



Standard Contract

open eir

Subject to Contract, Contract denied

Access Seeker

ACCESS REFERENCE OFFER FROM eircom Limited

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Version Control

| Version | Status | Update | Effective Date |
|---------|----------|--|----------------|
| V10.0 | Final | Clause 19 updated re limitation of liability for duct/pole access products | 21/02/2019 |
| V10.1 | Proposed | Inclusion of a Data Protection Clause section | 01/05/2019 |
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This document follows change control procedure:

Proposed is defined as a document status when the approved document is uploaded to Proposals Section of open eir Website.

Final is defined as a document status when the approved document is uploaded to the relevant section of the open eir Website following the publication period.

For information:

- Historical Document History Table located at end of Document.
- Publish means the action of uploading a document to the website regardless of status or location.
- **If there are changes to the document between 'Proposed' and 'Final', change control operates.**



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This is not a legal document. open eir¹ is not bound by this document and will regularly update this document in accordance with EU Regulation on Unbundled Access to the Local Loop. This document is without prejudice to the legal position or the rights and duties of open eir.

¹ open eir is a trading name of eircom Limited, Registered as a Branch in Ireland Number 907674, Incorporated in Jersey Number 116389, Branch Address: 2022 Bianconi Avenue | City West Business Campus | Dublin 24 | D24 HX03

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1. Preface

- 1.1. The following constitutes the open eir Access Reference Offer in accordance with the provisions of the Regulations of the European Parliament and the European Council on Unbundled Access to the Local Loop EU Regulation (EC) No. 2887/200. This Access Reference Offer does not purport to be exhaustive of all services open eir will provide and does not in any way diminish the rights of beneficiaries to seek additional services, or the obligation on open eir to provide additional services under applicable law.
- 1.2. The Access Reference Offer details an offering of new Access Services from open eir to all Access Seekers as defined herein.
- 1.3. This is a new version of the open eir Access Reference Offer which takes effect from the 29th January 2016 and shall continue in effect until superseded by a publication of a new version.
- 1.4. References to legislative provisions herein are to be construed as references to such provisions as the same may be amended from time to time.
- 1.5 open eir provides all migration services as set out in Wholesale (Physical) Network Infrastructure Access (Market 4) Decision No. D 05/10, Document No. 10/39 ["WPNIA"]. Within this ARO open eir has set out its definitions of migrations with reference to the movement of end users between Operators at the Wholesale contract level. For the avoidance of doubt, there is no difference in the scope of migrations available between the definitions in this document and those contained in D 05/10 and open eir confirms that migration capability is an intrinsic element of all existing and future wholesale access products. The processes to implement migrations, including any requirements for customer authorisation procedures, are designed to ensure seamless migration of end users.



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STANDARD ACCESS
AGREEMENT

DATED

between

XXXX

and

eircom Limited

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Annex E

Protocol for enabling vectoring on Exchange launched VDSL (EVDSL)

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THIS AGREEMENT is made on [Date]

Between

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

and

eircom Limited having its Branch Address at 2022 Bianconi Avenue | City West Business Campus | Dublin 24 | D24 HX03 , (herein referred to as "open eir")

1. Introduction

Whereas

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

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where the Parties agree same.

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

2. Definitions and Interpretation

2.1. In this Agreement, except if the context requires otherwise, words and expressions are as defined in Annex A or the Licence(s)

2.2. Terms defined in relevant European Union legislation on the liberalisation of the telecommunication services market or in consequent Irish implementing legislation (which, for the avoidance of doubt includes Decisions published by the National Regulator) shall, where used in this Agreement or the Licence(s), have the meanings ascribed to them in such legislation.

2.3. The following documents form part of this Agreement and, in the event of any inconsistencies between them, the order of precedence shall (unless expressly stated to the contrary) be as follows:

1. The Access Agreement which shall comprise:
 - a). Main Body and Annex A, Annex B, Annex C, Annex D and Annex E;
 - b). The Licence(s) in respect of each Site,
 - c). Product Descriptions;
 - d). The open eir ARO Price List;
 - e). Service Level Agreements;
 - f). Access and Security Procedures for Physical Colocation and Health and Safety Requirements for Physical Colocation and Sub Loop Unbundling (“Access and Health & Safety Requirements”);
 - g). Submitted Forms based on those set out in the process manuals

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

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

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3. Commencement and Duration

3.1. This Agreement takes effect on the date hereof and shall continue until:

3.1.1. the Access Seeker ceases to be authorised to provide an electronic communications network or electronic communications service pursuant to the provisions of the Authorisation Regulations.; or

3.1.2. termination pursuant to this Agreement.

3.2 Subject to the provisions of Clause 13, Termination, the termination of a Licence Agreement in respect of any Site does not automatically terminate this Agreement. However, the termination of this Agreement automatically terminates all Licence Agreements.

4. Access Services

4.1. Access Services shall be provided as set out in the relevant Service Schedules at Annex C to this Agreement and the Licence Agreement(s) and the Inter Operator Process and Technical Manuals.

4.2. The full cost of the provision, operation and ongoing maintenance of each Access Service shall be borne in full by the Party requesting that Access Service in accordance with the price or charging principle set out in the open eir ARO Price List.

4.3. The standard delivery periods for Access Services shall be as defined in the Service Schedules to this Access Agreement. If any variation to the standard times will be necessary in respect of any Access Service or Site, open eir shall indicate such variation in the Site Offer in respect of that Site.

4.4. For the avoidance of doubt and notwithstanding the Access Services offered to the Access Seeker, open eir shall have no obligation to the Access Seeker to provide an Access Service under this Access Agreement unless there is express provision for that Access Service in a Service Schedule at Annex C to this Agreement or as provided by an amendment to this Agreement.

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4.5. For the avoidance of doubt, nothing in this Agreement shall prevent the Access Seeker requesting other forms of unbundled access to the access infrastructure or limit such obligations that open eir may have in respect of such requests.

5. Charging for Access Services

5.1. The charging guidelines and resulting charges for each Service are described in detail in the open eir ARO Price List. In respect of bespoke charges arising from an Access Seeker's requirements in respect of an individual Site, these will be provided in relation to the Site at the time a Site Offer is provided.

5.2. The Access Seeker shall be liable for the charges payable to open eir in the ordering phase pursuant to the terms of this Agreement in respect to Physical Colocation, regardless of whether or not the Parties execute a Licence in respect of that Site.

5.3. The Access Seeker shall also be liable for all charges as set out in each Licence, where applicable, for each Site at which Physical Colocation is provided.

5.4 The method of reviewing the charges is described in Clause 16, Review hereof and is also set out in the Licence(s) in respect of each site.

6. Record of provided Access Services

6.1. The responsibility to record the provision of Scheduled Services and Licence(s) shall reside with open eir.

6.2. open eir shall ensure that its recording techniques and provisions are sufficiently detailed to enable it to meet its obligations as outlined in clause 6.1 above.

7. Billing and Payment

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7.1. The Access Seeker shall be liable for all charges levied by open eir in accordance with Clause 5 in relation to the provision of services pursuant to this Agreement and the Licence Agreement(s).

7.2. The Billing and Payment obligations will be as set out in Annex B.

8. Network Safety and Protection

8.1. Save as otherwise expressly provided in the Licence(s), each Party is responsible for the safe operation of its Network and shall take all reasonable and necessary steps in its operation and implementation of this Agreement to ensure that its Network does not:

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

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

8.2. Save as otherwise expressly provided in the Licence(s), neither Party shall connect or knowingly permit the connection to its Network of any equipment or apparatus, including, but not limited, to any terminal equipment that is not approved by the relevant approvals authority for attachment to its Network.

9. Quality of Service

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

10. Provisioning, Operation and Maintenance

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

11. Provision of Information

- 11.1. Subject to a Party's obligations of confidentiality to Third Parties, a Party may request and the other Party shall provide information which is required for the provision of Access Services specified in this Agreement or a Licence if such other Party has relevant information and the provision of such information is necessary.
- 11.2. Notwithstanding any provision of this Agreement a Party shall not be obliged to provide information which is subject to a confidentiality obligation to a Third Party unless such Third Party consents to such disclosure.
- 11.3. The Disclosing Party will use reasonable endeavours to ensure that information disclosed is correct to the best of its knowledge at the time of provision of such information.
- 11.4. If a Disclosing Party provides information to a Receiving Party, the Disclosing Party shall have obtained all appropriate Third Party consents.
- 11.5. Subject to Clause 14, Confidentiality, hereof, the Receiving Party shall indemnify the Disclosing Party and keep it indemnified against all liabilities, claims, demands, damages, costs and expenses arising as a consequence of any failure by the Receiving Party to comply with any conditions imposed and identified, including those relating to confidentiality as per Clause 14, Confidentiality, or the Non Disclosure Agreement, by the Disclosing Party or any third party at the time when the information was provided.

