

Subject to Contract/Contract Denied

**WHOLESALE BITSTREAM ACCESS
REFERENCE OFFERING**

From

eircom Limited

14/9/2012

WBARO Version 1.0

Subject to Contract/Contract Denied

This is not a legal document. eircom is not bound by this document and may amend it from time to time. This document is without prejudice to the legal position or the rights and duties of eircom.

Version	Status	Comment
Version 1.0	Proposed	

Preface

- 1.1 The Wholesale Bitstream Access Reference Offer, which is presented in the form of a standard contract, deals with specific Bitstream Services which eircom offers to Operators authorised under the Authorisation Regulations, operating in the Irish market.
- 1.2 eircom will not be responsible for the content of data conveyed through its Bitstream Service.
- 1.3 This Wholesale Bitstream Access Reference Offer takes effect from the date approved by the National Regulator and shall continue in effect until superseded by a revised Bitstream Reference Offer.
- 1.4 eircom reserves the right to review and to revise this Wholesale Bitstream Access Reference Offer on a regular basis. Further, eircom shall review and revise this Reference Offer when required to do so by the National Regulator acting in exercise of the powers conferred on by it by the Access Regulations. The National Regulator may also exercise its powers conferred by the Access Regulations in respect of compliance with the treatment of information exchanged between parties in respect of this Reference Offer.
- 1.5 Any revision of the terms of this Wholesale Bitstream Access Reference Offer shall be subject to the approval of the National Regulator. Once approved by the National Regulator, the revised Bitstream Reference Offer shall replace or amend this Wholesale Bitstream Access Reference Offer. Such revised or amended Wholesale Bitstream Access Reference Offer shall be published within one (1) week of its approval by the National Regulator. The implementation of such changes shall be subject to Clause 23 of this Agreement.
- 1.6 Without prejudice to the paragraph 1.5 above, where appropriate, eircom will consult with industry prior to the submission of revisions to the National Regulator.

Subject to Contract/Contract Denied

- 1.7 References to legislative provisions herein are to be construed as references to such provisions as the same may be amended from time to time.

Subject to Contract/Contract Denied

**STANDARD
BITSTREAM
AGREEMENT**

DATED

Between

Operator Name

And

eircom Limited

14/9/2012

WBARO Version 1.0

INDEX

1. Introduction
2. Definitions and Interpretation
3. Commencement and Duration
4. Bitstream Services and General Requirements
5. Charging for Bitstream Services
6. New Services
7. Billing and Payment
8. Network Safety and Protection
9. Provisioning, Operation and Maintenance
10. Resolution of Disputes
11. Breach, Suspension and Termination
12. Credit Assessment and Credit Risk Management
13. Confidentiality
14. Intellectual Property Rights
15. Review
16. Force Majeure
17. Limitation of Liability
18. Assignment of Rights and Obligations
19. Notices
20. Entire Agreement
21. Waiver
22. Severability
23. Amendments
24. Relationship of Parties
25. Governing Law

Annexes

Subject to Contract/Contract Denied

Annex A	Definitions
Annex B	Billing and Payments
Annex C	Service Schedules

This Bitstream AGREEMENT (hereinafter "Agreement" or "Bitstream Agreement")

is made on [Date] between [Operator Name] having its registered office at the [Operator Address] (hereinafter referred to as "the Operator" or "Operator")

and

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

1. Introduction

Whereas

- A. The Operator is authorised under the Authorisation Regulations to provide an electronic communication network or electronic communication service in Ireland.
- B. eircom is required to comply with obligations imposed in accordance with Regulations 5.6, 5.7 and 9 – 14 of the Access Regulations.
- C. The Parties entering into this Bitstream Agreement recognise the necessity of effective provision of quality telecommunications services to their respective customers and that accordingly:
 - (a) the Parties should exchange technical information willingly in order to make the provision of Bitstream Services effective, without prejudice to commercial confidentiality;
 - (b) the Parties should at all times act so as to facilitate the speedy and effective operation of this Bitstream Agreement, to the benefit of customers and to their mutual advantage;

- (c) in implementing services and facilities under this Bitstream Agreement, both Parties should endeavour to minimise the attendant costs, provided that this does not result in additional cost attribution to other products and services provided by either Party and is consistent with agreed quality standards.

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 Bitstream Agreement, except if the context requires otherwise, words and expressions are as defined in Annex A or the relevant Annex C Service Schedule.
- 2.2 References to Acts, Statutory Instruments and other legislation including European Community legislation are to such legislation as amended from time to time, any legislation of which it is a re-enactment and also includes any sub-ordinate legislation made from time to time under that legislation.
- 2.3 Terms defined in relevant European Union legislation concerning the provision of electronic communications networks and/or services 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, have the meanings ascribed to them in such legislation.
- 2.4 The following documents form part of this Bitstream 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. Main body of Bitstream Agreement including;

Annex A	Definitions
Annex B	Billing and Payments
Annex C	Service Schedules

2. Product Descriptions
3. eircom Bitstream Price List
4. Service Level Agreements
5. Forms – Billing and Order forms when submitted

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

3. Commencement and Duration

- 3.1 This Agreement takes effect on the date hereof and shall continue until:
- 3.1.1 the Operator ceases to be authorised to provide an electronic communications network or electronic communications service, pursuant to the provision of the Authorisation Regulations; or,
 - 3.1.2 termination pursuant to this Agreement.

4. Bitstream Services and General Requirements

- 4.1 The Service Schedules attached at Annex C provide detail on the services, which eircom will provide under this Agreement. Any variation to the terms of this Clause will be expressly stated in the respective Service Schedule.

- 4.2 The Operator shall not use the Bitstream Services or allow or permit any Customer to use the Operator Service:
- 4.2.1 other than in accordance with all applicable laws, including, but not limited to, the terms of any licence applicable to the Operator or the Customer (as applicable), data privacy laws, the laws of copyright and intellectual property rights;
 - 4.2.2 in any way that contravenes the criminal law or to export or re-export any material in violation of any applicable export control laws and regulations;
 - 4.2.3 other than in accordance with the acceptable usage policies of any connected networks
 - 4.2.4 other than in accordance with any instructions and/or notice given by eircom
 - 4.2.5 other than in accordance with the provisions of the applicable product description as specified in each Annex C Service Schedule..
- 4.3 The Operator shall include and maintain in its contracts with Customers provisions which are no less onerous than those contained in this Agreement. The Operator shall be responsible for the enforcement of all such provisions with Customers.
- 4.4 The Operator acknowledges and agrees that it is the Operator's sole responsibility to ensure that, insofar as is required by national legislation, any Operator Material and third party material complies with all applicable laws and regulations. The Operator further acknowledges and agrees that eircom

has no responsibility in relation to any such Operator Material or third party material.

- 4.5 Due to eircom's Universal Service Obligations, the Operator shall use its reasonable endeavours to ensure the continuing integrity of eircom voice services during installation and operation of the IP Service. If during the term of this Agreement eircom's Universal Service Obligation is affected or degraded the Operator will use its best endeavours to work with eircom to resolve the matter and shall comply with all established current industry processes.
- 4.6 The Operator shall indemnify eircom, its employees, servants and agents in full on demand against any liability, loss, cost, damage and expense (including but not limited to reasonable legal fees) incurred by it and arising directly or indirectly from any claim or proceeding instituted or threatened against eircom by a third party alleging that:
- 4.6.1 the Service has been used in breach of the provisions of Clause 4.2; or
 - 4.6.2 resulting from the Operator's installation of any equipment relating to the Bitstream Services;
 - 4.6.3 the Operator Service is faulty or cannot be used by that third party; or.

4.6.4 the Operator's failure to comply with the terms of Clause 2.7 which disrupts and/or interferes with eircom's ability to fulfil its Universal Service Obligations.

4.6.5 In order for eircom to recover from the Gaining Operator 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 Operator(not to be unreasonably withheld);
- c. Allow the Operator to conduct its own defence of such claims, demands, actions, damages, costs and expenses, and
- d. Provide all reasonable assistance to the Operator and make no admission prejudicial to the defence of such claims, demands, actions, damages, costs and expenses.

5. Charging for Bitstream Services

- 5.1 The charging structure and charging levels applicable to each Service Schedule are as published in the eircom Bitstream Price List on the eircom website. Any change to these prices will be subject to the Publication Requirements. .

6. New Services

- 6.1 The Operator (Requesting Party) may, at any time, request from eircom (Requested Party) to avail of a service or facility which the Requested Party does not already make available. The Requesting Party and the Requested Party shall enter into negotiations in good faith for the provision of such service.
- 6.2 The Requesting Party shall provide the Requested Party with a written statement of its requirements. The Requested Party shall acknowledge receipt of such a statement of requirements not later than five (5) Working Days after receipt.
- 6.3 Not later than one (1) month, unless otherwise agreed by the Parties, after receipt of a statement of requirements, the Requested Party shall confirm whether the statement of requirements is sufficient. If not, the Requested Party shall request any further clarification it may reasonably require.
- 6.4 Subject to the Requesting Party's statement of requirements being sufficient, the Requested Party shall confirm in writing whether it agrees to provide the service described in the statement of requirements not later than two (2) months after the receipt of the statement of requirements unless otherwise agreed by the Parties. Where the Requested Party declines to meet any such request it will give written reasons for its decision at the time of refusal.
- 6.5 If the Requested Party agrees to provide the new service, the Requested Party shall endeavour to agree the technical and commercial aspects of the new Bitstream Service within seventy five (75) calendar days after receipt of

the statement of requirements unless otherwise agreed by the Parties. The agreed technical and commercial terms will be incorporated into a revision to this Wholesale Bitstream Access Reference Offer and submitted to the National Regulator for approval in accordance with the Publication Requirements. eircom will automatically develop a Service Level Agreement for the new Bitstream Services where appropriate.

- 6.6 If the Requested Party does not agree to provide the service described in the statement of requirements on the ground that the obligations imposed on the Requested Party pursuant to Regulations 9-14 of the Access Regulations do not include an obligation to provide such a service, a Dispute may be deemed to have arisen between the Parties and the Parties may invoke the provisions of clause 11 hereof. Negotiations to agree agreeable terms may nevertheless continue pending resolution of the Dispute.
- 6.7 eircom shall offer new Bitstream Services to all operators and provide notice in accordance with the Publication Requirements .

7. Billing and Payment

- 7.1 eircom shall bill the Operator and the Operator shall remit payment to eircom in accordance with the provisions outlined in Annex B.
- 7.2 The charges in this Bitstream Agreement are exclusive of VAT. However VAT will be charged on invoices resulting from this Bitstream Agreement.
- 7.3 Invoices are due and payable in Euro. Invoices are payable within thirty (30) calendar days from the date of issue of the invoice.
- 7.4 eircom shall provide invoices of all amounts due to it, calculated in accordance with the provisions of the Services Schedules in Annex C hereof and the eircom Bitstream Price List.

