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# **TELECOMMUNICATIONS REGULATORY CONTRACT**

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<b>Date</b>	
<b>Parties</b>	
1.	<b>Telikom PNG Ltd</b> (company number 1-26889) and <b>Pacific Mobile Communications Ltd</b> (company number 1-18901) (collectively, <b>Telikom</b> ).
2.	<b>The Independent Consumer and Competition Commission</b> , a body corporate established under the <i>Independent Consumer and Competition Commission Act 2002</i> (the <b>Commission</b> ).
<b>Recitals</b>	
A	Telikom has been declared by the Treasurer to be a regulated entity under section 32 of the <i>Independent Consumer and Competition Commission Act 2002</i> .
B	The Fixed Network Services, Mobile Network Services and Excluded Services the subject of this Contract have been declared by the Treasurer to be regulated services under section 32 of the <i>Independent Consumer and Competition Commission Act 2002</i> .
C	Telikom is licensed under the <i>Telecommunications Act</i> to provide various telecommunications services to certain customers within Papua New Guinea.
D	This Contract is a regulatory contract that is binding on Telikom and the Commission and PANGTEL pursuant to the provisions of the <i>Independent Consumer and Competition Commission Act 2002</i> and the <i>Telecommunications Act</i> .
E	This Contract regulates the prices that Telikom may charge for the provision of Fixed Network Services, Mobile Network Services and Excluded Services.

**It is agreed** as follows.

## 1. General

### 1.1 Definitions

**Actual Average Access Price**, in respect of Fixed Network Access Services or Mobile Network Access Services for Regulatory Year  $t$ , means the amounts  $AAAP_{t,FA}$  and  $AAAP_{t,MA}$  respectively calculated in accordance with paragraph D of Schedule 2.

**Actual Average Call Price**, in respect of Fixed Network Services or Mobile Network Services for Regulatory Year  $t$ , means the amounts  $AACP_{t,FN}$  and  $AACP_{t,MN}$  respectively calculated in accordance with paragraph D of Schedule 2.

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**Actual Cumulative Expenditure** means:

- (a) all actual capital expenditure in relation to the fixed telecommunications network and mobile telecommunications network operated by Telikom which has been made by Telikom in the period from the Commencement Date to the date of the Capital Expenditure Progress Report (both dates inclusive); and
- (b) all capital expenditure in relation to the fixed telecommunications network and mobile telecommunications network operated by Telikom which, as at the date of the Capital Expenditure Progress Report, Telikom has contracted to undertake subject only to conditions that are acceptable to the Commission acting reasonably,

excluding, in each case, any associated overheads which are not directly attributable overheads.

**Adjusted Cumulative Expenditure** has the meaning given to it in clause 4.2(a)(iii).

**Approved Force Majeure Pass Through Amount** has the meaning given to it in clause 5.1(e)(ii).

**Approved Telecommunications Licence Pass Through Amount** has the meaning given to it in clause 5.3(c)(ii).

**Approved National Services Pass Through Amount** has the meaning given to it in clause 5.3(c)(ii).

**Approved Tax Pass Through Amount** has the meaning given to it in clause 5.2(c)(ii).

**Business Day** means a day other than a Saturday or a Sunday.

**Capital Expenditure**, unless the contrary intention appears, does not include any capital expenditure contributed by a third party.

**Capital Expenditure Progress Report** means a report submitted to the Commission in accordance with clause 4.2(a).

**Commencement Date** means the date this Contract takes effect pursuant to Section 37(2) of the *Independent Consumer and Competition Commission Act 2002*.

**Commission** means the Independent Consumer and Competition Commission established under the *Independent Consumer and Competition Commission Act 2002*, or its successors under any other relevant legislation.

**Contract** means this Telecommunications Regulatory Contract.

**Controlled Corporation** means a corporation controlled by Telikom PNG Ltd or Pacific Mobile Communications Ltd. For the purposes of this definition, a corporation is controlled by Telikom PNG Ltd or Pacific Mobile Communications Ltd if Telikom PNG Ltd or Pacific Mobile Communications Ltd, as the case may be:

- (a) controls, whether directly or indirectly and by whatever means, the composition of the board or other governing body of that corporation;

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- (b) is in a position to exercise, or control the exercise of, 50% or more of the maximum number of votes that can be exercised at a meeting of that corporation;
  - (c) holds 50% or more of the shares of that other corporation; or
  - (d) is entitled to receive 50% or more of every dividend paid on shares issued by that corporation.

**Customer** means a person to whom Fixed Network Services or Mobile Network Services are provided by Telikom, or a person who is seeking to have Fixed Network Services or Mobile Network Services provided to it by Telikom.

**Customer Cabling Services** means cabling undertaken for Customers by wiring technicians or engineers who are licensed for that purpose by PANGTEL, including:

- (a) the installation of telecommunications wiring in the Customer's premises beyond the point at which the fixed telecommunications network operated by Telikom terminates;
- (b) the installation of a second socket;
- (c) the installation of data communications cabling for the Customer's local area network and other private use on the Customer's premises; and
- (d) other functionally similar services that the Commission and Telikom agree to in writing from time to time.

**Customer Premises Equipment** means telecommunications network terminal equipment which has been type approved by PANGTEL for telecommunications use, including:

- (a) PABX systems;
- (b) key systems;
- (c) modems;
- (d) network termination units (NTUs);
- (e) facsimile equipment;
- (f) private payphones; and
- (g) other functionally similar equipment that the Commission and Telikom agree to in writing from time to time.

**Deed of Accession** means a deed substantially in the form set out in Schedule 10.

**Designated Operations Area** means an area encompassing a place in Papua New Guinea which as at 1 January 2006 had, or was within one kilometre of a place that had, a Telecommunications Service provided through the Public Telecommunications Network, as that area may be more specifically described on a map, to be provided by Telikom to the Commission no later than 31 March 2006, showing the location of Telikom facilities operating as at 1 January 2006, if the Commission agrees that such map accurately describes the Telikom fixed network.

**Excluded Services** means the services described in Schedule 4.

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**Existing Capital Expenditure Program** means the capital expenditure program (expressed in nominal Kina) set out in Schedule 6.

**Existing Forecast Capital Expenditure** means the total capital expenditure (excluding associated overheads other than directly attributable overheads) set out in the Existing Capital Expenditure Program.

**First Regulatory Year** means the period from the Commencement Date to 31 December 2002 (both dates inclusive).

**Fixed Network Access Services** means the services associated with connection to the fixed telecommunications network operated by Telikom where such connection is made in a Designated Operations Area, excluding the provision of Customer Premises Equipment, Customer Cabling Services and Excluded Services. As at the Commencement Date, the Fixed Network Access Services are those services referred to as:

- (a) business line rentals;
- (b) residential line rentals;
- (c) business connections (and reconnections and disconnections);
- (d) residential connections (and reconnections and disconnections);
- (e) business line installation; and
- (f) residential line installation,

where the connection to the fixed telecommunications network operated by Telikom is made in a Designated Operations Area.

**Fixed Network Call Minutes**, in respect of a specified period, means the number of minutes of utilisation by Customers over that period of the Fixed Network Services (other than Fixed Network Access Services) supplied by Telikom as recorded by equipment used by Telikom or (where that equipment does not automatically or with sufficient accuracy record that information) as estimated in accordance with such method as Telikom is required to use pursuant to clause 6.1(b) or (c) (as the case may be).

**Fixed Network Services** means the services associated with the transmission of voice, facsimile and data over voice bandwidth on the PTN using the fixed telecommunications network operated by Telikom where such transmission originates or terminates in a Designated Operations Area, including the Fixed Network Access Services but excluding the provision of Customer Premises Equipment, Customer Cabling Services and Excluded Services. As at the Commencement Date, the Fixed Network Services comprise the following services (whether charged on a free, fixed period, untimed or timed basis), in addition to the Fixed Network Access Services:

- (a) outgoing international calls (all bands);
- (b) national long distance (or toll) calls (all bands);
- (c) fixed to mobile calls;
- (d) local calls; and

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(e) internet dial-up calls, including those using special number ranges or dial-up access codes (eg prefix numbers)

where the transmission originates or terminates in a Designated Operations Area.

**Force Majeure Pass Through Amount** has the meaning given to it in clause 5.1(a).

**Force Majeure Event** means:

- (a) a cyclone, storm, flood, earthquake, volcanic eruption, tidal wave, landslide or any other natural disaster;
- (b) an act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion or any violent or threatening actions; or
- (c) any other event which the Commission and Telikom agree in writing to be a Force Majeure Event for the purposes of this Contract,

which results or is likely to result in an increase in the costs incurred by Telikom in providing Fixed Network Services or Mobile Network Services to Customers or in complying with the provisions of any legislation, or of any codes or guidelines made or published by any Governmental Agency or the Commission under the *Independent Consumer and Competition Commission Act 2002* or of any codes made under the *Telecommunications Act* or any other legislation, which must be complied with in relation to the provision of Fixed Network Services or Mobile Network Services to Customers.

