



Non-Disclosure Agreement

between

eircom Ltd

and

Operator

for

Interconnect Services

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THIS AGREEMENT is made on date

Between

Operators Name, (“Operator”) having its registered office at Operators Address

and

eircom Ltd (herein after referred to as *eircom*) having its registered office at 114 St. Stephen’s Green West, Dublin 2.

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

1. Introduction

1.1. Preface

- (a) The following constitutes the Non-Disclosure Agreement between *eircom* and the Operator:

to apply to discussions between the Parties and the exchange of information for purposes of any offerings made by *eircom* for Interconnection Services.

- (b) This Non-Disclosure Agreement takes effect from the date

Whereas

- (a) The Operator is authorised under the Authorisation Regulations to provide an electronic communications network or electronic communications service pursuant to the provisions of the Authorisation Regulations and is entering into this Agreement for the purposes relating to Interconnection Services.
- (b) *eircom* is required to publish a Reference Interconnection Offer as the basis for making Interconnection Services available to Operator in accordance with the obligations set out therein.
- (c) Whereas, in their businesses the Parties to this Agreement have valuable information and it is necessary to protect certain of this information as Confidential Information and as valuable trade secrets.
- (d) Whereas, through doing business with each other for the purpose of the Interconnection Services either Party may become acquainted with or come into possession of Confidential Information belonging to the other Party. In such cases the Party providing this information shall be designated “the Owner”, and the Party receiving this information shall be designated “the Recipient”.

In consideration of the mutual covenants and obligations contained in this Agreement, the Parties **HEREBY AGREE AS FOLLOWS:**

2. Definitions and Interpretation

- 2.1. In this Agreement, except if the context requires otherwise, words and expressions are as defined in Annex A
- 2.2. Terms defined in relevant European Union legislation on the liberalisation of the telecommunication services market or in consequent Irish implementing legislation (which, for the avoidance of doubt includes Decisions published by the National Regulator) shall, where used in this Agreement, have the meanings ascribed to them in such legislation.

3. Non-Disclosure Agreement

For the purpose of this Agreement “Confidential Information” includes:

- 3.1. information of whatever nature relating to either Party or its customers which is not publicly available and which is obtained as a result of or in connection with this Agreement or the negotiations thereof or the activities of either Party in relation to Interconnection Services information acquired either in writing, electronically or orally from or pursuant to discussions with:
 - 3.1.1. the directors, officers or employees of either Party, and/or
 - 3.1.2. either Party’s professional advisers;
- 3.2. analyses, compilations, studies and other documents prepared by or on behalf of either Party and of their employees or advisers;
- 3.3. information of whatever nature which is not in the public domain relating to either Party obtained by observation by the other Party; and
- 3.4. all information disclosed by either Party, whether orally or in writing shall be considered Confidential information, unless otherwise stated.

3.5 These terms and conditions will not apply to any Confidential Information which:

- 3.5.1 is or becomes publicly available through no fault of the Recipient;
- 3.5.2 can be demonstrated to be already known to the Recipient at the time of disclosure;
- 3.5.3 information that is received without obligation of confidence from a third party who did not acquire it under an obligation of confidence from either Party or that is independently developed by the Recipient.

3.5.4 is required to be disclosed by a government regulatory body or a court or other comparable authority of competent jurisdiction.

3.5.5 Is released from the provisions of this Confidentiality Agreement by the written consent of the owner. If only a portion of the Confidential Information falls to be disclosed under this clause, the remainder shall continue to be subject to the prohibitions and obligations set out herein

3.6 Therefore, in consideration of the disclosure to each Party of Confidential Information by the other and in consideration of the mutual promises contained in this Agreement, it is agreed as follows:

3.6.1 each Party undertakes with the other that the Confidential Information shall be used by it only for the purpose of or to facilitate the provision of Interconnection Services in accordance with the terms of this Agreement and for no other purposes whatsoever.

3.6.2 subject to sub paragraphs 3.6.3.3 and 3.6.3.6 below, neither Party will without the prior written consent of the other disclose or use or cause to be disclosed or used by any third party at any time any Confidential Information.