8. Network Safety and Protection

8.1 Each Party is responsible for the safe operation of its Network and shall take all reasonable and necessary steps in its operation and implementation of this Bitstream 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 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. Provisioning, Operation and Maintenance

9.1 The procedures for the provisioning of the Bitstream Services as well as for the continued operation and maintenance thereof shall be as set out in the Service Schedules and the associated Product Descriptions, Process Manuals and Service Level Agreements.

10. Resolution of Disputes

10.1 Each Party shall use its reasonable endeavours to resolve any Disputes between them concerning the implementation, application or interpretation of this Bitstream Agreement, including those covered by Annex B, in the first

instance through negotiation between the parties through the normal contacts, hereinafter referred to as Level 1.

- 10.2 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 to that effect upon the other Party. The Party serving the notice (the Disputing Party) shall include with such notice all relevant details including the nature and extent of the Dispute.
- 10.3 Upon service of such notice the Dispute shall be escalated to Level 2. The parties shall consult at Level 2 in good faith to endeavour to resolve the Dispute.
- 10.4 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 to the other escalate the Dispute for determination by the National Regulator in accordance with Regulation 31 and/or Regulation 32 of the Framework Regulations, as appropriate, hereinafter referred to as Level 3. All relevant details with regard to the nature and extent of the Dispute shall be furnished to the National Regulator together with a record of matters which have been agreed or not agreed at Levels 1 and 2.
- 10.5 The name of each Party's liaison contact and representative at each level of consultation shall be as specified in the clause 19. No change to a liaison contact or representative shall be effective until it has been notified to the other Party.
- 10.6 The time limits specified at paragraphs 10.2 and 10.4 above may be extended by mutual agreement between the Parties.
- 10.7 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 Bitstream Agreement.

10.8 Nothing herein contained shall prevent a Party from:

- (a) seeking (including obtaining or implementing) interlocutory or other immediate or equivalent relief; or
- (b) notwithstanding Clause 10.1, automatically referring the dispute to the National Regulator in accordance with Regulation 31 and/or Regulation 32 of the Framework Regulations, as appropriate, 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.

10.9 Where a dispute arises in relation to an amount payable in respect of an invoice then the Operator 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 and the written dispute is received by eircom prior to the payment Due Date..

10.10 Where the Operator invokes the provisions of this Clause after the Due Date of a disputed invoice, then the Operator shall not be entitled to withhold any portion of the amount due and payable. The Operator shall be entitled to raise a billing dispute within twenty four (24) months of the end of the disputed billing period.

10.11 In the event either Party identifies an undetected billing error which may have resulted in either under or over billing with twenty four (24) months of the billing period, the Party may raise this matter along with all relevant material and/or information. Upon review and consideration of the available information the Parties may issue a supplemental invoice or credit as appropriate.

10.12 Following resolution of the dispute, the Parties will issue a credit or tender payment as appropriate.

11. Breach, Suspension and Termination

- 11.1 If the Operator's Network adversely and materially affects the normal operation of the eircom Network, or is a threat to any person's safety, eircom may suspend, to the extent necessary, such of its obligations hereunder, and for such period as it may consider reasonable to ensure the normal operation of its Network or to reduce the threat to safety. Where possible all reasonable efforts to resolve bilaterally shall be made before service is suspended. Eircom shall contact the Operator's network operation centre and inform the Operator of the suspension, where possible in advance but in any case as soon as possible.
- 11.2 If either Party is in material breach of this Bitstream Agreement (excluding failure to pay an undisputed sum due hereunder which is subject to Clauses 11.10 through 11.15, the other Party may serve a written notice (the "breach notice") on the Party in breach specifying the breach and requiring it to be remedied within:
- 11.2.1 30 calendar days from the date of receipt of such breach notice; or
 - 11.2.2 in case of emergency (excluding financial obligations) within such shorter period as the Party not in breach may reasonably specify
- 11.3 If the Party in breach fails to remedy the breach within the period stated in the breach notice, the other Party may terminate this Bitstream Agreement on two weeks' written notice provided always that if the Party in breach remedies the breach within such two weeks' notice period, this Bitstream Agreement shall not terminate as a result of such notice.
- 11.4 This Bitstream Agreement may be terminated by either Party by written notice forthwith (or on the termination of such other period as such notice may specify) if the other Party:

Subject to Contract/Contract Denied

- 11.4.1 is unable to pay its debts within the meaning of the Companies Acts 1963 - 2001; or
 - 11.4.2 has a Receiver or Examiner appointed or has been subject to an application for the appointment of a Receiver or an Examiner in relation to all or any of its assets or an encumbrancer has taken possession of all or a material part of its assets; or
 - 11.4.3 has an order made or a resolution passed for its winding up (other than for the purpose of amalgamation or reconstruction); or
 - 11.4.4 enters into a voluntary arrangement with creditors under the Companies Acts 1963 - 2001; or
 - 11.4.5 ceases to carry on business.
- 11.5 In the event the Parties fail to reach agreement on a matter arising pursuant to Clause 15.1.2 where the material change removes a regulatory obligation(s) from eircom in accordance with the terms of Clause 15, eircom shall be entitled to issue a termination notice to take effect in thirty (30) days in respect of that portion of the Agreement (or Bitstream Service(s)) 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 period as may be agreed between the Parties acting reasonably, from the service of the review notice pursuant to Clause 15.1.2.
- 11.6 The Operator may terminate this agreement at any time by giving eircom not less than twelve (12) months written notice.
- 11.7 Without prejudice to eircom's rights upon termination of this Bitstream Agreement, eircom shall refund to the Operator a fair and equitable proportion of those periodic sums (if any) paid under this Bitstream Agreement for any period extending beyond the date of such termination.
- 11.8 Termination of this Bitstream Agreement shall not be deemed a waiver of a breach of any term or condition of this Bitstream Agreement and shall be

without prejudice to a Party's rights, liabilities or obligations that have accrued prior to such termination.

- 11.9 Notwithstanding the termination or expiry of this Bitstream Agreement clauses 11.6, 13, 14 and 17 inclusive shall continue in full force and effect for a period of six (6) years from the date of termination unless otherwise agreed by the Parties.
- 11.10 eircom's right to terminate or suspend performance of this Bitstream Agreement pursuant to this clause 11 is without prejudice to any other rights or remedies available to either Party. In particular nothing contained herein shall prevent a Party who has been served with a breach notice pursuant to clause 11.2 hereof (and who is of the reasonable opinion that no such material breach has occurred) referring the matter to the National Regulator for determination. The Parties shall use their best endeavours to ensure that the National Regulator shall determine the issue as expeditiously as possible after hearing submissions and representations from both Parties. The remedies available to the Party alleging a breach under this clause 11 by the other Party shall not be exercised by it pending adjudication on the matter by the National Regulator.
- 11.11 In the event that the Operator fails to remit payment for services under this Agreement in accordance with the provisions of Annex B, Billing and Payment, such failure shall constitute a material breach ("Payment Breach") and eircom shall be entitled to issue a breach notice requiring this breach to be remedied within ten (10) calendar days or such longer time as eircom may deem reasonable under the circumstances save for circumstances governed by sub-clause 11.15.
- 11.12 If the Operator remedies the breach within the period set out in Clause 11.15 eircom shall not terminate the Agreement provided that Clause 11.15 does not apply.

- 11.13 In the event the Operator fails to remedy the Payment Breach within the time provided in the breach notice, eircom may initiate credit vetting as defined in clause 12 of this Agreement. The purpose of this vetting is to establish whether the non-payment is likely to cause a specific financial risk to eircom, due to the financial circumstances of the Operator.
- 11.14 If justified by credit vetting, eircom may request a financial security guarantee following the principles outlined in clause 12.
- 11.15 Failure (within the time specified in Clause 12) or refusal (at any time) by the Operator to provide a financial guarantee shall give eircom the right to terminate the agreement with ten (10) calendar days notice.
- 11.16 If, following the service of three previous breach notices, a Party is in Payment Breach on a fourth occasion during a twenty-four month period, this Agreement may be terminated by eircom by the service of a written notice of termination on the Operator. Termination shall take effect thirty (30) calendar days from the date of issue of the notice. Termination may be effected regardless of whether or not the Payment Breach is remedied during this period. The payment obligations survive termination.

12. Credit Assessment and Credit Risk Management

- 12.1 eircom may carry out credit vetting of a prospective Operator prior to establishing a Bitstream Agreement. The method to be used by eircom will be communicated to the Operator and will be applied consistently to all Operators.
- 12.2 Should the result of the credit vetting of a prospective Operator confirm that the provision of Bitstream Services poses a financial risk which is greater than can be controlled by a credit limit (which eircom shall justify), eircom has the right to request a form of financial security. The level of security requested shall be proportional to the risk involved. The level of security shall take

account of factors such as the estimated value of services to be provided, and the projected liability. The financial security may be provided by a means such as bank deposit or guarantee, and eircom shall not unreasonably refuse to accept any other form of financial guarantee proposed by the Operator. The financial security will be subject to quarterly review during the first year of operation.

- 12.3 eircom may carry out credit vetting of an existing Operator where eircom has reasonable concern about the ability of the Operator to cover debts including without limitation where eircom has evidence of a poor payment history or the Operator's credit rating has been downgraded or threatened to be downgraded. The method to be used will be communicated to the Operator and will be standard to all Operators.
- 12.4 Should the result of credit vetting of an existing Operator confirm the existence of a financial risk, eircom has the right to request a form of financial security. The level of security requested shall be proportional to the risk involved and shall take due account of historic levels of payments, liability, payment frequency and credit terms. The financial security may be provided by a means such as bank deposit or guarantee, and eircom shall not unreasonably refuse to accept any other form of financial guarantee proposed by the Operator. The financial security will be subject to quarterly review and will be removed or reduced where the security or its level is no longer justified. eircom reserves the right to treat failure to provide an agreed security within thirty (30) days (or such longer period as eircom may reasonably allow) of the date of eircom's request as a breach of this Agreement.
- 12.5 For avoidance of doubt, any disputes relating to credit vetting and credit management shall be subject to the conditions set out in Clause 12 of this Agreement.

13. Confidentiality

- 13.1 The Parties agree to treat as confidential all information defined as such in the Non-Disclosure Agreement.
- 13.2 The contents of this Bitstream Agreement, either in one or more parts or in its entirety, may not be divulged to any Third Party, with the exception of the National Regulator, without the written consent of both Parties.

14. Intellectual property rights

- 14.1 Except as expressly otherwise provided in this Bitstream Agreement, Intellectual Property Rights shall remain the property of the Party creating or owning the same and nothing in this Bitstream 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.

