

Subject to Contract/Contract Denied

Agreement

between

eircom Limited.

And

(PSTN/ISDN PAC Operator)

for the Provision

the User Network Interface (“UNI”) Payphone Access

Charge Service

THIS AGREEMENT is made on xxxx 201x between

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

and
- (2) xxxx having its registered office at xxxxx . (hereinafter referred to as the "PAC Operator")

Together referred to as the "Parties" and individually as the "Party")

WHEREAS:

1. The PAC Operator has satisfied the eligibility criteria to levy the Payphone Access Charge and wishes to use the eircom UNI PAC Service in order to do so;
and
2. eircom agrees to provide the eircom UNI PAC Service to facilitate the enable PAC Operator's PAC charges to be levied; and
3. In consideration thereof, the Parties have agreed to enter into this Agreement, the terms and conditions of which shall govern the provision of the eircom UNI PAC Service.

Terms and Conditions

1. Definitions

"Agreement" means this Agreement between the Parties to govern the terms and conditions of the eircom UNI PAC service as more fully described in Clause 2.4.

"Commencement Date" means xxxx (or the date of this Agreement).

"Payphone Access Charge and/or PAC" means the call origination charge levied in respect of calls made from Eligible UNI PAC Lines for calls to 1800 xx numbers terminating on either the eircom network or other operators interconnected to the eircom network.

"UNI PAC"

Eligible Lines” means PSTN/ISDN lines that:

- (a) are rented from eircom by the PAC Operator and for which no notice to terminate service has been issued; and
- (b) are used for purposes of providing a public payphone service; and
- (c) route calls using the eircom network with eircom as their service provider.

“Reconciliation Report” is the report issued by the PAC Operator to eircom along with the invoice to enable eircom to confirm the validity of the information contained in the PAC Operator’s invoice.

“UNI PAC Service” is the service consisting of:

- (a) eircom providing the facility to enable PAC identification on UNI PAC Eligible Lines; and
- (b) eircom agreeing to PAC undisputed PAC charges for calls terminating on its network; and
- (c) eircom agreeing to levy the PAC on interconnected operators.

“Working Day” Any day other than Saturdays, Sundays, public or bank holidays in Ireland.

2. Conditions of the UNI PAC Service

2.1 The UNI PAC Service shall only be available to PSTN/ISDN PAC Eligible Lines. The PAC Operator shall only be entitled to submit orders in respect of UNI PAC Eligible Lines.

2.2 Subject to Clause 4.3, eircom shall be liable for payment of undisputed invoice amounts in respect of PAC charges levied for 1800 xx calls terminating on the eircom network.

2.3 In respect of 1800 xx calls terminating on the network of an operator interconnected to the eircom network, eircom agrees to levy the PAC on such operator and to enforce the provisions of its agreements to recover such amounts. However, eircom shall not be liable to remit such amounts to the PAC Operator unless collected regardless of whether or not some amounts may actually be paid

by eircom. eircom shall be entitled to request credits for such amounts that are uncollected and the PAC Operator shall be obliged to issue such credits. Eircom may apply the credits to future payments.

- 2.4 The UNI PAC Service will be provided in accordance with the following contractually binding documents:
- (a) this Agreement;
 - (b) the Product Description; and
- 2.4.1 The Agreement will be signed between the Parties and based on eircom's standard offering for the UNI PAC Service. This document is published on the eircom website and may be updated from time to time. The Parties undertake and agree to enter into amendments based on re-publications of this standard offering. All other modifications to this Agreements shall be agreed in writing between the Parties.
- 2.4.2 The controlling version of the Product Description shall be latest version of this document published on eircom's website.
- 2.4.3 eircom shall notify the operator by email each time a new version of the above documents is published. It shall be the PAC Operator's obligation to provide and keep current the information in respect of the contact details in Clause 9, Notice.
- 2.5 In the event the PAC Operator applies for a service provider other than eircom to route calls using carrier pre-selection, carrier select and/or carrier access in respect of any PAC Eligible UNI Line, the PAC Operator shall be obliged to provide a cease order to eircom in respect of that line within two Working Days of such application.
- 2.6 Neither the PAC Operator nor any other person shall use or allow the UNI PAC Service to be used otherwise than in accordance with any applicable law and the regulations.
- 2.7 Provision of the UNI PAC Service may be restricted by eircom in accordance with the eligibility criteria, any applicable law and regulations.
- 2.8 eircom does not warrant that the UNI PAC Service will meet the PAC Operator's requirements or that this service will be error free.
- 2.9 The PAC Operator shall be obliged to comply with the Requirements for Levying PAC as developed by industry, including any subsequent changes that may be agreed with ComReg.

