

Dated

AGREEMENT

relating to

application for the Oftel PASS

between

The Office of Telecommunications

and

[####]

OFTEL

CONDITIONS OF AGREEMENT FOR AN APPLICATION UNDER THE OFTEL PRICE ASSURANCE STANDARD (English Law Version)

THIS AGREEMENT is dated [].

PARTIES

- (1) **Office of Telecommunications of 50 Ludgate Hill London EC4M 7JJ** ("OfTel"); and
- (2) [NAME AND DETAILS] (the "Applicant").

BACKGROUND

- (A) OfTel's goal is for consumers to obtain the best deal for all types of telecommunications services in terms of quality, choice and value for money. One way to achieve this is to ensure that consumers are well informed about the costs of telecommunications services available to them, whether for residential or business purposes.
- (B) It is therefore important that consumers should be able to compare prices. It is also important that consumers should be able to use price information with confidence, so it must amongst other things be accurate and impartial. For these reasons, OfTel has launched an accreditation scheme for Websites providing price comparisons of telecommunications services. This scheme is referred to as the OfTel Price Assurance Standard.
- (C) This Agreement forms the basis on which the Applicant, a Website provider, will apply to OfTel for its Website to be accredited, that is, awarded the 'OfTel PASS'. It sets out the two-stage Application Process, the cost of applying, the terms and Conditions on which an Application is made and the basis on which the OfTel PASS is awarded.

AGREED TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 In this Agreement (except where the context otherwise requires) the following words shall have the following meanings:

"Agreement" means the agreement between the Applicant and OfTel consisting of this document, its attached Schedules, and any other documents (or parts thereof) specified in the Agreement;

"Applicant" means the party to the Agreement making the Application;

"Application" means an application including all information requested by Oftel and/or the Auditor to be considered under the Oftel Price Assurance Standard.

"Application Process" means the process by which the Applicant applies to be considered for the Oftel PASS (as set out at Condition 3 of this Agreement);

"Auditor" means an independent auditor appointed by Oftel;

"Monitoring" means the process by which Oftel monitors the Applicant's Website (as set out at Condition 4 of this Agreement);

"Oftel" means the Office of Telecommunications, based at 50 Ludgate Hill London EC4M 7JJ;

"Oftel PASS" means the approval awarded by Oftel to the Applicant's Website when it successfully completes all stages of the Application Process;

"Website" means the Website provided by the Applicant for the purpose of providing price comparisons of telecommunications services.

1.2 In this Agreement (except where the context otherwise requires):

- (a) any reference to a Condition or Schedule is to the Condition or Schedule of or to this Agreement and any reference to a paragraph is to the relevant paragraph of the Condition or Schedule in which it appears;
- (b) the Condition headings are included for convenience only and shall not affect the interpretation of this Agreement;
- (c) use of the singular includes the plural and vice versa;
- (d) use of any gender includes the other genders;
- (e) any reference to "persons" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);
- (f) any statement qualified by reference to the Applicant's state of knowledge, belief or awareness shall be deemed to include an additional statement

that before making it the Applicant has made such enquiry as it would be reasonable to expect the Applicant to have made;

(g) any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules.

2. THE APPLICATION PROCESS AND MONITORING

2.1 Oftel shall process and consider applications and monitor the Applicant's Website as appropriate with reasonable skill, care and diligence in accordance with the Agreement.

2.2 The Applicant agrees to cooperate with and provide information to Oftel and the Auditor in good faith in order to implement and achieve the aims of this Agreement.

2.3 Oftel reserves the right by notice to the Applicant to modify its requirements in relation to the Application Process and Monitoring, and any alteration to the Agreement and Schedules, the Agreement fee or the completion dates. Such notice shall be given 30 days before any such modification is to take effect, and shall be served in accordance with the provisions of Condition 14 below.

3 THE APPLICATION PROCESS

3.1 The Applicant agrees to comply with the following Application Process when applying for the Oftel PASS:

Stage 1:

3.2 Oftel will consider the Applicant's Application against requirements 2 to 12 of the Oftel PASS Code (as set out at Schedule 3 of this Agreement):

- on receipt by Oftel of a copy of the Agreement signed by the Applicant;
- where the Applicant has paid Oftel £1000, and
- where Oftel has confirmed to the Applicant that it has received the Application and payment.

