



An Coimisiún um  
**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

# Wholesale Compliance litigation update

Outcome of Cases 481 and 568 and related  
litigation.

## Information Notice

**Reference:** ComReg 18/110

**Version:** Final

**Date:** 10 December 2018

**An Coimisiún um Rialáil Cumarsáide**  
**Commission for Communications Regulation**

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## Additional Information

Document No:	18/110
Date:	10 December 208

1. The Commission for Communications Regulation (“ComReg”) has today reached a settlement with Eircom Limited (“Eircom”) in respect of certain compliance litigation which had been brought to the High Court. It has been agreed that Eircom will pay ComReg €3 million in respect of the compliance litigation and certain open compliance cases. Eircom has also agreed to discontinue the High Court proceedings that it had issued which had challenged the validity of the legislation upon which ComReg’s compliance litigation had been based. ComReg has agreed to set aside its compliance litigation and to close certain other open compliance cases, subject to remediation by Eircom of certain matters at issue in some of those cases<sup>1</sup>.
2. As part of the agreement ComReg and Eircom have agreed a set of commitments which, when implemented, will result in the establishment and operation of an enhanced Regulatory Governance Model (“RGM”) in Eircom. These commitments implementing the RGM are referred to as the RGM Undertakings and are detailed in the Settlement Agreement. A number of the key RGM Undertakings (“Performance Milestones”) will be underpinned by a cash amount of €9 million placed in escrow which can be drawn down by ComReg in the event of a late or non-delivery of the Performance Milestones by Eircom.
3. Under the Settlement Agreement, Eircom will implement a number of important measures to improve Eircom’s internal governance in respect of regulatory matters. Important elements include:
  - a. The creation of an Independent Oversight Body (“IOB”) with majority independent membership. This body will be charged *inter alia* with overseeing and assessing Eircom’s regulatory governance arrangements. The IOB will consist of 5 members, the majority of its members including its Chairperson will be independent and appointed by ComReg with two further members appointed by Eircom from its board;
  - b. Improved internal governance arrangements in Eircom and detailed reporting to the IOB;
  - c. Eir will increase the independence of its Wholesale arm from rest of Eircom’s business with increased transparency over internal decision making; and
  - d. Measures to remediate Eircom’s IT systems and associated controls to ensure that access to IT systems is appropriately governed.
4. ComReg has also agreed to consult publicly on how it might compute proposed financial penalties in future compliance litigation in respect of breaches of obligations imposed on operators under the Access Regulations<sup>2</sup>.

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<sup>1</sup> This is without prejudice to both sides’ positions in the litigation. Eircom has not admitted any liability.

<sup>2</sup> The European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No 334 of 2011).

5. ComReg has published, along with this Information Notice, a non-confidential version of the Settlement Agreement which inter alia includes the RGM Undertakings referred to above<sup>3</sup>, the Performance Milestones<sup>4</sup> and the charter underpinning the operation of the IOB<sup>5</sup>.

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<sup>3</sup> Annex 1 of the Settlement Agreement.

<sup>4</sup> Annex 2 of the Settlement Agreement.

<sup>5</sup> Annex 3 of the Settlement Agreement.

**This agreement is dated: 10 December 2018**

**(1) EIRCOM LIMITED**

**AND**

**(2) THE COMMISSION FOR COMMUNICATIONS REGULATION**

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**SETTLEMENT AGREEMENT**

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## **PARTIES**

- (1) Eircom Limited, a company incorporated in Jersey with registration number 116389 and having its registered office at 22 Grenville Street, St Helier, Jersey, JE4 8PX and having its principal place of business at 1 Heuston South Quarter, St. John's Road, Dublin 8, D08 A9RT ("**eir**").
- (2) The Commission for Communications Regulation, 1 Dockland Central, Guild Street, Dublin 1, D01 E4X0 ("**ComReg**").

## **BACKGROUND**

- (A) eir is an authorised provider of electronic communications networks and services in Ireland.
- (B) ComReg was established by the Communications Regulation Act 2002 and is the statutory body responsible for the regulation of the electronic communications sector in Ireland.
- (C) On 16 June 2017, ComReg issued two sets of legal proceedings against eir in the Irish High Court (Record Nos. 2017/186 MCA and 2017/187 MCA). The first proceedings, concerned four (4) alleged breaches of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No 334 of 2011) (the "**Access Regulations**") ("**Case 481**"). The second proceedings arose from an alleged breach of the Access Regulations in a separate matter ("**Case 568**"). In the proceedings that were issued, ComReg sought declarations of non-compliance and the imposition of financial penalties of €5,011,943, €1,587,210, €986,726, and €498,580 for Case 481 and a financial penalty of €1,666,185 for Case 568 (the "**Enforcement Proceedings**"). On 22 June 2017, eir issued legal proceedings in the Irish High Court against the Minister for Communications, Climate Action and Environment, Ireland and the Attorney General challenging the validity of the provisions of Regulation 19 of the Access Regulations invoked by ComReg in seeking to impose the financial penalties on eir in the Enforcement Proceedings. This matter was set down for hearing on 14 June 2018 (Record No. 2017/5929P) (the "**Regulation 19 Proceedings**").
- (D) The Enforcement Proceedings were stayed by Orders of the High Court (Mr. Justice Haughton) of 18 October 2017 pending resolution of the Regulation 19 Proceedings or further order. ComReg appealed these orders for stays in the Enforcement Proceedings (the "**Stay Appeals**") and there is currently a return date of Friday, 21 December 2018 for directions in these appeals.
- (E) ComReg was joined as a Defendant to the Regulation 19 Proceedings by Order of the High Court (Ms. Justice Murphy) of 14 November 2017.

(F) The parties agreed to vacate the hearing date of 14 June 2018 and to adjourn the hearing of the matter generally, in order to allow settlement discussions to take place. The Regulation 19 Proceedings are listed for mention on 17 December 2018.

(G) In addition to the Enforcement Proceedings, the following nine (9) open compliance cases against eir form part of the settlement agreement:

- Case 632: Ducts
- Case 683b: Poles
- Case 669: Change Control
- Case 806: Regional Handover
- Case 815: FTTH Rollout
- Case 859: BECS Pricing
- Case 872: Address Matching
- Case 1084: Poles
- Case 1231: Pricing Information

(the “**Open Compliance Cases**”)

(H) The parties have now agreed terms for the full and final settlement of the Regulation 19 Proceedings, the Enforcement Proceedings and the Open Compliance Cases and wish to record those terms of settlement, on a binding basis, in this Settlement Agreement (the “**Settlement Agreement**”).

## **IT IS HEREBY AGREED AS FOLLOWS:**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 DEFINITIONS**

In the Settlement Agreement, unless the context otherwise requires, the words and expressions have the meanings as outlined at in the Definitions at Annex 5 of the Settlement Agreement.

#### **1.2 INTERPRETATION**

In the Settlement Agreement:

- a) annex, clause, schedule and paragraph headings shall not affect the interpretation of the Settlement Agreement;
- b) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- c) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;

- d) a reference to a party shall include that party's successors, permitted assigns and permitted transferees;
- e) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- f) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- g) a reference to a time of day is to Dublin time;
- h) a reference to writing or written includes fax and email;
- i) an obligation on a party not to do something includes an obligation not to allow that thing to be done;
- j) unless the context otherwise requires, a reference to an annex, clause or schedule is to an annex to, clause of, or schedule to, the Settlement Agreement and a reference to a paragraph or clause is to a paragraph or clause of the relevant schedule or annex;
- k) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- l) ComReg cannot fetter its discretion in relation to any of its statutory powers or obligations and nothing in the Settlement Agreement is to be construed as fettering ComReg's discretion in any way; and
- m) nothing in the Settlement Agreement supersedes or takes precedence over any regulatory obligation eir has.

## **2. THE REGULATION 19 PROCEEDINGS**

- 2.1 Eir hereby agrees that, at the earliest opportunity after the execution of the Settlement Agreement, it shall take all necessary steps to discontinue the Regulation 19 Proceedings with no order made as to costs.
- 2.2 The parties to the Settlement Agreement agree that they shall each bear their own costs in relation to the Regulation 19 Proceedings. It is acknowledged that the Minister for Communications, Climate Action and Environment, Ireland and the Attorney General are not a party to this settlement and that their costs will be dealt with separately.
- 2.3 The parties agree that the respective positions of each party as adopted in the course of the Regulation 19 Proceedings are preserved for the purposes of any future proceedings. The parties agree that eir will not be precluded, estopped or otherwise prevented from raising the issues, arguments and grounds raised in the Regulation 19 Proceedings in any subsequent proceedings (including but not limited to any proceedings challenging Regulation 19 of the Access



Regulations, or any like provision), and that no argument of issue estoppel, res judicata, abuse of process or other such argument will be raised against eir in any subsequent proceedings on the basis of any of the arguments, issues or grounds raised by eir in the Regulation 19 Proceedings.

- 2.4 For the avoidance of doubt, eir's execution of the Settlement Agreement, payment of the settlement monies described in clause 3 below, and any future engagement by eir with ComReg (including but not limited to engagement in any consultation processes regarding Regulation 19 of the Access Regulations or any like provisions) are wholly without prejudice to eir's position in the Regulation 19 Proceedings and to eir's rights to raise the arguments, grounds and issues raised in the Regulation 19 Proceedings in any legal proceedings in the future and do not constitute an acceptance by eir of the validity of Regulation 19 of the Access Regulations or of ComReg's right to seek the imposition of financial penalties under Regulation 19 of the Access Regulations or any like provision.

### **3. THE ENFORCEMENT PROCEEDINGS AND THE OPEN COMPLIANCE CASES**

- 3.1 Eir shall pay to ComReg a sum of money in respect of the settlement of the Enforcement Proceedings and the Open Compliance Cases in the amount of €3,000,000 (three million Euro). The payment of each of the amounts below will be on the basis that time will be of the essence.

Payment shall be made in instalments as follows:

€1,000,000 (one million Euro) on 1 July 2019;  
€1,000,000 (one million Euro) on 1 January 2020; and  
€1,000,000 (one million Euro) on 1 July 2020;

by way of bank transfer to:

**Account Name:** [REDACTED]

**Address:** [REDACTED]  
[REDACTED]  
[REDACTED]

**Swift Code:** [REDACTED]

**IBAN:** [REDACTED]

**Sort Code:** [REDACTED]

**Account No:** [REDACTED]

- 3.2 ComReg hereby agrees that, at the earliest opportunity, and on the condition that clause 3.1 and clause 6 have been fully complied with by eir, it shall take all necessary steps to have the Enforcement Proceedings, including the Stay Appeals, struck out on or before the 21 December 2018, with no order made as to costs, with liberty to re-enter in the event that clause 3.1 or clause 6 have not been fully complied with by eir.
- 3.3 The parties agree that they shall each bear the entirety of their own costs in relation to the Enforcement Proceedings, including any costs relating to the appeal of the Stay Orders as incurred up to the date of the striking out of the Enforcement Proceedings and the Stay Appeals.

#### **4 OPEN COMPLIANCE CASES**

- 4.1 Within one (1) month of the date of the Settlement Agreement, ComReg shall confirm in writing the closure of the Open Compliance Cases without any further action, penalty or recourse to the High Court save that:
- a) in relation to Compliance Cases 632 and 1084 the following steps will be taken by eir:
    - (i) Within 2 months of the date of the Settlement Agreement, eir shall amend clauses in the Civil Engineering Infrastructure licence agreements and / or Access Reference Offer to clarify terms relating to indemnity/limitation of liability so that those clauses pose no barrier to entry and are reasonable and/or reciprocal and appropriate;
    - (ii) Within 3 months of the date of the Settlement Agreement update the Access Reference Offer to provide Access to Ingress and Egress points, subject to the Civil Engineering Principles at Annex 4 of the Settlement Agreement;
    - (iii) Within 6 months of the date of the Settlement Agreement provide the following CEI to at least an Equivalence of Outputs standard:
      - a. Direct Duct Access, Sub-duct Access;<sup>1</sup>
      - b. Chambers access<sup>2</sup> subject to “*Civil Engineering Infrastructure principles for access to Underground Utility Boxes and Conduits*”;

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<sup>1</sup> See principle 3 of the Civil Engineering Principles at Annex 4 of the Settlement Agreement.

<sup>2</sup> ComReg acknowledges that eir may specify objectively justified, reasonable terms and conditions governing access to Chambers in order to safeguard network integrity. Such terms and conditions, and any associated operational processes/procedures governing access to Chambers, must be clearly documented and published by eir in order that Access Seekers can be aware of and clearly understand them. For the avoidance of doubt, access to Chambers is available to Access Seekers who purchase CEI access i.e. an Access Seekers

(iv) Within 2 months of the date of the Settlement Agreement provide a remediation plan for access to Passive Access Records for CEI to at least an Equivalence of Outputs standard; and

(v) Within 6 months of the date of the Settlement Agreement, service level agreements (“**SLAs**”) for Duct/Pole Access shall be updated to align with actual processes, tasks and timeframes associated with pre-ordering, ordering, provisioning (including but not limited to route preparation and sub-duct design) and service assurance for the CEI used by eir when delivering products and services.

b) in relation to Compliance Case 1231, where the requirements at paragraphs 18 and 19 (and in particular, sub-paragraph g) of the RGM Undertakings at Annex 1 of the Settlement Agreement are met within 9 months of the date of the Settlement Agreement, ComReg will then close Case 1231.

4.2 Save as provided at clause 4.1 above, Compliance Cases 632, 1084 and 1231 will remain open until ComReg is satisfied that the steps outlined at clause 4.1 have been taken by eir and full remediation is in place. For the avoidance of doubt, ComReg does not fetter its discretion in relation to further action in these cases until such time as they are closed.

## **5 PUBLIC CONSULTATION**

5.1. ComReg shall undertake a public consultation on its proposed methodology for the calculation of financial penalties for breaches by authorised undertakings of regulatory obligations imposed under the Access Regulations.

5.2. The parties acknowledge that the timing of the public consultation and the associated response shall be set out in ComReg’s Annual Action Plan.

5.3. Any participation by eir in said consultation is wholly without prejudice to eir’s position in the Regulation 19 Proceedings and to eir’s rights to raise the arguments, grounds, and issues, raised in the Regulation 19 Proceedings in any legal proceedings in the future and do not constitute an acceptance by eir of the validity of Regulation 19 or of ComReg’s right to seek the imposition of financial penalties under Regulation 19 (or any like provision).

## **6 REGULATORY GOVERNANCE MODEL (INCLUDING INDEPENDENT OVERSIGHT BODY)**

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who purchase CEI access for a particular Duct and Pole route may seek access to the Chambers along the Duct and Pole route.