3. Charges

- 3.1 The PAC to be applied on behalf of the PAC Operator is as set out in Schedule 1 to this Agreement.
- 3.2 The charges for which the PAC Operator shall pay eircom for the provision of this service shall be as set out in Schedule 2 to this Agreement.

4. Billing and Payment

- 4.1 The PAC Operator shall issue eircom with a monthly invoice and Reconciliation Report no sooner than fifteen days following the last day of each calendar month.
- 4.2 eircom shall pay the invoice in accordance with the conditions of Clause 2 within 30 days from the date of the invoice unless any of the following occurs:
- a) The PAC Operator fails to provide the Reconciliation with the report;
 - b) A dispute is raised regarding the invoice but is not yet resolved;
 - c) eircom exercises its rights in Clause 2.4.
- 4.3 Whenever a sum of money shall be due and owing to eircom by the PAC Operator in respect of any retail service as published in the “eircom Telecommunications Scheme”, it is hereby agreed that any such sum due or part thereof may be deducted from any sum due by eircom to the PAC Operator.
- 4.4 eircom will issue invoices for the charges set out in the eircom UNI PAC Pricelist monthly. 4.7 The PAC Operator shall remit payment no later than thirty days from the date of the invoice.

5. Commencement and Duration

- 5.1 This Agreement shall commence on the Commencement Date and shall be for a period of twelve calendar months therefrom unless terminated pursuant to Clause 6.

6. Termination

- 6.1 Either Party can terminate this Agreement by giving one month’s written notice.

- 6.2 This Agreement may be suspended or terminated without notice for breach of any material terms or otherwise in accordance with any applicable law or regulation.
- 6.3 Either Party may terminate this Agreement forthwith by notice to the other Party if:
- 6.3.1 that other Party commits a material breach of any of the terms of this Agreement and in the case of a breach capable of remedy, fails to remedy the same within 21 Working Days after receipt of a notice requiring such breach to be remedied; or
 - 6.3.2 that other Party is repeatedly in breach of this Agreement; or
 - 6.3.3 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other Party; or
 - 6.3.4 that other Party makes any voluntary arrangement with its creditors or becomes subject to an administration order; or
 - 6.3.5 that other Party goes into liquidation; or
 - 6.3.6 that other Party ceases or threatens to cease to carry on business; or
 - 6.3.7 that other Party is charged with the breach of any applicable law.

7. Dispute Resolution

- 7.1 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
- 7.2 In the event of the Parties failing to resolve the dispute through negotiation within two (2) weeks or in order to invoke formal resolution 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 Dispute Notice may be served upon either the Level 1 or Level 2 contacts. 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 ("Disputes").
- 7.3 Service of the Dispute Notice shall formalize the Dispute and subject it to the terms of Clauses 9.5 through 9.13.
- 7.4 The Parties shall endeavor to resolve the Dispute within forty-five (45 days) from the issuing of a Dispute Notice (the "Dispute Period"). The Parties undertake to

Subject to Contract/Contract Denied

respond to all reasonable requests for information, which either Party reasonably believes will resolve the Dispute. Either Party may escalate the Dispute from Level 1 to Level 2 at any time during the Dispute Period by providing a written request.

7.4 The normal contact for eircom is:

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

Tel: (00) 353 1 671 4444
Fax: (00) 353 1 428 6240

Level 2 Wholesale Contracts Manager
eircom
1 Heuston South Quarter
St. John's Road
Dublin 8.

Tel: (00) 353 1 671 4444
Fax: (00) 353 1 428 6240

The normal contact for the Access Seeker is:

Level 1

Tel:
Fax:

Level 2

Tel:
Fax:

No change to the normal contact details shall be effected until same has been notified to the other Party.

7.5 The time limits specified in this Clause may be extended by mutual agreement between the parties.

- 7.6 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.
- 7.7 Nothing herein contained shall prevent a Party from seeking (including obtaining or implementing) interlocutory or other immediate or equivalent relief.

