

DATED / / 2021

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**(1) E-Nasc Eireann Teoranta**

**- and -**

**(2) [XXX]**

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**MAN Services Agreement**

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**BETWEEN:**

- (1) **E-Nasc Eireann Teoranta** (registered number 332982) whose registered office is at Enet House, National Technology Park, Castletroy, Co Limerick ("e|net"); and
- (2) [XXX] (registered number [XXX]) whose registered office is at [XXX]

**WHEREAS:**

- A. E|net entered into concession agreements dated 2 July 2004 and 8 July 2009 with the Contracting Authority (as therein defined) for the operation, maintenance and management of the MANs (as hereinafter defined) (the "Concession Agreements").
- B. Customer wishes to procure certain works and/or services from e|net in respect of the use MANs for the purposes of the Customer providing communications services to its subscribers.
- C. e|net has agreed to provide the works or services required by the Customer on the terms and conditions of this Agreement and any applicable Work Order (as hereinafter defined).

**IT IS AGREED** as follows:

**1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following definitions will apply:

<b>"Affected Party"</b>	shall have the meaning given to it in the definition of "Force Majeure Event";
<b>"Agreement"</b>	means this MAN Services Agreement including the Schedules and any appendices attached hereto or referred to herein;
<b>"Business Day"</b>	means a day when banks in Dublin are open for normal business;
<b>"Change"</b>	means any material change to this Agreement and/or any Work Order made in accordance with Schedule 1 (Change Procedure) other than a change pursuant to Clause 26;
<b>"Claim"</b>	means any claim, demand, proceedings, liability, action, cost, charges and expenses (including legal expenses) made by any person who is not a Party to this Agreement;
<b>"Code of Practice"</b>	means the Code of Practice for the management and allocation of access to the MANs which can be viewed at <a href="http://www.e net.ie">www.e net.ie</a> as same may be updated by e net from time to time. For the purposes of this Agreement, where the Code of Practice refers to Operator, it shall mean

	Customer, and where it refers to MSE, it shall mean e net;
<b>“Co-location Facility”</b>	means a co-location facility specified in an applicable Work Order in which e net provides Customer with co-location services in accordance with this Agreement;
<b>“Commercially Sensitive Information”</b>	means any information, whether in written, verbal or other form, which is agreed by the Parties or by one of the Parties with one or more other relevant persons from time to time as being commercially sensitive;
<b>“Confidential Information”</b>	means any information, whether in written, verbal or other form, which is agreed by the Parties or by one of the Parties with one or more other relevant other persons, from time to time as being confidential;
<b>“Customer Equipment”</b>	means all of the information technology, computer and telecommunications systems of Customer installed in a Co-location Facility and/or end-user premises;
<b>“Customer Order”</b>	means an order in the form of that contained at Schedule 3 hereto, to be issued by the Customer in accordance with clause 3.2;
<b>“Customer Personnel”</b>	means those persons authorised to access e net premises for the purposes of and in accordance with clause 11 hereof
<b>“Day”</b>	means calendar day;
<b>“Default”</b>	means any breach by a Party of its obligations (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of a Party, its employees, agents or sub-contractors in connection with or in relation to the subject of this Agreement and in respect of which such Party is liable to the other;
<b>“Default Interest Rate”</b>	means a rate equivalent to seven (7) per cent above the Interest Rate accruing at a daily rate (based on a 365 day year) and compounded on a monthly basis;
<b>“Dispute”</b>	means any disagreement between the Parties relating to this Agreement;
<b>“Dispute Resolution Procedure”</b>	means the procedure for resolving any Dispute set out in Clause 18 (Dispute Resolution Procedure);
<b>“DPA”</b>	means, to the extent applicable to the performance by each Party of their obligations under the Agreement, laws governing the processing, use and disclosure of Personal Data including (without limitation): <ul style="list-style-type: none"> <li>(i) the General Data Protection Regulation (EU) 2016/679 (“<b>GDPR</b>”);</li> <li>(ii) the e-Privacy Directive 2002/58/EC (as amended);</li> <li>(iii) the Irish Data Protection Acts 1988 to 2018;</li> </ul>

- (iv) any national implementing legislation, secondary legislation (including European Commission decisions), amendments, revisions or replacements to those laws (including, when it comes into force, the successor to the e-Privacy Directive), any other applicable laws relating to data privacy, and any case law interpreting the foregoing; and
- (v) any guidance from the European Data Protection Board or Irish Data Protection Commission.

**“e|net Premises”** means any location owned, leased or licensed by e|net, including the Co-location Facilities;

**“Effective Date”** means the date of execution hereof;

**“EURIBOR”** means, in relation to any sum denominated in Euro and any specified period:

- (i) the annual rate of interest which appears on Telerate page 249 (two hundred and forty nine) or any equivalent successor to any such page, as appropriate (as determined by Customer) (each a **“Telerate Screen”**) at or about 11:00 am Dublin time on the quotation date for such specified period as being the rate offered in the Euro Interbank Market for the offering of deposits in Euro for the specified period; or
- (ii) (if the relevant rate does not appear on the appropriate Telerate Screen for the purposes of paragraph (a) above), the rate per annum determined by Customer to be equal to the arithmetic mean (rounded upwards, if necessary, to four decimal places) of the rates per annum quoted to Customer by telephone for deposits in Euro equivalent to the relevant amount and for the specified period by at least three reference banks on the quotation date for such specified period,

and for the purposes of this definition “specified period” means the period in respect of which EURIBOR falls to be determined in relation to such sum;

**“Euro”** means euro, the lawful currency for the time being of Ireland;

**“Fee Schedule”** means the schedule of prices (exclusive of VAT) for the works and services offered by e|net which can be viewed at [www.e|net.ie](http://www.e|net.ie) and which is subject to alteration from time to time at the absolute discretion of e|net;

**“Force Majeure Event”** means the occurrence after the date of this Agreement of any event (other than labour disputes within e|net or its sub-contractors or financial or commercial difficulty arising from business or economic environment in which e|net

operates) which is beyond the reasonable control of any Affected Party having acted in accordance with Good Industry Practice and shall include:

- (i) war, civil war, riot or armed conflict or terrorism arising in or affecting Ireland;
- (ii) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions of e|net or person for whom e|net is responsible;
- (iii) any damage to or destruction of a substantial part of the Project Assets which materially and adversely affects e|net's ability to provide the Services;
- (iv) a notifiable disease that is likely to, or does, materially and adversely affect e|net's ability to provide the Services; or
- (v) the award by the courts of Ireland of injunctive relief (whether interim, interlocutory or otherwise) or similar remedy arising from a challenge in those courts pursuant to the directives (including remedies directives) of the European Communities on the law relating to the procurement of supplies, services or works, as transposed in Ireland, arising from the procurement process conducted by the Contracting Authority in awarding the Concession Agreement to e|net;
- (vi) the exercise by the Contracting Authority of its step-in rights under the Concession Agreement other than as a result of a breach or default of e|net under the Concession Agreement or this Agreement, and/or a breach or default by the Contracting Authority under the Concession Agreement, in either case and which is likely to, or does, materially and adversely affect e|net's ability to provide the Services;
- (vii) any third party preventing or obtaining a court order preventing e|net from providing the Services by claiming or alleging that e|net has not sufficient rights of way, Wayleaves or other rights to enable it to perform the Services or fulfil its obligations under this Agreement and any Work Order (other than as a result of a breach or default of e|net);

and which directly causes either Party (the "**Affected Party**") to be unable to comply with all or a material part of its obligations under this Agreement;

