

Agreement
Between
eircom Limited
And
Xxxxxxxxxxxxxx
for the Provision of
Migration Services

THIS Agreement is made on xxxxx day of xxxxx 2010

Between

eircom Limited registered in Ireland under company number 323200 and having its registered office at 1 Heuston South Quarter, St. John's Road, Dublin 8 (hereinafter referred to as "eircom")

And

Xxxxxxxxxxxx, registered Ireland under company number Xxxxxxxxxx and having its registered office at Xxxxxxxxxxxxxxxxxxxxxx (hereinafter referred to as "the Operator" or "Operator")

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

1. Introduction

WHEREAS:

- (a) eircom has agreed to provide this agreement to facilitate the migration of services offered under eircom's Reference Interconnect Offer ("RIO"), Access Reference Offer ("ARO") and Bitstream Access Reference Offer ("BARO") between or within the same eligible, authorised operators.
- (b) The Parties have agreed to enter into the terms of this Agreement to govern the migrations provided hereunder.

2. Definitions and Interpretations

2.1 In this Agreement, except if the context requires otherwise, words and expressions are as defined herein. However, to the extent terms are defined in the Product Agreements, the meaning ascribed therein shall be applied in this Migration Agreement.

- "Breach Notice"** shall have the meaning as defined in the respective Product Agreement (as defined in Clause 3.1).
- "Bulk Migration"** means a multiple migration that is a least equal to fifteen (15) lines in a given exchange.
- "CAF Exceptions"** means Migrations that are exempt from the requirement to have a Customer Authorisation Form and are:
- i. Intra-operator Migrations, including Intra-operator Bulk Migrations and,
 - ii. Inter-operator Bulk Migrations which require a Wholesale Operator Consent Form.

- “Gaining Operator”** means the operator who is the recipient of the customer relationship following the Migration Service.
- “Inter operator Migration”** means the facility that allows services eligible for migration as set out in the Migration Product Description on an end user’s line to be moved between operators.
- “Intra operator Migration”** means the facility that allows services eligible for migration on an end users line to be substituted with the same operator.
- “Inter-operator Bulk Migration”** means the facility that allows for a Bulk Migration in either direction between Bitstream and Line Share as the result of an authorised operator completing a Wholesale Operator Consent Form (“WOCF”) and selecting a different wholesale provider who places the orders. There is no change in the service provider for the end user.
- “Intra operator Bulk Migration”** means the facility that allows for a Bulk Migration for services eligible for migration Services on end user’s lines to be substituted with the same operator. All orders forming part of an Intra-operator Bulk Migration must have their current broadband service with the LLU operator but can have their narrowband service with any operator.
- “Losing Operator”** means the operator who is losing the customer relationship as a result of the Inter-operator Migration Service.
- “Migration”** means the actual transaction for which an order is placed to move between eligible services..
- “Migration Services”** means the service for moving between different products as set out in the Migrations Product Description.
- “National Directory Database or NDD”** means the record of all subscribers of publicly available telephone services in the State, including those with fixed, personal and mobile numbers, who have not refused to be included in that record, kept in accordance with Regulation 4(3) of the European Communities (Electronic Communications Networks and Services (Universal Service and Users’ Rights) Regulations 2003.

**“Wholesale Operator
Consent Form” or
“WOCF”**

is the form that must be signed by authorised operator selecting to migrate to a different wholesale provider in either direction between Bitstream and Line Share. A pro-forma WOCF Is set out in Appendix 1.

- 2.2 eircom shall provide Migration Services in accordance with the Product Description for Product Migrations (“Migration Product Description”), Service Level Agreement Product Migrations (“Migrations SLA”), and Process Manual for Product Migrations Process Manual (“Migrations IPM”). The controlling document is the latest version of the above titled document(s) published on eircom’s website..
- 2.3 The published version of the Migration Product Description and the Migrations SLA sets out the contractually binding service agreed between the Parties. These documents may be amended from time to time following consultation with industry or following determination by the National Regulator. For the avoidance of doubt, this Migration Agreement only covers the process of migrating from one Product Agreement to another Product Agreement.
- 2.4 The published version of the Migrations IPM is not contractually binding but sets out the processes the Parties agree to abide by in respect of the provision of Migration Services. This document may be amended from time to time following consultation with industry.
- 2.5 The following documents form part of this Migrations Agreement and, in the event of any inconsistencies between them, the order of precedence shall (unless stated to the contrary) be as follows:
1. Migrations Agreement
 2. Migrations Product Description
 3. Migrations SLA
 4. Submitted Orders including any Project Managed Bulk Migrations schedules.
- 2.6 In the event of any conflict between this Agreement and any of the Product Agreements required to facilitate Migration Services as set out in Clauses below, this Agreement shall take precedence. Otherwise, each Agreement shall be binding upon the Parties in respect of the services, which it governs.

