



Proximus's Reference ULLOffer

# Annex Jb Non-Disclosure Agreement

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## 1. Non-Disclosure Agreement

This non-disclosure agreement ("Agreement") has been made

**Between**

Customer, a company incorporated under the laws of ..., with registered office and place of business at ..., registered with the Brussels Register of Legal Entities under number [xxx].

(hereinafter "Customer")

**and**

Proximus PLC under Belgian Public Law, a Belgian autonomous public enterprise organized under the Law of March 21, 1991, and the Royal Decree of August 19, 1992, with registered office and place of business at 1030 Brussels, 27 Boulevard Roi Albert II, registered with the Brussels Register of Legal Entities under number 202.239.951.

(hereinafter "Proximus")

Both parties to this agreement being hereafter referred to, collectively, as the "Parties", or, individually, as a "Party"

**Witnesseth as follows:**

Whereas, the Parties have shown interest to obtain information with respect to the unbundling of the local loops in the Proximus network as described in the Proximus's Reference ULL Offer (the "Business Purpose");

Whereas, in the framework of these discussions, the Parties may need to disclose to one another confidential information with regard to products, processes, commercial, research and development activities or, in general, any know-how in relation to their respective business activities.

Whereas, in order to protect the respective proprietary interest of the Parties in the information that each of the Parties might disclose to the other, the Parties have decided to agree on the terms and conditions subject to which such confidential information will be disclosed.

Now, therefore, in consideration of the mutual covenants herein contained, the Parties do agree as follows:

## 2. Confidential Information

1. In this Agreement, the term "Confidential Information" shall mean:

- Any information in any form communicated by one Party (or from any of its Associated Companies as defined in Section O of this Agreement) (the "Disclosing Party") to the other Party (or to its employees and advisors) (the "Receiving Party") in connection with the Business Purpose, or obtained by the Receiving Party in connection with the Business Purpose, provided that such information is, at the time of its disclosure, designated, labeled or marked "confidential" or with an equivalent term. If such information was disclosed orally, it shall constitute Confidential Information provided that (i) a written notice containing a summary of the information disclosed orally and mentioning that such information is confidential, is issued by the Disclosing Party to the other within thirty days from the date of disclosure, or (ii) such disclosure is recorded in minutes of a meeting that are designated, labeled or marked "confidential" or designated, labeled or marked with an equivalent term.

and

- Any information communicated by the Disclosing Party to the Receiving Party in connection with the Business Purpose, or obtained by the Receiving Party in connection with the Business Purpose, which derives economic value, actual or potential, from not being generally known to persons other than the Disclosing Party, or which, by its nature, or, under the circumstances, are to be kept secret or confidential.
2. Any Confidential Information communicated or obtained prior to the conclusion of this Agreement shall be considered in the same manner and be subject to the same treatment as the Confidential Information disclosed after such date, provided that such Confidential Information is specifically identified by the Disclosing Party in a written notice sent to the Receiving Party within 30 days after the date of this Agreement.
3. For purposes of this agreement, "Confidential Information" does not include:
- information that is properly and lawfully in the public domain otherwise than by breach of this Agreement or any other obligation of confidence, as can be demonstrated on the basis of published documents and other evidence. Notwithstanding the foregoing, information that is specific to certain data will not be deemed to be in the public domain merely because such information is embraced by more general disclosures in the public domain. In addition, any compilation of public information, but which is set forth in a format which is not publicly available, will not be deemed as being in the public domain;
  - information that was disclosed by a third party to the Receiving Party without restriction on disclosure or use, unless the Receiving Party had actual knowledge that this information was acquired unlawfully or by a breach of contract or fiduciary relationship.
4. Information that does not constitute a trade secret will cease to be Confidential Information on the third anniversary of the first date of disclosure thereof by one Party to the other.
5. The term "Associated Companies" of a Party shall mean any subsidiary and/or parent company of such Party, together with any subsidiaries of such parent company. In this agreement, the terms parent and subsidiary company shall be understood as meaning, in the case of a parent company, only the companies which, directly or indirectly, hold more than fifty percent of the outstanding voting shares of the relevant company and, in the case of a subsidiary company, only the companies in which the relevant company holds, directly or indirectly, more than fifty percent of the outstanding voting shares.

