

**ACCESS REFERENCE OFFER  
FROM  
eircom Limited**

This is not a legal document. eircom is not bound by this document and will regularly update this document in accordance with EU Regulation on Unbundled Access to the Local Loop. This document is without prejudice to the legal position or the rights and duties of eircom.

## 1. Preface

- 1.1. The following constitutes the eircom Access Reference Offer in accordance with the provisions of the Regulations of the European Parliament and the European Council on Unbundled Access to the Local Loop EU Regulation (EC) No. 2887/200. This Access Reference Offer does not purport to be exhaustive of all services eircom will provide and does not in any way diminish the rights of beneficiaries to seek additional services, or the obligation on eircom to provide additional services under applicable law.
- 1.2. The Access Reference Offer details an offering of new Access Services from eircom to all Access Seekers as defined herein.
- 1.3. This is a new version of the eircom Access Reference Offer which takes effect from the xxxxxx 2010 and shall continue in effect until superseded by a publication of a new version.
- 1.4. References to legislative provisions herein are to be construed as references to such provisions as the same may be amended from time to time.
- 1.5 eircom provides all migration services as set out in Wholesale (Physical) Network Infrastructure Access (Market 4) Decision No. D 05/10, Document No. 10/39 (“WPNIA”). Within this ARO eircom has set out its definitions of migrations with reference to the movement of end users between Operators at the Wholesale contract level. For the avoidance of doubt, there is no difference in the scope of migrations available between the definitions in this document and those contained in D 05/10 and eircom confirms that migration capability is an intrinsic element of all existing and future wholesale access products. The processes to implement migrations, including any requirements for customer authorisation procedures, are designed to ensure seamless migration of end users.

**STANDARD ACCESS  
AGREEMENT**

**DATED**

**between**

**XXXX**

**and**

**eircom Limited**

## INDEX

1	<b>Introduction</b>
2	<b>Definitions and Interpretation</b>
3	<b>Commencement and Duration</b>
4	<b>Network Access</b>
5	<b>Charging for Access Services</b>
6	<b>Record of Provided Services</b>
7	<b>Billing and Payment</b>
8	<b>Network Safety and Protection</b>
9	<b>Quality of Service</b>
10	<b>Provisioning, Operation and Maintenance</b>
11	<b>Provision of Information</b>
12	<b>Resolution of Disputes</b>
13	<b>Breach, Suspension and Termination</b>
14	<b>Confidentiality</b>
15	<b>Intellectual Property Rights</b>
16	<b>Review</b>
17	<b>Force Majeure</b>
18	<b>Credit Assessment and Credit Risk Management</b>
19	<b>Limitation of Liability</b>
20	<b>Assignment of Rights and Obligations</b>
21	<b>Amalgamation and Reconstruction</b>
22	<b>Notices</b>
23	<b>Entire Agreement</b>
24	<b>Waiver</b>
25	<b>Severability</b>
26	<b>Amendments</b>
27	<b>Relationship of Parties</b>
28	<b>Governing Law</b>

### Signatory Page

### Annexes

<b>Annex A</b>	<b>Definitions</b>
<b>Annex B</b>	<b>Billing and Payments</b>
<b>Annex C</b>	<b>Service Schedules</b>

<b>Annex D</b>	<b>Information on eircom Network</b>
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**THIS AGREEMENT** is made on [Date]

Between

[Access Seeker] having its registered office at [Access Seeker's Address] (hereinafter referred to as the "Access Seeker".)

and

eircom Limited having its registered office at 1Heuston South Quarter, St. John's Road, Dublin 8, (hereinafter referred to as "eircom")

## **1. Introduction**

### **Whereas**

- (a) The Access Seeker is in possession of a General Authorisation to provide electronic communications network services pursuant to the provisions of Section 4(1) of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2003 (S.I. No. 306 of 2003
- (b) eircom has been designated by the National Regulator as having Significant Market Power in the provision of fixed networks and is in possession of a General Authorisation.
- (c) eircom has agreed to provide access to its networks, in accordance with Regulation of the European Parliament and of the Council on unbundled access to the local loop EU Regulation (EC) No. 2887 / 2000, as amended or superseded from time to time and to the supply of services and facilities on the terms and conditions as provided for in this Agreement ("The Regulations").
- (d) Subject to the Regulations, the Parties agree that the Access Agreement shall govern the terms and conditions of Unbundled Local Metallic Path ("ULMP") and Line Sharing ("LS"), Sub Loop Unbundling, and Unbundled Local Metallic Path with Geographic Number Portability ("GLUMP") through which the Access Seeker can request Physical Colocation from eircom in respect of eircom Telephone Exchanges, and that the terms of the Licence Agreement shall govern the terms and conditions of the provision of Physical Colocation in respect of each Site where the Parties agree same.

In consideration of the mutual covenant and obligations contained in this Agreement, the Parties HEREBY AGREE AS FOLLOWS:

## 2. Definitions and Interpretation

- 2.1. In this Agreement, except if the context requires otherwise, words and expressions are as defined in Annex A or the Licence(s)
- 2.2. Terms defined in relevant European Union legislation on the liberalisation of the telecommunication services market or in consequent Irish implementing legislation (which, for the avoidance of doubt includes Decisions published by the National Regulator) shall, where used in this Agreement or the Licence(s), have the meanings ascribed to them in such legislation.
- 2.3. The following documents form part of this Agreement and, in the event of any inconsistencies between them, the order of precedence shall (unless expressly stated to the contrary) be as follows:
  1. The Access Agreement which shall comprise:
    - a). Main Body and Annex A, Annex B and Annex C;
    - b). The Licence(s) in respect of each Site,
    - c). Product Descriptions;
    - d). The eircom ARO Price List;
    - e). Service Level Agreements;
    - f). Access and Security Procedures for Physical Colocation and Health and Safety Requirements for Physical Colocation and Sub Loop Unbundling (“Access and Health & Safety Requirements”);
    - g). Submitted Forms based on those set out in the process manuals

As same may be amended from time to time pursuant to the terms of this Agreement.

2. The Non-Disclosure Agreement signed between the Parties.

## 3. Commencement and Duration

- 3.1. This Agreement takes effect on the date hereof and shall continue until:
  - 3.1.1. the Access Seeker ceases to be authorised to provide an electronic communications network or electronic communications service pursuant to the provisions of the Authorisation Regulations.; or
  - 3.1.2. termination pursuant to this Agreement.
- 3.2. Subject to the provisions of Clause 13, Termination, the termination of a Licence Agreement in respect of any Site does not automatically terminate this Agreement. However, the termination of this Agreement automatically terminates all Licence Agreements.

#### **4. Access Services**

- 4.1. Access Services shall be provided as set out in the relevant Service Schedules at Annex C to this Agreement and the Licence Agreement(s) and the Inter Operator Process and Technical Manuals.
- 4.2. The full cost of the provision, operation and ongoing maintenance of each Access Service shall be borne in full by the Party requesting that Access Service in accordance with the price or charging principle set out in the eircom ARO Price List.
- 4.3. The standard delivery periods for Access Services shall be as defined in the Service Schedules to this Access Agreement. If any variation to the standard times will be necessary in respect of any Access Service or Site, eircom shall indicate such variation in the Site Offer in respect of that Site.
- 4.4. For the avoidance of doubt and notwithstanding the Access Services offered to the Access Seeker, eircom shall have no obligation to the Access Seeker to provide an Access Service under this Access Agreement unless there is express provision for that Access Service in a Service Schedule at Annex C to this Agreement or as provided by an amendment to this Agreement.
- 4.5. For the avoidance of doubt, nothing in this Agreement shall prevent the Access Seeker requesting other forms of unbundled access to the access infrastructure or limit such obligations that eircom may have in respect of such requests.

#### **5. Charging for Access Services**

- 5.1. The charging guidelines and resulting charges for each Service are described in detail in the eircom ARO Price List. In respect of bespoke charges arising from an Access Seeker's requirements in respect of an individual Site, these will be provided in relation to the Site at the time a Site Offer is provided.
- 5.2. The Access Seeker shall be liable for the charges payable to eircom in the ordering phase pursuant to the terms of this Agreement in respect to Physical Colocation, regardless of whether or not the Parties execute a Licence in respect of that Site.
- 5.3. The Access Seeker shall also be liable for all charges as set out in each Licence, where applicable, for each Site at which Physical Colocation is provided.
- 5.4. The method of reviewing the charges is described in Clause 16, Review hereof and is also set out in the Licence(s) in respect of each site.



## **6. Record of provided Access Services**

- 6.1. The responsibility to record the provision of Scheduled Services and Licence(s) shall reside with eircom.
- 6.2. eircom shall ensure that its recording techniques and provisions are sufficiently detailed to enable it to meet its obligations as outlined in clause 6.1 above.

## **7. Billing and Payment**

- 7.1. The Access Seeker shall be liable for all charges levied by eircom in accordance with Clause 5 in relation to the provision of services pursuant to this Agreement and the Licence Agreement(s).
- 7.2. The Billing and Payment obligations will be as set out in Annex B.

## **8. Network Safety and Protection**

- 8.1. Save as otherwise expressly provided in the Licence(s), each Party is responsible for the safe operation of its Network and shall take all reasonable and necessary steps in its operation and implementation of this Agreement to ensure that its Network does not:
  - 8.1.1. endanger the safety or health of employees, contractors, agents or customers of the other Party; or
  - 8.1.2. damage, interfere with or cause any deterioration in the operation of the other Party's Network.
- 8.2. Save as otherwise expressly provided in the Licence(s), neither Party shall connect or knowingly permit the connection to its Network of any equipment or apparatus, including, but not limited, to any terminal equipment that is not approved by the relevant approvals authority for attachment to its Network.

## **9. Quality of Service**

- 9.1. The Parties shall use their best endeavours to meet the performance standards as specified by the Technical Manual , the Inter Operator Process Manual and the Copper Loop Frequency Management Plan and shall adhere to the Technical Manual, the Inter Operator Process Manuals and Copper Loop Frequency Management Plan for each of the Scheduled Services, which may be in force from time to time. Any additional requirements which may be imposed in respect of any Licence will also require the Parties compliance.

## **10. Provisioning, Operation and Maintenance**

10.1. The procedures for the initial installation and testing of any equipment in respect of any Access Service, as well as for the continued operation and maintenance thereof shall be governed by the provisions of the Technical Manual and Inter Operator Process Manual as specified in Clause 9.1, Quality of Service, above. In respect of Physical Colocation, the requirements in respect of installation, testing, operation and maintenance will also be as set out in the Licence(s) and the Access Seeker is obliged to comply with such requirements.