**Force Majeure Event Claim** has the meaning given to it in clause 5.1(d).

**Force Majeure Event Notice** has the meaning given to it in clause 5.1(c).

**Governmental Agency** means any:

- (a) government or governmental, semi-governmental or judicial entity or authority; or
- (b) Minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government.

It also includes any regulatory organisation established under any legislation or any stock exchange.

**Imprudent Capex Percentage** has the meaning given to it in clause 4.3(c)(iv)(D).

**Imprudent Capex Shortfall** has the meaning given to it in clause 4.3(c)(iv)(C).

**International Transmission Functionality** means the International Transmission Functionality as specified in Schedule 7.

**Maximum Average Price Cap**, in respect of Fixed Network Services, Fixed Network Access Services or Mobile Network Services for Regulatory Year  $t$ , means the amounts of  $MAP_{t, FN}$ ,  $MAP_{t, FA}$  or  $MAP_{t, MN}$  respectively calculated in accordance with paragraph A Schedule 2. Notwithstanding the foregoing, for the First Regulatory Year (FRY),  $MAP_{FRY, FN} = 3,889.3$  Kina/subscriber line,  $MAP_{FRY, FA} = 491.4$  Kina/subscriber line and  $MAP_{FRY, MN} = 1,692.6$  Kina/mobile service.

**Mobile Network Access Services** means the services associated with accessing the cellular mobile telecommunications network operated by Telikom, excluding the provision of customer handsets, short message services on the signalling channel and Excluded

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Services. As at the Commencement Date, the Mobile Network Access Services are those services referred to as:

- (a) rental or subscription for any periodic fee;
- (b) activation; and
- (c) reconnection.

**Mobile Network Call Minutes**, in respect of a specified period, means the number of minutes of utilisation by Customers over that period of the Mobile Network Services (other than Mobile Network Access Services) supplied by Telikom as recorded by equipment used by Telikom or (where that equipment does not automatically or with sufficient accuracy record that information) as estimated in accordance with such method as Telikom is required to use pursuant to clause 6.1(b) or (c) (as the case may be).

**Mobile Network Services** means the services associated with the transmission of voice using the cellular mobile telecommunications network operated by Telikom, including the Mobile Network Access Services but excluding the provision of customer handsets, short message services on the signalling channel, recorded message services and Excluded Services. As at the Commencement Date, the Mobile Network Services comprise the following services (whether charged on a free, fixed period, untimed or timed basis), in addition to the Mobile Network Access Services:

- (a) outgoing international calls (all bands);
- (b) mobile to mobile calls (all bands); and
- (c) mobile to fixed calls.

**National Services** means the connection of VHF and HF services from the National Relay Service and the National Maritime Radio Safety Service to the PTN.

**National Services Event**, in respect of any Regulatory Year, means the making of any capital expenditure in that Regulatory Year by Telikom in providing the National Services.

**National Services Pass Through Amount** has the meaning given to it in clause 5.3(a).

**Negative Tax Change Event** means a Tax Change Event which results in Telikom incurring materially lower costs than it would have incurred but for that event in providing Fixed Network Services or Mobile Network Services to Customers.

**Negative Tax Pass Through Amount** has the meaning given to it in clause 5.2(e).

**New Capital Expenditure Program** means the capital expenditure program (expressed in nominal Kina) (if any) substituted for the Existing Capital Expenditure Program pursuant to clause 4.1(b)(i) or (ii) or clause 4.1(f).

**New Forecast Capital Expenditure** means the total capital expenditure expressed in nominal Kina (excluding associated overheads other than directly attributable overheads) that is set out in the New Capital Expenditure Program where the Existing Capital Expenditure Program has been substituted by the New Capital Expenditure Program pursuant to clause 4.1(b)(i) or (ii) or clause 4.1(f).

**PANGTEL** means the Papua New Guinea Radiocommunications and Telecommunications Technical Authority.

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**Past Regulatory Year** has the meaning given to it in clause 2.1.

**Permitted Force Majeure Pass Through Amount**, at any time in respect of a Force Majeure Event, means the increased costs that Telikom has actually incurred as at that time (as calculated by Telikom under clause 5.1(a) or by the Commission under clause 5.1(e), as appropriate):

- (a) in providing Fixed Network Services or Mobile Network Services to Customers; and
- (b) in complying with the provisions of any legislation, or of any codes or guidelines made or published by any Governmental Agency or the Commission under the *Independent Consumer and Competition Commission Act 2002* or of any codes made under the *Telecommunications Act* or any other legislation, which must be complied with in relation to the provision of Fixed Network Services or Mobile Network Services to Customers,

as a result of the occurrence of that Force Majeure Event.

**Permitted National Services Pass Through Amount**, in respect of a Regulatory Year, means the total capital expenditure made by Telikom during the 12 month period ending on 30 September in that Regulatory Year, being capital expenditure which is made by Telikom in providing the National Services.

**Permitted Tax Pass Through Amount**, in respect of a Tax Change Event, means the increase in costs that Telikom has incurred and is likely to incur over the term of this Contract (as calculated by Telikom under clause 5.2(a) or by the Commission under clause 5.2(c), as appropriate) in providing Fixed Network Services or Mobile Network Services to Customers as a result of the occurrence of the Tax Change Event.

**Permitted Telecommunications Licence Pass Through Amount**, in respect of a Regulatory Year, means the amount ( $PTL_t$ ) calculated as follows:

$$PTL_t = LF_t - TA_t$$

where:

$LF_t$  is the aggregate of the Telecommunications Licence and Regulatory Fees paid by Telikom which are referable to that Regulatory Year; and

$TA_t$  is the amount for that Regulatory Year set out in Schedule 9.

**Positive Tax Change Event** means a Tax Change Event which results in Telikom incurring materially higher costs than it would have incurred but for that event in providing Fixed Network Services or Mobile Network Services to Customers.

**Positive Tax Pass Through Amount** has the meaning given to it in clause 5.2(a).

**Public Telecommunications Network (or PTN)** has the meaning given to it in the *Telecommunications Act*.

**Quarter** means a period of three months from 1 January to 31 March (both dates inclusive), 1 April to 30 June (both dates inclusive), 1 July to 30 September (both dates inclusive) or 1 October to 31 December (both dates inclusive).

**Regulatory Principles** means the principles set out in Schedule 1.

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**Regulatory Year** means the First Regulatory Year or a period of 12 months commencing on 1 January of a year during the term of this Contract.

**Relevant Regulatory Year** has the meaning given to it in clause 2.1(b).

**Relevant Tax** means any Tax payable by Telikom other than:

- (a) income tax or any tax on fringe benefits or capital gains;
- (b) any tax on payroll;
- (c) land tax or any other tax on the ownership or occupancy of premises;
- (d) customs and import duties;
- (e) municipal rates, taxes and other charges imposed by the National Capital District Commission or any Provincial or Local-level Government or any other local authorities;
- (f) stamp duty, withholding tax or similar taxes and duties;
- (g) any licence fees or other fees payable by Telikom under the *Telecommunications Act* or under the *Radio Spectrum Act 1996*;
- (h) penalties, fines, interest, charges, fees or other amounts for late payments relating to any Tax; or
- (i) any Tax that replaces any of the Taxes referred to in paragraph (a) to (g).

**Required Connection Date** means the date by which Telikom is required to have connected a Customer to the fixed telecommunications network that is operated by Telikom as set out in Table 1 of Schedule 5.

**Required Functionality** means the functionality specified in Schedule 7 (including the International Transmission Functionality).

**Required Service Restoration Date** means the date by which Telikom is required to have rectified any fault in a service provided to a Customer by the fixed telecommunications network that is operated by Telikom as set out in Table 2 of Schedule 5.

**Required Tax Pass Through Amount**, in respect of a Tax Change Event, means the costs that Telikom has saved and is likely to save over the term of this Contract (as calculated by the Commission under clause 5.2(e)) in providing Fixed Network Services or Mobile Network Services to Customers as a result of the occurrence of the Tax Change Event.

