

Subject to licence / licence denied

open eir Physical Co-Location

LICENCE AGREEMENT

DRAFT



eircom Limited

AND

[Operator]

I N D E X

CLAUSE

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LICENCE AGREEMENT

THIS LICENCE is made the ____ day of _____ BETWEEN:

(1) **eircom Limited** which expression shall, where the context so admits, include its successors and assigns whose Branch Address is at 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24 D24 HX03, Ireland (“**the Licensor**”).

And

(2) [**Licensee’s Name**], company registration number [] and whose registered office is at [] (“**the Licensee**”)

Hereinafter collectively referred to as the “Parties” or separately the “Party”.

NOW IT IS AGREED as follows:-

1. DEFINITIONS

In this Licence the following terms shall bear the meanings hereby assigned to them namely:-

“Access Agreement” means the Agreement in respect of the provision of Physical Co-location, dated the ____ day of _____ 20__ and made between the Parties;

“Access Reference Offer” means the Reference Offer in relation to Physical CoLocation, for the time being published on open eir’s website;

“Accreditation Process” means the process more particularly described at Schedule 2, Section 1, clause 5;

“Apparatus” means that part of the Equipment (if any), approved under the equipment notification process contained in the Inter Operator Process

Manual, which the Licensor permits the Licensee to install in the Footprint and which is listed in Schedule 1 Part B, annexed hereto;

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

“Cable Chamber” Cable chambers are located below or adjacent to the MDF. They facilitate the entry of cables into the exchange premises and the routing of these cables to the MDF;

“Commencement Date” means the date specified in Part A of Schedule 1;

“Deed of Renunciation” means a deed of renunciation to be signed by the Licensee on or before the Commencement Date of this Licence;

“Duct and Pole Access Products” means duct and pole access products described in Service Schedules 107 and 108 to the current edition of open eir’s Access Reference Offer;

“Emergency” means a situation where immediate action is required in order to prevent or limit injury to persons or damage to property;

“Equipment” means the Licensee’s Block(s), Licensee’s Tie Cable, the Licensee’s Fibre, the Licensee’s D.C. Power Distribution Cable, the Licensor’s DC Distribution Cabinet, the Licensee’s Earth Cable, the Apparatus and the Licensee’s Manhole collectively, either owned, leased or licensed by the Licensee;

“Equipment Register”	means the Collocation Equipment Register as defined in the Inter-Operator Process Manual for Physical Collocation as maintained by eircom on behalf of the industry;
“Equipment Registration Check”	means the verification by the Licensor that the Licensee’s Equipment is included in the Equipment Register;
“Facilities Equipment”	means the air conditioning, fire safety equipment and wiring associated with the foregoing, installed by the Licensor at the explicit request of the Licensee;
“Footprint”	means an area within an open air Telephone Exchange measuring 600mm x 400mm x 2.2m;
“Hazard”	shall include, but not be limited to, any occurrence or threatened occurrence which, in the reasonable opinion of the Licensor, having due regard to the Health and Safety statement published by the Licensor constitutes or is likely to constitute a risk to the health and safety of any person or which is likely to cause damage to equipment or property;
“Hazardous Material”	has the meaning attributed to it in the Licensor’s Health and Safety Statement;
“Head Lease”	means any lease or licence under which the Licensor holds the property, and “Head Lessor” shall be construed accordingly;

“Infrastructure”	means ducting serving the Licensor's nominated manhole;
“Interest Rate”	means Euribor + four (4%) (3 month rate) applied to amount in default;
“Interconnect IBH Products”	means Interconnect IBH products as described in the current edition of open eir’s Leased Line Reference Offer;
“Inter Operator Process Manual”	means the manual of that name as amended from time to time by open eir and published on open eir’s website;
“Leased Line Reference Offer”	means the Reference Offer in relation to Leased Lines, for the time being published on open eir’s website which an Operator must agree to in order to avail specific leased line services;
“Licence”	means the licence granted pursuant to clause 2.1;
“Licence Fee”	means the sum specified in Schedule 3 plus Value Added Tax (or any tax substituted therefor) (as may be varied in accordance with the provisions of this Agreement);
“Licensee’s Block(s)”	means that part of the Equipment (if any) constituting the terminating block(s), installed by the Licensor on the Main Distribution Frame for the purpose of facilitating the connection of the Licensee’s Tie Cable to the Apparatus;
“Licensee’s D.C. Power Cable”	means that part of the Equipment indicated for the purposes of illustration only, on Plan A annexed hereto and thereon coloured yellow;

“Licensee’s Earth Cable”	means that part of the Equipment indicated for the purposes of illustration only on Plan A annexed hereto;
“Licensee’s Fibre”	means that part of the Equipment, if any, permitted by the Licensor under this Licence to be installed by the Licensor and terminated by the Licensee on the Apparatus and which is more particularly indicated on Plan A annexed hereto and thereon coloured red;
“Licensee’s Manhole”	means that part of the Equipment indicated for the purposes of illustration only on Plan A annexed hereto;
“Licensee’s Network”	means the Telecommunications Network owned, operated and controlled exclusively by the Licensee;
“Licensee’s Staff”	means any employee, agent or contractor of the Licensee;
“Licensee’s Tie Cable”	means that part of the Equipment (if any) installed by the Licensee shown for the purposes of identification only on Plan A annexed hereto and thereon coloured blue;
“Licensor’s D.C. Distribution Cabinet”	means that part of the Equipment (if any) installed by the Licensor shown for the purposes of identification only on Plan A annexed hereto;
“Licensor’s Jumper”	means that part of the Equipment indicated for the purposes of illustration only, on Plan A annexed hereto and thereon coloured green;

“Licensor’s Network”	means the Telecommunications Network owned, operated and controlled exclusively by the Licensor;
“Licensor’s Nominated Manhole”	means the manhole indicated for the purposes of illustration only on Plan A annexed hereto;
“Licensor’s Staff”	means any employee, agent or contractor of the Licensor;
“Main Distribution Frame”	means racks of termination circuits for the cable in a Telecommunications Network;
“MDF”	means the Main Distribution Frame;
“MDF Room”	means the room in the eircom telephone exchange housing the MDF;
“Material Change”	means a Physical Change which results in additions or changes to floor space, shared rack space, cable tray space, or non-trivial increase in air conditioning;
“National Management Centre”	means: <ul style="list-style-type: none"> (a) in the case of open eir, National Management Centre, Citywest Business Park, Citywest, Naas Road, County Dublin, and (b) in the case of the Licensee, [Address]
“Next Generation Access	means open eir’s Fibre To The Home (FTTH) or

Virtual Unbundled Access”	Fibre To The Cabinet (FTTC) Virtual Unbundled Access (VUA) Product as described in Service Schedule 302 to the current edition of open eir’s Wholesale Bitstream Access Reference Offer;
“Non Disclosure Agreement”	means the Agreement dated the ____ day of ____20__ and made between open eir of the One Part and [Licensee’s Name];
“Non-Material Change”	means a Physical Change which does not result in additions or changes to floor space, ladder rack space, cable tray space, or non-trivial increase in air conditioning capacity;
“NRA”	means the National Regulatory Authority or such other body in whom the powers and functions, currently vested in the Commission for Communications Regulation in Ireland are vested;
“open eir”	means eircom Limited;
“open eir telephone exchange”	means the telephone exchange building, situated in the Site, and belonging to the Licensor, more particularly delineated on Plan B annexed hereto and thereon outlined in red;
“Operational Procedures”	means the procedures set out in Schedule 2;

“Payment Days”	means the 1 st January, 1 st April, 1 st July and 1 st October in each year of the Term and “Payment Day” shall be construed accordingly;
“Physical Change”	means the installation, replacement, movement or expansion or a series of replacements, movements or expansions of the Equipment or the installation of additional connections to the Equipment. For the avoidance of doubt, Unforeseen Physical Change shall not constitute Physical Change;
“Physical Co-location”	means the provision by the Licensor of a serviced open eir Telephone Exchange Footprint(s), singularly or, where available, in multiples, for the purposes as set out in clause 2.7;
“Power-up Date”	means the date, twelve (12) months after the date on which the Site Preparation works are completed or deemed to be completed in accordance with the Operational Procedures;
“Probation Period”	means in open eir’s sole discretion, a period of a minimum of 12 months that must apply from the date of the signing of the first Licence Agreement for a Site by the Access Seeker;
“Product Elements”	means the Licensor’s Earth Cable, the Licensor’s Earth Bar, the Licensor’s D.C. Power Supply, the Licensor’s D.C. Supply Cable, the Licensor’s Jumper Cable, the Licensor’s Subduct collectively, all of which are indicated for

the purposes of illustration only on Plan A annexed hereto;