## **11. Provision of Information**

- 11.1. Subject to a Party's obligations of confidentiality to Third Parties, a Party may request and the other Party shall provide information which is required for the provision of Access Services specified in this Agreement or a Licence if such other Party has relevant information and the provision of such information is necessary.
- 11.2. Notwithstanding any provision of this Agreement a Party shall not be obliged to provide information which is subject to a confidentiality obligation to a Third Party unless such Third Party consents to such disclosure.
- 11.3. The Disclosing Party will use reasonable endeavours to ensure that information disclosed is correct to the best of its knowledge at the time of provision of such information.
- 11.4. If a Disclosing Party provides information to a Receiving Party, the Disclosing Party shall have obtained all appropriate Third Party consents.
- 11.5. Subject to Clause 14, Confidentiality, hereof, the Receiving Party shall indemnify the Disclosing Party and keep it indemnified against all liabilities, claims, demands, damages, costs and expenses arising as a consequence of any failure by the Receiving Party to comply with any conditions imposed and identified, including those relating to confidentiality as per Clause 14, Confidentiality, or the Non Disclosure Agreement, by the Disclosing Party or any third party at the time when the information was provided.
- 11.6. Nothing in this Agreement shall require a Party to do anything in breach of any statutory or regulatory obligation of confidentiality, including without prejudice to the generality of the foregoing, any obligation pursuant to Irish or European Union data protection legislation or regulation.

## **12. Resolution of Disputes**

12.1 This clause shall not be applicable to disputes arising in respect of the following clauses of the Licence(s), Clause 11.3, Payment of Licence Fee, and Clause 11.5, Material Breach.

- 12.2 Save as provided in Clause 12.1 above, each Party shall use its best endeavours to resolve any disputes arising concerning implementation, application or interpretation of this Agreement in the first instance through negotiation between the Parties through the normal contacts. This phase of the dispute resolution shall be referred to as 'Level 1'.
- 12.3 In the event of the Parties failing to resolve the dispute at Level 1 negotiation within two (2) weeks either Party shall have a right to invoke the dispute procedures specified herein on the service of notice ("the Dispute Notice") on the other Party. The Party serving the notice ("the Disputing Party") shall include in the Dispute Notice all relevant details including the nature and extent of the dispute.
- 12.4 Service of the Dispute Notice shall constitute escalation to Level 2. Level 2 shall consist of consultation between the parties in good faith to resolve the dispute.
- 12.5 If the endeavours of the parties to resolve the dispute at Level 2 are not successful within two (2) weeks of escalation of the Dispute to Level 2, either Party may upon service of notice ("the Level 3 Notice") on the other, escalate the dispute for determination by the National Regulator, hereinafter referred to as Level 3. The Level 3 Notice shall be served on both the National Regulator and the other Party. The Level 3 Notice shall include all details relevant to the dispute together with a submission from both Parties as to the nature and extent of the dispute.
- 12.6 The Level 1 Dispute Notice shall be served as follows:

If to eircom:

**Level 1** Wholesale Contracts Manager,  
eircom  
1 Heuston South Quarter  
St. John's Road  
Dublin 8.

**Tel:** (00) 353 1 600 4609

**Fax:** (00) 353 1 428 6240

If to Access Seeker:

**Level 1**

Address

Address

Address

**Tel:** (00) xxxxxxxxxxxx

**Fax:** (00) xxxxxxxxxxxx

The Level 2 escalation points within the Parties in relation to the resolution of Disputes shall be as follows:

If to eircom:

**Level 2** Commercial Director

eircom  
1 Heuston South Quarter  
St. John's Road,  
Dublin 8.

**Tel:** (00) 353 1 671 4444

**Fax:** (00) 353 1 428 6240

If to the Access Seeker:

**Level 2**

Address  
Address  
Address

**Tel:** (00) xxxxxxxxxxxx

**Fax:** (00) xxxxxxxxxxxx

The Parties shall notify each other pursuant to Clause 22 in the event of any change to their respective escalation points.

- 12.7 The time limits specified at paragraphs 12.3 and 12.5 above may be extended by mutual agreement between the parties.
- 12.8 The above procedures are without prejudice to any rights and remedies that may be available to the Parties in respect of any breach of any provision of this Agreement.
- 12.9 Nothing herein contained shall prevent a Party from:
- (a) seeking (including obtaining or implementing) interlocutory or other immediate or equivalent relief; or
  - (b) Automatically referring the Dispute to the National Regulator without recourse to Level 1 or Level 2 negotiation in accordance with any right (if any) either Party may have to request a determination or other appropriate steps for its resolution. Without prejudice to the foregoing each Party undertakes to avail of the Level 1 and Level 2 procedures set out herein, prior to referring the Dispute to the National Regulator save in exceptional circumstances.
- 12.10 Any disputes or queries that arise in relation to the charges or invoices furnished by eircom to the Access Seeker shall be subject to the dispute

resolution provisions of this clause.

- 12.11 Where a dispute arises in relation to an amount payable in respect of an invoice then the Access Seeker shall be entitled to withhold payment of the disputed amount due for payment, upon serving eircom with a Level 1 notice and provided that the disputed amount is greater than ten percent (10%) of the total invoice amount due for payment.
- 12.12 Where the Access Seeker invokes the provisions of this Clause after the due date of a disputed invoice, then the Access Seeker shall not be entitled to withhold any portion of the amount due and payable.
- 12.13 Following resolution of the dispute, the Parties will issue a credit or tender payment as appropriate.

### **13. Termination**

- 13.1 In the event that either Party is in breach of any term or provision of this Agreement then the non-breaching Party may, and so often as same may occur, serve a notice in writing on the breaching Party, specifying the breach complained of and giving the breaching Party what the non-breaching Party considers, acting reasonably, to be a reasonable time to remedy the matter complained of (such reasonable time not, in any event, being a period less than one (1) calendar month).
- 13.2 If the breach is material and the breaching Party shall fail or neglect, within such period of time aforesaid, to remedy and make good the matter aforesaid, then, and in any such case, the non-breaching Party shall be entitled without further notice to terminate this Agreement
- 13.3 A Party shall be further entitled to terminate this Agreement by notice in writing if any of the following occur:
- (i) an order is made or a resolution is passed to wind-up the other Party;
  - (ii) the appointment of a receiver, examiner or liquidator to the other Party;
  - (iii) the other Party is unable to pay its debts within the meaning of the Companies Acts 1963-1999;
  - (iv) the other Party enters into a voluntary arrangement with creditors under the Companies Acts 1963 – 1999; or
  - (v) the other Party ceases to hold an authorisation from the National Regulator to provide electronic communications network services within the State,
  - (vi) the Access Seeker is not remitting payment in respect of the

amounts due, save for the provisions of Clause 12, Resolution of Disputes, pursuant to the terms of this Agreement and save for the provisions of Clause 3, Payment, and Clause 20, Resolution of Disputes, under the terms of the Licence(s), or

- (vii) where eircom terminates three (3) Licences for cause between eircom and the Access Seeker, in a twelve month consecutive period, which period shall be determined from the Commencement Date of this Agreement and each anniversary thereof.

- 13.4 In the event the Parties fail to reach agreement on a matter arising pursuant to Clause 16.1.2 where the material change removes a regulatory obligation(s) from eircom in accordance with the terms of Clause 16, eircom shall be entitled to issue a termination notice to take effect in thirty (30) days in respect of that portion of the Agreement which relates to the removal of the regulatory obligation. Any termination notice pursuant to this Clause shall not be issued earlier than three (3) months, or such other longer period as may be agreed between the Parties acting reasonably, from the service of the review notice pursuant to Clause 16.1.2.

## 14. Confidentiality

- 14.1. Without prejudice to the terms of the Non-Disclosure Agreement, each Party shall treat as strictly confidential all information received as a result of entering into or performing this Agreement which relates to the provisions or subject matter of this Agreement, to any other party to this Agreement or the negotiations relating to this Agreement.
- 14.2. Any party may disclose information which would otherwise be confidential if and to the extent:-
- (a) it is required to do so by law or any securities exchange or regulatory or government body to which it is subject wherever situate and it has, so far as reasonably practicable, consulted with the other parties and given them an opportunity to oppose the disclosure or otherwise agree the timing of such disclosure;
  - (b) each Party to whom it relates has given its consent in writing
  - (c) it is in the public domain other than in breach of this Agreement;
  - (d) it is or becomes publicly available through no fault of the Access Seeker;
  - (e) it is in the possession of the Access Seeker before such disclosure has taken place;
  - (f) it is required to be disclosed by a government regulatory body or a court or other comparable authority of competent jurisdiction.

## 15. Intellectual property rights

- 15.1. Except as expressly otherwise provided in this Agreement, Intellectual Property Rights shall remain the property of the Party creating or owning the same and nothing in this Agreement shall be deemed to confer any assignment or right or title whatsoever or licence of the Intellectual Property Rights of one Party to the other Party, and nothing in this Agreement shall be deemed to restrict the rights of any Party to own, use, enjoy, licence, assign or transfer its own Intellectual Property.

## 16. Review

- 16.1. A Party may seek to amend this Agreement by serving on the other a review notice if:
- 16.1.1. either Party's General Authorisation is materially modified (whether by amendment or replacement); or
  - 16.1.2. a material change occurs in the law or regulations (including codes of practice whether or not having the force of law) governing telecommunications in Ireland or the EU. Where the change in regulation specifies a transition period ("Transition Period"), eircom shall be entitled to serve the review notice during the Transition Period. If the Transition Period is greater than nine months, eircom shall afford the Access Seeker at least a six month period, from the date of the review notice, to reach agreement on the subject matter of the review notice. If no Transition Period is specified or the Transition Period is less than nine months, the standard three month period from the date of the review notice for the Parties to reach agreement on the subject matter of the review notice shall apply; or
  - 16.1.3. This Agreement makes express provision for a review or the Parties may agree in writing that there shall be a review; or
  - 16.1.4. a material change occurs, including enforcement action by any regulatory authority, which affects or reasonably could be expected to affect the commercial or technical basis of this Agreement; or
  - 16.1.5. there is a material change to the terms and conditions of any Licence Agreement
  - 16.1.6. there is a general review pursuant to clause 16.3 hereof.
- 16.2. A review notice shall set out in reasonable detail the issues to be discussed between the Parties.
- 16.3. Save for the provisions of the Licence Agreement, a Party may initiate a general review of this Agreement at least once during the twelve month period beginning from the Commencement Date of this Agreement and subsequent

anniversary. However, provided a Party complies with Clause 16.2, a review may be initiated as deemed appropriate by either Party serving a review notice.

