



Standard Access Agreement relating to Wholesale Building and Cabin Co-Location Product and the National Broadband Plan

National Broadband Ireland

AND

[Service Provider]



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This Reference Offer relates to the set of wholesale Co-Location products outlined in the Project Agreement between National Broadband Ireland and DCCAE as signed on 22nd November 2019.

Version control

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Glossary of terms:

AF:	Assured Forwarding
API:	Application Programming Interface
BE:	Best Efforts
CIR:	Committed Information Rate
Co-Lo:	Co-Location
CPE:	Customer Premises Equipment
EF:	Expedited Forwarding
E-NNI:	External - Network to Network Interface
FTTH:	Fibre to the Home
IBH:	In-building Handover
ISH:	In-Span Handover
LAG:	Link Aggregation
LER:	(MPLS) Label Edge Router
MPLS:	Multi-Protocol Label Switching
NBI:	National Broadband Ireland
NTU:	Network Termination Unit
ODP:	Optical Distribution Point
OLT:	Optical Line Terminal
ONT:	Optical Network Terminal
PE:	Provider Edge node
PoH:	Point of Hand over
PoP:	Point of Presence
SES:	Symmetrical Ethernet Services
SP:	Service Provider (also known as RSP – Retail Service Provider)
UNI:	User Network Interface (as defined by MEF 13)
VLAN:	Virtual Local Area Network
VPLS:	Virtual Private LAN Service
VUA:	Virtual Unbundled Access
XGS-PON:	10Gbp/s Symmetrical Passive Optical Network

CONTENTS

	Page No.
1. Introduction.....	6
2 Commencement and Duration	14
3 The Products and General Requirements.....	14
4 Data Protection.....	17
5 Charges, Billing and Payment.....	17
6 Network Safety and Protection.....	18
7 Interference	18
8 Provisioning, Operation and Maintenance	19
9 Co-Location Product Licence	19
10 Title to the Equipment	20
11 Co-Location Product Obligations	21
12 Rights and Obligations of NBI	21
13 Provisions for the Termination of the Co-Location Licence	22
14 Management of Site	23
15 Resolution of Disputes	24
16 Breach, Suspension and Termination	25
17 Credit Assessment and Credit Risk Management	27
18 Confidentiality	28
19 Intellectual Property Rights	28
20 Force Majeure	28
21 Limitation of Liability	30
22 Insurance.....	30
23 Assignment of Rights and Obligations	30
24 Minister Step-In	31
25 Rights of Inspection, Reporting and Audit.....	31
26 Notices.....	32
27 Entire Agreement	33
28 Waiver	33
29 Severability	33
30 Amendments	33
31 Relationship of Parties	34
32 Governing Law	34
Appendix 1 – Data Processing Agreement.....	37

SUBJECT TO CONTRACT/CONTRACT DENIED

Schedule 1 – Co-Location Product Description 44
Schedule 2 – Co-Location Product Billing..... 48
Schedule 3 – Co-Location Price List..... 49



SUBJECT TO CONTRACT/CONTRACT DENIED

This **WHOLESALE [CO-LOCATION SERVICES] AGREEMENT** is made on [date]

BETWEEN

[], a company registered in Ireland with registration number [] and having its registered office at [Service Provider Address] (“Service Provider”);

and

~~NATIONAL BROADBAND IRELAND~~ **NBI INFRASTRUCTURE DAC**, a company registered in Ireland with registration number 631656 and having its registered office at [3009 Lake Drive, Citywest, Dublin 24, D24 H6RR](#) ~~10 Earlsfort Terrace, Dublin 2, D02 T380, Ireland~~ (“NBI”),

(each of the Service Provider and NBI shall be referred to individually as a “Party” and together shall be referred to as the “Parties”).

1. Introduction

WHEREAS

- A. The Minister (as defined below) has appointed NBI to make certain wholesale Products (as defined below) available in the areas specified by the Minister in the NBP Agreement (as defined below).
- B. NBI has in turn agreed to provide the Service Provider with the Products on the terms of this Agreement.

This Agreement has been written in accordance with the Body of European Regulators for Electronic Communications (BEREC) Guidelines¹ and is assumed to be compliant with the proposed best practices set out in the BEREC Guidelines.

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

Definitions and Interpretation

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

“Affiliate”	means, in relation to a Party, a Subsidiary of that Party or a Holding Company of that Party or any other Subsidiary of that Holding Company.
“Agreement”	means the terms and conditions applicable to the provision of the Product as set out in this agreement and its Schedules (which may be updated by NBI from time to time and published on NBI’s website in accordance with the NBP Agreement and clause 27 of this Agreement).
“Application Programming Interface” or “API”	means a set of routines, protocols, and tools for building software applications. An Application Programming Interface specifies how the Service Provider and NBI software components should interact.
“Architect’s Opinion on Exemption”	means a professional opinion provided by an architect accredited by the Royal Institute of the Architects of Ireland (the “RIAI”) in a form approved by the Law Society of Ireland and the RIAI declaring that planning permission is not required for works or that the Building Control Regulations do not apply to such works.

¹ Body of European Regulators for Electronic Communications (BEREC) Guidelines on the Minimum Criteria for a Reference Offer, BEREC Document No. BoR 19 (238), 5th December 2019, available at: https://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/guidelines/8899-berec-guidelines-on-the-minimum-criteria-for-a-reference-offer-relating-to-obligations-of-transparency

“Authorisation Regulations”

means the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (SI 335 of 2011).

“Authorised Undertaking”

means an authorised undertaking as defined in the Authorisation Regulations.

“Best Industry Practice”

means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, experienced and expert supplier in the Irish or United Kingdom electronic communications services and network industry and sector engaged to carry out and provide services, works, duties, deliverables, functions, responsibilities and activities of a similar scope, nature, scale, complexity and importance to the Services, Network and Products (or the relevant part of them) and under the same or similar circumstances or conditions and doing its best in good faith to comply with its contractual obligations and applicable Laws, Codes and Standards, Binding Guidance and Consents and, to the extent that it does not give rise to disproportionate or material cost, Non-Binding Guidance.

“Breach Notice”

means a written notice service by either Party on the other Party in the event of a breach of this as further described in Clause 16.3.

~~**“Building Control Regulations”**~~

~~means the Building Control Regulations 1997-2015, as amended, replaced or superseded from time to time.~~

“Building and Cabin Co-Location”

means the premises, property or site at which or upon which the Co-Location Product is provided by NBI (as may be notified by NBI to the Service Provider from time to time). Hereafter referred to as ‘Co-Location’ and that one means the other and so forth.

“Claim”

means any action, claim, demand, proceedings or similar.

“Co-Location Product”

means the provision of sufficient rack space and other facilities including but not limited to AC power, DC power, air conditioning, at a Point of Handover.

“Co-Location Product Price List”

means the document that details the prices and charges for the Product as set out in Schedule 3 which may be updated from time to time by NBI and published on NBI’s website in accordance with the NBP Agreement and clause 30 of this Agreement.

“Co-Location Product Process Manual”

means the document published on NBI’s website that sets out the processes for Service Provider eligibility, ordering, fault management and billing for the Product.

“Co-Location Product Technical Manual”

means the document published on NBI’s website that provides a detailed description of the Co-Location products that will be made available to Wholesale Service Providers (WSP) and Retail Service Providers (RSP)

“Co-Location Service Level Agreement”

means the document published on NBI’s website that sets out the degree of service and support that will be provided by NBI in respect of the Products and the corresponding charges.

“Co-Location Reference Offer”

means the specification, terms and conditions applicable to the Co-Location Product as set out in this Agreement, the Service Schedule entitled “Building and Cabin Co-Location Product” and as specified in the NBI Building and Cabin Co-Location Product Description, the NBI Building and Cabin Co-Location Access and Health & Safety Requirements, the NBI Building and Cabin Co-Location Service Level Agreement and the NBI Building and Cabin Co-Location Price List (all as published on the NBI website and as may be updated and re-published from time to time).

“Claim”

~~means any action, claim, demand, proceedings or similar.~~

~~“Co-Location Reference Offer”~~

~~means the specification, terms and conditions applicable to the Co-Location Product as set out in this Agreement, the Service Schedule entitled “Building and Cabin Co-Location Product” and as specified in the NBI Building and Cabin Co-Location Product Description, the NBI Building and Cabin Co-Location Access and Health & Safety Requirements, the NBI Building and Cabin Co-Location Service Level Agreement and the NBI Building and Cabin Co-Location Price List (all as published on the NBI website and as may be updated and re-published from time to time).~~

“Co-Location Site”

means the premises, property or site at which or upon which the Co-Location Product is provided by NBI (as may be notified by NBI to the Service Provider from time to time).

~~“Co-Location Product”~~

~~means, if applicable to the Service Provider, the Co-Location Product as described in more particular detail in the Reference Offer.~~

“Commencement Date”

means the date on which this Agreement is executed and delivered by the Parties, namely the date first written above.

SUBJECT TO CONTRACT/CONTRACT DENIED

“Connection Request”	means a request from the Service Provider to NBI via the NBI Operational Environment to connect the Product to the Customer’s premises.
“Customer”	means a person subscribing to the Service Provider Service, including without limitation, End Users and resellers.
“Deployment Area (DA)”	means the geographical area that is served by an Optical Light Terminal (OLT) deployed by NBI for the purpose of providing Product(s) and Services to Premises located in that geographical area.
“Department”	means the Department of Communications, Climate Action and Environment.
“End User”	means the customer of the Service Provider on whose behalf the Service is ordered.
“Equipment”	means any equipment owned, leased or licensed by the Service Provider and used by the Service Provider in connection with its use of the Products.
“Holding Company”	means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.
“Incorrect Overpayment”	means a price that NBI charged to the Service Provider which was higher than the price which should have been charged in accordance with the Pricing Rules.
“Intellectual Property Rights”	means any patent, patent application, copyright, moral right, trade name, trade mark, service mark, trade secret, copyright, and any applications or right to apply for registration therefor, internet domain names, logos, designs, slogans, and general intangibles of like nature, computer software programs or applications, tangible or intangible proprietary information, know-how, proprietary processes, formulae, algorithms, or any other intellectual property right, whether registered or unregistered, and whether first made or created before, on, or after the date of this Agreement.
“Minister”	means the holder of the office of the Minister for Communications, Climate Action and Environment and any successor to that role.
“Minister Representative”	means such person or persons (or such substitute or substitutes) (other than the National Regulator) as may be appointed by the Minister under the NBP Agreement.
“National Regulator”	means the Commission for Communications Regulation (ComReg) or any person or body designated as the

“NBI Operational Environment”

National Regulatory Authority pursuant to Council Directive 90/388/ EEC.

means the web portal and web services provided by NBI that can be accessed by the Service Provider to perform eligibility checks, place orders for Products, create or schedule appointments for End Users and create or track faults for End Users.