“Regulatory Requirements” means the telecommunications requirements issued by the European Union (EU), the Commission for Communications Regulation or primary and secondary legislation issued by the Government for the time being of Ireland as may be updated from time to time;

“Regulations” means Regulation 2887/2000 of European Parliament and the European Council relating to Unbundled Access to the Local Loop, as amended or superseded from time to time;

“Site” means the location specified in Part A of Schedule 1, more particularly indicated on Plan B annexed hereto and thereon outlined in blue;

“Site Preparation Fee” means the fee levied by the Licensor on the Licensee in accordance with the provisions of Schedule 3 Section 2;

“Site Preparation Works” means the works set out in Schedule 2, Section 2;

“Specified Regulated Products” means the products which the Licensor is obliged under its Regulatory Requirements to provide to the Licensee which are set out in the Licensor’s reference offers and which specify that they may be used with a Footprint in the respective service schedule, the current versions of which are published on the open eir website, www.openeir.ie;

“Technical Manual”	means the manual of that name as amended from time to time by open eir and published on the open eir website;
“Telecommunications Network”	means transmission and, where applicable, switching equipment and other resources, which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electromagnetic means;
“Term”	means the period specified in Part A of Schedule 1;
“Wholesale Bitstream Access Reference Offer”	means the Reference Offer in the form of a binding legal contract which an Operator must agree to in order to avail specific bitstream services, for the time being published on open eir’s website;
“Unbundled Local Metallic Path”	means an in-situ two-wire metallic path connection between the Licensee’s Block(s) and the Network Termination Unit (“NTU”), or Network Terminating Point or where no NTU exists, in the telecommunications subscriber’s own premises;
“Unescorted Access”	means the authorisation of a registered, accredited individual and/or a registered contractor of the Access Seeker to carry out Non-Material Change (as defined in the Licence) and/or repair on behalf of the Access Seeker at exchanges where the Access Seeker has a valid Licence;

“Unforeseen Physical Change”

means the unexpected or unforeseen replacement of the Licensee’s Tie Cable, the Licensee’s D.C. Power Cable, the Licensee’s Earth Cable or individual elements of the Apparatus with like for like element. For the avoidance of doubt, ‘like for like’ means that the replacement elements shall have the same physical dimensions, functionality and power usage as the original elements. Unforeseen Physical Change does not include replacements of the aforementioned elements which affect Line Sharing, nor does it include the replacement of more than fifty (50%) per centum of the Apparatus;

2. GRANT OF LICENCE

2.1 In consideration of the Licence Fee, the Site Preparation Fee, the additional sums payable in accordance with the provisions of clause 3.7, the Licensor hereby grants to the Licensee a non-exclusive licence in common with the Licensor and any other person or persons who may be permitted by the Licensor so to do, and subject to the terms and conditions hereinafter contained, for and during the Term, and subject to the provisions of clause 11 (Termination) herein after contained, to:

- (a) maintain and use the Licensee’s Fibre at a location or locations on the Site agreed with the Licensor (“the Designated Fibre Site”);
- (b) install, terminate on the Licensee’s Block(s), use and maintain the Copper Tie Cable at a location on the Site agreed with the Licensor (“the Designated Tie Cable Location”);

- (c) use and maintain the Licensee's Block(s) at a location or locations on the Main Distribution Frame agreed with the Licensor ("the Designated Block Location");
- (d) install terminate, use and maintain the Licensee's Earth Cable between the Earth Bar and Apparatus respectively ("the Designated Earth Cable Location");
- (e) install, terminate, use and maintain the Licensee's D.C. Cable between the D.C. Distribution and Apparatus respectively ("the Designated D.C. Cable Location");
- (f) use the Licensor's D.C. Distribution Cabinet at a location or locations on the Site agreed with the Licensor ("the Designated Distribution Location");
- (g) to use the Product Elements.

For the avoidance of doubt, the Licence hereby granted does not confer and shall not be construed so as to confer on the Licensee any right or entitlement to use either the Infrastructure serving the Site or the existing electrical supply to the Site.

- 2.2 The Site shall be under the control of the Licensor who shall be entitled to exercise such control by itself or through its servants or agents.
- 2.3 Save for the Licensee's Block(s), the Licensee's Fibre and the Licensor's D.C. Distribution Cabinet, which shall be installed by the Licensor in accordance with the provisions of Schedule 2 Section 2, the installation of the Equipment shall be at the sole risk and expense of the Licensee.
- 2.4 Save for the Licensor's D.C. Distribution Cabinet, which shall be maintained by the Licensor, the use and maintenance of the Equipment shall be at the sole risk and expense of the Licensee.

- 2.5 The Licensor reserves the right to monitor the Licensee's access to the Site in the manner set out in the Operational Procedures.
- 2.6 The Licensor reserves the right to supervise all work carried out by the Licensee at the Site and all access of the Licensee to the site, in accordance with the provisions of Schedule 2. (Operational Procedures)
- 2.7 The Licensee may use the Equipment for the exclusive purpose of availing of some or all of the following open eir products:
- (i) Unbundled Local Metallic Path ("ULMP") Service and Line Sharing products under the terms of open eir's current Access Reference Offer,
 - (ii) Duct and/or Pole Access Products under the terms of open eir's current Access Reference Offer,
 - (iii) open eir's Next Generation Access (NGA) Virtual Unbundled Access (VUA) products under the terms of open eir's Wholesale Bitstream Access Reference Offer , and
 - (iv) open eir's Interconnect IBH Products under the terms of open eir's Wholesale Leased Lines Reference Offer -
- together "open eir's Reference Offers" - published from time to time on the open eir website. The Licensee further agrees to abide by all of the terms and conditions of the relevant open eir Reference Offer.
- 2.8 The Licensee hereby acknowledges that the Licensor retains possession and control of the Site, whether being the Site or the Substituted Site and of any ducting whatsoever on the Site, whether housing cabling belonging to the Licensor or to the Licensee ("the Licensor's Ducting") subject to the rights granted by this Licence and that nothing in this Licence is intended to or shall be deemed to confer any tenancy on the Licensee, and the Licensee undertakes with the Licensor that it will not in any way impede the Licensor or its servants or agents in the exercise of its rights of possession and control of the Site and the Licensor's ducting and shall comply with all directions and regulations which the Licensor makes, or may make, from time to time, and notifies to the Licensee, from time to time, governing the Site, and every and

any part thereof and of the Licensor's ducting.

- 2.9 The Licensee hereby further acknowledges that this Licence is personal to the Licensee and not assignable and the rights given hereunder may only be exercised by the Licensee for its benefit and that of its customers.
- 2.10 Plan A annexed hereto is provided for the purposes of illustration only and is not intended to accurately reflect the ultimate position or size of the Equipment or any part thereof.
- 2.11 The Licensor grants the Licensee the right to use the Footprint for the provision of Specified Regulated Products to the Licensee. The Licensee shall be required to enter into a contract with the Licensor for the Regulated Product(s) for the grant to become effective.

3. PAYMENTS BY LICENSEE

- 3.1 In consideration of the grant by the Licensor of the Licence, the Licensee shall pay the Licence Fee and the Site Preparation Fee.
- 3.2 Save for the first Licence Fee, the Licence Fee shall be paid quarterly in advance by the Licensee on the Payment Days for the Term and in accordance with the provisions in respect of Billing and Payment contained in the Access Agreement.
- 3.3 The first Licence Fee shall be payable on the date that either;
- (a) the Licensor commences the Site Preparation Works; or
 - (b) the date hereof;
- whichever is the earlier.