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11.6. Nothing in this Agreement shall require a Party to do anything in breach of any statutory or regulatory obligation of confidentiality, including without prejudice to the generality of the foregoing, any obligation pursuant to Irish or European Union data protection legislation or regulation.

12. Resolution of Disputes

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

12.2 Save as provided in Clause 12.1 above, each Party shall use its best endeavours to resolve any disputes arising concerning implementation, application or interpretation of this Agreement in the first instance through negotiation between the Parties through the normal contacts. This phase of the dispute resolution shall be referred to as 'Level 1'.

12.3 In the event of the Parties failing to resolve the dispute at Level 1 negotiation within two (2) weeks either Party shall have a right to invoke the dispute procedures specified herein on the service of notice ("the Dispute Notice") on the other Party. The Party serving the notice ("the Disputing Party") shall include in the Dispute Notice all relevant details including the nature and extent of the dispute.

12.4 Service of the Dispute Notice shall constitute escalation to Level 2. Level 2 shall consist of consultation between the parties in good faith to resolve the dispute.

12.5 If the endeavours of the parties to resolve the dispute at Level 2 are not successful within two (2) weeks of escalation of the Dispute to Level 2, either Party may upon service of notice ("the Level 3 Notice") on the other, escalate the dispute for determination by the National Regulator, hereinafter referred to as Level 3. The Level 3 Notice shall be served on both the National Regulator and the other Party. The Level 3 Notice shall include all details relevant to the dispute together with a submission from both Parties as to the nature and extent of the dispute.

12.6 The Level 1 Dispute Notice shall be served as follows:



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If to open eir:

Level 1 Wholesale Contracts Manager,
open eir
2022 Bianconi Avenue
City West Business Campus
Dublin 24 | D24 HX03

Tel: (00) 353 1 600 4609

Fax: (00) 353 1 428 6240

If to Access Seeker:

Level 1

Address

Address

Address

Tel: (00) xxxxxxxxxxxx

Fax: (00) xxxxxxxxxxxx

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

If to open eir:

Level 2 Commercial Director
open eir
2022 Bianconi Avenue
City West Business Campus
Dublin 24 | D24 HX03

Tel: (00) 353 1 671 4444

Fax: (00) 353 1 428 6240

If to the Access Seeker:

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Level 2

Address

Address

Address

Tel: (00) xxxxxxxxxxxx

Fax: (00) xxxxxxxxxxxx

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

12.7 The time limits specified at paragraphs 12.3 and 12.5 above may be extended by mutual agreement between the parties.

12.8 The above procedures are without prejudice to any rights and remedies that may be available to the Parties in respect of any breach of any provision of this Agreement.

12.9 Nothing herein contained shall prevent a Party from:

(a) seeking (including obtaining or implementing) interlocutory or other immediate or equivalent relief; or

(b) Automatically referring the Dispute to the National Regulator without recourse to Level 1 or Level 2 negotiation in accordance with any right (if any) either Party may have to request a determination or other appropriate steps for its resolution. Without prejudice to the foregoing each Party undertakes to avail of the Level 1 and Level 2 procedures set out herein, prior to referring the Dispute to the National Regulator save in exceptional circumstances.

12.10 Any disputes or queries that arise in relation to the charges or invoices furnished by open eir to the Access Seeker shall be subject to the dispute resolution provisions of this clause.

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12.11 Where a dispute arises in relation to an amount payable in respect of an invoice then the Access Seeker shall be entitled to withhold payment of the disputed amount due for payment, upon serving open air with a Level 1 notice and provided that the disputed amount is greater than ten percent (10%) of the total invoice amount due for payment.

12.12 Where the Access Seeker invokes the provisions of this Clause after the due date of a disputed invoice, then the Access Seeker shall not be entitled to withhold any portion of the amount due and payable.

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

13. Termination

13.1 In the event that either Party is in breach of any term or provision of this Agreement then the non-breaching Party may, and so often as same may occur, serve a notice in writing on the breaching Party, specifying the breach complained of and giving the breaching Party what the non-breaching Party considers, acting reasonably, to be a reasonable time to remedy the matter complained of (such reasonable time not, in any event, being a period less than one (1) calendar month).

13.2 If the breach is material and the breaching Party shall fail or neglect, within such period of time aforesaid, to remedy and make good the matter aforesaid, then, and in any such case, the non-breaching Party shall be entitled without further notice to terminate this Agreement

13.3 A Party shall be further entitled to terminate this Agreement by notice in writing if any of the following occur:

- (i) an order is made or a resolution is passed to wind-up the other Party;
- (ii) the appointment of a receiver, examiner or liquidator to the other Party;
- (iii) the other Party is unable to pay its debts within the meaning of

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| open air | Subject to Contract, Contract denied the Companies Acts 1963-1999; (iv) the other Party enters into a voluntary arrangement with creditors under the Companies Acts 1963 – 1999; or (v) the other Party ceases to hold an authorisation from the National Regulator to provide electronic communications network services within the State, (vi) the Access Seeker is not remitting payment in respect of the amounts due, save for the provisions of Clause 12, Resolution of Disputes, pursuant to the terms of this Agreement and save for the provisions of Clause 3, Payment, and Clause 20, Resolution of Disputes, under the terms of the Licence(s), or (vii) where open air terminates three (3) Licences for cause between open air and the Access Seeker, in a twelve month consecutive period, which period shall be determined from the Commencement Date of this Agreement and each anniversary thereof. | Access Seeker |
|----------|---|---------------|

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

14. Confidentiality

- 14.1 Without prejudice to the terms of the Non-Disclosure Agreement, each Party shall treat as strictly confidential all information received as a result of entering into or performing this Agreement which relates to the provisions or subject matter of this Agreement, to any other party to this Agreement or the negotiations relating to this Agreement.

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14.2. Any party may disclose information which would otherwise be confidential if and to the extent:-

- (a) it is required to do so by law or any securities exchange or regulatory or government body to which it is subject wherever situate and it has, so far as reasonably practicable, consulted with the other parties and given them an opportunity to oppose the disclosure or otherwise agree the timing of such disclosure;
- (b) each Party to whom it relates has given its consent in writing
- (c) it is in the public domain other than in breach of this Agreement;
- (d) it is or becomes publicly available through no fault of the Access Seeker;
- (e) it is in the possession of the Access Seeker before such disclosure has taken place;
- (f) it is required to be disclosed by a government regulatory body or a court or other comparable authority of competent jurisdiction.

15. Intellectual property rights

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

16. Review

16.1. A Party may seek to amend this Agreement by serving on the other a review notice if:

- 16.1.1. either Party's General Authorisation is materially modified (whether by amendment or replacement); or

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- 16.1.2. a material change occurs in the law or regulations (including codes of practice whether or not having the force of law) governing telecommunications in Ireland or the EU. Where the change in regulation specifies a transition period (“Transition Period”), open eir shall be entitled to serve the review notice during the Transition Period. If the Transition Period is greater than nine months, open eir shall afford the Access Seeker at least a six month period, from the date of the review notice, to reach agreement on the subject matter of the review notice. If no Transition Period is specified or the Transition Period is less than nine months, the standard three month period from the date of the review notice for the Parties to reach agreement on the subject matter of the review notice shall apply; or
- 16.1.3. This Agreement makes express provision for a review or the Parties may agree in writing that there shall be a review; or
- 16.1.4. a material change occurs, including enforcement action by any regulatory authority, which affects or reasonably could be expected to affect the commercial or technical basis of this Agreement; or
- 16.1.5. there is a material change to the terms and conditions of any Licence Agreement
- 16.1.6. there is a general review pursuant to clause 16.3 hereof.
- 16.2. A review notice shall set out in reasonable detail the issues to be discussed between the Parties.
- 16.3. Save for the provisions of the Licence Agreement, a Party may initiate a general review of this Agreement at least once during the twelve month period beginning from the Commencement Date of this Agreement and subsequent anniversary. However, provided a Party complies with Clause 16.2, a review may be initiated as deemed appropriate by either Party serving a review notice.
- 16.4. On service of a review notice, the Parties shall forthwith negotiate in good faith the matters to be resolved with a view to agreeing the relevant amendments to this Agreement.

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16.5. For the avoidance of doubt, the Parties agree that notwithstanding service of a review notice this Agreement shall remain in full force and effect.

16.6. Save for a review notice served pursuant to Clause 16.1.2 where the material change removes a regulatory obligation from open eir, if the Parties fail to reach agreement on the subject matter of a review notice within 3 calendar months (the relevant period) in each case from the date of service of such review notice, either Party may, not later than one calendar month after the expiration of the relevant period, request in writing the National Regulator to determine:

16.6.1. the matters upon which the Parties have failed to agree;

16.6.2. whether this Agreement should be modified to take account of such matters; and, if so

16.6.3. the amendment or amendments to be made.