“NBI Product and Commercial Team”

means the team of NBI staff reporting into the Chief Commercial Officer of NBI with responsibility for all Service Provider engagement activities and all Product management and development activities within NBI.

“NBP Agreement”

means the agreement entered into between NBI and the Minister under which the Minister appointed NBI to make certain wholesale services available in certain intervention areas, and references to the NBP Agreement are intended to reflect only NBI’s rights and obligations under the NBP Agreement and the Service Provider’s obligation to comply with same shall be limited to the extent the detail of the relevant provisions has been expressly incorporated into this Agreement, the Co-Location Service Level Agreement, the Co-Location Product Technical Manual and/or the Co-Location Product Process Manual.

“Non-Compliant Overpayment”

means ~~a price that NBI charged to the Service Provider which was non-compliant with the Pricing Rules. This definition is more particularly set out in the NBP Agreement and defined therein as~~ an amount equal to the difference between the Wholesale Price that NBI charged and the price which NBI should have charged in accordance with the Wholesale Pricing Rules over the total relevant period of non-compliance.

“Onboarding Process”

means NBI’s process of onboarding RSPs to allow those RSPs to procure and avail of the Products.

“Optical Network Termination” or “ONT”

means wholesale customer premises equipment (WCPE), that is the network termination device located in the End User Premises that is used to terminate NBI’s Access Network and is the physical network termination point for the Wholesale Service Provider’s network and to which the Service Provider’s equipment is directly connected. The output of the WCPE provides the Demarcation Point between the NBI Network and the Service Provider’s equipment.

“Point of Handover” or “PoH”

means the point at which NBI hands over the conveyance of a Product to the Service Provider so that the Service Provider is then able to use a number of connection options to connect the PoH to its own network.

“Prospective Customer”	means an entity or individual including without limitation End Users and resellers, that has requested to or wishes to subscribe to the Service Provider Service.
“Pricing Rules”	means the Wholesale Pricing Rules, Retail Pricing Rules, Price Benchmarking Rules and Wholesale Product Benchmarking Rules as set out in the NBP Agreement.
“Product(s)”	means each variant of the Co-Location products provided by NBI under this Agreement and as described in more detail in Schedule 1 and which may be updated by NBI from time to time in accordance with the NBP Agreement and published on NBI's website.
“Quarter” or “Quarterly”	means each three (3) month period during this Agreement from the Commencement Date onwards, with: (i) the first Quarter commencing on the Commencement Date and ending on the last day of the third calendar month after which the Commencement Date falls (e.g. if the Commencement Date is 15 February, the Quarter commences on 15 February and ends on 30 April); and (ii) each subsequent Quarter being a period of three calendar months commencing on the day following the expiry of the preceding Quarter, with four (4) Quarters in each twelve (12) month period.
<u>“Related Third Party”</u>	<u>means a person which is a party to another contract with the Service Provider which is relevant to this Agreement or is otherwise considered by NBI to be a Related Third Party for the purposes of a Dispute.</u>
<u>“Related Third Party Material”</u>	<u>means documents, data, information, video, graphics, sound, music, pictures, text, code, scripts, photographs, software and any other material (in whatever form) published or otherwise made available (directly or indirectly) by or on behalf of the Related Third Party using the Products.</u>
“RSP(s)”	means a retail service provider including the Service Provider which has entered into a contract with NBI for the Products and will provide services to Customers or Prospective Customers.
“Service Provider Material”	means documents, data, information, video, graphics, sound, music, pictures, text, code, scripts, photographs, software and any other material (in whatever form) published or otherwise made available (directly or indirectly) by or on behalf of the Service Provider using the Products.
“Service Provider Service”	means the products and/or services provided by the Service Provider to the Customer (or End User) using the Products.

“SES”	means Symmetric Ethernet Services.
“Subsidiary”	means a company in respect of which another company, its holding company (i) holds a majority of the voting rights in it, (ii) is a member of it and has the right to appoint or remove a majority of its board of directors, or (iii) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it, or if it is a subsidiary of a company that is itself a subsidiary of that other company.
“Substituted Co-Location Site”	means the alternative site proposed for Co-Location should the original Co-Location Site require relocation.
“Supervised Co-Location Access”	means access to Co-Location Sites while accompanied by an NBI representative.
“Third Party”	means any individual, company, firm, partnership, competent regulatory authority association or body corporate other than the Parties to this Agreement, or a Party to this Agreement acting in any capacity other than a capacity in which it enters into this Agreement.
“Technical Manual”	means the technical document describing the Co-Location Products.
“Un-supervised Co-Location Access”	means access to Co-Location Sites unaccompanied by an NBI representative.
“VUA”	means Virtual Unbundled Access.
“Working Day”	means the hours between 08:00 to 20:00, during any day other than Saturdays, Sundays or public holidays as defined in the Second Schedule to the Organisation of Working Time Act, 1997.

SUBJECT TO CONTRACT/CONTRACT DENIED

“Works”

means any works to be carried out by or on behalf of the Service Provider in connection with its use of a Product or the use by any Customer of a Service Provider Service.

“WSP(s)”

means a Wholesale Service Provider including the Service Provider which has entered into a contract with NBI for the Products and will provide services to Retail Customers.

SUBJECT TO CONTRACT/CONTRACT DENIED

- 1.2 In this Agreement, except if the context requires otherwise, words and expressions are as defined in clause 1.1 above or in the appropriate Schedule.
- 1.3 References to acts, statutory instruments and other legislation including European Union legislation are to such legislation as amended from time to time, any legislation of which it is a re-enactment and includes any subordinate legislation made from time to time under that legislation.
- 1.4 Terms defined in relevant European Union legislation concerning the provision of electronic communications networks and/or services 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.
- 1.5 The following documents form part of this Agreement and, in the event of any inconsistencies between them, the order of precedence shall (unless expressly stated to the contrary) be as follows:
 - 1.5.1 the main body of the Agreement (clauses 1 to 32 (inclusive)); and
 - 1.5.2 the provisions of the Schedules.

2 Commencement and Duration

- 2.1 This Agreement takes effect on the Commencement Date and shall continue until:
 - 2.1.1 the Service Provider ceases to be an Authorised Undertaking, or
 - 2.1.2 termination pursuant to this Agreement.

3 The Products and General Requirements

- 3.1 Schedule 1 provides a detailed description of the Products that NBI may provide under this Agreement. The terms of Schedule 1 are incorporated into this Agreement by reference.
- 3.2 The Service Provider shall not use a Product or allow or permit any Customer to use a Service Provider Service:
 - 3.2.1 other than in accordance with all applicable laws, including, but not limited to, the terms of any licence, approval, clearance or consent applicable to the Service Provider or the Customer (as applicable), data privacy laws, the laws of copyright and Intellectual Property Rights;
 - 3.2.2 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;
 - 3.2.3 other than in accordance with the acceptable usage policies of [the Service Provider and/or NBI-any connected networks](#);

SUBJECT TO CONTRACT/CONTRACT DENIED

- 3.2.4 other than in accordance with any reasonable instructions and / or notice given by NBI; and/or
- 3.2.5 other than in accordance with the provisions of this Agreement.
- 3.3 The Service Provider shall include and maintain in its contracts with Customers provisions which are no less onerous than those contained in this Agreement (including, for the avoidance of doubt, its Schedules).
- 3.4 The Service Provider shall exercise the reasonable skill and care of a competent electronic communications services provider in performing its obligations under this Agreement.
- 3.5 The Service Provider shall, insofar as required by Law, be solely responsible for ensuring any Service Provider Material and Related Third Party ~~Material~~ (in whatever form) complies with all applicable laws and regulations. The Service Provider further acknowledges and agrees that, save as required by Law, NBI has no responsibility in relation to any such Service Provider Material or Related Third Party ~~Material~~ (in whatever form).
- 3.6 The Service Provider shall provide NBI with a quarterly forecast of its projected number of Connection Requests and Pre-Ordered Connection Requests, broken out by Deployment Area (DA) Area, at least 20 Working Days in advance of each Quarter.
- 3.53.7 Subject to Clause 21, ~~the~~ the Service Provider shall indemnify NBI, its employees, officers, servants and agents in full and on demand against any liability, fines, loss, cost, damage and expense (including but not limited to reasonable legal fees) incurred by it and arising directly or indirectly from any Claim instituted or threatened against NBI by any Third Party in relation to:
- ~~3.5.13.7.1~~ 3.5.13.7.1 the manner in which the Product has been used where such use is in breach of the provisions of Clause 16.
- ~~3.5.23.7.2~~ 3.5.23.7.2 the Service Provider's installation and use of any equipment relating to the Products (including the Equipment);
- ~~3.5.33.7.3~~ 3.5.33.7.3 incidents (of material duration) in which the Service Provider Service is faulty or cannot be used by any Third Party (including a Customer);
- ~~3.5.43.7.4~~ 3.5.43.7.4 to the extent the Service Provider is required by Law to be responsible for same, the content of data conveyed via the Products; and/or
- ~~3.5.53.7.5~~ 3.5.53.7.5 the Service Provider Material or any Related Third Party ~~Material~~ which is provided to or made available to Customers or any other Third Party.
- 3.63.8 Subject to Clause 21, ~~in~~ in the event that the use, maintenance, installation and / or removal of Equipment by or on behalf of the Service Provider causes any loss, damage, interference or disruption to any asset, equipment, installation, activities and / or operations of any Third Party ("**Third Party Damage**"), the Service Provider shall indemnify and hold NBI harmless from and against any Claim or proceeding arising out of or in connection with the Third Party Damage

SUBJECT TO CONTRACT/CONTRACT DENIED

suffered by NBI (including Claims made against NBI by Third Parties resulting from the Third Party Damage) for each event or series of related events howsoever arising whether in contract, tort (irrespective of negligence) or from breach of duty (statutory or otherwise), except and insofar as NBI, its employees, servants or agents are directly liable therefore.

The indemnity under this Clause 3.7 shall include any Claim or proceedings arising out of or in connection with:

~~3.6.13.8.1~~ damage to Third Party equipment located at or in a Co-Location Site;

~~3.6.2~~ ~~indirect or consequential loss arising from Third Party Damage;~~

~~3.6.33.8.2~~ all costs and expenses reasonably incurred in repairing and remediating the Third Party Damage;

~~3.6.43.8.3~~ all costs and expenses reasonably incurred in taking such measures as are reasonably required to bring the asset, installation, equipment, activities and / or operations affected by the Third Party Damage back to normal order; and

~~3.6.53.8.4~~ all Claims made or proceedings instituted against NBI by any Third Party in respect of the Third Party Damage.

~~3.73.9~~ The Products shall be made available to the Service Provider for the term set out for each Product in Schedule 1.