- 16.4. On service of a review notice, the Parties shall forthwith negotiate in good faith the matters to be resolved with a view to agreeing the relevant amendments to this Agreement.
- 16.5. For the avoidance of doubt, the Parties agree that notwithstanding service of a review notice this Agreement shall remain in full force and effect.
- 16.6. Save for a review notice served pursuant to Clause 16.1.2 where the material change removes a regulatory obligation from eircom, if the Parties fail to reach agreement on the subject matter of a review notice within 3 calendar months (the relevant period) in each case from the date of service of such review notice, either Party may, not later than one calendar month after the expiration of the relevant period, request in writing the National Regulator to determine:
  - 16.6.1. the matters upon which the Parties have failed to agree;
  - 16.6.2. whether this Agreement should be modified to take account of such matters; and, if so
  - 16.6.3. the amendment or amendments to be made.

The Parties shall enter into an agreement to modify or replace this Agreement in accordance with what is agreed between the Parties to conform to the determination of the National Regulator.

- 16.7 Any failure to reach agreement on the subject matter of a review notice pursuant to Clause 16.1.2 where the material change removes a regulatory obligation from eircom shall be subject to Clause 13.4 of this Agreement.

## **17. Force Majeure**

- 17.1. If and to the extent that either party (the “Affected Party”) is hindered or prevented by circumstances not within its reasonable ability to control, including, but not limited to, acts of God, inclement weather, flood, lightning, fire, acts or omissions of Governments or other competent authority, acts of terrorism, industrial action or industrial dispute, war, military operations or acts or omissions of third parties for whom the Affected Party is not responsible (“Force Majeure”) from performing any of its obligations under this Licence, the Affected Party shall be relieved of liability for failure to perform such obligations under this Licence solely to the extent circumstances may require.
- 17.2. The Affected Party shall promptly notify the other party of the estimated extent and duration of such inability to perform its obligations and upon the



cessation of the event of Force Majeure the Affected Party shall notify the other party of such cessation.

- 17.3. Each Party shall use its reasonable endeavours (i) to avoid or remove the circumstances constituting the Force Majeure and (ii) to mitigate the effect of the Force Majeure as and when it exists.

## **18. Credit Assessment and Credit Risk Management**

- 18.1 It is a condition precedent to this Agreement that the Access Seeker shall provide to eircom such financial security (whether by way of deposit, guarantee or otherwise) as eircom in its reasonable and fair opinion considers appropriate as proportionate security against the Access Seeker's non-compliance with or non-observance of any of the provisions hereof (including without limitation the failure to pay charges), unless otherwise agreed by eircom in writing.
- 18.2 eircom may, at any time, require the Access Seeker to enter into bank or other guarantees or to provide some other form of financial security, (for example a deposit) which in the reasonable and fair opinion of eircom is/are appropriate as proportionate security against Access Seeker's non-compliance with or non-observance of any of the provisions hereof (including failure to pay charges due). eircom reserves the right to treat refusal to provide such security or failure to provide such security within thirty (30) days (or such longer period as eircom may reasonably allow) of the date of eircom's request for the same shall be deemed to be a breach of this Agreement by Access Seeker.

## **19 Limitation of Liability**

- 19.1 Save as provided in the Licence Agreement(s), neither Party has an obligation of any kind to the other Party beyond an obligation to exercise the reasonable skill and care of a competent telecommunications operator in performing its obligations under this Agreement.
- 19.2 Subject to clause 19.3, if an Access Seeker is in breach of any of its obligations under this Agreement (excluding obligations arising under this Agreement to pay monies in the ordinary course of business), and/or the Licences, or otherwise (including liability for negligence or breach of statutory duty) such Access Seeker's liability to eircom shall be limited to thirty two million EURO (€32,000,000) for any one event or series of connected events and thirty two million EURO (€32,000,000) for all events (connected or unconnected) in any period of twelve (12) calendar months.
- 19.3 The Parties accept unlimited liability for death or personal injury resulting from its negligence or its malicious acts or those of its Staff. Clause 19.1 above does not apply to such liability.

- 19.4 Save as provided in the Licence Agreement, if eircom is in breach of any of its obligations under this Agreement (excluding obligations arising under this Agreement to pay monies in the ordinary course of business), or otherwise (including liability for negligence or breach of statutory duty) such eircom's liability to the Access Seeker shall be limited to six hundred and thirty five thousand EURO (€635,000) for any one event or series of connected events and one million two hundred seventy thousand EURO (€1,270,000) for all events (connected or unconnected) in any period of 12 calendar months.
- 19.5 Each provision of this clause 19 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.

## **20 Assignment of Rights and Obligations**

- 20.1 The Access Seeker shall not be entitled to assign either in whole or in part or otherwise dispose of any of its rights and obligations hereunder

## **21 Amalgamation and Reconstruction**

- 21.1 Where the Access Seeker is a body corporate, in the event of a reconstruction or amalgamation of the Access Seeker, the Access Seeker shall be entitled to apply to eircom to accept a surrender of the Licence or the Access Agreement and to grant to the amalgamated or reconstructed body corporate a new licence or Access Agreement on substantially the same terms as the within Access Agreement or Licence, for the residue of the Term of the Access Agreement or Licence. In order to avail of the within clause, the Access Seeker must first satisfy eircom that the proposed amalgamation or reconstruction is bona fide and the decision as to the bona fides of the amalgamation or reconstruction of the Access Seeker shall be at the sole discretion of eircom.

## **22 Notices**

- 22.1 A notice shall be deemed to have been served:
- (a) at the time of delivery, if served personally;
  - (b) forty-eight (48) hours after posting in the case of an address in Ireland or
  - (c) ninety-six (96) hours after posting from any other address; or
  - (d) two (2) hours after transmission (upon the sender obtaining a valid transmission receipt), if sent by facsimile on a Business Day or prior to 3.00pm or in any other case at 10.00am on the Business Day after the date of dispatch
- 22.2 If the deemed time of service is not during normal business hours of the country of receipt, the notice shall be deemed to be served at or in the case of faxed service two (2) hours after the opening of business on the next Business Day of that country.

- 22.3 The deemed service provisions set out at clause 22.1 above do not apply to:
- (a) A notice served by post if there is a national or local suspension, curtailment or disruption of postal services which affects the collection of the notice or is such that the notice cannot reasonably be expected to be delivered within forty-eight (48) hours or ninety-six (96) hours (as appropriate) after posting; and
  - (b) A notice served by facsimile, if, before the time at which a notice would otherwise be deemed to have been served, the receiving party informs the sending party that the notice has been received in a form which is unclear in any material respect, and, if after informing the sending party by telephone, it also dispatches a confirmatory facsimile within two (2) hours.
  - (c) In the case of personal service that it has been handed to the party or delivered to or left in an appropriate place of letters at its address
  - (d) In the case of a letter sent by post, that the letter was properly addressed, stamped and posted; and
  - (e) In the case of the facsimile that it was properly addressed and dispatched to the number of the party.
  - (f) (f)A party shall not attempt to prevent or delay the service on it of a notice connected with this licence

22.4 The normal contacts for the Parties are:

If to eircom:

Wholesale Contracts Manager,  
eircom  
1 Heuston South Quarter  
St. John's Road  
Dublin 8

Telephone +3531 600 4609  
Facsimile +353 1 428 6240

Or

Commercial Director,  
eircom  
1 Heuston South Quarter  
St. John's Road  
Dublin 8

Telephone: +353 1 671 4444

Facsimile: +353 1 428 6240

If to the Access Seeker:

Title  
Address  
Address  
Address

Telephone: 01 xxxxxxx  
Fax: 01 xxxxxxx

Or

Title  
Address  
Address  
Address

Telephone: 01 xxxxxxx  
Fax: 01 xxxxxxx

or to such other addresses as the Parties may notify from time to time pursuant to this clause 22.

## **23 Entire Agreement**

23.1 Save for the provisions of any Licence and the Non Disclosure Agreement, this Agreement supersedes any previous agreement between the Parties in relation to the matters dealt with herein and represents the entire understanding between the Parties in relation thereto.

## **24. Waiver**

24.1 Save as provided in the Licence(s) the waiver of any breach of, or failure to enforce, any term or condition of this Agreement shall not be construed as a waiver of any other term or condition of this Agreement. No waiver shall be valid unless it is in writing and signed on behalf of the Party making the waiver.

## **25 Severability**

25.1 The invalidity, unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement.

## **26 Amendments**

- 26.1 Any amendments, including price changes, to the eircom Access Reference Offer specified by directions, decisions, determinations, specific obligation, obligations, measures and requirements of the National Regulator or other competent regulatory or statutory body shall be deemed to be automatically incorporated into this Access Agreement and/or Licence with immediate effect or such alternative date as specified by the National Regulator or such other body.
- 26.2 Notwithstanding Clause 26.1, the automatic incorporation of changes in the Access Agreement shall apply only to the Party subject to the obligations and to the extent the mandating body has jurisdiction to impose such obligations.
- 26.3 All other changes to this Access Agreement and/or Licence shall be in writing and agreed between the Parties to become effective and binding upon the Parties, including any amendment to add new services.

## **27 Relationship of Parties**

- 27.1 In addition to the provisions of the Licence(s) regarding the relationship of the Parties and the interests in title, the relationship between the Parties is that of independent contractors. Nothing in this Agreement shall be construed to make either Party hereto an agent, joint venture or partner of or with the other. Neither Party is granted any right of authority or agency, expressly or implicitly, on behalf of, or in the name of the other nor any right to legally bind the other in any manner whatsoever. Neither Party shall become liable through any representation, act or omission of the other which is contrary to or unauthorised by the provisions of this Agreement.

## **28 Governing Law**

- 28.1 Save for the provisions of the Licence(s), the interpretation, validity and performance of this Agreement shall be governed in all respects by the laws of Ireland and the Parties submit to the exclusive jurisdiction of the Irish Courts.

**IN WITNESS** WHEREOF THIS AGREEMENT WAS ENTERED INTO THE DAY AND YEAR FIRST ABOVE WRITTEN.

**SIGNED** for and on behalf of

**the Access Seeker:**

\_\_\_\_\_

[SIGNATURE]

\_\_\_\_\_

[NAME (BLOCK CAPITALS)]

\_\_\_\_\_

[POSITION]

\_\_\_\_\_

[DATE]

**SIGNED** for and on behalf of

**eircom:**

\_\_\_\_\_

[SIGNATURE]

\_\_\_\_\_

[NAME (BLOCK CAPITALS)]

\_\_\_\_\_

[POSITION]

\_\_\_\_\_

[DATE]

## ANNEX A DEFINITIONS

In this Agreement, words and expressions have the following meanings:

- “Access Agreement”** means this Agreement.
- “Access Provider”** is the authorised operator, in this case eircom, providing the line that connects the Network Terminating Unit in a customer’s premises to that operator’s local exchange
- “Access Seeker Staff”** means any employee, agent or contractor of the Access Seeker
- “Access Services”:** The services provided for in Annex C to this Agreement which at Commencement Date are Physical Colocation subject to signature of a Licence Agreement, Unbundled Local Metallic Path Service, and Line Sharing.
- “Access Usage Report”:** A matrix based on the charges for each access service and the frequency of usage of these services.
- “the Apparatus”** means that part of the Equipment (if any), which eircom permits the Access Seeker to install in the Serviced Exchange Footprint in accordance with the equipment notification process detailed in the Inter Operator Process Manual
- “Authorised Operator”** A person or company in possession of a General Authorisation from the National Regulator.
- “Billing Information”:** That information which must be provided by the Billing Party in support of invoices issued under this Agreement as agreed by the Parties to enable the billed Party to validate an invoice.