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

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

17. Force Majeure

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

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perform such obligations under this Licence solely to the extent circumstances may require.

17.2. The Affected Party shall promptly notify the other party of the estimated extent and duration of such inability to perform its obligations and upon the cessation of the event of Force Majeure the Affected Party shall notify the other party of such cessation.

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

18. Credit Assessment and Credit Risk Management

18.1 It is a condition precedent to this Agreement that the Access Seeker shall provide to open eir such financial security (whether by way of deposit, guarantee or otherwise) as open eir in its reasonable and fair opinion considers appropriate as proportionate security against the Access Seeker's non-compliance with or non-observance of any of the provisions hereof (including without limitation the failure to pay charges), unless otherwise agreed by open eir in writing.

18.2 open eir may, at any time, require the Access Seeker to enter into bank or other guarantees or to provide some other form of financial security, (for example a deposit) which in the reasonable and fair opinion of open eir is/are appropriate as proportionate security against Access Seeker's non-compliance with or non-observance of any of the provisions hereof (including failure to pay charges due). open eir reserves the right to treat refusal to provide such security or failure to provide such security within thirty (30) days (or such longer period as open eir may reasonably allow) of the date of open eir's request for the same shall be deemed to be a breach of this Agreement by Access Seeker.

19 Limitation of Liability

19.1 Save as provided in the Licence Agreement(s), neither Party has an obligation of any kind to the other Party beyond an obligation to exercise the

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reasonable skill and care of a competent telecommunications operator in performing its obligations under this Agreement.

19.2 Subject to clause 19.3 and clause 19.4, if an Access Seeker is in breach of any of its obligations under this Agreement (excluding obligations arising under this Agreement to pay monies in the ordinary course of business), and/or the Licences, or otherwise (including liability for negligence or breach of statutory duty) such Access Seeker's liability to open eir shall be limited to thirty two million EURO (€32,000,000) for any one event or series of connected events and thirty two million EURO (€32,000,000) for all events (connected or unconnected) in any period of twelve (12) calendar months.

19.3 In the case of an Access Seeker which has signed up to a duct access licence agreement as set out under Service Schedule 107 and or to a pole access licence agreement as set out under Service Schedule 108 and such Access Seeker has not signed up to any other Access Services under this Agreement, and in the event the Access Seeker is in breach of any of its obligations under this Agreement (excluding obligations arising under this Agreement to pay monies in the ordinary course of business), and/or the duct access licence agreement or the pole access licence agreement as the case may be, or otherwise (including liability for negligence or breach of statutory duty) such Access Seeker's liability to open eir shall be limited to ten million EURO (€10,000,000) for any one event or series of connected events and ten million EURO (€10,000,000) for all events (connected or unconnected) in any period of twelve (12) calendar months under the duct access licence agreement and shall be limited to ten million EURO (€10,000,000) for any one event or series of connected events and ten million EURO (€10,000,000) for all events (connected or unconnected) in any period of twelve (12) calendar months under the pole access licence agreement.

19.4 The Parties accept unlimited liability for death or personal injury resulting from its negligence or its malicious acts or those of its Staff. Clause 19.1 above does not apply to such liability.

19.5 Save as provided in the Licence Agreement, if open eir is in breach of any of its obligations under this Agreement (excluding obligations arising under this Agreement to pay monies in the ordinary course of business), or otherwise (including liability for negligence or breach of statutory duty) such open eir's liability to the Access Seeker shall be limited to six hundred

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and thirty five thousand EURO (€635,000) for any one event or series of connected events and one million two hundred seventy thousand EURO (€1,270,000) for all events (connected or unconnected) in any period of 12 calendar months.

19.6 Each provision of this clause 19 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.

20 Assignment of Rights and Obligations

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

21 Amalgamation and Reconstruction

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

22 Notices

22.1 A notice shall be deemed to have been served:

- (a) at the time of delivery, if served personally;
- (b) forty-eight (48) hours after posting in the case of an address in Ireland or
- (c) ninety-six (96) hours after posting from any other address; or
- (d) two (2) hours after transmission (upon the sender obtaining a valid transmission receipt), if sent by facsimile on a Business Day

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or prior to 3.00pm or in any other case at 10.00am on the Business Day after the date of dispatch

22.2 If the deemed time of service is not during normal business hours of the country of receipt, the notice shall be deemed to be served at or in the case of faxed service two (2) hours after the opening of business on the next Business Day of that country.

22.3 The deemed service provisions set out at clause 22.1 above do not apply to:

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

22.4 The normal contacts for the Parties are:

If to open eir:



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Wholesale Contracts Manager,
open eir
2022 Bianconi Avenue
City West Business Campus
Dublin 24 | D24 HX03

Telephone +3531 600 4609
Facsimile +353 1 428 6240

Or

Commercial Director,
open eir
2022 Bianconi Avenue
City West Business Campus
Dublin 24 | D24 HX03

Telephone: +353 1 671 4444
Facsimile: +353 1 428 6240

If to the Access Seeker:

Title
Address
Address
Address

Telephone: 01 xxxxxxx
Fax: 01 xxxxxxx

Or

Title
Address
Address
Address

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Telephone: 01 xxxxxxx

Fax: 01 xxxxxxx

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

23 Entire Agreement

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

24. Waiver

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

25 Severability

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

26 Amendments

26.1 Any amendments, including price changes, to the open eir Access Reference Offer specified by directions, decisions, determinations, specific obligation, obligations, measures and requirements of the National Regulator or other competent regulatory or statutory body shall be deemed to be automatically incorporated into this Access Agreement

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and/or Licence with immediate effect or such alternative date as specified by the National Regulator or such other body.

26.2 Notwithstanding Clause 26.1, the automatic incorporation of changes in the Access Agreement shall apply only to the Party subject to the obligations and to the extent the mandating body has jurisdiction to impose such obligations.

26.3 All other changes to this Access Agreement and/or Licence shall be in writing and agreed between the Parties to become effective and binding upon the Parties, including any amendment to add new services.

27 Relationship of Parties

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

Data Protection

28.1 Within this Clause 28 “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data” and “Processing” shall have the same meanings as in the Applicable Data Protection Law and “Processed” and “Process” shall be construed in accordance with the definition of “Processing”.
open eir

28.2 In order for open eir to provide the Services to the Operator, it is necessary for the Operator to share Personal Data with open eir.

28.3 The Operator in its role as a Data Controller will ensure that it has all necessary appropriate consents and notices in place to enable open eir to Process Personal Data.

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28.4 The Operator instructs open eir to Process Personal Data on behalf of the Operator where the Operator is a Data Controller.

28.5 The Parties have included these clauses to assist the Operator in its role as the Data Controller in meeting its obligations under the Applicable Data Protection Law while also binding open eir to its obligations as Data Processor under Applicable Data Protection Law.

28.6 open eir may also authorise an open eir Sub-Processor to Process the Personal Data being Processed for or on behalf of the Operator in its role as a Data Controller where required for the provision of the Services, save that suitable provisions for complying with Applicable Data Protection Law are set out in any contract with the open eir Sub-Processor.

28.7 In respect of the Processing of Personal Data by open eir or an open eir Sub-Processor under or in connection with the Agreement, open eir shall as Data Processor, and shall procure that the open eir Sub-Processor shall:

- (a) only Process the Personal Data to the extent required to provide the Services in accordance with the terms of the Agreement;
- (b) not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically agreed between the Parties;
- (c) comply with open eir's obligations under Article 32 of the GDPR to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of the Processing undertaken by open eir under or in connection with the Agreement;
- (d) comply with Applicable Data Protection Law;
- (e) make available to the Operator as a Data Controller, upon reasonable written notice, all information reasonably required by the Operator as a Data Controller to demonstrate compliance with Article 28 of the GDPR as may be requested by the Operator as a Data Controller from time to time;

