

EIRCOM LIMITED

- and -

[]

DEED OF VARIATION



- (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**”).

RECITALS:

- A. On [], the Licensor and the Licensee entered into a physical co-location Master Licence Agreement (the "**MLA**").
- B. Under the terms of the MLA the Licensee has installed its Equipment at the Footprints in open eir Telephone Exchanges at the Sites listed in Schedule 1 of the MLA.
- C. Clause 14.1 of the MLA provides that the licences granted thereunder are personal to the Licensee, and that the Licensee is not entitled to assign, charge or mortgage the MLA or any benefit under it, either in all or in part, or otherwise dispose of the MLA or to grant any sub-licence.
- D. Clause 2.9 of MLA further provides that rights granted to the Licensee under the MLA may only be exercised by the Licensee for its benefit and that of its customers.
- E. As a result of the Licensee requesting the Licensor’s regulated product variant ‘*CoLocation Resource Sharing – Serviced Footprint*’ and the Licensor providing the Licensee with same, the Licensor hereby authorises the Licensee subject to the terms of this Deed of Variation to ‘share’ the Footprints licensed under the MLA with another Operator which (1) has executed a reference offer agreement with the Licensor and (2) qualifies for co-location access under the Licensor’s regulated reference offer agreements (an “**Other Licensed Operator**”).

NOW THIS DEED WITNESSETH as follows:

1. Waiver

For the sole purpose of the provision of '*CoLocation Resource Sharing – Serviced Footprint*' the Licensor **HEREBY WAIVES** Clause 14.1 and Clause 2.9 of the MLA in respect of the Sites listed in the Schedule to this Deed of Variation and will not require the Licensee to comply with either Clause 14.1 or 2.9 of the MLA from the date of this Deed of Variation in the event the Licensee wishes to share occupation of the Footprints at the Sites listed in the Schedule to this Deed of Variation for the receipt of '*CoLocation Resource Sharing – Serviced Footprint*'. This Deed of Variation constitutes a waiver in writing for the purposes of Clause 18 of the MLA and this Deed of Variation will remain operative for the Term of the MLA and any renewals thereof (if any).

2. Confirmations

2.1 Without prejudice to the generality of the waiver set out above and for the avoidance of doubt, for the purposes of the provision of '*CoLocation Resource Sharing – Serviced Footprint*' the Licensor confirms to the Licensee that the Licensee:

- (a) may share occupation of the Footprints at the Sites listed in the Schedule to this Deed of Variation (the "Shared Footprint Sites") for the duration of the Term of the MLA with Other Licensed Operators in order for the Licensee to access services as set out in clause 2.7 the MLA and for no other purposes;
- (b) may grant a sub-licence and or sub-licences at its Footprints in the open air Telephone Exchange building at the Shared Footprint Sites (each a "Sub-Licence") to Other Licensed Operators (each a "Sub-Licensee") for the duration of the Term of the MLA, with such Sub-Licence(s) to be on terms which are substantially similar to the terms and conditions as set out in the MLA;

- (c) may install the equipment belonging to Other Licensed Operators at the Footprints in the open eir Telephone Exchange building at the Shared Footprint Sites for the duration of the Term of the MLA;
- (d) shall not have to pay additional Licence Fees for entry into each Sub-Licence.

2.2 Without prejudice to the generality of the waiver set out above and for the avoidance of doubt, for the purposes of the provision of '*CoLocation Resource Sharing – Serviced Footprint*' the Licensee confirms to the Licensor:

- (a) subject to the waiver set out above all of the terms of the MLA apply and that this Deed of Variation is to be read in conjunction with the MLA;
- (b) the purpose of this Deed of Variation is to allow the Licensee to share occupation of its Footprints in the open eir Telephone Exchange building at the Shared Footprint Sites with a Sub-Licencee in order for the Licensee to access services as set out in clause 2.7 the MLA and for no other purposes;
- (c) it shall not shall not grant a Sub-Licence at a Shared Footprint Site to any other party except to a party which is an Other Licensed Operator;
- (d) this Deed of Variation being entered into for the purposes of the provision of '*CoLocation Resource Sharing – Serviced Footprint*' and except for this purpose the licence in the MLA is personal to the Licensee and the Licensee acknowledges that it is not entitled to assign, charge or mortgage its rights under the MLA;
- (e) it shall comply with the terms of the MLA and this Deed of Variation when sharing its Footprints in the open eir Telephone Exchange building at the Shared Footprint Sites;
- (f) in the event the Licensee shares occupation of its Footprints in the open eir Telephone Exchange building at the Shared Footprint Sites

with a Sub-Licensee it shall execute a formal Sub-Licence legal agreement with the Sub-Licensee;

- (g) that all Sub-Licenses with Sub-Licensees will be in writing and will be substantially similar to the terms and conditions as those set out in the MLA;
- (h) it will ensure that each Sub-Licensee executes a deed of renunciation whereby the Sub-Licensee renounces any landlord and tenant rights at a Shared Footprint Site;
- (i) it shall upon the request in writing of the Licensor provide the Licensor with a copy of each Sub-Licence. The Licensee shall be entitled to redact the pricing information and licence fees in the Sub-Licence on the basis such information is deemed to be commercially sensitive information;
- (j) it shall be responsible for the actions of each of the Sub-Licensee(s) and their staff, employees, contractors and agents at each of the Shared Footprint Sites;
- (k) it will assume all responsibilities and liabilities (incl. product/ process/ operational/ accreditation/ access/ equipment approval, etc.) on behalf of each Sub-Licensee and the Sub-Licensee's equipment at the Footprint in the open air Telephone Exchange building at each of the Shared Footprint Sites;
- (l) it may require a power meter fitted in the open air Telephone Exchange building at each of the Shared Footprint Sites;
- (m) it acknowledges that Clauses 16 and 17 of the MLA apply to this Deed of Variation;
- (n) in the event that it does not comply with the terms of this Deed of Variation the Licensor shall be entitled to invoke and exercise all of its rights and remedies under the MLA.

3. Capacity

Each party hereto warrants and represents to each of the others that it has full authority, power and capacity to enter into this Deed of Variation, and that all necessary actions have been taken to enable it lawfully to enter into this Deed of Variation.

4. Governing Law and Jurisdiction

This Deed of Variation shall in all respects be governed by and construed in accordance with the laws as set out in the MLA. This Deed of Variation shall be read in conjunction with the MLA and in the event of a conflict or ambiguity between the MLA and this Deed of Variation, the terms of this Deed of Variation shall take precedence.

5. Definitions

Terms not herein defined shall have the meaning given to them in the MLA.

GIVEN under the common seal
of **EIRCOM LIMITED**
and delivered as a deed

Signature

Print name

Signature

Print name

GIVEN under the common seal
of []
and delivered as a deed

Signature

Print name

Signature

Print name

Schedule 1 – List of Sites “Shared Footprint Sites”

The below table itemises the locations addressed by this Deed of Variation:

open air Exchange	Rack	Sub-Licensee	Equipment	Date