3. Terms and Conditions of Migration Services

- 3.1. The Operator must have the necessary product agreements (“Product Agreements”) in place with eircom, including, as appropriate:

- i. an Interconnect Agreement
- ii. an Access Agreement
- iii. a Standard Bitstream Agreement (including Standard Bitstream Agreements subject to a Minimum Term)

the Operator shall not be the recipient of a valid and un-remedied Breach Notice (e.g. not remedied within the timeframe and manner specified in the relevant Product Agreement) in respect of any of the Product Agreements for which it is the Gaining Operator.

- 3.2 The terms and conditions applicable to each of the products and/or services in scope for Migration Services shall be as set out in the respective agreements listed in 3.1 above. Both Parties shall be obliged to comply with their obligations under those agreements in respect of products and/or services it is contracted for prior to and/or after a Migration. At the time of order, eircom's obligations in respect of provisioning and delivery shall be subject to the terms and conditions of Migrations SLA
- 3.3 Ordering, provisioning, and fault reporting and management shall be as set out in the Migrations IPM.
- 3.4 Migration Services will be subject to breaks in service as set out in the Migrations-IPM. The Parties shall endeavour to minimise the break in service for individual end users.
- 3.5 The Operator shall be responsible for fulfilling all of its obligations with respect to the National Directory Database. The NDD listing transfer service provided by eircom in the SB-WLR product is not available where the SB-WLR product is provisioned through a Migration.
- 3.6 eircom may suspend Migration Services where the Operator is the Gaining Operator and there is a valid Breach Notice issued to the Operator which remains un-remedied by the Operator after the remedy period. For the avoidance of doubt, a Breach Notice will not be issued where amounts are withheld for which a valid billing dispute exists.
- 3.7 Subject to clause 3.8 below, Migration orders shall be subject to the requesting Operator obtaining a complete Wholesale Operator Consent Form ("WOCF") or a complete Customer Authorisation Form (CAF) from the customer containing all the relevant details for the provision of Migration Service on their behalf. The CAF shall be held in a secure file by the Operator in accordance with the Data Protection Acts, 1988 and 2003 or any amendment or replacement thereof. The form of the CAF shall be as set out in the Migration IPM Services.
- 3.8 (i) Without prejudice to the generality of clause 3.7 above, it shall not be mandatory for the Gaining Operator to procure and/or furnish a CAF in respect of CAF Exceptions, provided however that where the Gaining Operator decides not to procure and/or furnish such a CAF, eircom shall have

no liability for any loss or damage to the customer which arises directly and solely from the absence of such a CAF.

- (ii) The Gaining Operator will, subject to sub-clause (iv) below, indemnify and hold eircom harmless against any and all direct claims, demands, actions, damages, costs and expenses for loss or damage to the customer which arise directly and solely from the Gaining Operator's decision not to procure and/or furnish a CAF in respect of a CAF Exception, (the "Indemnity"), provided always that:-
 - (a) the total aggregate liability of the Gaining Operator arising under the Indemnity shall not exceed the amount of €50,000 for any event or series of connected events and to €250,000 for all events (connected or unconnected) in any period of twelve (12) consecutive months. For the avoidance of doubt the transfer of a block of lines for one customer shall be deemed one event.
 - (b) the Gaining Operator shall not be liable under the Indemnity for consequential or indirect loss (meaning loss that is not reasonably foreseeable and arises indirectly or is not an immediate and proximate result of the absence of a CAF); and
 - (c) any notice, demand or communication made by eircom under the Indemnity shall be in writing and shall be deemed to be duly served if served by registered post to [].

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

- (iii) In respect of Inter-operator Bulk Migrations, the Operator and/or the Operator's customer shall indemnify and hold eircom harmless in respect of any claims made by end users in respect of the provision of the services on the lines from the date of Migration arising directly and solely from the absence of a CAF(the "Indemnity"). The Indemnity given in this sub-clause shall be subject to the provisions as set out in 3.8(ii)(a),(b) and (c) and (iv) shall apply.
- (iv) In orderfor eircom to recover from the Gaining Operator under the Indemnity eircom shall:-
 - (a) confirm its intention in writing to make a claim under the Indemnity within 60 days after eircom becomes aware of the relevant facts, or ought reasonably to have become aware of those facts, and include a brief note of the facts with such confirmation;

- (b) take all reasonable steps to mitigate any such losses, claims, damages and liabilities, costs, charges and expenses and shall not compound, compromise, settle or admit those proceedings without the prior written approval of the Gaining Operator (not to be unreasonably withheld or delayed);
- (c) allow the Gaining Operator to conduct its own defence of such claims, demands, actions, damages, costs and expenses; and
- (d) provide all reasonable assistance to the Gaining Operator and make no admission prejudicial to the defence of such claims, demands, actions, damages, costs and expenses.