<b>“Billing Party”:</b>	The Party who is issuing any particular invoice.
<b>“Bulk Migration”</b>	means a multiple migration that is at least equal to fifteen (15) lines in a given exchange.
<b>“Billing Period”:</b>	The agreed intervals at which billing takes place under this Agreement or the Licence Agreement(s).
<b>“Business Day”</b>	means any day (other than a Saturday or Sunday) on which retail banks are open for normal business in Ireland.
<b>“CAF Exceptions”</b>	means Migrations that are exempt from the requirement to have a Customer Authorisation Form and are: <ol style="list-style-type: none"><li>i. Intra-operator Migrations, including Intra Operator Bulk Migrations, and</li><li>ii. Inter-operator Bulk Migrations which require a Wholesale Operator Consent Form.</li></ol>
<b>“Clerk of Works”</b>	An eircom employee who is suitably technical qualified and who will escort the Access Seeker onto eircom exchange premises and to the appropriate Serviced Exchange Footprint to ensure that any Access Seeker activities do not adversely impact the network integrity of eircom and/or other Access Seekers and that the mechanism(s) by which such activities are undertaken conform to the appropriate standard and method statement”.
<b>“Confidential Information”:</b>	All information disclosed by either Party, whether orally or in writing shall be considered shall be considered Confidential Information unless otherwise stated As same may be more fully set out in the Non Disclosure Agreement.
<b>“Copper Loop Frequency Management Plan”</b>	means the plan of that name as amended from time to time by the LLU Review Forum and published on the eircom website.



**“Customer Authorisation Form or CAF”**

means the form completed and signed by the customer, or the recording of Third Party Verification, or the electronic form completed by the customer, or the recording of an Operator Internal Customer Verification to approve a change of services. The requirements for each means of customer authorisation are set out in requirements documents published on eircom’s website

**”Electronic Customer Authorisation”**

means the electronic customer authorisation process set out in Requirements for Electronic Customer Authorisation document published on eircom’s website.

**“the Equipment”**

means the various items of telecommunications equipment which eircom permits the Access Seeker to install under the Licence Agreement

**“Interest Rate”:**

Euribor + four (4%) (3 month rate) applied to amount in default.

**“Disclosing Party”:**

A Party who discloses information for the purposes of Clause 11 of this Agreement

**“Dispute”:**

Any disagreement between the Parties in respect of the interpretation or resolution of any provision of this Agreement raised and resolved in accordance with Clause 12 of this Agreement (excluding material breaches of this Agreement).

**“Due Date”:**

A date, which is 30 calendar days after the date of an invoice except as expressly provided otherwise in the Licence

**“eircom's Telephone Exchange”:**

Means the telephone exchange building, situated in the Site, and belonging to eircom as will be set out in detail in each Licence Agreement.

**“eircom Network”:**

The Telecommunications Network which is operated and maintained by eircom in accordance with the General Authorisation granted to eircom by the National Regulator (previously General Communications Licence No. 14 awarded to eircom by the Director of Telecommunications Regulation on the 30<sup>th</sup> November 1998\_) ( and any licence, permit, authorization, consent or other measure amending or replacing or re-enacting the said Authorisation.

**“eircom Access Network”:**

That part of the Telecommunications Network which is operated and maintained by eircom in accordance with the General Authorisation granted to eircom by the National Regulator (previously General Communications Licence No. 14 awarded to eircom by the Director of telecommunications Regulation on the 30<sup>th</sup> November 1998) (and any licence, permit, authorisation, consent or other measure amending or replacing or re-enacting the said Authorisation which consists only of trenches, ducts, chambers, joint boxes, manholes, poles and similar works up to such interface point as may from time to time be specified by eircom (and specifically excludes all other aspects of the said Telecommunications Network including without limitation, transmission equipment, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electro magnetic means, wireless local loop or other wireless communications network facilities and all Telecommunications Services.

**“eircom Aro Price List”**

The eircom ARO Price List sets out the charges and/or charging guidelines for the service provided as part of the eircom Access Reference Offer.

**“eircom Staff”**

means any employee, agent or contractor of eircom.

**“Existing Exchange Facility”**

The existing switching and transmission space within an eircom's Telephone Exchange.

**“Gaining Access Seeker”**

is the access seeker that the customer has chosen to provide services in the future.

**“Inter Operator Migration”**

means the facility that allows services eligible for Migration (as set out in the respective product descriptions) on an end user's line to be moved between operators.

**“Inter Operator Bulk Migration”**

means the facility that allows for a Bulk Migration in either direction between Bitstream and Line Share as a result of an authorised operator completing a Wholesale Operator Consent Form (“WOCF”) and selecting a different wholesale provider who places the orders. This is no change in the service provider for the end user.

**“Intra Operator Migration”**

means the facility that allows services eligible for Migration (as set out in the respective product descriptions) on an end user's line to be substituted with the same operator.

**“Intra Operator Bulk Migrations”**

means the facility that allows for a Bulk Migration for services eligible of Migration (as set out in the product descriptions) to be substituted with the same operator. All orders forming part of an Intra Operator Bulk Migration must have their current broadband service with the LLU operator but can have their narrowband service with any operator.

**“Line Sharing”**

Means a methodology whereby the voice frequency service provided by the eircom and the high frequency service provided by the Access Seeker may be integrated over the same two-wire metallic path as more fully described in Annex C, Service Schedule 103 Appendix 1 to this

Agreement.

**“Inter Operator Process Manual”**

means the manual of that name as amended from time to time by the LLU Review Forum and published on eircom website;

**“Intellectual Property”:**

Any patent, copyright, design, trade name, trademark, service mark or other intellectual property right (whether registered or not) including without limitation ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, tracings, diagrams, models and other information relating to any such intellectual property.

**“Licence Agreement” and/or “Licence”**

means the document containing terms and conditions through which the Access Seeker avails of either Physical Co-location, Unbundled Local Metallic Path Service and Line Sharing which shall be signed by the Parties in respect of each Site for which the Access Seeker accepts a Site Offer.

**“Losing Access Seeker”**

is the access seeker that provided services to the customer prior to the customer electing to change to the Gaining Access Seeker.

**“Migration”**

means the actual transaction for which an order is placed to move between eligible services.

**“Migration Services”**

means the service for moving between different products as set out in the Migrations Product Description.

**“the National Regulator”**

The Commission for Communications Regulation or any person or body designated as the National Regulatory Authority pursuant to Council Directive 90/388/EEC.

**“Network”:**

The eircom Network or the Access Seeker Network as the case may be.

<b>“Network Management Centre, (NMC)”</b>	(a) in the case of eircom plc. National Management Centre, Citywest Business Park, Citywest, Naas Road, County Dublin and, (b) Access Seeker
<b>“Paper CAF”</b>	means the paper CAF(s) in respect of services as set out in the Requirements for Paper Customer Authorisation published on eircom’s website from time to time.
<b>“Operator Internal Customer Verification”</b>	means an internal Access Seeker process of recording the customer’s consent to processing an order for Line Sharing, Unbundled Local Metallic Path and/or Unbundled Local Metallic Path with Geographic Number Portability, which is conducted via the telephone, with a recording of the customer. This facility may also be known as “vCAF.”
<b>“Party”:</b>	A party to this Agreement.
<b>“Physical Co-location Service”:</b>	The Access Service described in Annex C Service Schedule 101 Appendix 1 to this Agreement.
<b>“Product Description(s)”:</b>	The description of the products offered by eircom in the Service Schedules offered by eircom to the requesting party.
<b>“Publication Requirements”</b>	means those requirements for publication as set out in the Response to Consultation and Decision, Market Review: Wholesale (Physical) Network Infrastructure Access (Market 4), Decision No. D05/10, Document No 10/39, 20 <sup>th</sup> May 2010 and any subsequent decision or direction of the National Regulator.
<b>“Ready for Service date”:</b>	The date by which an ordered Access Service or other activity requested by one Party of the other is requested to be available.
<b>“Receiving Party”:</b>	A Party who received any information from the other Party in relation to the Access Services.

<b>“Requested Party”:</b>	The Party who has been requested by the other Party to carry out some activity in relation to the Access Services.
<b>“Requesting Party”:</b>	The Party who is requesting the other Party to carry out some activity in relation to the Access Services.
<b>“Scheduled Services”:</b>	The schedules attached at Annex C to this Access Reference Offer, which describe the Access Services, and the basis on which they are provided.
<b>“Serviced Exchange Footprint”</b>	A space 400mm deep X 600mm wide X 2200mm high within an existing eircom Exchange facility for use by the Access Seeker as per Service Schedule 101. The Licence fee will be charged per Site and not per Footprint
<b>“Site Offer”</b>	means the offer extended by eircom to the Access Seeker in respect of the provision to the Access Seeker of the Access Services at the Site. The terms and conditions of the Site Offer, including charges, may vary if the Access Seeker subsequently provides information which the Access Seeker was previously obliged to provide, alters or supplements information previously provided, or if the Access Seeker makes a request to change any specification. Any such request to modify the Site Offer is subject to agreement by eircom
<b>“Site Preparation Works”</b>	means the work set out in each Licence received to facilitate the Access Seeker’s request for Physical Colocation.
<b>“the Site”</b>	means the site in respect of which a Site Survey has been conducted and for which eircom has issued a Site Offer to the Access Seeker in respect of the Access Services and set out in the Licence issued for that Site.
<b>“Sub Loop Unbundling”</b>	consists of a circuit offering a two-wire metallic transmission path between a served customer premises and an Access Seeker's underground joint enclosure connected to a sub-loop connection point

within the eircom Access Network. The joint enclosure provides an interface point between the eircom network and the access Seeker's network

**“Technical Manual”**

means the manual of that name as amended from time to time by the LLU Review Forum and published on the eircom website;

**“Third Party”:**

Any Party other than the Parties to this Agreement.

**“Third Party Operators”:**

All licensed Operators not party to this Agreement.