In consideration of the Settlement Agreement, eir hereby agrees to:

- a) implement the RGM Undertakings as set out at Annex 1 to the Settlement Agreement;
- b) enter into a Performance Agreement as set out at Annex 2 to the Settlement Agreement; and
- c) Implement the provisions of the Escrow Agreement and, at execution of the Settlement Agreement, eir will evidence that it has authorised the transfer of €9 million in an Escrow Account.

## **7 COSTS**

- 7.1 Each party shall each bear its own legal costs in relation to the preparation and execution of the Settlement Agreement.
- 7.2 The Settlement Agreement supersedes and overrides any and all previous agreements between the parties and any court order regarding the legal costs in relation to the Regulation 19 Proceedings, or the Enforcement Proceedings including any costs relating to the Stay Appeals.

## **8 AUTHORITY**

- 8.1 Each party warrants and represents to the other with respect to itself that it has the full right, power and authority to execute, deliver and perform the Settlement Agreement.
- 8.2 The parties hereby agree to execute all documents and do all things necessary as may be requested by the other party to give full force and effect to the terms of the Settlement Agreement.

## **9 NO ADMISSION**

The Settlement Agreement is entered into in connection with the compromise of disputed matters and in the light of other considerations. It is not, and shall not be represented or construed by the parties as, an admission of liability or wrongdoing on the part of either party to the Settlement Agreement or any other person or entity.

## **10 ENTIRE AGREEMENT**

- 10.1 The Settlement Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating only to the subject matter of the Settlement Agreement.

10.2 For the avoidance of doubt, all obligations and requirements contained in primary or secondary legislation whether domestic or European and/or in Decision Notices, Decision Instruments and Directions made by ComReg, applying to eir, and in force immediately prior to the date of the Settlement Agreement, continue in force and eir shall comply with the same.

10.3 Nothing in the Settlement Agreement shall operate to limit ComReg in the exercise and performance of its statutory powers, functions or duties, as conferred on it under any primary or secondary legislation, whether domestic or European.

## **11 CONFIDENTIALITY**

Eir acknowledges that details of the Settlement Agreement may be published by ComReg in an Information Notice. ComReg agrees to consult with eir in advance of publication of any such Information Notice. The contents of any such Information Notice shall be entirely at ComReg's sole and absolute discretion, subject to the removal of any confidential or commercially sensitive information belonging to eir or ComReg.

## **12 GOVERNING LAW**

The Settlement Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with Irish law.

## **13 JURISDICTION**

Each party irrevocably agrees that the Irish courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Settlement Agreement or its subject matter or formation.

## **14 COUNTERPARTS**

The Settlement Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Settlement Agreement.

## **15 VARIATION**

No variation of the terms and conditions of the Settlement Agreement shall be effective unless it is in writing and signed by the parties. For the avoidance of doubt, no terms of the Settlement Agreement may be orally waived, varied, extended or discharged.

## **16 IOB and SUNSET**

- 16.1 The parties acknowledge that the IOB, established in accordance with the IOB Charter at Annex 3 of the Settlement Agreement, is not a body corporate under the Companies Act 2014.
- 16.2 Each party shall facilitate its appointees carrying out their functions as IOB Members in accordance with the Settlement Agreement and the IOB Charter.
- 16.3 The IOB shall remain in place for five (5) consecutive years following the date of the first IOB meeting held in accordance with the IOB Charter at Annex 3 of the Settlement Agreement. The IOB shall be requested by both parties to produce its final report not more than three (3) months after the fifth (5<sup>th</sup>) anniversary of its first meeting. After that date, eir shall have no obligation under the Settlement Agreement to support the maintenance of the IOB and eir shall then be entitled to replace the IOB with a committee comprising some or all of the executive or non-executive directors of eir to have oversight of regulatory matters. The delegated authority of this committee will be as determined by the Board.
- 16.4 The RGM Undertakings and the IOB are entirely predicated upon eir having significant market power (“**SMP**”) in one or more regulated markets (with the exception of the mobile voice call termination and fixed voice call termination markets). In the event that eir no longer has SMP in any particular market, then the RGM Undertakings will cease to apply in respect of that particular market. In the event that eir no longer has SMP in any market, then the RGM Undertakings will cease to apply in their entirety and the IOB may be dissolved.
- 16.5 Notwithstanding the terms of clause 16.3, ComReg shall be entitled to terminate the IOB at any time at its discretion in accordance with the provisions of clause 9 of the IOB Charter.

## **17 DISPUTE RESOLUTION**

Save in cases necessitating urgent action by either party, in the event of any dispute arising out of or in connection with the Settlement Agreement, the parties hereby agree that they shall first make a good faith effort to settle amicably any dispute which may arise between them under or in connection with the Settlement Agreement. Any dispute that the parties are unable to settle amicably after such effort shall be referred to mediation. If that dispute has not been settled pursuant to such mediation within 45 days of entering into mediation or within such other period as the parties may agree in writing, that dispute shall thereafter be decided by the courts of Ireland in accordance with Irish law.

**ON BEHALF OF THE COMMISSION**  
**FOR COMMUNICATIONS REGULATION**

SIGNED:

*mm*

DATE:

*10 Dec 2018*

**JEREMY GODFREY**

**COMMISSIONER**

SIGNED:

*Donal Leavy*

DATE:

*10 Dec 2018*

**DONAL LEAVY**

**DIRECTOR OF WHOLESALE**



ON BEHALF OF EIRCOM LIMITED

SIGNED:

*Carlan Lennon*

DATE:

*10/12/2018*

CAROLAN LENNON

CHIEF EXECUTIVE OFFICER

SIGNED:

*Stephen Tighe*

DATE:

*10/12/2018*

STEPHEN TIGHE

CHIEF FINANCIAL OFFICER

## Annex 1

### The RGM Undertakings

In consideration of the settlement, eir agrees to implement the RGM Undertakings detailed below.

#### **PART A - GOVERNANCE**

##### **GENERAL**

1. eir will put in place and document measures to manage, or where appropriate mitigate, potential regulatory related conflicts of interest, including:
  - a) an appropriate segregation of duties, functions, business lines and/or units;
  - b) establishing information barriers including the possibility of physical separation of certain business lines or units;
  - c) ensuring that there is appropriate access to regulated products and services; and
  - d) ensuring that there is appropriate transparency over decision making in relation to eir's regulatory obligations at the Board and within the Wholesale Function.
2. In implementing the RGM Undertakings eir will have regard to the principles and methodologies described in Schedule 3 to the IOB Charter at Annex 3 of the Settlement Agreement. Internal Audit, when performing reviews of relevant aspects of eir's governance will confirm to the IOB whether or not this approach has been applied and, if not, to identify and describe in what respects eir's practice is different.
3. The parties acknowledge the RGM Internal Documentation is subject to ongoing review in line with eir's regulatory obligations. Eir agrees to ensure that a full review of the entire risk environment will be completed within 18 months of the Settlement Agreement. An evaluation of existing controls as documented in the Risk and Control Matrix ("**RACM**") will take place in parallel. Eir agrees to design and implement any additional controls identified as part of this process and to update the RACM and RGM Internal Documentation accordingly within 20 months of the date of the Settlement Agreement.

##### **INDEPENDENT OVERSIGHT BODY ("IOB")**

4. eir will create the IOB with responsibility for the robust oversight of eir's governance structures as they apply to its regulatory obligations. The majority membership of the IOB will be independent members appointed in accordance with the IOB Charter at Annex 3 of the Settlement Agreement.
5. The IOB's mandate and operations shall be in accordance with the IOB Charter and associated schedules at Annex 3 of the Settlement Agreement.

6. The IOB will have adequate oversight of the measures put in place by eir to ensure capex and access to group functions, including IT, is allocated across the eir Group in line with eir's regulatory obligations in a non-discriminatory manner.
7. Eir will ensure that the IOB obtains at least the information and reports set out at Schedule 2 to the IOB Charter at Annex 3 of the Settlement Agreement on reporting. This IOB Charter may be amended from time to time by the IOB in consultation with the Board and ComReg. Information and reports supplied by Internal Audit will be provided directly to the IOB and copied to eir senior management at the same time. Information and reports provided by the first and second lines of defence will be made available to Internal Audit at the same time as it is made available to eir senior management. The RGM committee will make the first and second line reports available unchanged to the IOB except for the incorporation, as appropriate, of any observations from management.
8. It is acknowledged between the parties that ComReg has the right to make a request to the IOB for sight of any information or reports provided to the IOB and the IOB will on such request provide this information or reports to ComReg as soon as possible.
9. Eir will implement necessary structural changes and governance arrangements in order to ensure that eir's Wholesale Function operates transparently and in a non-discriminatory manner in accordance with eir's regulatory obligations, keeping in mind that the Wholesale Function is not a separate corporate legal entity within eir Group and overall strategic decisions are set by the eir Group CEO /CFO in accordance with decisions made by the Board.
10. Eir will ensure as far as reasonably practicable the independence of the Wholesale Function. Independence in this context means that Wholesale Function operates separately from eir's retail arm, treating all its Wholesale customers both internal and external in a non-discriminatory manner. In this regard, its culture, strategy and operational approach will be geared towards meeting all customers' needs, in an efficient and non-discriminatory manner.
11. Eir will increase the governance and operational independence of the Wholesale Function in relation to operational decision-making by creating a formal Wholesale Senior Management Team which will be responsible *inter alia* for wholesale regulatory governance with a Managing Director with formal terms of reference. Eir will underpin this with appropriate authority which will apply to address at least the matters listed a) to f) below;
  - a) operational decisions;
  - b) capex decisions;
  - c) development of regulated products including the treatment of access requests and prioritisation;
  - d) pricing and provision of active and passive regulatory access products;
  - e) appropriate handling of Confidential Regulated Information ("CRI") in divisions and functions; and

- f) regulatory matters including compliance with obligations and, where relevant, remediation of non-compliance.
12. The governance model for the Wholesale Function will appropriately separate it from the direct interests of eir Group's other functions and divisions and ensure the appropriate handling of CRI.
  13. The Managing Director(s) of the Wholesale Function will report to the IOB annually on how this is achieved.
  14. Wholesale Function related personnel will be located separately from non-Wholesale Function staff.
  15. Eir will put in place measures to ensure that capex and access to group functions including IT, is allocated across the eir Group in line with eir's regulatory obligations in a non-discriminatory manner. This will include at a minimum adequate oversight by the IOB.
  16. Eir will prepare a formal schedule of mandates clearly setting out the decision making authority granted to all senior management decision making fora which will be overseen by the CEO.
  17. Meetings of the Wholesale SMT will be formally minuted and decisions documented.
  18. Eir will create a separate Wholesale Pricing Function with a documented mandate. The head of this function will report directly to the Managing Director of the Wholesale Function. Eir will design, implement and embed appropriate controls to ensure non-discriminatory decision making and to manage the risk of sharing CRI with other business units.

## **NON-OPERATIONAL DECISION MAKING AND APPROVAL PROCESSES**

19. Eir will develop, implement, maintain and embed a formal decision making framework which will address all decisions that have relevance for eir's compliance with its regulatory obligations. The formal decision making framework will include identification of all relevant decision making fora, all decision makers, relevant processes and will clearly identify all relevant decisions. Each fora will have clear terms of reference. The scope of this decision making framework will include, but not be limited to, the following fora and processes.

### Fora

- a) Group Senior Management Team;
- b) Wholesale Senior Management Team;
- c) RGM committee;
- d) RAP change;
- e) Product development councils; and

- f) Portfolio board.

### Processes

- a) Capex Process;
  - b) Wholesale bid process including bespoke bid processes;
  - c) RAP change request process;
  - d) RAP development process;
  - e) RAP prioritisation process;
  - f) KPI generation and publication process; and
  - g) Wholesale pricing.
20. Eir will design, implement, embed and monitor controls to mitigate any risks of non-compliance with eir's regulatory obligations within the governance fora or decision making processes outlined above
21. Eir will ensure that CRI is managed appropriately. In particular meeting minutes will be required for each of the fora.

### **INCENTIVES**

22. All performance management and incentive remuneration of the Wholesale Function employees will reflect solely the objectives of the Wholesale Function.
23. The remuneration policies for all eir staff will include completion of Regulatory Code of Practice training as a prerequisite for inclusion in any incentive plan. Eir's disciplinary policy will also address breaches of the Regulatory Code of Practice by any member of eir staff.
24. Eir will ensure that the remuneration incentive arrangements for employees working in Internal Audit relating to RGM are based on its objectives and are not based on the financial performance of eir.

### **RISK MANAGEMENT**

25. All Regulatory Risk Management and Assurance ("RRMA") processes will be robust and effective to ensure the correct identification and mitigation of risks of non-compliance. Sufficient resources and expertise will be made available to ensure the proper operation of the RRMA processes. Appropriate metrics in relation to the operation of RRMA processes will be maintained.
26. The effectiveness of the RRMA framework will be reported to the IOB.
27. There will be a process to ensure that all relevant regulatory risks are identified. The scope of the risks to be addressed will include operations and non-operational risks including those relating to management decision making. There will be an effective risk management control for each identified regulatory risk. The correct operation of

controls should be recorded with sufficient clarity and detail such that the control can be operated, by assurance process owners, at all levels of the eir organisation, e.g. within business units, governance fora etc. in a consistent manner. In particular eir shall identify risks of non-compliance and apply appropriate controls in relation to, but not limited to, the following:

- a) setting prices for RAP services;
- b) allocation of capex to the Wholesale Function;
- e) wholesale bids including bespoke bids;
- f) eir's RAP development process including eir's RAP prioritisation process;
- g) eir governance fora and decision making processes with regard to the operational and non-operational decision making and approval processes; and
- h) generation and publication of key performance indicators mandated by ComReg.

28. Sufficient evidence will be maintained to demonstrate:

- a) that the controls mitigate the risks;
- b) that the controls have been operated and the outcome of the operation;
- c) the steps taken, including remediation, when a control operation identifies a potential non-compliance; and
- d) the steps taken, including remediation, when a control is identified as not effectively managing the associated risk.

29. Eir will continue to develop, implement and maintain the risk control framework and environment (including the continuing development and application of the Business Unit Process Compliance Review ("BUPCR")) and the RACM.

## **REGULATORY CODE OF PRACTICE**

30. Eir will establish and maintain the Regulatory Code of Practice which will be communicated to all staff and relevant contractors on a periodic basis. Eir shall formalise the Regulatory Code of Practice processes, including reporting requirements, to ensure that the Regulatory Code of Practice considers all relevant regulatory obligations and requirements at the right level of detail. This will include formalising communication and training on the Regulatory Code of Practice which includes communication on the disciplinary consequences of non-compliance with the Regulatory Code of Practice. Eir has aligned and will continue to align its human resources policies with the Regulatory Code of Practice.