- 3.4 The first Licence Fee shall be apportioned from the date specified in the preceding sub-clause to the next Payment Day.
- 3.5 Where the Licence is to expire on a date less than three (3) months from the Payment Day, then that Licence Fee shall be apportioned from the Payment Day to the date of expiry of the Licence.
- 3.6 The Licensor shall be entitled to review the Licence Fee every one (1) year and the Licensor shall notify the Licensee in respect of any variation of Licence Fee as a result of the review.
- 3.7 In addition to the Licence Fee, the Site Preparation Fee and the Registration Fee, the Licensee shall pay the Licensor on receipt of a valid invoice the reasonable costs and expenses necessarily incurred by the Licensor:
- (a) in respect of the supervision by the Licensor of the installation, use and maintenance of the Equipment by the Licensee, in accordance with clause 2.6. The charge for this supervision shall be the charge set out in the ARO Price List;
 - (b) in making good any damage to the Site caused by the Licensee;
 - (c) in enforcing its rights under this Licence;
 - (d) in acceding to any requests of the Licensee, which results in expenditure by the Licensor outside of the terms of this Licence. This shall include, but not be restricted to, requests for additional security, cleaning or maintenance at the Designated Site or the Substituted Site. The Licensor shall charge a fifteen (15%) per centum administration fee in respect of any such requests.

Any such fully invoiced demands will be issued at least twenty-one (21) days in advance of the due date for payment.

- 3.8 The Licensor shall be entitled to charge the Licensee for space occupied by any Facilities Equipment, where the Facilities Equipment has been installed by the Licensor at the request of the Licensee.
- 3.9 If any payment under this Licence is not made on the Payment Day, without prejudice to any other rights which the Licensor may have, the Licensee shall pay interest on the outstanding amount from the Payment Day when that amount shall become payable, until the date of actual payment (whether before or after any judgement) at the rate of two per cent (2.0%) per month.
- 3.10 The Licensee shall pay one hundred (100%) per centum of the Site Preparation Fee in accordance with Schedule 2, Section 2, Clause 2.
- 3.11 The Licensee acknowledges that it shall not be entitled to withhold the Licence Fee. Save for the Licence Fee, any disputes or queries that arise in relation to the charges raised on foot of this Agreement or invoices furnished by the Licensor to the Licensee shall be subject to the dispute resolution provisions of clause 20 hereof. Where the Licensee raises a dispute under this clause then:
- (a) where the dispute arises in relation to an amount payable in respect of an invoice then the Licensee shall be entitled to withhold payment of the disputed amount due for payment, upon serving the Licensor 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. For the avoidance of doubt the raising of a dispute by the Licensee in respect of the Site Preparation Fee, whether the dispute has been raised under this clause or has been raised prior to the execution of this Licence under the Access Agreement, shall not entitle the Licensee to withhold any portion of the Site Preparation Fee pending resolution of the said dispute, nor shall the raising of the dispute delay the completion of the works in accordance with this Licence.
 - (b) Where the Licensee invokes the provisions of Clause 20 after the due date of a disputed invoice, then the Licensee shall not be entitled to

withhold any portion of the amount due and payable.

- (c) Following resolution of the dispute, the appropriate Party will issue a credit or tender payment.

4. OBLIGATIONS OF LICENSEE

4.1 The Licensee shall during the continuance of this Licence:

- (a) comply with the provisions of all Acts of the Oireachtas and statutory instruments or regulations made thereunder (including but not limited to) the Environmental Protection Agency Act, 1992 (as amended), the Safety, Health and Welfare at Work Acts, 1989 (as amended), the Local Government (Planning and Development) Act 1963 – 1999 (as amended) and the Planning and Development Act 2000 and the Building Control Act, 1990) (as amended), the Data Protection Acts, 1988 to 2018 and all regulations made thereunder;
- (b) obtain all and any licences, approvals, clearances or consents necessary to lawfully install, maintain or use the Equipment (including without limiting the generality of the foregoing, any planning permissions, rights-of-way or wayleaves);
- (c) the Licensee hereby covenants with the Licensor that any application for planning permission made in respect of the installation of the Equipment shall relate only to the plans and specifications contained in the Technical Manual. In respect of any application for planning permission proposed by the Licensee for any other development, the Licensee shall, prior to the making of any such planning application, lodge a copy of the proposed planning application together with a copy of all relevant plans and specifications with the Licensor for approval and in any event the Licensor shall respond to the Licensee's proposal by not later than (20) Business Days after receipt of the said proposal;

- (d) where the Licensee is of the view that either planning permission is not required for the works or Building Control Regulations do not apply, the Licensee shall, prior to the commencement of any works, furnish the Licensor with an Architect's Opinion on Exemption, in the form approved by the Law Society of Ireland and the Royal Institute of Architects of Ireland;
- (e) where the Licensee is granted planning permission it shall provide the Licensor with all details of the planning permission and not commence work on foot of that planning permission without the written permission of the Licensor. Permission may be withheld if in the opinion of the Licensor the conditions attached to the Planning Permission are not acceptable to the Licensor;
- (f) observe and perform any conditions attaching to any licence, approval, clearance or consent granted to it in respect of the installation, use or maintenance of the Equipment;
- (g) ensure that no nuisance is caused directly or indirectly from the granting of this Licence;
- (h) ensure that this Licence is exercised in a quiet, peaceful and orderly manner, making good any damage caused;
- (i) ensure that the Licensee's Staff behave in a responsible manner and adhere to the Licensor's General Health and Safety Requirements while at the Site;
- (j) ensure that the Licensee's Staff comply with all reasonable requests of any of the Licensor's Staff while at the Site, provided that in the view of the Licensor such requests relate to the safe and proper use of the Site;
- (k) comply with all Regulatory Requirements and notify the Licensor of any such requirements immediately upon receipt of same in so far as such requirements relate to the Licensee's obligations under this Licence;

- (l) comply with all provisions of the Technical Manual and the Inter-Operator Process Manual;
- (m) maintain the Equipment located at the Site in good repair;
- (n) comply with the provisions of the Operational Procedures;
- (o) be responsible for the safety of its operations on the Site and ensure that its employees and agents in addition to their obligations laid down in paragraph 4.1(a) – (o) of this Licence are aware of and comply with the Licensor’s General Health and Safety Requirements for Licensees while on or working on the Site which must be observed.
- (p) comply with the provisions of the Access Agreement.

4.2 The Licensee shall not during the continuance of this Licence:

- (a) do or permit anything to be done which might cause interference with, damage or cause injury to the Licensor or the Licensor’s Staff or any of the Licensor’s installation or any other existing installation or equipment at the Site or any equipment subsequently installed by any authorised user of the Site;
- (b) display any signs, notices or manufacturers’ motifs or advertising material at the eircom telephone exchange or at the Site;
- (c) store any Hazardous Material in the open eir telephone exchange or on the Site.
- (d) ¹[breach any of the covenants or conditions of the Head Lease.]
- (e) do or permit to be done anything which would compromise the integrity of the Licensor’s Network.

5. RIGHTS AND OBLIGATIONS OF THE LICENSOR

¹ Only where open eir holds Site under Lease
31/05/2019

The Licensor shall during the continuance of this Licence:

- (a) except in cases of Emergency (when all reasonable endeavours will be made to notify the Licensee forthwith of the action taken) give the Licensee at least ten (10) Business Days notice of all proposals to carry out work of whatsoever nature insofar as such works may affect the operation of, or access to, the Equipment or the operation of the Product Elements;
- (b) comply with the provisions of all Acts of the Oireachtas and statutory instruments or regulations made thereunder (including but not limited to) the Environmental Protection Agency Act (as amended), 1992, the Safety, Health and Welfare at Work Acts, 1989 (as amended), the Local Government (Planning and Development) Act 1963 – 1999 (as amended) and the Planning and Development Act 2000 and the Building Control Act, 1990) (as amended), the Data Protection Acts, 1988 to 2018 (including the General Data Protection Regulation) and all regulations made thereunder;
- (c) comply with all provisions of the Technical Manual and the Inter-Operator Process Manual, insofar as same relate to the Licensor;
- (d) maintain the Product Elements in good repair, in accordance with the provisions of Schedule 5;
- (e) comply with the provisions of the Operational Procedures insofar as they relate to the Licensor;
- (f) comply with the provisions of the Access Agreement insofar as they relate to the Licensor;
- (g) where the Licensor occupies the Site by virtue of a lease or licence, observe and perform the terms of the Head Lease and make available to the Licensee any notices served on the Licensor by the Head Lessor.

6. CONFIDENTIALITY

6.1 Each Party shall treat as confidential all information received as a result of entering into or performing this Licence which relates to the provisions or subject matter of this Licence, to any other party or the negotiations relating to this Agreement.