**“Third Party Verification”**

means an independent means of verifying a customer's consent and obtaining the customer information required to process an order for the services which is conducted via the telephone, with a recording of the call serving as a record of the customer's consent as more fully set out in the Requirements for Third Party Verification document published on the eircom website.

**“Unauthorised Provisioning of Services”**

means any activity undertaken by an access seeker that attempts to initiate a service change without the consent of the customer. This is also known as “slamming.”

**“Unbundled Local Metallic Path”**

An in-situ two wire metallic path connection between the Access Seeker's block on the main distribution frame and the network termination unit, (NTU), or network terminating point where no NTU exists, in the customer's premises.

**“Unbundled Local Metallic Path Services”**

The Access Service described in Annex C Service Schedule 102 Appendix 1 to this Agreement.

**“Unbundled Local Metallic Path with Geographic Number Portability”**

means the Access Seeker may place one order that will enable the co-ordinated delivery of both the ULMP and

geographic number portability to the end user.

**“Wholesale Operator Consent Form” or “WOCF”**

is the form that must be signed by authorised operators seeking to migrate to a different wholesale provider in either direction between Bitstream and Line Share. (pro forma WOCF is in the Migrations Product Description).

**“Working Day”:**

The time between 09:00 – 17:00 on any day other than Saturdays, Sundays, or Public Holidays as defined in the Second Schedule to the Organisation of Working Time Act, 1997.



## **ANNEX B BILLING AND PAYMENT**

1. The Access Seeker shall be liable to pay eircom for the charges set out in the eircom ARO Price List (“the Charges”) of this Agreement and in the Licence(s) for each Site.
2. Upon issuance of the Site Offer, eircom shall be entitled to raise an invoice in respect of the Charges incurred and the Access Seeker shall be liable to pay eircom the full amount of the Charges associated with the preparation of the Site Offer including but not limited to the Site Survey and Site Offer Fee as more particularly set out in the eircom ARO Price List.
3. Upon execution of the Licence eircom shall be entitled to payment of the Site Preparation Fee set out in Schedule 3 of the Licence(s). The Access Seeker shall be required to pay the required portion of the Site Preparation Fee no later than thirty (30) days from the date of invoice, however, in order to progress eircom’s ability to undertake the site preparation activities, the Access Seeker may tender this payment sooner.
4. Any fees and or charges applicable under the Licence shall be payable in accordance with the provisions of the Licence(s).
5. The Access Seeker shall pay any Value Added Tax exigible on any of the charges raised pursuant to the terms of this Agreement and the Licence.
6. Unless explicitly stated otherwise in this Agreement or the Licence Agreement(s), eircom will issue monthly invoices for the Charges associated with the Access Services. Unless explicitly stated otherwise in this Agreement or the Licence Agreement(s) invoices are due and payable in EUROS. Invoices are payable within thirty (30) calendar days from the date of the invoice, the Due Date unless provided otherwise in this Agreement or the Licence.
7. eircom will provide Billing Information in relation to each invoice.
8. Any Disputes which arise pursuant to the charges the Licence or invoices issued in relation to the Charges, shall be subject to the provisions of clause 12 of this Agreement.

**ANNEX C**  
**INDEX**  
of  
**Scheduled Services**

<b>SERVICE SCHEDULE NUMBER</b>	<b>SERVICE TITLE</b>
--	--------------------------

**eircom Services**

101.	Physical Co-location
102.	Unbundled Local Metallic Path
103.	Line Sharing
104	Sub Loop Unbundling
106	Unbundled Local Metallic Path with Geographic Number Portability Service (“GLUMP”)

**ANNEX C**  
**SERVICE SCHEDULE 101**  
*Physical Co-location*

This Service Schedule is effective from the date of signature of this Agreement and shall remain in effect until amended following agreement of the Parties to such amendment or following determination by the National Regulator.

## 1. Definitions

- 1.1. In this Annex, a reference to a clause or Appendix unless stated otherwise, is to a clause or Appendix of this Annex. Words and expressions have the meaning given in Annex A
- 1.2. For the purpose of this product, Physical Co-location is available in the Existing Exchange Facility. This definition does not preclude future expansion of the Exchange Facility.

## 2. Description of Services

- 2.1. Subject to the provisions of this Schedule, eircom shall provide Physical Co-location in accordance with the following document(s) which shall be contractually binding on the Parties:
  - a). The Product Description for Physical Co-location;
  - b). Access and Health and Safety Requirements for Physical Co-location and Sub Loop Unbundling (“Access and Health & Safety Requirements”), and
  - c) Service Level Agreement for Physical Co-location.(“SLA for Physical Co-location”).

The controlling document is the latest version of the above entitled document(s) published on eircom’s website in accordance with the Publication Requirements..

- 2.2 Physical Co-location shall be subject to the execution of a Licence Agreement in respect of each Site.
- 2.3 The following document(s) referenced in this Service Schedule that set out the procedures and standards for operation, but is non-contractual:
  - a). The Process Manual for eircom Physical Co-location Service (“Co-location IPM”)
  - b) The Technical Manual for Physical Co location Service.

All references are to the latest version published on eircom’s website..

### 3. Terms and Conditions

3.1. Physical Co-location shall be provided by eircom under the following conditions:

- 3.1.1. Physical Co-location shall be provided to the Access Seeker in line with the ordering provisions appropriate for Physical Co-location outlined in the Inter Operator Process Manual for Physical Co-location (hereinafter “Process Manual for Physical Co-location”).
- 3.1.2. A condition precedent for Physical Co-location shall be receipt of the correctly completed Order Form for Physical Co-location. The provision of Physical Co-location will require a specific Licence Agreement for that particular eircom Telephone Exchange.
- 3.1.3. Each order form submitted by the Access Seeker for Physical Co-location shall refer to a particular eircom exchange.
- 3.1.4. eircom will maintain, on behalf of the industry, a list of equipment (hereafter known as the Co-location Equipment Register), which may be co-located to which the Access Seeker may append items. eircom or any other Access Seeker may object to the inclusion of any equipment on this list and such objection will in the first instance be reviewed at industry level and if not resolved, will be referred to the National Regulator for resolution.
  - 3.1.4.1. The Access Seeker shall physically co-locate only equipment and associated backhaul equipment listed on the Co-location Register. (The Co-location Register is as described in the Process Manual for Physical Co-location.)
  - 3.1.4.2. Once a particular item of equipment has been appended to the list the Access Seeker will be free to deploy it in co-location spaces without the need for further approvals from eircom. However, eircom will require information to be provided prior to installation of equipment for the purposes of protecting Health and Safety and maintaining Network integrity.
- 3.1.5. The Access Seeker shall be responsible for the installation, operation and maintenance of its equipment within the provided footprint.
- 3.1.6. Physical Co-location shall be within an Existing Exchange Facility, eircom will not structurally alter or build any new exchange facility or provide space on eircom premises for Access Seeker structures. However, future development of Exchange Facilities within eircom will be informed by the pre-orders received (as outlined the Process Manual for Physical Co-location) and may also take place following consultation on a case by case basis of individual footprint requests. The allocation of space in eircom Exchange Facilities will be compatible with existing eircom Network plans. eircom shall use its reasonable endeavours to facilitate Access Seeker’s requests.

- 3.1.7. Serviced Exchange Footprints shall be allocated on a first come first, served basis. (The process for selection is as described in the Process Manual for Physical Co-location).
- 3.1.8. If the service cannot be provided on the grounds of feasibility or the need to maintain network integrity or lack of capacity because of the unavailability or unsuitability of an exchange floor space, the product will not be available. Any such refusal shall be accompanied by an account of the reasons for the refusal and may at the request of the prospective beneficiary be made available to the National Regulator.
- 3.1.9. The Access Seeker may in certain circumstances request the right to inspect the locations at which physical co-location is available, or sites where co-location has been refused on grounds of lack of capacity. The process to support such requests are outlined in the Process Manual for Physical Co-location
- 3.1.10. Any sharing of Serviced Exchange Footprints shall be in compliance with the terms of the Licence Agreement as published on eircom's website, [www.eircomwholesale.ie](http://www.eircomwholesale.ie) from time to time. Each Access Seeker sharing any such Services Exchange Footprints shall be required to execute a separate Licence Agreement with eircom in respect of the portion of the Serviced Exchange Footprint to be occupied by that particular Access Seeker.
- 3.1.11. The provision of Physical Co-location by eircom is subject to the terms of the commercial SLA for Physical Co-location.
- 3.1.12. All Access Seeker Staff, before being permitted access to any eircom premises for the purpose of the provision of the Access Services shall be required to be registered in accordance with the provisions of the Licence Agreement.
- 3.1.13. The Access Seeker shall conform and shall procure that all of its staff conform to all on-site security requirements as reasonably requested by eircom Exchange managers and specified in the Access and Health & Safety Requirements.
- 3.1.14. The Access Seeker shall conform and shall procure that all Access Seeker Staff shall conform to all Health and Safety regulations as reasonably requested by the eircom Exchange Managers and specified in the Access and Health & Safety Requirements..
- 3.1.14.1. Failure by the Access Seeker's Staff to comply with all Health and Safety regulations as reasonably requested by eircom and specified in the Access and Health & Safety Requirements will be subject to the Access Agreement and Licence Agreement.
- 3.1.15. All access to eircom exchange premises shall be in accordance with the terms of the Licence Agreement.

3.1.16. eircom shall provide the Physical Co-location Service in accordance with the terms of the Access and Licence Agreements.

#### **4. Lead Times**

- 4.1 The lead times shall be as provided for in the Process Manual and will be subject to the SLA for Physical Co-location.

#### **5. Charging Structure**

- 5.1 The charges and charging guidelines for Physical Co-location shall be as set out in the eircom ARO Price List.
- 5.2 The Access Seeker must tender payment for the Site Preparation Fee and first Licence Fee before eircom will execute the Licence in respect of any Site. The Access Seeker may tender payment of such fees anytime prior to the Due Date to facilitate execution of the Licence and be granted access to a Site

**ANNEX C**  
**SERVICE SCHEDULE 102**  
*Unbundled Local Metallic Path Service*

This Service Schedule is effective from the date of signature of this Agreement and shall remain in effect until amended following agreement of the Parties to such amendment or following determination by the National Regulator.

## 1. Definitions

- 1.1. In this Annex, a reference to a clause or Appendix unless stated otherwise, is to a clause or Appendix of this Annex. Words and expressions have the meaning given in Annex A.