## **WHISTLEBLOWING AND WHOLESALE COMPLAINTS**

31. Eir will oversee and approve how and by whom legitimate material regulatory concerns and complaints will be investigated and addressed. Metrics in respect of whistleblowing cases will be reported to the IOB and appropriate details

communicated on request having regard to any need to preserve anonymity. The IOB will use such information as part of its assessment of the effectiveness of eir's governance arrangements but is not responsible for dealing with or managing complaints in any way.

32. Eir will continue to operate a wholesale complaints process which will be overseen by a Second Line of Defence function.

### **PORTFOLIO BOARD**

33. Eir will maintain a portfolio board ("**Portfolio Board**") to oversee product developments at eir Group level, to help ensure that eir manages its product development process in line with its regulatory obligations. The Portfolio Board will provide reports on activities to the Wholesale Senior Management Team. RAP product development prioritisation will take place within the Wholesale Function and the Portfolio Board will respect this prioritisation.

### **CAPEX**

34. Eir will set a separate Wholesale Function capex budget (as part of the wider eir Group capex budget.) The basis for the allocation of capex to Wholesale Function compared to the rest of eir will be documented at the time of the decision. Subsequent changes to the Wholesale Function capex budget will also be documented. A report on the Wholesale Function capex budget including any changes to the capex budget will be provided to the IOB in line with Schedule 2 of the IOB Charter at Annex 3 of the Settlement Agreement (Reporting).

### **BESPOKE BIDS**

35. Eir will perform a risk analysis of its bespoke bids process and if necessary develop implement and embed controls to ensure regulatory compliance. Such controls will have regard to the specific risks to regulatory compliance associated with such bids. This risk analysis and control implementation will be completed and the RACM updated for the first meeting of the IOB.

### **KEY PERFORMANCE INDICATORS AND METRICS**

36. Eir will document the process for the generation and publication of KPIs and perform a risk analysis and develop controls to ensure accuracy and comparability. This documentation underpinning KPIs and metrics will provide an audit trail.

## **PART B – ASSURANCE**

### **REGULATORY GOVERNANCE MODEL**

37. Eir will operate a Regulatory Governance Model ("**RGM**") comprising Three Lines of Defence as set out below.

38. There will be separation of governance, operational and assurance roles. They will be comprised of:
- a) A first line of defence: comprised of eir's business units (including relevant management fora) which own and manage regulatory risks, including the identification, assessment and mitigation of risk (the "**First Line of Defence**");
  - b) A second line of defence: comprised of a risk management function, a risk testing function and an advisory function independent from the First Line of Defence (the "**Second Line of Defence**"); and
  - c) A third line of defence: comprised of an independent assurance function (Internal Audit) which is independent from the first and second lines of defence and which has a functional reporting line to the IOB in respect of regulatory matters (the "**Third Line of Defence**").
39. There will be mandates for all regulatory functions. Eir will ensure, to the satisfaction of the IOB, that all regulatory compliance and assurance functions are independent of business units.
40. The heads of the third line function will report functionally in respect of regulatory matters to the IOB and administratively at a level within the organisation that allows the assurance activity to fulfil its responsibilities.
41. The head of Internal Audit must confirm to the IOB, at least annually, the organisational independence of the Internal Audit activity.
42. The heads of the second line functions will not report to the same member of senior management as Internal Audit.
43. All RGM functions will have adequate authority and access to records including access to the Board and committees, to operate effectively. Where necessary, funding should be made available for external support to assist in regulatory assurance activities.
44. Eir will formally document methodologies for all RGM related activities which will set out the scope, approach, information requirements and the end to end processes for the following.
- a) the identification of risks including the assessment of emerging risks;
  - b) the development of controls;
  - c) process for documenting and approving changes to controls;
  - d) escalation processes when issues relating to risk assessment or control operation or effectiveness are noted;
  - e) process for the review of the completeness and accuracy of risk assessments;
  - f) process for monitoring and assessing the design and effectiveness of controls; and



g) process for IT reviews such as BAR and TSDS reviews.

45. Each of the Second line of Defence functions and the Third Line of Defence must have:

- a) appropriate resources (number, skills level and competencies) to achieve their mandate in a comprehensive, effective and timely manner;
- b) a formal mandate outlining the scope, methodology and activities;
- c) a risk based annual work plan which is regularly reviewed by the IOB; and
- d) an annual work plan for second line functions as appropriate out all RGM related tasks to be performed during the period.

### **Third Line of Defence**

46. The Third Line of Defence will have:

- a) an appropriate independent functional reporting line to the IOB for RGM related audit activity;
- b) appropriate resources (number, skills level and competencies) to achieve its RGM related mandate in a comprehensive, effective and timely manner, ;
- c) an Internal Audit risk based work plan that sets out all RGM related tasks to be performed during the period to include:
  - i. the approach to audit planning;
  - ii. details of the Internal Audit tasks including reviews to be performed during the period that relate to the RGM;
  - iii. details of RGM related process which will not be covered in the period of review;
  - iv. the number of days required for each RGM related Internal Audit task, including Audits, in order to generate a projected resource requirement; and
  - v. an identification of any resource gap to achieve the work plan based on the projected resource requirement.

47. The Internal Audit annual work plan for RGM related tasks and any subsequent changes to this Internal Audit work plan will be notified to the IOB for comment. The Internal Audit work plan and any amendments to it will be approved by the IOB, in consultation with the Board and ComReg. The IOB may amend the Internal Audit work plan. The IOB may request additional resources for Internal Audit from the Board. The Board will consider such a request and approval to provide such resource will not be withheld unreasonably. Any such extra resource will be put in place as quickly as possible. Internal Audit will *inter alia*:

- a) Perform end-to-end compliance review of controls which includes a review of the design and operating effectiveness of controls identified in the RACM;

- b) Perform end-to-end reviews of Wholesale Function activities with specific focus on regulatory and compliance matters including:
  - i. the processes listed in paragraph 19;
  - ii. systems access management reviews performed by both IT and business units;
  - iii. management of CRI including Structured Data access management, Unstructured Data Access management, data classification and data handling; and
  - iv. reviewing of the effectiveness of the Second Line of Defence functions.

- 48. Internal Audit will follow-up recommendations raised during the audit reviews to ensure that appropriate and timely action has been taken.
- 49. Appropriate records will be maintained to provide a basis for oversight to ensure regulatory compliance through ensuring all control procedures outline the process for retention of evidence.
- 50. The effectiveness of Internal Audit will be formally assessed at least annually by the IOB.

**PART C: DATA GOVERNANCE AND MANAGEMENT INCLUDING CONFIDENTIAL REGULATED INFORMATION**

- 51. Eir will complete BAR and TSDS reviews on Information Technology Systems (“**systems**”) on user access management at regular intervals. These will be designed to provide reasonable assurance that access to CRI is appropriately controlled and in particular that non wholesale staff cannot access CRI.
- 52. Eir will perform a full review of all IT systems with CRI or that have access to systems with CRI, to ensure that Wholesale Function and non-Wholesale Function access to these IT systems is appropriately controlled.
- 53. The scope of this review will be shared with the IOB and ComReg. The review will be completed by 31 May 2019 and will include:
  - a) identifying and classifying the data held on each system and determining a risk rating for each system;
  - b) documenting access to each system at a business unit level;
  - c) updating the Data Asset Register to reflect the risk rating which will be reviewed on a quarterly basis; and
  - d) conducting a risk review of each system identifying risks of non-compliance and identifying new controls.
- 54. For the avoidance of doubt, the criteria applied to identify a risk rating for each system as outlined in paragraph 53 above, will be shared with ComReg by 28 February 2019.

55. By 31 May 2019, eir will provide a report to the IOB and ComReg based on the review described in paragraphs 52 and 53. This report will document the reviews of all systems material to the RGM (Structured Data containing CRI or with access to systems with CRI) identifying risks of non-compliance and identifying new controls. By 1 December 2020 high risk systems will be remediated by adding these systems to eir's user access management ("**UAM**") system. For the remainder of the systems, i.e. low risk systems, the controls identified in the report, as per paragraph 53, will be implemented, operated and managed, in order to ensure that Wholesale Function and Non-Wholesale Function access to systems with CRI, or to systems that have access to systems with CRI, is appropriately controlled.
56. By 30 November 2019, eir will provide a systems/application delivery plan to the IOB and ComReg, based on the report outlined in paragraph 55 above. This plan will provide timelines for the development of controls and/or systems remediation in order to manage or mitigate the risk including controls based on the appropriate segregation of Structured Data at a system level. System-based access controls will be put in place for the high risk systems as set out in paragraph 55.
57. By 1 March 2020, eir will provide to the IOB and ComReg, a written report on progress of the remediation of high risk systems and will provide an updated review of low risk systems.
58. By 1 December 2020, eir will fully implement the systems/application delivery plan for systems remediation to address access to all systems with CRI or that have access to systems with CRI as outlined in paragraphs 55 and 56 to ensure regulatory compliance. This will *inter alia* provide the IOB and ComReg with reasonable assurance that non-Wholesale Function personnel will not have access to CRI. In particular by 1 December 2020 in line with paragraph 55 and 56, high risk systems will have been remediated by adding these systems to eir's UAM system. For the remainder of the systems, i.e. low risk systems, the controls identified in the report, as per paragraph 55 will have been implemented, operated and managed, in order to ensure that Wholesale Function and Non-Wholesale Function access to systems with CRI, or to systems that have access to systems with CRI, is appropriately controlled.
59. By 31 May 2019, eir will develop and provide to the IOB and ComReg an overarching policy on the management of CRI from, at a minimum, data governance, data ownership, data management, data classification, data handling and security perspective.
60. By 31 May 2019, eir will develop and provide a protocol to the IOB and ComReg for the implementation of all future new systems that will ensure the compliance with regulatory obligations including appropriate segregation of and governance over retail and wholesale data. The protocol will include the design principles for user access profiles on the new systems. Eir will implement the protocol for all new systems development. Future BAR and TSDS reviews on these systems will address user access profiles.
61. Eir will carry out a comprehensive analysis and prepare a written report of the risks associated with the use of Unstructured Data and the extent to which existing policies

and controls mitigate these risks. The report should include analysis of systems based controls and other controls as ways of mitigating against risks identified and should consider which controls from a cost and complexity approach are appropriate to be adopted. Having consulted the IOB and taken their advice into account, eir will implement a remediation plan to include the most appropriate controls to deliver remediation. The report and the remediation plan will be provided to ComReg and the IOB by 30 September 2019. Eir will regularly report to ComReg and the IOB on the delivery of the plan. Remediation will be completed by 1 December 2019.

62. By 31 March 2019, eir will design and implement and subsequently maintain a Data Asset Register (including Structured Data) to include information on the nature and type of data in use. The Data Asset Register will include current data classification on systems and will be updated for any subsequent changes. This Data Asset Register will be kept up to date, i.e. current systems and systems data will be in scope, and will include:
  - a) description of system including functionality and/or use;
  - b) types of data held (e.g. wholesale customer personally identifiable information (“**PII**”), retail customer PII, employee PII, financial, wholesale commercial, retail commercial, intellectual property etc.);
  - c) classification of data as per the Data Classification Policy (e.g. Confidential Regulatory Information etc.);
  - d) UAM; and
  - e) risk rating and criteria.
63. By 31 May 2019, eir will provide ComReg and the IOB with its most up to date IT Transformation Plan (the “**IT Transformation Plan**”), which will provide information on eir’s plan for the implementation of new IT systems. As eir’s IT Transformation Plan in relation to new systems develops it will be shared with ComReg and the IOB.
64. Eir will communicate periodically with the IOB and ComReg with regard to progress against milestones and updates in relation to the report described at paragraph 55, which will include updates on the systems/application delivery plan at paragraph 56 above. Eir will also communicate periodically to ComReg and the IOB progress against all Wholesale Function aspects of the IT Transformation Plan. The IT Transformation Plan will ensure that IT governance arrangements will provide adequate assurance regarding management of CRI and related access management requirements.

## **REPORTING**

65. Reporting will be as outlined in Schedule 2 of the IOB Charter at Annex 3 of the Settlement Agreement.

## **IMPLEMENTATION**

66. Unless otherwise stated or implied in the Settlement Agreement, eir will implement the provisions of the Settlement Agreement by no later than 30 June 2019.

**ANNEX 2**

COMMISSION FOR COMMUNICATIONS REGULATION

EIRCOM LIMITED

**PERFORMANCE AGREEMENT**

THIS PERFORMANCE AGREEMENT is made on 10 December 2018

BETWEEN

EIRCOM LIMITED  
Registered number 116389  
incorporated in Jersey  
having its registered office at  
22 Grenville Street, St Helier  
Jersey JE4 8 PX and  
having its principal place of business at  
1 Heuston South Quarter, St. John's Road  
Dublin 8 D08 A9RT  
("eir")

- and -

THE COMMISSION FOR COMMUNICATIONS  
REGULATION  
having its place of business at  
1 Docklands Central, Guild Street, Dublin 1  
D01 E4X0  
("ComReg")

RECITALS:

1. In Clause 6 of the Settlement Agreement eir has agreed to enter into this Performance Agreement and to achieve Performance Milestones.
2. By way of an Escrow Agreement made between eir, ComReg and the Escrow Agent, eir has agreed to pay into an Escrow Account the sum of 9 Million Euro (free from Encumbrances) to underwrite the obligation of eir to achieve the Performance Milestones.
3. ComReg shall assess whether Performance Milestones have been achieved. eir will be entitled to a Notional Milestone Amount in respect of each Performance Milestone achieved and ComReg will be entitled to a Late Delivery Amount if it is not achieved.
4. In accordance with the provisions below certain amounts will be paid out by way of either Refund Payments to eir or Late Delivery Payments to ComReg and ComReg will instruct the Escrow Agent by way of Irrevocable Instruction to make such payments as determined according to the terms of this Performance Agreement.

## 1. Definitions

- 1.1. In this Performance Agreement the following words and expressions have the following meanings.

"**2020 Milestone**" the Performance Milestones due for delivery after 1 January 2020 together with any Mid-Term Milestone not delivered by the Second Reconciliation

Date.

**“Authorisation”** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

**“Business Day”** a day (other than a Saturday or a Sunday or public holiday in Ireland) on which clearing banks are open for business in Dublin.

**“Daily Penalty”** means €3,333 for each calendar day or part thereof by which a Performance Milestone was delivered late or, if it has not been delivered by a particular Reconciliation Date, the number of days or part thereof that have elapsed since the Performance Milestone due date.

**“Determination”** a determination by ComReg that a Performance Milestone has been achieved or not or is delayed, which determination, in each case, shall be final and “Determine” shall be construed accordingly.