**Required Telecommunications Licence Pass Through Amount** has the meaning given to it in clause 5.4(f).

**Service Category 1**, in respect of Telecommunications Services, means those services involving:

- (a) communications with:
  - i. emergency services (including police, ambulance, fire brigade, hospital, and medical doctors on call);
  - ii. the Maritime Division and Volcanology Observatories; and

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- iii. the Brigadier General, CIS Commissioner, Police Commissioner, Governor General, Prime Minister, Members of the National Parliament, National Government Ministers, Opposition Leader, Speaker of the National Parliament, heads of embassies, and the Chief Justice of the National Court; and

(b) any other communications requested by government in the case of a national disaster.

**Service Category 2**, in respect of Telecommunications Services, means all non-residential services which are not within Service Category 1 (including services involving communications with business customers), and residential services for foreign dignitaries and judges.

**Service Category 3**, in respect of Telecommunications Services, means residential services other than for foreign dignitaries and judges.

**Submarine Cable** means the Cairns - Port Moresby telecommunications cable that is in existence as at the Commencement Date.

**Subsequent Regulatory Year** means any Regulatory Year after the First Regulatory Year.

**Tax** means any tax, levy, impost, deduction, charge, rate, duty or withholding which is levied or imposed by the National Government, a Provincial or Local-level Government or any agency, department, instrumentality or other authority of the National Government or of a Provincial or Local-level Government.

**Tax Change Event** means:

- (a) a change in (or change in application or official interpretation of) a Relevant Tax or the way in which a Relevant Tax is calculated;
- (b) the removal of a Relevant Tax; or
- (c) the imposition of a Relevant Tax,

which results in Telikom incurring materially higher or lower costs than it would have incurred but for that event in providing Fixed Network Services or Mobile Network Services to Customers.

**Telecommunications Licence and Regulatory Fees** means:

- (a) any licence fees payable by Telikom under section 19K(5) of the *Telecommunications Act* where the relevant licences are required to enable Telikom to provide Fixed Network Services or Mobile Network Services;
- (b) any licence fees payable by Telikom under the *Radio Spectrum Act 1996*; and
- (c) any other fees payable by Telikom to the Commission or to PANGTEL under the *Telecommunications Act* or the *Radio Spectrum Act 1996*.

**Telecommunications Licence Pass Through Amount** has the meaning given to it in clause 5.4(a).

**Telecommunications Service** has the meaning given to it in the *Telecommunications Act*.

**Telikom** means Telikom PNG Ltd (company number 1-26889) and Pacific Mobile Communications Ltd (company number 1-18901), a Controlled Corporation, or any person

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that subsequently carries on substantially the same business, using substantially the same assets, as the business carried on and assets used by Telikom PNG Ltd and Pacific Mobile Communications Ltd as at the Commencement Date.

**Uncontrollable Cumulative Expenditure** has the meaning given to it in clause 4.2(a)(ii).

**Uncontrollable Failure** means a failure by Telikom:

- (a) on or prior to the Required Connection Date which applies in respect of that connection, to connect a Customer to the fixed telecommunications network that is operated by Telikom; or
- (b) on or prior to the Required Service Restoration Date which applies in respect of that rectification, to rectify any fault in a service provided to a Customer by the fixed telecommunications network that is operated by Telikom,

as a result of an event the nature or extent of which could not reasonably have been prevented or foreseen by Telikom.

## 1.2 Principles of interpretation

(a) Unless the contrary intention appears, the following principles of interpretation apply to this Contract:

- (i) words denoting persons include corporations, unincorporated associations, firms, governments and governmental agencies;
- (ii) a reference to a person includes a person's agents, successors and permitted assigns, persons who have control over any assets of a person and receivers, managers, trustees, administrators and liquidators and similar persons appointed over:
  - (A) a person; or
  - (B) any assets of a person;
- (iii) headings are only included for convenience and do not affect the interpretation of this Contract;
- (iv) a reference to a clause or Schedule is to a clause of, or Schedule to, this Contract;
- (v) a reference to an agreement, document or regulatory instrument (including this Contract) is a reference to that agreement, document or regulatory instrument as varied, novated or replaced from time to time (whether or not the parties thereto remain the same);
- (vi) in the absence of a specified time or time periods for the performance of something, a reference to the performance of that thing shall be taken to be read as being performance of that thing within a **reasonable** time;
- (vii) a reference to legislation is a reference to legislation in force in Papua New Guinea; and

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- (viii) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
  - (b) All calculations made under or for the purposes of this Contract are to be rounded to four significant digits.
  - (c) When a calculation is required under this Contract:
    - (i) Regulatory Year “t”, Subsequent Regulatory Year “t” or calendar year “t” is the Regulatory Year, Subsequent Regulatory Year or calendar year (as the case may be) in respect of which the calculation is being made;
    - (ii) Regulatory Year “t-1”, Subsequent Regulatory Year “t-1” or calendar year “t-1” is the Regulatory Year, Subsequent Regulatory Year or calendar year (as the case may be) immediately preceding Regulatory Year “t”, Subsequent Regulatory Year “t” or calendar year “t”; and
    - (iii) Regulatory Year “t-2”, Subsequent Regulatory Year “t-2” or calendar year “t-2” is the Regulatory Year, Subsequent Regulatory Year or calendar year (as the case may be) immediately preceding Regulatory Year “t-1”, Subsequent Regulatory Year “t-1” or calendar year “t-1”.
      - i. All financial amounts in this Contract are exclusive of Papua New Guinea Goods and Services Tax.

### **1.3 Revoking or altering decisions**

- (a) If the Commission has made a decision under this Contract and later forms a reasonable opinion that the decision was made on the basis of information provided to the Commission by Telikom after the Commencement Date that was false or misleading in a material particular, then, subject to clause 1.3(b), the Commission may revoke the decision and make a new decision in substitution for the revoked decision.
- (b) Before the Commission revokes and substitutes a decision pursuant to clause 1.3(a), the Commission agrees that it will first:
  - (i) notify Telikom in writing of the proposed revocation and of the proposed new decision (including the proposed date of effect of the revocation and new decision), and the reasons for the revocation and new decision; and
  - (ii) provide Telikom with:
    - (A) copies of all materials and information which the Commission now believes to be false or misleading in a material particular; and
    - (B) written confirmation of the source of those materials and information;
  - (iii) allow Telikom a reasonable opportunity to make submissions to the Commission regarding the proposed revocation and the proposed new decision (including submissions as to whether the original decision was based on information that was false or misleading in a material particular); and

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- (iv) take into account any matters contained in a submission made by Telikom pursuant to paragraph (iii).
- (c) A new decision made under clause 1.3(a) applies from:
- (i) if notice of the new decision is required to be published under clause 1.4(a)(ii) – the later of the date on which that notice is so published and any date specified by the Commission in that notice as the date from which the new decision is to apply; and
  - (ii) if notice of the new decision is not required to be published under clause 1.4(a)(ii) - the later of the date the new decision is made and any date specified by the Commission in making that new decision as the date from which the new decision is to apply.
- (d) A new decision made under clause 1.3(a) must only differ from the revoked decision to the extent necessary to correct for:
- (i) the false or misleading information on which the revoked decision was based; and
  - (ii) the application of the revoked decision during the period in respect of which that decision was in effect.

#### **1.4 Notices**

- (a) The Commission must ensure that a notice of each decision made by the Commission under this Contract (other than a decision made pursuant to clause 1.5) is:
- (i) sent to the Ministers responsible for the *Telecommunications Act* and the *Independent Consumer and Competition Commission Act 2002*;
  - (ii) published in the National Gazette and a newspaper circulating nationally; and
  - (iii) sent to Telikom.
- (b) The Commission must ensure that a copy of each decision made by the Commission under this Contract, together with a copy of its reasons for that decision, is:
- (i) sent to the Ministers responsible for the *Telecommunications Act* and the *Independent Consumer and Competition Commission Act 2002*;
  - (ii) sent to Telikom; and
  - (iii) made available for inspection and purchase by members of the public.

#### **1.5 Modification of time periods**

The Commission may, on written application by Telikom, extend:

- (a) the time by which a thing required to be done by Telikom must be done; or
  - (b) the period within which a thing required to be done by Telikom must be done,
- to such time or period as the Commission and Telikom agree in writing.

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## 1.6 Term

The term of this Contract commences on the Commencement Date and ends on 31 December 2011 (both dates inclusive).