~~3.83.10~~ The Products provided by NBI will meet the service levels which are set out in the Co-Location Service Level Agreement. In the event that the Service Provider does not meet the required service level set out in the Co-Location Service Level Agreement, it shall be subject to the penalties set out in the Co-Location Service Level Agreement.

~~3.93.11~~ The Service Provider shall obtain all and any licences, approvals, clearances or consents necessary over private land to use a Product or allow or permit any Customer to use a Service Provider Service, excluding any rights of way over public lands or any planning permissions including any planning permissions or rights of way.

~~3.12~~ Where the Service Provider is successful in obtaining ~~planning~~ permission for any Works, it shall provide NBI with all details of the ~~planning~~ permission and the Works shall not commence the Works detailed therein without the written permission of the NBI. Permission may be withheld if, in the opinion of NBI, if the conditions attached to the ~~planning~~ permission are not acceptable to NBI (acting reasonably). If NBI has not notified the Service Provider that the conditions are unacceptable within 2 Working Days of receipt of the details of the permission, they shall be deemed to be acceptable.

~~3.13~~ - Each Party shall use reasonable endeavours to mitigate its losses under this Agreement, including any losses under any indemnities set out in this Agreement.

~~3.14~~

4 Data Protection

This 'Data Protection' section should be read in conjunction with Appendix 1 of this document which details the 'NBI Data Processing Agreement' and its associated stipulations.

For the purposes of this clause, "Data Protection Laws" means the General Data Protection Regulation (Regulation (EU) 2016/679) (the "GDPR"), (ii) the Data Protection Act 2018, and (iii) the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011, in each case as amended, supplemented or replaced from time to time; and the terms "processing", "controller", "data subject" and "personal data" have the meanings given to them in the GDPR.

To the extent that personal data of Customers is provided to NBI by the Service Provider pursuant to this Agreement, the Parties acknowledge and agree that Service Provider is the data controller and NBI is the data processor in respect of such personal data subject to Appendix 1. Each Party shall at all times comply with its obligations under applicable Data Protection Laws regarding such personal data.

The Service Provider shall ensure that it has provided all necessary notices to relevant data subjects, including but not limited to Customers (and to the extent applicable, obtained all necessary consents) to enable the lawful transfer of such personal data to NBI.

5 Charges, Billing and Payment

- 5.1 The Service Provider shall be liable to pay NBI for all charges and fees set out in the Co-Location Price List set at Schedule 3 to this Agreement (the "Charges"). NBI reserves the right to update the Co-Location Price List and publish it on NBI's website in accordance with the NBP Agreement.
- 5.2 The Charges shall be paid by the Service Provider at the billing intervals specified in the Co-Location Price List.
- 5.3 The Charges set out in a Co-Location Price List are exclusive of value added tax ("VAT"). VAT shall be levied on all invoices issued pursuant to the terms of this Agreement at the appropriate VAT rate for each Product and such VAT will be payable by the Service Provider.
- 5.4 Invoices shall include detailed itemised billing of the Products provided and the relevant billing information.
- 5.5 Unless explicitly stated otherwise in this Agreement invoices are due and payable in EURO. Invoices are payable within thirty (30) Working Days from the date of issue the invoice unless provided otherwise in this Agreement.
- 5.6 The Service Provider shall pay each invoice by electronic transfer to a bank account nominated by NBI and notified to the Service Provider on the invoice in accordance with Clause 5.4.
- 5.7 Any disputes which arise in respect of the Charges or invoices shall be subject to the provisions of Clause 15 (Resolution of Disputes) of this Agreement.

SUBJECT TO CONTRACT/CONTRACT DENIED

NBI shall refund to the Service Provider any Incorrect Overpayment or any Non-Compliant Overpayment (together with interest, as applicable) where required in accordance with the NBP Agreement.

5.8 Any undisputed amounts which are not paid when due shall accrue interest at a rate equal to 5% per annum over the base lending rate of the ECB ("**Interest Rate**") from the due date until the date of payment. If such unpaid sum is disputed in good faith and subject to a dispute resolution process in accordance with Clause 15 of this Agreement, interest shall accrue on such of the sum as is determined to be the proper sum due and payable at a rate equal to the Interest Rate from the date the disputed sum would have been due and payable had the sum not been disputed. Interest shall accrue daily but shall not be compound interest.

6 Network Safety and Protection

6.1 Each Party is responsible for the safe operation of its network and shall take all reasonable and necessary steps in its operation and implementation of this Agreement to ensure that its network does not

6.1.1 endanger the safety or health of employees, contractors, agents or customers of the other Party; or

6.1.2 damage, interfere with or cause any deterioration in the operation of the other Party's network.

6.2 Neither Party shall connect nor knowingly permit the connection to its network of any equipment or apparatus, including, but not limited, to any terminal equipment, that is not approved by the relevant approvals authority for attachment to its network.

7 Interference

7.1 Where it is suspected that either Parties' Equipment interferes with any other transmission or reception in such a way as to affect other services operating at the Co-Location Site then either party shall, on written request from either Party, no later than twenty-four (24) hours after such request, use its best endeavours to prove the Equipment is not the cause of the interference. If the either Party is unable to prove that the Equipment is not the cause of the interference within this period, then the Service Provider and NBI shall meet at the Co-Location Site and work together over a further twenty-four (24) hour period to ascertain whether the Equipment is the cause of the interference. If after this further twenty-four (24) hour period the interference remains and it has not been possible to prove that the Equipment is not the cause of the interference, then Clause 7.3 shall apply.

7.2 If the Equipment of either Party is proven to be the cause of the interference, the relevant Party shall take all necessary action to cease the interference as soon as possible but no later than one (1) Working Day after either Party has served a written notice upon the other Party requesting that such action be taken.

7.3 Where:

SUBJECT TO CONTRACT/CONTRACT DENIED

- 7.3.1 either Party requests the other Party to comply with the provisions of Clauses 7.1 or 7.2; and
- 7.3.2 either Party fails to comply with that request within the periods as mutually agreed or as set out in the said clauses, as the case may be, or if in the case of a service affecting interference, referred to in Clause 7.1, and either Party is unable to prove that the interference is not caused by the Equipment within the relevant notice period,

Either Party shall be entitled to take any action in relation to the Equipment in whatever manner it deems appropriate and the offending Party shall be liable to the injured party for all losses which they may suffer as a result of the failure by the offending Party to comply with such a request.

8 Provisioning, Operation and Maintenance

The procedures for the provisioning of the Products and for the continuing operation and maintenance of the Products shall be as set out in the Co-Location Process Manual as published on NBI's website and updated by NBI from time to time in accordance with the NBP Agreement.

9 Co-Location Product Licence

- 9.1 The provisions of Clause 8 (Provisioning, Operation and Maintenance) shall apply only if the Service Provider chooses to purchase, and NBI elects to provide to the Service Provider, the Co-Location Product.
- 9.2 In consideration of the payment of the Charges in accordance with this Agreement and all other fees specified in the Co-Location Reference Offer as payable in respect of the Co-Location Product, NBI hereby grants to the Service Provider a non-exclusive Licence in common with NBI and any other person or persons who may be permitted by NBI so to do, and subject to the terms and conditions hereinafter contained, for and during the Co-Location Licence Term, and subject to the provisions of Clause 6 herein after contained, to use and benefit from certain property, equipment and / or other assets of NBI (including the Co-Location Site) only to the extent expressly specified and permitted in the Co-Location Reference Offer in order to avail of the Co-Location Product.
- 9.3 Upon the expiration of the Co-Location Licence Term and in circumstances where the Service Provider wishes to continue to purchase the Co-Location Product, the Service Provider shall have an automatic right to be granted an equivalent Co-Location Licence to that which has just expired. Subject to the Service Provider complying with its obligations under this Agreement, NBI shall, provided that the Service Provider delivers to NBI a corresponding duly executed Deed of Renunciation, issue a new and equivalent Co-Location Licence to the Service Provider immediately prior to the expiry of an Expired Licence. For the avoidance of doubt, it is the intention of the Parties that, subject to the Service Provider complying with its obligations under this Agreement, the Service Provider will have the benefit of a Co-Location Licence as is necessary to avail of the Co-Location Product agreed to be provided to the Service Provider pursuant to this Agreement (albeit that individual Co-Location Licences will during that period expire and be replaced with an equivalent Co-Location Licence pursuant to this Clause 9.3).

SUBJECT TO CONTRACT/CONTRACT DENIED

- 9.4 For the avoidance of doubt, the Co-Location Licence hereby granted does not confer and shall not be construed so as to confer on the Service Provider any right or entitlement to use the property, equipment and / or other assets of NBI unless such right or entitlement is expressly granted to the Service Provider pursuant to the Co-Location Reference Offer. The Service Provider shall have no right or entitlement to use the property, equipment and / or other assets of NBI serving the Co-Location Site or the existing electrical supply to the Co-Location Site.
- 9.5 The Co-Location Site shall remain under the control of NBI at all times and NBI shall be entitled to exercise such control by itself or through its servants or agents.
- 9.6 Save for any equipment used, installed and / or maintained by NBI in accordance with the Co-Location Reference Offer, the use, installation and / or maintenance of the Equipment shall be at the sole risk and expense of the Service Provider.
- 9.7 NBI reserves the right to monitor the Service Provider's access to the Co-Location Site.
- 9.8 The Service Provider may use the Co-Location Site and the Equipment at such Co-Location Site solely for the exclusive purpose of availing of the Co-Location Product under the terms of this Agreement and in accordance with the Co-Location Reference Offer.
- 9.9 The Service Provider hereby acknowledges that NBI retains possession and control of the Co-Location Site and of any ducting whatsoever on the Co-Location Site, whether housing cabling belonging to NBI or to the Service Provider, subject to the Co-Location Licence and that nothing in this Clause 9.9 is intended to or shall be deemed to confer any tenancy on the Service Provider. The Service Provider undertakes with NBI that it will not in any way impede NBI or its servants or agents in the exercise of its rights of possession and control of the Co-Location Site and the NBI ducting and shall comply with all directions and regulations which NBI makes, or may make, from time to time, and notifies to the Service Provider, from time to time, governing the Co-Location site, and every and any part thereof and of the NBI ducting.
- 9.10 The Service Provider hereby further acknowledges that the Co-Location product is personal to the Service Provider and not assignable and the rights given hereunder may only be exercised by the Service Provider for its benefit and that of its customers.
- 9.11 Any map, schematic, drawing or similar document provided with or annexed to the Co-Location Reference Offer is provided for the purposes of illustration only and is not intended to accurately reflect the ultimate position or size of the Equipment or any part thereof.
- 9.12 Title to the Co-Location [Site](#) remains with NBI and no right or interest in that property passes to the Service Provider.