3.9 The existence of this Agreement shall remain Confidential between the Parties.

4. Charges, Billing and Payment

4.1 The charges applicable to each of the products and services within the scope of Migration Services will be as set out in the applicable price list for each of the products and services, i.e.:

- a) The charges relating to Interconnect services subject to Migrations shall be as set out in the eircom RIO Price List,
- b) The charges relating to Access services shall be as set out in the eircom ARO Price List,
- c) The charges relating to Bitstream services shall be as set out in the eircom Bitstream Price List,
- d). Intra Operator Bulk Migrations and Inter-Operator Bulk Migrations are subject to a 25% discount on the relevant LLU Connection Charge as per the published ARO Price List.
- e.) Where Project Management is requested for Intra Operator Bulk Migration or Inter-operator Bulk Migrations a separate charge will apply.

Charges for Migration Services shall apply upon the completion of each Migration order.

4.2 Invoices for all Migration Services shall be issued in accordance with the terms of the recipient Product Agreement relating to the Service being migrated.

4.3 Payment due dates for Migration Services shall be in accordance with the terms and conditions of the recipient Product Agreement.

- 4.4 All disputes, including billing and payment disputes, shall be governed by the terms of the Product Agreement for the Service, the subject matter of the Migration.

5 Resolution of Disputes

- 5.1 Resolution of Disputes will be dealt with by using the dispute resolution process with in the recipient Product Agreement. Nothing in this Agreement shall prevent either Party referring a dispute at any point in time to the National Regulator.

6 Term and Termination

- 6.1 This Agreement shall commence on the date hereof and shall remain in full force and effect unless terminated by either Party in line with the provisions of this Agreement.
- 6.2 In the event that eircom withdraws Migrations Services as set out in this Agreement, eircom shall provide the Operator with at least ninety (90) days written notice of the termination of this Agreement. In the event of such termination, eircom will make all reasonable endeavours to ensure the continuity of end user services.
- 6.3 The Operator may terminate this Agreement by providing a minimum of ninety (90) days written notice of its intent to the other Party.
- 6.4 In the event that the Operator is in material breach of this Agreement, eircom may issue a breach notice. In the event the Operator fails to remedy the breach within thirty (30) days from the date of the breach notice, eircom may terminate this Agreement by notice of termination to take effect within 5 calendar days.

7 Amendments

- 7.1 Amendments and supplements to this Agreement, excluding changes to the Migration Product Description and Migrations SLA, shall in order for them to be valid, have been drawn up in writing, dated and signed by both Parties. Such amendments and supplements shall not affect the validity or enforceability of any of the provisions of this Agreement, which have not been so amended or supplemented.

8. Review

8.1 Either Party to this Agreement may invoke a review of this Agreement each year during the three month period commencing on the 1st October.

9. Governing Law

9.1 The interpretation, validity and performance of this Agreement shall be governed in all respects by the laws of Ireland and the Parties submit to the exclusive jurisdiction of the Irish Courts.

Signed for and on behalf of Operator: <hr/> Name <hr/> Title <hr/> Date	Signed for and on behalf of eircom: <hr/> Name <hr/> Title <hr/> Date
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Appendix 1
Pro-forma

Wholesale Operator Consent Form (WOCF)

**To: eircom,
1 Heuston South Quarter, St. John's Road, Dublin 8**

**From: XXXXXXXX ("Operator")
Address**

By signature of this form, Operator authorises Gaining Operator to commence and complete the Inter-operator Bulk Migration the lines set out in Attachment 1 to this document from Bitstream to Line share. Operator also accepts the following conditions:

1. The lines submitted on Attachment 1 are all customers of Operator for broadband services and will continue to be Operator broadband customers following the Bulk Migration. Therefore they are eligible for Bulk Migration as set out in the process document.
2. Operator is responsible for the payment of any undisputed broadband charges currently in arrears in advance of the proposed transfer and that these arrears must be cleared before the Bulk Migration can commence. Operator also acknowledges responsibility for payment of any legitimate invoices under the existing Product Agreement that eircom may subsequently issue in respect of the services provided prior to the Bulk Migration.
3. The lines in Attachment 1 will be updated as required throughout the bulk migration process to ensure that only orders for Operator broadband customers are submitted.
4. Operator confirms that in providing this authorisation it is not in breach of any of the terms of its customer contracts.
5. Operator acknowledges that the process of Bulk Migration may result in a short interruption of service.
6. Operator acknowledges that in respect of the lines subject to Bulk Migration, Operator shall no longer be entitled to contact (Name of existing Service Provider) directly in relation to fault reporting or repair for events that occur post-Migration of the line.
7. Operator agrees to indemnify and hold (name of existing Service Provider) harmless in respect of any claims made by its customers in respect of the

provision of the service on the lines from the date of migration or in relation to any claims arising as a result of any breach of the terms and conditions set out in this consent form.

I confirm that I have the authority to make this instruction on behalf of my company.

Signed by and on behalf of Operator:

Name

Title

Date