## 2. Regulation of Prices

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### 2.1 Maximum Average Prices

By the second Friday in November of each Regulatory Year (such Regulatory Year being referred to, for the purposes of this clause 2, as the **Past Regulatory Year**) (or such other date in the Past Regulatory Year as may be agreed by Telikom and the Commission), Telikom agrees to give to the Commission a statement that sets out:

- (a) its calculation of:
  - (i) the Actual Average Call Price for Fixed Network Services (expressed in Kina/minute) for the Past Regulatory Year;
  - (ii) the Actual Average Call Price for Mobile Network Services (expressed in Kina/minute) for the Past Regulatory Year;
  - (iii) the Actual Average Access Price for Fixed Network Access Services (expressed in Kina/subscriber line) for the Past Regulatory Year; and
  - (iv) the Actual Average Access Price for Mobile Network Access Services (expressed in Kina/mobile service) for the Past Regulatory Year;
- (b) its proposed maximum tariffs for the sale of Fixed Network Services and Mobile Network Services for the immediately succeeding Regulatory Year (such immediately succeeding Regulatory Year being referred to, for the purposes of this clause 2, as the **Relevant Regulatory Year**); and
- (c) its estimate of:
  - (i) the Actual Average Call Price for Fixed Network Services (expressed in Kina/minute) for the Relevant Regulatory Year;
  - (ii) the Actual Average Call Price for Mobile Network Services (expressed in Kina/minute) for the Relevant Regulatory Year;
  - (iii) the Actual Average Access Price for Fixed Network Access Services (expressed in Kina/subscriber line) for the Relevant Regulatory Year; and
  - (iv) the Actual Average Access Price for Mobile Network Access Services (expressed in Kina/mobile service) for the Relevant Regulatory Year.

### 2.2 Additional information

The Commission may request Telikom to provide to it information that verifies or supports the calculations referred to in clause 2.1(a) and the estimates referred to in clause 2.1(c) (including details of actual sales volumes from the relevant customer billing systems and details of audited revenues) and Telikom agrees to provide that information within a reasonable time specified by the Commission in its request.

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### 2.3 Adjustment of proposed maximum tariffs

If the Commission is satisfied that any of the conditions set out below is likely to occur:

(a)  $AAP_{t, FN} / AAP_{t-1, FN} > [MAP_{t, FN} * (1 + OUR_{t, FN})] / MAP_{t-1, FN}$

where:

$AAP_{t, FN}$  is the likely Actual Average Price for Fixed Network Services for the Relevant Regulatory Year as estimated by the Commission on the same basis as the manner in which  $AAP_{t-1, FN}$  is calculated pursuant to paragraph C.1 of Schedule 2 except that the estimate is for the period constituted by the Relevant Regulatory Year;

$MAP_{t, FN}$  is the Maximum Average Price Cap for Fixed Network Services for the Relevant Regulatory Year as calculated in accordance with paragraph A of Schedule 2;

$MAP_{t-1, FN}$  and  $OUR_{t, FN}$  are as defined in paragraph A of Schedule 2 for the purposes of calculating the Maximum Average Price Cap for Fixed Network Services for the Relevant Regulatory Year except that, where the Commission has determined the Average Local Call Minutes pursuant to clause 6.2 during Regulatory Year t-1,  $MAP_{t-1, FN}$  shall be calculated in accordance with paragraph (b) of the definition of  $MAP_{t-1, FN}$  contained in paragraph C.1 of Schedule 2; and

$AAP_{t-1, FN}$  is the Actual Average Price for Fixed Network Services for the Past Regulatory Year; or

(b)  $AAAP_{t, FA} / AAAP_{t-1, FA} > [MAP_{t, FA} * (1 + OUR_{t, FA})] / MAP_{t-1, FA} *$

where:

$AAAP_{t, FA}$  is the likely Actual Average Access Price for Fixed Network Access Services for the Relevant Regulatory Year as estimated by the Commission on the same basis as the manner in which  $AAAP_{t, FA}$  is calculated pursuant to paragraph D.3 of Schedule 2 except that the estimate is for the period constituted by the Relevant Regulatory Year;

$MAP_{t, FA}$  is the Maximum Average Price Cap for Fixed Network Access Services for the Relevant Regulatory Year as calculated in accordance with paragraph A of Schedule 2;

$MAP_{t-1, FA}$  and  $OUR_{t, FA}$  are as defined in paragraph A of Schedule 2 for the purposes of calculating the Maximum Average Price Cap for Fixed Network Access Services for the Relevant Regulatory Year; and

$AAAP_{t-1, FA}$  is the Actual Average Access Price for Fixed Network Access Services for the Past Regulatory Year; or

(c)  $AAP_{t, MN} / AAP_{t-1, MN} > [MAP_{t, MN} * (1 + OUR_{t, MN})] / MAP_{t-1, MN}$

where:

$AAP_{t, MN}$  is the likely Actual Average Price for Mobile Network Services for the Relevant Regulatory Year as estimated by the Commission on the same basis as the manner in which  $AAP_{t-1, MN}$  is calculated pursuant to paragraph C.3 of

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Schedule 2 except that the estimate is for the period constituted by the Relevant Regulatory Year;

$MAP_{t,MN}$  is the Maximum Average Price Cap for Mobile Network Services for the Relevant Regulatory Year as calculated in accordance with paragraph A of Schedule 2;

$MAP_{t-1,MN}$  and  $OUR_{t,MN}$  are as defined in paragraph A of Schedule 2 for the purposes of calculating the Maximum Average Price Cap for Mobile Network Services for the Relevant Regulatory Year; and

$AAP_{t-1,MN}$  is the Actual Average Price for Mobile Network Services for the Past Regulatory Year,

then the Commission may, by the later of the first Monday in December of the Past Regulatory Year (or such other date in the Past Regulatory Year as may be agreed by Telikom and the Commission) and the 21<sup>st</sup> day after the statement referred to in clause 2.1 and any information requested by the Commission pursuant to clause 2.2 is provided to the Commission, request Telikom to adjust the proposed maximum tariffs referred to in clause 2.1(b) so that none of those conditions is likely to occur, and Telikom will thereupon:

- (d) adjust those proposed maximum tariffs for the Relevant Regulatory Year so that none of those conditions is likely to occur; and
- (e) provide evidence satisfactory to the Commission that the new proposed maximum tariffs for the Relevant Regulatory Year are such that none of those conditions is likely to occur.

#### **2.4 Deemed acceptance**

If the Commission does not give a notice to Telikom under clause 2.3 by the later of the first Monday in December of the Past Regulatory Year (or such other date in the Past Regulatory Year as may be agreed by Telikom and the Commission) and the 21<sup>st</sup> day after the statement referred to in clause 2.1 and any information requested by the Commission pursuant to clause 2.2 is provided to the Commission, the Commission is deemed to have notified Telikom of its decision to accept Telikom's statement made pursuant to clause 2.1.

#### **2.5 Tariffs for Excluded Services**

Telikom agrees to charge for Excluded Services on a fair and reasonable basis and, in the event of a dispute in respect of the amount of a charge for an Excluded Service, Telikom agrees to charge such amount for that Excluded Service as the Commission determines to be fair and reasonable (taking into account any relevant principles that are applied in regulating tariffs under this Contract and the reasonable costs that would be incurred by Telikom in providing that Excluded Service in an efficient manner). If Telikom and a commercial Customer reach an agreement on the charge for an Excluded Service the agreed charge will be deemed to be fair and reasonable in respect of that Customer, unless the agreement specifies the charge is subject to any determination by the Commission of a different charge under this clause 2.5.

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## 2.6 Access and Interconnection Charges

Where Telikom and another carrier (as that term is defined in the *Telecommunications Act*) fail to reach agreement on a commercial basis as to the charges payable for access and interconnection, and the Commission is required to determine the matter pursuant to section 84 of the *Telecommunications Act*, in determining the charges for access and interconnection the Commission shall have regard to the following factors:

- (a) the directly and indirectly attributable incremental capital costs incurred by Telikom in connection with the provision of the access and interconnection, being a reasonable return on the written down asset base, and including economic depreciation costs associated with the asset base, for those assets used directly or indirectly to provide the access and interconnection;
- (b) the directly and indirectly attributable incremental operating costs incurred by Telikom in connection with the provision of the access and interconnection;
- (c) full recovery of once off incremental operational and capital costs incurred in the provision of the access and interconnection which Telikom would not have otherwise incurred but for the requirement to provide the access and interconnection;
- (d) the requirement for a fair and reasonable contribution to the common costs incurred by Telikom;
- (e) the availability and capacity of the telecommunications network operated by Telikom to provide the access and interconnection and the timeframe reasonably required to provide access to additional capacity; and
- (f) any other factors the Commission considers relevant.

The Commission's determination of the charges for access and interconnection must be made available to the public but must not disclose confidential data provided to the Commission by Telikom for the purposes of determination.