**"Good Industry Practice"**

means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced operator

engaged in Ireland and /or the United Kingdom in the provision of services similar to the Services, or in the case of the Customer, in the provision of communications services, seeking in good faith to comply with its contractual obligations, complying with all applicable laws, codes of professional conduct, relevant codes of practice, Irish, European and other relevant standards and other consents;

**“Information”**

means all materials, documents and data, whether in written, verbal or other form, relating to the Services and the obligations to be undertaken by the Parties under this Agreement including, without limitation, information as to the activities carried on by e|net or Customer, their assets, the Project Assets, contractual arrangements and the MANs;

**“Intellectual Property”**

means all patents, copyrights (including copyright in computer programs), trademarks, service marks, design rights, database rights, semi-conductor topography rights, mask rights and any other intellectual or industrial property rights of whatsoever nature and whether registered, unregistered or capable of registration, including all rights in the nature of intellectual property rights and whether similar to those described above or otherwise, and whether existing or prospective throughout the world;

**“Interest Rate”**

means, in respect of any period, EURIBOR;

**“Legislation”**

means any and all constitutions, binding legal instruments (including of the European Communities or any organ thereof) acts, statutes, laws, bye-laws, rules, codes, regulations, orders, standards and/or conditions having legal effect in Ireland or any relevant part thereof including any final judgment or order of any court of competent jurisdiction and further including, any enforceable community right within the meaning of Section 2 of the European Communities Act, 1972;

**“Losses”**

means all damages, losses, liabilities, claims, actions, costs, expenses, proceedings, demands and charges but excluding any loss or damage referred to in Clause 12.3;

**“MANs” or “Metropolitan Area Networks”**

means the broadband, wireless or electronic communications infrastructure and other ancillary facilities or assets managed, operated and maintained by e|net pursuant to the Concession Agreements (including, without limitation, fibre in appropriate forms, extensions thereto, customer connections, enhancements (including ancillary related matters) and the Co-location Facilities) at the MAN locations specified in an applicable Work Order and in respect of which E|net provides the Services in accordance with this Agreement;

**“Necessary Consents”**

means all Wayleaves, rights of way and other rights in respect of property and all permissions, authorisations and

licences necessary from time to time for the carrying out of a Party's obligations in accordance with this Agreement;

- “Parties”** means e|net and Customer and the term **“Party”** shall mean any of them as the case may be;
- “Personal Data”** means personal data as defined in the DPA which is supplied by one Party to the other or obtained by a Party pursuant to the terms of or in the course of performing this Agreement;
- “Personnel”** means the employees, agents and approved sub-contractors of a Party who are assigned to work under this Agreement and/or any relevant Work Order;
- “Programmed Maintenance”** means the maintenance, repair, refurbishment and replacement activities scheduled to be undertaken for a MAN pursuant to e|net's preventative maintenance programme as notified by e|net to Customer from time to time and which shall be undertaken during the Programmed Maintenance Window;
- “Programmed Maintenance Window”** means, in respect of each MAN, the period of time between 12:00 midnight and 4:00 am once per week on one of Tuesday through Friday during which time e|net shall have the right to reduce the level of the Services below the Service Levels for the purposes of Programmed Maintenance and/or providing additional facilities, which period can be extended, where required, to 6:00 am, not more than once in any calendar quarter. For the avoidance of doubt, and subject to the additional carveouts and exceptions from the calculation of Service unavailability specified in the SLA, time spent in the provision of maintenance services outside the Programmed Maintenance Window during which the Services are not available shall be considered as periods of Service unavailability for the purposes of calculating Rental Credits;
- “Project Assets”** means all assets including the MANs and such other assets and rights for the time being relating to the delivery of the Services including the MANs and those other assets provided by e|net pursuant to the provisions hereof including as may be extended or enhanced during the course of the Term;
- “Project Manager(s)”** means the project managers to be appointed by the Parties in accordance with Clause 8;
- “Rental Credits”** means those rental credits specified in the SLA to which Customer is entitled in the event of a failure to meet the Services Levels;
- “Service Fees”** means the fees payable by the Customer in respect of Services specified in a Work Order to be calculated by reference to the SLA and the rates and prices applicable



to the ordered Services identified in the Fee Schedule pertaining as at the date of issue of the relevant Work Order (and the rates and prices then pertaining to any Services ordered with a Work Order shall be identified on that Work Order);

**“Service Levels”**

means the standards for performance of the Services specified in the SLA;

**“Service Term”**

means:

- (i) the service term specified in an applicable Work Order (to run from the relevant Services Commencement Date); and
- (ii) where, on or before the date which is 90 Days prior to the expiry of the term specified at (i), the Customer has not, by notice in writing to e|net, indicated that it wishes to discontinue the Services identified in the applicable Work Order, the additional period of 180 Days;

**“Services”**

means such services as are identified on any Work Order issued pursuant to this Agreement (which may include any of those services identified as being offered by e|net on the website at [www.e|net.ie](http://www.e|net.ie) the scope of which is more particularly defined through the SLA) to be provided to Customer by e|net in accordance with this Agreement, and which may for the avoidance of doubt include Works;

**“Services Commencement Date”**

means the date the later of:

- (i) the commencement date for Services as specified in the applicable Work Order;
- (ii) the date on which such Services are available for use by the Customer which shall be deemed to be the date the earlier to occur of the following:
  - (A) the date on which e|net delivers to the Customer documentation evidencing the satisfactory completion of all commissioning tests for any Works carried out in respect of a Works Order where no dispute regarding such documentation is notified by the Customer within a 10 day period from its issue; or
  - (B) the date the Services Commencement Date is determined to have been achieved pursuant to the dispute resolution procedure at clause 18 and any notice of dispute issued by the Customer in respect of any e|net commissioning test documentation;

<b>“SLA” or “Service Level Agreement”</b>	means the service level agreement which can be viewed on the website at <a href="http://www.ejnet.ie">www.ejnet.ie</a> which contains a description of the Services, details of the pro forma Service Fees, and details of the applicable Service Levels and Rental Credits, and which for the avoidance of doubt forms an integral part of this Agreement;
<b>“Technical Specification”</b>	shall mean the specification attached to the Work Order;
<b>“Unprogrammed Maintenance Work”</b>	means the maintenance, repair, refurbishment or replacement works, which need to be undertaken by e net in respect of a MAN which are not scheduled to be carried out as part of the Programmed Maintenance;
<b>“Wayleave”</b>	means permission for a Party to this Agreement to enter the premises of another party;
<b>“Wholesale Customer”</b>	means any telecommunications service provider that provides telecommunications services to persons other than end users of the MANs;
<b>“Work Order”</b>	means an order for Services signed by the Parties in the form set out in Schedule 2;
<b>“Works”</b>	means any survey and drop connection services specified in a Work Order.

- 1.2 Reference to the singular includes the plural and vice versa, and reference to a gender includes the other gender.
- 1.3 References to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it.
- 1.4 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- 1.5 The headings in this agreement do not affect its interpretation.

