

**BARO**

**Bitstream Access Reference Offer**

**Standard**

**Agreement**

**between**

***eircom* Ltd**

**and**

**(Access Seeker)**

**for the**

**Provision of the ADSL**

**Bitstream Service**

**Subject to a Minimum Term**





**“Minimum Term”** means the minimum period during which the Access Seeker commits to keep and pay for a New Product Order on a Bitstream Port. This period shall commence on the date eircom starts billing for that Product on a Bitstream Port and shall continue for six months thereafter.

**“New Product Order”** means any of the following types:

- a) an order to provide a Product to an In Service telephone number/CLI under this Agreement;
- b) an order for an upgrade or downgrade of a Product on a Bitstream Port;
- c) an order for Bitstream Port Transfer on a Bitstream Port.

**“NTU”** means Network Termination Unit;

**“NTU Installation Manual”** means the document which defines the responsibilities of all parties involved in the access, provision and repair of different types of services using *eircom*'s Access Network. Specifically this document defines the procedures and standards to which any party including the Subscriber, installing a NTU at the Subscriber's premises for Bitstream provisioning on copper paths, should adhere to.

**“Product”** means singularly, each variant of the products set out in the Product Description as may be updated and re-published from time to time.

**“Public Holiday”** means a day on which banks are not open for business in the Republic of Ireland;

**“Repeated Unauthorised Use of the Bitstream Port Transfer”** means more than two occasions of Unauthorised Use of the Bitstream Port Transfer in any rolling 12 month period;

**“Service”** means the *eircom* service known as *eircom*'s ADSL Bitstream Service which is more specifically described in the ADSL Bitstream Service Product Description (“Product Description”). This document is contractually binding and the controlling document is the latest version of the above titled document published on eircom's website. This document is exempt from the requirements of Clause 20.1, Variations, *eircom* shall notify the Access Seeker of the publication of new versions of the Product Description;

**“Subscriber”** means a person subscribing to the Access Seeker Service;

**“Working Day”** means a day other than a Saturday, Sunday, or Public Holiday between the hours of 9:00 am and 5:30 p.m.

**“Unauthorised Use of the Bitstream Port Transfer”** means more than three (3) percent of an Access Seeker's Bitstream Port Transfer orders in a given month that were found to not have a supporting DSL Transfer Authorisation

Form and/or did not comply with the processes, procedures, and standards for the Bitstream Port Transfer service set out in the Bitstream Industry Process Manual.

**“Universal Service Obligations”** means a defined minimum set of services of specified quality which is available to all users independent of their geographic location and in the light of specific national conditions, at an affordable price.

## **2. CONDITIONS OF THE SERVICE**

- 2.1 The Service is only available:
  - 2.1.1 for Subscribers directly connected to the *eircom* network;
  - 2.1.2 on those *eircom* PSTN copper lines currently In Service within the defined ADSL regional areas. The ADSL regional areas at the commencement of this Agreement will be provided to the Access Seeker. Any future changes as the roll out develops will be exempt from the written requirement of Clause 20, Variation, but shall be provided to the Access Seeker pursuant to Clause 11, Notice. The terms and conditions of this Agreement shall apply to all exchanges added through this process.
  - 2.1.3 where the copper pairs have been deemed suitable by *eircom* for the provision of the Service in accordance with the Industry Process Manual;
- 2.2 Where a Subscriber’s PSTN service is terminated, *eircom* shall be entitled to terminate the Service to such Subscriber.
- 2.3 The Access Seeker shall not use the Service or allow or permit any Subscriber to use the Access Seeker Service:
  - 2.3.1 other than in accordance with all applicable laws, including, but not limited to, the terms of any licence applicable to the Access Seeker or the Subscriber (as applicable), data privacy laws, the laws of copyright and intellectual property rights;
  - 2.3.2 in any way that contravenes the criminal law or to export or re-export any material in violation of any applicable export control laws and regulations;
  - 2.3.3 other than in accordance with the acceptable usage policies of any connected networks
  - 2.3.4 other than in accordance with any instructions and/or notice given by *eircom* pursuant to Clauses 2.6;
  - 2.3.5 other than in accordance with the provisions of the Product Description.