## 3. Tariffs

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### 3.1 Changes to maximum tariffs

- (a) Subject to clause 3.1(b), Telikom may at any time during a Regulatory Year change the maximum tariffs it charges for the sale of Fixed Network Services and Mobile Network Services and must, within 5 Business Days of their implementation:
  - (i) publish notice of such changes in a daily newspaper circulating nationally;
  - (ii) make copies of those maximum tariffs available on request and without charge; and
  - (iii) notify the Commission in writing of those maximum tariffs.
- (b) If the Commission forms the reasonable opinion that, as a consequence of any change in maximum tariffs pursuant to clause 3.1(a), any of the conditions set out in clause 2.3 is likely to occur (the Regulatory Year during which the change is made and the immediately preceding Regulatory Year being treated, for these purposes, as the

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Relevant Regulatory Year and the Past Regulatory Year respectively referred to in clause 2.3), then the Commission may, not later than 20 Business Days after it receives notification of the change in maximum tariffs pursuant to clause 3.1(a)(iii) and any information requested by the Commission in relation to that change pursuant to clause 3.2, request Telikom in writing to adjust its maximum tariffs so that none of those conditions is likely to occur, and Telikom will thereupon:

- (i) with effect from the date it received the Commission's written request, adjust its maximum tariffs so that none of those conditions is likely to occur; and
  - (ii) notify the Commission in writing of the maximum tariffs as so adjusted; and
  - (iii) provide evidence satisfactory to the Commission that its maximum tariffs as so adjusted are such that none of those conditions is likely to occur.
- (c) If the Commission does not make a request in accordance with clause 3.1(b) within 20 Business Days of receiving notification of the change in maximum tariffs pursuant to clause 3.1(a)(iii) or 3.1(b)(ii), then the Commission is deemed to have accepted the change in maximum tariffs so notified and, where clause 3.1(b)(ii) applies, Telikom will within 5 Business Days of their deemed acceptance by the Commission and implementation:
- (i) publish notice of such changes in a daily newspaper circulating nationally; and
  - (ii) make copies of those maximum tariffs available on request and without charge.

### **3.2 Information**

The Commission may request Telikom to provide to it such information as it requires for the purposes of determining whether the consequence of any change in maximum tariffs pursuant to clause 3.1(a) is (as described in clause 3.1(b)) that any of the conditions set out in clause 2.3 is likely to occur, and Telikom agrees to provide that information within a reasonable time specified by the Commission in its request.

### **3.3 Maximum tariffs**

Telikom must not charge more for the sale of Fixed Network Services and Mobile Network Services than the applicable maximum tariff that it is permitted to charge under this Contract from time to time.

### **3.4 Discrimination**

Telikom agrees that the prices it charges for the sale of Fixed Network Services and Mobile Network Services (including any discounts to those prices) will not discriminate unreasonably between Customers who are in substantially the same circumstances. If the Commission, after consulting with Telikom, notifies Telikom that any prices (including any discounts to those prices) which Telikom is charging for the sale of Fixed Network Services or Mobile Network Services do discriminate unreasonably between such Customers, then Telikom agrees to immediately change those prices (including any discounts to those

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prices) so as to remove that discrimination and to advise the Commission of those changed prices.

## **4. Capital Expenditure Program**

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### **4.1 Forecast Capital Expenditure**

- (a) Telikom may submit to the Commission, not later than 1 July 2006 a capital expenditure program for the 5 years following 1 January 2007 which sets out, for each such year, the total capital expenditure expressed in nominal Kina (excluding associated overheads other than directly attributable overheads) which it proposes to undertake for the purposes of achieving or exceeding the Required Functionality (including the International Transmission Functionality) within five years from 1 January 2004.
- (b) Any capital expenditure referred to in this clause 4 does not include capital expenditure which has been or is proposed to be funded, directly or indirectly, by the State, by a provincial government, or by anyone other than Telikom.
- (c) The Commission must, within 30 days after the capital expenditure program referred to in clause 4.1(a) is submitted to the Commission, give written notice to Telikom as to whether or not it is satisfied that the program is likely to achieve or exceed the Required Functionality within five years from 1 January 2004. If:
- (i) the Commission gives such a notice to Telikom within the 30 day period stating that it is so satisfied; or
  - (ii) the Commission does not give such a notice to Telikom within the 30 day period stating either that it is or that it is not so satisfied,
- then the capital expenditure program referred to in clause 4.1(a) will be deemed to be substituted for the Existing Capital Expenditure Program for the purposes of this Contract.
- (d) If the Commission gives a written notice to Telikom pursuant to clause 4.1(c) within the 30 day period referred to in that clause which states that the Commission is not satisfied that the capital expenditure program referred to in clause 4.1(a) is likely to achieve or exceed the Required Functionality within five years from 1 January 2004, either the Commission or Telikom may, within 5 Business Days after the giving of that notice, give written notice to the other of them that it requires the appointment of an international consultant for the purposes of this clause 4.1. As soon as reasonably practicable after the giving of any such notice, the Commission must appoint an appropriately qualified independent international consultant to report to the Commission and Telikom, within 3 months of that international consultant's appointment, as to whether, in the international consultant's opinion, the capital expenditure program referred to in clause 4.1(a) is likely to achieve or exceed the Required Functionality within five years from 1 January 2004. The international consultant must be a person or firm agreed by Telikom and the Commission or, failing such agreement being reached, a person or firm nominated at the request of either

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Telikom or the Commission by the President for the time being of the Institution of Engineers Australia.

- (e) If a notice requiring the appointment of an international consultant for the purposes of this clause 4.1 is given, pursuant to clause 4.1(d), by:
- (i) the Commission, then the costs of the international consultant must (in the absence of an agreement to the contrary with Telikom) be borne by the Commission; or
  - (ii) Telikom, then the costs of the international consultant must (in the absence of an agreement to the contrary with the Commission) be borne by Telikom.
- (f) If any international consultant is appointed pursuant to clause 4.1(d), the Commission must decide, within 1 month of receiving the international consultant's report, whether the capital expenditure program referred to in clause 4.1(a) is likely to achieve or exceed the Required Functionality within five years from 1 January 2004. Except to the extent the Commission and Telikom agree otherwise, the Commission's decision in this regard must be consistent in all material respects with any opinion of the international consultant which is given in accordance with clause 4.1(d).
- (g) If the Commission decides that the capital expenditure program referred to in clause 4.1(a) is likely to achieve or exceed the Required Functionality within five years from 1 January 2004, then the capital expenditure program referred to in clause 4.1(a) will be deemed to be substituted for the Existing Capital Expenditure Program for the purposes of this Contract.

#### **4.2 Capital Expenditure Progress Report**

- (a) Telikom shall submit a Capital Expenditure Progress Report, in accordance with clause 4.2(b), which sets out:
- (i) the Actual Cumulative Expenditure;
  - (ii) the amount (if any) of that Actual Cumulative Expenditure which is attributable to the reinstatement or repair of the fixed or mobile telecommunications network operated by Telikom where the need for that reinstatement or repair has arisen as a result of damage or destruction caused by the occurrence, after the Commencement Date, of a cyclone, storm, flood, earthquake, volcanic eruption, tidal wave, landslide, or any other natural disaster, act of public enemy, war (declared or undeclared), sabotage, revolution, riot, insurrection or civil commotion, or any other event which the Commission and Telikom agree to in writing (such amount of the Actual Cumulative Expenditure referred to in this clause 4.2(a)(ii) being referred to as the **Uncontrollable Cumulative Expenditure**);
  - (iii) if the Actual Cumulative Expenditure reduced by the Uncontrollable Cumulative Expenditure (such reduced amount being referred to as the **Adjusted Cumulative Expenditure**) is less than:

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- (A) where the Existing Capital Expenditure Program has not been substituted by a New Capital Expenditure Program pursuant to clause 4.1(c)(i) or (ii) or clause 4.1(g) - 70% of the Existing Forecast Capital Expenditure; or
  - (B) where the Existing Capital Expenditure Program has been substituted by a New Capital Expenditure Program pursuant to clause 4.1(c)(i) or (ii) or clause 4.1(g) – 100% of the New Forecast Capital Expenditure,

but Telikom considers that the Required Functionality has been achieved or exceeded or is likely to be achieved or exceeded within five years from 1 January 2004, evidence that the Required Functionality has been achieved or exceeded or is likely to be achieved or exceeded within that period of time; and

- (iv) whether the construction and installation of a submarine cable or other equipment or facilities, in either case with the International Transmission Functionality, has commenced within four years from 1 January 2004.
- (b) The Capital Expenditure Progress Report referred to in clause 4.2(a) may be given to the Commission at any time but not later than 15 March 2009 (or such other date as Telikom and the Commission may agree in writing). Telikom agrees that, if so requested by the Commission within 30 days of the submission of the Capital Expenditure Progress Report, Telikom will procure, at its own cost and within 30 days, certification of the Capital Expenditure Progress Report by a registered company auditor (as defined in section 2 of the *Accountants Act 1996*) as being not false or misleading.