## 2 PRECEDENCE OF DOCUMENTS

- 2.1 In the event of any discrepancy between this Agreement, the documentation scheduled to this Agreement and any Work Order, then the following shall be the order of precedence:
  - 2.1.1 the Agreement (other than the Schedules);
  - 2.1.2 any applicable Work Order;
  - 2.1.3 the SLA;
  - 2.1.4 the remaining Schedules; and
  - 2.1.5 the Code of Practice.

### 3 ENGAGEMENT

3.1 Customer agrees to engage e|net to provide, and e|net agrees to provide, certain works or services offered by e|net in respect of the use of the MANs. Those works and services required by the Customer will be identified and agreed between the parties from time to time through the issue of Works Orders. The parties agree that the Services identified on any Works Order will be carried out on the terms of this Agreement and the applicable Works Order. Subject to clause 3.2, any terms and conditions other than those in this Agreement and/or a Works Order are expressly excluded.

3.2 Prior to the parties concluding any arrangements in relation to a specific Works Order, it may be necessary for e|net to assess and determine the scope of Works required to enable or facilitate the provision of Services. Where e|net advises such a survey is required, the Customer shall submit a signed Customer Order in the form of that contained at Schedule 3 hereto. On receipt of such Customer Order by e|net, the parties shall be deemed to have concluded a contract pursuant to which:

3.2.1 e|net shall be obliged to carry out any survey required to determine the necessary scope of Works required for a contemplated Works Order; and

3.2.2 on completion of the survey by e|net, the Customer shall pay to e|net the survey fee specified in the SLA current at the date of the Customer Order (which fee may, at e|net's absolute discretion, be subsequently waived where a Works Order is effected in accordance with clause 3.3 below).

Once a survey in respect of a proposed Works Order has been completed, e|net shall issue a quotation in relation to any Works required for proposed Services. Where the Customer wishes to proceed with the proposed Services, it shall return an executed Works Order attaching the quotation to e|net.

3.3 Subject to clause 3.2, e|net shall otherwise have no obligation to provide Services to the Customer save in accordance with a Works Order executed by e|net and the Customer. On execution by e|net of a Works Order which has been signed by the Customer, the parties shall be deemed to have concluded a contract in respect of the subject matter of the Works Order on the terms and conditions of the Works Order and this Agreement.

3.4 For the purposes of the Customer signing and/or executing any Works Order:

3.4.1 subsequent to the execution of this Agreement, by notice in writing addressed to e|net and sent to e|net's registered office as set out above (or such other address as e|net subsequently notifies in accordance with clause 21), the Customer shall identify to e|net those individuals within its organisation that have authority to execute a Works Order on the Customer's behalf ("**Authorised Signatories**");

3.4.2 any notice under clause 3.4.1 will provide specimen signatures for each Authorised Signatory;

3.4.3 subject to clause 3.4.4:

(a) each Authorised Signatory shall, as between the Customer and e|net, be constituted as agent for the Customer with full authority to bind the Customer to any commitment contemplated by a Works Order (save to the extent that such authority is expressly limited in the notice from the Customer referred to at clause 3.4.1);

(b) where any Works Order received by e|net has been executed by an Authorised Signatory, it shall be binding on the Customer and the Customer shall be estopped from asserting that the Authorised Signatory lacked any authority or capacity to sign a Works Order on the Customer's behalf as its agent or otherwise;

3.4.4 at any time, the Customer may by notice in writing remove any person from the list of Authorised Signatories by notice in writing to e|net in accordance with clause 21 (and as and from the date of receipt of any such notice any person so removed shall be deemed to have no authority to bind the Customer to a Works Order and the provisions to clause 3.4.3 shall not apply in respect of such person and/or any Works Orders executed by him or her).

#### **4 WAYLEAVES**

4.1 Customer will procure sufficient Wayleaves, rights of way and other rights in respect of the locations and premises of Customer, its affiliates and subscribers detailed in a relevant Work Order, to enable e|net to provide the Services, and shall indemnify and keep e|net indemnified against all Claims and Losses suffered or incurred by e|net as a result of any failure by Customer to obtain such Wayleaves, rights of way and other rights. e|net shall have no liability or responsibility to provide the Services in the event Customer fails to procure any necessary Wayleaves, rights of way and other rights.

#### **5 REPRESENTATIONS, WARRANTIES AND DISCLAIMER**

5.1 Customer acknowledges and confirms that, for each MAN:

5.1.1 it has satisfied itself as to the nature of the MANs together with the nature and extent of the risks assumed by it under this Agreement;

5.1.2 it has gathered all Information that it has considered necessary to perform its obligations under this Agreement and other obligations assumed; and

5.1.3 it has generally obtained for itself all necessary information as to any other factors which would affect its decision to enter into this Agreement or the terms upon which it would do so.

5.2 Except in the case of wilful default, wilful misconduct or fraud on the part of e|net or wilful non-disclosure on the part of e|net which renders the Information materially misleading, Customer shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against e|net on grounds of any misunderstanding or misapprehensions in respect of the Information or on grounds that incorrect or insufficient Information was given to it by any person (whether or not in the employment or otherwise acting on behalf of e|net), nor shall it be relieved from any risks or obligations imposed on or undertaken by it under any Work Order on any such ground.

5.3 Neither e|net nor any of its agents, servants, shareholders, directors or advisers shall be liable to Customer (whether in contract, tort or otherwise and whether or not arising out of any negligence on the part of e|net or any of its agents or servants) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Information.

5.4 Customer warrants to e|net that:

- 5.4.1 it is a limited liability company duly incorporated and validly existing under the laws of Ireland and has power to carry on its business and to own its property and assets;
- 5.4.2 it has power and authority to execute deliver and perform all its obligations under this Agreement to which it is a party and to exercise its rights under them;
- 5.4.3 all necessary action has been taken (and not revoked) to authorise the execution, delivery and performance of this Agreement by it;
- 5.4.4 the execution, delivery and performance of this Agreement by Customer does not and will not:
  - (a) contravene any Legislation to which it (if any) is subject; or
  - (b) result in any actual or potential breach of or default under any obligation, agreement, instrument or consent to which it is a party or by which it is bound or which it requires to carry on its business; or
  - (c) contravene any provision of its memorandum of association or of its articles of association.
- 5.5 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied, statutory or otherwise, are hereby excluded to the maximum extent permitted by applicable law.