- 2.4 The Access Seeker shall include and maintain in its contracts with Subscribers provisions which are no less onerous than those contained in this Agreement. The Access Seeker shall be responsible for the enforcement of all such provisions with Subscribers.
- 2.5 The Access Seeker acknowledges and agrees that it is the Access Seeker's sole responsibility to ensure that, insofar as is required by national legislation, any Access Seeker Material and third party material complies with all applicable laws and regulations. The Access Seeker further acknowledges and agrees that *eircom* has no responsibility in relation to any such Access Seeker Material or third party material.
- 2.6 Use of the Service may be restricted by *eircom* where such use is in contravention of any applicable law.
- 2.7 Due to *eircom's* Universal Service Obligations, the Access Seeker shall use its reasonable endeavours to ensure the continuing integrity of *eircom* voice services during installation and operation of the Service. If during the term of this Agreement *eircom's* Universal Service Obligation is affected or degraded the Access Seeker will use its best endeavours to work with *eircom* to resolve the matter and shall comply with all established current industry processes.
- 2.8 The Access Seeker agrees that from time to time it may be necessary for *eircom* to temporarily suspend the Service during periods of repair, essential maintenance or alteration or improvement to *eircom's* network. In the case of planned outage *eircom* will give the Access Seeker ten (10) Working Days' notice prior to such suspension of service and *eircom* will restore service as soon as possible after such suspension.
- 2.9 *eircom* does not warrant that the Service will meet the Access Seeker's requirements or the requirements of any third party or that the operation of the Service will be uninterrupted or error-free or that any defect in the Service can be remedied.
- 2.10 The Access Seeker shall indemnify *eircom*, its employees, servants and agents in full on demand against any liability, loss, cost, damage and expense (including but not limited to reasonable legal fees) incurred by it and arising directly or indirectly from any claim or proceeding instituted or threatened against *eircom* by a third party alleging that:
- 2.10.1 the Service has been used in breach of the provisions of Clause 2.3; or
  - 2.10.2 the Access Seeker fails to comply with 2.15;
  - 2.10.3 the Access Seeker Service is faulty or cannot be used by that third party; or.

- 2.10.4 the Access Seeker's failure to comply with the terms of Clause 2.7 which disrupts and/or interferes with eircom's ability to fulfil its Universal Service Obligations.
- 2.11 The Access Seeker shall indemnify *eircom* against all claims made against *eircom*, its employees, servants and agents for personal injury or death to any person occasioned by or arising from the Access Seeker's negligent operation or use of the Service except and insofar as eircom, its employees, servants or agents are directly liable therefor.
- 2.12 *eircom* shall indemnify the Access Seeker against all claims made against the Access Seeker, its employees, servants and agents for personal injury or death to any person occasioned by or arising from *eircom*'s negligent provision of the Service except and insofar as the Access Seeker, its employees, servants or agents are directly liable therefor.
- 2.13 The Parties shall use the reasonable commercial endeavours to provide such information as the other Party may reasonably require in order for the Parties to perform its obligations under this Agreement.
- 2.14 eircom may give the Access Seeker instructions which eircom reasonably believes are necessary for reasons of health, safety, or the quality of any telecommunications service provided by eircom to the Access Seeker or any other person.
- 2.15 The Parties shall comply with the processes, procedures and standards set out in the Bitstream Industry Process Manual, the NTU Installation Manual, and such other industry developments related to this Service as some may be updated or modified from time to time.
- 2.16 The Bitstream Port Transfer service is available for use by an Access Seeker who has secured a DSL Transfer Authorisation Form (DTAF), as defined in Schedule 2, from an end user customer, and complies with the processes, procedures, and standards for the Bitstream Port Transfer service set out in the Bitstream Industry Process Manual, Section 3.4.5.1.1.
- 2.17 In all instances the Access Seeker shall retain these DTAFs for at least 2 years and no longer than 6 years from the date of submitting the Bitstream Port Transfer order. The Access Seeker shall make such DTAFs available to *eircom* upon request. *eircom* may request the DTAF if it believes that an Access Seeker is submitting Bitstream Port Transfer orders without supporting DTAFs or in cases where customers or ComReg have made direct complaints to *eircom* about specific Access Seekers or their agents.
- 2.18 Where an incident(s) of Unauthorised Use of the Bitstream Port Transfer service is detected by *eircom*, the incident(s) shall be notified to the Access Seeker. The Access Seeker shall use their best endeavours to resolve the matter directly with the customer. Where *eircom* detects Repeated

