,27	15.517,79	24.460,29

1.2.2.2 Between Belgacom site and external site (BROTSoLL BGC-External)

	local	intra-zonal	intra-area
64k	100,78	120,16	138,70
128k	106,48	128,50	149,55
192k	156,43	181,08	204,65
256k	162,13	189,42	215,51
320k	167,83	197,75	226,36
384k	173,53	206,09	237,22
448k	179,23	214,42	248,07
512k	184,93	222,76	258,93
576k	190,63	231,09	269,79
640k	196,33	239,43	280,64
704k	202,03	247,76	291,50
768k	207,73	256,10	302,35
832k	213,43	264,44	313,21
896k	219,13	272,77	324,06
960k	224,83	281,11	334,92
1024k	230,52	289,44	345,77
1088k	236,22	297,78	356,63
1152k	241,92	306,11	367,48
1216k	247,62	314,45	378,34
1280k	253,32	322,78	389,19
1344k	259,02	331,12	400,05
1408k	264,72	339,45	410,90
1472k	270,42	347,79	421,76
1536k	276,12	356,12	432,61
1600k	281,82	364,46	443,47
1664k	287,52	372,80	454,32
1728k	293,22	381,13	465,18
1792k	298,92	389,47	476,04
1856k	304,62	397,80	486,89
1920k	310,32	406,14	497,75
1984k	177,92	250,45	349,71
E1	177,92	250,45	349,71
E3	1.050,97	1.742,25	3.987,50
STM-1	1.326,11	4.193,22	9.254,15
STM-4	1.864,53	10.515,46	15.968,20
STM-16	2.841,18	17.028,69	25.971,20

1.2.2.3 Between two external sites (BROTSoLL External-external)

	local	intra-zonal	intra-area
64k	159,64	179,02	197,55
128k	165,34	187,36	208,41
192k	259,53	284,19	307,76
256k	265,23	292,52	318,61
320k	270,93	300,86	329,47
384k	276,63	309,19	340,32
448k	282,33	317,53	351,18
512k	288,03	325,86	362,03
576k	293,73	334,20	372,89
640k	299,43	342,53	383,75
704k	305,13	350,87	394,60
768k	310,83	359,20	405,46
832k	316,53	367,54	416,31
896k	322,23	375,88	427,17
960k	327,93	384,21	438,02
1024k	333,63	392,55	448,88
1088k	339,33	400,88	459,73
1152k	345,03	409,22	470,59
1216k	350,73	417,55	481,44
1280k	356,43	425,89	492,30
1344k	362,13	434,22	503,15
1408k	367,83	442,56	514,01
1472k	373,53	450,89	524,86
1536k	379,23	459,23	535,72
1600k	384,93	467,57	546,57
1664k	390,63	475,90	557,43
1728k	396,33	484,24	568,29
1792k	402,03	492,57	579,14
1856k	407,73	500,91	590,00
1920k	413,43	509,24	600,85
1984k	281,02	353,56	452,81
E1	281,02	353,56	452,81
E3	1.807,79	2.499,07	4.744,32
STM-1	2.267,04	5.134,15	10.195,08
STM-4	2.917,92	11.568,85	17.021,60
STM-16	4.352,08	18.539,60	27.482,11

The rental price covers :

- a) the lease and maintenance of the infrastructure and equipment provided by Belgacom to the Customer and that are necessary for the use of the service;
- b) the repair of service disruptions (up to and including the connection point) in accordance with the procedures and conditions specified in the BROTSoLL offer.

All fees are due as from the day on which the BROTSoLL Line has been made available to the Operator.

The rental and installation fees indicated in section 1.2.1 and 1.2.2 do not include the cabling within the private domain of the Belgacom end-user or of a Third Party, nor the costs related to colocation of Operator's transmission equipment in Belgacom's premises.

This cabling, if necessary, must be ordered prior to the ordering of the BROTSoLL Line.

Protection of BROTSoLL Line is not included in the indicated prices.

### 1.2.3 Long term Discount

Long term discounts specified in the table below are applicable per end-point outside the aggregated access defined in section 1.3.