## 6 GENERAL OBLIGATIONS

- 6.1 Each of the Parties shall:
  - 6.1.1 discharge their respective obligations under this Agreement and any Work Order with all reasonable skill, care and diligence in accordance with Good Industry Practice and in accordance with the Technical Specifications;
  - 6.1.2 ensure that they carry out work on the other Party's facilities or premises in accordance with applicable Irish health and safety legislation. Each Party shall familiarise itself with and ensure that its Personnel shall familiarise themselves with, and comply with the other Party's procedures relating to security, fire and health and safety when on the other Party's facilities and such other rules and regulations pertaining to use of the other Party's facilities which may be in place from time to time, provided always that such procedures and rules are notified to the visiting Party in advance;
  - 6.1.3 ensure that those of its Personnel whose decisions are necessary for the operation of this Agreement are reasonably available to the other party for consultation in relation to any aspect of this Agreement;
  - 6.1.4 be responsible for all matters relating to the payment of its own Personnel including compliance with social security legislation and all regulations governing such matters;
  - 6.1.5 subject to Customer's obligations pursuant to Clause 4.7, obtain all Necessary Consents required by it in connection with this Agreement and/or any Work Order;

- 6.1.6 provide to the other such Information as may be reasonably required in connection with the Services;
  - 6.1.7 comply at all times with the Code of Practice.
- 6.2 Customer shall:
- 6.2.1 notify e|net as soon as possible of any Service related problems and fully cooperate with e|net in addressing and resolving such problems;
  - 6.2.2 install at the MANs and/or Co-Location Facilities only such Customer Equipment as has been approved by e|net in advance and shall obtain and maintain adequate insurance in respect of loss of or damage to Customer Equipment;
  - 6.2.3 take all such steps as are necessary to make sure that the Project Assets and third party equipment are not at any time altered or interfered with and in particular that no unauthorised connections are made to any equipment and no lines, or integral sections are moved, altered or modified without e|net's prior written consent, and shall indemnify and keep e|net indemnified against all Claims and Losses suffered or incurred by e|net as a result of breach of this Clause 6.2.3;
  - 6.2.4 permit e|net to access such of its or its affiliates' or subscribers' premises and sites as may be reasonably required for the purposes of:
    - (a) inspecting Customer's use of the Services; and
    - (b) ensuring compliance with the terms of this Agreement and/or any Work Order;
    - (c) carrying out any necessary maintenance work required to facilitate the provision of the Services, including without limitation, any Unprogrammed Maintenance Work (and the Customer shall do all things reasonably necessary to facilitate any e|net requirement in this regard, notwithstanding the absence of any notice from e|net that such work is required).
  - 6.2.5 co-operate with e|net in its dealings with the Contracting Authority;
  - 6.2.6 provide reasonable co-operation to e|net, the Contracting Authority or its representative in connection with any customer satisfaction survey undertaken by any of them;
  - 6.2.7 participate in any audit or inspection conducted by the Contracting Authority or its representative in relation to the provision of the Services; and
  - 6.2.8 not provide re-sell or provide services similar to the Services provided under this Agreement to any Wholesale Customer without the explicit written agreement of e|net.
- 6.3 The Customer acknowledges that e|net may from time to time need to undertake Programmed Maintenance and/or Unprogrammed Maintenance Work of the MAN(s) and that e|net shall not be liable for any Claims or Losses suffered or incurred by Customer as a result of Programmed Maintenance and/or Unprogrammed Maintenance Work save to the extent e|net is liable for Rental Credits pursuant to the SLA. e|net shall use its

reasonable endeavours to keep disruption to the Services as short as practicable and where reasonably practicable will undertake maintenance at such times as e|net considers would minimise its impact.

## 7 PAYMENT

- 7.1 The Parties shall fulfil all obligations upon them in this Agreement and the Schedules hereto. The Customer shall pay e|net all Service Fees and other relevant charges that may arise in connection with the MANs and Co-location Facilities. Such Service Fee shall be calculated and made in accordance with the Fee Schedule or as otherwise agreed between the parties, the applicable Work Orders and this Clause 7. Any sums owing by Customer to e|net pursuant to the provisions of this Agreement shall be recoverable as simple contract debts without any claim for set off or counterclaim.
- 7.2 If any amount due and payable by either Party to the other under this Agreement is not paid on the due date then:
- 7.2.1 if such unpaid sum is undisputed, interest shall accrue at the Default Interest Rate from (and including) the date the sum became due and payable (but excluding) the date the sum is paid;
- 7.2.2 if such unpaid sum is disputed in good faith and referred to the Dispute Resolution Procedure (and unless otherwise determined pursuant to any reference to the Dispute Resolution Procedure (including in circumstances where it is determined that any such sum was disputed in bad faith) in which case such determination shall apply and not this Clause 7.2.2), interest shall accrue on such of the sum as is determined to be the proper sum due and payable (i) at the Interest Rate from (and including) the date the disputed sum became due and payable (or would have been due and payable had the sum not been disputed) to (but excluding) the date on which the sum is determined to be due and payable and (ii) at the Default Interest Rate from (and including) that date of determination to (but excluding) the date on which the sum determined to be the proper sum is paid; and
- 7.2.3 where the amount is owed by the Customer to e|net, e|net may suspend the provision of the Services pending payment of the amount .
- 7.3 e|net may issue an invoice for Service Fees payable in respect of Works the subject of a Works Order at any time after receipt of that Works Order. The Customer shall pay the Service Fees specified in an invoice by electronic transfer of funds, or otherwise as might reasonably be determined and specified by e|net, no later than the date which is the later of:
- 7.3.1 the date thirty (30) days from the date of issue of the invoice; or
- 7.3.2 the Services Commencement Date in respect of the relevant Works Order.
- 7.4 Services Fees for Services other than Works shall be paid by Customer quarterly in advance, by electronic transfer of funds (or otherwise as might reasonably be determined and specified by e|net) and by no later than the date which is the later of:
- 7.4.1 the Services Commencement Date in respect of the relevant Works Order for the Services concerned; or
- 7.4.2 the date thirty (30) days from the date of issue of the relevant invoice by e|net; or

7.4.3 the last day of the quarterly period preceding any quarterly period during the Services Term being invoiced under this clause.

7.5 e|net may, at any time, require Customer to enter into bank or other guarantees or to provide some other form of financial security, (for example a deposit) which in the reasonable and fair opinion of e|net is/are appropriate as proportionate security against the possibility of the Customer's non-compliance with or non-observance of any of the provisions hereof (including failure to pay Service Fees due). e|net reserves the right to treat refusal to provide such security or failure to provide such security within thirty (30) days (or such longer period as e|net may reasonably allow) of the date of e|net's request for the same shall be deemed to be a breach of this Agreement by Customer.

## **8 PROGRESS AND REVIEW MEETINGS**

8.1 For the purposes of project management of the Services to be provided under a Work Order, each Party shall appoint a representative to operate as Project Manager, such individual to be identified in the relevant Work Order.

8.2 Customer's Project Manager and e|net's Project Manager shall meet and conduct review meetings to monitor the Services on a regular basis or as required.

8.3 Any change in either Party's Project Manager shall be notified in writing to the other Party.

## **9 CHANGE**

9.1 The provisions of Schedule 1 (Change Procedure) shall apply to Change proposed or notified by either Party.

## **10 INTELLECTUAL PROPERTY**

10.1 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.

## **11 PERSONNEL**

11.1 No Customer Personnel shall be entitled to enter any e|net Premises unless authorised by e|net in advance. Customer shall by notice in writing to e|net provide a list of the names and business addresses of all Customer Personnel who may require admission to e|net Premises in connection with the performance of the Services under this Agreement, specifying the capacities in which they are entering such e|net Premises, the purpose of the entrance, the precise time that entry is requested, the duration of the work and giving such other particulars as e|net may reasonably require. Any Customer Personnel will retain such status until receipt by e|net of a notice in writing from the Customer stating such status should be removed for the purposes of this Agreement.

11.2 Failure by Customer to comply with the provisions of Clause 11.1 will entitle e|net to refuse admission to e|net Premises to any person who has not been notified to e|net or in respect of whom full information has not been disclosed to e|net and/or who are otherwise not designated as Customer Personnel.