**“Early Milestone”** a Performance Milestone due for delivery on or before the first meeting of the IOB or on or before 31 May 2019.

**“Encumbrance”** shall be construed as a reference to a mortgage, charge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect.

**“Escrow Agent”** means any reputable and licensed financial institution, which is acceptable to ComReg (acting reasonably).

**“Escrow Account”** the deposit account held by the Escrow Agent.

**“Escrow Agreement”** the escrow agreement entered between ComReg, eir and the Escrow Agent.

**“Escrow Amount”** the amount of €9,000,000 (nine million euro) to be deposited by eir with the Escrow Agent in the Escrow Account.

**“First Reconciliation Date”** 1 June 2019.

**“Final Reconciliation Date”** 1 December 2021 or any earlier date on which ComReg determines that all Performance Milestones have been delivered.

**“IOB”** the independent oversight body established in accordance with Annex 3 of the Settlement Agreement.



**“Irrevocable Instruction”** shall have the meaning ascribed to it in the Escrow Agreement.

**“Late Delivery Amount”** in respect of any Performance Milestone at a particular Reconciliation Date delivered after a due date means the lesser of the:

- (a) The Daily Penalty; and
- (b) Notional Milestone Amount.

**“Late Delivery Payment”** a payment to ComReg by the Escrow Agent on foot of an Irrevocable Instruction from ComReg.

**“Mid-Term Milestone”** a Performance Milestone due for delivery after the first meeting of the IOB and before 31 December 2019 together with any Early Milestone that had not been delivered by the First Reconciliation Date.

**“Notional Milestone Amount”** is the amount set out in Column C of the table in the Schedule below for each of the Performance Milestones.

**“Payment Date”** is the date on which any Refund Payment becomes due.

**“Performance Milestones”** each of the milestones described which are to be achieved by the relevant dates applicable thereto as set out in table attached as Schedule 1 of this Performance Agreement whether they are an Early Milestone, a Mid Term Milestone or a 2020 Milestone.

**“Reconciliation Date”** means the First Reconciliation Date, the Second Reconciliation Date or the Final Reconciliation Date, as the case may be.

**“Refund Payment”** a payment to eir by the Escrow Agent on foot of an Irrevocable Instruction from ComReg.

**“Second Reconciliation Date”** 1 December 2019.

**“Settlement Agreement”** the settlement agreement entered into between ComReg and eir to which this Performance Agreement is Annex 2 of that Settlement Agreement.

**“Third Reconciliation Date”** 1 December 2020.

- 1.2. In accordance with the terms of the Settlement Agreement eir covenants with ComReg that it shall achieve all Performance Milestones.

- 1.3. Each Performance Milestone shall be grouped, according to the time by which it is to be achieved, into one of the following categories namely:
  - 1.3.1. Early Milestone;
  - 1.3.2. Mid-Term Milestone; or
  - 1.3.3. 2020 Milestone.
- 1.4. ComReg shall come to a Determination following each Reconciliation Date in relation to each Performance Milestone due to be achieved by that date. At any time between a Reconciliation Date and the date one week before the date by which payment of any associated refund falls due for payment, eir may provide relevant factual clarifications to ComReg and/or the IOB and ComReg may also seek relevant factual clarifications from eir and/or the IOB. Any such clarification should be answered two days before the Payment Date.
- 1.5. For each Performance Milestone that ComReg Determines has been achieved by the First Reconciliation Date or the Second Reconciliation Date eir shall be entitled to a refund of a Notional Milestone Amount less any Late Delivery Amount referable to the particular Performance Milestone at that Reconciliation Date (if no refund has previously been paid or credited in respect of that Performance Milestone). If ComReg Determines that a Performance Milestone was achieved late or is late and has not been achieved at all ComReg shall be entitled to a Late Delivery Payment in respect of that Performance Milestone.
- 1.6. If ComReg determines that all of the 2020 Milestones have been achieved by the Third Reconciliation Date then eir shall be entitled to a refund of a Notional Milestone Amount less any Late Delivery Amount referable to the particular Performance Milestone at that Reconciliation Date (if no refund has previously been paid or credited in respect of that Performance Milestone). If ComReg Determines that a Performance Milestone was achieved late or is late and has not been achieved at all ComReg shall be entitled to a Late Delivery Payment in respect of that Performance Milestone.
- 1.7. For each Performance Milestone that ComReg Determines has been achieved by the Final Reconciliation Date eir shall be entitled to a refund of a Notional Milestone

Amount less any Late Delivery Amount referable to the particular Performance Milestone at that Reconciliation Date (if no refund has previously been paid or credited in respect of that Performance Milestone). Eir shall then cease to be entitled to any further refund for Performance Milestones not achieved at that date and ComReg shall be entitled to payment of a Late Delivery Payment equal to the remaining balance in the Escrow account. The Late Delivery Payment at the Final Reconciliation Date shall be paid in consideration of Performance Milestones due but not achieved.

1.8. Determinations shall occur at the following times for each of the categories of Performance Milestones both in respect of the Performance Milestones due by that Reconciliation Date as well as any Performance Milestones that had been due but not completed by any previous Reconciliation Date:

1.8.1. for all Early Milestones as soon as possible after the First Reconciliation Date;

1.8.2. for Mid-Term Milestones as soon as possible after the Second Reconciliation Date;

1.8.3. for the 2020 Milestones as soon as possible after the Third Reconciliation Date; and

1.8.4. for all Performance Milestones as soon as possible after the Final Reconciliation Date.

1.9. Following the assessment at Clause 1.8 above ComReg shall calculate what amount:

1.9.1. Eir is entitled to by way of Notional Milestone Amounts; and

1.9.2. ComReg is entitled to by way of Late Delivery Amounts.

1.10. In respect of each of the Early Milestone, Mid Term Milestone and 2020 Milestone, ComReg shall aggregate each of the Notional Milestone Amounts and any Late Delivery Amounts in respect of each Performance Milestone actually achieved, that the parties are entitled to and by way of set off Determine whether, at each

Reconciliation Date, either eir is entitled to a net Refund Payment and whether ComReg is entitled to a net Late Delivery Payment, as appropriate.

- 1.11. When calculating the aggregate referred to at Clause 1.10 above, in respect of a Performance Milestone for which any delay in its achievement extends beyond the Second or Third Reconciliation Date, only the sum of the Daily Penalties incurred since the last Reconciliation Date calculation shall be used.
- 1.12. In accordance with this Performance Agreement and the Escrow Agreement, ComReg shall in the case of the First, Second and Third Reconciliation Dates instruct the Escrow Agent to pay any Refund Payments due to eir by the 20th day of the month in which the relevant Reconciliation Date falls. In the case of the Final Reconciliation Date ComReg shall instruct the Escrow Agent to pay any Refund Payments due to eir within one month of the Final Reconciliation Date.
- 1.13. Eir acknowledges that its only entitlement to a Refund Payment is from the Escrow Account in accordance with the terms of this Performance Agreement.
- 1.14. Subject to ComReg having given eir 5 Business Days prior written notice (in the format set out in Schedule 2 of this Performance Agreement), ComReg shall be entitled to instruct the Escrow Agent to pay any Late Delivery Payments which fall due at a Reconciliation Date to ComReg and within ten days Business Days of such instruction to the Escrow Agent, shall set out for eir, details of how the amount so paid was properly due to ComReg. Such amounts shall not be repayable to eir.
- 1.15. If the first meeting of the IOB has not occurred by 1 June 2019 because of ComReg's failure to make appointments to the IOB, then all Performance Milestones due for delivery by the first meeting of the IOB shall be deemed to have been delivered on time and before the First Reconciliation Date. In this case material to be presented to the IOB will be made available to ComReg when available and to the IOB when it is convened.
- 1.16. eir acknowledges and agrees that notwithstanding that it believes that ComReg is not entitled to a Late Delivery Amount or a Notional Milestone Amount it cannot take any action to prevent such payment by reason of any dispute including, without prejudice, a dispute as to whether any default in achieving a Performance Milestone or a delay in doing so, has occurred. If eir raises any such dispute the issue/s in dispute shall

be determined by way of the terms set out in Section 17 of the Settlement Agreement. Eir further acknowledges that such dispute or proceedings cannot prevent ComReg from issuing an instruction to the Escrow Agent to make a Late Delivery Payment or a final payment as referred to at 1.7 and Clause 1.14 above.

1.17. The total amount payable to ComReg by way of Late Delivery Payments under this Performance Agreement is capped and shall not exceed €9 Million.

## **2. Escrow Amount/Escrow Account**

2.1. Eir hereby represents and warrants to ComReg at the date of this Performance Agreement and hereby covenants with ComReg at all times that the Escrow Amount and Escrow Account are and shall remain free from Encumbrances.

## **3. Notice Provisions**

3.1. Any notice (in the format set out in Schedule 2 of this Performance Agreement) must be in writing in the English language and must be delivered personally or sent by pre-paid registered or recorded delivery post to the party intended to receive the notice at its address set out at the front of this Performance Agreement or any revised address.

3.2. Any notice as provided in Clause 3.1 shall be deemed to have been duly given or made upon delivery at the address of the relevant party on a Business Day provided however that if any such notice is delivered outside of working hours, such notice shall be deemed to be given or made at 9.30am on the next following Business Day.

## **4. Binding Obligations**

4.1. The obligations expressed to be assumed by each party in this Performance Agreement, are its legal, valid, binding and enforceable obligations.

## **5. Validity**

5.1. All Authorisations required by each party to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Performance Agreement have been obtained and are in full force and effect.

**6. Governing Law/Submission to Jurisdiction**

- 6.1. The Performance Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with Irish law.
- 6.2. Each party irrevocably agrees that the Irish courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Performance Agreement or its subject matter or formation.

**7. Counterparts**

- 7.1. The Performance Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Performance Agreement.

**ON BEHALF OF THE COMMISSION FOR  
COMMUNICATIONS REGULATION**

SIGNED:

*Jeremy Godfrey*

DATE:

*10 Dec 2018*

**JERÉMY GODFREY**

**COMISSIONER**

SIGNED:

*Donal Leavy*

DATE:

*10 Dec 2018*

**DONAL LEAVY**

**DIRECTOR OF WHOLESALE**

ON BEHALF OF EIRCOM LIMITED

SIGNED:

*Carh Lennon*

DATE:

*10/12/2018*

CAROLAN LENNON

CHIEF EXECUTIVE OFFICER

SIGNED:

*Stephen Tighe*

DATE:

*10/12/2018*

STEPHEN TIGHE

CHIEF FINANCIAL OFFICER

**SCHEDULE 1**

The Performance Milestones table:

<b>Category</b>	<b>Performance Milestone (Column A)</b>	<b>To be achieved by (end of) (Column B)</b>	<b>Notional Milestone Payment (Column C)</b>
<b>Assurance and oversight</b>	<ul style="list-style-type: none"> <li>Facilitate creation of the IOB through the appointment of eir members to the IOB and allocation of IOB Secretariat.</li> </ul>	31 January 2019	€1 million
	<ul style="list-style-type: none"> <li>Internal Audit [3<sup>rd</sup> Line of defence] will provide a multi annual audit plan for a 2 year period.</li> </ul>	31 May 2019 or 1 <sup>st</sup> Meeting of IOB	€0.75 million
	<ul style="list-style-type: none"> <li>Internal Audit provide a resource plan in line with the IOB charter.</li> </ul>	31 May 2019 or 1 <sup>st</sup> Meeting of IOB	€0.75 million
	<ul style="list-style-type: none"> <li>A reviewed and updated RACM with all risks (operational, non-operational and system) will be provided to the IOB.</li> </ul>	30 September 2019	€0.1 million
	<ul style="list-style-type: none"> <li>Produce one annual cycle and provide to IOB all reports set out in Schedule 2 of the IOB Charter and as agreed by IOB and eir in line with the IOB Charter.</li> </ul>	30 September 2020	€1.025 million
<b>IT Systems /Data /CRI</b>	<ul style="list-style-type: none"> <li>Eir will design and implement a data asset register as per paragraph 62 of the RGM Undertakings.</li> </ul>	31 March 2019	€0.25 million
	<ul style="list-style-type: none"> <li>Provide a written report to the IOB and ComReg documenting the review of IT systems which hold CRI or have access to systems with CRI as set out in paragraph 55 of the RGM Undertakings.</li> </ul>	31 May 2019	€0.25 million



Category	Performance Milestone (Column A)	To be achieved by (end of) (Column B)	Notional Milestone Payment (Column C)
	<ul style="list-style-type: none"> <li>Provide the IOB and ComReg a written protocol for all future systems development as set out in paragraph 60 of the RGM Undertakings.</li> </ul>	31 May 2019	€0.25 million
	<ul style="list-style-type: none"> <li>Provide to the IOB and ComReg eir's overarching written policy on the management of Confidential Regulated Information as set out in paragraph 59 of the RGM Undertakings.</li> </ul>	31 May 2019	€0.25 million
	<ul style="list-style-type: none"> <li>Eir will carry out a comprehensive analysis and prepare a written report, to be provided to the IOB and ComReg, on the risks associated with the use of unstructured data as set out in paragraph 61 of the RGM Undertakings.</li> </ul>	30 September 2019	€0.05 million
	<ul style="list-style-type: none"> <li>eir will prepare and have executed a remediation plan in order to remediate risks associated with unstructured data as set out in paragraph 61 of the RGM Undertakings</li> </ul>	1 December 2019	€2.1 million
	<ul style="list-style-type: none"> <li>Eir will provide a written report on progress of the remediation of high risk systems and will provide an updated review of the low risk systems.</li> </ul>	31 March 2020	€0.1 million
	<ul style="list-style-type: none"> <li>Completion of full systems remediation for Structured Data as set out in paragraph 58 of the RGM Undertakings</li> </ul>	1 December 2020	€1.125 million

Category	Performance Milestone (Column A)	To be achieved by (end of) (Column B)	Notional Milestone Payment (Column C)
Other	<ul style="list-style-type: none"> <li>Provide to the IOB and ComReg a written report on the provisions of the Regulatory Code of Practice as detailed in Group HR policies and on-going monitoring of compliance.</li> </ul>	31 May 2019 or 1 <sup>st</sup> Meeting of IOB	€0.33 million
	<ul style="list-style-type: none"> <li>Provide to the IOB and ComReg a written report on the policy for remuneration of Wholesale staff members (including for avoidance of doubt networks) specifically showing that incentives are based solely on performance of Wholesale division and that this is embedded in staff performance review metrics.</li> </ul>	31 May 2019 or 1 <sup>st</sup> Meeting of IOB	€0.33 million
	<ul style="list-style-type: none"> <li>Provide to the IOB and ComReg a written report on an incentive scheme for Internal Audit based on objectives of Internal Audit.</li> </ul>	31 May 2019 or 1 <sup>st</sup> Meeting of IOB	€0.34 million

**Schedule 2**

Form of Notice

Eircom Limited

Re Performance Agreement

Dear Sirs,

We are writing to give notice that on the [ ] day of [ ], ComReg shall instruct the Escrow Agent by way of Irrevocable Instruction to make a payment to ComReg by way of Late Delivery Payment in the amount of [ ].

