
Pro Forma
between
eircom Limited
and
Operator
for the
Provision of the 1891 UNI Service

Version Control

Version	Status	Update	Effective Date
1.0			01 July 2015
V2.0	Final	This document is based on V1.0 Implementation of Standardised Change Control.	12/06/2017

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- Historical Document History Table located at end of Document.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.**

THIS AGREEMENT is made on “**date**” between

eircom Limited (hereinafter referred to as “eircom”) having their Branch Address at 2022 Bianconi Avenue | City West Business Campus | Dublin 24 | D24 HX03 ,
Ireland of the one Part; and

Operator Name, having its registered office at “**Address**” (“**Operator Name**”) and including specifically for the purpose of this Agreement “**Operator**” (hereinafter referred to as the “Service Providers”) of the other Part

(Together referred to as the “Parties” and individually as the “Party”)

WHEREAS:

1. [**“Operator”** is the holding company of “**Operator Name**” (together referred to as “the Service Providers”)]
2. The Service Providers wish to offer access to their 1891 service to customers directly connected to the eircom network; and
3. eircom agrees to enable such access to customers directly connected to the eircom network; and
4. The Parties have therefore decided to enter into this Agreement, the terms and conditions of which shall govern the provision of the 1891 UNI Service.

Terms and Conditions

1. **Definitions**

In this Agreement:

“**Agreement**” means the agreement between eircom and the Service Providers for the provision of the 1891 UNI Service, as the same may be amended from time to time by the Parties subject to these general terms and conditions;

“**Commencement Date**” means “**date**”.

“**Contract Term**” means the period of time specified at Clause 4 below for which eircom and the Service Providers agree to provide and/or offer the 1891 UNI Service;

“**eircom local call area**” means the geographic area from which the geographic number that the 1891 number can be translated to in order to be charged at eircom’s prevailing local call fee, which local call fee may be changed by eircom from time to time.

“**Settlement Statement**” means the document submitted by eircom to the Service Providers which shall specify eircom’s figures for the volume of paid

minutes for each time of day, and the Settlement Rates payable for each time of day, for calls made to the Service Provider(s), resulting from the monthly volume of traffic across the Service ;

“**Service Providers**” means “Operator”, which have been assigned 1891 numbers by the ODTR, and has entered into this Agreement;

“**Settlement Rate**” means the rate(s) payable as set out in Schedule 1 of this Agreement as may be modified from time to time;

“**1891 UNI Service**”/ or “**Service**” means the facility whereby customers of eircom and customers of other licenced operators may dial the Service Provider’s 1891 code, and the resulting calls are delivered to the relevant point of presence in the eircom local call area by means of an Integrated Services Digital Network (“ISDN”) Primary Rate Access (“ PRA”).

2. Conditions of 1891 UNI Service

- 2.1 The 1891 UNI Service will only be available in those eircom local call areas in which the Service Providers have a point of presence.
- 2.2 Neither the Service Providers nor any other person shall use the 1891 UNI Service otherwise than in accordance with any applicable law and the regulations.
- 2.3 Use of the 1891 UNI Service may be restricted by eircom in accordance with any applicable law and regulations.
- 2.4 The Service Providers agree that from time to time it may be necessary for eircom to temporarily suspend the 1891 UNI Service during periods of repair, essential maintenance or alteration or improvement to eircom’s telecommunications network. Where possible eircom will give the Service Providers notice five (5) days prior to such suspension of service and eircom will restore Service as soon as possible after such suspension.
- 2.5 eircom does not warrant that the 1891 UNI Service will meet the Service Provider’s requirements or that the operation of the 1891 UNI Service will be uninterrupted. However in its provision of the Service under the terms of this Agreement, eircom will convey calls within it’s network to a quality of service no less than it provides for any other PSTN service. The overall quality of service will be impacted by the dimensioning of the access connection to the Service Providers and therefore the overall quality of service cannot be warranted by eircom.
- 2.6 The Service Providers shall not use the Service other than in accordance with any applicable law. The Service Providers also undertake to advise their

internet service provider customers that their use of the service should comply with any applicable law.

- 2.7 The Service Providers shall indemnify eircom, its employees, servants and agents against any demand, liability, loss, cost, damage and expense (including but not limited to reasonable legal fees) incurred by eircom arising directly or indirectly from any claim or proceeding instituted or threatened against eircom by a third party alleging that the Service Providers failed to comply with Clause 2.6. The Service Providers also agree to indemnify eircom should an action arise as a result of the Service Provider's customers failure to comply with applicable law.

As a condition of this indemnity eircom must:

- (a) notify the Service Providers promptly in writing of any claim or threatened claim
 - (b) make no admission relating to the claim or threatened claim
 - (c) allow the Service Providers to conduct all negotiations and proceedings and give the Service Providers all reasonable assistance in doing so.
- 2.8 The Service Providers hereby warrants to eircom for the benefit of eircom that it is fully empowered and authorised to enter into this Agreement on behalf of the Service Provider(s) and to bind the Service Providers to the terms of this Agreement.