- 11.3 The Customer indemnifies e|net in respect of any costs, loss, claims or damage suffered by e|net resulting from any access to e|net's premises by any Customer Personnel.
- 11.4 Each Party undertakes and agrees that it shall not, without the prior written consent of the other Party, actively solicit for hire any employee of the other engaged in the provision of, or in connection with, the Services, during the term of this Agreement and for a period of twelve (12) months thereafter.

## 12 LIABILITY

- 12.1 Neither Party excludes or limits liability to the other Party for:
- 12.1.1 death or personal injury due to negligence;
  - 12.1.2 fraud; or
  - 12.1.3 any other liability that cannot be excluded as a matter of law.
- 12.2 Subject to clause 17.5, each Party's maximum aggregate liability under or in connection with this Agreement and all Work Orders in any twelve (12) month period commencing on the Effective Date or an anniversary thereof shall be limited to direct damages of an amount equal to the Service Fees paid or payable to e|net during the twelve (12) month period in question.
- 12.3 Subject to Clause 12.1 above and clause 17.5, neither Party shall be liable for the following loss or damage however caused and even if foreseeable or if that Party had been advised of the possibility of the other Party incurring the same:-
- 12.3.1 loss of profits, business, revenue, goodwill, or anticipated savings;
  - 12.3.2 loss arising from any claim made against Customer by any other person; or
  - 12.3.3 loss or damage arising from the other Party's failure to fulfil its responsibilities or any matter within the control of the other Party; or
  - 12.3.4 loss of any data or information and any damage arising out of such loss;
  - 12.3.5 special, indirect or consequential loss whether or not coming within the foregoing provisions of this Clause 12.3.
- 12.4 If a number of defaults give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.
- 12.5 Nothing in this Clause shall confer any right or remedy upon a Party to which it would not otherwise be legally entitled.

## 13 INFORMATION AND CONFIDENTIALITY

- 13.1 The Parties shall and shall procure that their employees, agents and sub-contractors shall subject to Clause 13.2, keep confidential this Agreement and all matters relating to this Agreement which constitute Confidential Information and/or Commercially Sensitive Information.
- 13.2 Clause 13.1 shall not apply to:

- 13.2.1 any disclosure of information that is reasonably required by persons engaged in the performance of its obligations under this Agreement or any related agreements;
- 13.2.2 any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause 13;
- 13.2.3 any disclosure to enable a determination to be made under Clause 18 (Dispute Resolution);
- 13.2.4 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 13.2.5 any disclosure by e|net to the Contracting Authority or its representatives of information relating to the this Agreement and such other information as may be reasonably required; or
- 13.2.6 any registration or recording of any Necessary Consents and property registration;
- 13.2.7 any disclosure for the purpose of;
  - (a) the examination and certification of Customer's or e|net's accounts; or
  - (b) any examination pursuant to Legislation; or
  - (c) any examination which may be required pursuant to or in connection with Parliamentary requirements; or
  - (d) in compliance with the order of a court or tribunal of competent jurisdiction.
- 13.3 Where disclosure is permitted under Clause 13.2, other than Clauses 13.2.5 and 13.2.7 the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.
- 13.4 Neither Party shall make use of this Agreement or any Confidential Information or Commercially Sensitive Information issued or provided by or on behalf of the other Party in connection with this Agreement otherwise than for the purpose of this Agreement, except with the written consent of that other Party. Customer acknowledges that an executed copy of this Agreement shall be provided to the Contracting Authority at the Contracting Authority's request.
- 13.5 So far as practicable, the Parties shall designate as Confidential Information and/or as Commercially Sensitive Information, any information transmitted between each other which they believe to be of such character. Confidential Information and Commercially Sensitive Information transmitted between the parties shall be deemed to be on foot of an agreement as to confidentiality within the meaning of Section 26(1)(b) of the Freedom of Information Act 1997.

## 14 DATA PROTECTION

- 14.1 In relation to all Personal Data, the Parties shall at all times comply with the DPA, as a data controller if necessary, including maintaining a valid and up-to-date registration or

notification under the DPA covering the data processing to be performed in connection with the Services or the obligations of each Party under this Agreement.

14.2 e|net and Customer shall only undertake processing of Personal Data reasonably required in connection with the Services and in compliance with Legislation.

14.3 Neither Party shall disclose Personal Data to any third parties other than:

14.3.1 its Staff and Sub-Contractors to whom such disclosure is reasonably necessary in order for e|net to carry out the Services; or

14.3.2 to the extent required under a court order provided;

that disclosure under Clause 14.3.1 is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 14 (Data Protection) and that e|net shall give notice in writing to Customer of any disclosure of Personal Data which it is required to make under Clause 14.3.2 immediately it is aware of such a requirement.

14.4 Each Party shall bring into effect and maintain all reasonable technical and organisational measures necessary to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including, but not limited to, taking reasonable steps to ensure the reliability of Staff having access to the Personal Data.

14.5 Each Party may, at reasonable intervals, request a written description of the technical and organisational methods employed by the other referred to in Clause 14.4. Within twenty (20) Business Days of such a request, the relevant Party shall supply written particulars of all such measures detailed to a reasonable level such that the receiving Party can determine whether or not, in connection with the Personal Data, the other Party is complying with the DPA.

14.6 Each Party shall indemnify and keep indemnified the other Party against all Losses incurred by it in respect of any breach of this Clause 14 (Data Protection) by that Party and/or any act or omission of that Party.

## 15 TERM AND TERMINATION

15.1 This Agreement shall commence on the Effective Date and shall continue in effect for so long as there is a valid Work Order in place between e|net and Customer, subject always to termination in accordance with the provisions of this Agreement. Where there is no valid Work Order in place e|net may, by notice in writing to the Customer, terminate this Agreement.

15.2 Each Work Order shall commence on the applicable Services Commencement Date and shall terminate on expiry of the specified Service Term, subject to early termination in accordance with the terms of this Agreement or the relevant Work Order. If an order, for which a signed Customer Order/Works Order has been received from the Customer, is subsequently cancelled by the Customer, prior to commencement of Service Term, then the Customer will be liable for the costs of any goods materials and services ordered and provided by e|net in relation to the provision of the service for which e|net has paid or is legally obliged to pay and the Customer will also be liable for service fees (as specified in the Customer Order/Works Order) for a period of one year.

- 15.3 On termination of this Agreement, all Work Orders shall automatically terminate. Termination of a Work Order shall not prejudice the continuing validity of this Agreement or any other Work Order.
- 15.4 Either Party may terminate this Agreement and/or any Work Order forthwith by notice in writing to the other Party where that other Party:
- 15.4.1 has committed a material Default and where such Default is capable of remedy has failed to remedy such Default within thirty (30) days of receiving notice specifying the Default and requiring its remedy;
- 15.4.2 is unable to pay its debts as they fall due within the meaning of Section 214 of the Companies Act 1963 or if any action, application or proceeding is made with regard to it for:
- (a) a voluntary arrangement or composition or reconstruction of its debts;
  - (b) the presentation of an administrative petition;
  - (c) its winding-up or dissolution;
  - (d) the appointment of a liquidator, trustee, receiver, or similar officer; or
  - (e) any similar action, application or proceeding in any jurisdiction to which it is subject.
- 15.5 On expiry or termination of the Concession Agreement, e|net may at its option either terminate this Agreement and any Work Orders, or assign or novate them in accordance with Clause 20.2.