3.6.3 to secure the confidentiality attaching to Confidential Information, each Party and Associated Company who is allowed access to Confidential Information pursuant to sub-paragraph 3.6.3.3 below shall:

3.6.3.1 keep all documents and any other material bearing or incorporating any of the Confidential Information at one of the places in which the Recipient conducts its business or subject to sub-paragraph 3.6.3.3 below at the usual place of business of an Associated Company of the Recipient;

3.6.3.2 in relation to the reproduction, transformation, or storage of any of the Confidential Information in an externally accessible computer or electronic retrieval system, shall exercise no lesser security or degree of care than that Party applies to its own Confidential Information of an equivalent nature;

3.6.3.3 allow access to Confidential Information exclusively to those agents, professional advisers, Associated Companies and employees of the Recipient who have reasonable need to see and use it to facilitate Interconnection Services which may be amended by written notification in accordance with Paragraph 9 of this Agreement and shall inform each of the said agents, professional advisers, Associated Companies and employees of the confidential nature of the Confidential Information and of the obligations on the Recipient in respect thereof and undertake to use all reasonable endeavours to ensure that such agents, professional advisers, Associate Companies and employees honour these obligations.

3.6.3.4 on reasonable request of the Owner made at any time shall deliver up to the Owner, as far as reasonably practicable, all documents and other material in the possession custody or control of the Recipient or

Associated Companies of the Recipient that bear on or incorporate any part of the Confidential Information;

3.6.3.5 treat in the same manner as is agreed to treat Confidential Information, all copies of any analyses, compilations, studies or other documents prepared by it or its advisers containing or reflecting or generated from any Confidential Information;

3.6.3.6 allow access to the Confidential Information only to suppliers of the Recipient who have reasonable need to see and use this Confidential Information for the purposes of supply of services and products to the Recipient. In which case the Recipient undertakes to use all reasonable endeavours to ensure that such suppliers comply with conditions set out in this Clause 3.6 as described above for their use of the Confidential Information.

3.7 Each Party understands and acknowledges that neither is making any representation or warranty, express or implied as to the accuracy or completeness of the Confidential Information and neither of them will have any liability to the other or any other person resulting from the Confidential Information or its use thereof.

3.8 Any disclosure of confidential information by one party to the other party shall not in any way serve to create on the part of the Owner, a licence to use or any proprietary right in the confidential information or any other proprietary product, trade mark copyright or other right of the owner.

3.9 The Parties acknowledge and agree that damages would not be an adequate remedy for any breach of this undertaking by either of them. In the event of a breach or threatened breach of this Agreement by either Party, the other Party (“the aggrieved Party”) shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Agreement and, without prejudice to the foregoing, the other Party agrees to indemnify the aggrieved Party against any loss, claims, damages or liabilities by it as a result of or arising out of any such breach PROVIDED ALWAYS such liability is limited to:

one million two hundred and fifty thousand EURO (EUR1,250,000) for any one event or series of connected events and two million five hundred thousand EURO (EUR2,500,000) for all events (connected or unconnected) in any period of 12 calendar months in respect of information provided for all Interconnection Services.

3.10 Unless the Parties enter into an Interconnect Agreement, the Parties agree that the Non-disclosure Agreement obligations will exist for a period of 2 years following termination or expiry of this Agreement other than in the exceptional circumstances where the Owner of the information notifies the Recipient that the obligations regarding specific information shall remain in force for a period of five, (5) years following termination or expiry of the Agreement.

3.11 The Parties agree that in the event they enter into an Interconnect Agreement the terms set out herein will apply to Confidential Information exchanged thereafter. Upon termination of the Interconnect Agreement, the Parties agree that in respect of Confidential Information the obligations will exist for a period of 2 years following termination or expiry of this Agreement other than in the exceptional circumstances where the Party that owns the information notifies the Receiving Party that the obligations regarding specific information shall remain in force for a period of five, (5) years following termination or expiry of the Agreement.