Details of the payment shall be notified to you within 10 days in accordance with the Performance Agreement.

Yours etc.

Annex 3

IOB Charter

In this IOB Charter:

**1. TERMS OF REFERENCE**

- (A) The Independent Oversight Body (the “**IOB**”) is a standing committee established in accordance with the Settlement Agreement dated 10 December 2018 entered into by eir and ComReg which shall report to the Board and ComReg and which shall be responsible for the oversight of the Group’s Regulatory Governance Structures<sup>3</sup>.
- (B) “**Board**” means the board of directors of the Company.
- (C) “**BUPCR**” means eir’s Business Unit Process Compliance Review document.
- (D) “**ComReg**” means the Commission for Communications Regulation.
- (E) “**Company**” means Eircom Holdings (Ireland) Limited.
- (F) “**eir**” or “**Eircom**” means Eircom Limited, the Company or Group as may be applicable.
- (G) “**Governance Structure(s)**” means measures arrangements, structures and internal controls in respect of the assurance of compliance with regulatory obligations and the provisions of RGM Undertakings.
- (H) “**Group**” means the Company, its holding company(ies) from time to time (currently Eircom Holdco S.A.) and any of their respective subsidiaries from time to time.
- (I) “**Internal Audit**” (IA) means the part of Internal Audit function of the Group that is responsible for carrying out internal audit activity relating to regulatory governance. This is also referred to as the “**Third Line of Defence**”. Internal Audit shall have a reporting line on administrative matters to the Chief Financial Officer (CFO) of Eircom Limited and functional reporting line to the IOB in respect of regulatory matters.
- (J) “**Regulatory Code of Practice**” means eir’s regulatory code of practice which

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<sup>3</sup> The IOB is not a corporate entity and therefore has no role in terms of engagement with external stakeholders other than as allowed by the IOB Charter.

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has been designed to foster regulatory compliance and which must be adhered to by all employees, board members and – where appropriate – contractors and sub-contractors. It is set out at paragraph 30 of the RGM Undertakings.

- (K) “**Regulatory obligations**” and “**regulation**” shall for the purposes of this document be construed in the context of regulation specific to electronic communications encompassing the significant market power obligations<sup>4</sup> imposed on eir by ComReg by way of Decision Instruments and Directions.
- (L) “**RAP**” means regulated access product products and for avoidance of doubt includes associated services, facilities.
- (M) “**RACM**” means risk and control matrix.
- (N) “**RGM**” means regulatory governance model.
- (O) “**RGM Undertakings**” means the undertakings given by eir to ComReg as contained in Annex 1 of the Settlement Agreement and published on ComReg’s website.
- (P) “**Wholesale Function**” when used in respect of eir, means those divisions of eir collectively referred to as open eir which include eir’s wholesale regulated activities, eir’s network business and the regulated activities of field operations.

## **2. COMPOSITION**

- 2.1 The IOB shall be comprised of five (5) members (“**IOB Members**”). Two members shall be appointed by the Company in consultation with ComReg and shall be non-executive members of the Board (**eir IOB Members**). Three IOB Members shall be independent. Independent means that he or she is not, or will not for so long as he/she is an IOB Member and has not for a period of at least two (2) years prior to the establishment of the IOB been in the employ of or an advisor to any company within the Group, ComReg or another authorised operator in Ireland. The period of two (2) years in the preceding sentence can be less than 2 years, if mutually agreed by eir and ComReg. Independent members shall be appointed by ComReg in consultation with eir and remunerated by ComReg. The Chairperson shall be drawn from one of the independent IOB Members and shall be appointed by ComReg. An IOB Member’s term on the IOB shall not exceed 5 years. ComReg

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<sup>4</sup> But excluding obligations relating to fixed voice call termination or mobile voice call termination where they exist.

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and eir will aim to ensure that the IOB membership has adequate relevant skills and experience.<sup>5</sup>

- 2.2 Where an eir IOB Member retires, or is removed or resigns from the Board, that member shall automatically cease to be an IOB Member on the same date of his retirement, removal or resignation from the Board.
- 2.3 Within one month of the IOB being constituted and in advance of the first official meeting of the IOB, eir and ComReg shall provide an induction programme for new IOB Members covering the role of the IOB, including the IOB Charter and expected time commitments of members; and an overview of the Irish regulatory regime and eir's Regulatory Obligations, identifying the main obligations and how they are dealt with in the Regulatory Code of Practice, and the procedures in place and planned to ensure compliance within eir.
- 2.4 The IOB Members will be provided with training by eir and ComReg within 6 months of the IOB being constituted and on an on-going and timely basis and at the IOB's request. Such training will include an understanding of changes in eir's Regulatory Obligations. It will also include an understanding of the regulatory risks facing eir and internal and external auditing and regulatory risk management.

Eir IOB Members may be removed and replaced within their terms at eir's discretion. Independent IOB Members may be removed and replaced at ComReg's discretion. Replacement members will be appointed in accordance with paragraph 2.1.

### **3. AUTHORITY**

- 3.1 In fulfilling its duties and responsibilities, the IOB shall have access to the advice of any relevant employee (or officer) of any company within the Group. Eir shall ensure that the IOB has the authority and resources (including financial) to commission reviews of RGM related activities which the IOB deems necessary in order to fulfil its mandate. If eir forms the view in good faith that it is unnecessary that a particular review be undertaken by an external advisor it may refuse funding having provided its reasons in writing to ComReg. In that case the IOB may request funding from ComReg and ComReg may agree to provide such funding at its discretion.

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<sup>5</sup> ComReg in recruiting the independent members will ensure that their contract will include provisions in relation to conflict of interest and the protection of confidential information

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- 3.2 The IOB may also, on its own initiative, request any eir staff member with the appropriate expertise to review any aspect of eir's Governance Structure as they relate to regulatory compliance or undertake such review on its own account. Exceptionally, access to a staff member may be denied by his or her line manager if current business needs make such a meeting impracticable. Such meetings will be rescheduled as soon as possible. Eir will at all times act reasonably and will not obstruct the activities of the IOB by unreasonably delaying or denying access to eir staff.
- 3.3 Eir shall ensure that all functions in the second and third Lines of Defence are appropriately resourced (numbers, skills and competencies) to support the delivery of their mandate in a comprehensive, effective and timely manner. The IOB shall have oversight of resourcing in this regard.
- 3.4 The IOB shall have visibility of the Internal Audit RGM workplan. It shall approve and if it deems necessary, amend, the Internal Audit workplan relating to regulatory matters following consultations with the Board and ComReg.
- 3.5 Resourcing of Internal Audit shall be reviewed by the IOB on a regular basis. The IOB may recommend to the Board that additional resources are required in light of the Internal Audit workplan in order to ensure the fulfilment of the regulatory workplan. The Board will consider such a recommendation and approval to provide such resource will not be withheld unreasonably. Where such approval has been granted, eir will provide such resourcing as soon as reasonably possible. If in exceptional circumstances where, Internal Audit staff are temporarily diverted to non-regulatory matters the IOB will be notified and immediately provided with an assessment of the impact on the Internal Audit annual audit plan relating to regulatory governance activity.
- 3.6 The IOB shall review the effectiveness of Internal Audit and the appropriateness of the budgeted resources assigned on an at least annual basis.
- 3.7 The IOB shall report, following each meeting, to the Board and ComReg on how it has discharged its responsibilities, its assessment of the effectiveness of Internal Audit and any other matter on which the Board or ComReg has requested the IOB's opinion. In doing so, it should identify any matters in respect of which it considers that action or improvement is needed, and to make recommendations as to the steps to be taken. IOB meetings should be formal and properly minuted.

#### **4. DUTIES AND RESPONSIBILITIES**

4.1 The objective of the IOB is to provide assurance to eir and ComReg that there is in place a clear and unambiguous set of measures, arrangements, structures and internal controls that will ensure compliance with the eir's Regulatory Obligations.

4.2 The IOB shall:

- a) monitor on behalf of the Board and ComReg and report on, the Group's compliance with its RGM Undertakings and the Group's governance and compliance with its Regulatory Obligations generally. This is without prejudice to ComReg's statutory role in relation to monitoring the Group's compliance with its Regulatory Obligations;
- b) monitor and report on the implementation of the RGM Undertakings set out at Annex 1 of the Settlement Agreement;
- c) monitor and report on the implementation by eir of the RGM Undertakings and the suitability of the Regulatory Code of Practice and other relevant documentation as a framework for securing compliance by eir with its Regulatory Obligations and advising the Board and ComReg in this regard, including reviewing, determining and raising with the Board any material difficulties, reservations or other matters arising from the implementation of the Regulatory Code of Practice or RGM Undertakings;
- d) review and recommend to the Board for their consideration, proposals for any changes to eir's regulatory governance structures in so far as they impact eir's ability to meet its Regulatory Obligations; (simultaneously advising ComReg of these recommendations);
- e) as part of its responsibilities undertake at least the tasks listed in Schedule 1 to this document; and
- f) in all meetings shall ensure that CRI and eir's commercially confidential information is not disclosed to third parties. The IOB chair shall regulate the sharing of CRI and commercially sensitive data.

#### **5. GOVERNANCE**

5.1 After an initial period of two years, the IOB will for each year of the IOB's existence commission a suitably qualified independent person or organisation to express an opinion as to the effectiveness of the IOB's activity. A report prepared by the person or organisation will be published on a suitable open eir website as soon as



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possible after sharing the report with ComReg and eir in advance of publication. This will be based on a review of the material and information already provided to the IOB. No eir resources will be needed to support or contribute to this review other than access to the eir IOB Members, members of eir's SMT and the Head of Internal Audit. A review will be repeated annually unless otherwise agreed by ComReg. ComReg will bear the cost for any such review(s). Procurement arrangements will be agreed between the IOB and ComReg.

**6. REPORTING**

- 6.1 The IOB will conduct an annual review of eir's governance of its compliance with its Regulatory Obligations and its compliance with and the adequacy of the RGM Undertakings and prepare and publish a report with an opinion, regarding the implementation and effectiveness of eir's RGM. The report will, at a minimum, explain the reasons for the opinion and the information relied upon.
- 6.2 In forming its opinion the IOB will *inter alia* have regard to the guidance provided at Schedule 3.
- 6.3 At least 4 weeks in advance of publication, the IOB will share a copy of its opinion with eir and ComReg. Eir will have 4 weeks within which to comment on the opinion prior to publication. The IOB will include eir's comments in its report. The IOB opinion shall be published on the dedicated IOB section on the open eir website and ComReg's website.
- 6.4 Within three months after its establishment the IOB shall determine the content of the reports to be provided by eir taking into account the purpose of the reports detailed in Schedule 2, sample reports received from eir and the proposed content in Schedule 3. The IOB will discuss and agree the content of the reports with eir.
- 6.5 The IOB shall simultaneously notify the Board and ComReg immediately, if it believes it has reasonable grounds to believe that a material deviation from the RGM Undertakings has taken place. The IOB will ensure that a fair process is followed including, where appropriate, providing for management representations to be considered.
- 6.6 Minutes of the IOB meetings shall be sent to ComReg and the Board within a reasonable time of each meeting and shall be a fair, true and accurate summary of each meeting.

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- 6.7 The IOB will report periodically to ComReg on matters relevant to its mandate with a minimum frequency to be agreed between the IOB and ComReg.
- 6.8 Members of the IOB shall be available to meet with ComReg or the Board at reasonable notice at ComReg's or the Board's request. They shall be entitled to disclose all information relating to the IOB's mandate to ComReg staff or Commissioners or the Board. ComReg staff or the Commissioners or the Board may provide information to the IOB on matters relevant to the IOB's mandate.
- 6.9 The IOB shall convene a meeting annually with relevant industry stakeholders. All authorised undertakings in Ireland and any representative bodies in Ireland will be entitled to attend. The agenda shall be set by the IOB.

**7. PROCEEDINGS OF IOB MEETINGS**

- 7.1 The IOB may appoint a secretary who shall be entitled to attend all meetings and minute the proceedings (the "**IOB Secretary**"). If the IOB wishes to appoint an IOB Secretary, the IOB Secretary shall be an employee of eir, proposed by eir and agreed with the Chair of the IOB and ComReg. Draft minutes of IOB meetings shall be circulated promptly to all IOB members for review, and will be subject to formal approval at the next IOB meeting.
- 7.2 Meetings of the IOB shall be called by the IOB Secretary at the request of the IOB Chairperson or if there is no IOB Secretary by the IOB Chairperson.
- 7.3 The IOB may meet monthly for the first six months and at least quarterly thereafter unless otherwise agreed by ComReg or the IOB Chairperson.
- 7.4 The IOB Chairperson will determine the meeting agenda in consultation with the IOB Secretary. Any IOB Member may require that the IOB Chairperson includes a matter on the agenda for consideration.
- 7.5 Only the IOB Members have the right to attend IOB meetings. However, the IOB shall have full discretion to invite to its meeting such persons as it deems appropriate in order to carry out its duties and responsibilities.
- 7.6 The IOB Chairperson will chair IOB meetings, and in his/her absence, the IOB Members present may appoint any one of their number to chair that IOB meeting.
- 7.7 The IOB will aim to reach decisions by consensus. Where it is unable to do so, decisions will be made on a simple majority basis of IOB members who are present at such IOB meeting with the IOB Chairperson having a casting vote. Any dissenting opinions in relation to such a decision shall be noted in the minutes.

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- 7.8 Any three (3) IOB Members shall constitute a quorum sufficient for the taking of any action by the IOB, save that a majority of members at any meeting must be independent members and at least one must be an eir IOB Member. In the event that an IOB meeting duly convened cannot be held for lack of quorum, it shall be adjourned to an agreed time and place.
- 7.9 Recommendations of the IOB may be made at any IOB meeting or by all IOB Members signing a recommendation in writing sent to all IOB Members.
- 7.10 The IOB Members may participate in a IOB meeting by means of a conference telephone or a video conference telephone or similar communications equipment by which all persons participating in the meeting are able to hear and be heard by all other participants without the need for a IOB Member to be in the physical presence of another IOB Member(s) and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting. The IOB Members participating in any such meeting shall be counted in the quorum for such meeting and subject to there being a requisite quorum under paragraph 7.8 above at all times during such meeting, all resolutions agreed by the IOB Members in such meeting shall be deemed to be as effective as a resolution passed at a meeting in person of the IOB Members duly convened and held. A meeting conducted by means of a conference telephone or a video conference telephone or similar communications equipment as aforesaid is deemed to be held at the place agreed upon by the IOB Members attending the meeting, provided that at least one (1) of the IOB Members present at the meeting was at that place for the duration of the meeting.
- 7.11 Unless all the IOB members agree otherwise written notice of any meeting of the IOB shall be given to all IOB Members at least two weeks in advance of the date scheduled for such meeting. Matters not on the agenda, or business conducted in relation to those matters, may not be raised at an IOB meeting unless all the IOB Members agree.

