

Non-Disclosure Agreement

between

eircom Ltd

and

Operator

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Annex A **Definitions**

THIS AGREEMENT is made on the ____ Day of _____ 2011

BETWEEN

- (1) Operator Name having its registered offices at Operator Address (hereinafter referred to as “**Operator**”); and
- (2) **eircom Ltd** (hereinafter referred to as “**eircom**”) having its registered office at 1 Heuston South Quarter, St. John’s Road, Dublin 8,

together referred to as the “**Parties**” and individually as the “**Party**”.

WHEREAS

- (a) eircom is a supplier of wholesale telecommunications services.
- (b) Operator is a communications company and is a party interested in discussing and exploring mutually beneficially opportunities with eircom as a supplier.
- (c) The Parties wish to enter into discussions and either Party may provide information to the other Party regarding offerings made by eircom for Wholesale Services and both parties acknowledge that this may include the disclosure of Confidential Information from one Party to the other.
- (d) In consideration for the disclosure of Confidential Information, the Party in receipt of the Confidential Information from the other Party, agrees that any such information shall be kept confidential in accordance with the terms of this Agreement.

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

1. Definitions and Interpretation

- 1.1. In this Agreement, except if the context requires otherwise, words and expressions are as defined in Annex A.
- 1.2. 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.
- 1.3. For the purposes of this Agreement, the Party providing this information shall be designated the “**Owner**”, and the Party receiving this information shall be designated the “**Recipient**”.

2. Non-Disclosure Agreement

- 2.1. This Agreement shall take effect from the date above.
- 2.2. For the purpose of this Agreement “**Confidential Information**” shall mean and include:
 - 2.2.1. information of whatever nature relating to either Party or its customers which is not publicly available and which is directly or indirectly obtained as a result of this Agreement or the negotiations thereof or the activities of either Party in relation to Wholesale Services acquired either in writing, electronically or orally from or pursuant to discussions with:
 - 2.2.1.1. the directors, officers or employees of either Party; and/or
 - 2.2.1.2. either Party’s professional advisers;
 - 2.2.2. analyses, compilations, studies and other documents prepared by or on behalf of either Party and of their employees or advisers;
 - 2.2.3. information of whatever nature which is not in the public domain relating to either Party obtained by observation by the other Party; and
 - 2.2.4. all information and material (whether oral, electronically recorded, in writing or otherwise) that is directly or indirectly disclosed or communicated to the Recipient by the Owner on or after the date of this Agreement, and which is directly or indirectly related to the Wholesale Services.
- 2.3. These terms and conditions will not apply to any Confidential Information which:
 - 2.3.1. is or becomes publicly available otherwise than as a consequence of a breach of this Agreement by the Recipient;
 - 2.3.2. can be demonstrated to be already known to the Recipient at the time of disclosure;
 - 2.3.3. 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; or
 - 2.3.4. is required to be disclosed by a government regulatory body or a court or other comparable authority of competent jurisdiction.
- 2.4. 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:

Subject to Contract/Contract Denied

- 2.4.1. each Party undertakes with the other that the Confidential Information shall be used by it only for the purpose of or to facilitate Wholesale Services in accordance with the terms of this Agreement and for no other purposes whatsoever.
- 2.4.2. subject to sub paragraphs 2.4.3.3 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.
- 2.4.3. to secure the confidentiality attaching to Confidential Information, each Party (and/or any Associated Company pursuant to sub-paragraph 2.4.3.3 below) that is allowed access to Confidential Information shall:
 - 2.4.3.1. keep all documents and any other material bearing or incorporating any of the Confidential Information at the Recipient's usual place of business;
 - 2.4.3.2. 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;
 - 2.4.3.3. allow access to Confidential Information exclusively to those agents, professional advisers, Associated Companies, suppliers and employees of the Recipient who have reasonable need to see and use it to facilitate Wholesale Services which may be amended by written notification in accordance with Paragraph 8 of this Agreement and shall inform each of the said agents, professional advisers, Associated Companies, suppliers 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, suppliers and employees honour these obligations.
 - 2.4.3.4. on reasonable request of the Owner made at any time shall deliver up to the Owner or destroy, 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, within seven (7) days of such request for return or destruction; and
 - 2.4.3.5. 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

Subject to Contract/Contract Denied

- 2.5. 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.
- 2.6. 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 shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Agreement.
- 2.7. The Parties agree that the obligations of confidentiality within this Agreement will exist for a period of 2 years following termination or expiry of the agreement other than in the exceptional circumstances where the Party that owns the Confidential 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. Notices

- 3.1. Notices shall be duly served if:
- 3.1.1. delivered by hand, at the time of actual delivery;
 - 3.1.2. sent by facsimile, upon its receipt being confirmed;
 - 3.1.3. sent by recorded delivery post, 4 calendar days after the day of posting.
- 3.2. Except if otherwise specifically provided all notices and other communications relating to this Agreement shall be in writing and shall be sent as follows:
- 3.2.1. If to the Operator:
 - Title
 - Address

 - Telephone:
 - Facsimile:
 -
 - 3.2.2. If to eircom:
 - Wholesale Contracts Manager
 - Wholesale,
 - eircom Ltd.,

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1 Heuston South Quarter
St. John's Road
Dublin 8

Telephone: 01 600 4609
Facsimile: 01 428 6240

or

- 3.2.3. such other addresses as the Parties may notify from time to time pursuant to this clause 3.2.

4. Assignment of Rights and Obligations

- 4.1 Unless otherwise agreed in writing, and subject to Clause 4.2, 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.
- 4.2 No consent is required under Clause 4.1 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 shall have been granted a general authorisation by the National Regulator to run the Network of the assigning Party.
- 4.3 The assigning Party shall promptly give notice to the other Party of any assignment 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.

5. Entire Agreement

This Agreement represents the entire understanding of and agreement between the Parties in relation to the subject matter of this Agreement, unless otherwise agreed in writing and signed by both Parties.

6. Waiver

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.

7. Severability

The invalidity, unenforceability, or illegality of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement, and this Agreement shall be construed as if such invalid, unenforceable, or illegal

provision had never been set forth herein, and this Agreement shall be carried out as nearly as possible according to the original terms and intent.

8. Amendments

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 effect the validity or enforceability of any of the remaining provisions of this Agreement.

9. Relationship of Parties

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.

10. Governing Law

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.

11. Miscellaneous

- 11.1.** Each Party warrants that the person signing this Agreement on behalf of that Party has the requisite authority to bind that Party.
- 11.2.** This Agreement may be executed in two counterparts each of which when executed and delivered is an original, but the counterparts constitute the same document.

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 – 1999 or any subsidiary of any such Holding Company.
“Confidential Information”	Shall have the meaning given in clause 2.2.
“National Regulator”	The Commission for Communications Regulation or any person or body designated as the National Regulatory Authority pursuant to Council Directive 2002/21/EC.
“Network”	The total infrastructure operated by the relevant Party to provide telecommunications services.
“Party”	A party to this Agreement.
“Receiving Party”	A Party who received any information from the other Party in relation to the Access Services.
“Third Party”	Any Party other than the Parties to this Agreement.
“Wholesale Services”	means any services available from eircom Wholesale including but not limited to the offering set out in eircom's Reference Interconnect Offer, Access Reference Offer and the Telecommunications Scheme, as same may be changed or expanded from time to time.