Unauthorised Use of the Bitstream Port Transfer service, *eircom* retains the right to suspend the service from use by the Access Seeker until the issue causing the unauthorised use is resolved to *eircom*'s satisfaction. Should the service be suspended on more than two occasions on a rolling twelve months basis *eircom* retains the right to withdraw the Bitstream Port Transfer service from use by the Access Seeker.

- 2.19 A Minimum Term shall apply to each New Product.
- 2.20 The Access Seeker shall be liable for all charges relating to the Minimum Term.

### **3 EQUIPMENT**

- 3.1 Any equipment connected to or used with the Service must be connected and used in accordance with all applicable instructions, safety and security procedures. Any equipment that is attached, directly or indirectly, to the Service must be technically compatible with the Service and approved for that purpose under any applicable legislation or industry standards.

### **4 CHARGES, BILLING AND PAYMENT**

- 4.1 In consideration of the provision of the Service, the Access Seeker shall pay *eircom* the applicable Charges for the Service as set out in the ADSL Bitstream Service Price List.
- 4.2 *eircom* shall provide the Access Seeker with twenty one (21) day's notice of changes to *eircom*'s prices that will result in a change to the Charges for the Service. Changes to any of the Charges shall be exempt from the requirements of Clause 20, Variations.
- 4.3 With the exception of clause 4.4 below, *eircom* will issue monthly bills in advance of the billing period to the Access Seeker setting out the Charges applicable to the upcoming billing period
- 4.4 With respect to the excess usage charges, *eircom* will bill the Access Seeker monthly in arrears setting out the excess usage charges applicable per Bitstream line.
- 4.5 The billing detail provided by *eircom* is provided solely for the purpose of the Service. The Access Seeker is independently responsible for the invoicing of its customers.
- 4.6 Billing periods shall be each calendar month unless otherwise expressly agreed in writing by the Parties

- 4.7 The Access Seeker shall be liable for payment of the full invoice no later than thirty (30) days from the date of the invoice.
- 4.8 Any Disputes that arise in relation to the charging principles of this Agreement or invoices furnished by eircom to the Access Seeker shall be subject to the disputes resolution provisions of Clause 9 of this Agreement.
- (a) Where a Dispute arises in relation to an amount payable in respect of an invoice then the Access Seeker shall be entitled to withhold payment, upon serving eircom with a Dispute Notice prior to the payment due date and provided that the disputed amount is greater than ten percent (10%) of the total invoice amount due for payment. eircom shall issue the Access Seeker with a credit where appropriate for any amount that may constitute an overpayment.
- (b) Where the Access Seeker invokes the provisions of Clause 9 after the due date for payment of an invoice, then the Access Seeker shall not be entitled to withhold any portion of the amount due or amount(s) coming due on other invoices for services provided under this Agreement.
- (c) Where a Dispute arises in relation to an amount payable in respect of excess usage charges. The Access Seeker may request *eircom's* usage records (accumulated daily usage totals) per subscriber once per invoice. The Access Seeker may request the records up to a maximum of 50 bitstream lines.
- 4.9 Save for disputes raised in accordance with Clause 9 failure to remit payment in accordance with Clause 4.5 will be subject to Interest at two percent per month of amount in default. Failure to remit payment is a breach of this Agreement for which eircom may commence termination of this Agreement as set out in Clause 6.
- 4.10 Billing and payment for the Service are as set out in the ADSL Bitstream Service Price List.
- 4.11 In the event the Access Seeker ceases a New Product Order prior to the expiry of the Minimum Term, eircom shall invoice the Access Seeker for the remainder of the Minimum Term and the Access Seeker shall remit payment in accordance with the provisions of Clause 4.5.