15. Review

- 15.1 A Party may seek to amend this Bitstream Agreement by serving on the other a review notice if:
 - 15.1.1 either Party's authorisation is materially modified (whether by amendment or replacement); or
 - 15.1.2 a material change occurs in the law or regulations (including codes of practice whether or not having the force of law) governing electronic communications in Ireland or the EU; or
 - 15.1.3 a material change occurs, including enforcement action by any regulatory authority, which affects or reasonably could be expected to affect the commercial or technical basis of this Bitstream Agreement; or

- 15.1.4 this Bitstream Agreement is assigned or transferred by the other Party except if prior written consent to the assignment or transfer is not required under Clause 18 hereof.
- 15.1.5 a Party initiates a general review of the Bitstream Agreement during the three (3) month period commencing on the 1st October in any year.
- 15.2 A review notice shall set out in reasonable detail the issues to be discussed between the Parties.
- 15.3 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 Bitstream Agreement.
- 15.4 For the avoidance of doubt, the Parties agree that notwithstanding service of a review notice this Bitstream Agreement shall remain in full force and effect.
- 15.5 Save for a review notice served pursuant to Clause 15.1.2 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:
- 15.5.1 the matters upon which the Parties have failed to agree;
- 15.5.2 whether this Bitstream Agreement should be modified to take account of such matters; and, if so
- 15.5.3 the amendment or amendments to be made.
- 15.6 The Parties shall enter into an agreement to modify or replace this Bitstream Agreement in accordance with what is agreed between the Parties to conform with the National Regulator's determination.

- 15.7 Any failure to reach agreement on the subject matter of a review notice pursuant to Clause 15.1.2 where the material change removes a regulatory obligation from eircom shall be subject to Clause 11.5 of this Agreement.
- 15.8 The Parties may, at any time, agree in writing a variation to the time periods specified above in relation to a particular review notice.

16. Force Majeure

- 16.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligation under this Bitstream Agreement caused by a Force Majeure Event. For such purposes a "Force Majeure Event" means any event beyond the reasonable control of a Party, including act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority, compliance with any statutory, regulatory or legal obligation industrial disputes of any kind (whether or not involving either Party's employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, acts or omission of persons for whom neither Party is responsible or any other cause whether similar or dissimilar outside its reasonable control.
- 16.2 The Party initially affected by a Force Majeure Event shall promptly notify the other of the circumstances in question and their effect on the performance of obligations under this Bitstream Agreement, and the estimated extent and duration of its inability to perform or delay in performing its obligations ("Force Majeure Event notification").
- 16.3 Upon cessation of the service effects of the Force Majeure Event the Party initially affected by a Force Majeure Event shall promptly notify the other of such cessation.
- 16.4 If as a result of a Force Majeure Event, the performance by the Party, initially affected, of its obligations under this Bitstream Agreement is affected, such

Party shall, subject to the provisions of clause 16.6, perform those of its obligations not affected by a Force Majeure Event. In performing those of its obligations not affected by a Force Majeure Event, the Party initially affected by a Force Majeure Event shall deploy its resources such that (when taken together with other obligations to its customers and Third Parties) there is no undue discrimination against the other Party.

- 16.5 Each Party shall use its reasonable endeavours: (i) to avoid or remove the circumstances constituting Force Majeure, and (ii) to mitigate the effect of the Force Majeure as and when it exists.
- 16.6 To the extent that a Party is prevented as a result of a Force Majeure Event from providing all of the services or facilities to be provided under this Bitstream Agreement, the other Party shall be released to the equivalent extent from its obligations to make payment for such services or facilities or complying with its obligations in relation thereto.
- 16.7 Following a Force Majeure Event notification and if the effects of such Force Majeure Event continue for:
- 16.7.1 a continuous period of not more than 6 months from the date of the force majeure notification (whether or not notice of cessation has been given pursuant to clause 16.3) any obligation outstanding shall be fulfilled by the Party initially affected by the Force Majeure Event as soon as reasonably possible after the effects of the Force Majeure Event have ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party;
- 16.7.2 a continuous period of 6 months or more from the date of the Force Majeure Event notification (and notice of cessation has not been given pursuant to clause 16.3), the Party receiving the Force Majeure Event notification shall be entitled (but not obliged) to terminate this Bitstream Agreement by giving not less than thirty (30) Working Days written notice to the other Party, provided that such notice shall be deemed not

to have been given if notice of cessation is received by the Party receiving the force majeure notification prior to the expiry of the thirty (30) Working Days notice. If this Bitstream Agreement is not terminated in accordance with the provisions of this clause 16.6.2, any obligations outstanding shall be fulfilled by the Party initially affected by the force majeure as soon as reasonably possible after the effects of the force majeure have ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party.

17. Limitation of Liability

- 17.1 Neither Party has an obligation of any kind to the other Party beyond an obligation to exercise the reasonable skill and care of a competent electronic communications operator in performing its obligations under this Bitstream Agreement.
- 17.2 Subject to clause 16.4, if a Party is in breach of any of its obligations under this Bitstream Agreement to the other Party (excluding obligations arising under this Bitstream Agreement to pay moneys in the ordinary course of business), or otherwise (including liability for negligence or breach of statutory duty) such Party's liability to the other shall be limited to one and a quarter million EURO (€1,250,000) for any one event or series of connected events and two and a half million EURO (€2,500,000) for all events (connected or unconnected) in any period of 12 calendar months.
- 17.3 Neither Party shall be liable to the other in contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings, wasted expenditure or for any indirect or other consequential loss whatsoever arising in connection with the operation of this Bitstream Agreement, howsoever caused.

- 17.4 Each provision of clause 17 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.

18. Assignment of Rights and Obligations

- 18.1 Unless otherwise agreed in writing, and subject to clause 18.2, no rights, benefits or obligations under this Bitstream Agreement may be assigned or transferred, in whole or in part, by a Party without the prior written consent of the other Party. Such consent shall not be unreasonably withheld.
- 18.2 No consent is required under clause 18.1 for an assignment of rights, benefits or obligations under this Bitstream Agreement (in whole or in part) to a successor to all or substantially all of the assigning Party's Network to an Associated Company provided that such successor or Associated Company is authorised under the Authorisation Regulations, to operate the Network of the assigning Party.
- 18.3 The assigning Party shall promptly give notice to the other Party of any assignment permitted to be made without the other Party's consent. No assignment shall be valid unless the assignee/successor agrees in writing to be bound by the provisions of this Bitstream Agreement.

19. Notices

- 19.1 A notice shall be duly served if:
- 19.1.1 delivered by hand, at the time of actual delivery;
 - 19.1.2 sent by facsimile, upon its receipt being confirmed;
 - 19.1.3 sent by recorded delivery post, 4 calendar days after the day of posting.

19.2 Except if otherwise specifically provided all notices and other communications

relating to this Bitstream Agreement (Level 1) shall be in writing and shall be sent as follows:

If to the Operator:

Contact, Telephone 01 xxxxxxxx

Address, Facsimile 01 yyyyyyy

Address,

Address,

If to eircom:

Wholesale Contracts Manager

eircom Limited

1 Heuston South Quarter

St. John's Road

Dublin 8

Telephone: 01 600 4609

Facsimile: 01 428 6240

or to such other addresses as the Parties may notify from time to time pursuant to this clause 19.

19.3 The level 2 escalation points within the Parties in relation to resolution of disputes shall be as follows;

If to the Operator:

Contact Telephone 01 xxxxxxx

Address, Facsimile 01 yyyyyyy

Address,

Address,

Address,

Address

If to eircom:

Title

eircom Limited

1 Heuston South Quarter

St. John's Road

Dublin 8

Telephone: 01 600

Facsimile: 01 428 6240

20. Entire Agreement

20.1 This Bitstream Agreement represents the entire understanding of an agreement between the Parties in relation to the subject matter of this Bitstream Agreement, and, unless otherwise agreed in writing, supersedes all previous understandings, commitments, agreements or representations whatsoever, whether oral or written.

21. Waiver

21.1 The waiver of any breach of, or failure to enforce, any term or condition of this Bitstream Agreement shall not be construed as a waiver of any other term or condition of this Bitstream Agreement. No waiver shall be valid unless it is in writing and signed on behalf of the Party making the waiver.

22. Severability

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

23. Amendments

23.1 Any amendments, including price changes, to the eircom Bitstream Reference Offer specified by directions, decisions, determinations, specific obligations, obligations, measures and requirements of the National Regulator or other competent regulatory or statutory body, or introduced via the Publication Requirements shall be deemed to be automatically incorporated into this Bitstream Agreement with immediate effect or such alternative date as specified by the National Regulator or such other body .

23.2 Notwithstanding Clause 23.1, the automatic incorporation of changes in the Bitstream Agreement shall apply only to the Party subject to the obligations and to extent that the mandating body has jurisdiction to impose such obligations.

23.3 All other changes to this Bitstream Agreement shall be in writing and agreed between the parties to become effective and binding upon the Parties, including any amendment to add new Bitstream Services .

24. Relationship of Parties

24.1 The relationship between the Parties is that of independent contractors. Nothing in this Bitstream 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 Bitstream Agreement.

25. Governing Law

27.1 The interpretation, validity and performance of this Bitstream 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 Operator**:

[SIGNATURE]

[NAME (BLOCK CAPITALS)]

[POSITION]

[DATE]

SIGNED for and on behalf of **eircom**:

[SIGNATURE]

[NAME (BLOCK CAPITALS)]

[POSITION]

[DATE]

Annex A

Defintions

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

“Actual Date of Delivery”

means the date on which a Bitstream Backhaul Service actually comes into service.

“Bitstream Port”

is the capability to provide a Product to an In Service telephone number/CLI.

"Bitstream Port

Transfer"

means a service that can be used by a Gaining Operatr to move a Bitstream Port from the Losing Operator's network to the Gaining Opreatorr's network to a Bitstream Product of the Gaining Operator's choosing.

“Bitstream Services”

means the Bitstream access and Bitstream Backhaul services offered under this Agreement and for which the Operator has executed Service Schedules.

“Bulk Migration”

means a multiple migration that is at least equal to fifteen (15) lines in a given exchange.

“Commencement Date of Charging”

means the date on which charging for a Bitstream Backhaul Service commences.

“Customer Authorisation

Form (“CAF”)

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

“ Transfer Authorisation

Form (“TAF”)

means the form authorising the Gaining Operator to submit the request to transfer on behalf of a Customer for the Bitstream Service only..

“CAF Exceptions”

means Migratons that are exempt from the requirement to have a CAF and are:

- i. Intra-operator Migrations, including Intra Operator Bulk Migrations; and
- ii. Inter-Operator Bulk Migrations which require a Wholesale Operator Consent Form.