10 Title to the Equipment

- 10.1 In consideration of the grant of the Co-Location Licence, the Service Provider agrees that on the expiry or sooner determination of the Co-Location Licence it transfers to NBI full legal and beneficial title to the equipment used by the Service Provider in connection with its use of the Co-Location Product, excluding any equipment which the Service Provider is required to remove pursuant to Clause 9 of this Agreement.

11 Co-Location Product Obligations

11.1 With respect to the day to day use and operation of the Co-Location Product, the Service Provider shall:

11.1.1 ensure that no nuisance is caused directly or indirectly from the granting of the Co-Location licence and that the Co-Location licence is exercised in a quiet, peaceful and orderly manner, making good any damage caused;

11.1.2 ensure that the Service Provider's staff comply with all reasonable requests of any of NBI's staff while at the Co-Location [Site](#);

11.1.3 ensure that the Service Provider's staff behave in a responsible manner and adhere to the NBI Building and Cabin Co-Location Access and Health & Safety Requirements (as referenced in the Co-Location Reference Offer) while at the Co-Location Site;

11.1.4 maintain the Equipment located at the Co-Location Site in good repair;

11.1.5 be responsible for the safety of its operations on the Co-Location Site; and

11.1.6 comply with the provisions of the Co-Location Reference Offer.

11.2 The Service Provider shall not during the continuance of the Co-Location licence:

11.2.1 do or permit anything which might cause interference with, damage or cause injury to NBI's staff or any of NBI's installation or any other installation or equipment at the Co-Location Site or any equipment subsequently install by any authorised user of the Co-Location Site;

11.2.2 display any signs, notice of manufacturers' motifs or advertising material without the prior consent of NBI at the Co-Location Site; and / or

11.2.3 store any hazardous material on the Co-Location Site.

12 Rights and Obligations of NBI

12.1 Pursuant to Clause 9, NBI shall during the continuance of the Co-Location Licence:

12.1.1 Except in cases of emergency give the Service Provider at least ten (10) Working Days' notice of all proposals to carry out work of whatsoever nature insofar as such works may affect the operation of, or access to, the Equipment;

12.1.2 Maintain the Co-Location Site in good repair;

12.1.3 Where NBI occupies the Co-Location Site by virtue of a lease or licence, observe and perform the terms of the Head Lease and make available to Service Provider any notices served on NBI by the Head Lessor.

SUBJECT TO CONTRACT/CONTRACT DENIED

12.1.4 Where access to the Co-Location Site is by a right of way granted to NBI by a Third Party, NBI does not warrant that it has the right to grant the Service Provider a right of way to the Co-Location Site and the Service Provider acknowledges that it shall be its responsibility to negotiate such a right of way with the relevant grantor.

13 Provisions for the Termination of the Co-Location Licence

13.1 The provisions of this Clause 13 with respect to the termination of the Co-Location Licence shall apply in addition to the provisions of Clause 16 and other provisions of this Agreement with respect to the termination of this Agreement and / or the Co-Location Licence.

13.2 In the event that the Service Provider is in breach of any term or provision of the Co-Location Licence, other than a breach referred to in Clause 16, NBI may and so often as same may occur, take the following actions:

13.2.1 where the breach complained of requires the Service Provider to either take action or desist from a particular action, in order to remedy the breach, NBI shall serve a notice in writing upon the Service Provider, specifying the breach complained of and giving the Service Provider what NBI considers a reasonable time to remedy the matter complained of. If the Service Provider shall fail or neglect within such period of time to remedy the said matter then NBI shall be entitled to serve further notice upon the Service Provider, calling upon the Service Provider to remedy the matter complained of within one (1) calendar month of the date of notice. If the Service Provider shall fail or neglect to remedy the matter then NBI shall serve a notice upon the Service Provider advising that, in light of the persistent breach, NBI considers the breach to be material. In that event, Clause 16.2 shall apply and NBI shall follow the notice requirements set out in Clause 16.2; or

13.2.2 if the breach is of a nature which neither requires the Service Provider to take action or to desist from taking an action in order to remedy the breach, NBI may and as often as such breach may occur, serve a notice in writing upon the Service Provider, specifying the breach complained of and calling upon the Service Provider to ensure that the breach is not repeated. If NBI has cause to serve three (3) such notices upon the Service Provider in respect of the same type of breach within a twelve (12) month period then, on the third such notice, NBI shall advise the Service Provider in writing that, in light of the persistent breach, NBI considers the breach to be material. In that event, Clause 16.2 shall apply and NBI shall follow the notice requirements set out in Clause 16.2.

13.3 NBI shall have the right to terminate the Co-Location Licence at any time during the Term on giving the Service Provider not less than twelve (12) months' notice in writing of its intention to terminate in the following circumstances:

13.3.1 where NBI proposes to dispose of all or part of the Co-Location Site;

13.3.2 where NBI plans to build on the Co-Location Site;

13.3.3 where NBI plans to develop the Co-Location Site;

SUBJECT TO CONTRACT/CONTRACT DENIED

- 13.3.4 where NBI determines that it is necessary to excavate the Co-Location Site to lay ducts for cables for other services; and / or
- 13.3.5 where NBI ceases to be an Authorised Undertaking.
- 13.4 On determination, for whatever reason, of the Co-Location Licence, the Service Provider hereby undertakes at its own cost and expense, and save as provided in Clause 1, to remove the Equipment within thirty (30) Working Days thereafter from the Co-Location Site and shall make good, at its own cost and expense, any damage occasioned to the Co-Location Site in the course of such removal.
- 13.5 In the event that the Service Provider fails to remove the Equipment as set out above, NBI shall be entitled to disconnect the Co-Location Equipment forthwith and at the expense of the Service Provider. Where NBI has disconnected the Co-Location Equipment in this manner, NBI shall serve a notice upon the Service Provider calling upon it to remove the Co-Location Equipment from the Co-Location Site within ten (10) Working Days of the date of the notice. If the Co-Location Equipment is not removed by the Service Provider within the said ten (10) Working Day period, NBI shall be at liberty to remove the Co-Location Equipment as it sees fit and without further notice to the Service Provider and the Service Provider shall bear the cost of this removal.
- 13.6 On the removal by the Service Provider of the Equipment in accordance with Clause 13.5 above, the Service Provider shall reimburse NBI the cost of the removal.
- 13.7 Termination of the Co-Location Licence shall not prejudice or affect any accrued rights or remedies available to either Party against the other in respect of any antecedent breach of the Co-Location Licence.
- 14 **Management of Site**
- 14.1 In the event of NBI determining for any reason, during the continuance of the Co-Location Licence, to alter the location of (i) the Co-Location Site; (ii) any Equipment therein or (iii) any access or interface arrangements with respect to the Co-Location Site and / or Equipment located therein, it shall first notify the Service Provider and allow the Service Provider twenty (20) Working Days to set out its requirements in relation to substituted locations, in writing. NBI shall then select an alternative site which it considers, acting reasonably, to be as suitable and as sufficient as the Co-Location Site for the purposes of providing the Co-Location Product (the "**Substituted Co-Location Site**"). NBI shall give not less than thirty (30) Working Days' notice in writing to the Service Provider of its decision to re-locate the Service Provider to the Substituted Co-Location Site and shall not re-locate the Service Provider to the Substituted Co-Location Site during the said thirty (30) Working Day period unless, within such period, the Service Provider shall have signified its consent to such re-location.
- 14.2 NBI shall pay all direct costs involved in the removal of the Equipment to the Substituted Co-Location Site. For the avoidance of doubt, NBI shall not be obliged to pay any consequential loss incurred by the Service Provider as a result of the said removal nor shall NBI be obliged to replace any of the Equipment.

SUBJECT TO CONTRACT/CONTRACT DENIED

14.3 In the event that the Parties are unable to agree on alternative locations pursuant to Clause 14.1 within the thirty (30) Working Day period specified therein, either Party shall be entitled to submit the matter for dispute resolution in accordance with Clause 15 (*Resolution of Disputes*) of this Agreement. Where the Service Provider fails to submit the matter for dispute resolution within the said period time, NBI shall be entitled:

14.3.1 to remove all or any part of the Equipment from the Co-Location Site; or

14.3.2 to move the Equipment to the Substituted Co-Location Site.

14.4 NBI or the NBI staff may refuse entry to the Co-Location Site to any person who does not produce suitable documentary identification and authorisation. NBI may refuse admittance to or require removal from the Co-Location Site of any person whose presence may reasonably be considered undesirable.

14.5 The Service Provider acknowledges that NBI reserves the right to use the Co-Location Site and to allow others to do so.

15 Resolution of Disputes

15.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (a "**Dispute**"), then, except as expressly provided elsewhere in this Agreement, the Parties shall follow the procedure set out in this Clause:

15.1.1 either Party shall give to the other a written notice of the Dispute, setting out its nature and full particulars, together with relevant supporting documents (a "**Dispute Notice**"). On service of the Dispute Notice, the Account Manager of NBI and Product Manager ([or person holding equivalent position](#)) of Service Provider shall attempt in good faith to resolve the Dispute;

15.1.2 if the Account Manager of NBI and Product Manager ([or person holding equivalent position](#)) of Service Provider are for any reason unable to resolve the Dispute within 25 Working Days of service of the Dispute Notice, the Dispute shall be referred to the Head of Product of NBI and Head of Product ([or person holding equivalent position](#)) of Service Provider who shall attempt in good faith to resolve it.

15.2 The time limits specified above may be extended by mutual agreement between the Parties.

15.3 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.

15.4 Nothing in this Agreement shall prevent a Party from seeking (including obtaining or implementing) interlocutory or other immediate or equivalent relief.

15.5 Where the Service Provider invokes the provisions of this Clause after the due date of a disputed invoice, then the Service Provider shall not be entitled to withhold any portion of the amount due and payable. The Service Provider shall be entitled to raise a billing dispute within twenty-four (24) months of the end of the disputed billing period.

SUBJECT TO CONTRACT/CONTRACT DENIED

- 15.6 In the event either Party identifies an undetected billing error which may have resulted in either under or over billing with twenty-four (24) months of the billing period, the Party may raise this matter along with all relevant material and / or information. Upon review and consideration of the available information the Parties may issue a supplemental invoice or credit as appropriate.
- 15.7 Following resolution of the Dispute, the Parties will issue a credit or tender payment as appropriate.
- 15.8 Either or both Parties shall be entitled, provided that they have failed to resolve a Dispute in accordance with the provisions of this Clause 15 within the time limits specified or agreed for such resolution, to refer an unresolved Dispute to arbitration by a sole arbitrator. The arbitration shall be held in Dublin and shall be conducted in accordance with the arbitration procedure published from time to time by the Dispute Resolution Board of Engineers Ireland. Any such reference to arbitration shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2010 or any statutory re-enactment or amendment thereof for the time being in force. The arbitrator shall be appointed by agreement between the Parties or, if such appointment has not been agreed within ten (10) Working Days of the referral of a Dispute to arbitration, by the President for the time being of the Institution of Engineers of Ireland (commonly known as “**Engineers Ireland**” or “**IEI**”) upon the request of either Party. [Nothing in this Clause shall limit the rights of either Party to engage with the National Regulator for any relevant purpose.](#)
- 15.9 In the event that the assistance or co-operation of the Service Provider is required in connection with any Dispute governed by the provisions of the NBP Agreement with which NBI is involved and which is relevant to the subject matter of this Agreement, the Service Provider shall provide any assistance and co-operation as may reasonably be required by NBI or the Minister in connection with such Dispute.