## **5. COMMENCEMENT AND DURATION**

- 5.1 This Agreement shall commence on the Commencement Date, and shall be for a term of twelve calendar months therefrom (the "Initial Term") unless terminated in accordance with Clause 6 hereof. The Agreement shall be automatically renewed for an additional twelve month term unless either party has initiated termination of this Agreement pursuant to Clause 6.

## **6. TERMINATION**

- 6.1 On or at anytime after the expiration of the Initial Term, either Party may terminate this Agreement (subject to any Regulatory obligations to provide the service) without cause by giving the other Party three months' notice in writing.
- 6.2 Either Party may terminate this Agreement forthwith by notice to the other Party if:
- 6.2.1 that other Party commits a material breach of any of the terms of this Agreement (excluding payment) and in the case of a breach capable of remedy, fails to remedy the same within 30 calendar days after receipt of a notice requiring such breach to be remedied; or
  - 6.2.2 that other Party is repeatedly in breach of this Agreement; or
  - 6.2.3 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other Party; or
  - 6.2.4 that other Party makes any voluntary arrangement with its creditors or becomes subject to an administration order; or
  - 6.2.5 that other Party goes into liquidation; or
  - 6.2.6 that other Party ceases or threatens to cease to carry on business; or
  - 6.2.7 that other Party is charged with the breach of any applicable law
  - 6.2.8 The Access Seeker fails to remit payment in accordance with this Agreement and fails to remedy this breach within 10 calendar days after receipt of a notice requiring such payment breach ("Payment Breach Notice") to be remedied; or
  - 6.2.9 the Access Seeker refuses or fails to provide eircom with the security eircom is permitted to seek pursuant to Clause 19 in the form or within the timeframes requested by eircom.
- 6.3 Any termination of this Agreement pursuant to this Clause 6 shall be without prejudice to any other rights or remedies a Party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

## **7. LIMITATION OF LIABILITY**

- 7.1 The following provisions set out each Party's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) in respect of:
- 7.1.1 any breach of the contractual obligations arising under this Agreement; and
  - 7.1.2 any representations, statements or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 7.2 Any act or omission on the part of either Party or its employees, agents or sub-contractors falling within Clause 7.1 shall, for the purposes of this Clause 7, be known as an "Event of Default".
- 7.3 Each Party's entire liability in respect of an Event of Default shall be limited to one million, two hundred and sixty nine thousand, seven hundred and thirty eight EURO (EUR 1,269,738) for any one event or series of connected events and two million, five hundred and thirty nine thousand, four hundred and seventy six EURO (EUR 2,539,476) for all events (connected or unconnected) in any period of 12 calendar months.
- 7.4 eircom shall have no liability under this Agreement in respect of any fault which is the responsibility of any third party service provider.
- 7.5 In no circumstances shall either Party be held liable to the other Party for direct or indirect loss of profits, goodwill, business or anticipated savings nor for any type of special, indirect or consequential loss or for any loss of or destruction of data (even if such loss was reasonably foreseeable or *eircom* had been advised of the possibility of the Access Seeker incurring the same).
- 7.6 Save as expressly stated in this Agreement, each Party shall have no liability whatsoever to the Access Seeker in respect of this Agreement whether in contract, tort, or otherwise and all conditions and warranties express or implied whether by statute or common law or otherwise are hereby excluded to the extent permitted by applicable law.