6.2 Any Party may disclose information which would otherwise be confidential if and to the extent:-

- (a) it is required on a need to know basis to its employees, agents, contractors, or sub-contractors to ensure compliance with the provisions of the within Licence or in the case of the Licensee for the purpose of providing information to its parent company or where 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 Licence;
- (d) it is or becomes publicly available through no fault of the licensee;
- (e) it is in the possession of the Licensee before such disclosure has taken place;
- (f) It is required to be disclosed by a government regulatory body, NRA or a court or other comparable authority of competent jurisdiction.

7. OBLIGATIONS AND RIGHTS OF THE PARTIES

- 7.1 Where it is suspected that the Equipment interferes with any other transmission or reception in such a way as to affect other services operating at the Site then the Licensee shall, as soon as possible on written request from the Licensor, but in any case, no later than twenty-four (24) hours after such request, use its best endeavours to prove that the Equipment is not the cause of the interference. The Licensee shall advise the Licensor, in writing of the outcome of its investigations as soon as same is known to the Licensee. In the event that the Licensee is unable to prove that the Equipment is not the cause of the interference within the twenty-four (24) hour timeframe aforesaid, then the Licensor and the Licensee shall immediately meet at the Site and work together over the next twenty-four (24) hour period to ascertain whether the Equipment is the cause of the interference. If, at the end of this further twenty-four (24) hour period the interference remains and it has not been possible to prove that the Equipment is not the cause of the interference, then clause 7.9(b) shall apply.
- 7.2 If the Equipment is proven to be the cause of the interference, the Licensee shall take all necessary action in relation to the Equipment in order to cease the interference. The Licensee shall take such action as soon as possible after it has been proven that the Equipment is the cause of the interference but, in any case, no later than one (1) Business Day after the Licensor has served a written notice upon the Licensee, requesting the Licensee to take all such action.
- 7.3 Where it is suspected that the Equipment interferes with any other transmission or reception, but in a manner which does not affect any other services operating at the Site, the Licensee shall as soon as possible upon written request from the Licensor, but in any event no later than five (5) Business Days after receipt of such request from the Licensor, use its best endeavours to examine the Equipment, to establish whether the Equipment is, in fact, the cause of the interference. The Licensee shall advise the Licensor in

writing of the outcome of its investigations as soon as same shall be known to the Licensee.

- 7.4 If the Equipment is proven to be the cause of the interference referred to in clause 7.3 above, then the Licensee shall use all efforts to remove the interference as soon as possible after it has been proven that the Equipment is the cause of the interference but, in any event, not later than three (3) Business Days after written notification from the Licensor.
- 7.5 Where the Licensee experiences an interference with any transmission from or reception of its Equipment, the Licensor shall, on receipt of a written request from the Licensee, use its best endeavours to establish the cause of the interference and, having established the cause of the interference, use its reasonable endeavours to eradicate the cause of the interference.
- 7.6 In the event that the Equipment causes a Hazard, the Licensor may either:
- (a) request, by contacting the Licensee's NMC, that the Licensee take any action, which the Licensor reasonably deems necessary in relation to the Equipment in order to ensure that the Equipment ceases to constitute a Hazard;
 - (b) at the Licensee's request, following (a) above, or in the event that the Licensor deems necessary, take any action in relation to the Equipment in order to ensure that the Equipment ceases to constitute a Hazard.
- 7.7 In the event of an Emergency, the Licensor may either:
- (a) request, by contacting the Licensee's NMC, that the Licensee take all actions, which the Licensor, in the light of the Emergency, deems appropriate; or

- (b) the Licensor's Staff may take all actions which the Licensor, in light of the Emergency, deems appropriate, without prior notice to the Licensee but as soon as possible thereafter inform the Licensee that it has done so.

7.8 Where:

- (a) the Licensor wishes to carry out routine preventative maintenance work on the Site; and
- (b) the Licensor and Licensee are of the reasonable opinion that carrying out this maintenance work while the Equipment is in operation is undesirable

then the Licensor may, after giving reasonable notice to the Licensee instruct the Licensee to take any action which the Licensor deems appropriate to enable the Licensor to carry out the maintenance work. Where the Licensor and the Licensee have not reached agreement in accordance with (b) above, the matter may be referred by either Party for dispute resolution in accordance with the provisions of clause 20 hereto.

7.9 Where:

- (a) the Licensor requests the Licensee to comply with the provisions of clauses 7.1, 7.2, 7.3, 7.4, 7.6, 7.7 or 7.8; and
- (b) the Licensee fails to comply with that request within the periods as mutually agreed or as set out in the said clauses, as the case may be, or, if in the case of a service affecting interference, referred to in Clause 7.1, the Licensee is unable to prove that the interference is not caused by the Equipment within the relevant notice period;

then the Licensor shall be entitled to take any action in relation to the Equipment in whatever manner it deems appropriate and the Licensee shall be

liable to the Licensor for all loss which the Licensor may suffer as a result of the failure by the Licensee to comply with such a request.

8. LIMITATION OF LIABILITY

8.1 Save where such loss is attributable to the breach by the Licensor of the terms of this Licence or is attributable to either the negligent or malicious acts on the part of the Licensor's Staff, carried out with the sole intent of damaging the Equipment, the Licensee acknowledges that the Licensor shall not be liable to the Licensee, its servants or agents for any loss or damage whatsoever sustained by it relating to or arising out of:

- (a) the installation, operation, use or maintenance of the Equipment (including, but not limited to, any damage sustained by reason of any delay in commencing to install, operate, use or maintain or failure to commence to install, operate, use or maintain the Equipment);
- (b) any interruption of any service provided by the Licensee using the Equipment;
- (c) any defect in the open air Telephone Exchange or damage to the open air Telephone Exchange; or
- (d) any deficiency in the Site; or
- (e) any damage to the Licensee's Equipment caused by third parties.

8.2 The Licensee accepts unlimited liability for death or personal injury resulting from its negligence or its malicious acts or the negligence or malicious acts of the Licensee's Staff. Clause 8.3 below does not apply to such liability.

8.3 Without prejudice to clause 8.2 above, the Licensee's liability under this Licence shall be limited as follows:

- (a) the total liability of the Licensee arising under this Licence shall be €32 million per individual incident or series of related incidents for a single year under this Licence;
- (b) the Licensee shall not be held liable by the Licensor either in contract, tort, including negligence or otherwise, for the acts or omissions of other providers of telecommunications services (within the meaning of the Regulations) at the Site.

9. INDEMNITY

- 9.1 The Licensee shall indemnify the Licensor, its servants and agents against all claims, demands, actions, suits, proceedings, judgements, orders and decrees brought, made or rendered against it and all damages, costs, charges and expenses suffered or incurred by the Licensor howsoever arising out of or occasioned by anything done by the Licensee pursuant to this Licence or which ought to have been done by the Licensee pursuant to this Licence but was omitted to be done.
- 9.2 The Licensor shall indemnify the Licensee, its servants and agents, against all claims, demands, actions, suits, proceedings, judgements, orders and decrees brought, made or rendered against it and all damages, costs, charges and expenses suffered or incurred by the Licensee in respect of the Licensee Equipment arising out of or occasioned by the negligent or malicious acts of the Licensor, its employees, agents and subcontractors from carrying out any activity, including Works at the Site.

10. INSURANCE

- 10.1 The Licensee shall insure at its own cost, throughout the duration of this Licence, its liability in respect of:
 - (i) Employer's liability; and

- (ii) third party liability or loss, injury or damage,

such insurances shall be for amounts of not less than EURO 13 million.

- 10.2 The Licensee shall, prior to the installation of the Equipment, provide the Licensor with evidence that the insurance referred to in clause 10.1 above has been put in place together with evidence that the insurance premium has been paid. After installation the Licensee shall provide such evidence when requested to do so by the Licensor.

11. TERMINATION

- 11.1 For the purposes of this clause, 'Material Breach' shall include but not be limited to:

- (a) Licensee or the Licensee's Staff knowingly interfering with or using any equipment belonging to the Licensor, its invitees or licensees at the Site excluding fire alarm activation equipment, fire extinguishers, fire blankets and lifting equipment or any other equipment, belonging to the Licensor, which the Licensor has permitted the Licensee to use;
- (b) where the Licensee or the Licensee's Staff access the Site or the eircom telephone exchange or carry out Physical Change or Unforeseen Physical Change without the permission of the Licensor, obtained in accordance with the provisions of this Licence;
- (c) acts of the Licensee or its the Licensee's Staff which affect the safe and efficient management of the Site or the open eir Telephone Exchange by the Licensor, which shall include, but not be limited to the acts which are in contravention of the Licensor's Health and Safety Statement.