## 16 TERMINATION FOR FORCE MAJEURE

- 16.1 No Party shall be entitled to bring a claim for a breach of obligations under the Agreement by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event, and e|net shall not accrue any Rental Credits if a Force Majeure Event occurs.
- 16.2 On the occurrence or cessation (including the cessation of the effects) of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification of the occurrence shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect. Subject to Clause 16.3, following the cessation of the Force Majeure Event the Service Term of any affected Work Order shall be extended by a period of time equal to the duration of the Force Majeure Event.
- 16.3 If the Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Agreement for a period of more than one hundred and eighty (180) days, then either Party may terminate the Agreement by giving thirty (30) days written notice ("Termination Notice") to the other Party.
- 16.4 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any interruption in the Services and e|net shall at all times during which a Force Majeure Event is subsisting

take all reasonable steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

## 17 CONSEQUENCES OF TERMINATION

- 17.1 Termination in accordance with Clauses 15 and 16 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.
- 17.2 If notice is served in accordance with Clause 15 and 16, the rights and obligations of e|net and Customer under this Agreement and any applicable Work Order shall continue in effect for the duration of the notice period.
- 17.3 On termination of this Agreement and/or any Work Order, Customer will:
- 17.3.1 immediately deliver up to e|net all property belonging to e|net (or, in the event of termination of a Work Order, such as is relevant to that Work Order) which may be in the possession of, or under the control of Customer, and certify to e|net in writing that this has been done;
  - 17.3.2 undertake to procure from its Personnel (or their personal representatives) that they will immediately deliver up to e|net all such and property belonging to e|net as may be in the possession of or under the control of its Personnel or their personal representatives;
  - 17.3.3 remove the Customer Equipment from any MAN and/or affected Co-location Facility, subject to the procedures specified in Clauses 6.1.2 and 11 and in such a manner as to cause minimum disruption to e|net and its other customers; and
  - 17.3.4 promptly vacate the MANs and/or Co-location Facilities, having firstly ensured that it is in a similar condition to that in which it was found when first provided to the Customer (subject to normal wear and tear).
- 17.4 To the extent that any property referred to in Clause 17.3 is in electronic form and contained on non-detachable storage devices, Customer will provide e|net with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.
- 17.5 In the event that the Agreement and/or any Work Order is terminated by either party, the Customer will pay to e|net within 30 days of the issue of an appropriate invoice by e|net:
- 17.5.1 all outstanding fees (apportioned on a daily basis) relating to the Services undertaken by e|net up until the date of such termination;
  - 17.5.2 the costs of any goods, materials and services ordered by e|net in relation to the such Services for which e|net has paid or is legally obliged to pay, and which e|net is unable to re-allocate elsewhere with its business;
  - 17.5.3 where the Agreement has been terminated for Default by the Customer or by reason that any of the circumstances specified in clause 15.4.2 apply to the Customer, all Service Fees applicable to any remaining Service Term.
- 17.6 For the avoidance of doubt, any purported termination otherwise than in accordance with the provisions of Clauses 15 and 16, shall be of no effect for the purposes of this

Agreement save where e|net elects to accept any purported termination by the Customer (such election to be notified to the Customer in writing by e|net) in which event the termination shall be deemed to have occurred by reason of the Customer's Default on the date of e|net's notice of acceptance thereof.

## 18 DISPUTE RESOLUTION PROCEDURE

- 18.1 Any Dispute arising in relation to any aspect of this Agreement or the Services shall, except where otherwise specifically provided, be subject to the provisions of this Clause 18.
- 18.2 If a Dispute, claim or controversy is not resolved by agreement between the Parties within ten (10) Business Days, e|net's Chief Executive Officer and Customer's equivalent officer shall be obliged to mediate the dispute and seek a resolution during the next ten (10) Business Day period. The joint and mutual decision of such officers shall be conclusive.
- 18.3 If the dispute cannot be resolved pursuant to the procedure set out in Clause 18.2 above, then it may be referred by either Party for final determination to an expert (the "Expert") who shall be deemed to act as an expert and not as arbitrator.
- 18.4 The Expert shall be selected by mutual agreement of the Parties or, failing agreement, within ten (10) Business Days after a request by one Party to the other, shall be chosen at the request of either Party by the President for the time being of the Institution of Engineers in Ireland, or his nominee, who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question, where possible located in Dublin.
- 18.5 Ten (10) Business Days after the Expert has accepted the appointment the Parties shall submit a written report on the dispute to the Expert and to each other and five (5) Business Days thereafter shall submit any written replies they wish to the Expert and to each other.
- 18.6 Both Parties shall afford the Expert all necessary assistance, which the Expert requires to consider the dispute, including, but not limited to, full access to any documentation or correspondence relating to the subject matter of the dispute.
- 18.7 The Expert shall be instructed to deliver his determination to the Parties within ten (10) Business Days after the submission of the written reports pursuant to Clause 18.5, or after the expiration of such longer period as is required by the Expert in which to consider the Parties' reports and documentation or correspondence provided, which date shall not be greater than a period of thirty (30) Business Days after the submission of the written reports pursuant to Clause 18.5.
- 18.8 Decisions of the Expert shall, in the absence of manifest error, be final and binding and not subject to appeal. The Expert shall have the same powers to require any Party to produce any documents or information to him and that Party and each Party shall in any event supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.
- 18.9 The fees of the Expert shall be borne by the Parties in the proportion as shall be determined by the Expert having regard (amongst other things) to the conduct of the Parties.
- 18.10 The Parties, and the Expert, shall treat as Confidential Information all information obtained in relation to the reference to the Expert, the fact that a dispute has been

referred to the Expert, its occurrence and the decision of the Expert arising from it. Proposals and information exchanged during the informal proceedings described in Clause 18 between the Parties will be privileged, confidential and without prejudice to a Party's legal position in any formal proceedings.

18.11 Neither Party may commence formal legal proceedings without first observing the procedures set forth in this Clause 18, provided however that nothing in this Clause 18 shall prevent either Party from instituting proceedings against the other Party in any court of competent jurisdiction for an injunction, temporary restraining order or other similar equitable relief required to enforce the terms of this Agreement. Nothing in this Clause 18 shall prejudice the right or entitlement of either Party implied by the Statute of Limitations Act, 1957 as amended by the Statute of Limitations (Amendment) Act, 1991 or the Statute of Limitations (Amendment) Act, 2000.

18.12 The Parties shall continue to comply with their respective obligations in accordance with this Agreement without interruption during any dispute resolution proceedings.

## 19 **NO PARTNERSHIP**

19.1 This Agreement shall not be deemed to create any partnership, joint venture, agency or contract of employment between the Parties.

19.2 Neither Party shall commit or endeavour to purport or commit the other to any legally binding obligation or agreement or hold itself out as being able so to commit the other without the prior specific consent in writing of the other.

## 20 **ASSIGNMENT AND SUB-CONTRACTING**

20.1 Subject to any express provision of this Agreement, neither Party shall, without the prior written consent of the other, assign all or any benefit, right or interest under this Agreement and/or any Work Order.

20.2 e|net shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement and/or any Work Order or any part thereof to the Contracting Authority or any successor in title or nominee of the Contracting Authority.

20.3 e|net may sub-contract some or all of its obligations under this Agreement and/or any Work Order.