16 Breach, Suspension and Termination

- 16.1 If the Service Provider’s network adversely and materially affects the normal operation of the NBI network, or is a threat to any person’s safety, NBI may suspend, to the extent necessary, the provision to that Service Provider of any and all Products for such period as it may consider reasonable to ensure the normal operation of its network or to reduce the threat to safety.
- 16.2 If either Party is in material breach of this Agreement (including in relation to a failure by the Service Provider to pay an undisputed sum due hereunder within the required timeframe i.e. a sum which is not subject to the provisions of Clause 11), the other Party may serve a written notice on the Party in breach specifying the breach and requiring it to be remedied within:
- 16.2.1 Twenty-five (25) Working Days from the date of receipt of such breach notice; or
- 16.2.2 in case of emergency (excluding financial obligations) within such shorter period as the Party not in breach may reasonably specify,
- (“Breach Notice”).**
- 16.3 If the Party fails to remedy the breach within the period stated in the Breach Notice, the other Party may terminate this Agreement by providing two (2) weeks’ written notice. If the Party in breach

SUBJECT TO CONTRACT/CONTRACT DENIED

- remedies the breach within such two (2) weeks' notice period, this Agreement shall not terminate as a result of such notice.
- 16.4 In the event the Service Provider fails to pay an undisputed invoice within the time provided in the Breach Notice, NBI may initiate credit vetting as defined in Clause 17 of this Agreement. The purpose of this vetting is to establish whether the non-payment is likely to cause a specific financial risk to NBI, due to the financial circumstances of the Service Provider.
- 16.5 If justified by credit vetting, NBI may request a financial security guarantee following the principles outlined in Clause 17 Credit Assessment and Credit Risk Management. Failure (within the time specified in Clause 17 Credit Assessment and Credit Risk Management or refusal (at any time) by the Service Provider to provide a financial guarantee shall give NBI the right to terminate this Agreement with seven (7) Working Days' notice.
- 16.6 This Agreement may be terminated immediately by either Party by written notice (or on the termination of such other period as such notice may specify) if the other Party:
- 16.6.1 is unable to pay its debts within the meaning of the Companies Acts 2014; or
 - 16.6.2 has a receiver or examiner appointed or has been subject to an application for the appointment of a receiver or an examiner in relation to all or any of its assets or an encumbrancer has taken possession of all or a material part of its assets; or
 - 16.6.3 has an order made or a resolution passed for its winding up (other than for the purpose of amalgamation or reconstruction); or
 - 16.6.4 enters into a voluntary arrangement with creditors under the Companies Acts 2014; or
 - 16.6.5 ceases to carry on business.
- 16.7 NBI shall be further entitled to terminate this Agreement immediately by notice in writing to the Service Provider if the Service Provider ceases to be an Authorised Operator.
- 16.8 The Service Provider may terminate this agreement at any time by giving NBI not less than twelve (12) months' written notice.
- 16.9 The Service Provider acknowledges that it shall not be entitled to any compensation upon the expiry or in the event of termination of this Agreement by NBI pursuant to the provisions of this Clause 16.9 and that upon such expiry or termination any sum due by the Service Provider to NBI shall become immediately payable.
- 16.10 The basis of NBI's right to make the Products available is the NBP Agreement. NBI shall have the right to: (i) suspend or cease providing any or all of the Products; and (ii) terminate this Agreement where it is required to do so pursuant to the NBP Agreement (including under a remedial plan or to ensure compliance with the Pricing Rules).

SUBJECT TO CONTRACT/CONTRACT DENIED

16.11 Termination of this Agreement shall not be deemed a waiver of a breach of any term or condition of this Agreement and shall be without prejudice to a Party's rights, liabilities or obligations that have accrued prior to such termination.

17 Credit Assessment and Credit Risk Management

17.1 As part of the Onboarding Process, NBI shall be entitled to carry out credit vetting of a prospective Service Provider prior to (i) entering into this Agreement; or (ii) providing Products to a Service Provider. The Service Provider shall provide NBI with such information as NBI may request at any time for the purpose of determining the Service Provider's creditworthiness.

17.2 Should the result of the credit vetting of a prospective Service Provider confirm that the provision of the Products poses a financial risk which is greater than can be controlled by a credit limit, NBI may request a form of financial security. The level of security requested shall be proportional to the risk involved and may be provided by a means such as bank deposit or guarantee.

17.3 NBI may carry out credit vetting of an existing Service Provider where NBI has reasonable concern about the ability of the Service Provider to cover debts including without limitation where NBI has evidence of a poor payment history or the Service Provider's credit rating has been downgraded or threatened to be downgraded. The method to be used will be communicated to the Service Provider and will be standard to all Service Providers.

17.4 Should the result of credit vetting of an existing Service Provider confirm the existence of a financial risk, NBI has the right to request a form of financial security. The level of security requested shall be proportional to the risk involved and shall take due account of historic levels of payments, liability, payment frequency and credit terms. The financial security may be provided by a means such as bank deposit or guarantee, and NBI shall not unreasonably refuse to accept any other form of financial guarantee proposed by the Service Provider. The financial security will be subject to Quarterly review and will be removed or reduced where the security or its level is no longer justified. NBI reserves the right to treat failure to provide an agreed security within twenty-five (25) Working Days (or such longer period as NBI may reasonably allow) of the date of NBI's request as a breach of this Agreement.

17.5 NBI may, at any time, require the Service Provider 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 NBI is/are appropriate as proportionate security against the possibility of the Service Provider's non-compliance with or non-observance of any of the provisions hereof (including failure to pay Charges due). NBI reserves the right to treat refusal to provide such security or failure to provide such security within twenty-five (25) Working Days (or such longer period as NBI may reasonably allow) of the date of NBI's request for the same as a breach of this Agreement by the Service Provider.

17.6 Credit terms are subject to review by NBI from time to time and NBI shall at all times have the right to suspend or vary any credit terms granted.

17.7 For avoidance of doubt, any Disputes relating to credit vetting and credit management shall be subject to the conditions set out in Clause 15 of this Agreement.

18 Confidentiality

18.1 Pursuant to this Agreement, a Party may be given access to or acquire information which is proprietary or confidential to the other Party and its Affiliates, clients and Customers ~~and subject to the terms of the NBI Non-Disclosure Agreement signed as part of the NBI Onboarding Process.~~ Any and all such information obtained by either Party shall be deemed to be confidential and proprietary information. Each Party agrees to use the information solely for purposes of discharging obligations and exercising rights under this Agreement, to hold such information securely and in strict confidence and not to disclose such information to Third Parties or to use such information for any purposes whatsoever other than the provision and receipt of Products under this Agreement save where:

18.1.1 it is required on a need to know basis to its employees, agents, contractors or sub-contractors to ensure compliance with the provisions of this Agreement;

18.1.2 it is in the public domain other than in breach of this Agreement;

18.1.3 it is or becomes publicly available through no fault of the Service Provider; or

18.1.4 it is required to be disclosed by a government, regulatory or public service body (including the Minister and the Minister's duly appointed agents or delegates), National Regulator or a court or other comparable authority of competent jurisdiction;

18.1.5 it is or has been created independently by or for the Party without use or knowledge of such information,

provided that nothing in this Clause shall operate to prevent or preclude engagement by the Parties with the National Regulator or other regulatory authorities, in the exercise of a Party's rights and entitlements otherwise to engage with the National Regulator or other regulatory authorities.

~~18.1.4~~

19 Intellectual Property Rights

19.1 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 Rights.

20 Force Majeure

20.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligation under this Agreement caused by a Force Majeure Event. For such purposes a "**Force Majeure Event**" means any event beyond the reasonable control of a Party, including act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority, compliance with any

SUBJECT TO CONTRACT/CONTRACT DENIED

statutory, regulatory or legal obligation industrial disputes of any kind (whether or not involving either Party's employees), fire, lightning, explosion, flood, subsidence, weather of exceptional severity, outbreak of a viral animal disease in Ireland such as "foot and mouth disease" (in response to which the Government of Ireland has issued an order halting the operation of the relevant Party's business), acts or omission of persons for whom neither Party is responsible or any other cause whether similar or dissimilar outside its reasonable control.

- 20.2 The Party initially affected by a Force Majeure Event shall promptly notify the other of the circumstances in question and their effect on the performance of obligations under this Agreement, and the estimated extent and duration of its inability to perform or delay in performing its obligations ("**Force Majeure Event notification**").
- 20.3 Upon cessation of any service (including the provision of the Products by NBI and provision of the Service Provider Services) provided by the Party initially affected by a Force Majeure Event due to the effects of the Force Majeure Event that Party shall promptly notify the other of such cessation.
- 20.4 If as a result of a Force Majeure Event, the performance by the Party, initially affected, of its obligations under this Agreement is affected, such Party shall, subject to the provisions of Clause 20.6, perform those of its obligations not affected by a Force Majeure Event. In performing those of its obligations not affected by a Force Majeure Event, the Party initially affected by a Force Majeure Event shall deploy its resources such that (when taken together with other obligations to its customers and third parties) there is no undue discrimination against the other Party.
- 20.5 Each Party shall use its reasonable endeavours: (i) to avoid or remove the circumstances constituting a Force Majeure Event, and (ii) to mitigate the effect of the Force Majeure Event as and when it exists.
- 20.6 To the extent that a Party is prevented as a result of a Force Majeure Event from providing all of the Products to be provided under this Agreement, the other Party shall be released to the equivalent extent from its obligations to make payment for such Products or complying with its obligations in relation thereto.
- 20.7 Following a Force Majeure Event notification and if the effects of such Force Majeure Event continue for:
- 20.7.1 a continuous period of not more than 6 months from the date of the force majeure notification (whether or not notice of cessation has been given pursuant to Clause 20.3) any obligation outstanding shall be fulfilled by the Party initially affected by the Force Majeure Event as soon as reasonably possible after the effects of the Force Majeure Event have ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party;
- 20.7.2 a continuous period of 6 months or more from the date of the Force Majeure Event notification (and notice of cessation has not been given pursuant to Clause 20.3, the Party receiving the Force Majeure Event notification shall be entitled (but not obliged) to terminate this Agreement by giving not less than thirty (30) Working Days written notice to the other Party, provided that such notice shall be deemed not to have been given if notice of cessation is received by the Party receiving the Force Majeure Event notification prior to

SUBJECT TO CONTRACT/CONTRACT DENIED

the expiry of the thirty (30) Working Days' notice. If this Agreement is not terminated in accordance with the provisions of this Clause 20.7.2, any obligations outstanding shall be fulfilled by the Party initially affected by the Force Majeure Event as soon as reasonably possible after the effects of the Force Majeure Event have ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party.