## 2. Description of Services

- 2.1 Subject to the provisions of this Schedule, eircom shall provide the Unbundled Local Metallic Path Line Service in accordance with the following document(s) which shall be contractually binding on the Parties:

- a). The Product Description for Unbundled Local Metallic Path;
- b). The Product Description for Product Migrations (the “Migrations Product Description”)
- c). The Copper Loop Frequency Management Plan (“CLFMP”);
- d). The eircom Service Level Agreement for the Provision and Repair of Unbundled Local Metallic Path (“ULMP”), Line Sharing (“LS”) and Combined GNP and ULMP (“GLUMP”) (the “Services SLA”); and
- e). Requirements for Paper Customer Authorisation (“Paper CAF”)
- f). Requirements for Third Party Verification, and
- g). Requirements for Electronic Customer Authorisation (“eCAF”)
- h). Requirements for Operator Internal Customer Verification (“vCAF”).

The controlling document is the latest version of the above entitled document(s) published on eircom’s website in accordance with the Publication Requirements..

- 2.2 The following document(s) referenced in this Service Schedule that sets the procedures and standards for operation, but are non-contractual:

- a). The Process Manual for the eircom Services: Local Loop Unbundling (the “LLU IPM”); and
- b). The Process Manual for Product Migrations (“Migrations IPM”).

All references are to the latest version published on eircom’s website..

### 3. Terms and Conditions

- 3.1. Unbundled Local Metallic Paths shall be provided by eircom under the following conditions:
  - 3.1.1. Both eircom and the Access Seeker shall adhere to the Industry agreed Copper Loop Frequency Management Plan (CLFMP), as agreed under the LLU Review Forum.
  - 3.1.2. eircom Unbundled Local Metallic Path shall be provided to the Access Seeker in line with the provisions appropriate to Unbundled Local Metallic Path outlined in the LLU IPM..
  - 3.1.3. Receipt of a correctly completed Order Form is a condition precedent to the provision of eircom Unbundled Local Metallic Path. The LLU IPM contains the information relating to the Order Form..
  - 3.1.4. The Unbundled Local Metallic Path utilised in this product shall remain the property of eircom.
  - 3.1.5. The Access Seeker shall not assign or share their interest in or rights to Unbundled Local Metallic Path. For the avoidance of doubt this does not preclude the Access Seeker providing services using Unbundled Local Metallic Path as the bearer for products and services for resale to third parties
  - 3.1.6. The provision of Unbundled Local Metallic Path Service by eircom is subject to the terms of the Services SLA.
  - 3.1.7. Line Categorisation is provided for unbundled Local Metallic Path. The LLU IPM outlines how this shall be provided..

### 4. Lead times

- 4.1 The Lead Times shall be as provided for in the LLU IPM and will be subject to the Services SLA..

### 5. Customer Authorisation

- 5.1 The Gaining Access Seeker must acquire a CAF prior to the submission of service orders unless the request is made in respect of:
  - a). A new line, or
  - b). Intra-operator migrations, or
  - c) An emergency restore initiated by the Gaining Operator, or
  - d) Orders subject to a WOCF.
- 5.2 The Gaining Access Seeker must retain a customer's CAF for a period of at least six months.. Thereafter, the Gaining Operator must cease the service



when the end user referenced in the CAF ceases services with the Gaining Access Seeker.

- 5.3 If a customer complains to a Losing Access Seeker regarding the change of service provider, the Losing Access Seeker is entitled to request a copy of the CAF, and the Gaining Access Seeker must provide a true copy of the CAF to that access seeker within two (2) Working Days.
- 5.4 If the Losing Access Seeker is not satisfied with the copy of the CAF produced by the Gaining Access Seeker, then the Gaining Access Seeker must provide access to the original CAF within two (2) Working Days.

## **6. Unauthorised Provision of Services**

- 6.1 A Party shall not engage in Unauthorised Provisioning of services. Nothing in this Clause 6 or elsewhere shall prejudice the rights of the National Regulator pursuant to Section 45 of the Communications Regulations Act 2002, as may be amended from time to time.
- 6.2 Where an incident(s) of Unauthorised Provisioning of Services is detected by either Party, the incident(s) shall be notified to the Gaining Access Seeker. Each Party shall use its best endeavours to resolve the matter. Where the matter is resolved the Gaining Access Seeker shall notify the Access Provider to reinstate the customer's service to the status prior to the disputed provisioning.
- 6.3 Where complaints concerning incident(s) of Unauthorised Provisioning of Service cannot be resolved in accordance with Clause 6.2, or within ten (10) Working Days of the Gaining Access Seeker being notified pursuant to Clause 5.2, the Losing Access Seeker shall have the option of requesting the President of the Law Society of Ireland to nominate a single arbitrator to adjudicate upon the complaint. The decision of such arbitrator shall be final and binding in its entirety upon the Parties.

## **7. Charging Structure**

- 7.1 The charges for Unbundled Local Metallic Path shall be as set out in the eircom ARO Price List, including the charges for Line Categorisation.

## **8. Migration Services**

- 8.1 Migration Services to and from the Unbundled Local Metallic Path Service are as set out in the Migrations Product Description.
- 8.2 Subject to Clause 8.3 below, Migration orders shall be subject to the requesting Access Seeker obtaining a complete Wholesale Operator Consent Form "WCOF") or a complete Customer Authorisation Form (CAF), if applicable.

- 8.3 (i) Without prejudice to the generality of Clause 8.2 above, it shall not be mandatory for the Gaining Access Seeker to procure and/or furnish a CAF in respect of CAF Exceptions, provided however that where the Gaining Access Seeker decides not to procure and/or furnish such a CAF, eircom shall have no liability for any loss or damage to the customer which arises directly and solely from the absence of such a CAF.
- (ii) The Gaining Access Seeker will, subject to sub-clause (iv) below, indemnify and hold eircom harmless against any and all direct claims, demands, actions, damages, costs and expenses for loss or damage to the customer which arise directly and solely from the Gaining Access Seeker's decision not to procure and/or furnish a CAF in respect of a CAF Exception, (the "Indemnity"), provided always that:
- (a) The total aggregate liability of the Gaining Access Seeker arising under the indemnity shall not exceed the amount of fifty thousand euro (€50,000) for any event or series of connected events and up to two hundred and fifty thousand euro (€250,000) for all events (connected or unconnected) in any period of twelve (12) consecutive months. For the avoidance of doubt the transfer of a block of lines for one customer shall be deemed one event;
  - (b) The Gaining Access Seeker shall not be liable under the Indemnity for consequential or indirect loss (meaning loss that is not reasonably foreseeable and arises indirectly or is not of an immediate and proximate result of the absence of a CAF); and
  - (c) Any notice, demand or communication made by eircom under the Indemnity shall be in writing and shall be deemed to be duly served if served by registered post to:

Name/Title  
Company  
Address

The Gaining Access Seeker agrees that it shall not imply to the customer that any such damage or loss (i.e. loss or damage to the customer which arises directly and solely from the absence of a CAF) was the fault of eircom.

- (iii) In respect of Inter-operator Bulk Migrations, the Access Seeker or the Access Seeker's customer shall indemnify and hold eircom harmless in respect of any claims made by end users in respect of the provision of services on the lines from the date of Migration arising directly and solely from the absence of the CAF (the "Indemnity"). The Indemnity given in this sub-clause shall be subject to the provisions as set out in Clause 8.3(ii)(a),(b), and (c) and sub-clause (iv) shall apply.

- (iv) In order for eircom to recover from the Gaining Access Seeker under the Indemnity, eircom shall:
- (a) Confirm its intention in writing to make a claim under the Indemnity within sixty (60) days after eircom becomes aware of the relevant facts, or ought reasonably to have become aware of those facts, and include a brief note of the facts of such confirmation:
  - (b) Take all reasonable steps to mitigate any such losses, claims, damages and liabilities, costs, charges and expenses and shall not compound, compromise, settle or admit those proceedings without the prior written approval of the Gaining Access Seeker (not to be unreasonably withheld);
  - (c) Allow the Gaining Access Seeker to conduct its own defence of such claims, demands, actions, damages, costs and expenses, and
  - (d) Provide all reasonable assistance to the Gaining Access Seeker and make no admission prejudicial to the defence of such claims, demands, actions, damages, costs and expenses.

8.4 Migration Services will be subject to breaks in service as set out in the Migrations IPM. The Parties shall endeavour to minimise the break in service for individual end users.

**ANNEX C**  
**SERVICE SCHEDULE 103**  
*Line Sharing Service*

This Service Schedule is effective from the date of signature of this Agreement and shall remain in effect until amended following agreement of the Parties to such amendment or following determination by the National Regulator.

## 1. Definitions

- 1.1. In this Annex, a reference to a clause or Appendix unless stated otherwise, is to a clause or Appendix of this Annex. Words and expressions have the meaning given in Annex A.

## 2. Description of Services

- 2.1 Subject to the provisions of this Schedule, eircom shall provide the Line Sharing Service in accordance with the following document(s) which shall be contractually binding on the Parties:

- a). The Product Description for Line Sharing Service
- b) The Product Description for Product Migrations (the “Migrations Product Description”)
- c). The Copper Loop Frequency Management Plan (“CLFMP”);
- d). The eircom Service Level Agreement for the Provision and Repair of Unbundled Local Metallic Path (“ULMP”), Line Sharing (“LS”) and Combined GNP and ULMP (“GLUMP”) (the “Services SLA”); and
- e). Requirements for Paper Customer Authorisation (“Paper CAF”)
- f). Requirements for Third Party Verification
- g). Requirements for Electronic Customer Authorisation,
- h). Requirements for Operator Internal Customer Verification (“vCAF”).

The controlling document is the latest version of the above entitled document(s) published on eircom’s website in accordance with the Publication Requirements.

- 2.2 The following document(s) referenced in this Service Schedule that sets the procedures and standards for operation, but are non-contractual:

- a). The Process Manual for the eircom Services: Local Loop Unbundling (the “LLU IPM”), and
- b) The Process Manual for Product Migrations (“Migrations IPM”).

All references are to the latest version published on eircom’s website.

### 3. Terms and Conditions

- 3.1. Line Sharing shall be provided by eircom under the following conditions:
- 3.1.1. Both eircom and the Access Seeker shall adhere to the Industry agreed Copper Loop Frequency Management Plan (CLFMP), as agreed under the LLU Review Forum.
  - 3.1.2. eircom Line Sharing shall be provided to the Access Seeker in line with the provisions appropriate to Line Sharing as outlined in the LLU IPM.
  - 3.1.3. Receipt of a correctly completed Order Form shall be a condition precedent to the provision of eircom Line Sharing. The LLU IPM provides the information relating to the Order Form..
  - 3.1.4. The Access Seeker shall not assign or share their interest in or rights to Line Sharing. For the avoidance of doubt this does not preclude the Access Seeker providing services using Line Sharing as the bearer for products and services for resale to third parties.
  - 3.1.5. The Metallic Path used to provide the eircom Line Sharing Service shall remain the property of eircom.
  - 3.1.6. The Line Sharing Service from eircom shall only be available where either .
    - (A) eircom receives retail line rental for that metallic path
    - or
    - (B) eircom provides Single Billing through Wholesale Line Rental (SB-WLR) on that metallic path.
  - 3.1.7. The provision of Line Sharing Service by eircom is subject to the terms of the Services SLA.
  - 3.1.8. eircom will make available to the Access Seeker, upon signature of the Non Disclosure Agreement at Annex D, the information outlined in Annex G in relation to the eircom Network.
  - 3.1.9. Line Categorisation is provided for Line Sharing. The LLU IPM provides how this shall be provided..

