

Unbundling Agreement

UNBUNDLING AGREEMENT

between

[Corporate name of the concerned Operator]

and

Entreprise des Postes et Télécommunications

March 2015

Date	Version
26.03.2015	Version 1

Unbundling Agreement

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Unbundling Agreement

By and between

[corporate name of the Provider], a [legal form of the company, such as e.g. limited liability] company ("société anonyme" [French translation of the legal form to be adjusted if needed]) incorporated under the laws of Luxembourg, registered with the Luxembourg Trade and Companies Register ("Registre de Commerce et des Sociétés") of [city to be specified] under registration number [to be specified], having its registered office at [address to be specified], Grand Duchy of Luxembourg, represented by [identity to be specified], acting as [title to be specified], duly empowered for the purpose hereof, hereafter the "Operator",

and

Entreprise des Postes et Télécommunications, a public undertaking ("établissement public") created by the law dated August 10th, 1992 as further modified, registered with the Luxembourg Trade and Companies Register ("Registre de Commerce et des Sociétés") under registration number J28 and having its registered office at 8a avenue Monterey, L-2020 Luxembourg, Grand-Duchy of Luxembourg, represented by Mr. Gaston BOHNENBERGER, acting as *Directeur*, duly empowered for the purpose hereof, hereafter "POST Technologies",

The Operator and POST Technologies being hereafter referred individually as to a "Party" and together as to the "Parties".

WHEREAS

- A. The Operator is a legal person providing fixed telecommunication services, duly notified at ILR pursuant to the Luxembourg Law of February 27, 2011 on Networks and Electronic Communication Services (the "Telecom Law") in particular for the provision of retail broadband services to End-Users (the "Service Notification").
- B. POST Technologies is the established telecommunications operator in Luxembourg, which has been required by ILR to provide regulated wholesale services to other operators notified at ILR pursuant to the Telecom Law, the Operator being one of them, and in particular the LLU Services as referred to and detailed in the applicable Reference Unbundling Offer ("RUO").
- C. The Operator having requested to procure from POST Technologies certain services and facilities covered by the applicable RUO, the Parties have discussed the terms and conditions of this Unbundling Agreement on the provision of LLU Services (all as defined in the RUO), based on the RUO that has been published and is currently in force in compliance with the applicable ILR regulations, and decided to enter into this Unbundling Agreement to make the terms of the RUO binding between them.

THIS BEING REMINDED, THE PARTIES HAVE AGREED AS FOLLOWS:

1. DEFINITIONS, INTERPRETATION AND ORDER OF PRECEDENCE

- 1.1 In this Unbundling Agreement (including its recitals, appendices and/or subsequent amendments if any) the words and expressions used with a capital letter shall have the same meaning as defined in the applicable RUO, unless expressly specified otherwise in this Unbundling Agreement or where inconsistent with the context.
- 1.2 The appendices of this Unbundling Agreement form integral part thereof and shall have the same effect as if set out in full in the body of this Unbundling Agreement and any reference to this Unbundling Agreement expressly includes its appendices.
- 1.3 The applicable RUO as well as the General Terms and Conditions for Sale of POST Technologies in force (the "GTCS") are an integral part hereof. The Parties expressly agree that the order of precedence set forth hereafter shall apply in case of discrepancies or contradictions between :
 - (i) any provision(s) of this Unbundling Agreement and any provision(s) of the applicable RUO, the concerned provision(s) of the applicable RUO shall prevail;
 - (ii) any provision(s) of this Unbundling Agreement and any provision(s) of the applicable GTCS, the concerned provision(s) of this Unbundling Agreement shall prevail;
 - (iii) any provision(s) of the applicable RUO and any provision(s) of the applicable GTCS, the concerned provision(s) of the applicable RUO shall prevail.
- 1.4 Clause and Appendix headings are inserted for reading purposes only and shall not affect the interpretation of this Unbundling Agreement.

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1.5 Unless expressly stated otherwise, any reference to a Clause or an appendix is a reference to a Clause or appendix of this Unbundling Agreement.

2. SCOPE

2.1 The purpose of this Unbundling Agreement is to set forth the specific terms and conditions whereby, in addition to the provisions of the LLU Services defined in the applicable RUO, which forms an integral part of this Unbundling Agreement, POST Technologies shall provide, pursuant to the Law and the applicable RUO, and the Operator shall pay for the LLU Services as ordered by the latter.