21 Limitation of Liability

~~21.1 If NBI is in breach of any of its obligations under this Agreement or otherwise (including liability for negligence or breach of statutory duty) NBI's total liability to Service Provider shall be limited to the total amount of the Charges paid by Service Provider in the twelve (12) months immediately preceding the incident or action which has given rise to a claim.~~

~~21.221.1~~ If ~~the Service Provider~~ either Party is in breach of any of its obligations under this Agreement or otherwise (including liability for negligence or breach of statutory duty) ~~the Service Provider~~ such Party's total liability to ~~NBI~~ the other shall be limited to thirteen million euro (€13,000,000) in respect of any single incident or action which has given rise to a claim within a twelve-month period.

~~21.321.2~~ Neither Party shall be liable to the other in contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings, wasted expenditure or for any indirect or other consequential loss whatsoever arising in connection with the operation of this Agreement, howsoever caused.

~~21.421.3~~ Each provision of this Clause 21 is a separate limitation applying and surviving even if one or more such provisions is inapplicable or held unreasonable in any circumstances.

22 Insurance

22.1 The Service Provider shall insure at its own cost, throughout the duration of the [this Agreement], its liability in respect of:

22.1.1 employer's liability; and

22.1.2 third party liability for loss, injury or damage,

such insurances to carry a limit of indemnity of not less than €13,000,000 (thirteen million euro) per claim or series of claims arising from one event and unlimited in the aggregate.

23 Assignment of Rights and Obligations

23.1 Unless otherwise agreed in writing, and subject to Clause 23.2, 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. Such consent shall not be unreasonably withheld.

23.2 No consent is required under Clause 23.1 for an assignment of rights, benefits or obligations under this Agreement (in whole or in part) to an Affiliate of the assigning Party provided that:

23.2.1 such Affiliate is legally authorised to operate the network of the assigning Party;

SUBJECT TO CONTRACT/CONTRACT DENIED

- 23.2.2 the assigning Party shall promptly give notice to the other Party of any proposed assignment; and
- 23.2.3 no assignment shall be valid unless the assignee / successor agrees in writing to be bound by the provisions of this Agreement.
- 23.3 Nothing in this Agreement shall prevent NBI from novating or assigning its right and obligations under this Agreement to the Minister or a replacement supplier where required to do so under the terms of the NBP Agreement.
- 24 Minister Step-In**
- 24.1 The Service Provider recognises and agrees to comply with all of the Minister's step-in rights under the NBP Agreement ("**Step-In Rights**"). In the event that the Step-In Rights are invoked by the Minister in accordance with the NBP Agreement, the Minister will be entitled to take certain actions including the right to assume (either itself or through the appointment of a suitable Third Party) the rights and obligations of NBI pursuant to this Agreement.
- 25 Rights of Inspection, Reporting and Audit**
- 25.1 Subject to the provisions of this clause, the Service Provider shall at all times permit NBI or the Minister's representatives (including external auditors or advisors) (together, the "**Auditors**") to have access to:
- 25.1.1 the business records maintained by the Service Provider relating to the Products;
- 25.1.2 the Service Provider site(s) where the Service Provider Services using the Products are performed;
- 25.1.3 the Service Provider personnel who are passing the benefit of the Products to the Customers;
- 25.1.4 copies of Service Provider internal reports (including internal audit reports) relating to the provision of the Service Provider Services using the Products;
- 25.1.5 Service Provider's business premises in order to inspect any one of the above;
- 25.1.6 any additional information and / or documentation in connection with this Agreement that is reasonably required to be reported to the Minister pursuant to the terms of the NBP Agreement, including information in relation to the operational performance of the Products under this Agreement.
- 25.2 The Service Provider agrees to provide the Auditors with access to and / or copies of any information requested pursuant to this Clause 25.2 within five (5) Working Days from the time of any such request.
- 25.3 On an annual basis, the Service Provider will participate in and respond to NBI's reasonable information security questionnaire processes.

SUBJECT TO CONTRACT/CONTRACT DENIED

- 25.4 Upon reasonable request, the Auditors will arrange for their relevant subject matter experts to meet with the relevant subject matter experts of the Service Provider to review Service Provider's security controls and any deficiencies identified in same. The Auditors may view Service Provider's security-related policies and procedures, however, no documentation may be copied, shared, transmitted or removed from the Service Provider's premises, except as mutually agreed or required by applicable law.
- 25.5 Not more than once each year, and subject to the Service Provider's reasonable security requirements and availability of personnel (which shall be secured as soon as reasonably possible), the Service Provider will at the Auditor's request arrange a tour of the Service Provider's facilities for Auditors subject matter experts. In the event that an Auditor identifies any technical or operational deficiencies, the Service Provider will discuss such findings with the Auditor and the parties shall work together to develop a mutually agreeable remediation plan.
- 25.6 All non-public documentation and information disclosed to an Auditor in accordance with this clause shall be deemed proprietary and confidential information of the Service Provider. The Auditor shall not disclose such documentation or information to any Third Party or use it for any purpose other than evaluating the Service Provider's security controls, except (1) as may be permitted under the terms of this Agreement (including Clause 18 (Confidentiality)) and (2) that an Auditor may disclose information gained from the security questionnaire processes to its own external auditors and advisors provided that such external auditors and advisors are required to be bound by confidentiality obligations that are at least equivalent to those assumed by the Auditor disclosing such information.
- 25.7 The Service Provider will ensure that all information and materials to be provided to the Auditors pursuant to this Clause 25.7:

[25.7.1](#) will be kept in a form that is reasonably capable of audit pursuant to this clause 25.7.1; and

[25.7.2](#) will to the best of its knowledge, information and belief, be true, correct and accurate and will not be false or materially misleading in any way.

[25.8 - Without prejudice to any other audit right, NBI shall undertake no more than one audit and two spot checks pursuant to this Clause 25 in each calendar year of the Agreement unless otherwise required by the Minister or the Minister's Representative.](#)

26 Notices

- 26.1 A notice shall be duly served if:
- 26.1.1 delivered by hand, at the time of actual delivery;
 - 26.1.2 sent by facsimile, upon its receipt being confirmed;
 - 26.1.3 sent by recorded delivery post, two (2) Working Days after the day of posting.

SUBJECT TO CONTRACT/CONTRACT DENIED

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

26.2.1 If to the Service Provider [Telephone 01 xxxxxxxx Address, Facsimile 01 yyyyyyy]; and

26.2.2 If to NBI: Wholesale Contracts Manager, National Broadband Ireland, [3009 Lake Drive, Citywest, Dublin 24, D24 H6RR10](#) ~~Earlsfort Terrace, Dublin 2, D02 T380~~, Ireland, with carbon copy to the Head of Product at SP_engagement@nbi.ie.

or to such other addresses as the Parties may notify from time to time pursuant to this Clause 26 (*Notices*).

27 Entire Agreement

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

28 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.

29 Severability

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

30 Amendments

30.1 Any amendments, including changes to the Charges or changes to the Products required in order to give effect to NBI's rights or obligations under the NBP Agreement or specified by directions, decisions determinations, specific obligation, obligations, measures and requirements of the National Regulatory or other competent regulatory or statutory body, shall be deemed to be automatically incorporated into this Agreement with immediate effect or on such alternative date as specified by NBI, the Minister or a Minister Representative. In particular, the (i) Charges; or (ii) the nature of the Products, may be changed from time to time and published on NBI's website where NBI is required to make such changes under the terms of the NBP Agreement.

30.2 Notwithstanding Clause 30.1, the automatic incorporation of changes in the Agreement shall apply only to the Party subject to the obligations and to extent that the mandating body has jurisdiction to impose such obligations.

30.3 All other changes to this Agreement shall be in writing and agreed between the Parties to become effective and binding upon the Parties.

31 Relationship of Parties

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

32 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.

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

Signed for and behalf of **NBI INFRASTRUCTURE DAC**

Signature

Name (block capitals)

Title

Date

AND

Signature

Name (block capitals)

Title

Date

SUBJECT TO CONTRACT/CONTRACT DENIED

Signed for and behalf of **[SERVICE PROVIDER]:**

Signature

Name (block capitals)

Title

Date

Appendix 1 – Data Processing Agreement

THIS DATA PROCESSING AGREEMENT IS MADE BETWEEN:

(1) **NBI INFRASTRUCTURE DAC**, a company registered in Ireland, with company number 631656 having its registered office at [3009 Lake Drive, Citywest, Dublin 24, D24 H6RR, Ten Earlsfort Terrace, Dublin 2, D02 T380](#) (“**NBI**”)

and

(2) [**INSERT COMPANY**], a company incorporated in Ireland whose registered office is at [**INSERT DATE**] (the “**RSP**”).

BACKGROUND:

- A. Each Party is an Authorised Undertaking for the provision of electronic communication networks and services in Ireland pursuant to the Authorisation Regulations.
- B. NBI and the WSP/RSP entered into the Agreement on or around [] for the provision by NBI of certain broadband services to the WSP/RSP for the purposes of offering such broadband services to End Users.
- C. In the ordinary course of providing or receiving such services the Parties will be required to process, transmit and/or share Customer Personal Data. Further to the Agreement, the Parties agree to the provisions of this data processing agreement (the “**DPA**”) for the purposes meeting their respective obligations to each other under the Agreement and the Data Protection Laws in relation to such processing activities in respect of the Customer Personal Data.
- D. In particular, in connection with the RSP’s provision of the Service Provider Services, the RSP will provide certain Customer Personal Data to NBI in order to enable NBI to undertake certain data processing activities as a processor on behalf of RSP.

THE PARTIES AGREE as follows:

1. DEFINITIONS

In this DPA all defined terms in the Agreement shall apply. To the extent not otherwise defined in the Agreement, the following terms shall have the following meanings:

“**Agreement**” means the Agreement between NBI and the RSP.