## **8. REVIEW**

- 8.1 The Parties agree to meet every six months or as required to monitor the performance of this Agreement and to modify the terms of this Agreement when appropriate to reflect operational, industry or market changes.
- 8.2 The parties also agree to meet upon request:

- 8.2.1 in the event that an operational difficulty cannot be resolved and agree to negotiate in good faith any changes that may be necessary to resolve such difficulty; or
- 8.2.2 in the event that there is a change in the regulatory environment in which this Service is offered by *eircom*, which removes *eircom*'s obligation to provide the Service to the Access Seeker. In such event, the Parties shall immediately review the provisions of this Agreement.

## **9. RESOLUTION OF DISPUTES**

- 9.1 This clause shall not be applicable to matters governed by Clause 6.
- 9.2 Each Party shall use its best endeavours to resolve any disputes arising concerning implementation, application or interpretation of this Agreement in the first instance through negotiation between the Parties through the normal contacts
- 9.3 In the event of the Parties failing to resolve the dispute through negotiation within two (2) weeks or in order to invoke formal resolution 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 Dispute Notice may be served upon either the Level 1 or Level 2 contacts. 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 ("Disputes").
- 9.4 Service of the Dispute Notice shall formalise the Dispute and subject it to the terms of Clauses 9.5 through 9.13.
- 9.5 The Parties shall endeavour to resolve the Dispute within forty-five (45 days) from the issuing of a Dispute Notice (the "Dispute Period"). The Parties undertake to respond to all reasonable requests for information, which either Party reasonably believes will resolve the Dispute. Either Party may escalate the Dispute from Level 1 to Level 2 at any time during the Dispute Period by providing a written request. If the endeavours of the Parties to resolve the Dispute during the Dispute Period are not successful, 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 National Regulator 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.
- 9.6 The normal contact for eircom is:
- Level 1            Wholesale Contracts Manager  
*eircom* Ltd  
114 St. Stephens Green West  
Dublin 2.

Tel: (00) 353 1 701 1209  
Fax: (00) 353 1 455 2535

Level 2        Head of Wholesale Regulatory Operations  
*eircom* Ltd  
114 St. Stephens Green West  
Dublin 2.

Tel: (00) 353 1 701 1260  
Fax: (00) 353 1 455 2535

The normal contact for the Access Seeker is:

Level 1        Name  
                 Address  
                 Tel:  
                 Fax:

Level 2        Name  
                 Address  
                 Tel:  
                 Fax:

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

- 9.7 The time limits specified in this Clause may be extended by mutual agreement between the parties.
- 9.8 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 Agreement.
- 9.9 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 negotiation in accordance with any right (if any) either Party may have to request a determination or other appropriate steps for its resolution. Without prejudice to the foregoing each Party undertakes to avail of the Level 1 and Level 2 procedures set out herein, prior to referring the Dispute to the National Regulator save in exceptional circumstances.

- 9.10 Any disputes or queries that arise in relation to the charging principles of this Agreement or invoices furnished by eircom to the Access Seeker shall be subject to the dispute resolution provisions of this clause.
- 9.11 Where a dispute arises in relation to an amount payable in respect of an invoice then the Access Seeker shall only be entitled to withhold payment of the disputed amount due for payment, upon serving eircom with a Dispute Notice prior to the payment due date and provided that the disputed amount is greater than ten per cent (10%) of the total invoice amount due for payment.
- 9.12 Where the Access Seeker invokes the provisions of this Clause after the due date of a disputed invoice, then the Access Seeker shall not be entitled to withhold any portion of the amount due and payable.
- 9.13 Following resolution of the dispute, the Parties will issue a credit or tender payment as appropriate.