### 3. Non-Disclosure

6. The Receiving Party shall refrain from disclosing the Confidential Information to any third party and shall use the Confidential Information only for the Business Purpose or the negotiation of any agreement related to the Business Purpose. In addition, the Receiving Party shall take any and all measures to ensure the confidentiality of this information. In any event, the Receiving Party shall use efforts commensurate with those that such Party employs for protecting the confidentiality of its own Confidential Information.
7. Notwithstanding the foregoing, either Party shall be allowed to disclose the Confidential Information to third parties provided it has obtained the prior written consent of the other Party. Such written consent will be given case-by-case upon a discretionary basis. Such written consent shall only be valid and enforceable for the specific information listed therein. The written consent to disclose Confidential Information shall identify the third party or parties to which the information can be disclosed and shall set forth the terms and conditions to which such disclosure is subject.
8. Notwithstanding the general application of the provisions of Section 6, the Receiving Party shall not use the Confidential Information in any way detrimental to the Party who consented to the disclosure.
9. The Disclosing Party shall remain free to disclose to third Party Confidential Information disclosed to the Receiving Party.

### 4. Disclosure to Personnel, Advisors or Suppliers

10. A Receiving Party shall disclose the Confidential Information received from the other only to its employees, agents, directors, consultants or advisors who have a need to know such information because they are directly involved in the assessment, evaluation of or negotiation of agreements related to the Business Purpose. Such Party shall ensure that such employees, agents, directors, consultants or advisors are bound by the obligations of confidentiality in respect of the Confidential Information that are set forth in this Agreement.
11. Customer and Proximus shall be entitled to disclose the other Party's Confidential Information to the employees, agents, directors, consultants or advisors of their Associated Companies, as stipulated in Article 3 hereabove, on the same terms as they can disclose the Confidential Information to their own management and employees subject to the obligations contained in Clause 1 of this Article.
12. Notwithstanding anything to the contrary in the foregoing provisions, each of the Parties undertakes not to disclose Confidential information to business divisions of their organization or business division of their Associated Companies that are engaged in activities competing with the other Party, unless such disclosure would be required for the Business Purpose, in which case no use whatsoever shall be made of this Confidential information for any purpose other than the Business Purpose.
13. Either Party shall be entitled to disclose Confidential Information which they received from the other Party to this Agreement to their suppliers of goods and services provided and to the extent that they are able to demonstrate that these suppliers effectively require to have access to such information in order to supply the relevant goods and services. The Parties shall do whatever is necessary in order to impose on the suppliers which have obtained access to Confidential Information under the present provision obligations to keep this information confidential which are at least equivalent to the obligations imposed under this Agreement.

14. Each Party shall be fully liable for any unauthorized disclosure or use of the Confidential Information by its employees, agents, directors, consultants, advisors or suppliers. Each of the Parties agrees, at its sole expense, to take all responsible measures (including but not limited to court proceedings) to restrain its employees, agents, directors, consultants, advisors or suppliers from prohibited or unauthorized disclosure or use of the Confidential Information.

## 5. Disclosure Required by Law

15. If the disclosure of Confidential Information to third parties is required by law, the Receiving Party shall refrain from disclosing the Confidential Information until it has informed the Disclosing Party in writing of the reasons and nature of the proposed disclosure. The Disclosing Party shall have a reasonable term to (i) make known its opinion with regard to the need to disclose the relevant information and with regard to the scope and nature of the information to be disclosed; to (ii) seek a protective order or other appropriate remedy or to (iii) waive compliance with the obligations of this Agreement.
16. If the Disclosing Party considers that the disclosure of Confidential Information is not required by law and in the absence of a protective order or other remedy, Parties shall designate a mutually acceptable counsel who shall decide whether the disclosure is required by law. Any expenses and costs flowing from the use of such a counsel will be borne by the Disclosing Party unless the claim for disclosure can be considered as unreasonable or frivolous.
17. If the Disclosing Party waives the obligations under this Agreement or if counsel decides that disclosure is required, the Receiving Party shall be entitled to disclose only that portion of the Confidential Information which is designated by the Disclosing Party or by counsel to be subject to disclosure required by law.
18. Parties shall cooperate to preserve the confidentiality of the information disclosed under this Agreement including, where relevant, by cooperating to obtain a protective order or other reliable assurance that confidential treatment will be granted by the addressee of the disclosure. Any costs flowing therefrom shall be borne by the Disclosing Party.
19. Without prejudice to the application of the foregoing, in the event that a disclosure to a competent government authority is required to ensure compliance with applicable laws, the Parties shall endeavor to ensure the confidential treatment of the Confidential Information by such government authorities.
20. The provisions of this agreement are without prejudice to the right of each of the Parties to disclose Confidential Information to the BIPT (Belgian Institute for Post and Telecommunications) where (i) such disclosure is necessary to comply with any general or specific reporting obligations of the Party concerned or where (ii) such disclosure is made in the context of formal proceedings initiated in front of the BIPT. If any such disclosure of Confidential Information is made, the Party communicating the information concerned will ensure that the attention of the BIPT is properly drawn to the fact that the information is confidential and that the information needs to be kept confidential.