“**Authorisation Regulations**” means European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (SI 335 of 2011);

“**Customer Personal Data**” shall in particular have the meaning as described in in the Data Processing Schedule 1, which forms part of this DPA;

“**Minimum Security Requirements**” shall mean the security measures specified in the Data Processing Schedule 2, which forms part of this DPA, as may be updated or reissued from time to time by the Parties in accordance with the terms of the Agreement;

“**Processing Purposes**” has the meaning as described in in the Data Processing Schedule 1, which forms part of this DPA;

“**Relevant Personnel**” means the Data Processor’s employees, agents and personnel and such other personnel of the Data Controller as may be approved in writing by the Data Controller from time to time in respect of access to the Personal Data;

“**Services**” shall mean the Service Provider Services as described in the Agreement;

“Standard Contractual Clauses” shall mean the model contract clauses set out in the European Commission’s Decision of 5 February 2010 on standard contractual clauses for the transfer of Personal Data to Processors established in third countries, under the Data Protection Directive as may be amended by the European Commission from time to time; and

“Supervisory Authority” shall mean the Irish Data Protection Commission or any other competent data protection supervisory in accordance with the GDPR.

2. APPLICATION OF TERMS OF THIS DPA

- 2.1. The Parties agree that terms of this DPA shall apply to and govern NBI's processing of Customer Personal Data where, in accordance with clause 6 of the Agreement, NBI acts as a processor on behalf of the RSP acting a controller.
- 2.2. To the extent that NBI processes Customer Personal Data independently of the Agreement, including where NBI obtains Customer Personal Data directly from End Users or subjects separate to the Agreement, NBI will in such circumstances act as an independent controller and, in doing so, shall comply with its obligations under Data Protection Laws.

3. DURATION

The provisions of this DPA shall apply from the Commencement Date for the duration of the Agreement and shall continue to apply to any processing of Customer Personal Data undertaken by NBI on behalf of the RSP after the termination of the Agreement.

4. DATA PROCESSING OBLIGATIONS

- 4.1. From the Commencement Date, where NBI processes Customer Personal Data provided to it by or on behalf of the RSP, as a processor in connection with the Processing Purposes, NBI agrees that it:
 - 4.1.1. shall process Customer Personal Data only for the Processing Purposes in connection with the provision of the Services, as described in Schedule 1 of this DPA, or as subsequently instructed in writing from time to time by the RSP;
 - 4.1.2. shall ensure that it shall not transfer the Customer Personal Data outside the European Economic Area (“EEA”) without the express written instructions of the RSP and where such instructions are received by NBI, such transfers of Customer Personal Data shall be undertaken in accordance with the Data Protection Laws;
 - 4.1.3. shall ensure that all Relevant Personnel authorised to be involved in the processing of Customer Personal Data for and on behalf of NBI have committed themselves to a duty of confidentiality in respect of Customer Personal Data;
 - 4.1.4. shall implement appropriate technical and organisational measures in accordance with Article 32 of the GDPR to ensure the security of Customer Personal Data, in particular as described in Minimum Security Requirements under Data Processing Schedule 2 of this DPA;
 - 4.1.5. shall only engage sub-contract or outsource the processing of Customer Personal Data under this DPA to any other person or Third Party processor (“**Sub-processor**”) subject to:
 - (i) having notified the RSP of the identity of such Sub-processor and obtaining the written authorisation of the RSP before engaging any such Sub-processor; and

SUBJECT TO CONTRACT/CONTRACT DENIED

- (ii) NBI putting in place binding contractual terms with such Sub-processor on terms no less onerous than those contained in this DPA;

4.1.6. taking into account the nature of the processing of Customer Data, NBI shall reasonably assist the RSP in meeting its responsibilities as a controller by putting in place appropriate technical and organisational measures to enable NBI to provide reasonable assistance on request from RSP in responding to any data subject requests received by the RSP in accordance with the Data Protection Laws;

4.1.7. on becoming aware of a “personal data breach” (as such term is defined in the Data Protection Laws) affecting the Customer Personal Data, NBI shall notify the RSP without undue delay and in any event within a period of [24] hours using the following contact details:

RSP email addresses	[●]	[●]
RSP phone number	[●]	[●]

4.1.8. on becoming aware of a personal data breach affecting Customer Personal Data, NBI shall provide reasonable assistance to the RSP in investigating and remediating any such incident(s);

4.1.9. depending on the nature of the processing activities, NBI shall not retain Customer Personal Data for any longer than is necessary having regard to the Processing Purposes;

4.1.10. on request, NBI shall reasonably assist the RSP in ensuring compliance with the RSP’s obligations to comply with Articles 32 to 36 of the GDPR (inclusive);

4.1.11. based on written instructions of the RSP, either return or securely delete the Customer Personal Data on the termination of the Agreement and relevant processing of Customer Personal Data. If NBI has not received instructions from RSP return or delete the Customer Personal Data within received within 25 Working Days of the effective date of termination of the Agreement, NBI shall by default delete the Customer Personal Data.

4.1.12. on written request, it shall make available to the RSP all information strictly necessary for the WSP/RSP to demonstrate compliance with its obligations under Article 28 of the GDPR, including records of the processing undertaken by NBI of the Customer Personal Data, on receipt of reasonable notice of not less than 10 Working Days;

4.1.13. on written request from the RSP, NBI shall contribute to audits, including inspections, conducted by or on behalf of the RSP of NBI’s relevant data processing facilities, data files, procedures or documentation as is strictly necessary for the RSP to demonstrate its compliance with the Data Protection Laws as they relate to the processing of Customer Personal Data. Any such right of audit is subject to the conditions that:

- (i) the RSP shall provide notice of not less than 20 Working Days in advance of any such audit;

SUBJECT TO CONTRACT/CONTRACT DENIED

- (ii) any such auditor nominated by the RSP must be independent, impartial and suitably qualified and must be acceptable to NBI and not, in NBI's reasonable opinion, present any conflict of interest or be a competitor of NBI;
- (iii) any such auditor, including a Third Party auditor nominated by the RSP, must commit itself to a written duty of confidentiality; and
- (iv) the RSP shall be permitted to undertake no more than one such audit in any 12-month period (save in exceptional circumstances, where the RSP is compelled to do so based on binding request from a Supervisory Authority).

4.2. For the purposes of Clause 4.1.5 above, the RSP hereby authorises the appointment of the appointed NBI connection company as Sub-processor on behalf of NBI to process Customer Personal Data for the purposes of providing certain of the Services.

4.3. Any additional costs incurred by NBI (which in NBI's ~~sole discretion~~ view, acting reasonably, exceed the costs reasonably contemplated by it) in order to ensure compliance with clauses 4.1.6, 4.1.8 and 4.1.10 shall be at the expense of the RSP. NBI shall provide written evidence in support of such costs incurred by it when requesting re-imbusement of such costs.

5. DATA CONTROLLER OBLIGATIONS

5.1. The RSP shall provide Customer Personal Data to NBI only to the extent necessary to enable NBI achieve the Processing Purposes and in this regard the RSP shall not provide any excessive or unnecessary Customer Personal Data to NBI. All Customer Personal Data provided by the RSP to the NBI shall be accurate and up to date.

5.2. The RSP acknowledges that NBI is reliant on the RSP for lawful instruction as to the extent of the NBI's processing of Customer Personal Data and accordingly the RSP agrees to provide clear written instructions in a timely manner to NBI, which shall at all times be in compliance with the Data Protection Laws.

5.3. Notwithstanding clause 5.2 above, NBI retains the discretion to refuse any such instruction received if, in NBI's reasonable opinion, such instruction infringes the Data Protection Laws or any other applicable law. In such circumstances, NBI shall notify in writing the RSP of same, including the reasons underlying its opinion.

5.4. As regards access to the NBI Operational Environment, the RSP shall ensure that its staff, employees, contractors and all other personnel authorised to access NBI Operational Environment, shall ensure the security and confidentiality of all passwords, credentials and access

SUBJECT TO CONTRACT/CONTRACT DENIED

codes. The RSP shall maintain an up to date list of all persons authorised by it to access, upload and download data to and from the NBI Operational Environment.

6. APPLICABLE PROVISIONS

- 6.1. To the extent there is any conflict between the provisions of this DPA and the Agreement concerning the processing of Customer Personal Data, the provisions of this DPA shall in all such cases prevail over the provisions of the Agreement.

- 6.2. Subject to clause 6.1 above, all other provisions of the Agreement shall continue to apply and govern the provision of the Services.

DATA PROCESSING SCHEDULE 1 OF DPA

DESCRIPTION OF CUSTOMER PERSONAL DATA AND PROCESSING PURPOSES

<p>1. Categories of Data Subject</p>	<p>The data subjects are comprised of End Users of the broadband services provided by the RSP (and in some limited cases, neighbors, friends or other points of contact for purposes of facilitating appointments.</p>
<p>2. Categories of Customer Personal Data</p>	<p>- Contact details: End-User names, personal addresses and contact telephone numbers (including mobile and/or landline) (together “End User Contact Details”); and</p> <p>- Appointment information: Details of appointments / orders to perform eligibility check-ups and place orders from End Users (together “Appointment Information”).</p>
<p>3. Duration of processing</p>	<p>See clause 3 of the DPA.</p>
<p>4. Processing Purposes</p>	<p>A. General purpose: NBI will provide a web portal and web services that RSP will access to perform eligibility checks, place orders for the Services, create/schedule appointments for End Users, create/track faults for End Users.</p> <p>B. Specific data processing: The NBI operational environment is used to connect NBI RSPs with NBI in order to deliver the Services to End Users. The following data flows are applicable:</p> <ol style="list-style-type: none"> 1. RSP provides contact details to NBI for appointment reservation purposes; 2. NBI’s poll gateway for work orders, which contain the contact details from the appointment reservation; and 3. If an RSP is viewing work orders for the Services or appointments on NBI portal front-end, then this data would go over VPN between the RSP and NBI’s platform.
<p>5. Physical location of Customer Personal Data</p>	<p>Amazon web services (servers located within the EEA).</p>

**DATA PROCESSING SCHEDULE 2 OF DPA
MINIMUM SECURITY REQUIREMENTS**

NBI shall in particular implement the following technical and organisational security measures to ensure the security of Customer Personal Data:

1. Encryption-at-rest: Personal Data for appointments will be encrypted (by https and SSL certs) web services and portal access to this data (whether submitting or viewing via the NBI operational environment).
2. Encryption-at-rest: Similarly, the web services used by retail service provider (RSP) to access this information will also be encrypted (HTTPs and SSL certs).
3. Encryption-in-transit: All access to BSS data – whether by Managed Service Front-End or Web Services will be encrypted in transmission.

Schedule 1 – Co-Location Product Description

1. Co-Location Product Overview

The NBI Co-Location product enables Service Providers to order and use serviced rack space within one of the 33 NBI PoH sites. It is used in conjunction with the NBI IBH Interconnect Product. Co-Location is required for NBI products such as Wholesale VUA and Symmetric Ethernet Services (SES).