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| <p>(f)</p> <p style="padding-left: 40px;">(i)</p> <p style="padding-left: 40px;">(ii)</p> <p style="padding-left: 40px;">(iii)</p> <p style="padding-left: 40px;">(iv)</p> <p>(g)</p> | <p>subject to Clause 28.5 not transfer any Personal Data where the Operator is a Data Controller, outside of the European Economic Area unless the following conditions are fulfilled in a contract with the open eir Sub-Processor:</p> <p>the open eir Sub-Processor has provided appropriate safeguards in relation to the transfer of the Personal Data;</p> <p>the open eir Sub-Processor complies with its obligations under the Applicable Data Protection Law by providing an adequate level of protection to any Personal Data that is transferred to it;</p> <p>the open eir Sub-Processor complies with reasonable instructions notified to it in advance by open eir with respect to the Processing of the Personal Data; and</p> <p>the Data Subjects have enforceable rights and effective legal remedies;</p> | <p>cease Processing the Personal Data where the Operator is Data Controller upon receipt of a legally binding written notice in accordance with Clause 13 [termination] of the Agreement from the Operator in its role as Data Controller of the termination or expiry of the Services or the Agreement or, if sooner, cease providing the Services to which it relates and within a reasonable period thereafter, delete from its systems (to the extent possible), the Personal Data and any copies of it or of the information it contains. The Operator acknowledges that the provisions of this Clause 28.6(g) shall not apply to the extent that (1) open eir is obliged by applicable law to keep copies of the Personal Data or (2) open eir has to retain some of the Personal Data in order to provide the Services to another operator in the event the Operator's end user has ceased its telecommunication service with the Operator. For the avoidance of doubt such Personal Data shall only be retained for the purpose of service provisioning and for no other purpose.</p> |
| <p>28.8</p> | <p>To the extent that that the Operator is a Data Controller and requires open eir's assistance, and in response to a written request from the Operator in its role as Data Controller, open eir shall co-operate with and reasonably assist the Operator as a Data Controller:</p> | |

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- (a) to put appropriate technical and organisational measures in place to enable the Data Controller to comply with any exercise of rights by a Data Subject under the Applicable Data Protection Law (including, without limitation, in relation to the retrieval and/or deletion of a Data Subject's Personal Data); and
- (b) in discharging the Data Controller's obligations pursuant to Articles 32 and 36 GDPR.

Any obligations arising under this Clause 28.7 shall be at no additional cost to open air and any such costs arising in connection with the performance of open air's obligations under this Clause 28.7 shall be promptly reimbursed to open air by the Operator as a Data Controller upon reasonable request and without delay.

Operator

- 28.9 In order for the Operator to receive the Services from open air so that the Operator can provide services to its customers, it is necessary for open air as Data Controller to share Personal Data with the Operator.
- 28.10 open air in its role as a Data Controller will ensure that it has all necessary appropriate consents and notices in place to enable the Operator to Process Personal Data.
- 28.11 open air instructs the Operator to Process Personal Data on behalf of open air where open air is a Data Controller.
- 28.12 The Parties have included these clauses to assist open air in its role as the Data Controller to meet its obligations under the Applicable Data Protection Law while also binding the Operator to meet its obligations as Data Processor under Applicable Data Protection Law.
- 28.13 The Operator may also authorise an Operator Sub-Processor to Process the Personal Data being Processed for or on behalf of the Data Controller where required for the receipt of the Services, save that suitable provisions for complying with Applicable Data Protection Law are set out in any contract with an Operator Sub-Processor.

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28.14 In respect of the Processing of Personal Data by the Operator under or in connection with the Agreement, the Operator shall act as Data Processor, and shall procure that any Operator Sub-Processor shall:

- (a) only Process the Personal Data to the extent required to receive the Services in accordance with the terms of the Agreement;
- (b) not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically agreed between the Parties;
- (c) comply with the Operator's obligations under Article 32 of the GDPR to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of the type of Processing undertaken by the Operator under or in connection with the Agreement;
- (d) comply with Applicable Data Protection Law;
- (e) make available to the Data Controller, upon reasonable notice, all information reasonably required by the Data Controller to demonstrate compliance with Article 28 of the GDPR as may be requested by the Data Controller from time to time;
- (f) subject to Clause 28.13 not transfer any Personal Data where open eir is a Data Controller, outside of the European Economic Area unless the following conditions are fulfilled in a contract with the Operator Sub-Processor:
 - (i) the Operator Sub-Processor has provided appropriate safeguards in relation to the transfer of the Personal Data;
 - (ii) the Operator Sub-Processor complies with its obligations under the Applicable Data Protection Law by providing an adequate level of protection to any Personal Data that is transferred to it;

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- (iii) the Operator Sub-Processor complies with reasonable instructions notified to it in advance by the Operator with respect to the Processing of the Personal Data; and
- (iv) the Data Subjects have enforceable rights and effective legal remedies;
- (g) cease Processing the Personal Data upon receipt of a legally binding written notice in accordance with Clause 13 [termination] of the Agreement from open eir in its role as the Data Controller of the termination or expiry of the Agreement or, if sooner, the Services to which it relates and within a reasonable period thereafter, at open eir's option as a Data Controller and explicit written direction, either return, or delete from its systems, the Personal Data and any copies of it or of the information it contains. The provisions of this Clause 28.14(g) shall not apply to the extent the Data Processor is obliged by applicable law to keep copies of the Personal Data.

28.15 To the extent that open eir in its role as the Data Controller requires the Operator's assistance, and in response to a written request from open eir, the Operator shall co-operate with and reasonably assist open eir in its role as the Data Controller:

- (a) to put appropriate technical and organisational measures in place to enable the Data Controller to comply with any exercise of rights by a Data Subject under the Applicable Data Protection Law (including, without limitation, in relation to the retrieval and/or deletion of a Data Subject's Personal Data); and
- (b) in discharging the Data Controller's obligations pursuant to Articles 32 and 36 GDPR.

Any obligations arising under this Clause 28.15 shall be at no additional cost to the Operator and any such costs arising in connection with the performance of the Operator's obligations under this Clause 28.15 shall be promptly reimbursed to Operator by the Data Controller upon reasonable request and without delay.

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28.16 Each Party shall indemnify the other against all liabilities, costs, expenses, damages and losses suffered or incurred by the indemnified party arising out of or in connection with the breach of the Applicable Data Protection Law by the indemnifying party and its employees, agents, contractors, sub-contractors and sub-processors provided that the indemnified party gives to the indemnifying party prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

29 Governing Law

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



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

SIGNED for and on behalf of
the Access Seeker:

[SIGNATURE]

[NAME (BLOCK CAPITALS)]

[POSITION]

[DATE]

SIGNED for and on behalf of
open eir:

[SIGNATURE]

[NAME (BLOCK CAPITALS)]

[POSITION]

[DATE]

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ANNEX A DEFINITIONS

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

| | |
|---|---|
| “Access Agreement” | means this Agreement. |
| “Access Provider” | is the authorised operator, in this case open eir, providing the line that connects the Network Terminating Unit in a customer’s premises to that operator’s local exchange |
| “Access Seeker Staff” | means any employee, agent or contractor of the Access Seeker |
| “Access Services”: | The services provided for in Annex C to this Agreement which at Commencement Date are Physical Colocation subject to signature of a Licence Agreement, Unbundled Local Metallic Path Service, and Line Sharing. |
| “Access Usage Report”: | A matrix based on the charges for each access service and the frequency of usage of these services. |
| “the Apparatus” | means that part of the Equipment (if any), which open eir permits the Access Seeker to install in the Serviced Exchange Footprint in accordance with the equipment notification process detailed in the Inter Operator Process Manual |
| “Applicable Data Protection Law” | means: |

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- (a) the Irish Data Protection Acts 1988, 2003 and 2018;
- (b) the European Communities (Electronic Communications Networks & Services) (Privacy & Electronic Communications) Regulations 2011;
- (c) the EU ePrivacy Directive 2002/58/EC (as amended) (the “ePrivacy Directive”);
- (d) the General Data Protection Regulation (Regulation (EU) 2016/679 (the “GDPR”)); and
- (e) any successor or replacement to the laws set out above.

“Authorised Operator”

A person or company in possession of a General Authorisation from the National Regulator.

“Billing Information”:

That information which must be provided by the Billing Party in support of invoices issued under this Agreement as agreed by the Parties to enable the billed Party to validate an invoice.

“Billing Party”:

The Party who is issuing any particular invoice.

“Bulk Migration”

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

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“Billing Period”: The agreed intervals at which billing takes place under this Agreement or the Licence Agreement(s).

“Business Day” means any day (other than a Saturday or Sunday) on which retail banks are open for normal business in Ireland.

“CAF Exceptions” means Migrations that are exempt from the requirement to have a Customer Authorisation Form and are:

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

“Clerk of Works” An open eir employee who is suitably technical qualified and who will escort the Access Seeker onto open eir exchange premises and to the appropriate Serviced Exchange Footprint to ensure that any Access Seeker activities do not adversely impact the network integrity of open eir and/or other Access Seekers and that the mechanism(s) by which such activities are undertaken conform to the appropriate standard and method statement”.

“Confidential Information”: All information disclosed by either Party, whether orally or in writing shall be considered shall be considered Confidential Information unless otherwise stated As same may be more fully set out in the Non Disclosure Agreement.

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“Copper Loop Frequency Management Plan”

means the plan of that name as amended from time to time by the LLU Review Forum and published on the open eir website.