2.2 For the avoidance of doubt, the applicable RUO as referred to here above may be (i) amended or (ii) replaced and superseded from time to time as set forth in the said RUO or in compliance with the Law and applicable ILR regulations, while the Parties expressly agree that the above reference to the "applicable RUO" shall expressly refer to the RUO or any similar reference offer applicable in force.

2.3 Any applicable RUO or similar reference offer shall automatically apply to and be incorporated in this Unbundling Agreement, without any further or specific formalities from either or both Parties be required or necessary in this respect for the entire term of this Agreement and in any case until its effective termination date as set forth in Clauses 9 and 10 below.

3. LLU SERVICES

3.1 By signing this Unbundling Agreement, the Operator duly confirms and certifies to hold a valid Service Notification. In case the above-mentioned Service Notification is amended, expires or is retrieved by the ILR, the Operator duly undertakes to notify forthwith POST Technologies in writing as soon as it has due knowledge of such fact or reasonable risk of occurrence of such fact.

3.2 The LLU Services offered to the Operator under this Unbundling Agreement are those as specified in the applicable RUO and which have been ordered by the Operator to POST Technologies in compliance with the relevant ordering and provisioning procedures as referred to in the applicable ROB.

3.3 Should the Operator reasonably require from POST Technologies any features, facilities and/or services not expressly covered by the applicable ROB but strictly ancillary to any LLU Services (the "**Ancillary Broadband Services**"), the Operator shall provide POST Technologies with a written request specifying in detail its requirements and needs and POST Technologies will examine the said request. If the Parties reach an agreement in this respect, it shall be formalized in writing and, if appropriate, the agreed terms shall be incorporated in Appendix 2, if need be by way of a formal amendment to this Unbundling Agreement in compliance with Clause 4.

4. REVIEW

4.1 Unless stipulated expressly otherwise in this Unbundling Agreement, a Party may seek to amend this Unbundling Agreement by serving on the other a review notice setting out in reasonable detail the matters to be discussed between the Parties and grounds thereof (the "**Review Notice**") in any of the following cases:

- (a) The Service Notification of either Party is materially modified in whole or in part (whether by amendment or replacement) ; or
- (b) A material change in the regulatory context in the field of electronic communication services and/or networks in the Grand-Duchy of Luxembourg, such as e.g. material change in applicable law or regulations (including the Telecom Law as well as code(s) of practice whether or not having the force of law), decisions and/or regulations of ILR or of any other regulatory or judicial authority, affects or may reasonably affect the commercial and/or technical basis of this Unbundling Agreement and/or of any LLU Services; or
- (c) A general review of the Unbundling Agreement is requested by either Party during the first three (3) calendar months of any calendar year,
- (d) A special review of the Unbundling Agreement is specifically agreed upon by the Parties.

4.2 On service of a Review Notice, the Parties shall forthwith negotiate in good faith the matters to be settled with a view to agreeing the relevant amendments to this Unbundling Agreement. For the avoidance of doubt, notwithstanding the service of a given Review Notice, this Unbundling Agreement shall remain in full force and effect until formally amended in compliance with Clause 9.2.

4.3 If the Parties fail to reach an agreement in relation to a Review Notice pursuant to this Clause 4.3 within three (3) calendar months as from the receipt date of the concerned Review Notice, either Party may request in writing the ILR within the three (3) calendar months after the expiration date of the relevant negotiation period to settle the matters upon which the Parties have failed to agree upon. Upon such ILR settlement, the Parties shall without

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undue delay enter into a formal amendment compliant to the decision or regulation taken by the ILR to the extent that its effect has not been suspended by an appeal procedure or any other legal challenge.

- 4.4 The provisions of this Clause 5 are intended to establish a framework governing the review and determination of the provisions of this Unbundling Agreement, but are not intended to prejudice the Parties' rights, liabilities and/or obligations created by and under their respective Service Notification.

5. TERM – ORDINARY TERMINATION

- 5.1 This Unbundling Agreement shall enter into force on its signature date and shall continue until terminated pursuant to this Unbundling Agreement.
- 5.2 In the event that any Party ceases to benefit from a full and valid Service Notification for the provision of fixed telecommunications services, the Party so ceasing shall inform in writing the other Party thereof forthwith and to the widest extent possible at least three (3) months before the effective date of such cessation, which shall correspond to the date of full and automatic termination of this Unbundling Agreement.
- 5.3 The Operator may terminate this Unbundling Agreement at any time subject to a minimum 12-month prior written termination notice.