## **10. SEVERABILITY**

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

## **11. NOTICE**

- 11.1 A notice shall be duly served if:
- 11.1.1 delivered by hand, at the time of actual delivery;
  - 11.1.2 sent by facsimile, upon its receipt being confirmed;
  - 11.1.3 sent by recorded delivery post, four (4) Working Days after the day of posting.
- 11.2 Except if otherwise specifically provided all notices and other communications relating to this Agreement shall be in writing and shall be sent as follows:
- 11.2.1 Wholesale Contracts Manager  
*eircom* Ltd  
114 St. Stephens Green West  
Dublin 2.  
  
Tel: (00) 353 1 701 1209  
Fax: (00) 353 1 455 2535
  - 11.2.2 Access Seeker:  
Address

Tel:

Fax:

## **12. ENTIRE AGREEMENT**

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

## **13. WAIVER**

- 13.1 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.

## **14. CONFIDENTIALITY**

- 14.1 Each party will keep the specific terms of this Agreement confidential and not disclose them to any third party (other than to its legal, financial and technical advisers who need to know same) without the other party's prior written consent, except as required by law. In addition, in connection with the negotiation and performance of this Agreement, a party (the "Receiving Party") may receive or have received information of the other party (the "Disclosing Party") which is confidential or proprietary in nature, including without limitation information about a party's products and services ("Confidential Information"). Information disclosed under this Agreement will be considered Confidential Information only if it is labelled confidential or proprietary or, if taking into account the nature of the information and/or the manner in which it was obtained or acquired, it ought reasonably to be considered confidential or proprietary. The Receiving Party agrees that, during the term of this Agreement and thereafter, it will keep the Confidential Information in strictest confidence and, in addition, protect such Confidential Information by no less stringent security measures as it takes to protect its own Confidential Information. The Receiving Party also agrees that it will not use any Confidential Information for any purpose other than in connection with the performance of its obligations under this Agreement.
- 14.2 Each Party undertakes with the other that the Confidential Information shall be used by it only for the purpose of or to facilitate the Service in accordance with the terms of this Agreement and for no other purposes whatsoever.
- 14.3 The term "Confidential Information" shall not include information which is or becomes generally available to the public without breach of this Agreement,

is in the possession of the Receiving Party prior to its disclosure by the Disclosing Party, becomes available from a third party not in breach of any obligations of confidentiality, is independently developed by the Receiving Party, or is required by law to be disclosed.

- 14.4 The Parties recognise that the disclosure or use of a Disclosing Party's Confidential Information by the Receiving Party in violation of the provisions of this section would cause irreparable injury to the Disclosing Party; therefore, in the event any Party breaches or threatens to breach the provisions of this section, the other Party, in addition to any other remedies it may have, shall be entitled to seek preliminary and permanent injunctive relief.

## **15. INTELLECTUAL PROPERTY RIGHTS**

- 15.1 Except as expressly otherwise provided in this Agreement, Intellectual Property Rights shall remain the property of the Party creating or owning the same and nothing in this Agreement shall be deemed to confer any assignment or right or title whatsoever or licence of the Intellectual Property Rights of one Party to the other Party, and nothing in this Agreement shall be deemed to restrict the rights of any Party to own, use, enjoy, licence, assign or transfer its own Intellectual Property.

## **16. FORCE MAJEURE**

- 16.1 Neither party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder (other than a payment obligation) due to causes beyond its reasonable control, including but not limited to: earthquake, flood, fire, storm or other natural disaster, breakdown of telecommunications systems, act of God, labour controversy or threat thereof, civil disturbance or commotion, disruption of the public markets, war or armed conflict (whether or not officially declared) or the inability to obtain sufficient material, supplies, labour, transportation, power or other essential commodity or service required in the conduct of its business, any change in or the adoption of any law, ordinance, rule, regulation, order, judgement or decree (each a "Force Majeure Event"); provided that the party relying upon this provision shall (a) have given the other party written notice thereof promptly and, in any event, within 5 (five) days of discovery thereof; and (b) shall take all steps reasonably necessary under the circumstances to mitigate the effects of the Force Majeure Event upon which such notice is based. Either party shall have the right to terminate this Agreement upon written notice if any Force Majeure Event continues for more than 90 (ninety) days.