“Customer Authorisation Form or CAF”

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

“Electronic Customer Authorisation”

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

“the Equipment”

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

“Interest Rate”:

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

“Disclosing Party”:

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

“Dispute”:

Any disagreement between the Parties in respect of the interpretation or resolution of any provision of this Agreement raised

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and resolved in accordance with Clause 12 of this Agreement (excluding material breaches of this Agreement).

“Due Date”:

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

“open eir's Telephone Exchange”:

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

“open eir Network”:

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

“open eir Access Network”:

That part of the Telecommunications Network which is operated and maintained by open eir in accordance with the General Authorisation granted to open eir by the National Regulator (previously General Communications Licence No. 14 awarded to open eir by the Director of telecommunications Regulation on the 30th November 1998) (and any licence, permit, authorisation,

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consent or other measure amending or replacing or re-enacting the said Authorisation which consists only of trenches, ducts, chambers, joint boxes, manholes, poles and similar works up to such interface point as may from time to time be specified by open eir (and specifically excludes all other aspects of the said Telecommunications Network including without limitation, transmission equipment, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electro magnetic means, wireless local loop or other wireless communications network facilities and all Telecommunications Services.

“open eir Aro Price List”

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

“eircom Staff”

means any employee, agent or contractor of eircom.

“Existing Exchange Facility”

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

“Gaining Access Seeker”

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

“Inter Operator Migration”

means the facility that allows services eligible for Migration (as set out in the

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respective product descriptions) on an end user's line to be moved between operators.

“Inter Operator Bulk Migration”

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

“Intra Operator Migration”

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

“Intra Operator Bulk Migrations”

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

“Line Sharing”

Means a methodology whereby the voice frequency service provided by the open eir and the high frequency service provided by the Access Seeker may be integrated over the same two-wire

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metallic path as more fully described in Annex C, Service Schedule 103 Appendix 1 to this Agreement.

“Inter Operator Process Manual”

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

“Intellectual Property”:

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

“Licence Agreement” and/or “Licence”

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

“Losing Access Seeker”

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

“Migration”

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

“Migration Services”

means the service for moving between

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different products as set out in the Migrations Product Description.

“the National Regulator”

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

“Network”:

The open eir Network or the Access Seeker Network as the case may be.

“Network Management Centre, (NMC)”

(a) in the case of open eir plc. National Management Centre, Citywest Business Park, Citywest, Naas Road, County Dublin and,
(b) Access Seeker

“open eir Sub-Processor”

means the agents, contractors and/or sub-contractors of open eir.

“Operator Sub-Processor”

means the wholesale customers, agents, contractors and/or sub-contractors of the Operator.

“Paper CAF”

means the paper CAF(s) in respect of services as set out in the Requirements for Paper Customer Authorisation published on open eir’s website from time to time.

“Operator Internal Customer Verification”

means an internal Access Seeker process of recording the customer’s consent to processing an order for Line Sharing, Unbundled Local Metallic Path and/or Unbundled Local Metallic Path with Geographic Number Portability, which is

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conducted via the telephone, with a recording of the customer. This facility may also be known as “vCAF.”

“Party”:

A party to this Agreement.

“Physical Co-location Service”:

The Access Service described in Annex C Service Schedule 101 Appendix 1 to this Agreement.

“Product Description(s)”:

The description of the products offered by open eir in the Service Schedules offered by open eir to the requesting party.

“Publication Requirements”

means those requirements for publication as set out in the Response to Consultation and Decision, Market Review: Wholesale (Physical) Network Infrastructure Access (Market 4), Decision No. D05/10, Document No 10/39, 20th May 2010 and any subsequent decision or direction of the National Regulator.

“Ready for Service date”:

The date by which an ordered Access Service or other activity requested by one Party of the other is requested to be available.

“Receiving Party”:

A Party who received any information from the other Party in relation to the Access Services.

“Requested Party”:

The Party who has been requested by the other Party to carry out some activity in relation to the Access Services.

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“Requesting Party”: The Party who is requesting the other Party to carry out some activity in relation to the Access Services.

“Scheduled Services”: The schedules attached at Annex C to this Access Reference Offer, which describe the Access Services, and the basis on which they are provided.

“Serviced Exchange Footprint” A space 400mm deep X 600mm wide X 2200mm high within an existing open eir Exchange facility for use by the Access Seeker as per Service Schedule 101. The Licence fee will be charged per Site and not per Footprint

“Site Offer” means the offer extended by open eir to the Access Seeker in respect of the provision to the Access Seeker of the Access Services at the Site. The terms and conditions of the Site Offer, including charges, may vary if the Access Seeker subsequently provides information which the Access Seeker was previously obliged to provide, alters or supplements information previously provided, or if the Access Seeker makes a request to change any specification. Any such request to modify the Site Offer is subject to agreement by open eir

“Site Preparation Works” means the work set out in each Licence received to facilitate the Access Seeker’s request for Physical Colocation.

“the Site” means the site in respect of which a Site Survey has been conducted and for which open eir has issued a Site Offer to the Access Seeker in respect of the

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Access Services and set out in the Licence issued for that Site.

“Sub Loop Unbundling”

consists of a circuit offering a two-wire metallic transmission path between a served customer premises and an Access Seeker's underground joint enclosure connected to a sub-loop connection point within the open eir Access Network. The joint enclosure provides an interface point between the open eir network and the access Seeker's network

“Technical Manual”

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

“Third Party”:

Any Party other than the Parties to this Agreement.

“Third Party Operators”:

All licensed Operators not party to this Agreement.

“Third Party Verification”

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

“Unauthorised Provisioning

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of Services”

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

“Unbundled Local Metallic Path”

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

“Unbundled Local Metallic Path Services”

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

“Unbundled Local Metallic Path with Geographic Number Portability”

means the Access Seeker may place one order that will enable the co-ordinated delivery of both the ULMP and geographic number portability to the end user.

“Wholesale Operator Consent Form” or “WOCF”

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

“Working Day”:

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

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ANNEX B
BILLING AND PAYMENT

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



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ANNEX C
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SCHEDULE
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ANNEX C SERVICE SCHEDULE 101

Physical Co-location

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

1. Definitions

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

2. Description of Services

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

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

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2.2 Physical Co-location shall be subject to the execution of a Licence Agreement in respect of each Site.

2.3 The following document(s) referenced in this Service Schedule that set out the procedures and standards for operation, but is non-contractual:

- a). The Process Manual for open eir Physical Co-location Service (“Co-location IPM”)
- b) The Technical Manual for Physical Co location Service.

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

3. Terms and Conditions

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

3.1.1. Physical Co-location shall be provided to the Access Seeker in line with the ordering provisions appropriate for Physical Co-location outlined in the Inter Operator Process Manual for Physical Co-location (hereinafter “Process Manual for Physical Co-location”).

3.1.2. A condition precedent for Physical Co-location shall be receipt of the correctly completed Order Form for Physical Co-location. The provision of Physical Co-location will require a specific Licence Agreement for that particular open eir Telephone Exchange.

3.1.3. Each order form submitted by the Access Seeker for Physical Co-location shall refer to a particular open eir exchange.

3.1.4. open eir will maintain, on behalf of the industry, a list of equipment (hereafter known as the Co-location Equipment Register), which may be co-located to which the Access Seeker may append items. open eir or any other Access Seeker may object to the inclusion of any equipment on this list and such objection will in the first instance be reviewed at industry level and if not resolved, will be referred to the National Regulator for resolution.

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3.1.4.1. The Access Seeker shall physically co-locate only equipment and associated backhaul equipment listed on the Co-location Register. (The Co-location Register is as described in the Process Manual for Physical Co-location.)

3.1.4.2 Once a particular item of equipment has been appended to the list the Access Seeker will be free to deploy it in co-location spaces without the need for further approvals from open eir. However, open eir will require information to be provided prior to installation of equipment for the purposes of protecting Health and Safety and maintaining Network integrity.

3.1.5. The Access Seeker shall be responsible for the installation, operation and maintenance of its equipment within the provided footprint.

3.1.6. Physical Co-location shall be within an Existing Exchange Facility, open eir will not structurally alter or build any new exchange facility or provide space on open eir premises for Access Seeker structures. However, future development of Exchange Facilities within open eir will be informed by the pre-orders received (as outlined the Process Manual for Physical Co-location) and may also take place following consultation on a case by case basis of individual footprint requests. The allocation of space in open eir Exchange Facilities will be compatible with existing open eir Network plans. open eir shall use its reasonable endeavours to facilitate Access Seeker's requests.

3.1.7. Serviced Exchange Footprints shall be allocated on a first come first, served basis. (The process for selection is as described in the Process Manual for Physical Co-location).