6. BREACH, SUSPENSION AND EXTRAORDINARY TERMINATION

- 6.1 If either Party is in material breach of this Unbundling Agreement, the other Party may serve a written notice ("**Breach Notice**") on such Party (the "**Defaulting Party**") specifying the concerned breach, requiring the Defaulting Party to remedy to such breach:
- (a) within thirty (30) calendar days from the date of receipt of such Breach Notice; or
 - (b) in case of emergency, within such shorter period as the serving Party may reasonably specify in the Breach Notice.

The ILR shall be in copy to the Breach Notice served to the defaulting Party.

For the purpose hereof, a material breach shall include in particular a failure to pay a sum due under this Unbundling Agreement and/or a breach of a material provision of this Unbundling Agreement and/or of the applicable RUO.

- 6.2 If a Breach Notice is served, the serving Party may, until the concerned breach is remedied, suspend in whole or in part the performance of such of its obligations under this Unbundling Agreement as is reasonable having regards to the circumstances and/or refuse to enter into any new order or request the Defaulting Party may further submit to the serving Party, notably in relation to the Unbundling Services.
- 6.3 If the Defaulting Party fails to remedy the concerned breach within the period stated in the concerned Breach Notice or if the Defaulting Party reasonably needs any longer period to remedy to the concerned breach, the Defaulting Party shall notify the serving Party thereof without undue delay. The Parties shall then discuss in good faith such remedy period as deem relevant having regards to the situation.
- 6.4 If the Defaulting Party fails to remedy the concerned breach in due time, the serving Party may terminate this Unbundling Agreement with a three (3)-month prior written notice and copy the ILR to such termination notice for breach.
- 6.5 During the said three (3)-month period and upon request of any Party, the Parties and ILR shall consult and coordinate to (i) define the reasonably appropriate settlement way(s) to remedy the concerned breach without further undue delay and (ii) if breach remedy is or appears as being not reasonably possible (anymore) or if the Defaulting Party does not timely comply with the agreed settlement way(s), to define the actions and calendar to be applied to effectively terminate the Unbundling Agreement and the provision by POST Technologies of the Unbundling Services.

Notwithstanding the above, in case the Defaulting Party finally remedies the breach within such three (3)-month notice period, this Broadband Agreement shall not terminate and the related termination notice for breach shall be deemed as not having been served.

- 6.6 Without prejudice to the Operator's rights upon termination of this Agreement, POST Technologies shall refund to the Operator a fair and equitable proportion of those periodic sums (if any) paid under the Agreement for a period extending beyond the date of such termination unless the Parties agree otherwise.

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6.7 A Party's right to terminate or suspend performance of this Unbundling Agreement pursuant to this Clause 7 is without prejudice to any other legal rights or remedies that may be available to such Party.

7. NOTICES - POINTS OF CONTACT

7.1 Except as otherwise specifically provided in this Unbundling Agreement and/or in the applicable RUO, all formal notices and communications relating to this Unbundling Agreement shall be in writing and shall be sent as follows address:

▪ **If to the Operator:**

[Operator's corporate name]

[Address]

To the attention of: [Name, first name, title]

Telephone: [to be specified] Fax: [to be specified]

▪ **If to POST Technologies:**

Entreprise des Postes et Télécommunications

POST Technologies

Département Développement et Vente en Gros

2, rue Emile Bian

L-1235 Luxembourg

Telephone: +352 49 91 1 Fax: +352 49 12 21

7.2 The Operator shall serve to POST Technologies any operational or technical notices and/or request pursuant to the applicable RUO.

7.3 For the purpose of this Unbundling Agreement and in addition to the contact details already specified in the applicable RUO, each Party shall appoint one or several agents as specified in the Appendix 1.

In case any Party modifies later on any of the related contact details and by express exception to the provisions of Clause 9.3 below, such Party shall notify it together with all related fully updated contact details to the other Party without undue delay. Upon receipt of such notification, the other Party shall deal with the appointed agent(s) or contact(s) for such purposes until due receipt of a new formal notification by the concerned Party of any such appointment and/or details change.

8. DISPUTES

8.1 The Parties will make their reasonable efforts to settle amicably any and all claims and disputes arising among them in relation to the execution, implementation, interpretation and/or termination of this Unbundling Agreement, in compliance with this Clause 11. This obligation shall not prevent a Party from seeking (including obtaining or implementing) interlocutory or other immediate relief.

8.2 Failing to reach such an amicable settlement, the Parties irrevocably agree that the courts of Luxembourg have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Unbundling Agreement without prejudice to the possibility for one of the Parties to submit the dispute to the ILR in accordance with the applicable Telecom Law.