- 11.2 This Licence shall terminate on the expiration of the Term or on the happening of one of the events referred to in this clause.

- 11.3 The Licensor shall issue an invoice in respect of the Licence Fee to the Licensee thirty (30) Business Days before the Payment Date.
- 11.4 If the Licence Fee remains due after the due date for payment (whether demanded or not) the Licensor shall serve a notice upon the Licensee calling upon it to pay the arrears plus interest, within ten (10) Business Days. Should the Licensee fail to pay the arrears and interest thereon within the said period, the Licensor shall serve a notice upon the Licensee advising that, due to non-payment of the Licence Fee, the Licence shall be at an end five (5) Business Days from the date of the notice. At the expiration of the said five (5) Business Day period, this Licence shall be at an end unless the Licensor shall have received an acknowledgement of the arrears thereon.
- 11.5 In the event that the Licensee is in Material Breach of any term or provision of this Licence or any part thereof, other than the payment of the Licence Fee, the Licensor may, and so often as same may occur, serve a notice in writing on the Licensee, specifying the breach complained of and giving the Licensee what the Licensor 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), and if the Licensee 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 Licensor shall be entitled without further notice to terminate the Licence.
- 11.6 In the event that the Licensee is in breach of any term or provision of this Licence, other than a breach referred to in either clauses 11.4 or 11.5, the Licensor may and so often as same may occur, take the following actions:
- (a) where the breach complained of requires the Licensee to either take action or desist from a particular action, in order to remedy the breach, the Licensor shall serve a notice in writing upon the Licensee, specifying the breach complained of and giving the Licensee what the

Licensor considers, acting reasonably, a reasonable time to remedy the matter complained of (such reasonable time not, in any event, being a period of less than one (1) calendar month). If the Licensee shall fail or neglect within such period of time aforesaid to remedy or make good the said matter as aforesaid then the Licensor shall be entitled to serve further notice upon the Licensee, calling upon the Licensee to remedy the matter complained of within one (1) calendar month of the date of the notice. If the Licensee shall fail or neglect, within such further period of one (1) calendar month to remedy and make good the matter aforesaid then the Licensor shall serve a notice upon the Licensee advising that, in light of the persistent breach, the Licensor considers the breach to be Material. In that event, clause 11.5 shall apply and the Licensor shall follow the notice requirements set out in clause 11.5;

- (b) if the breach is of a nature which neither requires the Licensee to take action or to desist from taking an action in order to remedy the breach, the Licensor may and so often as may occur, serve a notice in writing upon the Licensee, specifying the breach complained of and calling upon the Licensee to ensure that the breach is not repeated. If the Licensor has cause to serve three (3) such notices upon the Licensee in respect of the same type of breach within a twelve (12) month period then, on the third such notice, the Licensor shall advise the Licensee in writing that, in light of the persistent breach, the Licensor considers the breach to be Material. In that event, clause 11.5 shall apply and the Licensor shall follow the notice requirements set out in clause 11.5.

11.7 The Licensor shall be further entitled to terminate this Licence by notice in writing to the Licensee on:

- (a) the making of an order or the passing of a resolution to wind-up the Licensee;
- (b) the appointment of a receiver, examiner or liquidator to the Licensee;

- (c) the Licensee ceasing to hold a telecommunications Licence to provide telecommunications service pursuant to the provisions of the Postal and Telecommunications (Services) Act, 1983.
- 11.8 The Licensee acknowledges that, subject to the provisions of clause 11.13 it shall not be entitled to any compensation upon the expiry or in the event of termination of this Licence by the Licensor pursuant to the provisions of this clause and that upon such expiry or termination any sum due by the Licensee to the Licensor shall become immediately payable.
- 11.9 The Licensee shall have the right to terminate the within Licence at any time during the Term on giving to the Licensor not less than 12 (twelve) months notice in writing of its intention to terminate.
- 11.10 The Licensor shall have the right to terminate the within Licence at any time during the Term on giving the Licensee not less than 12 (twelve) months notice in writing of its intention to terminate in the following circumstances:
- (a) where the Licensor proposes to dispose of all or part of the Site;
 - (b) where the Licensor plans to build on the Site;
 - (c) where the Licensor plans to develop the Site;
 - (d) where the Licensor determines that it is necessary to excavate the Site to lay ducts for cables for other services;
 - (e) where the Licensor no longer holds a Telecommunications Licence or is otherwise no longer a telecommunications provider to whom the Regulations apply.

- 11.11 In the event that the Licensee fails to power up the Equipment on or before the Power Up Date, the Licensor may, on giving one month's notice be entitled to terminate the within Licence at any time after the Power Up Date.
- 11.12 This Licence shall automatically terminate on the termination, for whatever reason, of the Access Agreement.
- 11.13 (i) On determination, for whatever reason, of this Licence the Licensee hereby undertakes at its own cost and expense, and save as provided in clause 25, to remove the Equipment within thirty (30) Business Days thereafter from the Site and shall make good, at its own cost and expense, any damage occasioned to the Site in the course of such removal;
- (ii) In the event that the Licensee fails to disconnect the Equipment as set out above, the Licensor shall be entitled to disconnect the Equipment forthwith and at the expense of the Licensee. Where the Licensor has disconnected the Equipment in this manner, the Licensor shall serve a notice upon the Licensee, calling upon him to remove the Equipment within ten (10) Business Days of the date of the notice. If the Equipment is not removed by the Licensee within the said ten (10) Business Day period, the Licensor shall be at liberty to remove the Equipment as it sees fit and without further notice to the Licensee and the Licensee shall bear the cost of this removal;
- (iii) On the removal by the Licensee of the Equipment in accordance with clause 11.13 (i) above, the Licensee shall reimburse the Licensor the cost of the removal by the Licensor of the Licensee's Fibre and the sealing by the Licensor of the opes.
- 11.14 Termination of this Licence shall not prejudice or affect any accrued rights or remedies available to either Party against the other in respect of any antecedent breach of this Licence.

Termination will not affect the rights and liabilities of the Parties which are expressly or impliedly to survive termination.

12. MANAGEMENT OF SITE

12.1 In the context of this clause, “Services” means the Services to be provided by the Licensee from the Designated Site with due regard to the permitted user specified in clause 2.1.

12.2 In the event of the Licensor determining, for any reason, during the continuance of this Licence to alter the location of the Designated Fibre(s) Location, the Designated Tie Cable(s) Location the Designated Block(s) Location, the Designated Earth Cable(s) Location, the Designated D.C. Power Cable(s) Location, the Designated Jumper(s) Location, the Designated Licensor’s Manhole Location, the Designated DC Distribution Location or the location of the Footprint it shall first notify the Licensee and allow the Licensee twenty (20) Business Days to set out its requirements in relation to the substituted locations, in writing. It shall then select an alternative site which it considers, acting reasonably, to be as suitable and as sufficient as the Designated Fibre(s) Location, the Designated Tie Cable(s) Location, Designated Earth Cable(s) Location, the Designated D.C. Power Cable(s) Location, the Designated Jumper(s) Location, the Designated Licensor’s Manhole Location, the DC Designated Distribution Location or the location of the Footprint for the purposes of providing, for the time being, the Services provided by and from the Site by the Licensee. The Licensor shall give not less than thirty (30) Business Days notice in writing to the Licensee, of its decision to re-locate the Licensee to the Substituted Fibre Location, Substituted Copper Tie Cable Location or Substituted Block Location, the Substituted Earth Cable Location, the Substituted D.C. Power Location, the Substituted DC Distribution Location or the Substituted Footprint location and shall not re-locate the Licensee to the Substituted Fibre Location, Substituted Copper Tie Cable Location or Substituted Block Location, the Substituted Earth Cable Location, the Substituted D.C. Power Location or the Substituted Footprint location during the said period of thirty (30) Business Days unless,

within the said period of thirty (30) Business Days, the Licensee shall have signified its consent to such re-location.

12.3 The Licensor shall pay all direct costs involved in the removal of the Equipment to the substituted locations. For the avoidance of doubt, the Licensor shall not be obliged to pay any consequential loss incurred by the Licensee as a result of the said removal nor shall the Licensor be obliged to replace any of the Equipment other than to extend the Copper Tie Cable, where necessary.