## **17. ASSIGNMENT**

- 17.1 Unless otherwise agreed in writing, and subject to clause 17.2, 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.

- 17.2 No consent is required under clause 17.1 for an assignment of rights, benefits or obligations under this Agreement (in whole or in part) to a successor in interest to all or substantially all of the assigning Party's to which the subject matter of this Agreement relates.
- 17.3 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.

## **18. RELATIONSHIP OF PARTIES**

- 18.1 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.

## **19. CREDIT ASSESSMENT AND CREDIT RISK MANAGEMENT**

- 19.1 It is a condition precedent to this Agreement that the Access Seeker shall provide to eircom such financial security (whether by way of deposit, guarantee or otherwise) as in the opinion of eircom is appropriate as security against the Access Seeker's non-compliance with or non-observance of any of the provisions hereof (including without limitation the failure to pay charges), unless otherwise agreed by eircom in writing.
- 19.2 Eircom may, at any time, require the Access Seeker to enter into bank or other guarantees (or to provide some other form of financial security, for example a deposit) which in the opinion of eircom is/are appropriate as security against hereof (including failure to pay charges due). Refusal to provide such security or failure to provide such security within the timeframe and in the form of eircom's request for the same shall be deemed to be a breach of this Agreement by the Access Seeker subject to Clause 6.2.9.

## **20 VARIATION**

- 20.1 Any variation to the terms and conditions of this Agreement shall be made solely in writing upon agreement between the Parties which variation shall be read in conjunction with the terms and conditions of this Agreement except:
- (a) expressly exempted from this requirement in this Agreement,

- (b) directions from the National Regulator which shall apply from the date set out in the direction or the date of publication
- (c) price changes which shall take effect 21 days after notifications and which will be published in the ADSL Bitstream Service Price List.

**21 GOVERNING LAW**

21.1 This Agreement shall be governed by and construed in accordance with the laws of Ireland and the parties hereby submit to the exclusive jurisdiction of the Irish Courts.

<p>Signed by and on behalf of <i>eircom</i> Ltd.</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>Signed by and on behalf of [Access Seeker]</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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## **Schedule 1**

# ***DSL Transfer Authorisation Form***

**DSL Transfer Authorisation Form**

This is an instruction to *eircom* to change the DSL Service Provider on the referenced DSL line below. I accept that there may be some downtime in conducting this change.

**Customer/Company name:**   
As shown on most recent telecommunications bill from eircom

**Account Number:**   
As shown on most recent telecommunications bill from eircom

**Telephone Number**   
As shown on most recent telecommunications bill from eircom

**Address:**   
As shown on most recent telecommunications bill from eircom

**Gaining Operator**

**Losing Operator**

I understand this form will be relayed to you by use of electronic or other means.  
 The information contained in this form may not be used for any purpose other than that for which it is intended.  
 I understand that services provided by [Gaining Access Seeker] may be different from those services provided by [Losing Access Seeker]  
 You have my authority to disclose such information regarding numbers quoted above together with any other numbers to the [Losing Access Seeker] as is necessary to allow this service to be provided.

**Please tick box to accept:**

*By signature of this form, I authorise [Gaining Access Seeker] to cease my DSL service with [Losing Access Seeker] in respect of the above telephone number/s in conjunction with the successful provision of DSL from the [Gaining Access Seeker]. I authorise eircom to activate the above changes on my behalf. I accept that my company or I am responsible for the discharge of any obligations in reference to the service provided by [Losing Access Seeker] and I wish to proceed with the provision of DSL service with [Gaining Access Seeker]. I understand that I may only avail of the transfer of DSL service to [Gaining Access Seeker] once I have discharged any obligations in reference to the service provided by [Losing Access Seeker]. I am authorised to act on behalf of my company/household in this matter.*

**Signed:**  **Date:**

**Print Name:**

**Contact Number:**

**Position in Company if applicable:**