Discount (in EURO) per non-aggregated access				
	<b>2year contract</b>	<b>3year contract</b>	<b>4year contract</b>	<b>5year contract</b>
64k-128k	5,34	10,69	16,03	21,38
192k-2048k(E1)	8,70	17,40	26,10	34,80
E3	104,76	209,53	314,29	419,05
STM1	118,80	237,59	356,39	475,19
STM4	127,37	254,74	382,11	509,48
STM16	162,24	324,49	486,73	648,97

If no long term discount is chosen, the BROTSoLL Line will be made available by default for an indefinite term. In both cases line must remain in force for a minimum one year duration as of either its installation date if the line is totally new or the date of its administrative change if the line has been migrated from another contract to BROTSoLL.

At the end of the chosen term, the discount applicable at that time remains applicable as long as the concerned line is maintained unless the Customer has in the meantime subscribed to a new long term commitment for this line. In the latter case, the discount corresponding to the new long term commitment is applied without any new minimum one year duration being applied.

### 1.3 Aggregated Access on fiber

The customer can choose for an aggregated access for all his BROTSoLL Lines terminated at the same end-point being an external OLO site.

#### 1.3.1 Installation fee

- For the creation of a new aggregated access, installation fee as stated in section 1.2.1 will be applicable.
- For each existing BROTSoLL Line to be migrated in the aggregated access at its creation, an administrative cost (125€) will be applicable.
- For each existing BROTSoLL Line to be migrated in an existing aggregated access, 50% of the installation fee stated in section 1.2.1 will be applicable.

#### 1.3.2 Rental fee

The customer shall pay a rental fee (*all values in EUR/month*) for the Aggregated access, as indicated in the table below:

Equipment	1year-contract	2year-contract	3year-contract	4year-contract	5year-contract
Multiple E1 on fiber (up to 16)	756,28	651,55	546,83	442,11	337,39
STM-1 or E4	940,93	822,13	703,33	584,54	465,74
STM-4	1.053,39	926,02	798,65	671,28	543,91
STM-16	1.510,91	1.348,67	1.186,42	1.024,18	861,94
Supplement per SYRAR or DNT connected to ADM or Mux	184,13	170,29	156,45	142,61	128,77

He will also pay the rental fee as stated in section 1.2.2 for each line in the aggregated access following the rules in the table below:

	Without Aggregated acces	With Aggregated acces at one end-point	With Aggregated access at both end-points
<b>BROTSoLL line between two external sites</b>	BROTSoLL External-external	BROTSoLL BGC-External	BROTSoLL BGC-BGC
<b>BROTSoLL line between BGC site and external site</b>	BROTSoLL BGC-External	BROTSoLL BGC-BGC	-
<b>BROTSoLL line between two BGC sites</b>	BROTSoLL BGC-BGC	-	-

All fees are due as from the day on which the BROTSoLL aggregated access has been made available to the Operator.

#### 1.3.3 Long term Discount

Long term discounts as specified in section 1.3.2 are applicable for Aggregated access.

If no long term discount is chosen, the Aggregated access will be made available by default for an indefinite term. In both cases line must remain in force for a minimum one year duration as of its installation date.

At the end of the chosen term, the discount applicable at that time remains applicable as long as the concerned Aggregated Access is maintained unless the Customer has in the meantime subscribed to a new long term commitment for this Aggregated Access. In the latter case, the discount corresponding to the new long term commitment is applied without any new minimum one year duration being applied.

The terms applied to the existing BROTSoLL Lines added in the aggregation remain valid and will continue to run.

## 1.4 **BROTSoLL Ethernet**

### 1.4.1 **Installation fee**

Installation fee of 2450 EUR will be billed per external end-point.

### 1.4.2 **Rental fee**

The monthly rental fee for a BROTSoLL Ethernet Line is indicated in the following tables (*all values in EUR/month*). Rental fees for each bit rate depend on the site where the end-point is located : Belgacom site (Belgacom building) or external site (OLO POP or end-user)

#### 1.4.2.1 Between two external sites (BROTSoLL Ethernet Customer-sited)

	0-5 km	5-20 km	20-50 km	>50 km
Ethernet	650	1125	1800	2350
Fast Ethernet	1375	2060	3900	4385
Gigabit Ethernet	2650	3350	5950	6700