#### **4.3 Failure to meet Required Functionality**

- (a) The Commission or Telikom may, within 5 Business Days after the Capital Expenditure Progress Report referred to in clause 4.2(a) is submitted to the Commission, give written notice to the other of them that it requires the appointment of an international consultant for the purposes of this clause 4.3. As soon as reasonably practicable after the giving of any such notice, the Commission must appoint an appropriately qualified independent international consultant to report to the Commission and Telikom, by 30 June 2009, as to:
- (i) if the Existing Capital Expenditure Program has not been substituted by a New Capital Expenditure Program pursuant to clause 4.1(c)(i) or (ii) or clause 4.1(g), whether (in the international consultant's opinion) the Adjusted Cumulative Expenditure is less than 70% of the Existing Forecast Capital Expenditure and (if so) whether (in the international consultant's opinion) the Required Functionality has been achieved or exceeded or is likely to be achieved or exceeded within five years from 1 January 2004;
  - (ii) if the Existing Capital Expenditure Program has been substituted by a New Capital Expenditure Program pursuant to clause 4.1(c)(i) or (ii) or clause 4.1(g), whether (in the international consultant's opinion) the Adjusted

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Cumulative Expenditure is less than 100% of the New Forecast Capital Expenditure and (if so) whether (in the international consultant's opinion) the Required Functionality has been achieved or exceeded or is likely to be achieved or exceeded within five years from 1 January 2004; and

- (iii) whether (in the international consultant's opinion) the construction and installation of a submarine cable or other equipment or facilities, in either case with the International Transmission Functionality, has commenced within four years from 1 January 2004.

The international consultant must be a person or firm agreed by Telikom and the Commission or, failing such agreement being reached, a person or firm nominated at the request of either Telikom or the Commission by the President for the time being of the Institution of Engineers Australia.

- (b) The costs of any international consultant appointed pursuant to clause 4.3(a) must (in the absence of an agreement to the contrary with the Commission) be borne by Telikom.
- (c) The Commission must, by 31 July 2009, notify Telikom in writing of its determinations as to the following matters:
  - (i) if the Existing Capital Expenditure Program has not been substituted by a New Capital Expenditure Program pursuant to clause 4.1(c)(i) or (ii) or clause 4.1(g), whether the Adjusted Cumulative Expenditure is less than 70% of the Existing Forecast Capital Expenditure and (if so) whether the Required Functionality has been achieved or exceeded or is likely to be achieved or exceeded within five years from 1 January 2004;
  - (ii) if the Existing Capital Expenditure Program has been substituted by a New Capital Expenditure Program pursuant to clause 4.1(b)(i) or (ii) or clause 4.1(f), whether the Adjusted Cumulative Expenditure is less than 100% of the New Forecast Capital Expenditure and (if so) whether the Required Functionality has been achieved or exceeded or is likely to be achieved or exceeded within five years from 1 January 2004;
  - (iii) whether the construction and installation of a submarine cable or other equipment or facilities, in either case with the International Transmission Functionality, has commenced within four years from 1 January 2004; and
  - (iv) if:
    - (A) the Existing Capital Expenditure Program has not been substituted by a New Capital Expenditure Program pursuant to clause 4.1(c)(i) or (ii) or clause 4.1(g) and the Commission has determined that the Adjusted Cumulative Expenditure is less than 70% of the Existing Forecast Capital Expenditure; or
    - (B) the Existing Capital Expenditure Program has been substituted by a New Capital Expenditure Program pursuant to clause 4.1(c)(i) or (ii) or clause 4.1(g) and the Commission has determined that the

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Adjusted Cumulative Expenditure is less than 100% of the New Forecast Capital Expenditure,

and in either case the Commission has determined that the Required Functionality has not been achieved or exceeded and is not likely to be achieved or exceeded within five years from 1 January 2004:

- (C) the amount by which the Existing Forecast Capital Expenditure exceeds the Adjusted Cumulative Expenditure (the **Imprudent Capex Shortfall**); and
  - (D) the Imprudent Capex Shortfall as a percentage of the Existing Forecast Capital Expenditure (the **Imprudent Capex Percentage**);
- (d) If an international consultant is appointed pursuant to clause 4.3(a) then, except to the extent the Commission and Telikom agree otherwise, the determinations of the Commission pursuant to clause 4.3(c) must be consistent in all material respects with any opinions of the international consultant which are given in accordance with clause 4.3(a).
- (e) Telikom agrees that it will, at its expense, provide the Commission and any international consultant appointed pursuant to clause 4.3(a) with such access to Telikom's records, employees and contractors as the Commission or the international consultant reasonably requests for the purposes of this clause 4.3 provided that the Commission or international consultant agrees to keep such information confidential.

#### **4.4 Required Functionality**

If, at any time within five years from 1 January 2004 upon an application by Telikom, it is determined by the Commission that the Required Functionality has been achieved or exceeded on a sustainable and stable basis, then this clause 4 ceases to have effect and the value of  $CEF_{1,C}$  for the purposes of Part A of Schedule 2 shall be deemed to be zero for all subsequent Regulatory Years.

### **5. Regulated Pass Through**

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#### **5.1 Force Majeure Event Pass Through**

- (a) If a Force Majeure Event occurs, Telikom may propose to the Commission that it charge Customers an amount (**Force Majeure Pass Through Amount**) that is not greater than the Permitted Force Majeure Pass Through Amount (as calculated by Telikom) in respect of that Force Majeure Event as at the date of the Force Majeure Event Claim (if any) given to the Commission pursuant to clause 5.1(d) in respect of that Force Majeure Event.
- (b) In order to seek the Commission's agreement to pass through a Force Majeure Pass Through Amount under clause 5.1(a), Telikom must give the Commission:
  - (i) a Force Majeure Event Notice pursuant to clause 5.1(c) within 3 months of the Force Majeure Event occurring; and

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- (ii) a Force Majeure Event Claim pursuant to clause 5.1(d) within 12 months of the Force Majeure Event occurring.
  - (c) A Force Majeure Event Notice must specify:
    - (i) details of the Force Majeure Event concerned; and
    - (ii) the date the Force Majeure Event occurred.
  - (d) A Force Majeure Event Claim must specify:
    - (i) details of the Force Majeure Event concerned;
    - (ii) the date the Force Majeure Event occurred;
    - (iii) the increase in costs that Telikom has actually incurred as at the date of the Force Majeure Event Claim:
      - (A) in providing Fixed Network Services or Mobile Network Services to Customers; and
      - (B) in complying with the provisions of any legislation, or of any codes or guidelines made or published by any Governmental Agency or the Commission under the *Independent Consumer and Competition Commission Act 2002* or of any codes under the *Telecommunications Act* or any other legislation, which must be complied with in relation to the provision of Fixed Network Services or Mobile Network Services to Customers,
    - as a result of the occurrence of the Force Majeure Event;
    - (iv) the extent (if any) to which Telikom has the benefit of any insurance against the consequences of the Force Majeure Event;
    - (v) the Force Majeure Pass Through Amount Telikom proposes in relation to the Force Majeure Event;
    - (vi) the basis on which Telikom proposes to apply the Force Majeure Pass Through Amount to Customers; and
    - (vii) the date from, and period over, which Telikom proposes to apply the Force Majeure Pass Through Amount to Customers,and must be accompanied by evidence of the increase in costs referred to in paragraph (iii).
  - (e) If the Commission receives a Force Majeure Event Claim under clause 5.1(d) in relation to a Force Majeure Event, the Commission must decide whether it agrees that the Force Majeure Event has occurred and, if the Commission agrees that the Force Majeure Event has occurred, the Commission must decide:
    - (i) the Permitted Force Majeure Pass Through Amount in respect of the Force Majeure Event;
    - (ii) the basis on which the Force Majeure Pass Through Amount proposed by Telikom in relation to the Force Majeure Event or the Permitted Force Majeure Pass Through Amount in respect of the Force Majeure Event as

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determined by the Commission (whichever is the lesser) (the **Approved Force Majeure Pass Through Amount**) may be applied to Customers (the basis so determined by the Commission must entail the application of the entire amount of the Approved Force Majeure Pass Through Amount to Customers); and

- (iii) the date from, and period over, which the Approved Force Majeure Pass Through Amount in respect of the Force Majeure Event may be applied to Customers,

and notify Telikom in writing of the Commission's decision and the reasons for the Commission's decision.