“Customer”	means a person subscribing to the Operator’s Service, including without limitation, end users and resellers.
“Gaining Operator”	means an authorised Operator that is an Operator of the eircom Bitstream Service according to the Bitstream Agreement, and gains a Customer through the Bitstream Port Transfer service or Migrations.
“In Service”	means an existing access connection where eircom receives rental from a customer or another authorised operator;
“Intellectual Property Rights”	means any patent, patent application, copyright, moral right, trade name, trade mark, service mark, trade secret, copyright, and any applications or right to apply for registration therefor, internet domain names, logos, designs, slogans, and general intangibles of like nature, computer software programs or applications, tangible or intangible proprietary information, know-how, proprietary processes, formulae, algorithms, or any other intellectual property right, whether registered or unregistered, and whether first made or created before, on, or after the Commencement Date;

“Interest Rate”	means Euribor + four percent (4%) (three month rate) applied to the amount in default.
“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 thall 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 Migrations”	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 Migration”	means the facility that allows for a Bulk Migration for 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. 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.

“Losing Operator”

means an authorised Operator that is an Operator of the eircom Bitstream Service according to the Bitstream Agreement, and loses a Customer through the Bitstream Port Transfer service or Migrations;

“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 Migration Product Description. The controlling version is the latest document published on eircom’s website in accordance with the applicable Publication Requirements.

“Minimum Term”

means the minimum period during which the Operator commits to keep and pay for a New Product Order on a Bitstream Port. This period shall commence on the date eircom starts billing for that Product on a Bitstream Port and shall continue for six months thereafter.

- “National Regulator”** means the Commission for Communications Regulation or any person or body designated as the National Regulatory Authority pursuant to Council Directive 90/388/EEC.
- “New Product Order”** means any of the following types:
- a) an order to provide a Product to an In Service telephone number/CLI under this Agreement;
 - b) an order for an upgrade or downgrade of a Product on a Bitstream Port; or
 - c) an order for Bitstream Port Transfer on a Bitstream Port.
- “NTU”** means Network Termination Unit;
- “NTU Installation Manual”** means the document which defines the responsibilities of all parties involved in the access, provision and repair of different types of services using eircom’s Access Network. Specifically this document defines the procedures and standards to which any party including the Customer, installing a NTU at the Customer’s premises for Bitstream provisioning on copper paths, should adhere to.
- “Operator Material”** means data, information, video, graphics, sound, music, pictures, text, code, scripts, photographs, software and any other material (in whatever form) published or otherwise made available (directly or

indirectly) by or on behalf of the Operator using the Service.

“Operator Service” means the service provided by the Operator Seeker to the Customer using the Service;

“Product” means singularly, each variant of the products set out in service schedules of Annex C as may be updated and re-published from time to time.

“Publication Requirements” means those requirements for publication as set out in in decisions of the National Regulator, including without limitation:

Response to Consultation and Decision: Market Review: Wholesale Broadband Access (Market 5), Decision No. D06/11, Document No. 11/49 dated 8 July 2011.

and any subsequent decision or direction of the National Regulator.

“Repeated Unauthorised Use of the Bitstream Port Transfer”

means more than two occasions of Unauthorised Use of the Bitstream Port Transfer in any rolling 12 month period;

“Service” means the eircom service known as eircom’s Bitstream Service which is more specifically

described in Annex C, Service Schedule or Service Schedule x.

“Working Day”

means 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.

“Unauthorised Use of the Bitstream Port Transfer”

means more than three (3) percent of an Operator’s Bitstream Port Transfer orders in a given month that were found to not have a supporting Transfer Authorisation Form and/or did not comply with the processes, procedures, and standards for the Bitstream Port Transfer service set out in the Bitstream Industry Process Manual.

“Universal Service Obligations”

means a defined minimum set of services of specified quality which is available to all users independent of their geographic location and in the light of specific national conditions, at an affordable price.

“Usage Charge”

means the amount of time that exceeds the levels set in the Price List or Product Description at the rates set out therein. The amount charged per month shall not exceed the Cap amounts set out therein.

“Wholesale Operator

Consent Form”

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 (as defined in the eircom Access Reference Offer) (pro forma WOCF is in the Migrations Product Description).

Annex B

BILLING AND PAYMENT

1. The Operator shall be liable to pay eircom for the charges set out in the eircom Bitstream List ("the Charges") arising from its purchase of Bitstream Services under this Agreement.
2. The billing intervals shall be set out in each Annex C, Service Schedule respectively.
3. The Operator shall pay any Value Added Tax exigible on any of the charges raised pursuant to the terms of this Agreement.
4. Unless explicitly stated otherwise in this Agreement 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.
5. eircom will provide billing information in relation to each invoice.
6. 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 10 of this Agreement.

Annex C Service Schedules

Bitstream Access Services

Service Schedule

Number

Description

Minimum Term

001	Bitstream Internet Protocol (with Minimum Term contract)
➤ 002	Bitstream Managed Backhaul (with Minimum Term contract)
➤ 003	Bitstream Virtual Circuit (with Minimum Term contract)
➤	
➤ Applicable Cease Fees	
➤ 101	Bitstream Internet Protocol (with Cease contract)
➤ 102	Bitstream Managed Backhaul (with Cease contract)
➤ 103	Bitstream Virtual Circuit (with Cease contract)

Bitstream Backhaul Services

➤ **Service Schedule**

➤ **Number**

Description

➤ 201	Bitstream Ethernet Connection Service
➤ 202	Bitstream Connection Service

Annex C

Service Schedule 001

Bitstream Internet Protocol (with Minimum Term contract)

This Service Schedule is effective from the date of signature of this Bitstream Agreement and/or an Amendment 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 Schedule, a reference to a paragraph, unless stated otherwise, is to a paragraph of this Schedule. Words and expressions have the meanings give in Annex A, except as otherwise expressly stated in this Schedule.

1.2 The documents referenced in this Service Schedule that are contractually binding:

a. Bitstream Services Product Description (“Bitstream Product Description”)

b. Bitstream Service Level Agreement (“SLA”)

The controlling document is the latest version of the above titled document published on eircom's website in accordance with the Publication Requirements.

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

a. Bitstream Inter operator Maintenance Process Manual (“Bitstream IPM”)and,

b. The NTU Installation Manual. (“NTU Installation Manual”)

All references are to the latest version published on eircom’s website as agreed with the National Regulator with industry input in respect of developments and/or changes.

2. Conditions of IP Service

2.1 The Service is only available:

2.1.1 for Customers directly connected to the eircom network;

2.1.2 on those eircom PSTN copper lines currently In Service within the defined ADSL regional areas.

2.1.3 where the copper pairs have been deemed suitable by eircom for the provision of the Service in accordance with the Industry Process Manual;

2.2 Where a Customer’s PSTN service is terminated, eircom shall be entitled to terminate the Service to such Customer.

2.3 Use of the IP Service may be restricted by eircom as required by applicable law. Eircom shall promptly notify the Operator if it invokes this clause.

2.4 The Operator agrees that from time to time it may be necessary for eircom to temporarily suspend the Service during periods of repair, essential maintenance or alteration or improvement to eircom’s network. In the case of planned outage eircom will give the Operator five (5) Working Days’ notice

prior to such suspension of service and eircom will restore service as soon as possible after such suspension.

- 2.5 eircom does not warrant that the IP Service will meet the Operator's requirements or the requirements of any third party or that the operation of the Service will be uninterrupted or error-free or that any defect in the Service can be remedied.
- 2.6 The Parties shall use the reasonable commercial endeavours to provide such information as the other Party may reasonably require in order for the Parties to perform its obligations under this Bitstream Agreement.
- 2.7 eircom may give the Operator instructions which eircom reasonably believes are necessary for reasons of health, safety, or the quality of any telecommunications service provided by eircom to the Operator or any other person.
- 2.8 The Parties shall abide by the processes, procedures and standards set out in the Bitstream Industry Process Manual, the NTU Installation Manual, and such other industry developments related to this Service as some may be updated or modified from time to time. These documents are not contractually binding.

3 IP Service (subject to a Minimum Term)

- 3.1 The charges and/or charging principles for IP Service are as set out in the Bitstream Price List.
- 3.2 eircom shall be entitled to invoice the Operator in accordance with the

charging intervals set out in the Bitstream Price List for the IP Service .

- 3.3 The Operator shall remit payment for the IP Service by the Due Date.
- 3.4 The Operator shall be liable for charges associated with the Minimum Term for the IP Service.
- 3.5 In the event that the IP Service is either upgraded to a higher available Product or downgraded to a lower available Product, a Minimum Term shall apply to the new Product.

4. Bitstream Port Transfer

- 4.1 The Bitstream Port Transfer service is available for use by an Operator who has secured a DSL Transfer Authorisation Form (DTAF), as defined in Schedule 1, from a Customer, and complies with the processes, procedures, and standards for the Bitstream Port Transfer service set out in the Bitstream Industry Process Manual, Section 3.4.5.1.1.
- 4.2 In all instances the Operator shall retain these DTAFs for at six (6) months from the date of submitting the Bitstream Port Transfer order. If a Customer complains to a Losing Operator regarding the change of the service provider, the Losing Operator is entitled to request a copy of the DTAF, and the Gaining Operator must provide a true copy of the DTAF to that operator within two (2) Working Days. If the Losing Operator is not satisfied with the copy of the DTAF produced by the Gaining Operator, then the Gaining Operator must provide access to the original DTAF within two (2) Working Days.
- 4.3 A Party shall not engage in the Unauthorised Use of the Bitstream Port Transfer services. Nothing in this Clause 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. Where an

incident(s) of Unauthorised Use of the Bitstream Port Transfer service is detected by either Party, the incident(s) shall be notified to the Gaining Operator. Each Party shall use their best endeavours to resolve the matter. . Where complaints concerning incident(s) of Unauthorised Provisioning of Bitstream Port Transfer services cannot be resolved in accordance with this Clause, or within ten (10) Working Days of the Gaining Operator being notified pursuant to Clause 5.2, the Losing Operator 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.

4.4 The provisions of this Clause 5 shall apply to CAFs and Migrations.

5. **Migration Services**

5.1 Migration Services to and from the Bitstream Services, including the IP Service, are as set out in the Migrations Product Description.

5.2 Subject to Clause 5.3 below, Migration orders shall be subject to the requesting Operator obtaining a complete Wholesale Operator Consent Form (“WCOF”) or a complete CAF), if applicable.

5.3 (i) Without prejudice to the generality of Clause 5.2 above, it shall not be mandatory for the Gaining Operator to procure and/or furnish a CAF in respect of CAF Exceptions, provided however that where the Gaining Operator 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 Operator will, subject to sub-clause (iv) below,

Subject to Contract/Contract Denied

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 Operator'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 Operator 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 Operator 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 the Notice contact in this Bitstream Agreement. The Gaining Operator 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 Operator or the Operator Customer shall indemnify and hold eircom harmless in respect of any claims made by customers in respect of the provision

Subject to Contract/Contract Denied

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 5.3(ii)(a),(b), and (c) and sub-clause (iv) shall apply.