20.4 Customer shall co-operate fully with any party to which e|net sub-contracts, assigns, novates or otherwise disposes of its rights and/or obligations pursuant to Clauses 20.2 or 20.3.

## 21 **SERVICE OF NOTICES**

21.1 Any notice, consent or other communication given under this Agreement shall be in writing in the English language and shall be served by sending the same by pre-paid recorded delivery post or facsimile or by delivering the same by hand or by electronic mail, or such other method as the Parties may agree.

21.2 Until notified otherwise all notices, Necessary Consents or other communication under this Agreement shall be sent to the Project Managers at such addresses facsimile numbers and/or electronic mail addresses as are notified by the Parties in writing from time to time and subject to Clause 21.4 shall be deemed to have been served as set out below, and in proving the service of the same it will be sufficient to prove, in the case of a

letter, that such letter was properly stamped, addressed and placed in the post, in the case of facsimile, that such facsimile was duly dispatched to a facsimile number notified for such purpose, and in the case of an electronic mail that the electronic mail was duly dispatched to an electronic mail address notified for such purpose. In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly given:

21.2.1 if delivered personally, when left at the relevant address referred to above;

21.2.2 if sent by recorded delivery post, two (2) days after posting it;

21.2.3 if sent by facsimile, at the time of despatch; and

21.2.4 if sent by electronic mail, at the time provided in sections 20 and 21 of the Electronic Commerce Act 2000.

21.3 In the case of any successor in title to e|net then the reference in Clause 21.2 to the address stated in this Agreement shall be a reference to such address as may be set out from time to time by e|net (as the case may be) in a notice in writing given to Customer from time to time.

21.4 If the day of service of any notice is not a Business Day or service takes place after 5pm on a Business Day then the notice shall be deemed to be served on the following Business Day.

## 22 COSTS AND EXPENSES

Each Party shall be responsible for paying its own costs and expenses in relation to the preparation, execution and implementation of this Agreement, except where expressly provided to the contrary and except for any award of costs or expenses by a competent court, tribunal or other body, national or supra-national.

## 23 VALUE ADDED TAX

23.1 All amounts stated to be payable by Customer under this Agreement shall be exclusive of any VAT properly chargeable thereon.

23.2 Customer shall pay to e|net any VAT properly chargeable to it in respect of any supply made to it under this Agreement provided that it shall first have received from e|net a valid VAT invoice in respect of that supply which complies with the requirements of Section 17 of the Value Added Tax Act, 1972 and any related regulations made by the Irish Revenue Commissioners relating to the issue of invoices.

## 24 WAIVER

A failure by either Party at any time to enforce any provision of this Agreement shall in no way affect its right thereafter to require complete performance by the other Party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any provision, or to be a waiver of the provision itself.

## 25 SEVERABILITY

In the event that any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be omitted from this Agreement, and the rest of this Agreement shall stand, provided that if, in the



case of any such term, condition or provision it would not have been so held if any amount as to time, monetary sum, geographic extent or otherwise had been in a lesser amount such term, condition or provision shall be deemed to have been written at the date hereof in such lesser amount.

**26 ENTIRE AGREEMENT AND AMENDMENTS**

- 26.1 This Agreement and any agreements or documents (including, for the avoidance of doubt, electronic documents) to the extent expressly referenced herein constitute the entire understanding between the Parties in relation to the subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No Party has relied on any representation except as expressly set out in this Agreement.
- 26.2 Each Party irrevocably and unconditionally waives any right which it may have to rescind this Agreement and/or to claim damages for any misrepresentation from the other whether or not contained in this Agreement or for breach of any warranty not contained in this Agreement unless such misrepresentation or warranty was made fraudulently.
- 26.3 Subject to Clause 26.4, no amendments to this Agreement shall be binding unless in writing and signed by each Party.
- 26.4 The Code of Practice and the Service Fees may be amended from time to time by e|net in its absolute discretion.

**27 LAW OF THE AGREEMENT AND JURISDICTION**

- 27.1 This Agreement shall be governed by and construed in accordance with the laws of Ireland.
- 27.2 Unless otherwise stated in this Agreement, both Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of Ireland. Both Parties confirm that the courts of Ireland are not an inconvenient forum and each Party irrevocably waives any right which it may have to object to their jurisdiction on the grounds of inconvenience of otherwise.

IN WITNESS of which this Agreement has been duly executed by the parties.

**SIGNED** for and on behalf of e|net

**SIGNED** for and on behalf of Customer

Signature.....

Signature.....

Name.....

Name: .....

Position.....

Position: .....

Date.....

Date.....



## SCHEDULE 1

### Change Procedure

#### 1 DEFINITIONS

1.1 In this Schedule 1 the following words and expressions shall have the meanings set out against each of them:

**“Change in Law”** means the coming into effect after the Effective Date of:

- (a) any Legislation, other than any Legislation which on the Effective Date has been published:
  - (i) in a draft Bill which has been presented before the Dáil for approval;
  - (ii) in a Bill;
  - (iii) in a draft statutory instrument; or
  - (iv) as a proposal in the Official Journal of the European Union;
- (b) any amendment to the Code of Practice as set out in Schedule 3; or
- (c) any applicable judgment of a court of law in Ireland which changes a binding precedent.

**“Contracting Authority Change”** means a Change required as a result of a Change to the Concession Agreement.

**“Contracting Authority Change Approval”** means written approval from the Contracting Authority to e|net in relation to any Change requiring Contracting Authority consent.

**“Eligible Change”** means:

- (i) a Qualifying Change in Law; and/or
- (ii) a Contracting Authority Change.

**“Qualifying Change in Law”** means any one or more of the following:

- (a) any Change in VAT in Ireland; or
- (b) any Change in Law the effect of which is to discriminate against:
  - (i) the Project Assets;
  - (ii) the Services; or
  - (iii) e|net in relation to other companies performing similar functions.

## **Eligible Changes - General Requirements**

- 1.2 If any notice is served upon either Party by the other in relation to an Qualifying Change in Law the Party receiving the notice shall give due consideration to the representations contained in the notice and shall advise the other Party in writing whether it agrees with the representations or whether it disagrees, in which event it shall state the reasons for such disagreement.
- 1.3 Where any circumstance has arisen that may constitute a Qualifying Change in Law, either Party shall upon request being made by the other provide such information as the other reasonably requires of the effect of the Qualifying Change in Law, (including any change in costs and/or the Service Fees) and any reasonable objections to or proposals to mitigate the same.
- 1.4 If the Parties are unable to agree the impact on costs and the Service Fees and/or any consequent Changes to this Agreement or any Work Order in relation to any Qualifying Change in Law within twenty (20) Business Days of receipt of the relevant notice specified above, either Party may refer the matter to the Dispute Resolution Procedure.
- 1.5 Where e|net reasonably determines that urgency requires, it may proceed to implement a Qualifying Change in Law pending agreement of the adjustment to the Service Fees or any other aspect of the Parties' obligations. e|net and Customer shall use all reasonable endeavours to reach agreement on the adjustment to the Service Fees, or such other outstanding aspect, as soon as possible thereafter. If e|net and Customer fail to reach agreement on any adjustment in the Service Fees or any other aspect of the Parties' obligations, either Party may refer the matter to the Dispute Resolution Procedure.
- 1.6 The parties acknowledge and agree that all Contracting Authority Changes shall be implemented by e|net, and the parties shall agree any consequent amendments to this Agreement that may be required as a result of a Contracting Authority Change.
- 1.7 Subject to the other provisions of this Schedule 1 e|net shall have no liability to Customer for Claims or Losses suffered or incurred by Customer howsoever arising as a result of any Eligible Change.