12.4 In the event that the Parties are unable to agree on alternative locations pursuant to the provisions of clause 12.2 above within the period of thirty (30) Business Days specified therein, either Party shall be entitled to submit the matter for dispute resolution in accordance with clause 20 hereof. Where the Licensee fails to submit the matter for dispute resolution within the said period of time, the Licensor shall be entitled:

- (a) to remove all or any part of the Equipment from the Site; or
- (b) to move the Equipment to the Substituted Fibre Location, Substituted Copper Tie Cable Location or Substituted Block Location, the Substituted Earth Cable Location, the Substituted D.C. Power Distribution Location or the Substituted Footprint location;

12.5 In accordance with the provisions of Schedule 2, Section 1 the Licensor or the Licensor's Staff may refuse entry to any person who does not produce suitable documentary identification and authorisation, as set out in the Inter-Operator Process Manual to Licensor's Staff at the Site. The Licensor may refuse admittance to or require removal from the Site of any person whose presence, in light of the provisions of Schedule 2 Section 1 may reasonably be considered undesirable.

12.6 The Licensee acknowledges that the Licensor reserves to itself the right to use the Site and to allow others to do so.

13. ACCESS

Where access to the Site is by a right of way granted to the Licensor by a third party, the Licensor does not warrant that it has the right to grant the Licensee a right of way and a wayleave agreement to the Site and the Licensee acknowledges that it shall be its responsibility to negotiate such a right of way and wayleave agreement with the grantor of the right of way.

14. ASSIGNMENT

14.1 This Licence is personal to the Licensee who shall not be entitled to assign, charge or mortgage this Licence or any benefit under it, either in whole or in part, or otherwise dispose of this Licence.

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

15. NOTICES

15.1 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 ninety-six (96) hours after posting for any other address; or

- (c) two (2) hours after transmission, (upon the sender obtaining a valid transmission receipt) if sent by facsimile on a Business Day or prior to 3.00 p.m. or in any other case at 10.00 a.m. on the Business Day after the date of dispatch.

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.

15.2 The deemed service provisions set out at clause 15.1 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.

15.3 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:

- (a) in the case of a letter sent by post, that the letter was properly addressed, stamped and posted; and
- (b) in the case of the facsimile that it was properly addressed and dispatched to the number of the party.

A Party shall not attempt to prevent or delay the service on it of a notice connected with this licence.

Unless alternative written instructions are received, any notices served on the Licensor shall be marked for the attention **THE COMPANY SECRETARY and the Director Wholesale Regulated Product Management, open eir** and in the case of a fax shall be addressed to fax number [] and [] respectively and in the case of a notice to the Licensee shall be marked for the attention of **THE COMPANY SECRETARY** and in the case of a fax shall be addressed to fax number []

16. NO RELATIONSHIP OF LANDLORD AND TENANT

- 16.1 Nothing in this Licence is intended to create nor shall be treated or construed as creating the relationship of landlord and tenant between the Parties.
- 16.2 On or prior to the Commencement Date of the Licence, the Licensee shall execute a Deed of Renunciation.

17. TITLE NOT TO PASS

Title to the Site remains with the Licensor and no right or interest in that property passes to the Licensee.

18. WAIVER

None of the Licensor's rights under this Licence shall be prejudiced or restricted by any indulgence or forbearance extended to the Licensee and no waiver by the Licensor in respect of any breach shall operate as a waiver in respect of a subsequent breach by the Licensee.

19. WHOLE AGREEMENT

Save for the provisions of the Access Agreement and the Non Disclosure Agreement, this Licence 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. In the case of a conflict between the Access Agreement and this Licence or the Non Disclosure Agreement and this Licence, the terms of this Licence shall prevail.

20. DISPUTE RESOLUTION

20.1 This clause shall not be applicable to disputes arising in respect of clauses 11.2 (Payment of Licence Fee) and 11.5 (Material Breach) of this Licence.

20.2 Save as provided in clause 20.1 above, each Party shall use its best endeavours to resolve any disputes arising concerning implementation, application or interpretation of this Licence 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'.

20.3 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.

20.4 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.

20.5 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 NRA 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.

20.6 The normal contact for the Licensor is:

Level 1 Wholesale Contracts Manager,
open eir,
2022 Bianconi Avenue
Citywest Business Campus
Dublin 24 D24 HX03
Tel: (00) 353 1 671 4444
Fax: (00) 353 1 428 6240

Level 2 **Director of Regulated Product Management**
open eir,
2022 Bianconi Avenue
Citywest Business Campus
Dublin 24 D24 HX03
Tel: (00) 353 1 671 4444
Fax: (00) 353 1 428 6240

The normal contact for the Licensee is:

Level 1 Contact
Address
Address
Address
Tel: (00) xxxxxxxxxxxx
Fax: (00) xxxxxxxxxxxx

Level 2 Contact
Address
Address
Address

Tel: (00) xxxxxxxxxxxx
Fax: (00) xxxxxxxxxxxx

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

20.7 The time limits specified at paragraphs 20.3 and 20.5 above may be extended by mutual agreement between the parties.

20.8 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 Licence.

20.9 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 in accordance with any right either Party may have to request a determination or other appropriate steps for its resolution.
- (c) automatically referring the dispute to Arbitration in accordance with clause 21 hereof, once Level 1, Level 2 and Level 3 of the dispute resolution process has been exhausted.

21. ARBITRATION

All disputes between the Parties in connection with this Licence may be submitted for arbitration by a sole arbitrator once, Level 1, Level 2 of the dispute resolution set out in Clause 20 has been exhausted. The arbitration shall be held in Dublin and shall be governed by the provisions of the Arbitration Act 2010. The arbitrator shall be appointed by agreement between the Parties or, in default thereof, by the President for the time being of the Law

Society of Ireland or other officer endowed with the functions of such President. If the arbitrator shall relinquish his appointment or die, a substitute arbitrator may be appointed in his place in the manner hereinbefore provided.

22. FORCE MAJEURE

22.1 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, industrial action, acts of terrorism, industrial action, war, military operations or acts or omissions of third parties for whom the Affected Party is not responsible (“**Force Majeure**”) from performing any of its obligations under this Licence, the Affected Party shall be relieved of liability for failure to perform such obligations under this Licence solely to the extent circumstances may require.

22.2 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.

22.3 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.

23. VARIATION

Any variation to the terms and conditions of this Licence shall be recorded by memorandum in writing, executed by both Parties, which variation shall be read in conjunction with the terms and conditions of this Licence.

24. GOVERNING LAW

The construction, validity and performance of this Licence shall be governed in all respects by Irish Law and the Parties hereby submit to the exclusive

jurisdiction of the Irish Courts.

25. TITLE TO THE EQUIPMENT

In consideration of the grant of this Licence, the Licensee agrees that on the expiry or sooner determination of this Licence it transfers to the Licensor full legal and beneficial title to the Equipment, excluding the Licensee's Fibre, the Apparatus and the Licensee's Tie Cable itself title to which shall remain with the Licensee.

IN WITNESS whereof this Licence has been executed on the date written above.

SIGNED by:

Duly authorised on behalf of **the Licensor:**

Name (BLOCK CAPITALS)

SIGNED by:

Duly authorised to sign on behalf of **the Licensee:**

Name (BLOCK CAPITALS)

SCHEDULE 1

PART A

The Site is more particularly delineated on Plan **B** annexed hereto and thereon outlined [].

The site is [Licensor I.D. code and open eir site name]

The Commencement Date is the date hereof.

The Term is ten (10) years from the Commencement Date.

SCHEDULE 1

Part B

APPARATUS

SCHEDULE 2

OPERATIONAL PROCEDURES

Section 1: Access

The following are the procedures to be followed by the Licensee and its staff in relation to access to the Site by the Licensee and its staff:

1. All members of the Licensee's staff accessing the Site shall be registered persons in accordance with Section 1.6 of this Schedule.
2. All members of the Licensees' Staff shall comply with the Visitation Regulations set out in clause 3 below.
3. Visitation Regulations

During any visit to the Site, for whatever purpose, the Licensee's Staff shall:

- (i) meet the escort/Clerk of Works at the meeting place designated by the Licensor except in cases of Unescorted Access;
- (ii) display a photo identity card issued by the Licensee;
- (iii) act in a professional manner;
- (iv) adhere to the Licensor's General Health and Safety Requirements for Licensees while working on the Site;
- (v) sign the log on entry and exit in accordance with the procedures for the eircom Telephone Exchange and Site;
- (vi) remove all waste from the Site on a daily basis;
- (vii) adhere to notified parking procedures as notified by the Licensor from time to time;

- (viii) where the Licensee has been granted written permission by the Licensor to park vehicles on the Site adhere to notified security and risk management procedures in operation at the Site;
 - (ix) respond to reasonable questions from the Licensor's staff;
 - (x) In accordance with Section 5.3 of the Inter Operator Process Manual as amended from time to time, all entry and exit times, purpose of visit and personnel attending should be notified in advance by the Licensee's NMC to the Licensor's NMC.
- (xi) comply with the provisions of clause 6 below.
4. In the event of any amendments or modifications to any of the above Visitation n Regulations, these shall be notified in writing to the Licensee.