- 3.3 Oftel will inform the Applicant of its decision whether or not to progress the Applicant to Stage 2 within ten working days of the date of Oftel's confirmation of receipt of the Application and payment. Oftel's decision in this matter is final and conclusive.
- 3.4 If Oftel decides that an Applicant's Website is not suitable for the award of the Oftel PASS based on the requirements of the Oftel PASS Code, Oftel will not progress the Application to Stage 2 of the verification process. The Applicant will be notified in writing of Oftel's decision and be given reasons as to why its Application failed. Oftel will refund the Applicant the sum of £750.
- 3.5 If Oftel considers that the Applicant's Website needs only minor adjustments for the Application to progress to Stage 2, Oftel will not immediately refund the £750 but will advise the Applicant as to the changes needed to pass Stage 1. Oftel will then allow the Applicant 28 working days to make the suggested adjustments. If the Applicant fails to make the suggested amendments, Oftel will not progress the Application to Stage 2 of the verification process and will advise the Applicant accordingly, refunding it the sum of £750. Oftel's decision in this matter is final and conclusive.
- 3.6 If the Application is unsuccessful, the Applicant may apply again in which case the provisions of Conditions 3.1 *et seq.* above will apply, as they did to the first application. It is at Oftel's discretion whether or not to consider such an application. Oftel will only consider a maximum of two Applications in respect of the same Website (or what appears to Oftel to be materially the same Website) in any period of twelve months.
- 3.7 If Oftel considers that the Applicant's Website satisfies requirements 2 to 12 of the Oftel PASS Code, Oftel will inform the Applicant that its Application is ready to move on to Stage 2 and will request the required information for the Application to proceed to Stage 2.
- 3.8 Oftel will commence Stage 2 of the verification process once it has received written confirmation from the Applicant that it wishes to proceed.

Stage 2:

- 3.9 The Auditor will consider whether the Applicant's Website satisfies requirement 1 of the Oftel PASS Code and any other requirements of the Oftel PASS Code it considers appropriate.
- 3.10 The Auditor will require the appropriate information/documentation from the Applicant to make its deliberations and will, at its discretion, visit the Applicant's office.

- 3.11 The Applicant will co-operate with the Auditor, and comply with the Auditor's requirements, in good faith.
- 3.12 Once the Auditor has completed its enquiries, it will advise Oftel whether it believes Oftel should award the Oftel PASS to the Applicant's Website.
- 3.13 Oftel is not bound by the Auditor's recommendation.
- 3.14 Where Oftel decides that the Applicant's Website meets all the requirements of the Oftel PASS Code, it will award the Applicant's Website the Oftel PASS. The Oftel PASS will only be awarded once Oftel has received appropriate payment, as set out in Schedule 1 of this Agreement, from the Applicant.
- 3.15 If the Applicant's Website does not satisfy all the requirements of the Oftel PASS Code, including requirement 1 of the Oftel PASS Code, Oftel will advise the Applicant that it has not been successful. Oftel will provide reasons why the Application was unsuccessful. Oftel's decision in this matter is final and conclusive. Oftel is under no obligation to enter into any further correspondence/dialogue with the unsuccessful Applicant.
- 3.16 The Applicant may re-apply. The Applicant will, however, need to submit a fresh Application, with appropriate payment, ie it must start the Application Process again. It is at Oftel's discretion whether to consider this fresh Application. Oftel will only consider a maximum of two Applications in respect of the same Website (or what appears to be materially the same Website) in any period of twelve months.
- 3.17 If the Website does not satisfy all the requirements of the Oftel PASS Code but would do so subject to some minor adjustment(s), Oftel will inform the Applicant and allow it 28 working days to address the problem(s). At which stage, Oftel will consult the Auditor as necessary and then decide whether at this point the Website meets all the requirements of the Oftel PASS Code.
- 3.18 If Oftel considers that the Applicant's Website does meet all the requirements of the Oftel PASS Code, and subject to receipt of the appropriate payment as set out in Schedule 1 of this Agreement, it will award the Applicant's Website the Oftel PASS.
- 3.19 An Applicant whose Website is awarded the Oftel PASS must comply with the obligations set out in Schedule 2.