#### 1.4.2.2 Between Belgacom site and external side (BROTSoLL Ethernet BGC-sited)

	0-5 km	5-20 km	20-50 km	>50 km
Ethernet	525	900	1550	1850
Fast Ethernet	1075	1600	3050	3500
Gigabit Ethernet	2175	2750	4850	5450

#### 1.4.2.3 Between two Belgacom sites (BROTSoLL Ethernet Dual BGC-sited)

	0-5 km	5-20 km	20-50 km	>50 km
Ethernet	-	-	-	-
Fast Ethernet	490	1050	2135	2450
Gigabit Ethernet	980	1790	3395	3815

### 1.4.3 Long term Discount

Long term discounts specified in the table below are applicable per BROTSOLL Ethernet line Customer-sited or BGC-sited:

1 year	0%
2 years	-9%
3 years	-12%
4 years	-15%
5 years	-17%

## 1.5 Termination

### 1.5.1 Termination before implementation

Until the line is made available, the Customer may terminate the contract immediately by a registered letter. If Belgacom has already carried out work for the line activation at the time of the contract termination, Belgacom will nevertheless bill the Customer for the full cost of the implementation. If Belgacom has not carried out such work, the Customer will be billed EUR 125.00 for administrative fees.

The same rules will be applicable in case of cancellation of request for transfer, change or capacity decrease before it is implemented.

### 1.5.2 Termination of line in service

Once the line has been made available, the parties may terminate the contract at any time, subject to a minimum one calendar-month notice by registered letter sent via the mail.

In case of early termination of an order, full compensation shall be payable to Belgacom:

- if the order (standard or fixed term contract) is terminated during the first year, 100% of the amounts payable by the Customer at standard rates for the order that has been terminated, starting from the termination date until the first anniversary of the activation date of the concerned order.
- moreover, if the order (fixed term contract) is terminated, reimbursement of any undue received discounts will be billed following a recalculation of the prices based on the actual term for which the order was provided.

### 1.5.3 Return of equipment

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In the event of a contract termination, the Customer shall return the equipment belonging to Belgacom as soon as requested. The Customer shall authorize Belgacom to enter his premises during working hours to recover equipment, either in his own presence or that of one of his delegates. If the equipment removal takes place under normal conditions, Belgacom shall not bear the costs of restoring the premises to their original state.

If the Customer has not returned the equipment within fifteen working days of the day on which a registered letter was sent to him, he will be charged a penalty equal to 10% of the subscription charge, without prejudice to any legal action Belgacom that may take

## **1.6 Change/Move**

### **1.6.1 One-time costs**

The Customer can request a change to his line (i.e., a change of technical characteristics or a capacity increase/decrease) or the move of his line (i.e., the transfer of one connection point of his line without changing the technical characteristics or capacity). In this case, the contract that was originally concluded remains valid. The Customer is nevertheless required to pay the cost of the work carried out as stated below:

- 50% of the installation fee stated in section 1.2.1 in case of capacity increase (upgrade)
- 100% of the installation fee stated in section 1.2.1 in case of capacity decrease (downgrade)
- 40% of the installation fee stated in section 1.2.1 in case of move of one end-point

Any increase or decrease in the subscription charge resulting from a change requested by the Customer or a transfer shall take effect on the date this change or transfer has been carried out.

### **1.6.2 Capacity decrease (downgrade)**

Any request submitted by the Customer for a capacity decrease of his line will be considered as a termination request by the Customer and as the entering into a new contract of at least one year for this lower-capacity line ordered. [The terms and conditions foreseens in BROTSOLL and its Annexes apply to this new contract.](#) Unless the new contract specifies a different duration, the contract for the new line is entered into for the same duration as the original line.

In addition to the costs covering the work carried out, the Customer shall owe the indemnity mentioned in section 1.4.2 if his request for a capacity decrease is submitted during the initial one-year term.

### **1.6.3 Capacity increase (upgrade)**

If a capacity increase for the line is requested, the original line and the higher-capacity line will operate parallel to each other in the initial phase, in order to enable the Customer to migrate his applications.

If the Customer has not requested the cancellation of the original line within a period of ten business days of the activation of the higher-capacity line, the Customer will still be billed for his original line and will be billed for the higher-capacity line starting on the date it is activated. A reminder will be sent to the Customer within one calendar month following this period of ten working days.