5. Accreditation

Before being given access to the Site, the Licensee will be required to demonstrate that it has undergone an Accreditation Process. The primary purpose of this accreditation will be to ensure that the Licensee and the Licensee's Staff understand the Licensor's requirements in respect of Health and Safety at the Site. Accreditation will be on a corporate basis. Individual members of the Licensor's Staff will not be accredited but will require registration in accordance with Clause 6 below.

6. Registration

- (a) In order for a member of the Licensee's staff to become registered for access to the Site, the Licensee must complete the relevant application form to register as nominated agent of an accredited Licensee and furnish the Licensor with the following information regarding the staff member to be registered:-

Full Name;

Sample of signature;

Work Address and daytime telephone number;

Two photographs signed on the back by relevant member of Licensee's staff.

- (b) The Licensor shall acknowledge, in writing, receipt of the application form and information listed at (a) above. This acknowledgement shall be forwarded by email to the Licensee within two (2) Business Days of receipt of the application by the Licensor. The Licensor shall be deemed to have received the application in accordance with the time limits set out in clause 15 of this Licence.
- (c) Where the application is not accompanied by items 1-4 above or the application is incomplete, the Licensor shall reject the application for registration and the Licensee shall be obliged to resubmit the application, when all information has been accumulated.
- (d) Where the application for registration is complete and adjudged by the Licensor to be in order, the Licensor shall register the member of the Licensee's staff, the subject of the application and shall notify the Licensee of the registration within five (5) Business Days of receipt by the Licensor of the application as per (b) above.
- (e) Any member of the Licensee's Staff seeking access to the Site must be registered in accordance with this clause at least five (5) Business Days prior to the intended visit to the Site.
- (f) It is the Licensee's responsibility to ensure that the above details in respect of each staff member are forwarded to the Licensor. It is the Licensee's responsibility to forward details of any and all amendments to the above information to the Licensor.
- (g) Where a member of the Licensee's Staff is currently registered as a nominated agent of the Licensee in respect of another site, the property

of the Licensee, it shall not be necessary for that member of the Licensee's Staff to re-register under this clause.

7. Access to Licensee's Equipment

7.1 Access Times

The Licensor will provide the Licensee with escorted access to its Equipment (within the open air Telephone Exchange) at any time, twenty-four hours a day, seven days a week once the Licensee has given the Licensor the notice set out in Clause 7.2 below. The fees for such escorted access will be as set out in Schedule 3. Although most access visits are expected to take place during normal office hours on Business Days ("Standard Hours"), access outside Standard Hours will be available but at a higher charge.

Access Times are specified in Figure 1

Figure 1: Access Times

	Time	Days
Standard Hours	09.00 to 16.00	Monday to Friday Excluding public holidays
Outside Standard Hours	all other times	

7.2 **Notification Times for all Licensee Access to Site**

7.2.1 Lead Times for all Licensee Access to Site

In most cases access requests will be for routine activities which can be planned in advance ("Planned Access"). In this case, the Licensee should submit a Planned Access request. Figure 2 lists the notice periods for Planned Access.

Figure 2: Planned Access Notification Times

Standard Hours	10 Business Days
Outside Standard Hours	10 Business Days

7.2.2 Unplanned Escorted Access

If the Licensee requires access to the Telephone Exchange at the Site and is unable to give the amount of notice required for Planned Access, then the access request is said to be an Unplanned Access Request. Unplanned Access may be used in the following circumstances only:

- (a) in case of Emergency;
- (b) where the Licensee requires access in order to investigate a service affecting fault or service affecting interference in accordance with clause 7.1 of this License;

The maximum response times for Unplanned Access are specified in Figure 3

Figure 3: Maximum Response Times for Unplanned Access

Standard Hours	3 hours
Outside Standard Hours	4 hours

For such visits Access Requests should be submitted to the Licensor's NMC.

N.B. Where the Unplanned or Planned access is required in order to carry out Physical Change, the Licensee shall, in conjunction with the notice/response requirements set out above, comply with the provisions set out in Schedule 2,

Section 3. In these circumstances, the escort required in accordance with the within clause may be the Clerk of Works provided for in Schedule 2, Section 3 and the rates chargeable will be as set out in the Access Agreement.

7.2.3 Unescorted Access

The Licensee shall be permitted to have Unescorted Access provided the following requirements are met:

- (i) the Licensee requires access to the telephone exchange at the Site for Non-Material Change, and;
- (ii). one of the following applies to the reason for access:
 - (a) the case of Emergency; or
 - (b) where the Licensee requires access to undertake routine maintenance of the Equipment which would be Non-Material Change; or
 - (c) where the Licensee requires access to investigate a service affecting fault or a service effecting interference in accordance with clause 7.1 of this License; and
- (iii) Personnel requesting Unescorted Access must be accredited to do so under the terms of the Industry Process Manual for eircom Physical Collocation Service

Figure 4: Maximum Response Times for Unescorted Access

Standard Hours	2 hours
Outside Standard Hours	N/A

SCHEDULE 2

Section No. 2: Site Preparation

1. Components of Site Preparation

- 1.1 The Licensor shall prepare the Site for use by the Licensee in accordance with the Technical Manual.
- 1.2 The Licensee shall pay for the preparation of the Site, which said payment shall be the Site Preparation Fee as set out in Schedule 3. The Site Preparation Fee may be adjusted by the Licensor by the amount of any increase or decrease in the cost to the Licensor of providing the Site Preparation due to increases or decreases after the date of this Licence in the cost of labour, materials, fuel, provision of plant or other expenses. The Licensor may also adjust the Site Preparation Fee by the amount of any increase or decrease in the cost to the Licensor for carrying out the Site Preparation due to any alteration after the date of this Licence in the rate of VAT.
- 1.3 Save for the Licensee's Fibre and the Licensee's Block the Licensor shall be responsible for the maintenance of the items listed in clause 2.1.1 of the Technical Manual. For the avoidance of doubt the items listed in clause 2.2.2 of the Technical Manual, save for the Licensee's Fibre and the Licensee's Block, remain in the ownership of the Licensor.

The project management of this work will follow the Project Management Process as outlined in clause 2 below.

- 1.4 The components of the Site Preparation listed at clause 2.2.2 of the Technical Manual shall, at all times remain in the ownership of the Licensor.

2. Project Management Process

2.1 The following procedure will apply in respect of proposed works at the Site:

- a) The Licensor will appoint a Project Manager who will be responsible for project managing the execution of the works.
- b) Proposed works will be identified to and initiated through the Project Manager.
- c) Materials and timetables for the work will be as agreed by the Licensor and the Licensee prior to the execution of this Licence
- d) Once agreed, the work will be conducted in accordance with drawings, specifications and schedules of work as contained in Schedule 4
- e) The proposed commencement and completion dates will be agreed with The Licensor for inclusion in the tender documents.
- f) The works will be carried out expeditiously and to an agreed overall programme and in accordance the Safety Health and Welfare at Work (Construction) Regulations, 1995 (as amended).
- g) The Licensor will manage the execution of the works on site.
- h) The programme referred to above, shall allow the Licensee an opportunity to inspect the Site Preparation Works at completion of the works (“the Window of Inspection”) as mutually agreed between the Licensor’s Project Manager and the Licensee’s Project Manager. The purpose of the Window of Inspection is to afford the Licensee an opportunity to either certify its satisfaction with the Site Preparation Works to date or to reject same.
- i) The Licensee shall be entitled to inspect the works at the Window of Inspection. Any comments which the Licensee may have in relation to the execution of the Site Preparation Works shall be made to the Project Manager at the Window of Inspection. At the Window of Inspection, should the Licensee be satisfied with the execution of the Site Preparation Works, the Licensee shall immediately certify that the Site Preparation Works have been satisfactorily completed.
- j) In the event that the Licensee:
 - (a) avails itself of the Window of Inspection but fails to either comment on the Site Preparation Works or to certify that it is satisfied with the Site Preparation Works; or
 - (b) fails to avail itself of the Window of Inspection, then the Licensee shall be deemed to have certified its satisfaction with the Site Preparation Works

then the Site Preparation Works shall not cease but shall continue on foot of the deemed certification.