The key product offering includes:

- Pre-built rack space rentable in 2U increments, with the same standard charge for all POHs
- Air conditioning and guaranteed DC power (99.99%) provided as standard
- AC power available to facilitate Service Provider ancillary equipment (e.g. panellist equipment for performance monitoring)
- Access to the Service Provider Rack space is on a 24 x 7 x 365 basis
- Unsupervised access available upon completion of an NBI accreditation process
- Monitoring of facilities (heat, air conditioning, power etc.) and security
- Cable management is provided within the Co-Location Site for use by WSP/RSPs

The Co-Location product can be ordered through the NBI ordering form via the Service Provider portal or via the NBI APIs. Full details on ordering and assurance processes are detailed in the Co-Location Process Manual.

The product elements are as detailed below. These are set out in more detail in the Co-Location Price List.

Table 1 Product elements	
Product Set	Charge mechanism
2U Shelf space	Set-up and Annual Rental
AC charge per kW	Annual Rental
DC charge per kW	Annual Rental
Unescorted Access Accreditation (6 people)	Set-up
Unescorted Access Accreditation Renewal	Annual Recurrence
Supervised Access Emergency	Per Visit
Supervised Access 5-day notice	Per Visit

NBI also provides an SLA for Co-Location. Note that the Service Provider must supply, install, operate and maintain all their own equipment in the serviced rack space.

1.1. Key Co-Location Product Attributes

1.1.1. Security

All Co-Location buildings or cabins have a secured perimeter fence surrounding the cabin/building with remote security monitoring 24 x 7 x 365 and secure access to all Co-Location Sites. Access to each Co-Location Site is controlled by the NBI NOC and requires a swipe card or remote NOC access. All Co-Location Sites (PoHs) have internal cameras to monitor activity in each site. A sample camera view is illustrated in Figure 1.

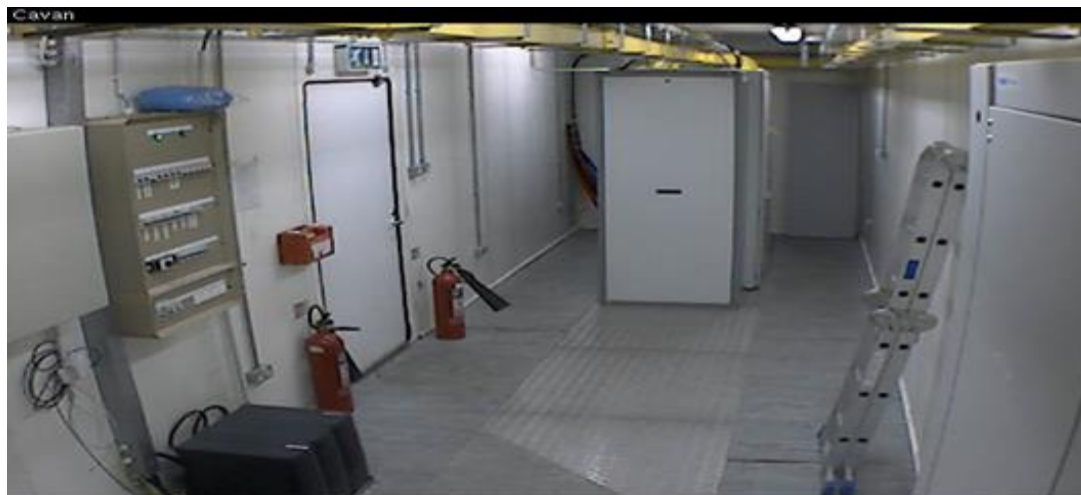


Figure 1: Internal PoH Security Camera view

1.1.2. Access to site

There is remote monitoring of all Co-Location Site facility access, so access to the Service Provider equipment is available 24 x 7 x 365. Supervised Co-Location Site access is as outlined below. Unsupervised Co-Location Access is available on completion of a suitable accreditation process approved by NBI. Charges will apply for Accreditation and for Supervised Co-Location access.

Table 2 - Notice Period and type of access		
Access Type	Notice*	Hours*
Co-Location Access Accreditation**	5 Working days' notice	Normal Working hours
Supervised Co-Location Access	Emergency notice	Emergency notice
Supervised Co-Location Access	5 Working day notice	Normal Working hours
Unsupervised Co-Location Access	None**	24x7x365

* Normal Working hours 08:00 – 20:00. Out of hours access by pre-arrangement only.

** The accessor to call the NOC when on-site to verify identity and enable the card.

Physical access to each PoH is controlled by the NOC and requires a swipe card or remote access by the NOC.

1.1.3. Facilities Management

The NOC monitors power, smoke detection, water ingress, atmosphere, security and communication from the Co-Location Site to the NOC with in band and out of band communications. The temperature of Co-Location Sites are maintained at between 18-22°C. Humidity levels can vary between 20% and 80%.

1.1.4. Shelf Space Footprint

The rack will be pre-built by NBI and available shelf space will be presented on the Secure Portal and can be ordered on the Secure Portal in increments of 2U. The Standard Rack Footprint is 2000mm high x

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600mm wide. Of the racks being deployed, Rack 1 is 2000mm x 600mm x 900mm, Rack 2 and Rack 3 are 2000mm x 600mm x 300mm, configured back to back.

The Service Provider fibre Interconnect will be made available in the Service Provider shelf space labelled appropriately. The Service Provider is only permitted to work on their own fibres which will be routed to the rack through the Co-Location cable management system. Fibre cables will be managed by in-rack cabling systems or overhead cabling management systems.

1.1.5. DC Power

Dual-fed 48V DC power (A&B power feeds) is provided to a circuit breaker panel at the top of the rack. Each will be capable of providing up to 60 amps in total. DC power is available to a maximum of 20% of the existing DC system capacity at the Co-Location Site and is guaranteed under SLA at 99.99% availability.

1.1.6. AC Power

230V AC power can be provided. AC power is provided with no SLA.

1.1.7. Air Conditioning

Based on the equipment to be installed, NBI will work with the Service Provider on any specific air conditioning requirements. Charges will apply for any additional air conditioning infrastructure installed to accommodate the Service Provider.

1.1.8. Cable Management System

At each Co-Location Site there are cable trays running above all racks for electrical cables and separate yellow enclosed trunking for all optical cables.

1.1.9. Footprint Heat Dissipation

The individual rack space heat dissipation must not exceed 2kW. NBI may request heat data on dissipation levels of their equipment from the Service Provider.

1.1.10. Earthing

All racks are earthed. The Service Provider is responsible for the provision, installation and maintenance of earthing of all their equipment within the NBI provided Co-Location rack space. NBI will be responsible for earthing the rack.

1.1.11. Access from the Rack to the Service Provider Network

NBI will nominate a meet-me chamber close to the Co-Location Site where the Service Provider can connect from the Co-Location Site to its network via an In-Span Interconnect product. This will be detailed in the site pack. The Service Provider will access the NBI chamber as detailed in the Co-Location Process Manual.

1.1.12. Prohibited Areas

Within the Co-Location Site, the Service Provider cannot access the main ODF, AC Panel, DC Panel, air-conditioning and UPS. The Service Provider can only work on their own equipment. Only Co-Location Site owner, NBI personnel or their authorised subcontractors can work on power air conditioning and the ODF. The Service Provider is only permitted to work on their own fibres and equipment in their own rack space.

1.2. Forecasting and Ordering

A Service Provider must submit forecasts to NBI outlining the location and type of Physical Co-Location they wish to order. This should be in the form of a 12-month rolling forecast, submitted on a quarterly basis.

Full details on the forecasting process is available in the Co-Location Process Manual, available on the NBI website or directly from the NBI Account Manager. Requests for Co-Location space outside the forecast will be treated on a case-by-case basis.

1.3. Co-Location Service Level Agreement

Details of the SLA are outlined in the Co-Location SLA document. This document is available on the NBI website or directly via the Service Provider's NBI Account Manager.

Schedule 2 – Co-Location Product Billing

Connection, rental and one-off charges exist for all NBI Co-Location Products. All details of the relevant charges are outlined in the Co-Location Price List contained within Schedule 3 of this Reference Offer. Pricing details may also be obtained directly from the Service Provider's NBI Account Manager.

Rental charges are billed annually in advance and will include any broken period rentals (on a pro-rata basis) from the time of installation. A Minimum Period of Service is applicable to all Co-Location orders.

Invoices are issued annually detailing connection, one-off, Managed Services (if applicable) and rental charges payable. The Co-Location Billing details will be described in full as part of the NBI Process Manual and will be published on the Portal on the NBI Website

Schedule 3 – Co-Location Price List

This Price List sets out the charges applicable in respect of the Co-location products only (the “Product”). For information on pricing for alternative NBI product sets, please visit the NBI website or consult with your NBI Account Manager.

These prices may increase or decrease in accordance with the provisions of this Reference Offer. All pricing changes will be subject to the defined NBI change management process in accordance with the rules of the Project Agreement in place between NBI and DCCAE and will be reflected in the published NBI Co-Location Products Price List.

Rack space is pre-built and rentable in 2U increments specifically for the delivery of NBI and WSP/RSP products and services. Preparation and rental charges are aligned across urban and rural PoHs.

Air conditioning and guaranteed DC power are standard in all PoHs. DC and AC Power usage is charged by Amp (or part thereof) and is provided to the rack. 48V DC A&B power feeds to a circuit breaker panel in the designated rack.

Use of the Unescorted Access option is encouraged as it is more flexible with 24 x 7 x 365 access, requires no pre-booking and once accredited has a far smaller cost impact on the Service Provider.

Co-Location Charges

The table below details annual charges applicable to the Co-Location Product for preparation, rental, power, and access as required.

Table 1 – Co-Location Charges				
Charge Ref	Charge Description	Effective From	Effective To	Wholesale Price
	Site Preparation			
CL1.0	1 st footprint	01/04/2020	-	€750 per 2U
CL2.0	2 nd and subsequent footprints	01/04/2020	-	€200 per 2U
		01/04/2020		
	Site Rental	01/04/2020		
CL3.0	1 st footprint	01/04/2020	-	€750 per 2U
CL4.0	2 nd and subsequent footprints	01/04/2020	-	€400 per 2U
		01/04/2020		
	Site Licence - Power	01/04/2020		
CL5.0	AC Power at 230V, per Amp	01/04/2020	-	€370
CL6.0	DC power at 48V, per Amp	01/04/2020	-	€80
		01/04/2020		
	Access	01/04/2020		
CL7.0	Unescorted Access – 1st time application	01/04/2020	-	€750 (for 6 staff)
CL8.0	Unescorted Access – Retest	01/04/2020	-	€400 every 4 years
CL1.1	Escorted Access – Planned 09:00 – 17:00	01/04/2020	-	€60 (per hour) ²
CL1.2	Escorted Access - Planned 17:00 – 09:00	01/04/2020	-	€120 (per hour) ³
CL1.3	Escorted Access - emergency	01/04/2020	-	€120 (per hour) ⁴

² 3 hour minimum duration

³ 3 hour minimum duration

⁴ 3 hour minimum duration

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