**8. AMENDMENT TO THE CHARTER**

The IOB Charter may be amended from time to time by recommendation of the IOB and with the approval of ComReg and the Board. The IOB shall review the IOB Charter on an annual basis.

**9. TERMINATION OF IOB**

ComReg may terminate the IOB at any time prior to the expiry of its term by serving 30 days' notice on the Company and on the IOB Members.

**10. THE STATUS OF IOB**

10.1 The IOB shall:

- a) be a committee jointly established by the Company and ComReg and shall not be a committee of the Board or of ComReg;
- b) be independent of ComReg and the Company in the discharge of its functions;
- c) not be the agents of either the Company or ComReg and accordingly shall have no power to bind the Company or ComReg; and
- d) not be deemed to carry on or usurp any regulatory function of ComReg.

10.2 Without prejudice to the generality of clause 10.1:

- a) No resolution, decision, finding, opinion or other statement of the IOB shall be considered a resolution, decision, finding, opinion or statement of ComReg, or the Company; and
- b) The establishment of the IOB and the powers and functions entrusted to it shall not impair, prejudice or restrict in any way the regulatory powers and duties of ComReg.

## **SCHEDULE 1 TO THE IOB CHARTER: IOB RESPONSIBILITIES**

### **1. IOB RESPONSIBILITIES**

- 1.1 On an annual basis prepare and publish on open Eir's and ComReg's websites a report with respect to the operation and effectiveness of eir's regulatory governance model, to include the IOB's opinion as to:
- a) whether the IOB's own governance was satisfactory;
  - b) whether adequate resources - financial and non-financial - had been made available to it;
  - c) whether eir's Second Line of Defence and Third Line of Defence with responsibilities in respect of regulatory governance had appropriate mandates and were adequately resourced and whether the Third Line of Defence was sufficiently independent of line management;
  - d) the adequacy of the Regulatory Code of Practice and other relevant documentation to foster regulatory compliance; and
  - e) the adequacy of the governance structures in place to ensure regulatory compliance.
- 1.2 The extent to which eir's RGM meets the requirements of the RGM undertakings.
- 1.3 In order to form its opinion in 1.1 above the IOB will develop a multi annual workplan which will include the review of the reports in Schedule 2 (Reporting) of the IOB Charter at Annex 3 of the Settlement Agreement and any additional material the IOB deems necessary in order to carry out the tasks outlined below and or any other tasks the IOB deems necessary and are consistent with the IOB Charter:
- a) review and assess how effective the governance arrangements were to ensure the accuracy of KPIs and metrics relevant to regulatory matters. Assess the implications of such KPIs and metrics for the effectiveness of governance arrangements generally. Assess the implications of such KPIs and metrics for the workplan for Internal Audit;
  - b) review and assess how effective the governance arrangements were to assure regulatory compliance regarding the operation and management of open eir wholesale service level agreements for regulated products;
  - c) discuss with eir in order to agree the content of the reports detailed in Schedule 2 as per paragraph 6.4 of the IOB Charter at Annex 3 of the Settlement Agreement;

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- d) the IOB will review reports from Internal Audit which shall be supplied to the IOB directly by the Director of Internal Audit without the intervention of line management, and operational reports which shall be sent to the IOB from eir management;
- e) review and assess how effective governance arrangements were in addressing breaches of the Regulatory Code of Practice;
- f) review and assess how effective the governance arrangements were in addressing complaints made to the eir whistleblower hotline relating to regulatory compliance matters as referred to in the Regulatory Code of Practice;
- g) review the mandates of the Second Line of Defence (where applicable) and Internal Audit (in relation to matters relevant to the RGM);
- h) evaluate whether the Second Line of Defence and Internal Audit (in relation to matters relevant to the RGM) are adequately resourced with sufficient numbers of adequately experienced staff of the requisite expertise and seniority;
- i) review and assess how effective the governance arrangements were to assure regulatory compliance for eir's RAP product prioritisation process;
- j) review and assess how effective the governance arrangements were to assure regulatory compliance in respect of eir's assessment of requests for regulated products and services;
- k) review how effective the governance arrangements were to assure regulatory compliance in respect of the allocation of group resources, including IT, in light of eir's regulatory obligations, with respect to the development and provision of regulated services;
- l) annually review and if appropriate comment on the approach to incentivising Wholesale Function and Internal Audit personnel;
- m) review how effective the governance arrangements were for allocating capital expenditure to the Wholesale Function in light of eir's regulatory obligations;
- n) review all RGM related policies that support the operation, standardisation and embedding of the Regulatory Code of Practice;

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- o) review eir's other policies and structures in so far as they are intended to ensure that they enable eir to be compliant with its regulatory obligations;
- p) review eir's governance structures to ensure they enable eir to comply with its regulatory obligations in an effective and transparent manner;
- q) satisfy itself as to the effectiveness of the Second Line of Defence and Third Line of Defence (including but not limited to) by:
  - i. reviewing annually their work plans, including Internal Audit plans, and charters/mandates;
  - ii. reviewing the level of human and financial resource available to them and making recommendations to eir in that regard; and
  - iii. periodically reviewing their effectiveness.
- r) review how effective the governance arrangements were for managing any complaints from other operators; and
- s) put in place arrangements for communicating with stakeholders (including other authorised operators) in consultation with eir and ComReg.

1.4 This list may be amended from time to time with the agreement of ComReg and eir.

## **SCHEDULE 2 TO THE IOB CHARTER: REPORTING**

For note:

The content of compliance or assurance reports to the IOB, from both Second Line of Defence and Third Line of Defence, should include, where appropriate and not be limited to, an executive summary, detailed findings, root cause analysis, exception and escalation cases with descriptive detail and associated remediation, and comparison to the prior period/year.

All data used in the production of reports that are referred to in this Schedule 2 of the IOB Charter should be clearly identified and retained for possible review, with report owner(s) and report approver(s) being clearly identified. In addition, all reports to the IOB should also include the basis of preparation, standards used, signed process (including, where relevant, details of the review and quality control processes).

“Annual Reporting Frequency” as detailed are indicative in nature and where relevant, increased frequency may be required when and where material issues are identified. In the first years of operation of the RGM there may be a need for increase in frequency, in particular to establish a base line understanding of key risks and controls design and operational effectiveness.

In relation to RGM Assurance reviews, in all cases the risk of self-review with conducting and completing such reviews is to be avoided. This includes a clear separation of those conducting RGM Assurance reviews from business operations.

All reporting is for purposes of IOB in allowing it perform its duties under the IOB Charter. After it is established, the IOB will agree the contents of the report detailed in this Schedule 2 taking into account the guidance on content provided in Schedule 3. Thereafter, the IOB can request eir to change or amend reports provided to it.



### RGM Committee Reporting

Report No.	Report Name	Purpose	Annual reporting frequency
R01	Risks and Controls Summary Review - Including RGM Processes and Key Business Processes.	Quantitative review of the quality of risks and controls, and its efficacy.	4
		Details of exceptions and escalations.	
R02	Risks and Controls Assurance Summary Review - Including RGM Processes and Key Business Processes.	Quarterly review of the design and operational effectiveness of risk and control processes.	4
		Summary of issues and developments on the RACM.	1
R03	Product Development and Access Requests Summary Review.	Review the status of Product Development, and its efficacy	2
		Quantitative review the status of Product Development, and its efficacy	
R04	Product prioritisation review.	Qualitative and quantitative review of RAP prioritisation process	2
R05	Internal Audit Report - Annual IOB review of Wholesale Remuneration Policy.	Annual IOB review of Wholesale Remuneration Policy to enhance Wholesale Function operational independence from the Group.	1

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<b>Report No.</b>	<b>Report Name</b>	<b>Purpose</b>	<b>Annual reporting frequency</b>
<b>R06</b>	Open eir Capex and Group IT Budget.	Transparency of the budgets.	1
	Open eir Capex and Group IT Budget Change Report.	Transparency of budget changes.	4
<b>R07</b>	Code and Regulatory related Policies and Procedures.	Code training completions.	1
		Code breaches and regulatory related policies and procedures.	
		Annual review and update of the Regulatory Code of Practice and regulatory related policies and procedures.	
<b>R08</b>	Wholesale Customer Complaints.	Information purposes.	4
<b>R09</b>	Whistle-blower complaints	Information purposes.	4
<b>R10</b>	Mandated KPIs.	For information purposes.	4
<b>R11</b>	ComReg Decisions.	For IOB information purposes.	4
<b>R12</b>	ComReg Compliance Investigations.	Reports on internal and ComReg compliance investigations, breaches, exception reporting, root cause analysis and remediation.	Ad-hoc

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<b>Report No.</b>	<b>Report Name</b>	<b>Purpose</b>	<b>Annual reporting frequency</b>
<b>R13</b>	RGM Transformation Status Report.	Reports on RGM implementation - progress, issues identification and remediation programmes.	4
<b>R14</b>	Annual Plans for Second Line of Defence and quarterly review of progress against plan.	As required in IOB Charter at Annex 3 of the Settlement Agreement.	4

**IA Reporting**

<b>Report No.</b>	<b>Report Name</b>	<b>Purpose</b>	<b>Annual reporting frequency</b>
A01	Internal Audit Reports - RGM and Key Business Process Assurance Reviews.	<p>Reports on compliance review of controls (end-to-end process reviews).</p> <p>Review of the design and operating effectiveness of RGM processes and key business processes, including risks and controls management and review of application of key business processes.</p>	1
A02	Internal Audit Report - Review of the RACM and Self-certification Process.	<p>Report on compliance review of controls (end-to-end process reviews)</p> <p>Report on the design and operating effectiveness of the management of the RACM, including the self-certifications process.</p>	4

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<b>Report No.</b>	<b>Report Name</b>	<b>Purpose</b>	<b>Annual reporting frequency</b>
A03	Internal Audit Report - Capex and Group IT Opex Process Risks and Controls Review.	Report on compliance review of controls (End-to-end process reviews): Design and operating effectiveness of Risks and Controls	1
A04	Internal Audit Report - Report on the design and operating effectiveness of risk analysis and controls over senior management for a.	Report on the design and operating effectiveness of risk analysis and controls over senior management for a.	1
A05	Internal Audit Report - Product Development Summary Review.	Report on compliance review of controls (end-to-end process reviews) - product development, including product prioritisation and access requests.	1
A06	Internal Audit Report - Review of the Second Line of Defence	Report on the reviews of the effectiveness of the Second Line of Defence Functions.	1
A07	Internal Audit Report - Systems access controls including outputs of BAR/SODs/TSDS reviews	Report on the design and operating effectiveness of RGM in relation to system access controls in relation to Confidential Regulated Information (“ <b>CRI</b> ”).	1
A08	Internal Audit Report - Controls over access to unstructured data.	Report on the design and operating effectiveness of RGM in relation to unstructured access controls in relation to CRI.	1

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<b>Report No.</b>	<b>Report Name</b>	<b>Purpose</b>	<b>Annual reporting frequency</b>
A09	Internal Audit Reporting - Other (internal and external) reports and information, as required by the IOB Charter.	As requested by the IOB.	As requested by the IOB.
A10	Internal Audit Report - RGM Reviews of the Wholesale Division implementation of ComReg Decisions / Directions.	RGM Reviews of the Wholesale Function implementation of ComReg Decisions / Directions. The requirement for a second line of defence function to follow up actions taken by the relevant business units to implement changes arising from the publication of a ComReg Decision and report on progress to the IOB.	1
A11	Annual Plans for Third Line of Defence and quarterly review of progress against plan.	As required in IOB Charter at Annex 3 of the Settlement Agreement.	4
A12	Annual review of policies, procedures, mandates/charters and fora terms of reference.	Report on the review of policies, procedures, mandates/charters and fora terms of reference to ensure that there are no conflicts with regulatory requirements.	1

### SCHEDULE 3 TO THE IOB CHARTER – GUIDING PRINCIPLES IN RELATION TO REGULATORY GOVERNANCE

The IOB will monitor eir's adherence to the RGM Undertakings and establish whether or not the principles detailed below have been adhered to and in doing so shall assess the implications for the effectiveness of the governance arrangements in respect of regulatory obligations.

#### 1. GUIDANCE ON BESPOKE BIDS PROCESS

1.1 Document, implement and embed a formal bespoke bid process for bids (the "**Bespoke Bid Policy**") which include RAP products and related procedural documentation which includes:

- a) protocols for establishing the bid team;
- b) level of authorisation required for decision making during the bid preparation and contract agreement processes;
- c) policies and procedures to how Confidential Regulated Information is managed in compliance with eir's regulatory obligations;
- d) access profiles for the proposed bid team, prior to its establishment, will be reviewed in the context of each bid and will be amended or revoked, as appropriate, to ensure compliance with eir's regulatory obligations;
- e) the reporting to and approval requirements of senior management governance fora; and
- f) this Group Bespoke Bid Policy and related procedures should contain specific procedures, including segregation of bid teams, for wholesale only bespoke bids where Confidential Regulated Information needs to be managed sensitively.

1.2 Ensure that for bespoke bids which include RAP Products:

- a) the bid evaluation team should, at a minimum include Wholesale Pricing and a second line Function with responsibility for confirming compliance with regulatory obligations in relation to the direct or indirect inclusion of RAP products; and
- b) Bespoke bids should be signed off by the bid evaluation team and submitted to the Wholesale Senior Management Team for information;

## **2. GUIDANCE ON THE KPI PROCESS**

- 2.1 Document and implement a KPI generation and publication process which includes:
- a) how data relevant to each KPI is generated;
  - b) how raw data is collected including an explanation of the criteria, if any, applied to the collection of data;
  - c) where data relevant to each KPI is stored;
  - d) process for generating KPIs from raw data including an explanation of the reasons and effect of data filtering which may be applied; and
  - e) process for the publication of KPIs.