3. Billing and Payment

- 3.1 No sooner than fifteen (15) days following the last day of each calendar month, and no later than thirty days (30) days following the last day of each calendar month eircom will issue a Settlement Statement to the Service Providers. Subject to Clause 4, the Service Providers shall issue an invoice to eircom within fifteen (15) days of the date on the Settlement Statement. Subject to Clause 3.6, eircom will remit payment no later than thirty (30) days from the date of the invoice.
- 3.2 For the avoidance of doubt, this Agreement does not apply to calls where the calling party dials the PSTN number directly.
- 3.3 The Service Providers shall accept the traffic levels stated in eircom's Settlement Statement and use such figures as the basis for its invoice unless there is a five percent (5%) or greater variance in either direction from the Service Providers own total measured traffic for the applicable period (hereinafter a "Variance"). Total measured traffic must exclude calls directly dialled using PSTN numbers for purposes of determining a Variance. If the Settlement Statement reflects a Variance, the Service Providers will issue the invoice for that period using the Service Provider's traffic levels. In the event of a Variance, the Service Providers shall so note such on the applicable

invoice, and provide details to eircom of its measured traffic for such period. Upon request, eircom will also provide details of its measured traffic to the Service Providers. If a Variance occurs for three consecutive months the, the Parties shall immediately commence internal investigations, and shall agree to all reasonable efforts to try to resolve the discrepancy. (the “Variance Review”). If the reason(s) or cause of the Variances cannot be resolved, the terms of this clause will be reviewed subject to Clause 7. If the Variance Review demonstrates that during the period of any Variance, the Parties relied on incorrect traffic measurements, an invoice or credit notice will be raised to correct the error in the settlement process

- 3.4 Whenever a sum of money shall be due and owing to eircom by the Service Providers in respect of any retail service as published in the “eircom Telecommunications Scheme” excluding leased lines services, it is hereby agreed that any such sum due or part thereof may be deducted from any sum due by eircom to the Service Providers.

4. Commencement and Duration

This Agreement shall be deemed to have commenced on the “**Date**”, and shall be for a minimum period of twelve calendar months therefrom. Provided that this Agreement has not been terminated in accordance with its terms or in accordance with any applicable regulations, this Agreement shall thereafter automatically renew for successive twelve (12) month periods. For the purposes of this Clause, a twelve month period will be calculated from the first anniversary of the commencement date set out herein.

5. Termination

- 5.1 This Agreement, subject to Clause 6 below, is terminable by either party by giving to the other in writing at least one month’s notice expiring on the last day of the calendar month following that in which the notice is given. Notice shall be in accordance with Clause 9.
- 5.2 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. Settlement Rates

- 6.1 The Settlement Rates applicable to any period or traffic levels shall be as set out in Schedule 1 of this agreement.

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- 6.2 eircom shall provide the Service Providers with fourteen (14) days written notice of changes to its retail and retention rates which will result in a change to the Settlement Rate and such notice shall be subject to Clause 13.3.

7. Review

- 7.1 The Parties agree to meet at least every six months to monitor the performance of this Agreement and to modify the terms of this Agreement when appropriate to reflect operational, industry or market changes.
- 7.2 The Parties also agree to meet upon request in the event that an operational difficulty cannot be resolved and agree to negotiate in good faith any changes that may be necessary to resolve such difficulty.

8. Dispute Resolution

- 8.1 Each Party shall use its best endeavours to resolve any disputes arising between them concerning the implementation, application or interpretation of this Agreement.
- 8.2 In the event that the Parties fail to resolve the dispute, either Party may formalise the dispute by writing to the relevant contact point in Clause 10. The written notice will set forth in detail the nature of the dispute and the actions undertaken by the Parties prior to formalising the dispute.
- 8.3 Upon receipt of a written notice of dispute, the persons set out in Clause 10 shall agree to schedule a meeting within fourteen (14) days of receipt.
- 8.4 The above procedures do not preclude either party from seeking any entitled recourse, including but not limited to recourse to the Office of the Director of Telecommunications Regulation.

9. Severability

- 9.1 If any part or parts of this Agreement are held to be invalid, the remaining parts of the Agreement will continue to be valid and enforceable.

10. Notice

- 10.1 A notice shall be duly served if:

- a). delivered by hand, at the time of actual delivery;
- b). sent by facsimile, upon its receipt being confirmed;
- c). sent by recorded delivery post, 4 calendar days after the day of posting.

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

- a) eircom
Wholesale Contracts Manager
Eircom

2022 Bianconi Avenue
City West Business Campus
Dublin 24 | D24 HX03

Telephone: (01) 671 4444
Facsimile: (01) 428 6240

- b) **“Operator Name, Address, Telephone and Fax number”**

11. Confidentiality

11.1 The Service Provider will be obliged to sign a Non-Disclosure Agreement (NDA) prior to entering into this agreement with eircom.

12. Force Majeure

No 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.

13. Assignment

13.1 Unless otherwise agreed in writing, and subject to clause 13.2, no rights, benefits or obligations under this Agreement may be assigned or transferred, in whole or in part, by either Party without the prior written consent of the other Party.

13.2 No consent is required under clause 13.1 for an assignment of rights, benefits or obligations under this Agreement (in whole or in part) to a successor to all or substantially all of the assigning Party's network to an associated company provided that such successor or associated company shall have had a licence granted to it to run the network and use the allocated number ranges of the assigning Party.

13.3 Number Translation Codes (NTC) retentions and Retail Industry notification regulation will apply to this service.

14. Governing Law

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

<p>Signed by and on behalf of eircom:</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>Signed by and on behalf of "Operator"</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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Schedule 1
Commercial Terms

The agreed settlement rates will be dependent on the routing arrangements of the Service Provider, which will be defined and agreed prior to the signing of the agreement.

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