8.3 In case of a dispute, any Party may apply the dispute procedure set out below by notifying its request as soon as reasonably practicable the relevant other Party's point of contact. The claiming Party shall include with such notice all relevant details including the nature and extent of the concerned dispute.

Upon receipt of such a request, the Parties shall consult in good faith to attempt in good faith to resolve the concerned dispute at the working level 1 of the consultation. If amicable settlement is not reasonably reached or reachable at the working level 1, the concerned dispute may be escalated to the Parties' respective higher management corresponding to level 2. If amicable settlement is not reasonably reached or reachable at such level 2, the concerned dispute may be escalated to the respective managing director(s) of the Parties corresponding to level 3.

If a Party escalates a dispute, it shall record for the benefit of the next level all relevant details including what has already been agreed and what is not agreed concerning the dispute.

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The details of each Party's liaison contact and representatives at each level of consultation are specified in Appendix 1. No change to a liaison contact or representative shall be effective until it has been notified in writing to the other Party by express exception to the provisions of Clause 9.3 below.

9. RECIPROCITY

The Operator agrees to grant access to POST Technologies on its own network on the basis of terms similar to those described in the present Unbundling Agreement and settled down in a separate agreement.

10. FINAL CLAUSES

- 10.1 This Unbundling Agreement contains the whole agreement reached between the Parties as to its subject matters and supersedes all previous understandings, commitments, agreements or representations whatsoever, whether oral or written, in relation to the subject matters of this Unbundling Agreement.

As a consequence of the above, the Operator, which has already entered with POST Technologies into:

- (i) a LLU Agreement for the provisioning of raw copper in the local loop under the Reference Offer for Unbundling ("**LLU Agreement**") and/or
- (ii) a Fibber Access Agreement for the provisioning of fiber access under the Fibber Access Offer ("**FAO Agreement**"),

expressly agrees and acknowledges that, by signing this Broadband Agreement, the said agreement(s) will be automatically replaced and superseded by this Unbundling Agreement as from the date that all services covered by the said LLU Agreement and/or all services covered by the said FAO Agreement will have been migrated to the services covered by this Unbundling Agreement, it being understood that any such date cannot be prior to the definitive publication and entry into force of the RUO in compliance with the applicable regulations.

For the purpose of such service migration, a migration scenario and related timing shall be worked out by POST Technologies for the concerned Operator and be further complied with by the Parties.

- 10.2 Except as expressly provided for in this Unbundling Agreement, no amendment to this Unbundling Agreement shall be effective unless expressly agreed upon in writing and signed by a duly authorised representative of each Party.
- 10.3 The interpretation, validity and performance of this Unbundling Agreement as well as any disputes or claims arising out of or in connection with its subject matter shall be governed by and construed in accordance with the laws of Luxembourg.
- 10.4 Notwithstanding the termination of this Unbundling Agreement, the terms and conditions of the applicable RUO and the provisions set forth in Clauses 6, 7, 8 and 10 inclusive shall survive and remain in full force and effect for their specific term and in any case for a minimum of a 3-year period after the termination date, whichever may be the ground for termination.
- 10.5 For the avoidance of doubt, no provision of this Unbundling Agreement is intended to prejudice the rights, liabilities and obligations of the Parties created by and under the respective Service Notification(s) of each Party and/or the Telecom Law.

IN WITNESS WHEREOF the duly authorized representatives of the Parties have executed this Unbundling Agreement in the English language on the date mentioned on the first page hereof, in Luxembourg, and in two (2) original counterparts, one for each Party.

For and on behalf of the Operator:

**For and on behalf of
Entreprise des Postes et Télécommunications:**

Name:
Title:

Name: Gaston BOHNENBERGER
Title: Directeur

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APPENDIX 1

CONTACT AND ESCALATION DETAILS

<i>Operator</i>			
	Name, address	Phone	E-mail
Operational			
Fault acceptance			
Billing			
Commercial/legal			
Level 1 liaison point			
Level 2 liaison point			
Level 3 liaison point			

<i>POST Technologies</i>			
	Name, address	Phone	E-mail
Operational			
Fault acceptance			
Billing			
Commercial/legal			
Level 1 liaison point			
Level 2 liaison point			
Level 3 liaison point			

For the avoidance of doubt, the above POST Technologies contact details are in addition to those specified in the applicable RUO.

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APPENDIX 2

SPECIFICATIONS FOR ANCILLIARY LLU SERVICES

[To be specified as relevant]