4 MONITORING

- 4.1 The Applicant agrees that once its Website has been awarded the Oftel PASS it will ensure that it, and where appropriate, its Website continues to comply with the Oftel PASS Code (at Schedule 3 of this Agreement).
- 4.2 The Applicant agrees that it will deal responsibly with complaints and queries from users and telecommunications suppliers.
- 4.3 Oftel and the Auditor will conduct a review of the Applicant's Website twelve months after the Applicant has been awarded the Oftel PASS and every twelve months thereafter.
- 4.4 If Oftel considers that a Website is in serious and/or repeated breach of the Oftel PASS Code, Oftel may withdraw the Oftel PASS forthwith without reimbursement or compensation.
- 4.5 The Applicant must give Oftel 30 days' notice of any substantial changes to its Website.

5 APPLICANT'S PERSONNEL

The Applicant shall provide Oftel with contact details of employees regarded by the Applicant as key personnel under this Agreement and, if and when instructed by the Oftel, all other persons who may be at any time concerned with the Agreement or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Oftel may reasonably require.

6 FEES AND EXPENSES

- 6.1 The Applicant shall pay to Oftel the fees at the rate and at the time specified in Schedule 1 of this Agreement.
- 6.2 Oftel reserves the right not to proceed with the Application Process set out in Condition 3 of this Agreement until such time as it receives from the Applicant the appropriate payments specified in Schedule 1 of this Agreement.

7 CORRUPT GIFTS OR PAYMENTS

The Applicant shall not offer or give, or agree to give, to any member, employee or representative of Oftel or the Auditor any gift or consideration of any kind as an inducement or reward for doing or refraining from doing,

or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Agreement with Oftel or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Agreement. The attention of the Applicant is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916.

8 INTELLECTUAL PROPERTY

- 8.1 The Applicant warrants to Oftel that any documents, materials or otherwise used to produce its Website, or under this Agreement are not so used in violation or infringement of any existing copyright or licence or any other right of any other person or organisation.
- 8.2 The Applicant grants Oftel a licence to use any documents, materials or otherwise used to produce its Website's materials for the purpose of this Agreement.
- 8.3 The provisions of this Condition 8 shall apply during the continuance of this Agreement and after its termination howsoever arising.
- 8.4 The Applicant may not make any public announcement relating to this Agreement or its subject matter without the prior written approval of Oftel except as required by law or by any legal or regulatory authority.
- 8.5 Oftel owns the intellectual property rights in the Oftel PASS logo and where:
- the Applicant fails to pay Oftel the fees at the rate and at the time specified in Schedule 1, Oftel can request that the Applicant removes the Oftel PASS logo from its Website by giving three working days' notice.
 - Oftel considers that the Applicant's Website is in serious and/or repeated breach of the Oftel PASS Code, or Oftel has not awarded the Oftel PASS to the Applicant's Website, Oftel may withdraw the Oftel PASS forthwith without reimbursement or compensation.

9 INDEMNITIES AND INSURANCE

- 9.1 The Applicant shall indemnify and keep indemnified Oftel, the Crown, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Oftel or the Crown, its servants or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Agreement to the extent that such loss, damage or

injury is caused by the negligence or other wrongful act of the Applicant, his servants or agents.

- 9.2 This indemnity shall apply whether or not Oftel may have been negligent or at fault and does not limit any further compensation rights of Oftel.
- 9.3 If any third party makes a claim against or notifies an intention to make a claim against Oftel which may reasonably be considered as likely to give rise to any liability under this indemnity ("a relevant claim"), Oftel shall as soon as reasonably practicable give written notice of that matter to the Applicant, specifying in reasonable detail the nature of the relevant claim.

10 RACIAL DISCRIMINATION

The Applicant shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment. The Applicant shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Applicant and all sub-contractors employed in the execution of the Agreement.

11 OFFICIAL SECRETS ACTS AND CONFIDENTIALITY

- 11.1 The Applicant undertakes to abide and procure that its employees where appropriate abide by the provisions of the Official Secrets Acts 1911 to 1989.
- 11.2 Each party undertakes that it will keep secret and not disclose and shall procure that its employees keep secret and do not disclose any information of a confidential nature obtained by it by reason of this Agreement, except:
- information which is in the public domain otherwise than by reason of a breach of this provision;
 - to its professional representatives or advisers; or
 - as may be required by law or by any legal or regulatory authority or in the public interest.
- 11.3 Notwithstanding the above, Oftel may disclose matters relating to, connected with or arising out of this Agreement or the matters contained in it to its professional advisers to the extent necessary for such advisers properly to provide their services to that party **provided** that such disclosure to any such persons is on terms that:

- (a) it is confidential;
- (b) the Applicant shall have a right, as third party to enforce the confidentiality obligation in accordance with the Agreements (Rights of Third Parties) Act 1999; and
- (c) gives notice of the provisions of this Condition.