- (iv) In order for eircom to recover from the Gaining Operator 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 Operator(not to be unreasonably withheld);
 - c. Allow the Gaining Operator to conduct its own defence of such claims, demands, actions, damages, costs and expenses, and
 - d. Provide all reasonable assistance to the Gaining Operator and make no admission prejudicial to the defence of such claims, demands, actions, damages, costs and expenses.

5.4 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

Subject to Contract/Contract Denied

for individual end users.

Annex C

Service Schedule 002

Bitstream Managed Backhaul (“Bitstream MB”)

(with Minimum Term contract)

This Service Schedule is effective from the date of signature of this Bitstream Agreement and/or an Amendment 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 Schedule, a reference to a paragraph, unless stated otherwise, is to a paragraph of this Schedule. Words and expressions have the meanings give in Annex A, except as otherwise expressly stated in this Schedule.

1.2 The documents referenced in this Service Schedule that are contractually binding:

- a. Bitstream Services Product Description (“Bitstream Product Description”)
- b. Bitstream Service Level Agreement (“ Bitstream SLA”)

The controlling document is the latest version of the above titled document published on eircom's website in accordance with the Publication Requirements.

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

- a. Bitstream Inter operator Maintenance Process Manual (“Bitstream IPM”), and
- b. The NTU Installation Manual. (“NTU Installation Manual”)

All references are to the latest version published on eircom's website as agreed with the National Regulator with industry input in respect of developments and/or changes.

2. Conditions of Bitstream MB Service

2.1 The Service is only available:

2.1.3 for Customers directly connected to the eircom network;

2.1.4 on those eircom PSTN copper lines currently In Service within the defined ADSL regional areas.

2.1.3 where the copper pairs have been deemed suitable by eircom for the provision of the Service in accordance with the Industry Process Manual.

2.2 The requirements for ordering Bitstream MB Service shall be as set out in the Bitstream Product Description and/or Bitstream IPM. Specifically, it is a condition precedent to the acceptance of an order for the Bitstream MB Service that the Operator must have in place the requisite Bitstream Ethernet Connection service.

2.3 Where a Customer's PSTN service is terminated, eircom shall be entitled to terminate the Service to such Customer.

2.4 Use of the Bitstream MB Service may be restricted by eircom as required by applicable law and regulation. eircom shall promptly notify the Operator if this clause is invoked.

2.5 The Operator agrees that from time to time it may be necessary for eircom to temporarily suspend the Service during periods of repair, essential maintenance or alteration or improvement to eircom's network. In the case of planned outage eircom will give the Operator five (5) Working Days' notice prior to such suspension of service and eircom will restore service as soon as possible after such suspension.

Subject to Contract/Contract Denied

- 2.6 eircom does not warrant that the MB Service will meet the Operator's requirements or the requirements of any third party or that the operation of the Service will be uninterrupted or error-free or that any defect in the Service can be remedied.
- 2.7 The Parties shall use the reasonable commercial endeavours to provide such information as the other Party may reasonably require in order for the Parties to perform its obligations under this Bitstream Agreement.
- 2.8 eircom may give the Operator instructions which eircom reasonably believes are necessary for reasons of health, safety, or the quality of any telecommunications service provided by eircom to the Operator or any other person.
- 2.9 The Parties shall abide by the processes, procedures and standards set out in the Bitstream Industry Process Manual, the NTU Installation Manual, and such other industry developments related to this Service as some may be updated or modified from time to time. These documents are not contractually binding.

3. Bitstream MB Service (subject to a Minimum Term) Charging and Invoicing

- 3.1 The charges and/or charging principles for Bitstream MB Service are as set out in the Bitstream Price List.
- 3.2 eircom shall be entitled to invoice the Operator in accordance with the charging intervals set out in the Bitstream Price List for the MB Service.
- 3.3 The Operator shall remit payment for the Bitstream MB Service by the Due Date.
- 3.4 The Operator shall be liable for charges associated with the Minimum Term for the Bitstream MB Service regardless of whether or not the Bitstream VC Service is provided for that period.
- 3.5 In the event that the Bitstream MB Service is either upgraded to a higher available Product or downgraded to a lower available Product, a Minimum Term shall apply to

the new Product.

4. Bitstream Port Transfer

- 4.1 The Bitstream Port Transfer service is available for use by an Operator who has secured a DSL Transfer Authorisation Form (DTAF), as defined in Schedule 1, from a Customer, and complies with the processes, procedures, and standards for the Bitstream Port Transfer service set out in the Bitstream Industry Process Manual, Section 3.4.5.1.1.
- 4.2 In all instances the Operator shall retain these DTAFs for at six (6) months from the date of submitting the Bitstream Port Transfer order. If a Customer complains to a Losing Operator regarding the change of the service provider, the Losing Operator is entitled to request a copy of the DTAF, and the Gaining Operator must provide a true copy of the DTAF to that Operator within two (2) Working Days. If the Losing Operator is not satisfied with the copy of the DTAF produced by the Gaining Operator, then the Gaining Operator must provide access to the original DTAF within two (2) Working Days.
- 4.3 A Party shall not engage in the Unauthorised Use of the Bitstream Port Transfer services. Nothing in this Clause 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. Where an incident(s) of Unauthorised Use of the Bitstream Port Transfer service is detected by either Party, the incident(s) shall be notified to the Gaining Operator. Each Party shall use their best endeavours to resolve the matter. . Where complaints concerning incident(s) of Unauthorised Provisioning of Bitstream Port Transfer services cannot be resolved in accordance with this Clause, or within ten (10) Working Days of the Gaining Operator being notified pursuant to Clause 5.2, the Losing Operator 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.

4.4 The provisions of this Clause 5 shall apply to CAFs and Migrations.

5. Migration Services

5.1 Migration Services to and from the Bitstream Services, including the Bitstream MB Service, are as set out in the Migrations Product Description.

5.2 Subject to Clause 5.3 below, Migration orders shall be subject to the requesting Operator obtaining a complete Wholesale Operator Consent Form "WCOF") or a complete CAF), if applicable.

5.3 (i) Without prejudice to the generality of Clause 5.2 above, it shall not be mandatory for the Gaining Operator to procure and/or furnish a CAF in respect of CAF Exceptions, provided however that where the Gaining Operator 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 Operator 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 Operator'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 Operator 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;

Subject to Contract/Contract Denied

- b. The Gaining Operator 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 the Notice contact in this Bitstream Agreement. The Gaining Operator 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 Operator or the Operator Customer shall indemnify and hold eircom harmless in respect of any claims made by customers 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 5.3(ii)(a),(b), and (c) and sub-clause (iv) shall apply.
- (iv) In order for eircom to recover from the Gaining Operator 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

Subject to Contract/Contract Denied

not compound, compromise, settle or admit those proceedings without the prior written approval of the Gaining Operator(not to be unreasonably withheld);

- c. Allow the Gaining Operator to conduct its own defence of such claims, demands, actions, damages, costs and expenses, and
- d. Provide all reasonable assistance to the Gaining Operator and make no admission prejudicial to the defence of such claims, demands, actions, damages, costs and expenses.

5.4 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 003

Bitstream Virtual Circuits (“Bitstream VC”)

(with Minimum Term contract)

This Service Schedule is effective from the date of signature of this Bitstream Agreement and/or an Amendment 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 Schedule, a reference to a paragraph, unless stated otherwise, is to a paragraph of this Schedule. Words and expressions have the meanings give in Annex A, except as otherwise expressly stated in this Schedule.

1.2 The documents referenced in this Service Schedule that are contractually binding:

- a. Bitstream Services Product Description (“Bitstream Product Description”)
- b. Bitstream Service Level Agreement (“ Bitstream SLA”)

The controlling document is the latest version of the above titled document published on eircom's website in accordance with the Publication Requirements.

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

- a. Bitstream Inter operator Maintenance Process Manual (“Bitstream IPM”), and
- b. The NTU Installation Manual. (“NTU Installation Manual”)

All references are to the latest version published on eircom's website as agreed with the National Regulator with industry input in respect of developments and/or changes.

2. Conditions of Bitstream VC Service

2.1 The Service is only available:

2.1.5 for Customers directly connected to the eircom network;

2.1.6 on those eircom PSTN copper lines currently In Service within the defined ADSL regional areas.

2.1.3 where the copper pairs have been deemed suitable by eircom for the provision of the Service in accordance with the Industry Process Manual.

2.2 The requirements for ordering Bitstream VC Service shall be as set out in the Bitstream Product Description and/or Bitstream IPM. Specifically, it is a condition precedent to the acceptance of an order for the Bitstream VC Service that the Operator must have in place the requisite Bitstream Connection Service. The Operator must also have the requisite Bitstream Connection Service in place to support Migrations to the Bitstream VC Service.

2.3 Where a Customer's PSTN service is terminated, eircom shall be entitled to terminate the Service to such Customer.

2.4 Use of the Bitstream VC Service may be restricted by eircom as required by applicable law and regulation. eircom shall promptly notify the Operator if this clause is invoked.

2.5 The Operator agrees that from time to time it may be necessary for eircom to temporarily suspend the Service during periods of repair, essential maintenance or

Subject to Contract/Contract Denied

alteration or improvement to eircom's network. In the case of planned outage eircom will give the Operator five (5) Working Days' notice prior to such suspension of service and eircom will restore service as soon as possible after such suspension.

- 2.6 eircom does not warrant that the VC Service will meet the Operator's requirements or the requirements of any third party or that the operation of the Service will be uninterrupted or error-free or that any defect in the Service can be remedied.
- 2.7 The Parties shall use the reasonable commercial endeavours to provide such information as the other Party may reasonably require in order for the Parties to perform its obligations under this Bitstream Agreement.
- 2.8 eircom may give the Operator instructions which eircom reasonably believes are necessary for reasons of health, safety, or the quality of any telecommunications service provided by eircom to the Operator or any other person.
- 2.9 The Parties shall abide by the processes, procedures and standards set out in the Bitstream Industry Process Manual, the NTU Installation Manual, and such other industry developments related to this Service as some may be updated or modified from time to time. These documents are not contractually binding.

3. VC Service (subject to a Minimum Term) Charging and Invoicing

- 3.1 The charges and/or charging principles for Bitstream VC Service are as set out in the Bitstream Price List.
- 3.2 eircom shall be entitled to invoice the Operator in accordance with the charging intervals set out in the Bitstream Price List for the VC Service.
- 3.3 The Operator shall remit payment for the Bitstream VC Service by the Due Date.
- 3.4 The Operator shall be liable for charges associated with the Minimum Term for the

Bitstream VC Service regardless of whether or not the Bitstream VC Service is provided for that period.

- 3.5 In the event that the Bitstream VC Service is either upgraded to a higher available Product or downgraded to a lower available Product, a Minimum Term shall apply to the new Product.

4. **Migration Services**

- 4.1 Migration Services to and from the Bitstream Services, including the Bitstream VC Service, are as set out in the Migrations Product Description.