### 4. Lead times

- 4.1. The lead times shall be as provided for in the LLU IPM and shall be subject to the Services SLA..

## 5. Customer Authorisation

- 5.1 The Gaining Access Seeker must acquire a CAF prior to the submission of service orders unless the request is made in respect of:
- a). a new provide, or
  - b). Intra-operator migrations, or
  - c). An emergency restore initiated by the Gaining Operator, or
  - d). Orders subject to a WOCF.
- 5.2 Where a CAF is required, the Gaining Access Seeker must retain a customer's CAF for a period of at least six months. Thereafter, the Gaining Operator must cease the service when the end user referenced in the CAF ceases services with the Gaining Access Seeker.
- 5.3 If a customer complains to a Losing Access Seeker regarding the change of service provider, the Losing Access Seeker is entitled to request a copy of the CAF, and the Gaining Access Seeker must provide a true copy of the CAF to that access seeker within two (2) Working Days.
- 5.4 If the Losing Access Seeker is not satisfied with the copy of the CAF produced by the Gaining Access Seeker, then the Gaining Access Seeker must provide access to the original CAF within two (2) Working Days.

## 6. Unauthorised Provision of Services

- 6.1 A Party shall not engage in Unauthorised Provisioning of services. Nothing in this Clause 6 or elsewhere shall prejudice the rights of the National Regulator pursuant to Section 45 of the Communications Regulations Act 2002, as may be amended from time to time.
- 6.2 Where an incident(s) of Unauthorised Provisioning of Services is detected by either Party, the incident(s) shall be notified to the Gaining Access Seeker. Each Party shall use its best endeavours to resolve the matter. Where the matter is resolved the Gaining Access Seeker shall notify the Access Provider to reinstate the customer's service to the status prior to the disputed provisioning.
- 6.3 Where complaints concerning incident(s) of Unauthorised Provisioning of Service cannot be resolved in accordance with Clause 6.2, or within ten (10) Working Days of the Gaining Access Seeker being notified pursuant to Clause 5.2, the Losing Access Seeker shall have the option of requesting the President of the Law Society of Ireland to nominate a single arbitrator to adjudicate upon the complaint. The decision of such arbitrator shall be final and binding in its entirety upon the Parties.

## 7 Charging Structure

- 7.1 The charges for Line Sharing shall be as set out in the eircom ARO Price List, including the charges for Line Categorisation.

## 8. Migration Services

- 8.1 Migration Services to and from the Line Share Service are as set out in the Migrations Product Description.
- 8.2 Subject to Clause 8.3 below, Migration orders shall be subject to the requesting Access Seeker obtaining a complete Wholesale Operator Consent Form “WCOF”) or a complete Customer Authorisation Form (CAF), if applicable.
- 8.3 (i) Without prejudice to the generality of Clause 8.2 above, it shall not be mandatory for the Gaining Access Seeker to procure and/or furnish a CAF in respect of CAF Exceptions, provided however that where the Gaining Access Seeker decides not to procure and/or furnish such a CAF, eircom shall have no liability for any loss or damage to the customer which arises directly and solely from the absence of such a CAF.
- (ii) The Gaining Access Seeker will, subject to sub-clause (iv) below, indemnify and hold eircom harmless against any and all direct claims, demands, actions, damages, costs and expenses for loss or damage to the customer which arise directly and solely from the Gaining Access Seeker’s decision not to procure and/or furnish a CAF in respect of a CAF Exception, (the “Indemnity”), provided always that:
- (d) The total aggregate liability of the Gaining Access Seeker arising under the indemnity shall not exceed the amount of fifty thousand euro (€50,000) for any event or series of connected events and up to two hundred and fifty thousand euro (€250,000) for all events (connected or unconnected) in any period of twelve (12) consecutive months. For the avoidance of doubt the transfer of a block of lines for one customer shall be deemed one event;
- (e) The Gaining Access Seeker shall not be liable under the Indemnity for consequential or indirect loss (meaning loss that is not reasonably foreseeable and arises indirectly or is not of an immediate and proximate result of the absence of a CAF); and
- (f) Any notice, demand or communication made by eircom under the Indemnity shall be in writing and shall be deemed to be duly served if served by registered post to:

Name/Title  
Company  
Address

The Gaining Access Seeker agrees that it shall not imply to the customer that any such damage or loss (i.e. loss or damage to the

customer which arises directly and solely from the absence of a CAF) was the fault of eircom.

- (iii) In respect of Inter-operator Bulk Migrations, the Access Seeker or the Access Seeker's customer shall indemnify and hold eircom harmless in respect of any claims made by end users in respect of the provision of services on the lines from the date of Migration arising directly and solely from the absence of the CAF (the "Indemnity"). The Indemnity given in this sub-clause shall be subject to the provisions as set out in Clause 8.3(ii)(a),(b), and (c) and sub-clause (iv) shall apply.
- (iv) In order for eircom to recover from the Gaining Access Seeker under the Indemnity, eircom shall:
  - (e) Confirm its intention in writing to make a claim under the Indemnity within sixty (60) days after eircom becomes aware of the relevant facts, or ought reasonably to have become aware of those facts, and include a brief note of the facts of such confirmation:
  - (f) Take all reasonable steps to mitigate any such losses, claims, damages and liabilities, costs, charges and expenses and shall not compound, compromise, settle or admit those proceedings without the prior written approval of the Gaining Access Seeker (not to be unreasonably withheld);
  - (g) Allow the Gaining Access Seeker to conduct its own defence of such claims, demands, actions, damages, costs and expenses, and
  - (h) Provide all reasonable assistance to the Gaining Access Seeker and make no admission prejudicial to the defence of such claims, demands, actions, damages, costs and expenses.

8.4 Migration Services will be subject to breaks in service as set out in the Migrations IPM. The Parties shall endeavour to minimise the break in service for individual end users.



## ANNEX C

### SERVICE SCHEDULE 104

#### *Sub Loop Unbundling*

This Service Schedule is effective from the date of signature of this Agreement and shall remain in effect until amended following agreement of the Parties to such amendment or following determination by the National Regulator.

#### **1 Definitions**

- 1.1 In this Annex, a reference to a clause or Appendix unless stated otherwise, is to a clause or Appendix of this Annex. Words and expressions have the meaning given in Annex A.

#### **2 Description of Services**

- 2.1 Subject to the provisions of this Schedule, eircom shall provide Sub Loop Unbundling in accordance with the following document(s) which shall be contractually binding on the Parties:
- a). The Product Description for Sub Loop Unbundling;
  - b). The Technical Manual for Physical Co-location Service and
  - c). Access and Health and Safety Requirements for Physical Co-location and Sub Loop Unbundling (“Access and Health & Safety Requirements”).

The controlling document is the latest version of the above-entitled document(s) published on eircom’s website in accordance with the Publication Requirements. .

- 2.2 The following document(s) referenced in this Service Schedule that sets the procedures and standards for operation, but are non-contractual:
- a). The Process Manual for Sub Loop Unbundling (the “Sub Loop Unbundling IPM”)

All references are to the latest version published on eircom’s website.

#### **3 Terms and Conditions**

- 3.1 Sub Loop Unbundling shall be provided by eircom under the following conditions:

- 3.1.1 Sub Loop Unbundling shall be provided to the Access Seeker in line with the ordering provisions appropriate for Sub Loop Unbundling outlined in the Sub Loop Unbundling IPM).
- 3.1.2 Receipt of a correctly completed Order Form is a condition precedent to the provision of Sub Loop Unbundling. The information regarding the Order Forms is in the Sub Loop Unbundling IPM.
- 3.1.3 Each order form submitted by the Access Seeker for Sub Loop Unbundling shall refer to a particular eircom cabinet.
- 3.1.4 The Access Seeker shall be responsible for the installation, operation and maintenance of its equipment within its Cabinet/Building.
- 3.1.5 Sub Loop Unbundling shall be within an existing eircom cabinet. eircom will not structurally alter or build any new Cabinet. The allocation of space in eircom Cabinets will be compatible with existing eircom Network plans.
- 3.1.6 Space within eircom Cabinets shall be allocated on a first come first, served basis. The process for selection is described in the Sub Loop Unbundling IPM.
- 3.1.7 If the service cannot be provided on the grounds of feasibility or the need to maintain network integrity or lack of capacity because of the unavailability or unsuitability of cabinet space, the product will not be available. Any such refusal shall be accompanied by an account of the reasons for the refusal and may at the request of the prospective beneficiary be made available to the National Regulator.
- 3.1.8 The Access Seeker may in certain circumstances request the right to inspect the locations at which Sub Loop Unbundling is available, or sites where Sub Loop Unbundling has been refused on grounds of lack of capacity. The processes to make such requests are outlined in the for Sub Loop Unbundling IPM.
- 3.1.9 All Access Seeker Staff, before being permitted access to any eircom cabinet for the purpose of the provision of the Access Services shall be required to be registered. The processes for registering are set out in the Sub Loop Unbundling IPM.
- 3.1.10 The Access Seeker shall conform and shall procure that all of its staff conforms to all security requirements as reasonably requested by eircom and as set out in the Access and Health & Safety Requirements.
- 3.1.11 The Access Seeker shall conform and shall procure that all Access Seeker Staff shall conform to all Health and Safety regulations as reasonably requested by eircom and specified in the eircom Access and Health & Safety Requirements Where this document refers to eircom premises it should be read to refer to the Cabinet.

3.1.11.1 Failure by the Access Seeker's Staff to comply with all Health and Safety regulations as reasonably requested by eircom and specified in the Access and Health & Safety Requirements will be subject to the Access Agreement.

3.1.12 All access to eircom cabinets shall be escorted access. The Sub Loop Unbundling IPM sets out the processes for escorted access.

3.1.13 eircom shall provide the Sub Loop Unbundling Service in accordance with the terms of the Access Agreement.

## **4 4 Lead Times**

4.1 The lead times shall be as provided for in the Sub Loop Unbundling IPM.

## **5 Charging Structure**

5.1 The charges for Sub Loop Unbundling shall be as set out in the eircom ARO Price List, including the charges for Line Categorisation.