3.1.8. If the service cannot be provided on the grounds of feasibility or the need to maintain network integrity or lack of capacity because of the unavailability or unsuitability of an exchange floor space, the product will not be available. Any such refusal shall be accompanied by an account of the reasons for the refusal and may at the request of the prospective beneficiary be made available to the National Regulator.

3.1.9. The Access Seeker may in certain circumstances request the right to inspect the locations at which physical co-location is available, or

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sites where co-location has been refused on grounds of lack of capacity. The process to support such requests are outlined in the Process Manual for Physical Co-location

- 3.1.10. Any sharing of Serviced Exchange Footprints shall be in compliance with the terms of the Licence Agreement as published on open eir's website, www.openeir.ie from time to time. Each Access Seeker sharing any such Services Exchange Footprints shall be required to execute a separate Licence Agreement with open eir in respect of the portion of the Serviced Exchange Footprint to be occupied by that particular Access Seeker.
- 3.1.11. The provision of Physical Co-location by open eir is subject to the terms of the commercial SLA for Physical Co-location.
- 3.1.12. All Access Seeker Staff, before being permitted access to any open eir premises for the purpose of the provision of the Access Services shall be required to be registered in accordance with the provisions of the Licence Agreement.
- 3.1.13. The Access Seeker shall conform and shall procure that all of its staff conform to all on-site security requirements as reasonably requested by open eir Exchange managers and specified in the Access and Health & Safety Requirements.
- 3.1.14. The Access Seeker shall conform and shall procure that all Access Seeker Staff shall conform to all Health and Safety regulations as reasonably requested by the open eir Exchange Managers and specified in the Access and Health & Safety Requirements..
- 3.1.14.1. Failure by the Access Seeker's Staff to comply with all Health and Safety regulations as reasonably requested by open eir and specified in the Access and Health & Safety Requirements will be subject to the Access Agreement and Licence Agreement.
- 3.1.15. All access to open eir exchange premises shall be in accordance with the terms of the Licence Agreement.

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

4. Lead Times

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

5. Charging Structure

5.1 The charges and charging guidelines for Physical Co-location shall be as set out in the open eir ARO Price List.

5.2 The Access Seeker must tender payment for the Site Preparation Fee and first Licence Fee before open eir will execute the Licence in respect of any Site. The Access Seeker may tender payment of such fees anytime prior to the Due Date to facilitate execution of the Licence and be granted access to a Site

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ANNEX C SERVICE SCHEDULE 102

Unbundled Local Metallic Path Service

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

1. Definitions

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

2. Description of Services

- 2.1 Subject to the provisions of this Schedule, open eir shall provide the Unbundled Local Metallic Path Line Service in accordance with the following document(s) which shall be contractually binding on the Parties:
- a). The Product Description for Unbundled Local Metallic Path;
 - b). The Product Description for Product Migrations (the “Migrations Product Description”)
 - c). The Copper Loop Frequency Management Plan (“CLFMP”);
 - d). The open eir Service Level Agreement for the Provision and Repair of Unbundled Local Metallic Path (“ULMP”), Line Sharing (“LS”) and Combined GNP and ULMP (“GLUMP”) (the “Services SLA”); and
 - e). Requirements for Paper Customer Authorisation (“Paper CAF”)
 - f). Requirements for Third Party Verification, and
 - g). Requirements for Electronic Customer Authorisation (“eCAF”)
 - h). Requirements for Operator Internal Customer Verification (“vCAF”).

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

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

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

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

3. Terms and Conditions

3.1. Unbundled Local Metallic Paths shall be provided by open eir under the following conditions:

3.1.1. Both open eir and the Access Seeker shall adhere to the Industry agreed Copper Loop Frequency Management Plan (CLFMP), as agreed under the LLU Review Forum.

3.1.2. open eir Unbundled Local Metallic Path shall be provided to the Access Seeker in line with the provisions appropriate to Unbundled Local Metallic Path outlined in the LLU IPM..

3.1.3. Receipt of a correctly completed Order Form is a condition precedent to the provision of open eir Unbundled Local Metallic Path. The LLU IPM contains the information relating to the Order Form..

3.1.4. The Unbundled Local Metallic Path utilised in this product shall remain the property of open eir.

3.1.5. The Access Seeker shall not assign or share their interest in or rights to Unbundled Local Metallic Path. For the avoidance of doubt this does not preclude the Access Seeker providing services using Unbundled Local Metallic Path as the bearer for products and services for resale to third parties

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3.1.6. The provision of Unbundled Local Metallic Path Service by open eir is subject to the terms of the Services SLA.

3.1.7. Line Categorisation is provided for unbundled Local Metallic Path. The LLU IPM outlines how this shall be provided..

4. Lead times

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

5. Customer Authorisation

5.1 The Gaining Access Seeker must acquire a CAF prior to the submission of service orders unless the request is made in respect of:

- a). A new line, or
- b). Intra-operator migrations, or
- c) An emergency restore initiated by the Gaining Operator, or
- d) Orders subject to a WOCF.

5.2 The Gaining Access Seeker must retain a customer's CAF for a period of at least six months.. Thereafter, the Gaining Operator must cease the service when the end user referenced in the CAF ceases services with the Gaining Access Seeker.

5.3 If a customer complains to a Losing Access Seeker regarding the change of service provider, the Losing Access Seeker is entitled to request a copy of the CAF, and the Gaining Access Seeker must provide a true copy of the CAF to that access seeker within two (2) Working Days.

5.4 If the Losing Access Seeker is not satisfied with the copy of the CAF produced by the Gaining Access Seeker, then the Gaining Access Seeker must provide access to the original CAF within two (2) Working Days.

6. Unauthorised Provision of Services

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

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

- 6.2 Where an incident(s) of Unauthorised Provisioning of Services is detected by either Party, the incident(s) shall be notified to the Gaining Access Seeker. Each Party shall use its best endeavours to resolve the matter. Where the matter is resolved the Gaining Access Seeker shall notify the Access Provider to reinstate the customer's service to the status prior to the disputed provisioning.
- 6.3 Where complaints concerning incident(s) of Unauthorised Provisioning of Service cannot be resolved in accordance with Clause 6.2, or within ten (10) Working Days of the Gaining Access Seeker being notified pursuant to Clause 5.2, the Losing Access Seeker shall have the option of requesting the President of the Law Society of Ireland to nominate a single arbitrator to adjudicate upon the complaint. The decision of such arbitrator shall be final and binding in its entirety upon the Parties.

7. Charging Structure

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

8. Migration Services

- 8.1 Migration Services to and from the Unbundled Local Metallic Path Service are as set out in the Migrations Product Description.
- 8.2 Subject to Clause 8.3 below, Migration orders shall be subject to the requesting Access Seeker obtaining a complete Wholesale Operator Consent Form "WCOF") or a complete Customer Authorisation Form (CAF), if applicable.
- 8.3 (i) Without prejudice to the generality of Clause 8.2 above, it shall not be mandatory for the Gaining Access Seeker to procure and/or furnish a CAF in respect of CAF Exceptions, provided however that where the Gaining Access Seeker decides not to procure and/or furnish such a CAF, open eir shall have no liability for any loss or damage to the

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customer which arises directly and solely from the absence of such a CAF.

(ii) The Gaining Access Seeker will, subject to sub-clause (iv) below, indemnify and hold open eir harmless against any and all direct claims, demands, actions, damages, costs and expenses for loss or damage to the customer which arise directly and solely from the Gaining Access Seeker's decision not to procure and/or furnish a CAF in respect of a CAF Exception, (the "Indemnity"), provided always that:

(a) The total aggregate liability of the Gaining Access Seeker arising under the indemnity shall not exceed the amount of fifty thousand euro (€50,000) for any event or series of connected events and up to two hundred and fifty thousand euro (€250,000) for all events (connected or unconnected) in any period of twelve (12) consecutive months. For the avoidance of doubt the transfer of a block of lines for one customer shall be deemed one event;

(b) The Gaining Access Seeker shall not be liable under the Indemnity for consequential or indirect loss (meaning loss that is not reasonably foreseeable and arises indirectly or is not of an immediate and proximate result of the absence of a CAF); and

(c) Any notice, demand or communication made by open eir under the Indemnity shall be in writing and shall be deemed to be duly served if served by registered post to:

Name/Title
Company
Address

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

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

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

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ANNEX C
SERVICE SCHEDULE 103

Line Sharing Service

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

1. Definitions

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

2. Description of Services

- 2.1 Subject to the provisions of this Schedule, open eir shall provide the Line Sharing Service in accordance with the following document(s) which shall be contractually binding on the Parties:
- a). The Product Description for Unbundled Local Metallic Path
 - b). The Product Description for Product Migrations (the “Migrations Product Description”)
 - c). The Copper Loop Frequency Management Plan (“CLFMP”);
 - d). The open eir Service Level Agreement for the Provision and Repair of Unbundled Local Metallic Path (“ULMP”), Line Sharing (“LS”) and Combined GNP and ULMP (“GLUMP”) (the “Services SLA”); and
 - e). Requirements for Paper Customer Authorisation (“ Paper CAF”)
 - f). Requirements for Third Party Verification
 - g). Requirements for Electronic Customer Authorisation,
 - h). Requirements for Operator Internal Customer Verification (“vCAF”).