If the Customer has not requested the cancellation of the original line within two calendar months of the activation date of the higher-capacity line, Belgacom will no longer consider the original request for a capacity as a request for a line change, but as an order for a new separate line, for which a new contract of at least one year will be entered into, and which will take effect on the activation date. The terms and conditions foreseens in BROTSoLL and its Annexes apply to this new contract. In this case, the Customer will owe Belgacom for any benefits it unduly obtained at the time of the activation of the higher-capacity line. Unless the new contract specifies a different duration, the contract for the new line is entered into for the same duration as the original line.

Belgacom does not guarantee uninterrupted service during the transfer, change or capacity decrease of the line.

## **1.7 Migration**

Commercial national digital Leased Lines and ONS lines can migrate towards BROTSoLL equivalent products as far as the lines fulfil the conditions of BROTSoLL .

The term “migration” as used in the present section does not cover any changes of technical characteristics of the line (e.g. change of bit rate) or any move of one end-point (e.g. transfer of one end-point from a POP to a Colocation)

### **1.7.1 One-time costs**

Administrative cost (125€) will be billed in case of administrative migration (modification of product – no technical intervention)

### **1.7.2 Rental fee**

The rental fee for the BROTSoLL Line as described in section 1.2.2 and 1.4.2 will be billed as from the date of the migration.

### **1.7.3 Long term Discount**

In principle, when a commercial national digital Leased Line or ONS line is migrated towards BROTSoLL product, the commercial national digital leased lines or ONS line is considered as terminated by the customer with all the contractual consequences foreseen in the initial agreement and the BROTSoLL Line is considered as a new line. If no long term discount is chosen, the BROTSoLL Line will be made available by default for an undefined term. In both cases line must remain in force for a minimum one year duration as of its administrative change. This principle also apply to the national digital leased lines or ONS line that were ordered after 08/04/2009 (date of adoption of the BROTSoLL Ethernet prices decision) even if they are migrated during the four months period indicated below.

Notwithstanding the principles indicated above, the following cumulative rules apply to the migration requests taking place between 15/09/2008 till 08/08/2009 ( i.e. four months after the publication of the BROTSoLL Ethernet prices decision made on 08/08/09)

1. no penalty fee will be applicable (i) if due to said migration, the volume of Customer'spark of commercial national digital leased lines or ONS lines decreases and/or (ii) for the early termination of the concerned commercial national leased line or ONS line having been migrated to BROTSoLL .
2. the long term commitment initially taken by the Customer for the commercial national leased lines or the ONS lines and the minimum one year duration as of the initial installation date remain in force like if the line hadn't change of contract. If a commercial national digital leased line or ONS line included in a

global contract is migrated to **BROTSoLL**, the date of the initial installation is considered as start point of the one year period and the effective date of the global contract is considered as start point of the long term commitment. The BROTSoLL long term discount corresponding to the initial commitment will be applied.

3. If the BROTSoLL line is terminated before the minimum one year duration, the remaining months are billed at standard BROTSoLL prices ( without any discount) until the first anniversary of the installation date. Furthermore if the long term commitment is not observed, Belgacom reserves the right to regularize the discounts that were granted taking into account the effective line duration. This regularization will be applied according to the discount granted in the frame of each contract ( commercial national digital leased lines/ONS lines and BROTSoLL) for their respective validity period.

Long term discounts such as described in section 1.2.3 are applicable for each specific migrated commercial national digital lines and the long term discounts such as described in section 1.4.3 are applicable for each specific migrated ONS line. Those discounts can be obtained by requesting a modification of the term of the concerned line via the order online form available on the personal page and by concluding a **BROTSoLL** contract.

## **1.8 Rush Order**

Rush order is allowed for all BROTSoLL orders at the following conditions:

For BROTSoLL lines up to and including 2M: rush order is a paying option

- <=128k : 1000€
- >128k and <=2M : 1500€

For BROTSoLL lines above 2M and BROTSoLL Ethernet lines: rush order is for free but there is no guarantee that the delivery will be faster (it's best effort)

## **2. Billing**

### **2.1. Preliminary**

Parties are defined in the present document as Belgacom a telecommunication Operator in Belgium and Beneficiary, an undertaking authorized to practice the activities covered by this agreement under the Belgian regulatory framework.