- 4.2 Subject to Clause 4.3 below, Migration orders shall be subject to the requesting Operator obtaining a complete Wholesale Operator Consent Form "WCOF") or a complete CAF), if applicable.

- 4.3 (i) Without prejudice to the generality of Clause 5.2 above, it shall not be mandatory for the Gaining Operator to procure and/or furnish a CAF in respect of CAF Exceptions, provided however that where the Gaining Operator 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 Operator 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 Operator'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 Operator 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

Subject to Contract/Contract Denied

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 Operator 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 the Notice contact in this Bitstream Agreement. The Gaining Operator 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 Operator or the Operator Customer shall indemnify and hold eircom harmless in respect of any claims made by customers 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 4.3(ii)(a),(b), and (c) and sub-clause (iv) shall apply.
 - (iv) In order for eircom to recover from the Gaining Operator 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:

Subject to Contract/Contract Denied

- 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 Operator(not to be unreasonably withheld);
- c. Allow the Gaining Operator to conduct its own defence of such claims, demands, actions, damages, costs and expenses, and
- d. Provide all reasonable assistance to the Gaining Operator and make no admission prejudicial to the defence of such claims, demands, actions, damages, costs and expenses.

4.4 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 101

Bitstream Internet Protocol (“Bitstream IP”)

(subject to Cease Contract)

This Service Schedule is effective from the date of signature of this Bitstream Agreement and/or an Amendment 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 Schedule, a reference to a paragraph, unless stated otherwise, is to a paragraph of this Schedule. Words and expressions have the meanings give in Annex A, except as otherwise expressly stated in this Schedule.

1.2 The documents referenced in this Service Schedule that are contractually binding:

- a. Bitstream Services Product Description (“Bitstream Product Description”)
- b. Bitstream Service Level Agreement (“ Bitstream SLA”)

The controlling document is the latest version of the above titled document published on eircom's website in accordance with the Publication Requirements.

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

- a. Bitstream Industry Process Manual (“Bitstream IPM”), and
- b. The NTU Installation Manual. (“NTU Installation Manual”)

All references are to the latest version published on eircom's website as agreed with the National Regulator with industry input in respect of developments and/or changes.

2. Conditions of Bitstream IP Service

2.1 The Service is only available:

2.1.1 for Customers directly connected to the eircom network;

2.1.2 on those eircom PSTN copper lines currently In Service within the defined ADSL regional areas.

2.1.3 where the copper pairs have been deemed suitable by eircom for the provision of the Service in accordance with the Industry Process Manual.

2.2 The requirements for ordering Bitstream IP Service shall be as set out in the Bitstream Product Description and/or Bitstream IPM. Specifically, it is a condition precedent to the acceptance of an order for the Bitstream IP Service that the Operator must have in place the requisite Bitstream Ethernet Connection service.

2.3 Where a Customer's PSTN service is terminated, eircom shall be entitled to terminate the Service to such Customer.

2.4 Use of the Bitstream IP Service may be restricted by eircom as required by applicable law and regulation. eircom shall promptly notify the Operator if this clause is invoked.

2.5 The Operator agrees that from time to time it may be necessary for eircom to temporarily suspend the Service during periods of repair, essential maintenance or alteration or improvement to eircom's network. In the case of planned outage eircom

Subject to Contract/Contract Denied

will give the Operator five (5) Working Days' notice prior to such suspension of service and eircom will restore service as soon as possible after such suspension.

- 2.6 eircom does not warrant that the Bitstream IP Service will meet the Operator's requirements or the requirements of any third party or that the operation of the Service will be uninterrupted or error-free or that any defect in the Service can be remedied.
- 2.7 The Parties shall use the reasonable commercial endeavours to provide such information as the other Party may reasonably require in order for the Parties to perform its obligations under this Bitstream Agreement.
- 2.8 eircom may give the Operator instructions which eircom reasonably believes are necessary for reasons of health, safety, or the quality of any telecommunications service provided by eircom to the Operator or any other person.
- 2.9 The Parties shall abide by the processes, procedures and standards set out in the Bitstream Industry Process Manual, the NTU Installation Manual, and such other industry developments related to this Service as some may be updated or modified from time to time. These documents are not contractually binding.

3. Bitstream IP Service Charging and Invoicing

- 3.1 The charges and/or charging principles for Bitstream IP Service are as set out in the Bitstream Price List. This Bitstream IP Service is subject to the application of the cease fees.
- 3.2 eircom shall be entitled to invoice the Operator in accordance with the charging intervals set out in the Bitstream Price List for the Bitstream IP Service.
- 3.3 The Operator shall remit payment for the Bitstream IP Service by the Due Date.

- 3.4 In the event that the Bitstream IP Service is either upgraded to a higher available Product or downgraded to a lower available Product, a Minimum Term shall apply to the new Product.

4. Bitstream Port Transfer

- 4.1 The Bitstream Port Transfer service is available for use by an Operator who has secured a DSL Transfer Authorisation Form (DTAF), as defined in Schedule 1, from a Customer, and complies with the processes, procedures, and standards for the Bitstream Port Transfer service set out in the Bitstream Industry Process Manual, Section 3.4.5.1.1.
- 4.2 In all instances the Operator shall retain these DTAFs for at six (6) months from the date of submitting the Bitstream Port Transfer order. If a Customer complains to a Losing Operator regarding the change of the service provider, the Losing Operator is entitled to request a copy of the DTAF, and the Gaining Operator must provide a true copy of the DTAF to that Operator within two (2) Working Days. If the Losing Operator is not satisfied with the copy of the DTAF produced by the Gaining Operator, then the Gaining Operator must provide access to the original DTAF within two (2) Working Days.
- 4.3 A Party shall not engage in the Unauthorised Use of the Bitstream Port Transfer services. Nothing in this Clause 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. Where an incident(s) of Unauthorised Use of the Bitstream Port Transfer service is detected by either Party, the incident(s) shall be notified to the Gaining Operator. Each Party shall use their best endeavours to resolve the matter. . Where complaints concerning incident(s) of Unauthorised Provisioning of Bitstream Port Transfer services cannot be resolved in accordance with this Clause, or within ten (10) Working Days of the Gaining Operator being notified pursuant to Clause 5.2, the Losing Operator shall have the option of requesting the President of the Law Society of Ireland to nominate a single arbitrator

Subject to Contract/Contract Denied

to adjudicate upon the complaint. The decision of such arbitrator shall be final and binding in its entirety upon the Parties.

4.4 The provisions of this Clause 5 shall apply to CAFs and Migrations.

5. Migration Services

5.1 Migration Services to and from the Bitstream Services, including the IP Service, are as set out in the Migrations Product Description.

5.2 Subject to Clause 5.3 below, Migration orders shall be subject to the requesting Operator obtaining a complete Wholesale Operator Consent Form "WCOF") or a complete CAF), if applicable.

5.3 (i) Without prejudice to the generality of Clause 5.2 above, it shall not be mandatory for the Gaining Operator to procure and/or furnish a CAF in respect of CAF Exceptions, provided however that where the Gaining Operator 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 Operator 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 Operator'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 Operator 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

Subject to Contract/Contract Denied

block of lines for one customer shall be deemed one event;

- b. The Gaining Operator 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 the Notice contact in this Bitstream Agreement. The Gaining Operator 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 Operator or the Operator Customer shall indemnify and hold eircom harmless in respect of any claims made by customers 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 5.3(ii)(a),(b), and (c) and sub-clause (iv) shall apply.
- (iv) In order for eircom to recover from the Gaining Operator 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:

Subject to Contract/Contract Denied

- 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 Operator(not to be unreasonably withheld);
- c. Allow the Gaining Operator to conduct its own defence of such claims, demands, actions, damages, costs and expenses, and
- d. Provide all reasonable assistance to the Gaining Operator and make no admission prejudicial to the defence of such claims, demands, actions, damages, costs and expenses.

5.4 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 102

Bitstream Managed Backhaul (“Bitstream MB”)

(with a Cease contract)

This Service Schedule is effective from the date of signature of this Bitstream Agreement and/or an Amendment 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 Schedule, a reference to a paragraph, unless stated otherwise, is to a paragraph of this Schedule. Words and expressions have the meanings give in Annex A, except as otherwise expressly stated in this Schedule.

1.2 The documents referenced in this Service Schedule that are contractually binding:

- a. Bitstream Services Product Description (“Bitstream Product Description”)
- b. Bitstream Service Level Agreement (“ Bitstream SLA”)

The controlling document is the latest version of the above titled document published on eircom's website in accordance with the Publication Requirements.

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

- a. Bitstream Industry Process Manual (“Bitstream IPM”), and
- b. The NTU Installation Manual. (“NTU Installation Manual”)

All references are to the latest version published on eircom's website as agreed with the National Regulator with industry input in respect of developments and/or changes.

2. Conditions of Bitstream MB Service

2.1 The Service is only available:

2.1.1 for Customers directly connected to the eircom network;

2.1.2 on those eircom PSTN copper lines currently In Service within the defined ADSL regional areas.

2.1.3 where the copper pairs have been deemed suitable by eircom for the provision of the Service in accordance with the Industry Process Manual;

2.2 The requirements for ordering Bitstream MB Service shall be as set out in the Bitstream Product Description and/or Bitstream IPM. Specifically, it is a condition precedent to the acceptance of an order for the Bitstream MB Service that the Operator must have in place the requisite Bitstream Ethernet Connection service.

2.3 Where a Customer's PSTN service is terminated, eircom shall be entitled to terminate the Service to such Customer.

2.4 Use of the Bitstream MB Service may be restricted by eircom as required by applicable law and regulation. eircom shall promptly notify the Operator if this clause is invoked.

2.5 The Operator agrees that from time to time it may be necessary for eircom to temporarily suspend the Service during periods of repair, essential maintenance or alteration or improvement to eircom's network. In the case of planned outage eircom

Subject to Contract/Contract Denied

will give the Operator five (5) Working Days' notice prior to such suspension of service and eircom will restore service as soon as possible after such suspension.

- 2.6 eircom does not warrant that the MB Service will meet the Operator's requirements or the requirements of any third party or that the operation of the Service will be uninterrupted or error-free or that any defect in the Service can be remedied.
- 2.7 The Parties shall use the reasonable commercial endeavours to provide such information as the other Party may reasonably require in order for the Parties to perform its obligations under this Bitstream Agreement.
- 2.8 eircom may give the Operator instructions which eircom reasonably believes are necessary for reasons of health, safety, or the quality of any telecommunications service provided by eircom to the Operator or any other person.
- 2.9 The Parties shall abide by the processes, procedures and standards set out in the Bitstream Industry Process Manual, the NTU Installation Manual, and such other industry developments related to this Service as some may be updated or modified from time to time. These documents are not contractually binding.