## 6. Limited Scope

21. This Agreement applies only in respect to those rights and obligations that are explicitly referred to herein. Nothing in this agreement shall be construed as, directly or indirectly, granting or conferring upon the Receiving Party any right of transfer and/or license under any patent, copyright, know-how, trademarks, registered trade names, service marks or any other right (including intellectual or industrial property rights), which is owned by or licensed to the other Party or which such other Party should acquire in property or by way of license.
22. The disclosure of Confidential Information shall not constitute an encouragement to infringe any industrial and/or intellectual property rights of third parties. The exchange of information shall not constitute any representation, warranty, assurance or guarantee with respect to the infringement of these rights.

## 7. No Representation or Warranty

23. Except as set forth in a subsequent definitive agreement between the Parties, neither Party shall be deemed to have made any representation or warranty as regards the accuracy or completeness of the Confidential Information communicated under this Agreement.
24. Neither Party nor any of its representatives shall have any liability to the other Party or its representatives relating to or resulting from the use of the Confidential Information, except in case of intentional or gross negligence.

## 8. Return of Confidential Information

25. If either Party decides that it does not wish to participate with the other in a transaction in relation to which Confidential Information was disclosed, it will promptly inform the other Party of that decision. In that case, any documents, designs, drawings, models, samples, computer software or other tangible items, in either electronic or paper format, constituting Confidential Information and communicated by the Disclosing Party ("Primary Materials") shall be returned by the Receiving Party at the request of the Disclosing Party. In addition, at the request of the Disclosing Party, all copies of the Primary Materials will be destroyed or returned to the Disclosing Party and the Receiving Party shall certify in writing to the Disclosing Party that all such copies have been destroyed or returned to the Disclosing Party.
26. Any notes, analyses, compilations, comparisons, studies, interpretations or other similar documents prepared by a Receiving Party, its employees, agents, directors, consultants or advisors, which contain, reflect or are based upon, in whole or in part, the Confidential Information ("Derivative Materials") will be kept by such Party and shall be kept confidential by it, or will be destroyed by it if so requested by the Disclosing Party. In the latter case, the Receiving Party shall certify in writing to the Disclosing Party that the Derivative Materials, including all copies thereof, have been destroyed or returned to the Disclosing Party.

## 9. Duration

27. This Agreement shall take effect on the date of conclusion of this Agreement and shall remain in force until the end of the third year following of the last disclosure of Confidential Information covered by this Agreement.
28. In the event that the Parties enter into one or more agreement related to the Business Purpose, the confidentiality provisions contained in that agreement will supersede the provisions of this Agreement.

## 10. Miscellaneous

29. In the event any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this agreement. This agreement shall be construed as if such invalid, illegal or unenforceable provision had never been set forth herein, and the agreement shall be carried out as nearly as possible according to its original terms and intent.
30. No failure or delay by either of the Parties in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
31. In the event of a breach by either of the Parties of any or all of the terms or conditions contained herein, the non-breaching Party may, at its option, institute and prosecute proceedings in court to obtain damages for any breach of this Agreement, or to enforce the specific performance hereof or to enjoin the disclosure or unauthorized use of any of the Confidential Information, but nothing herein shall be construed to prevent such other legal remedies as the non-breaching Party may elect to invoke.
32. Acceptance of the terms contained in this Agreement shall not compel the Parties to enter into any further agreements or to proceed with any possible relationship or other agreements. Nothing in this agreement shall prevent the Parties to pursue other business opportunities, interconnection, access or special access arrangements or agreements in Belgium or abroad, either independently or with third parties, simultaneously with the discussions between the Parties or subsequently.
33. This Agreement shall be governed by Belgian law.
34. Any and all disputes concerning or arising out of the conclusion, interpretation or performance of this Agreement will be submitted exclusively to the courts of Brussels in Belgium.





In witness whereof, the Parties have caused this Agreement to be duly executed in the English language by their respective duly authorized officers, at the date(s) mentioned hereunder in two original copies, of which each Party acknowledges having received one copy.

For Proximus

For Customer

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