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



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

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

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

3. Terms and Conditions

3.1. Line Sharing shall be provided by open eir under the following conditions:

3.1.1. Both open eir and the Access Seeker shall adhere to the Industry agreed Copper Loop Frequency Management Plan (CLFMP), as agreed under the LLU Review Forum.

3.1.2. open eir Line Sharing shall be provided to the Access Seeker in line with the provisions appropriate to Line Sharing as outlined in the LLU IPM.

3.1.3. Receipt of a correctly completed Order Form shall be a condition precedent to the provision of open eir Line Sharing. The LLU IPM provides the information relating to the Order Form..

3.1.4. The Access Seeker shall not assign or share their interest in or rights to Line Sharing. For the avoidance of doubt this does not preclude the Access Seeker providing services using Line Sharing as the bearer for products and services for resale to third parties.

3.1.5. The Metallic Path used to provide the open eir Line Sharing Service shall remain the property of open eir.

3.1.6. The Line Sharing Service from open eir shall only be available where either .

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- (A) open eir receives retail line rental for that metallic path
or
- (B) open eir provides Single Billing through Wholesale Line Rental (SB-WLR) on that metallic path.

- 3.1.7. The provision of Line Sharing Service by open eir is subject to the terms of the Services SLA.
- 3.1.8. open eir will make available to the Access Seeker, upon signature of the Non Disclosure Agreement at Annex D, the information outlined in Annex G in relation to the open eir Network.
- 3.1.9. Line Categorisation is provided for Line Sharing. The LLU IPM provides how this shall be provided..

4. Lead times

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

5. Customer Authorisation

- 5.1 The Gaining Access Seeker must acquire a CAF prior to the submission of service orders unless the request is made in respect of:
 - a). a new provide, or
 - b). Intra-operator migrations, or
 - c). An emergency restore initiated by the Gaining Operator, or
 - d). Orders subject to a WOCF.
- 5.2 Where a CAF is required, the Gaining Access Seeker must retain a customer's CAF for a period of at least six months. Thereafter, the Gaining Operator must cease the service when the end user referenced in the CAF ceases services with the Gaining Access Seeker.
- 5.3 If a customer complains to a Losing Access Seeker regarding the change of service provider, the Losing Access Seeker is entitled to request a copy of

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the CAF, and the Gaining Access Seeker must provide a true copy of the CAF to that access seeker within two (2) Working Days.

- 5.4 If the Losing Access Seeker is not satisfied with the copy of the CAF produced by the Gaining Access Seeker, then the Gaining Access Seeker must provide access to the original CAF within two (2) Working Days.

6. Unauthorised Provision of Services

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

7 Charging Structure

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

8. Migration Services

- 8.1 Migration Services to and from the Line Share Service are as set out in the Migrations Product Description.

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

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Access Seeker

Name/Title

Company

Address

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

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



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such claims, demands, actions, damages, costs and expenses.

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

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ANNEX C
SERVICE SCHEDULE 104

Sub Loop Unbundling

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

1 Definitions

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

2 Description of Services

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

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

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

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All references are to the latest version published on open eir's website.

3 Terms and Conditions

- 3.1 Sub Loop Unbundling shall be provided by open eir under the following conditions:
 - 3.1.1 Sub Loop Unbundling shall be provided to the Access Seeker in line with the ordering provisions appropriate for Sub Loop Unbundling outlined in the Sub Loop Unbundling IPM).
 - 3.1.2 Receipt of a correctly completed Order Form is a condition precedent to the provision of Sub Loop Unbundling. The information regarding the Order Forms is in the Sub Loop Unbundling IPM.
 - 3.1.3 Each order form submitted by the Access Seeker for Sub Loop Unbundling shall refer to a particular open eir cabinet.
 - 3.1.4 The Access Seeker shall be responsible for the installation, operation and maintenance of its equipment within its Cabinet/Building.
 - 3.1.5 Sub Loop Unbundling shall be within an existing open eir cabinet. open eir will not structurally alter or build any new Cabinet. The allocation of space in open eir Cabinets will be compatible with existing open eir Network plans.
 - 3.1.6 Space within open eir Cabinets shall be allocated on a first come first, served basis. The process for selection is described in the Sub Loop Unbundling IPM.
 - 3.1.7 If the service cannot be provided on the grounds of feasibility or the need to maintain network integrity or lack of capacity because of the unavailability or unsuitability of cabinet space, the product will not be available. Any such refusal shall be accompanied by an account of the reasons for the refusal and may at the request of the prospective beneficiary be made available to the National Regulator.



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- 3.1.8 The Access Seeker may in certain circumstances request the right to inspect the locations at which Sub Loop Unbundling is available, or sites where Sub Loop Unbundling has been refused on grounds of lack of capacity. The processes to make such requests are outlined in the for Sub Loop Unbundling IPM.
- 3.1.9 All Access Seeker Staff, before being permitted access to any open eir cabinet for the purpose of the provision of the Access Services shall be required to be registered. The processes for registering are set out in the Sub Loop Unbundling IPM.
- 3.1.10 The Access Seeker shall conform and shall procure that all of its staff conforms to all security requirements as reasonably requested by open eir and as set out in the Access and Health & Safety Requirements.
- 3.1.11 The Access Seeker shall conform and shall procure that all Access Seeker Staff shall conform to all Health and Safety regulations as reasonably requested by open eir and specified in the open eir Access and Health & Safety Requirements. Where this document refers to open eir premises it should be read to refer to the Cabinet.
 - 3.1.11.1 Failure by the Access Seeker’s Staff to comply with all Health and Safety regulations as reasonably requested by open eir and specified in the Access and Health & Safety Requirements will be subject to the Access Agreement.
- 3.1.12 All access to open eir cabinets shall be escorted access. The Sub Loop Unbundling IPM sets out the processes for escorted access.
- 3.1.13 open eir shall provide the Sub Loop Unbundling Service in accordance with the terms of the Access Agreement.

4 4 Lead Times

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

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5 Charging Structure

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

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ANNEX C

SERVICE SCHEDULE 106

Unbundled Local Metallic Path with Geographic Number Portability Service [“GLUMP”]

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

1. Definitions

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

**“Department of Social and Family
Affairs Allowance or
“DSFA Allowance”**

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

**“Geographic Number
Portability (GNP)”**

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

**“National Directory
Database or NDD”**

means the record of all subscribers of publicly available telephone services in State, including those with fixed, personal and mobile numbers, who have not refused to be included in that

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record, kept in accordance with Regulation 4(3) of the Universal Service Regulations and these Regulations.

2. Description of Services

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

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

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

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

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

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All references are to the latest version(s) published on open eir's website.

3. Terms and Conditions

- 3.1 open eir and the Access Seeker agree to adhere to the Industry agreed Copper Loop Frequency Management Plan (CLFMP), as agreed under the LLU Review Forum.
- 3.2 Receipt of a correctly completed Order Form is a condition precedent to GLUMP being provided to the Access Seeker. The information relating to Order Forms are outlined in the LLU IPM and GNP IPM.
- 3.3 The Unbundled Local Metallic Path utilised in this product shall remain the property of open eir.
- 3.4 The Access Seeker shall not assign or share their interest in or rights to the Unbundled Local Metallic Path utilised in the GLUMP product. For the avoidance of doubt this does not preclude the Access Seeker providing services using Unbundled Local Metallic Path as the bearer for products and services for resale to third parties.
- 3.5 Line Categorisation for Unbundled Local Metallic Paths utilised in the GLUMP product shall be provided. The LLU IPM outlines how this shall be provided. .
- 3.6 Prior to placing any orders, the Access Seeker must have successfully completed Service Establishment Testing as set out in the "GLUMP Service Establishment Test Plan". The controlling document is the latest version of the above titled document(s) published on open eir's website.
- 3.7 Neither Party warrants that this service shall be free faults and/or partial or complete breaks in service.
- 3.8 The correct routing of traffic resulting from GNP shall be achieved through the use of the routing prefixes as allocated by the National Regulator and as outlined in the Industry Agreed "Number Portability Network Working Group Design Decisions, NP14".

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- 3.9 Upon the completion of a GLUMP order the Party gaining the customer shall then be responsible for all obligations in respect of the NDD Listing for that consumer and the application of the DFSA scheme where appropriate.