3 Bitstream MB Service Charging and Invoicing

- 3.1 The charges and/or charging principles for Bitstream MB Service are as set out in the Bitstream Price List. This Bitstream MB Service is subject to the application of the cease fees.
- 3.2 eircom shall be entitled to invoice the Operator in accordance with the charging intervals set out in the Bitstream Price List for the MB Service.
- 3.3 The Operator shall remit payment for the Bitstream MB Service by the Due Date.
- 3.4 In the event that the Bitstream MB Service is either upgraded to a higher available Product or downgraded to a lower available Product, a Minimum Term shall apply to the new Product.

4. Bitstream Port Transfer

- 4.1 The Bitstream Port Transfer service is available for use by an Operator who has secured a DSL Transfer Authorisation Form (DTAF), as defined in Schedule 1, from a Customer, and complies with the processes, procedures, and standards for the Bitstream Port Transfer service set out in the Bitstream Industry Process Manual, Section 3.4.5.1.1.
- 4.2 In all instances the Operator shall retain these DTAFs for at six (6) months from the date of submitting the Bitstream Port Transfer order. If a Customer complains to a Losing Operator regarding the change of the service provider, the Losing Operator is entitled to request a copy of the DTAF, and the Gaining Operator must provide a true copy of the DTAF to that Operator within two (2) Working Days. If the Losing Operator is not satisfied with the copy of the DTAF produced by the Gaining Operator, then the Gaining Operator must provide access to the original DTAF within two (2) Working Days.
- 4.3 A Party shall not engage in the Unauthorised Use of the Bitstream Port Transfer services. Nothing in this Clause 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. Where an incident(s) of Unauthorised Use of the Bitstream Port Transfer service is detected by either Party, the incident(s) shall be notified to the Gaining Operator. Each Party shall use their best endeavours to resolve the matter. . Where complaints concerning incident(s) of Unauthorised Provisioning of Bitstream Port Transfer services cannot be resolved in accordance with this Clause, or within ten (10) Working Days of the Gaining Operator being notified pursuant to Clause 5.2, the Losing Operator 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.
- 4.4 The provisions of this Clause 5 shall apply to CAFs and Migrations.

5. Migration Services

5.1 Migration Services to and from the Bitstream Services, including the Bitstream MB Service, are as set out in the Migrations Product Description.

5.2 Subject to Clause 5.3 below, Migration orders shall be subject to the requesting Operator obtaining a complete Wholesale Operator Consent Form (“WCOF”) or a complete CAF), if applicable.

5.3 (i) Without prejudice to the generality of Clause 5.2 above, it shall not be mandatory for the Gaining Operator to procure and/or furnish a CAF in respect of CAF Exceptions, provided however that where the Gaining Operator 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 Operator 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 Operator’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 Operator 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 Operator shall not be liable under the Indemnity for consequential or indirect loss (meaning loss that is not reasonably

Subject to Contract/Contract Denied

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 the Notice contact in this Bitstream Agreement. The Gaining Operator 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 Operator or the Operator Customer shall indemnify and hold eircom harmless in respect of any claims made by customers 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 5.3(ii)(a),(b), and (c) and sub-clause (iv) shall apply.
- (iv) In order for eircom to recover from the Gaining Operator 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 Operator(not to be unreasonably withheld);

Subject to Contract/Contract Denied

- c. Allow the Gaining Operator to conduct its own defence of such claims, demands, actions, damages, costs and expenses, and
- d. Provide all reasonable assistance to the Gaining Operator and make no admission prejudicial to the defence of such claims, demands, actions, damages, costs and expenses.

5.4 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

Bitstream Virtual Circuits (“Bitstream VC”)

(with a Cease contract)

This Service Schedule is effective from the date of signature of this Bitstream Agreement and/or an Amendment 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 Schedule, a reference to a paragraph, unless stated otherwise, is to a paragraph of this Schedule. Words and expressions have the meanings give in Annex A, except as otherwise expressly stated in this Schedule.

1.2 The documents referenced in this Service Schedule that are contractually binding:

- a. Bitstream Services Product Description (“Bitstream Product Description”)
- b. Bitstream Service Level Agreement (“ Bitstream SLA”)

The controlling document is the latest version of the above titled document published on eircom's website in accordance with the Publication Requirements.

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

- a. Bitstream Industry Process Manual (“Bitstream IPM”), and
- b. The NTU Installation Manual. (“NTU Installation Manual”)

All references are to the latest version published on eircom's website as agreed with the National Regulator with industry input in respect of developments and/or changes.

2. Conditions of Bitstream VC Service

2.1 The Service is only available:

2.1.1 for Customers directly connected to the eircom network;

2.1.2 on those eircom PSTN copper lines currently In Service within the defined ADSL regional areas.

2.1.3 where the copper pairs have been deemed suitable by eircom for the provision of the Service in accordance with the Industry Process Manual;

2.2 The requirements for ordering Bitstream VC Service shall be as set out in the Bitstream Product Description and/or Bitstream IPM. Specifically, it is a condition precedent to the acceptance of an order for the Bitstream VC Service that the Operator must have in place the requisite Bitstream Connection Service. The Operator must also have the requisite Bitstream Connection Service in place to support Migrations to the Bitstream VC Service.

2.3 Where a Customer's PSTN service is terminated, eircom shall be entitled to terminate the Service to such Customer.

2.4 Use of the Bitstream VC Service may be restricted by eircom as required by applicable law and regulation. eircom shall promptly notify the Operator if this clause is invoked.

2.5 The Operator agrees that from time to time it may be necessary for eircom to temporarily suspend the Service during periods of repair, essential maintenance or alteration or improvement to eircom's network. In the case of planned outage eircom will give the Operator five (5) Working Days' notice prior to such suspension of service and eircom will restore service as soon as possible after such suspension.

- 2.6 eircom does not warrant that the VC Service will meet the Operator's requirements or the requirements of any third party or that the operation of the Service will be uninterrupted or error-free or that any defect in the Service can be remedied.
- 2.7 The Parties shall use the reasonable commercial endeavours to provide such information as the other Party may reasonably require in order for the Parties to perform its obligations under this Bitstream Agreement.
- 2.8 eircom may give the Operator instructions which eircom reasonably believes are necessary for reasons of health, safety, or the quality of any telecommunications service provided by eircom to the Operator or any other person.
- 2.9 The Parties shall abide by the processes, procedures and standards set out in the Bitstream Industry Process Manual, the NTU Installation Manual, and such other industry developments related to this Service as some may be updated or modified from time to time. These documents are not contractually binding.

3. **Bitstream VC Service Charging and Invoicing**

- 3.1 The charges and/or charging principles for Bitstream VC Service are as set out in the Bitstream Price List. This Bitstream VC Service is subject to the application of cease fees.
- 3.1 eircom shall be entitled to invoice the Operator in accordance with the charging intervals set out in the Bitstream Price List for the VC Service.
- 3.2 The Operator shall remit payment for the Bitstream VC Service by the Due Date.
- 3.4 In the event that the Bitstream VC Service is either upgraded to a higher available Product or downgraded to a lower available Product, a Minimum Term shall apply to the new Product.

4. Migration Services

4.1 Migration Services to and from the Bitstream Services, including the Bitstream VC Service, are as set out in the Migrations Product Description.

4.2 Subject to Clause 4.3 below, Migration orders shall be subject to the requesting Operator obtaining a complete Wholesale Operator Consent Form “WCOF”) or a complete CAF), if applicable.

4.3 (i) Without prejudice to the generality of Clause 5.2 above, it shall not be mandatory for the Gaining Operator to procure and/or furnish a CAF in respect of CAF Exceptions, provided however that where the Gaining Operator 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 Operator 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 Operator’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 Operator 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;

Subject to Contract/Contract Denied

- b. . The Gaining Operator 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 the Notice contact in this Bitstream Agreement. The Gaining Operator 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 Operator or the Operator Customer shall indemnify and hold eircom harmless in respect of any claims made by customers 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 4.3(ii)(a),(b), and (c) and sub-clause (iv) shall apply.
- (iv) In order for eircom to recover from the Gaining Operator 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

Subject to Contract/Contract Denied

the prior written approval of the Gaining Operator(not to be unreasonably withheld);

- c. Allow the Gaining Operator to conduct its own defence of such claims, demands, actions, damages, costs and expenses, and
- d. Provide all reasonable assistance to the Gaining Operator and make no admission prejudicial to the defence of such claims, demands, actions, damages, costs and expenses.

5.4 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 201

Bitstream Ethernet Connection Service (“BECS”)

This Service Schedule is effective from the date of signature of this Bitstream Agreement and/or an Amendment 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 Schedule, a reference to a paragraph or Appendix, unless stated otherwise, is to a paragraph or Appendix A of this Schedule. Words and expressions have the meaning given in Annex A.

1.2 The document(s) referenced in this Service Schedule that is contractually binding:

- a. Bitstream Backhaul Service Product Description (“Backhaul Product Description”)
- b. Service Level Agreement for Bitstream Connection Service and Bitstream Ethernet Connection Service (“Backhaul SLA”), and
- c. The order form for each BECS order.

The controlling document is the latest version of the above titled document published on eircom’s website, www.eircomwholesale.ie, in accordance with the Publication Requirements.

1.3 The following document(s) referenced in the Service Schedules that set the

procedures and standards for operation, but are non-contractual:

- a. Bitstream Backhaul Process Manual (“Backhaul IPM”),¹

All references are to the latest version published on eircom’s website, www.eircomwholesale.ie, as agreed with the National Regulator with industry input in respect of developments and /or changes.

- 1.4 The remainder of this Service Schedule is separated in the following distinct sections:

Section A – Customer Sited Handover Bitstream Ethernet Connection Service (“CSH BECS”)

Section C – In-Building Handover Bitstream Ethernet Connection Service (“IBH BECS”)

¹ In development

Section A
Customer Sited Handover
Bitstream Ethernet Connection Service
("CSH BECS")

2. Description of Service

- 2.1 Subject to the provisions of this Schedule, eircom shall provide CSH BECS as specified from time to time in the Backhaul Product Description..
- 2.2 eircom shall provide and maintain the CSH BECS between the Operator nominated point of presence and the eircom exchange.
- 2.3 eircom shall install its fibre and terminating equipment at the Operator premises at a physical location in accordance with the Backhaul Product Description.
- 2.4 Ordering, forecasting, and provisioning procedures are specified in the Backhaul IPM. The procedures for cancellation, cessation and/or termination of CSH BECS(s) are as set out in the Backhaul IPM. Operator requests for cancellation, cessation and/or termination of CSH BECS(s) may impact and disrupt eircom's ability to provide services for dependent Bitstream Internet Protocol Services and/or Bitstream Managed Backhaul Services. eircom shall not be liable for any provision of service or quality of service impacts that may result, unless such requests form part of a project agreed in writing between the Parties.
- 2.5 The Bitstream Services that use the CSH BECS shall be subject to Annex C, Service Schedule(s) of the Bitstream Agreement.