- k) At the Window of Inspection, should the Licensee be dissatisfied with the execution of the Site Preparation Works, the Licensee's Project Manager and the Licensor's Project Manager shall use their best endeavours to agree a resolution as soon as possible and in any event no later than three working days after the Window of Inspection. Where the Parties fail to reach agreement within this agreed timeframe then the Parties shall be entitled to resolve the matter in accordance with the procedures set out in clause 20 hereof.
- l) Subject to Clause (k) above, the Site Preparation Works shall be deemed to be completed on either of the following dates, whichever is the sooner:
 - (a) the certification by the Licensee of the Site Preparation Works at the Window of Inspection; or
 - (b) ten (10) Business Days after the Window of Inspection.
- m) Such other matters as arise in relation to the execution of works will be resolved through dialogue between the Parties.

SCHEDULE 2

Section No. 3

Physical Change and Unforeseen Physical Change

A. Physical Change

1. The following are the procedures to be followed by the Licensee and the Licensee's staff in relation to Physical Change.

The expression "Physical Change" shall have the meaning assigned to it in the Definitions Section of this Licence.

- (1) The Licensee shall prior to the Commencement of the Physical Change make an application, which shall be in the agreed electronic format to carry out Physical Change. The Licensee's application shall be accompanied by a Schedule of Work and Method Statement. The Schedule of Work shall contain, *inter alia* the plans and specifications for the work to be carried out, as well as a timetable for the completion of the work. The Method Statement shall detail the sequence of the work specified in the Schedule of Work and shall contain such information as shall be necessary so as to enable all persons connected with the work to understand the hazards inherent in the work and the precautions required to mitigate those hazards. Once agreed with the Licensor, it shall be the responsibility of the Licensee to ensure that the Schedule of Works and the Method Statement are disseminated to all relevant parties.
- (2) The Licensor shall acknowledge receipt of the said application by electronic means in accordance with the procedure for receipt of electronic communications set out in the Access Agreement;

- (3) The Licensor shall respond to the said application within five Business Days of receipt signifying acceptance of the proposal, rejection or suggestion of an alternative to the proposed Physical Change
- (4) In the event that the Licensor's response to the Licensee's application is approval, the Licensee shall then follow the procedures for Planned Access set out in Schedule 2, Section 1, clause 7.
- (5) In the event that the response to the application is a refusal, the Licensor shall state, in writing, its reasons for the refusals. In the event of a refusal, the Parties shall agree the matter, failing which, the matter shall be referred for dispute resolution under clause 20.

B. Unforeseen Physical Change

1. The following are the procedures to be followed by the Licensee and its staff in relation to "Unforeseen Physical Change".

The expression 'Unforeseen Physical Change' shall have the meaning assigned to it in the Definitions Section of this Licence.

- (1) Unforeseen Physical Change may take place in the context of either Planned or Unplanned escorted Access;
- (2) In order to avail of the following provisions, relating to Unforeseen Physical Change, the Licensee shall, at the Commencement Date, submit to the Licensor for approval a Method Statement, relating to any Unforeseen Physical Change, which might be carried out by the Licensee during the Term. Once the said Method Statement has been approved by the Licensor, the Licensee shall adhere to the approved Method Statement in relation to all Unforeseen Change. Should the Licensee wish to deviate from the approved Method Statement in any

one instance, then the proposed works shall be deemed Physical Change and the Licensee must comply with the requirements set out at A above. Where the Licensee wishes to add to or amend the approved Method Statement as it applies to Unforeseen Physical Change in general, it may do so at any time during the Term, by submitting a new or an amended Method Statement to the Licensor for approval. The new or amended Method Statement shall be forwarded to the Licensor for approval in accordance with clause A1, subclauses (1), (2) (3) and (5) above;

Once the Licensor has approved the Method Statement, the Licensee may carry out Unforeseen Physical Change, once it has applied for Planned or Unplanned Access, as the case may be, in accordance with the provisions of Schedule 2, Section1, clause 7.

2. Supervision

2.1 The Licensor reserves the right to supervise all work carried out by the Licensee at the Site. The Licensor shall appoint a member of staff to supervise such work. IT IS HEREBY AGREED between the Licensee and the Licensor that the member of staff so designated shall act only in the capacity of a clerk of works (“COW”). The only function of the COW shall be to ensure that the work shall be carried out in a good and workmanlike manner and in such a way as shall not interfere in any way with the use and enjoyment by the Licensor, its licensees or invitees of the Site, IT IS HEREBY FURTHER AGREED, and the Licensee hereby acknowledges, that the member of staff so designated shall have no responsibility whatsoever towards the Licensee regarding the correct installation, use or maintenance of the Equipment. The charge for such supervision shall be as outlined in the Access Agreement.

2.2 The time spent at the Site by the COW shall be recorded on a time record (which can be either paper or electronic). As a minimum the time record shall include the site location, the date, and the start and exit times of the COW visits on Site. Representatives of both the Licensee and the Licensor shall sign the

time record on Site. The Licensee's Representative shall take a copy of the signed time record. The Licensor shall issue an invoice in respect of the charges to the Licensee on a monthly basis and the Licensee shall pay the invoice within forty-five (45) days of the issue of the said invoice. Failure to discharge the sum due under the invoice shall incur the interest charges set out in clause 3.10 of the within Licence.

SCHEDULE 3

FEES

- 1. Site Preparation Fee –**
- 2. Licence Fee per annum -**

SCHEDULE 4
DRAWINGS, SPECIFICATIONS

1. Site Drawings

1.1 The Site Drawings shall be as those included below.

2. Specifications

2.1 The Specifications shall be as those included below.

SCHEDULE 5

Maintenance of the Product Elements

- 1.1 The Licensor will give notification to withdraw any of the Product Elements, which may effect the Apparatus or may degrade the licensee products to the Licensee's NMC
- 1.2 In line with industry practice it is essential that such work is planned and notified well in advance and is performed, under normal situations, within preferred hours as described in Section 2.1
- 1.3 When it is not practicable and for certain categories of planned work e.g. for urgent investigations, relaxation of the preferred hours may apply. This shall be decided on a per case basis.

2. Preferred Hours for major works

- 2.1 The standard periods allocated for such Planned Maintenance work are shown below.

ALL DAYS 01.00-06.00

3. Notification Process and Timescale

- a) If the Licensor intends to carry out any such planned work which may affect the Licensee's equipment then licensor must notify the licensee of the planned work by e mail to the licensee contact point using the "Notification of Planned Maintenance" form in the Inter Operator Process Manual;

- b) The minimum advance notification that is required for service outages due to Planned Maintenance is 10 working days;
- c) Having been notified of planned maintenance the Licensee must review and respond to the proposal within 3 working days of receipt;
- d) On completion of the Planned Maintenance work the licensor must notify the licensee that the work was completed as planned within 1 hour of the planned completion time, by e-mail transmission of the completed “Notification for Planned Maintenance” form in the Inter Operator Process Manual.

4. Escalation

- a) If the date or timing of the Planned Maintenance work is unsuitable then the Licensee must contact the relevant inter-company escalation point so that a suitable date and time can be agreed. Escalation points for planned maintenance are shown in Schedule 6.
- b) If the Planned Maintenance work is critical and essential to the operation of either the Licensee or the licensor network then one party cannot veto the other party’s work.

SCHEDULE 6

The normal contact escalation of Planned Maintenance for the Licensor is:

Level 1 Product Infrastructure Manager
Wholesale,
open eir,
2022 Bianconi Avenue
Citywest Business Campus
Dublin 24 D24 HX03
Tel: (00) 353 1 671 4444
Fax: (00) 353 1 428 6240

Level 2 Infrastructure Business Director
open eir,
2022 Bianconi Avenue
Citywest Business Campus
Dublin 24 D24 HX03
Tel: (00) 353 1671 4444
Fax: (00) 353 1 428 6240