3.12 The parties to this agreement acknowledge that information has a time value and agree to work together to develop a process going forward to ensure that information is declassified on a regular and ongoing basis. The time frame between receipt of confidential information and the de-classification of such information shall be reviewed within twelve, 12, months

4. Notices

4.1. Notices shall be duly served if:

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

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

If to the Operator:

Name	Telephone	01
Address	Facsimile	01
Address		
Address		

If to *eircom*:

Head of Wholesale Regulatory Operations,	Telephone	01
7015413		
Wholesale	Facsimile	01 4752522
<i>eircom</i>		
St. Stephen's Green West		
Dublin 2		

- 4.2.1. or to such other addresses as the Parties may notify from time to time pursuant to this clause 4.2.

5. Assignment of Rights and Obligations

- 5.1. Unless otherwise agreed in writing, and subject to clause 5.2, no rights, benefits or obligations under this Agreement may be assigned or transferred, in whole or in part, by a Party without the prior written consent of the other Party.
- 5.2. No consent is required under clause 5.1 for an assignment of rights, benefits or obligations under this Agreement (in whole or in part) to a successor to all or substantially all of the assigning Party's Network to an associated company provided that such successor or Associated Company is authorised under the Authorisation Regulations to operate the Network of the assigning Party.
- 5.3. The assigning Party shall promptly give notice to the other Party of any assignment permitted to be made without the other Party's consent. No assignment shall be valid unless the assignee/successor agrees in writing to be bound by the provisions of this Agreement.

6. Entire Agreement

- 6.1. This Agreement represents the entire understanding of and agreement between the Parties in relation to the subject matter of this Agreement, and, unless otherwise agreed in writing, supersedes all previous understandings, commitments, agreements or representations whatsoever, whether oral or written.

7. Waiver

- 7.1. The waiver of any breach of, or failure to enforce, any term or condition of this Agreement shall not be construed as a waiver of any other term or condition of this Agreement. No waiver shall be valid unless it is in writing and signed on behalf of the Party making the waiver.

8. Severability

- 8.1. The invalidity, unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement.

9. Amendments

- 9.1. Amendments and supplements to this Agreement, including its Annex A shall in order for them to be valid, have been drawn up in writing, dated and signed by both Parties. Such amendment and supplements shall not affect the validity or enforceability of any of the remaining provisions of this Agreement.

10. Relationship of Parties

10.1. The relationship between the Parties is that of independent contractors. Nothing in this Agreement shall be construed to make either Party hereto an agent, joint venture or partner of or with the other. Neither Party is granted any right of authority or agency, expressly or implicitly, on behalf of, or in the name of the other nor any right to legally bind the other in any manner whatsoever. Neither Party shall become liable through any representation, act or omission of the other which is contrary to or unauthorised by the provisions of this Agreement.

11. Governing Law

11.1. 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.

IN WITNESS WHEREOF THIS AGREEMENT WAS ENTERED INTO THE DAY AND YEAR FIRST ABOVE WRITTEN.

SIGNED for and on behalf of

Operator:

[SIGNATURE]

[NAME (BLOCK CAPITALS)]

[POSITION]

[Date]

SIGNED for and on behalf of

eircom:

[SIGNATURE]

[NAME (BLOCK CAPITALS)]

[POSITION]

[DATE]

Annex A

Definitions

In this Agreement, words and expressions have the following meanings:

“Associated Company”	A Subsidiary and Holding Company of such Party, the terms Subsidiary and Holding Company having the meanings ascribed thereto in section 155 of the Companies Act 1963 – 2001 or any subsidiary of any such Holding Company.
“Authorisation Regulations”	European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2003 (SI 306 of 2003)
“Interconnection Services”	means the services available through eircom’s Reference Interconnect Offer.
“Intellectual Property”:	Any patent, copyright, design, trade name, trademark, service mark or other intellectual property right (whether registered or not) including without limitation ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, tracings, diagrams, models and other information relating to any such intellectual property.
“National Regulator”:	The Commission for Communications Regulation.
“Party”:	A party to this Agreement.