4. Lead times

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

5. Customer Authorisation

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

6. Unauthorised Provision of Services

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- 6.1 A Party shall not engage in Unauthorised Provisioning of services. Nothing in this Clause 6 or elsewhere shall prejudice the rights of the National Regulator pursuant to Section 45 of the Communications Regulations Act 2002, as may be amended from time to time.
- 6.2 Where an incident(s) of Unauthorised Provisioning of Services is detected by either Party, the incident(s) shall be notified to the Gaining Access Seeker. Each Party shall use its best endeavours to resolve the matter. Where the matter is resolved the Gaining Access Seeker shall notify the Access Provider to reinstate the customer's service to the status prior to the disputed provisioning.
- 6.3 Where the National Regulator has not exercised its rights pursuant to Section 45 of the Communications Regulations Act 2002, as may be amended from time to time, and where complaints concerning incident(s) of Unauthorised Provisioning of Service cannot be resolved in accordance with Clause 6.2, or within ten (10) Working Days of the Gaining Access Seeker being notified pursuant to Clause 5.2, the Losing Access Seeker shall have the option of requesting the President of the Law Society of Ireland to nominate a single arbitrator to adjudicate upon the complaint. The decision of such arbitrator shall be final and binding in its entirety upon the Parties. Nothing in this Clause shall alternatively prevent a Party from exercising its rights pursuant to Clause 12.9 of the Main Body of the Agreement.

7. Charging Structure

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

8. Migration Services

- 8.1 Migration Services to and from the GLUMP Service are as set out in the Migrations Product Description.
- 8.2 Subject to Clause 8.3 below, Migration orders shall be subject to the requesting Access Seeker obtaining a complete Wholesale Operator

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Consent Form “WCOF”) or a complete Customer Authorisation Form (CAF), if applicable.

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

Name/Title

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Company

Address

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

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



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

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ANNEX C
SERVICE SCHEDULE 107

Duct Access

- (1) This Service Schedule sets out open eir's Product Offering for Access to its Civil Engineering Infrastructure pursuant to ComReg Decision D03/13 (Response to Consultation and Final Decision – Next Generation Access (NGA) - Remedies for Next generation Access Markets) ["D03/13"] and ComReg Decision D05/10 (Market Review: Wholesale (Physical) Network Infrastructure Access(Market 4));
- (2) Under this Product Offering, open eir will permit Access Seekers to have their fibre cable carried in sub-ducts installed in open eir's duct infrastructure between nominated open eir ingress and open eir egress chambers locations for their customers. At all times it is the Access Seeker's responsibility to provide connectivity from their own network to the nominated open eir ingress and egress locations;
- (3) The terms and conditions of this Service Schedule shall become operative and binding on both parties once they have executed signed open eir's Duct Access Licence Agreement in duplicate;
- (4) Once the Duct Access Licence Agreement is executed by both parties, open eir will provide Duct Access subject to the terms and conditions in this Agreement and in the following order of priority:-
 - a. This Agreement;
 - b. The Licence Agreement;
 - c. The Product Description;
 - d. The applicable Pricing Schedule which will be made available to the Access Seeker on a confidential basis and will be based on industry agreed charging principles and ;

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- e. The industry agreed protocols for Duct Access, as these may be revised and updated from time to time. Currently:
- (i) The Duct Access Industry Process Manual
 - (ii) The Duct Access Technical and Operations Manual
 - (iii) Any applicable Service Level Agreements
- (5) In accordance with the provisions of D03/13 and D05/10 Access Seekers will be charged for the Duct Access Product in accordance with the following charging principles:
- (i) Operators will be levied with a survey/design charge to recover the costs to open air of survey /design work for each new access request.
 - (ii) The connection / installation fee will recover the direct engineering costs, including project management, to open air of providing access from the OAO network at each end to the open air duct space rented.
 - (iii) An annual licence fee to make a contribution to the open air capital and operating costs of providing the duct facility. The charge will reflect the length of duct accessed, the surface type(s) of the run, and the geographic location of the duct.
- (6) The term and duration of the Duct Access Product will be as set out in the Duct Access Licence Agreement

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ANNEX C
SERVICE SCHEDULE 108

Pole Access

- (1) This Service Schedule sets out open eir's Product Offering for Access to its Pole Infrastructure pursuant to ComReg Decision D03/13 (Response to Consultation and Final Decision – Next Generation Access (NGA) - Remedies for Next Generation Access Markets) ["D03/13"] and ComReg Decision D05/10 (Market Review: Wholesale (Physical) Network Infrastructure Access(Market 4);
- (2) Under this Product Offering, open eir will permit Access Seekers to have their fibre cable carried on open eir over-ground pole routes between nominated open eir ingress and open eir egress pole locations for their customers. At all times it is the Access Seeker's responsibility to provide connectivity from their own network to the nominated ingress and egress poles;
- (3) The terms and conditions of this Service Schedule shall become operative and binding on both parties once they have executed and signed open eir's Pole Access Licence Agreement in duplicate;
- (4) Once the Pole Access Licence Agreement is executed by both parties, open eir will provide Pole Access subject to the terms and conditions in this Agreement and in the following order of priority:-
 - a. This Agreement;
 - b. The Licence Agreement;
 - c. The Product Description and
 - d. The industry agreed protocols for Pole Access, as these may be revised and updated from time to time. Currently:
 - (i) The Pole Access Industry Process Manual
 - (ii) The Pole Access Technical and Operations Manual
 - (iii) Any applicable Service Level Agreements
- (5) In accordance with the provisions of D03/13 and D05/10 , Access Seekers will be charged for the Pole Access Product as described in the current issue of the Product Description.

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- (6) Precise details of each charge will vary for each pole route and can be made available to Access Seekers on a confidential basis. The total annual licence charge for each route will vary depending on the number of poles used, the number of operators using each pole, and on the number of poles carrying Operator furniture. Where the Operator opts to share a section of open eir duct, on a length of an open eir pole route without poles for less than 500 metres, then open eir will charge the appropriate rental charge for a pole for each 50 metres, or part thereof, of duct used. For duct routes longer than 500 metres the applicable duct access rates for annual licence charges will apply.
- (7) The term and duration of the Pole Access Product will be as set out in the Pole Access Licence Agreement

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ANNEX D

Information on open eir Network

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

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

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ANNEX E

Protocol for enabling vectoring on Exchange launched VDSL (EVDSL)

open eir and Access Seekers acknowledge that a co-operative approach is required to strike a fair balance between promoting the interest of end users through the provision of broadband services with the highest speed possible whilst also enabling competition. Operators acknowledge that disruption to end users should be minimised to the maximum extent possible.

Process for already unbundled exchanges and exchanges in the process of establishing unbundling

1. The use of vectoring is not permitted from an exchange where more than one operator is providing an EVDSL service.
2. On an exchange by exchange basis an operator must notify all Active EVDSL Operators * at least four (4) months prior to launching EVDSL from an exchange. The operators may choose to request the assistance of ComReg in this task
3. An operator intending to enable vectoring at any LLU exchange must provide a minimum of three (3) months' notice of implementation.
4. Prior to activating LLU EVDSL, Operators must ensure that they verify that the lines for which they intend to serve using EVDSL are eligible for EVDSL. Please refer to the Guidelines in the NGA IPM on LLU eVDSL.
5. Any operator already using vectoring technology at an exchange included or notified for inclusion in the schedule shall disable all vectoring, providing appropriate notice to their customers as required, in advance of the notified deployment date.
 - a. Operators shall manage their communication with their customers on this subject without naming specific operators that led to vectoring being disabled.

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An Operator may enable vectoring if the second Operator's EVDSL deployment has not been implemented within three (3) months after their notified deployment date. The option to launch does not automatically expire if the operator is late. If an operator becomes aware that it will miss a launch date communicated per paragraph 2 above by more than one (1) month then the operator must either withdraw the request or justify the delay and provide a revised launch date to all Active EVDSL Operators without delay.

In the case of an operator unbundling an exchange for the first time the operator shall use the process in paragraph 2 above if it intends to launch VDSL.

*An Active EVDSL Operator is an operator that has deployed EVDSL equipment and has previously given notice per paragraph 2.

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Version Control History

| Version | Status | Update | Effective Date |
|---------|----------|--|----------------|
| 8 | Approved | ANNEX C SERVICE SCHEDULE 107 Duct Access Wording change for Section [2] ANNEX C SERVICE SCHEDULE 108 Pole Access Wording change for Section [2] | 03/01/17 |
| V9.0 | Final | This document is based on V8 Implementation of Standardised Change Control. | 22/06/2017 |
| V10.0 | Final | Clause 19 updated to reflect liability for duct/pole access products | 21/02/2019 |
| V10.1 | Proposed | Inclusion of a Data Protection Clause section | 01/05/2019 |
| V11.0 | Final | Inclusion of a Data Protection Clause section | 02/05/2019 |