## **3. GUIDANCE ON NON-OPERATIONAL DECISION MAKING AND APPROVAL PROCESSES**

- 3.1 Controls should be implemented over the conduct of Senior management governance fora to mitigate potential regulatory related conflicts of interest and any potential risks of non-compliance with regulatory obligations, in particular controls relating to decision making processes.
- 3.2 In the context of paragraphs 19 to 21 of the RGM Undertakings at Annex 1 of the Settlement Agreement, controls over key decision fora should include :
- a) effective pre-meeting and post-meeting controls, to ensure that the meeting documentation is reviewed and approved by an appropriate Second Line of Defence function to confirm that all required regulatory obligations and regulatory requirements have been effectively considered in the documentation;
  - b) effective controls over distribution of Confidential Regulated Information (either by hardcopy, electronically or decision making processes) and attendance at meetings;
  - c) effective controls over the capture of attendance, documentation referred to and key decisions made, including decision making criteria, to provide sufficient evidence that regulatory obligations and requirements were considered and complied with; and
  - d) effective controls to ensure that any changes made to initiatives previously applied in a senior management governance fora are resubmitted, where



necessary, to obtain further review and approval on the extent of compliance with regulatory obligations and requirements.

#### **4. GUIDELINES ON REPORTING TO THE IOB**

The tables set out below provide guidelines to the IOB as to the content that may be provided for the reports set out in Schedule 2 Reporting of the IOB Charter at Annex 3 of the Settlement Agreement.

## RGM Committee Reporting

Report No.	Report Name	Purpose	Annual reporting frequency	Proposed Content
R01	Risks and Controls Summary Review - Including RGM Processes and Key Business Processes.	Quantitative review of the quality of risks and controls, and its efficacy.	4	Number of controls by category and status (new, opened, closed, active, failed, remediated etc.)
		Quantitative review of the quality of risks and controls, and its efficacy.		Number and types of changes to risks and controls.
		Quantitative review of the quality of risks and controls, and its efficacy.		Number of exceptions per period, and trending by exception types, discovery source (reported, through review), business units, timing / latency, products, etc. Includes aging.
		Details of exceptions and escalations.		Exceptions and escalations with supporting detail and remediation actions and status.

<b>Report No.</b>	<b>Report Name</b>	<b>Purpose</b>	<b>Annual reporting frequency</b>	<b>Proposed Content</b>
<b>R02</b>	Risks and Controls Assurance Summary Review - Including RGM Processes and Key Business Processes.	Quarterly review of the design and operational effectiveness of risk and control processes.	4	Provision of (quarterly) reviews, with detailed findings, of the completeness of the risk assessment and the design of the controls identified to mitigate the risks identified. Including, but not limited to, review of the quality of the self-certification process and the operating effectiveness of the controls in relation to the RACM, included comparison with prior year and how exceptions have been dealt with.  Annual summary comparison with prior years (where available) (Quantitative).
		Summary of issues and developments on the RACM.	1	Summary of issues and developments for the year and comparison to the prior year.
<b>R03</b>	Product Development and Access Requests Summary Review.	Review the status of product development, and its efficacy.	2	Number of RAP requests by status (new, opened, closed, active, failed, declined etc.) for the period.
		Review the status of product development, and its efficacy.		Number of RAP requests and status changes (Gates) by Requester (e.g., downstream, OAOs, aggregates) change types.

Report No.	Report Name	Purpose	Annual reporting frequency	Proposed Content
		Review the status of product development, and its efficacy.		Number of RAP development requests greater than 3, 6, 9 and 1 year, by operator, Status.
		Quantitative review the status of product development, and its efficacy		Exception and escalation cases with descriptive detail (cases that have been rejected or delayed)
<b>R05</b>	Internal Audit Report - Annual IOB review of Wholesale Remuneration Policy	Annual IOB review of Wholesale Remuneration Policy to enhance Wholesale Function operational independence from Group.	1	In line with the requirements of clauses 22 – 24 of the RGM Undertakings at Annex 1 of the Settlement Agreement.
<b>R06</b>	Open eir Capex and Group IT Budget	Transparency of the budgets.	1	Annual report on the open eir capex and Group IT budget and allocation processes.
	open eir Capex and Group IT Budget Change Report	Transparency of budget changes.	4	Reports on open eir capex and Group IT Budget changes, including the gap between the amount requested by wholesale business managers and budgeted amount.

<b>Report No.</b>	<b>Report Name</b>	<b>Purpose</b>	<b>Annual reporting frequency</b>	<b>Proposed Content</b>
<b>R07</b>	Regulatory Code of Practice and Regulatory related Policies and Procedures	Regulatory Code of Practice training completions.	1	Percentage completion of mandatory training per time period.
		Regulatory Code of Practice breaches and regulatory related policies and procedures.		Number of alleged breaches of the Regulatory Code of Practice/policies/procedures reported to HR, percentage resulting in disciplinary investigation, number resulting in disciplinary action.
		Annual review and update of the Regulatory Code of Practice and regulatory related Policies and Procedures.		High level summary of any issues identified during the course of the year, remediation identified, status of issue and completion timeline if remediation not completed.
<b>R08</b>	Wholesale Customer Complaints	For information purposes.	4	<p>Reports on complaints by status and by complaint type, downstream / OAOs, severity, etc.</p> <p>New complaints per period.</p> <p>Closed complaints per period, including rejected/redirected to relevant area as not a regulatory issue;</p> <p>Details on complaints investigated - and no issue found, issue identified, root cause analysis and remediation steps put in place.</p> <p>- Remediation status, including age reporting on remediation, escalations and closure</p>

<b>Report No.</b>	<b>Report Name</b>	<b>Purpose</b>	<b>Annual reporting frequency</b>	<b>Proposed Content</b>
<b>R09</b>	Whistle-blower complaints	For information purposes.	4	Reports on complaints by status, by complaint type, downstream / OAOs, severity, etc. New complaints per period Closed complaints per period, including rejected/redirected to relevant area as not a regulatory issue; Details on complaints investigated - and no issue found, issue identified, root cause analysis and remediation steps put in place. - Remediation status, including age reporting on remediation, escalations and closure
<b>R10</b>	Mandated KPIs	For information purposes.	4	Reports on mandated KPIs include KPIs such as those for provision and repair.
<b>R11</b>	ComReg Decisions	For IOB information purposes.	4	Summaries of ComReg Decisions and impact on the RGM, including commentary on the implementation of ComReg Decisions/Directions and associated programme to implement such ComReg Decisions/Directions.
<b>R12</b>	ComReg Compliance Investigations	Reports on internal and ComReg compliance investigations, breaches, exception reporting, root cause analysis and remediation.	Ad-hoc	Status update of all open wholesale compliance investigations that ComReg has raised with eir on the basis of eir's alleged non-compliance with its regulatory obligations.

<b>Report No.</b>	<b>Report Name</b>	<b>Purpose</b>	<b>Annual reporting frequency</b>	<b>Proposed Content</b>
<b>R13</b>	RGM Transformation Status Report	Reports on RGM implementation - progress, issues identification and remediation programmes.	4	Standard programme / project status report.
<b>R14</b>	Annual Plans for Second Line of Defence and quarterly review of progress against plan.	As required in IOB Charter at Annex 3 of the Settlement Agreement.	4	Risk based annual plan(s), risk review, methodologies, plans and resource dimensioning.  Quarterly review of progress to annual plan(s), including, where appropriate, key themes, issues, concerns. Also, where relevant corrective action(s).

## IA Reporting

Report No.	Report Name	Purpose	Annual reporting frequency	Proposed Content
A01	Internal Audit Reports - RGM and Key Business Process Assurance Reviews	<p>Reports on compliance review of controls (End-to-end process reviews)</p> <p>Review of the design and operating effectiveness of RGM processes and key business processes, including risks and controls management and review of application of key business processes.</p>	4	<p>Review including detailed findings on the compliance review of controls, including the completeness, process compliance, timeliness, availability of process documentation and change control processes. A report should be available for each of the relevant processes. Review of application of key business processes during the reporting year.</p> <p>The key business process, including but not limited to:</p> <ul style="list-style-type: none"> <li>- product development, including product prioritisation and access requests (See #5.4);</li> <li>- Bespoke Bids;</li> <li>- Other wholesale specific operational matters; and,</li> <li>- Pricing.</li> </ul> <p>RGM Processes, include but are not limited to:</p> <ul style="list-style-type: none"> <li>- Capital and operational budgeting and allocation processes, including Group IT allocations; (See #5.2);</li> <li>- Confidential Regulated Information (See #7 and #8 for specific IA Reviews);</li> <li>- Operation and effectiveness of risk analysis and controls over senior management decision making fora (See #5.3);</li> </ul>



Report No.	Report Name	Purpose	Annual reporting frequency	Proposed Content
A02	Internal Audit Report - Review of the RACM and Self-certification Process.	Report on compliance review of controls (end-to-end process reviews) Report on the design and operating effectiveness of the management of the RACM, including the self-certifications process.	4	<p>Quarterly reviews, with detailed findings, of the Second Lines approach to the review of RGM processes, including but are not limited to:</p> <ul style="list-style-type: none"> <li>- Those covered by the BUPCR and RGM regulatory control framework such as risk identification, control development, operation of controls by business units, self-certification and reporting, RACM management process and the operating effectiveness of the controls in relation to the RACM.</li> </ul> <p>This review should include, but not limited to, a review of the completeness and accuracy of risk assessments logged in the Risk registered and quality of controls designed to mitigate those risk.</p>
A03	Internal Audit Report - Capex and Group IT Opex Process Risks and Controls Review	Report on compliance review of controls (end-to-end process reviews): Design and operating effectiveness of risks and controls	1	Details on the annual capex and Group IT budgeting and allocation process, including a review of the design and operating effective to the end-to-end process and the associated risks and controls.

Report No.	Report Name	Purpose	Annual reporting frequency	Proposed Content
<b>A04</b>	Internal Audit Report - Report on the design and operating effectiveness of risk analysis and controls over senior management fora	Report on the design and operating effectiveness of risk analysis and controls over senior management fora	1	Review, including detailed findings, a description of the risk identification processes, the risks identified and the mitigating controls applied to senior management fora and the operation of the associated controls and their effectiveness.
<b>A05</b>	Internal Audit Report - Product Development Summary Review	Report on compliance review of controls (end-to-end process reviews) - product development, including product prioritisation and access requests.	1	Review, including detailed findings on the compliance review of controls, including the completeness, process compliance, timeliness, availability of process documentation and change control processes. A report should be available for each of the relevant processes. Review of application of key business processes during the reporting year.

<b>Report No.</b>	<b>Report Name</b>	<b>Purpose</b>	<b>Annual reporting frequency</b>	<b>Proposed Content</b>
<b>A06</b>	Internal Audit Report - Review of the Second Line of Defence	Report on the reviews of the effectiveness of the Second Line of Defence Functions.	1	Review, with detailed findings, including a review on positioning (e.g. reporting lines, stakeholder management), people (e.g. resource dimensioning, training and development, function structure) and process (e.g. statements of compliance, risk management framework, key business process reviews, including but not limited to product development, bespoke bids and other wholesale specific operational matters).
<b>A07</b>	Internal Audit Report - Systems access controls including outputs of BAR/SODs/TSDS reviews	Report on the design and operating effectiveness of RGM in relation to system access controls in relation to CRI.	1	In line with requirements of paragraph x of Settlement Agreement
<b>A08</b>	Internal Audit Report - Controls over access to unstructured data	Report on the design and operating effectiveness of RGM in relation to unstructured access controls in relation CRI.	1	In line with requirements of paragraph x of Settlement Agreement

Report No.	Report Name	Purpose	Annual reporting frequency	Proposed Content
A09	Internal Audit Reporting - Other (internal and external) reports and information, as required by the IOB Charter.	As requested by the IOB	N/A	<p>To include information as required by the IOB in fulfilment of the IOB Charter, and also the delivery of the annual opinions:</p> <ul style="list-style-type: none"> <li>• Whether risk regulatory operations and assurance functions with responsibilities in respect of regulatory compliance had appropriate mandates and were adequately resourced and sufficiently independent of line management;</li> <li>• The adequacy of the Regulatory Code of Practice and other relevant documentation to foster regulatory compliance; and</li> <li>• The adequacy of the governance structures in place to ensure regulatory compliance;</li> </ul>
A10	Internal Audit Report - RGM Reviews of the Wholesale Function implementation of ComReg Decisions / Directions	<p>RGM reviews of the Wholesale Function implementation of ComReg Decisions / Directions</p> <p>The requirement for a Second line of Defence Function to follow up actions taken by the relevant business units to implement changes arising from the publication of a ComReg Decision and report on progress to the IOB'.</p>	1	<p>Review of the effectiveness of implementation of ComReg Decisions / Directions. Focus on regulatory compliance matters, such as implementation of ComReg Decisions / Directions, product development, pricing and bespoke bids(RAP related)</p>

Report No.	Report Name	Purpose	Annual reporting frequency	Proposed Content
A11	Annual Plans for Third Line of Defence and quarterly review of progress against plan.	As required in IOB mandate	4	<p>Risk based annual plan, risk review, methodologies, plans and resource dimensioning.</p> <p>Quarterly review of progress to annual plan, including, where appropriate, key themes, issues, concerns. Also, where relevant corrective action(s).</p>
A12	Annual review of policies, procedures, mandates/charters and fora terms of reference	Report on the review of policies, procedures, mandates/charters and fora terms of reference to ensure that there are no conflicts with regulatory requirements.	1	Assessment of the extent to which policies, procedures, mandates/charters and fora terms of reference, comply with, and where possible, embed the requirements of the Regulatory Code of Practice.

## Annex 4

### Civil Engineering Principles

#### Civil Engineering Infrastructure principles for access to Underground Utility Boxes and Conduits

##### ***Introduction***

This document outlines the principles that open eir impose on its operatives when working on Civil Engineering infrastructure and in particular, underground conduit and UUBs. These principles will be subject to change over time. These principles apply to Open eir's access to the infrastructure. The open eir network has evolved over many decades. In the intervening time many work practices have evolved based on experience of managing a network of the scale of the open eir network. For example the practice of installing fibre optic cable in conduits (also known as ducts) that existed in the 1990s differs fundamentally with the current work practices. Fibre optic cable is now only installed within a protective sub-duct. This work practice minimises the risk of damage to existing cables as a result of drawing in new cables into conduits. The maintenance of network integrity is paramount in all principles outlined in this document. Open eir invests heavily in its network and is determined to ensure that the positive effects of this investment in terms of the delivery of quality services to end users is not undermined through poor workmanship generating faults on the network.

The open eir underground network is an extensive network covering the land mass of Ireland and can be found on almost every road comprising the ~100,000Km of road network in the country. The underground network is comprised of tracks containing one or more conduits facilitating the laying of telecommunications cables. Access to the underground network is via a series of ~1,200 Exchange sites and a network of underground utility boxes (UUBs) commonly referred to as chambers or joint boxes. At time of writing there are 615,199 recorded UUBs in the open eir network.