8. Limitation of Liability

- 8.1 The following provisions set out eircom's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the PAC Operator in respect of:
- 8.1.8 any breach of the contractual obligations arising under this Agreement;
and
- 8.1.2 any representations, statements or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 8.2 Any act or omission on the part of eircom or its employees, agents or sub-contractors falling within Clause 8.1 shall, for the purposes of this Clause 8, be known as an "Event of Default".
- 8.3 eircom's entire liability in respect of an Event of Default shall be limited to five thousand (5,000)EURO for any one event or series of connected events and ten thousand (10,000)(EURO) for all events (connected or unconnected) in any period of 12 calendar months.
- 8.4 eircom shall have no liability under this Agreement in respect of any fault which is the responsibility of any third party service provider.
- 8.5 In no circumstances shall eircom be liable to the PAC Operator for direct or indirect loss of profits, goodwill, business or anticipated savings nor for any type of special, indirect or consequential loss or for any loss of or destruction of data (even if such loss was reasonably foreseeable or eircom had been advised of the possibility of the PAC Operator incurring the same).
- 8.6 Save as expressly stated in this Agreement, eircom shall have no liability whatsoever to the PAC Operator in respect of this Agreement whether in contract, tort, or otherwise and all conditions and warranties express or implied whether by statute or common law or otherwise are hereby excluded to the extent permitted by applicable law.

9. Notice

9.1 A notice shall be duly served if:

- 9.1.1 delivered by hand, at the time of actual delivery;
- 9.1.2 sent by facsimile, upon its receipt being confirmed;
- 9.1.3 sent by recorded delivery post, four (4) Working Days after the day of posting.

9.2 Except if otherwise specifically provided all notices and other communications relating to this Agreement shall be in writing and shall be sent as follows:

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

Tel: (00) 353 1 671 4444

Fax: (00) 353 1 428 6240

9.2.2 PAC Operator

10. Waiver

10.1 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.

11. Confidentiality

11.1 The terms and conditions regarding Confidential Information shall be as set out in the Non Disclosure Agreement between the Parties signed xxxx and incorporated into this Agreement.

12. Intellectual Property Rights

12.1 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.

13. Force Majeure

13.1 Neither party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder (other than a payment obligation) due to causes beyond its reasonable control, including but not limited to: earthquake, flood, fire, storm or other natural disaster, breakdown of telecommunications systems, act of God, labour controversy or threat thereof, civil disturbance or commotion, disruption of the public markets, war or armed conflict (whether or not officially declared) or the inability to obtain sufficient material, supplies, labour, transportation, power or other essential commodity or service required in the conduct of its business, any change in or the adoption of any law, ordinance, rule, regulation, order, judgement or decree (each a "Force Majeure Event"); provided that the party relying upon this provision shall (a) have given the other party written notice thereof promptly and, in any event, within 5 (five) days of discovery thereof; and (b) shall take all steps reasonably necessary under the circumstances to mitigate the effects of the Force Majeure Event upon which such notice is based. Either party shall have the right to terminate this Agreement upon written notice if any Force Majeure Event continues for more than 90 (ninety) days.

14. Assignment

14.1 Unless otherwise agreed in writing, and subject to clause 15.2, no rights, benefits or obligations under this Agreement may be assigned or transferred, in whole or in part, by a Party without the prior written consent of the other Party.

14.2 No consent is required under clause 15.1 for an assignment of rights, benefits or obligations under this Agreement (in whole or in part) to a successor in interest to all or substantially all of the assigning Party's to which the subject matter of this Agreement relates.

14.3 The assigning Party shall promptly give notice to the other Party of any assignment permitted to be made without the other Party's consent. No assignment shall be valid unless the assignee/successor agrees in writing to be bound by the provisions of this Agreement.

15. Relationship of Parties

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.

16. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Ireland.

Signed by and on behalf of eircom:	Signed by and on behalf of PAC Operator:
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Subject to Contract/Contract Denied

Schedule 1
Payphone Access Charge

Charge (Euro)	Driver	Effective From	Effective To
.15708	Per minute		

Subject to Contract/Contract Denied

Schedule 2

eircom UNI PAC Service Price List

Table 1 below lists the Payphone Category Application charge raised by eircom for providing the UNI PAC Service.

Table 1 Payphone Order Handling Charges*			
Service	Charge (EUR)	Effective from	Effective to
Order Application	6.00	08/10/03	
Order Removal/Cessation	6.00	08/10/03	

The rates above are in Euro cent and are per application.

* The Payphone Category Application Charge is the charge applicable for the application of the payphone category to the PAC Eligible Payphone line.