- (f) If the Commission does not give a notice to Telikom under clause 5.1(e) within 20 Business Days of receiving:

- (i) a Force Majeure Event Claim from Telikom under clause 5.1(d); and
- (ii) such evidence of the increase in costs referred to in clause 5.1(d)(iii) as may be requested by the Commission,

then, on the 21<sup>st</sup> Business Day after receiving that Force Majeure Event Claim and that evidence, the Commission is deemed to have notified Telikom of its decision that:

- (iii) the Force Majeure Pass Through Amount proposed by Telikom in relation to the relevant Force Majeure Event in the Force Majeure Event Claim be the Approved Force Majeure Pass Through Amount in respect of that Force Majeure Event; and
- (iv) the basis on, date from and period over which that Approved Force Majeure Pass Through Amount may be applied to Customers are as specified in the Force Majeure Event Claim.

- (g) In making a decision under clause 5.1(e), the Commission must take into account:

- (i) the matters and proposals set out in the Force Majeure Event Claim; and
- (ii) any amount recoverable by Telikom under insurances against the consequences of the Force Majeure Event and of which Telikom has the benefit,

and, subject to the requirement that Telikom is not to be compensated for losses to the extent they are able to be compensated for by claiming under insurances of which Telikom has the benefit, the Commission must ensure that Telikom is fully (but not over) compensated for the increase in costs referred to in clause 5.1(d)(iii) to the extent that it was reasonable for Telikom to incur those costs, taking into account:

- (iii) the relative volumes of Fixed Network Services and Mobile Network Services provided by Telikom to Customers;
- (iv) the time cost of money for the period over which the Approved Force Majeure Pass Through Amount is to be applied;

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- (v) the need to provide an adequate return on any capital expenditure included in the Approved Force Majeure Pass Through Amount;
  - (vi) the basis on and period over which the Approved Force Majeure Pass Through Amount is to be applied;
  - (vii) any previous application of this clause 5.1 which has resulted in Telikom recovering an amount either more or less than the amount required to fully (but not over) compensate it in respect of a previous Force Majeure Event in accordance with this clause 5.1;
  - (viii) any other factors the Commission considers relevant; and
  - (ix) any other factors put to the Commission by Telikom.
- (h) Telikom may, after:
- (i) receipt or deemed receipt of a notice under clause 5.1(e) or (f) allowing Telikom to pass through an Approved Force Majeure Pass Through Amount; and
  - (ii) publishing a notice in a daily newspaper circulating nationally that sets out:
    - (A) the Approved Force Majeure Pass Through Amount which the Commission has approved or is deemed to have approved;
    - (B) the circumstances giving rise to the Approved Force Majeure Pass Through Amount; and
    - (C) the basis on, date from and period over which Telikom will apply the Approved Force Majeure Pass Through Amount to Customers,apply the Approved Force Majeure Pass Through Amount on the basis, from the date and over the period specified or deemed to be specified in the notice from the Commission.
- (i) The effect of an Approved Force Majeure Pass Through Amount must be:
- (i) shown on the bill of each affected Customer; or
  - (ii) notified in a public advertisement in a national newspaper; or
  - (iii) otherwise notified to such Customers in a manner agreed by Telikom and the Commission.

## 5.2 Tax Pass Through

- (a) If a Positive Tax Change Event occurs, Telikom may propose to the Commission that it charge Customers an amount (**Positive Tax Pass Through Amount**) that is not greater than the Permitted Tax Pass Through Amount (as calculated by Telikom) in respect of that Tax Change Event.
- (b) In order to seek the Commission's agreement to pass through a Positive Tax Pass Through Amount under clause 5.2(a), Telikom must give the Commission a statement within 3 months of the Tax Change Event occurring, specifying:
  - (i) details of the Tax Change Event concerned;

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- (ii) the date the Tax Change Event took effect;
  - (iii) the increase in costs that Telikom has incurred and is likely to incur over the term of this Contract in providing Fixed Network Services or Mobile Network Services to Customers as a result of the occurrence of the Tax Change Event;
  - (iv) the Positive Tax Pass Through Amount Telikom proposes in relation to the Tax Change Event;
  - (v) the basis on which Telikom proposes to apply the Positive Tax Pass Through Amount to Customers; and
  - (vi) the date from, and period over, which Telikom proposes to apply the Positive Tax Pass Through Amount to Customers,

and accompanied by evidence of the actual and likely increase in costs referred to in paragraph (iii).

- (c) If the Commission receives a statement under clause 5.2(b) in relation to a Positive Tax Change Event, the Commission must decide whether it agrees that the Tax Change Event has occurred and, if the Commission agrees that the Tax Change Event has occurred, the Commission must decide:

- (i) the Permitted Tax Pass Through Amount in respect of that Tax Change Event;
- (ii) the basis on which the Positive Tax Pass Through Amount proposed by Telikom in relation to that Tax Change Event or the Permitted Tax Pass Through Amount in respect of that Tax Change Event as determined by the Commission (whichever is the lesser) (the **Approved Tax Pass Through Amount**) may be applied to Customers (the basis so determined by the Commission must entail the application of the entire amount of the Approved Tax Pass Through Amount to Customers); and
- (iii) the date from, and period over, which the Approved Tax Pass Through Amount in respect of that Tax Change Event may be applied to Customers,

and notify Telikom in writing of the Commission's decision and the reasons for the Commission's decision.

- (d) If the Commission does not give a notice to Telikom under clause 5.2(c) within 20 Business Days of receiving:

- (i) a statement from Telikom under clause 5.2(b); and
- (ii) such evidence of the actual and likely increase in costs referred to in clause 5.2(b)(iii) as may be requested by the Commission,

then, on the 21<sup>st</sup> Business Day after receiving Telikom's statement and that evidence, the Commission is deemed to have notified Telikom of its decision that:

- (iii) the Positive Tax Pass Through Amount proposed by Telikom in relation to the relevant Tax Change Event in Telikom's statement be the Approved Tax Pass Through Amount in respect of that Tax Change Event; and

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- (iv) the basis on, date from and period over which that Approved Tax Pass Through Amount may be applied to Customers are as specified in Telikom's statement.
- (e) If a Negative Tax Change Event occurs, the Commission may require Telikom to pass through to Customers or otherwise apply for the benefit of Customers or potential Customers an aggregate amount (**Negative Tax Pass Through Amount**) that is not greater than the Required Tax Pass Through Amount (as determined by the Commission) in respect of that Tax Change Event. In such a case, the Commission must decide:
- (i) the Negative Tax Pass Through Amount in respect of that Tax Change Event;
  - (ii) the basis on which that Negative Tax Pass Through Amount must be passed through to or applied for the benefit of Customers or potential Customers; and
  - (iii) the date from, and period over, which the Negative Tax Pass Through Amount in respect of that Tax Change Event must be passed through to or applied for the benefit of Customers or potential Customers,
- and notify Telikom in writing of the Commission's decision and the reasons for the Commission's decision.
- (f) Telikom agrees to provide the Commission with such information as the Commission may request for the purpose of making a decision under clause 5.2(e) within the time specified by the Commission.
- (g) In making a decision under clause 5.2(c) or 5.2(e), the Commission must (in the case of a decision under clause 5.2(c)) take into account the matters and proposals set out in Telikom's statement and:
- (i) in the case of a decision under clause 5.2(c) - the Commission must ensure that Telikom is fully (but not over) compensated for the actual and likely increase in costs referred to in clause 5.2(b)(iii); and
  - (ii) in the case of a decision under clause 5.2(e) – the Commission must ensure that the aggregate amount that Telikom is required to pass through to, or otherwise apply for the benefit of, Customers or potential Customers is an amount that is equivalent to (but not more than) the costs that Telikom has saved and is likely to save over the term of this Contract in providing Fixed Network Services and Mobile Network Services to Customers as a result of the occurrence of the Negative Tax Change Event,
- taking into account:
- (iii) the relative volumes of Fixed Network Services and Mobile Network Services provided by Telikom to Customers;