The Belgacom billing process is based on a number of steps in which the two Parties have specific responsibilities. In order to implement this process, both Parties need to put in place (a) system(s) that will be used for the purposes of accounting and billing.

For each BROTSoLL product, Belgacom will invoice Beneficiary accordingly

Belgacom shall record, store and process the Billing Data in accordance with Section 2 of this Document.

The "Billing Data" is the data that is necessary to ascertain the charges payable by Beneficiary under the Agreement. The Billing Data is recorded via the Billing System as described in Section 2.2 of this Document.

All information related to the Billing procedures between Belgacom and Beneficiary is covered by the obligation of confidentiality set out in the Agreement. Specifically, such information will be kept strictly confidential by the

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Parties and will only be used for the purposes of accounting, and invoicing between the Parties and will only be disclosed between the Parties, or as legally required or in the framework of formal dispute procedures. Belgacom will be under no obligation to provide to Beneficiary direct access to its Billing system nor to any other system or facility generating the Billing Data.

Belgacom reserves the right to modify the layout and the presentation of the invoice to the Beneficiary.

## **2.2. Recording and storage of billing data**

For each service chargeable under the Agreement, Belgacom shall record via its Billing System at least the following Billing Data:

- Product/service ID;
- Type of request
- Subscription date;
- End of month of Subscription date;
- Customer ID;
- Account ID;

The general list of billing data indicated above is not exhaustive. Pricing is set in the Section 1 of this Annex.

## **2.3. Confirmation of charging principles**

All charges payable under this Agreement shall be calculated in accordance with the rules set out in the relevant provisions of this Agreement and its Annexes.

For internal purpose, Belgacom will use 6 decimals in Euro. The use of decimals is set as follows:

- Per line items up to 4 decimals can be used in Euro.
- The revenues, VAT and the totals use decimals in Euro.

All the non-recurring charges will be mentioned in the Invoice of the Billing Period covering the Bringing Into Service Date.

The recurring charges for the product fees will be mentioned in the Invoice of the Billing Period which the Bringing In Service Date encompasses. The Charges will be calculated on the proportion of the Billing Period in which the product and service fee were operational

Beneficiary amount of charges will be divided in the groups of one-time fees and recurring fees for the services described in the pricelist of this offer (Section 1 of this Annex)

## **2.4. Invoices**

For each Billing Period, Belgacom shall provide to Beneficiary the Invoice described hereafter. The Invoice will be established in accordance with the following rules:

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- Invoice Details: the Invoice will list all the services by product that are provided by Belgacom to the Beneficiary.
  - The above-mentioned Invoice will be transmitted via ordinary mail to the representatives or departments of Beneficiary as listed in Appendix A Contact persons.

Any invoice or credit note transmitted by Belgacom will contain the following information, in addition to any legally required mentions and information:

- relevant Billing Period;
- total net amount in Euro;
- due VAT amount;
- total amount due in Euro (including VAT);
- Due Date.

Belgacom shall use its best endeavours to issue invoices as of the start of the applicable Billing Period. Though Belgacom cannot ensure that the invoicing for the products and services provided will be performed within specific delays. Neither party may construe any late billing by the other party as a renunciation to its right to payment of the said bills.

Notwithstanding the foregoing, if an adjustment is required following a change in the referred Price List, a pending Dispute (for which the appropriate Dispute resolution mechanisms have been timely activated in accordance with this Agreement) or the outcome of commercial negotiations having a retroactive effect, the amount of such adjustment shall be established and Belgacom shall issue an invoice or a credit note as the case may be, within 30 days from the date of the relevant adjustment.

All changes to amounts invoiced in accordance with this Section 4 will be effected through credit notes or additional invoices.

## **2.5. Payment**

All charges due by Beneficiary to Belgacom under the Agreement shall be paid within 30 Calendar Days after issuance of the invoice (the "Due Date").

If Beneficiary has sent to Belgacom a Notice of Dispute related to an amount invoiced by Belgacom and if such Dispute has not been resolved by the Due Date the disputed amount may be withheld until the dispute is resolved provided that the remaining balance is payable on the Due Date.

Credit notes will be set off against any payments due of the next invoice and are refundable when there are no outstanding invoices.