11.4 The provisions of this Condition 11 shall apply during the continuance of this Agreement and after its termination howsoever arising.

12 TERMINATION

12.1 The Applicant shall notify Oftel in writing immediately upon the occurrence of any of the following events:

(a) where the Applicant is an individual and if a petition is presented for the Applicant's bankruptcy or a criminal bankruptcy order is made against the Applicant, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or

(b) where the Applicant is not an individual but is a firm; or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Applicant to be wound up as an unregistered company; or

(c) where the Applicant is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

12.2 On the occurrence of any of the events described in Condition 12.1, or if the Applicant shall have committed a material breach of this Agreement and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by Oftel in writing to do so, or, where the Applicant is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 the Oftel shall be entitled to terminate this Agreement by notice to the Applicant with immediate effect.

- 12.3 Where the Applicant's Website has been awarded the Oftel PASS and in addition to the rights of termination under Condition 12.2, and subject to Condition 8.5, Oftel may terminate this Agreement by giving to the Applicant not less than 30 days' notice to that effect. The Applicant can terminate this contract at any time on giving not less than 30 days' notice.
- 12.4 Termination under paragraphs 12.2 or 12.3 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to Oftel and shall not affect the continued operation of Conditions 8 and 11.

13 ASSIGNMENT AND SUB-CONTRACTING

- 13.1 The Applicant shall not assign or sub-contract any portion of the Agreement without the prior written consent of Oftel. Sub-contracting any part of the Agreement shall not relieve the Applicant of any obligation or duty attributable to him under the Agreement or these Conditions.
- 13.2 Where Oftel has consented to the placing of sub-contracts for the purpose of performing this Agreement, the Applicant shall cause a term to be included in such sub-contracts which requires observance of the same terms and Conditions in this Agreement.
- 13.3 The Applicant shall send copies of each sub-contract to Oftel immediately it is issued.

14 NOTICES

Any notice given under or pursuant to the Agreement may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by facsimile transmission and if so sent or transmitted to the address of the party shown on this Agreement, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

15 STATUS OF AGREEMENT

Nothing in the Agreement shall have the effect of making the Applicant the servant of Oftel or the Crown nor constituting a partnership between the parties to the Agreement.

16 ARBITRATION

All disputes, differences or questions between the parties to the

Agreement with respect to any matter or thing arising out of or relating to the Agreement, other than a matter or thing as to which the decision of Oftel is under the Agreement to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Agreement, shall be referred to the arbitration of two persons one to be appointed by Oftel and one by the Applicant or their Umpire, in accordance with the provisions of the Arbitration Act 1950 or any statutory modification or re-enactment thereof.

17 FORCE MAJEURE

- 17.1 In this agreement, "force majeure" shall mean any cause preventing either party from performing any or all of its obligations which arises from or is attributable to EITHER acts, events, omissions or accidents beyond the reasonable control of the party so prevented, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, or default of suppliers or sub-Contractors OR war, civil war, armed conflict or terrorist attack, nuclear, chemical or biological contamination or sonic boom, but nothing else.
- 17.2 If either party is prevented or delayed in the performance of any of its obligations under this agreement by force majeure, that party shall forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to force majeure, and shall, subject to service of such notice and having taken all reasonable steps to avoid such prevention or delay have no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.
- 17.3 If either party is prevented from performance of its obligations for a continuous period in excess of three months, the other party may terminate this agreement forthwith on service of written notice upon the party so prevented, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

18 COSTS AND EXPENSES

The Applicant shall pay its own costs relating to the negotiation, preparation, execution and implementation by it of this Agreement and of each document referred to in it.

19 ENTIRE AGREEMENT

This Agreement and the documents referred to in it constitute the entire Agreement and understanding of the parties and supercede any previous Agreement between the parties relating to the subject matter of this Agreement.

The Applicant acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

20 VARIATION

Unless otherwise stated in this Agreement, Oftel may only vary the terms and Conditions of this Agreement and its attached Schedules, on giving reasonable notice to the Applicant. No terms or Conditions put forward at any time by the Applicant shall form any part of this Agreement.