## **Other Changes**

- 1.8 From time to time during the term, Customer or e|net may propose changes in or additions to the Services or other aspects of this Agreement which are not Eligible Changes. All such changes will be implemented pursuant to the procedures set forth below.
- 1.9 If Customer desires to propose a change in or addition to the Services or other aspects of this Agreement, Customer will deliver a written notice to e|net describing the proposal. e|net will respond to such proposal as promptly as reasonably possible by preparing at Customer's expense and delivering to Customer a written document ("Contract Change Control Document"), indicating: (i) the effect of the proposal, if any, on the amounts payable by Customer hereunder and the manner in which such effect was calculated; (ii) the effect of the proposal, if any, on Service Levels with a full explanation acceptable to Customer; (iii) the anticipated time schedule for implementing the proposal; (iv) whether the consent of the Contracting Authority will be required; and (v) any other information requested in the proposal or reasonably necessary for Customer to make an informed decision regarding the proposal.

- 1.10 If e|net desires to propose a change in or addition to the Services or other aspects of this Agreement, it may do so by preparing at its expense and delivering a Contract Change Control Document to Customer.
- 1.11 Customer acknowledges that Changes may require Contracting Authority Change Approval and that e|net shall have no liability to Customer for any Claims or Losses suffered by Customer as a result of a delay in or refusal of Contracting Authority Change Approval.
- 1.12 Notwithstanding the above, the parties may wish to enter into a separate Work Order instead of executing a Contract Change Control Document.

## SCHEDULE 2

### Pro-Forma Work Order

e|net Work Order

**Customer:**

**End User:**

**End User Address:**

**E|net Reference:**

**MAN(s):**

**Product(s):**

**Date:**

**Proposed Handover Date:**

This Work Order is subject to the terms and conditions of the MAN Services Agreement dated X (the "MAN Services Agreement") entered into between e-net and X (Customer)

<b>1</b>	<b>e net Fixed Price Charges</b>	
	<b>Once off Charge (Total)</b>	
A	<b>Setup</b>	€
B	<b>Setup 2<sup>nd</sup> Civils Route</b>	€
	<b>Annual Recurring charges (Total)</b>	
A	<b>Metro</b>	€
B	<b>Backhaul</b>	€

<b>2</b>	<b>Product</b>	<b>Term</b>
		X Months

<b>3</b>	<b>Scope of Works</b>	
	<b>A-End</b>	
	<b>A-end Rack space required</b>	
	<b>A-End Presentation</b>	
	<b>B-End</b>	

	<b>B-end Rack space required</b>	
	<b>B-End Presentation</b>	

<b>4</b>	<b>Fibre Schematic</b>

<b>5</b>	<b>Civils Route Drawing</b>

<b>6</b>	<b>Technical Specification of Primary Materials</b>	
<b>A</b>	<b>Fibre</b>	
<b>B</b>	<b>Power A-End</b>	
<b>C</b>	<b>Power B-End</b>	
<b>D</b>	<b>Additional Circuit Protection if required</b>	
<b>E</b>	<b>Additional Hardware Protection A-End</b>	
<b>F</b>	<b>Additional Hardware Protection B-End</b>	

<b>7</b>	<b>Co location Rack Requirements</b>	
	<b>Rack size</b>	<b>None required</b>
	<b>U Space</b>	
	<b>AC/DC Power requirements</b>	
	<b>Additional Requirements</b>	

<b>8</b>	<b>Project Contacts</b>	
	<b>e net Contact</b>	<b>Customer Engineering Contact</b>
	<b>Name</b>	<b>Name</b>
	<b>Position</b>	<b>Position</b>
	<b>Phone</b>	<b>Phone</b>
	<b>Email</b>	<b>Email</b>

<b>9</b>	<b>End User building contact for site access</b>
	<b>Name</b>

	<b>Position</b>
	<b>Phone</b>
	<b>Email</b>

<b>10</b>	<b>Any Other Relevant Information</b>

<b>11</b>	<b>Signature</b>			
	Company		Company	
	Name		Name	
	Date		Date	
	Position		Position	
	Signed		Signed	

\*Please sign and return to e|net at your earliest convenience, non response within 5 days will be deemed as acceptance.



SCHEDULE 3

CUSTOMER ORDER FORM



Carrier Details

<b>Project Contact</b>	<input type="text"/>	<b>Phone</b>	<input type="text"/>
		<b>Email</b>	<input type="text"/>
<b>Technical Contact</b>	<input type="text"/>	<b>Phone</b>	<input type="text"/>
		<b>Email</b>	<input type="text"/>

Circuit Details

<b>Product</b>	<input type="text"/>	<b>Carrier Reference Number</b>	<input type="text"/>
<b>VLAN ID A-End</b>	<input type="text"/>	<b>VLAN ID B-End</b>	<input type="text"/>

**VLAN ID:** Please specify VLAN ID if required, otherwise e|net will assign VLAN ID upon delivery. VLAN ID at customer end will be set to untagged unless otherwise specified and set to tagged at the B end.

<b>Termination</b>	<input type="text" value="Not Required"/>	<b>Termination</b>	<input type="text" value="Not Required"/>
<b>Power</b>	<input type="text" value="-48VDC battery backup"/>	<b>Power</b>	<input type="text" value="-48VDC battery backup"/>

**Termination:** Default fibre connector type on all Patch Panels is SC, Default connector type on e|net optical telco equipment is LC. Please specify if you have a different requirement: **Power:** e|net installation cannot proceed until permanent power is in place. **Presentation:** All Ethernet circuits are built as default at Layer 2. Each circuit gets a single VLAN assigned to it and any additional VLANs required are charged at the appropriate pricing. Please review the technical product descriptions on the e|net web site for additional information.

**Order Date**

Drop Location Details

<b>A-End</b>	<input type="text"/>	<b>B-End</b>	<input type="text"/>
<b>Address</b>	<input type="text"/>	<b>Address</b>	<input type="text"/>

	<input type="text"/>		<input type="text"/>
<b>Site Contact</b>	<input type="text"/>	<b>Site Contact</b>	<input type="text"/>
<b>Phone</b>	<input type="text"/>	<b>Phone</b>	<input type="text"/>
<b>Landlord Name</b>	<input type="text"/>	<b>Landlord Name</b>	<input type="text"/>
<b>Phone</b>	<input type="text"/>	<b>Phone</b>	<input type="text"/>

**Summary of Charges**

<b>Once Off Charge</b>	<input type="text"/>	<b>Annual Recurring Charge</b>	<input type="text"/>
<b>Term (Months)</b>	<input type="text"/>	<b>PO Total</b>	<input type="text" value="€0.00"/>
<b>PO Number</b>	<input type="text"/>		

**Additional Information**

**Signature**

<b>Signed on behalf of Carrier</b>	<input type="text"/>	<b>Date</b>	<input type="text"/>
<b>Account Manager e net</b>	<input type="text"/>	<b>Date</b>	<input type="text"/>

By signing above you agree to e|net terms and conditions.  
 Price is subject to full site survey  
 Price is ex. VAT