It is open eir's policy to minimise network disturbance and to avoid accessing UUBs whenever possible due to the associated risks to both staff and plant and potential to generate faults. Staff accessing UUBs must be properly trained and accredited to avoid injury to either themselves or members of the public. In open eir's experience, the superior performance of telecommunications plant placed underground versus overhead is as a direct result of several influences. Experience has shown that there is a correlation between

underground network intervention and the rate of fault occurrence. To minimise intervention and resultant fault occurrence open eir has invested both in the training of operatives and provision of test equipment specifically to accurately localise faults and therefore minimise intervention. A consequence of increased footfall in the underground network will inevitably be an increase in operating cost to open eir and a reduction in service levels to affected wholesale and retail customers. At present Open eir is obliged to compensate customers when fault duration exceeds certain thresholds. One of the biggest impediments to meeting fault duration SLAs is the impact of delays in obtaining licences to remediate underground plant. It is therefore expected that if obliged to facilitate increased network interventions resulting from Access Seekers installing their cables in open eir conduits and UUBs then Access Seekers will share the burden of any penalties where faults are attributed to their workmanship. The nature of fault occurrence is that damage caused will take time to manifest itself. It is therefore prudent that when estimating the value of compensation due to Open eir as a result of damage to its plant that there is detailed record of network interventions.

It will be a requirement for all Access Seekers to inform open eir whenever they have resources working in the open eir network. This will identify the location and nature of work being undertaken.

### ***Engineering Principles for Accessing Conduits/UUBs***

The following are a key set of principles that must be enshrined in any decision to permit Access seekers to place cables/closure in Open eir conduits and UUBs. They are principles that open eir adhere to and access seekers must also be bound by these key principles.

1. An access seeker will be responsible for its own network design (routes chosen, cables chosen) with full respect of these CEI engineering principles.
2. As there is an incomplete spatial record of conduits, an access seeker shall record the remaining space available at each UUB requiring access on a chosen route as part of a duct survey. The Access Seeker shall provide a survey record for each of the conduit faces in accordance with the format that will be set out in the product documentation.

3. Fibre cable will always be installed in a sub-duct<sup>6</sup>. In exceptional cases, open eir will engage with the Access Seeker to investigate alternative options including (but not limited to) Direct Duct Access subject to engineering rules.
4. In circumstances where Access Seeker sub-duct has been installed and a duct subsequently is deemed to be full then the Access Seeker will engage constructively to make available spare capacity to open eir on terms equivalent to the open eir sub-duct access product, taking into account the principle to maximise the efficient use of duct space.
5. All cable and splice closure specifications to be deployed in Open eir CEI must be approved in advance and be within the permitted size as defined in the product technical manual.
6. If no capacity exists, i.e. the conduit is deemed full, then the Access seeker will be informed of same, and Open eir will offer a dark fibre solution where available. Where no capacity exists in a UUB and Open eir have no plans to increase its capacity, the access seeker will be informed.
7. For the purpose of ingress / egress an access seeker may interconnect to any suitable UUB, following agreement with Open eir, provided there is sufficient space in the UUB for safe working and to minimise the risk of disturbance to existing infrastructure in the UUB.
8. Should an access seeker wish to access a buried UUB (for example the UUB cover was buried at some point in the past as a consequence of local authority resurfacing work) Open eir's consent must first be sought. Subject to Open eir's consent, the access seeker is responsible for seeking the necessary local authority permissions and is responsible for the costs of related civil engineering works including reinstatement in accordance with good workmanship; to the satisfaction of the local authority and at no cost to Open eir.
9. An access seeker shall be responsible to install and maintain its fibre cables in open eir sub-duct.

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<sup>6</sup> Either open eir owned or Access Seeker owned, in both cases installed by open eir.



10. While installing and maintaining cables/splice closures, an access seeker shall not interfere with and/or damage other operator infrastructure.
11. Where unauthorised cables are identified in CEI, these will be removed.
12. An access seeker shall be responsible for the supply of documentation to Open eir of how the CEI is used (as built record of closure installation) in an agreed GIS format that can be incorporated in Open eir's GIS system Smallworld.
13. Where route diversion/retirement is required by 3rd parties, Open eir will inform all CEI subscribers and it will be up to the subscribers to make arrangements/representation with respect to their plant in/on affected CEI.
14. Where access seekers install equipment in open eir UUB the access seeker will clearly label. The labelling format/syntax must be agreed in advance. Note: where there is no labelling the equipment is deemed to be Open eir's.

### ***CEI Information exchange***

CEI sharing Information format is GIS in all cases and all requests must conform to a singular standard that enables Open eir to update its inventory in a timely manner.

- UUBs must be coded i.e. (ID, size/volume and normalised type).
- Conduits are coded i.e. (number of ducts, diameter of duct and type).
- The access seeker shall record Surface type and return as part of survey.
- The access seeker must notify Open eir of the type/size/locations where splice closures are placed in UUBs.

## Annex 5

### Definitions

In the Settlement Agreement (with the exception of the Performance Agreement at Annex 2 and the IOB Charter at Annex 3 of the Settlement Agreement), unless the context otherwise requires, the following words and expressions have the following meanings:

**“2020 Milestone”** the Performance Milestones due for delivery after 1 January 2020 together with any Mid-Term Milestone not delivered by the Second Reconciliation Date

**“Access Reference Offer”** shall have the same meaning as in ComReg Decision D10/18.

**“Access Seeker”** shall have the same meaning as in ComReg Decision D10/18.

**“Access”** shall have the same meaning as in ComReg Decision D10/18.

**“Authorisation”** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

**“BAR”** means business access review.

**“Board”** means the board of directors of eir.

**“BUPCR”** means the Business Unit Process Compliance Review.

**“Business Day”** a day (other than a Saturday or a Sunday or public holiday in Ireland) on which clearing banks are open for business in Dublin.

**“Business Day”** means a working day.

**“CEI”** or **“Civil Engineering Infrastructure”** shall have the same meaning as in ComReg Decision D10/18.

**“Civil Engineering Principles”** means the Civil Engineering Principles as more particularly described at Annex 4 of the Settlement Agreement.

**“Chamber”** shall have the same meaning as in ComReg Decision D10/18.

**“Communications Framework”** means the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No. 334 of 2011) (**“the Access Regulations 2011”**), the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011, (S.I. No. 335 of 2011) (**“the Authorisation Regulations 2011”**), the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011, (S.I. No. 333 of 2011) (**“the Framework Regulations 2011”**), and the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011, (S.I. No. 337 of 2011) (**“the Universal Service Regulations 2011”**).

**“ComReg Decision D10/18”** means Market Review Wholesale Local Access (WLA) provided at a Fixed Location, Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products. Response to Consultation and Decision (Reference: ComReg 18/94; Decision: D10/18; Date: 19 November 2018).

**“Confidential Regulated Information”** or **“CRI”** means information relating to Regulated Access Products (RAP) over and above that which is currently in the public domain, which may be of value to eir’s downstream business or a wholesale customer or to a downstream wholesale customer. This includes Confidential Wholesale Information.

**“Confidential Wholesale Information”** means confidential or commercially sensitive information provided to the Wholesale Function by a wholesale customer.

**“CRI Guidelines”** means the guidelines that govern the treatment of Confidential Regulated Information and Confidential Wholesale Information within eir.

**“Daily Penalty”** means €3,333 for each calendar day or part thereof by which a Performance Milestone was delivered late or, if it has not been delivered by a particular Reconciliation Date, the number of days or part thereof that have elapsed since the Performance Milestone due date.

**“Data Asset Register”** means as set out at paragraph 61 of the RGM Undertakings at Annex 1.

**“Data Classification Policy”** means the policy that sets out the classification of data.

**“Determination”** a determination by ComReg that a Performance Milestone has been achieved or not or is delayed, which determination, in each case, shall be final and **“Determine”** shall be construed accordingly.

**“Direct Duct Access”** shall have the same meaning as in ComReg Decision D10/18.

**“Duct Access”** shall have the same meaning as in ComReg Decision D10/18.

**“Duct”** shall have the same meaning as in ComReg Decision D10/18.

**“Early Milestone”** a Performance Milestone due for delivery on or before the first meeting of the IOB or on or before 31 May 2019.

**“Egress”** shall have the same meaning as in ComReg Decision D10/18.

**“eir Group”** or **“the Group”** or **“eir”** means eir, its holding companies from time to time (currently Eircom Holdco S.A.) and any of their respective subsidiaries from time to time.

**“eir IOB Members”** means the two members of the IOB that shall be appointed by eir in consultation with ComReg and shall be non-executive members of the Board.

**“Encumbrance”** shall be construed as a reference to a mortgage, charge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect.

**“Equivalence of Outputs”** shall have the same meaning as in ComReg Decision D10/18.

**“Escrow Account”** the deposit account held by the Escrow Agent.

**“Escrow Agent”** means any reputable and licensed financial institution, which is acceptable to ComReg (acting reasonably).

**“Escrow Agreement”** the escrow agreement entered between ComReg, eir and the Escrow Agent.

**“Escrow Amount”** the amount of €9,000,000 (nine million euro) to be deposited by eir with the Escrow Agent in the Escrow Account.

**“Final Reconciliation Date”** 1 December 2021 or any earlier date on which ComReg determines that all Performance Milestones have been delivered.

**“First Reconciliation Date”** 1 June 2019.

**“Group Senior Management Team” or “Group SMT”** means the senior management of eir Group.

**“Ingress”** shall have the same meaning as in ComReg Decision D10/18.

**“Internal Audit annual work plan”** means the annual plan which sets out all RGM related tasks to be performed during the period as further described in the RGM Undertakings.

**“Internal Audit”** means the part of Internal Audit function of the Group that is responsible for carrying out internal audit activity relating to regulatory governance. This is also referred to as the “Third Line of Defence”. Internal Audit shall have a reporting line on administrative matters to the Chief Financial Officer (CFO) of eir and shall report functionally to the IOB in respect of regulatory matters.

**“IOB Charter”** means the charter of the Independent Oversight Body which is at Annex 3 of the Settlement Agreement.

**“IOB Member”** means one of the five members of the IOB.

**“IOB”** means Independent Oversight Body as established in accordance with the IOB Charter.

**“IOB”** the independent oversight body established in accordance with the IOB Charter at Annex 3 of the Settlement Agreement.

**“Irrevocable Instruction”** shall have the meaning ascribed to it in the Escrow Agreement.

**“IT Transformation Plan”** means a document which details eir’s plan to upgrade or replace its IT systems including timelines.

**“KPI”** means key performance indicator.

**“Late Delivery Amount”** in respect of any Performance Milestone at a particular Reconciliation Date delivered after a due date means the lesser of the:

- (a) The Daily Penalty; and
- (b) Notional Milestone Amount.

**“Late Delivery Payment”** a payment to ComReg by the Escrow Agent on foot of an Irrevocable Instruction from ComReg.

**“Mid-Term Milestone”** a Performance Milestone due for delivery after the first meeting of the IOB and before 31 December 2019 together with any Early Milestone that had not been delivered by the First Reconciliation Date.

**“Next Generation Networks”** shall have the same meaning as in ComReg Decision D10/18.

**“Notional Milestone Amount”** is the amount set out in Column C of the table in the Schedule below for each of the Performance Milestones.

**“OAO”** means Other Authorised Operator.

**“Open Compliance Investigations”** means the list of ComReg compliance investigations as set out in clause 4.1 of the Settlement Agreement.

**“Passive Access Records”** shall have the same meaning as in ComReg Decision D10/18.

**“Payment Date”** is the date on which any Refund Payment becomes due.

**“PDC”** means product development councils.

**“Performance Agreement”** means the Performance Agreement as more particularly described at Annex 2 of the Settlement Agreement in respect of the RGM Undertakings.

**“Performance Milestones”** each of the milestones described which are to be achieved by the relevant dates applicable thereto as set out in table attached as Schedule 1 of this Performance Agreement whether they are an Early Milestone, a Mid Term Milestone or a 2020 Milestone.

**“PII”** means Personally Identifiable information.

**“Pole Access”** shall have the same meaning as in ComReg Decision D10/18.

**“Pole”** shall have the same meaning as in ComReg Decision D10/18.

**“RACM”** means the risk and control matrix.

**“RAP”** means regulated access products and for avoidance of doubt includes associated services, facilities.

**“Reconciliation Date”** means the First Reconciliation Date, the Second Reconciliation Date or the Final Reconciliation Date, as the case may be.

**“Refund Payment”** a payment to eir by the Escrow Agent on foot of an Irrevocable Instruction from ComReg.

**“Regulatory Code of Practice”** means eir’s Regulatory Code of Practice which has been designed to foster regulatory compliance and which must be adhered to by all employees, board members and – where appropriate – contractors and sub-contractors.

**“RGM Internal Documentation”** means the RGM overview manual and associated documentation as documented by eir.

**“RGM Undertakings”** means the undertakings given by eir to ComReg dated 10 December 2018 and published on ComReg’s website as set out at Annex 1 of the Settlement Agreement.

**“RGM”** means eir’s regulatory governance model.

**“RRMA”** means Regulatory Risk Management and Assurance.

**“Second Reconciliation Date”** 1 December 2019.

**“Settlement Agreement”** means this document in its entirety including all Annexes and schedules.

**“Stay Orders”** means the Orders of Mr. Justice Haughton of the High Court dated 18 October 2017 imposing a stay on the proceedings in Case 481 and Case 568 pending the outcome of the Regulation 19 Proceedings.

**“Structured Data”** means information that is documented and managed through an established business process in a formal manner and includes memos, email messages, letters, order forms, invoices, agendas and reports.

**“Sub-duct Access”** shall have the same meaning as in ComReg Decision D10/18.

**“Sub-duct”** shall have the same meaning as in ComReg Decision D10/18.

**“Third Reconciliation Date”** 1 December 2020.

**“TSDS”** means technical system data segregation.

**“UAM”** means user access management.

**“Unstructured Data”** means data that is documented and managed in a less formal manner than Structured Information and includes information passed between individuals or business units through informal communications.

**“Wholesale Function”** when used in respect of eir, means those divisions of eir collectively referred to as open eir which include eir’s wholesale regulated activities, eir’s networks business and the regulated activities of field operations.

**“Wholesale Pricing Function”** means the function as described in paragraph 18 of the RGM Undertakings at Annex 1 of the Settlement Agreement .

**“Wholesale Senior Management Team” or “Wholesale SMT”** means the management team of the Wholesale Function (including a Managing Director or Directors with a formal terms of reference) responsible for *inter alia* wholesale regulatory governance.