## ANNEX C

### SERVICE SCHEDULE 106

#### *Unbundled Local Metallic Path with Geographic Number Portability Service ("GLUMP")*

This Service Schedule is effective from the date of signature of this Agreement and shall remain in effect until amended following agreement of the Parties to such amendment or following determination by the National Regulator.

## 1. Definitions

- 1.1 In this Annex, a reference to a clause or Appendix unless stated otherwise, is to a clause or Appendix of this Annex. Words and expressions have the meaning given in Annex A.

**"Department of Social and Family  
Affairs Allowance or  
"DSFA Allowance"**

means the benefit and payment scheme for telecommunications services operated by the Department of Social and Family Affairs.

**"Geographic Number  
Portability (GNP)"**

is defined as the service by which a consumer can retain their geographic telephone number when moving from one network to another.

**"National Directory  
Database or NDD"**

means the record of all subscribers of publicly available telephone services in State, including those with fixed, personal and mobile numbers, who have not refused to be included in that record, kept in accordance with Regulation 4(3) of the Universal Service Regulations and these Regulations.

## 2. Description of Services

- 2.1 Subject to the provisions of this Schedule, eircom shall provide Unbundled Local Metallic Path with Geographic Number Portability Service in accordance with the following document(s) which shall be contractually binding on the Parties:

- a). The Product Description for Unbundled Local Metallic Path with Geographic Number Portability (the "GLUMP Product Description")

- b) The Product Description for Product Migrations (the “Migrations Product Description”)
- c). The Copper Loop Frequency Management Plan (“CLFMP”);
- d). The eircom Service Level Agreement for the Provision and Repair of Unbundled Local Metallic Path (“ULMP”), Line Sharing (“LS”) and Combined GNP and ULMP (“GLUMP”) (the “Services SLA”)
- e).Requirements for Paper Customer Authorisation (“Paper CAF”)
- f).Requirements for Third Party Verification,
- g).Requirements for Electronic Customer Authorisation
- h.).Requirements for Operator Internal Customer Verification (“vCAF”).

The controlling document is the latest version of the above-entitled document(s) published on eircom’s website in accordance with the Publication Requirements.

2.2 The following document(s) referenced in this Service Schedule that sets the procedures and standards for operation, but are non-contractual:

- a). Process Manual for the eircom Services: Local Loop Unbundling (the “LLU IPM”); and
- b). the Geographic Number Portability Process Manual (the “GNP IPM”)
- c) The Process Manual for Product Migrations (“Migrations IPM”)

All references are to the latest version(s) published on eircom’s website.

### **3. Terms and Conditions**

- 3.1 eircom and the Access Seeker agree to adhere to the Industry agreed Copper Loop Frequency Management Plan (CLFMP), as agreed under the LLU Review Forum.
- 3.2 Receipt of a correctly completed Order Form is a condition precedent to GLUMP being provided to the Access Seeker. The information relating to Order Forms are outlined in the LLU IPM and GNP IPM.
- 3.3 The Unbundled Local Metallic Path utilised in this product shall remain the property of eircom.
- 3.4 The Access Seeker shall not assign or share their interest in or rights to the Unbundled Local Metallic Path utilised in the GLUMP product. For the avoidance of doubt this does not preclude the Access Seeker providing services using Unbundled Local Metallic Path as the bearer for products and services for resale to third parties.
- 3.5 Line Categorisation for Unbundled Local Metallic Paths utilised in the GLUMP product shall be provided. The LLU IPM outlines how this shall be provided. .
- 3.6 Prior to placing any orders, the Access Seeker must have successfully completed Service Establishment Testing as set out in the “GLUMP Service

Establishment Test Plan". The controlling document is the latest version of the above titled document(s) published on eircom's website.

- 3.7 Neither Party warrants that this service shall be free faults and/or partial or complete breaks in service.
- 3.8 The correct routing of traffic resulting from GNP shall be achieved through the use of the routing prefixes as allocated by the National Regulator and as outlined in the Industry Agreed "Number Portability Network Working Group Design Decisions, NP14".
- 3.9 Upon the completion of a GLUMP order the Party gaining the customer shall then be responsible for all obligations in respect of the NDD Listing for that consumer and the application of the DFSA scheme where appropriate.

#### **4. Lead times**

- 4.1 The lead times for provision of the GLUMP product shall be as provided for in the LLU IPM and GNP IPM and subject to the Services SLA.

#### **5. Customer Authorisation**

- 5.1 The Gaining Access Seeker must acquire a CAF prior to the submission of service orders unless the request is made in respect of:
  - a). A new line, or
  - b). Intra-operator migrations, or
  - c) An emergency restore initiated by the Gaining Operator, or
  - d). Orders subject to the WOCF.
- 5.2 The Gaining Access Seeker must retain a customer's CAF for a period of at least six months. Thereafter, the Gaining Operator must cease the service when the end user referenced in the CAF ceases service(s) with the Gaining Access Seeker.
- 5.3 If a customer complains to a Losing Access Seeker regarding the change of service provider, the Losing Access Seeker is entitled to request a copy of the CAF, and the Gaining Access Seeker must provide a true copy of the CAF to that access seeker within two (2) Working Days.
- 5.4 If the Losing Access Seeker is not satisfied with the copy of the CAF produced by the Gaining Access Seeker, then the Gaining Access Seeker must provide access to the original CAF within two (2) Working Days.

#### **6. Unauthorised Provision of Services**

- 6.1 A Party shall not engage in Unauthorised Provisioning of services. Nothing in this Clause 6 or elsewhere shall prejudice the rights of the National Regulator

pursuant to Section 45 of the Communications Regulations Act 2002, as may be amended from time to time.

- 6.2 Where an incident(s) of Unauthorised Provisioning of Services is detected by either Party, the incident(s) shall be notified to the Gaining Access Seeker. Each Party shall use its best endeavours to resolve the matter. Where the matter is resolved the Gaining Access Seeker shall notify the Access Provider to reinstate the customer's service to the status prior to the disputed provisioning.
- 6.3 Where the National Regulator has not exercised its rights pursuant to Section 45 of the Communications Regulations Act 2002, as may be amended from time to time, and where complaints concerning incident(s) of Unauthorised Provisioning of Service cannot be resolved in accordance with Clause 6.2, or within ten (10) Working Days of the Gaining Access Seeker being notified pursuant to Clause 5.2, the Losing Access Seeker shall have the option of requesting the President of the Law Society of Ireland to nominate a single arbitrator to adjudicate upon the complaint. The decision of such arbitrator shall be final and binding in its entirety upon the Parties. Nothing in this Clause shall alternatively prevent a Party from exercising its rights pursuant to Clause 12.9 of the Main Body of the Agreement.

## **7. Charging Structure**

- 7.1 The charges for Unbundled Local Metallic Path shall be as set out in the eircom ARO Price List, including the charges for Line Categorisation.

## **8. Migration Services**

- 8.1 Migration Services to and from the GLUMP Service are as set out in the Migrations Product Description.
- 8.2 Subject to Clause 8.3 below, Migration orders shall be subject to the requesting Access Seeker obtaining a complete Wholesale Operator Consent Form "WCOF") or a complete Customer Authorisation Form (CAF), if applicable.
- 8.3 (i) Without prejudice to the generality of Clause 8.2 above, it shall not be mandatory for the Gaining Access Seeker to procure and/or furnish a CAF in respect of CAF Exceptions, provided however that where the Gaining Access Seeker decides not to procure and/or furnish such a CAF, eircom shall have no liability for any loss or damage to the customer which arises directly and solely from the absence of such a CAF.
- (ii) The Gaining Access Seeker will, subject to sub-clause (iv) below, indemnify and hold eircom harmless against any and all direct claims, demands, actions, damages, costs and expenses for loss or damage to the customer which arise directly and solely from the Gaining Access

Seeker's decision not to procure and/or furnish a CAF in respect of a CAF Exception, (the "Indemnity"), provided always that:

- (g) The total aggregate liability of the Gaining Access Seeker arising under the indemnity shall not exceed the amount of fifty thousand euro (€50,000) for any event or series of connected events and up to two hundred and fifty thousand euro (€250,000) for all events (connected or unconnected) in any period of twelve (12) consecutive months. For the avoidance of doubt the transfer of a block of lines for one customer shall be deemed one event;
- (h) The Gaining Access Seeker shall not be liable under the Indemnity for consequential or indirect loss (meaning loss that is not reasonably foreseeable and arises indirectly or is not of an immediate and proximate result of the absence of a CAF); and
- (i) Any notice, demand or communication made by eircom under the Indemnity shall be in writing and shall be deemed to be duly served if served by registered post to:

Name/Title  
Company  
Address

The Gaining Access Seeker agrees that it shall not imply to the customer that any such damage or loss (i.e. loss or damage to the customer which arises directly and solely from the absence of a CAF) was the fault of eircom.

- (iii) In respect of Inter-operator Bulk Migrations, the Access Seeker or the Access Seeker's customer shall indemnify and hold eircom harmless in respect of any claims made by end users in respect of the provision of services on the lines from the date of Migration arising directly and solely from the absence of the CAF (the "Indemnity"). The Indemnity given in this sub-clause shall be subject to the provisions as set out in Clause 8.3(ii)(a),(b), and (c) and sub-clause (iv) shall apply.
- (iv) In order for eircom to recover from the Gaining Access Seeker under the Indemnity, eircom shall:
  - (i) Confirm its intention in writing to make a claim under the Indemnity within sixty (60) days after eircom becomes aware of the relevant facts, or ought reasonably to have become aware of those facts, and include a brief note of the facts of such confirmation:
  - (j) Take all reasonable steps to mitigate any such losses, claims, damages and liabilities, costs, charges and expenses and shall not compound, compromise, settle or admit those proceedings



without the prior written approval of the Gaining Access Seeker (not to be unreasonably withheld);

- (k) Allow the Gaining Access Seeker to conduct its own defence of such claims, demands, actions, damages, costs and expenses, and
- (l) Provide all reasonable assistance to the Gaining Access Seeker and make no admission prejudicial to the defence of such claims, demands, actions, damages, costs and expenses.

8.4 Migration Services will be subject to breaks in service as set out in the Migrations IPM. The Parties shall endeavour to minimise the break in service for individual end users.

## **ANNEX D**

### **Information on eircom Network**

The following information will be made available, for each Telephone Exchange in the eircom network pursuant to the Access Seeker's Request, on written request from Access Seekers. Requesting Access Seekers must have signed the necessary Non Disclosure Agreement.

- 1. STD code**
- 2. Number range**
- 3. Exchange code**
- 4. Site name**
- 5. Number of working lines**
- 6. Easting**
- 7. Northing**
- 8. MDF size – small, medium or large**
- 9. Bulk transfer of line test information**