3. Time Frames for Delivery

- 3.1 Provision of these services shall be in accordance with the Backhaul SLA published

on eircom's website, www.eircomwholesale.ie.

4. CSH BECS Charging

- 4.1 eircom shall advise the Operator of the charges applicable to each BECS order.
- 4.2 eircom shall be entitled to invoice an Operator for the CSH BECS(s) from the Commencement Date of Charging. Commencement Date of Charging for CSH BECS(s) is the Actual Date of Delivery. Rental charges shall be payable monthly in advance.
- 4.3.1 In the event the Operator cancels an order for a CSH BECS prior to the Commencement of Charging Date, eircom shall be entitled to invoice the Operator for the connection charges for that circuit.
- 4.4 The Operator shall be liable for the charges associated with the minimum period of service set out in Clause 5 in the event it issues a termination request that would take effect prior to the expiry of the minimum period for service.

5. Term

- 5.1 The minimum period of service for any CSH BECS shall be twelve (12) months commencing on the Commencement of Charging Date.
- 5.2 Each additional CSH BECS shall be subject to its own minimum period of service of twelve (12) months commencing on the Commencement of Charging Date.
- 5.3 In the event that the termination of a CSH BECS is required, the Operator shall give to eircom in writing at least one months notice, expiring on the last day of the calendar month following that in which the notice is given. For the avoidance of doubt, the Operator shall ensure that all dependent Bitstream Internet Protocol and/or Bitstream Managed Backhaul Services are ceased prior to the termination of an CSH BECS. Where such a termination request takes effect prior to the expiry of the minimum period of service specified in 5.1 above, then the charges for the CSH BECS shall be as specified in 4.4 above. Where notice is given which expires after

Subject to Contract/Contract Denied

the minimum period of service, charging shall cease on the last day of the notice period.

- 5.4 Where the Operator requests to upgrade the CSH BECS to a higher available bandwidth and such request is delivered, a new minimum period will apply to the upgraded CSH BECS. If the upgrade request takes effect prior to the expiry of the minimum period of service, the charges set out at 4.4 above shall be waived.

- 5.4 Where the Operator requests to downgrade the CSH BECS to a lower available bandwidth and such request is delivered, a new minimum period will apply to the downgraded CSH BECS. If the downgrade request takes effect prior to the expiry of the minimum period of service, the charges set out at 4.4 above shall apply to the original CSH BECS.

Section B
In-Building Handover
Bitstream Ethernet Connection Service
("IBH BECS")

6. Description of Service

- 6.1 Subject to the provisions of this Schedule, eircom shall provide IBH BECSs as specified from time to time in the Backhaul Product Description.
- 6.2 As a condition precedent to IBH BECS, the Operator must have an existing, valid Licence for Physical Co-location for purposes of Local Loop Unbundling at the requested BECS location.
- 6.3 Orders for IBH BECS shall be treated as Specified Regulated Products as that term is defined in the Operator's Licence for Physical Co-location. Accordingly, provided the Operator has a valid Licence for the Site, the Operator shall not be required to execute a Deed of Variation to be entitled to use its footprint for purposes of the IBH BECS service.
- 6.4 The point of handover and method of delivery are as set out in the Backhaul Product Description. The Operator undertakes and agrees to comply with equipment and, network specifications as set out in the Backhaul Product Description.
- 6.5 The Parties agree that network ownership and obligations shall be as set out in the Backhaul Product Description.
- 6.6 Ordering, forecasting, and provisioning procedures are specified in the Backhaul IPM. The procedures for cancellation, cessation and/or termination of IBH BECS are as set out in the Backhaul IPM. Operator requests for cancellation, cessation and/or termination of IBH BECS(s) may impact and disrupt eircom's ability to provide services for dependent Bitstream Internet Protocol Services and/or Bitstream

Subject to Contract/Contract Denied

Managed Backhaul Services. eircom shall not be liable for any provision of service or quality of service impacts that may result, unless such requests form part of a project agreed in writing between the Parties.

6.7 The Bitstream Services using an IBH BECS shall be subject to Annex C, Service Schedules of the Bitstream Agreement.

6.8 The Operator shall only be entitled to use an IBH BECS for purposes of Ethernet backhaul to support the Bitstream Services available in this Agreement. The Operator shall be in material breach of this Agreement in the event it uses an IBH BECS for any other purpose.

7. Time Frames for Delivery

7.1 Provision of these services shall be in accordance with the Backhaul SLA published on eircom's website, www.eircomwholesale.ie.

8 IBH BECS Charging

8.1 The charges for IBH BECS(s) shall be advised to the Operator, including any charges that may be due under its Licence.

8.2 eircom shall be entitled to invoice an Operator for the IBH BEC(s) from the Commencement Date of Charging. Commencement Date of Charging for IBH BECS(s) is the Actual Date of Delivery. Rental charges shall be payable monthly in advance.

8.3 In the event the Operator cancels an order for an IBH BECS prior to the Commencement of Charging Date, eircom shall be entitled to invoice the Operator for the connection charges for that circuit.

8.4 The Operator shall be liable for the charges associated with the minimum period of service set out in Clause 9 in the event it issues a termination request that would take

effect prior to the expiry of the minimum period for service.

9. Term

- 9.1 The minimum period of service for any IBH BECS shall be twelve (12) months commencing on the Commencement of Charging Date.
- 9.2 Each additional IBH BECS shall be subject to its own minimum period of service of twelve (12) months commencing on the Commencement of Charging Date.
- 9.3 In the event that the termination of an IBH BECS is required, the Operator shall give to eircom in writing at least one months notice, expiring on the last day of the calendar month following that in which the notice is given. For the avoidance of doubt, the Operator shall ensure that all dependent Bitstream Internet Protocol Services and/or Bitstream Managed Backhaul Services are ceased prior to the termination of an IBH BECS. Where such a termination request takes effect prior to the expiry of the minimum period of service specified in 9.1 above, then the charges for the IBH BECS shall be as specified in 8.4 above. Where notice is given which expires after the minimum period of service, charging shall cease on the last day of the notice period.
- 9.4 Where the Operator requests to upgrade the IBH BECS to a higher available bandwidth and such request is delivered, a new minimum period will apply to the upgraded IBH BECS. If the upgrade request takes effect prior to the expiry of the minimum period of service, the charges set out at 8.4 above shall be waived.
- 5.4 Where the Operator requests to downgrade the IBH BECS to a lower available bandwidth and such request is delivered, a new minimum period will apply to the downgraded IBH BECS. If the downgrade request takes effect prior to the expiry of the minimum period of service, the charges set out at 8.4 above shall apply to the original IBH BECS.

Annex C

Service Schedule 202

Bitstream Connection Service (“BCS”)

This Service Schedule is effective from the date of signature of this Bitstream Agreement and/or an Amendment 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 Schedule, a reference to a paragraph, unless stated otherwise, is to a paragraph of this Schedule. Words and expressions have the meanings give in Annex A.

1.2 The document(s) referenced in this Service Schedule that is contractually binding:

- a. Bitstream Backhaul Service Product Description (“Backhaul Product Description”)
- b. Service Level Agreement for Bitstream Connection Service and Bitstream Ethernet Connection Service (“Backhaul SLA”);
- c. The order form for each BCS order.

The controlling document is the latest version of the above titled document published on eircom’s website, www.eircomwholesale.ie, in accordance with the Publication Requirements.

1.3 The following document(s) referenced in the Service Schedules that set the procedures and standards for operation, but are non-contractual:

- a. Bitstream Backhaul Process Manual (“Backhaul IPM”),²

All references are to the latest version published on eircom’s website, www.eircomwholesale.ie, as agreed with the National Regulator with industry input in respect of developments and /or changes.

2. Description of Service

- 2.1 Service shall consist of the Bitstream Connection Service(s) as specified by the Operator in its order; available bandwidths are as specified from time to time in the Product Description.

3. Conditions of Service

- 3.1 The provisioning and maintenance of BCS will be governed by the Backhaul IPM.
- 3.2 The provision and service availability of BCS shall be subject to the Backhaul SLA.
- 3.3 It is technically impracticable to provide a fault-free Service and eircom does not undertake to do so. The level of service availability is set out in the Backhaul SLA.
- 3.3 The Operator agrees that from time to time it may be necessary for eircom to temporarily suspend service on BCS(s) during periods of repair, essential maintenance or alteration or improvement to eircom’s Network.
- 3.4 Where possible eircom will give the Operator at least five (5) Working Days notice prior to such suspension of service on BCS(s) or as soon as possible after such temporary suspension.
- 3.5 Use of the Wholesale BCS may be restricted by eircom as required by applicable law or regulation. eircom shall promptly notify the Operator if this clause is invoked.

² In development

- 3.6 The Operator shall report a fault in accordance with the procedures set out in the Backhaul IPM.

4 Wholesale BCS Charging

- 4.1 The charges for the BCS(s) shall be provided to the Operator.
- 4.2 eircom shall be entitled to invoice the Operator and the Operator shall be obligated to pay for a BCS from the Commencement Date of Charging. The Commencement Date of Charging shall be the Actual Delivery Date. Rental charges shall be payable monthly in advance.
- 4.3 In the event the Operator cancels an order for a BCS following order validation and prior to the Commencement Date for Charging, eircom shall be entitled to invoice the Operator for the connection charges.
- 4.4 The Operator shall be liable for charges associated with the minimum period of service set out in Clause 5 in the event that the Operator issues a termination request that would take effect prior to the expiry of the minimum period of service.
- 4.5 In the event that a BCS is either upgraded to a higher available bandwidth or downgraded to a lower available bandwidth, the charging for the original BCS shall cease from the date of conversion and the charging for the new BCS shall commence from that same date except as set out in Clause 5.4.

5 Term

- 5.1 The minimum period of service for any BC shall be twelve (12) months commencing on the Commencement Date of Charging.
- 5.2 In the event that the termination of a BCS is required, the Operator shall give to eircom in writing at least one month's notice, expiring on the last day of the calendar month following that in which the notice is given. Where such a termination request

Subject to Contract/Contract Denied

takes effect prior to the expiry of the minimum period of service specified in 5.1 above, then the charges for the Wholesale BCS shall be as specified in 4.4 above. Where notice is given which expires after the minimum period of service, charging shall cease on the last day of the notice period.

- 5.3 Where the Operator requests to upgrade the BCS to a higher available bandwidth and such request is delivered, a new minimum period will apply to the upgraded Wholesale BCS. If the upgrade request takes effect prior to the expiry of the minimum period of service, the charges set out at 4.4 above shall be waived.
- 5.4 Where the Operator requests to downgrade the BCS to a lower available bandwidth and such request is delivered, a new minimum period will apply to the downgraded BCS. If the downgrade request takes effect prior to the expiry of the minimum period of service, the charges set out at 4.4 above shall apply to the original BCS.