If payment is not received by Belgacom on or before the Due Date, Belgacom will be entitled to an interest calculated on the basis of the legal interest rate + 2 percent points on the unpaid balance for late payment interests, administrative and recovery costs, but is only due if the dispute has been resolved in favour of Belgacom. This interest shall accrue from the Due Date until the date of payment in full of the amount to be paid. Such interest shall accrue day by day and shall not be compounded. In the event that a Dispute resolution procedure has been initiated by Belgacom as provided by the Agreement (including Section 6 of this Document), this interest shall be limited to the legal interest rate.

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Value Added Tax as well as any other applicable taxes, if any, shall be added to all or any part of the charges due under this Agreement and shall be paid by the Beneficiary responsible for making such payment.

Any payments under this Agreement will be made in Euro and will be made by bank transfer on the bank accounts mentioned in the Invoice. Payment costs are born by the Beneficiary. Costs of credit notes are born by Belgacom.

## **2.6. Disputes**

The Parties shall use their reasonable endeavours to resolve, pursuant to this Section 6 disputes related to the calculation and settlement of the charges invoiced or to be invoiced pursuant to this Document. Notwithstanding the foregoing, either Party will be allowed to trigger at any time the dispute resolution procedure provided under the main body of the Agreement provided that such Party reasonably believes that the Dispute at stake involves aspects of the Parties' rights and obligations broader than the mere calculation and settlement of charges pursuant to this Document. The fact that a Dispute involves aspects broader than the mere calculation and settlement of charges pursuant to this Document will not release the Disputing Party from its obligation to pay any undisputed amount pursuant to Section 2.5.2.

Any Dispute under this Section 2.6 will be triggered by a Notice of Dispute sent by registered letter by the Beneficiary to Belgacom before the Due Date or by registered mail to the mailbox [cbu.billing@belgacom.be](mailto:cbu.billing@belgacom.be). Such Notice of Dispute will indicate the disputed invoice, the disputed line reference, the disputed amounts, as well as a summary of the grounds for the Dispute and the position of the Disputing Party. Any amount invoiced under the Agreement will be deemed accepted unless a Notice of Dispute has been sent in accordance with above.

Upon receipt of the Notice of Dispute, the Parties shall exchange by ordinary mail any information necessary or useful for solving the Dispute.

Within 15 Working Days from the date of the Notice of Dispute, Belgacom will provide, by registered mail, an answer ("Notice of Reply") to the Beneficiary. If Belgacom does not accept some or all the arguments of the Beneficiary, the Notice of Reply will contain a justified reply to the arguments of the Beneficiary. If Belgacom accepts all or some arguments of the Beneficiary, Belgacom will, together with the Notice of Reply, issue a credit note for the relevant amount.

If, within 15 Working Days from the receipt of the Notice of Reply, the Beneficiary confirms its position in writing by registered letter, the Parties will escalate the Dispute within their respective organization as provided under Section 2.6.6. If the Beneficiary fails to confirm its position within 15 Working Days, from the date of the Notice of Reply, any outstanding amounts will be paid promptly and without delay and the Dispute will be deemed settled.

If the Parties have been unable to settle the Dispute as provided under the foregoing provisions, they will refer the matter to Implementation Committee, which, if deemed necessary by either Party, will be organized for this specific purpose. If after such meeting, the Dispute remains, the Parties will follow such additional steps in the escalation procedure as provided in the main body of the Agreement, or, if requested by either Party, the Dispute will be submitted to a certified accountant to be either jointly appointed by the Parties, or, failing agreement between the Parties in this respect, to be appointed by "Belgisch Instituut voor Bedrijfsrevisoren"/"Institut Belge des Réviseurs d'Enterprise". This

certified accountant will investigate and determine a solution for the Dispute, acting as an expert and not as an arbitrator. Unless there is evidence of a manifest error, decision of the certified accountant will be final in respect of those elements covered by the Dispute referred to him/her and will be binding on the Parties. The Parties will co-operate with this investigation. The costs of the certified accountant will be borne as determined by him/her in proportion to the outcome of the Dispute. Prior to undertaking his/her mission, the certified accountant will provide the Parties with an estimate of the relevant fees and costs. Upon final settlement of the Dispute, any necessary credit note will be issued and any outstanding amount will be paid promptly and without delay.