21 RECOVERY AND SUMS DUE

Wherever under this Agreement any sum of money is recoverable from or payable by the Applicant, that sum may be deducted from any sum then due, or which at any later time may become due, to the Applicant under this Agreement or under any other Agreement or Agreement with the Applicant or with any department, agency or authority of the Crown.

22 NOTICES

This Agreement is executed in two counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

23 RIGHTS OF THIRD PARTIES

No term of this Agreement shall be enforceable under the Agreements (Rights of Third Parties) Act 1999 by a third party, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

SIGNED on behalf of **Oftel** by [.....]

(A person authorised in that behalf under Section 8 of Schedule 1 of the Telecommunications Act)

SIGNED by [.....]
for and on behalf of [The Applicant]

Schedule 1

Charging scale

Stage One

1. The Applicant agrees to pay £1000 to Oftel towards the costs of operating the Oftel Price Assurance Standard.
2. If the Applicant's Website does not pass Stage 1 of the verification process, Oftel agrees to refund to that Applicant the sum of £750.

Stage Two

3. An Applicant whose Website passes both Stage 1 and Stage 2 of the verification process agrees to pay Oftel £4000, before its Website is awarded the Oftel PASS.

Stage Three

4. A Website awarded the Oftel PASS will be reviewed by Oftel and its Auditor 12 months after the award of the Oftel PASS and every twelve months thereafter. The Applicant agrees to pay Oftel £3000 before every review towards the costs of this work.

Review

5. The charging scale set out in this Schedule will be subject to review after 1 April 2003 and periodically thereafter. Oftel will give the Applicant three months' notice before making any changes.

Schedule 2

The responsibilities of the Applicant where its Website has been awarded the Oftel PASS

1. Where the Applicant's Website is awarded the Oftel PASS, the Applicant must:
 - ensure that it, and where appropriate its Website, continues to comply with the PASS Code;
 - display the Oftel PASS logo in a prominent position on the homepage of its Website;
 - make it clear that the Oftel PASS and the Oftel PASS logo relates only to the part or parts of the Website that Oftel and the Auditor have checked;
 - not use the Oftel PASS logo in a misleading or fraudulent manner;
 - not in any way whether on its Website or elsewhere misrepresent what having the Oftel PASS means;
 - incorporate a short statement on its Website explaining what the Oftel PASS means (this statement will be as specified by Oftel);
 - include a hyperlink on its homepage from the Oftel PASS logo to the appropriate part of the Oftel website;
 - deal with any complaints and queries responsibly, and assist Oftel with any enquiries;
 - notify Oftel at least eight weeks in advance of any significant changes; and
 - co-operate with the annual review by Oftel and the Auditor and provide any information requested by Oftel and/or the Auditor.

Schedule 3

The Oftel PASS Code

1. Prices and price comparisons must be accurate and up-to-date. They must be updated at least every eight weeks and the site must indicate when they were last updated.
2. The Website must be independent of telecoms suppliers. If a Website earns commission or some other remuneration from suppliers of telecoms services, it must disclose this clearly to users.
3. The Website must not charge users for prices and price comparisons of residential telecoms services.
4. The Website must be interactive and able to provide the user with price information of suppliers appropriate to his or her needs, eg fixed line services in the user's geographical area.
5. The Website must make it clear to users by means of a prominently displayed privacy notice that it complies with relevant data protection legislation.
6. If the Website facilitates 'switching' on-line, ie changing from one supplier to another, it must make it clear to the user what he or she is doing.
7. The layout and design of the Website must take into account the needs of disabled users.
8. Users must be able to browse the Website using Microsoft Explorer 4 or above and Netscape Navigator 4 or above.
9. If the Website provides price information on fixed telecoms services, it must include prices of at least ten different suppliers in total, including BT and, preferably, Kingston Communications. A Website providing price information on mobile telecoms services should include at least the four main mobile network operators, ie O2, Orange, T-mobile and Vodafone. For other types of telecoms services, the Website must provide prices of a reasonable number of suppliers.
10. The Website must advise users that they may want to take other issues beside price, such as service quality, into account before making any decision.

11. If the Website includes price information on 'bundled' offers, this information must be presented in a fair and transparent manner.

12. The Website must comply with all appropriate legislation. This includes, but is not limited to, relevant consumer and data protection legislation.