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- (iv) the time cost of money for the period over which the Approved Tax Pass Through Amount or the Negative Tax Pass Through Amount (as the case may be) is to be applied;
  - (v) the basis on and period over which the Approved Tax Pass Through Amount or the Negative Tax Pass Through Amount (as the case may be) is to be applied;
  - (vi) any previous application of this clause 5.2 which has resulted in an Approved Tax Pass Through Amount or a Negative Tax Pass Through Amount in respect of a previous Tax Change Event being more or less than the amount which it should have been for the purposes of this clause 5.2;
  - (vii) any change in the way or rate at which another Tax is calculated, or the removal or imposition of another Tax, which, in the Commission's opinion, is complementary to the Tax Change Event concerned;
  - (viii) the effect of any other previous Tax Change Event that has occurred since the later of the Commencement Date and the last decision made under this clause 5.2 in relation to a Tax Change Event; and
  - (ix) any other factors the Commission considers relevant; and
  - (x) any other factors put to the Commission by Telikom.
- (h) Telikom may, after:
- (i) receipt or deemed receipt of a notice under clause 5.2(c) or (d) allowing Telikom to pass through an Approved Tax Pass Through Amount; and
  - (ii) publishing a notice in a daily newspaper circulating nationally that sets out:
    - (A) the Approved Tax Pass Through Amount which the Commission has approved or is deemed to have approved;
    - (B) the circumstances giving rise to the Approved Tax Pass Through Amount; and
    - (C) the basis on, date from and period over Telikom will apply the Approved Tax Pass Through Amount to Customers,apply the Approved Tax Pass Through Amount on the basis, from the date and over the period specified or deemed to be specified in the notice from the Commission.
- (i) Telikom agrees that, after receipt of a notice under clause 5.2(e) requiring Telikom to pass through a Negative Tax Pass Through Amount to Customers or apply a Negative Tax Pass Through Amount for the benefit of Customers or potential Customers, it will do so on the basis, from the date and over the period specified in the notice from the Commission.
- (j) The effect of an Approved Tax Pass Through Amount or a Negative Tax Pass Through Amount must be:
- (i) shown on the bill of each affected Customer; or

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- (ii) notified by public advertisement in a national newspaper; or
  - (iii) otherwise notified to such Customers in a manner agreed by Telikom and the Commission.

### 5.3 National Services Pass Through

- (a) If a National Services Event in respect of a Regulatory Year occurs, Telikom may propose to the Commission that it charge Customers an amount (**National Services Pass Through Amount**) that is not greater than the Permitted National Services Pass Through Amount (as calculated by Telikom) in respect of that Regulatory Year.
- (b) In order to seek the Commission's agreement to pass through the National Services Pass Through Amount in respect of a Regulatory Year, Telikom must give the Commission a statement, by 31 October of that Regulatory Year, specifying:
  - (i) the National Services Pass Through Amount proposed by Telikom;
  - (ii) the total capital expenditure made by Telikom during the 12 month period ending on 30 September in that Regulatory Year, being capital expenditure which is made by Telikom in providing the National Services;
  - (iii) the basis on which Telikom proposes to apply the National Services Pass Through Amount to Customers; and
  - (iv) the date from, and period over, which Telikom proposes to apply the National Services Pass Through Amount to Customers,and must be accompanied by evidence of the capital expenditure referred to in paragraph (ii).
- (c) If the Commission receives a statement under clause 5.3(b), the Commission must decide:
  - (i) the Permitted National Services Pass Through Amount for that Regulatory Year;
  - (ii) the basis on which the National Services Pass Through Amount proposed by Telikom or the Permitted National Services Pass Through Amount as determined by the Commission (whichever is the lesser) (the **Approved National Services Pass Through Amount**) may be applied to Customers (the basis so determined by the Commission must entail the application of the entire amount of the Approved National Services Pass Through Amount to Customers); and
  - (iii) the date from, and period over, which the Approved National Services Pass Through Amount may be applied to Customers,and notify Telikom in writing of the Commission's decision and the reasons for the Commission's decision.
- (d) If the Commission does not give a notice to Telikom under clause 5.3(c) within 20 Business Days of receiving:
  - (i) a statement from Telikom under clause 5.3(b); and

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- (ii) such evidence of the capital expenditure referred to in clause 5.3(b)(ii) as may be requested by the Commission,
- then, on the 21<sup>st</sup> Business Day after receiving Telikom's statement and that evidence, the Commission is deemed to have notified Telikom of its decision that:
- (iii) the National Services Pass Through Amount proposed by Telikom in Telikom's statement be the Approved National Services Pass Through Amount for the relevant Regulatory Year; and
- (iv) the basis on, date from and period over which that Approved National Services Pass Through Amount may be applied to Customers are as specified in Telikom's statement.
- (e) In making a decision under clause 5.1(d), the Commission must ensure that Telikom is fully (but not over) compensated for the capital expenditure referred to in clause 5.3(b)(ii) to the extent that it was reasonable for Telikom to make that capital expenditure, taking into account:
- (i) the time cost of money for the period over which the Approved National Services Pass Through Amount is to be applied;
- (ii) the need to provide for an adequate return on the capital expenditure included in the Approved National Services Pass Through Amount;
- (iii) the basis on, and period over, which the Approved National Services Pass Through Amount is to be applied;
- (iv) any previous application of this clause 5.3 which has resulted in Telikom recovering an amount either more or less than the amount required to fully (but not over) compensate it in respect of a previous National Services Event;
- (v) any other factors the Commission considers relevant; and
- (vi) any other factors put to the Commission by Telikom.
- (f) Telikom may, after:
- (i) receipt or deemed receipt of a notice under clause 5.3(c) or (d) allowing Telikom to pass through an Approved National Services Pass Through Amount; and
- (ii) publishing a notice in a daily newspaper circulating nationally that sets out:
- (A) the Approved National Services Pass Through Amount which the Commission has approved or is deemed to have approved;
- (B) the circumstances giving rise to the Approved National Services Pass Through Amount; and
- (C) the basis on, date from and period over which Telikom will apply the Approved National Services Pass Through Amount to Customers,

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apply the Approved National Services Pass Through Amount on the basis, from the date and over the period specified or deemed to be specified in the notice from the Commission.

- (g) The effect of an Approved National Services Pass Through Amount must be:
  - (i) shown on the bill of each affected Customer; or
  - (ii) notified by public advertisement in a national newspaper; or
  - (iii) otherwise notified to such Customers in a manner agreed by Telikom and the Commission.
- (h) This clause 5.3 ceases to have effect from the time (if any) when the National Government reaches agreement with Telikom on an alternative arrangement for funding operational and maintenance and capital expenditures in relation to the National Services.

#### **5.4 Telecommunications Licence Pass Through**

- (a) Subject to clause 5.4(b), Telikom may at any time propose to the Commission that it charge Customers an amount (***Telecommunications Licence Pass Through Amount***) that is not greater than the Permitted Telecommunications Licence Pass Through Amount in respect of a Regulatory Year (the ***Relevant Regulatory Year***) (to the extent that amount is positive).
- (b) In order to seek the Commission's agreement to pass through a Telecommunications Licence Pass Through Amount referred to in clause 5.4(a), Telikom must give the Commission a statement, by 31 January of the Regulatory Year immediately following the Relevant Regulatory Year, specifying:
  - (i) the Telecommunications Licence Pass Through Amount proposed by Telikom;
  - (ii) the amount of the Telecommunications Licence and Regulatory Fees referable to the Relevant Regulatory Year which have been paid by Telikom;
  - (iii) the basis on which Telikom proposes to apply the Telecommunications Licence Pass Through Amount to Customers; and
  - (iv) the date from, and period over, which Telikom proposes to apply the Telecommunications Licence Pass Through Amount to Customers,and must be accompanied by evidence of the payments referred to in paragraph (ii).
- (c) If the Commission receives a statement under clause 5.4(b), the Commission must decide:
  - (i) the Permitted Telecommunications Licence Pass Through Amount in respect of the Relevant Regulatory Year;
  - (ii) the basis on which the Telecommunications Licence Pass Through Amount proposed by Telikom or the Permitted Telecommunications Licence Pass

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Through Amount as determined by the Commission (whichever is the lesser) (the **Approved Telecommunications Licence Pass Through Amount**) may be applied to Customers (the basis so determined by the Commission must entail the application of the entire amount of the Approved Telecommunications Licence Pass Through Amount to Customers); and

- (iii) the date from, and period over, which the Approved Telecommunications Licence Pass Through Amount may be applied to Customers,

and notify Telikom in writing of the Commission's decision and the reasons for the Commission's decision.

- (d) If the Commission does not give a notice to Telikom under clause 5.4(c) within 20 Business Days of receiving:

- (i) a statement from Telikom under clause 5.4(b); and
- (ii) such evidence of the payments referred to in clause 5.4(b)(ii) as is required by the Commission,

then, on the 21<sup>st</sup> Business Day after receiving Telikom's statement and that evidence, the Commission is deemed to have notified Telikom of its decision that:

- (iii) the Telecommunications Licence Pass Through Amount proposed by Telikom in Telikom's statement be the Approved Telecommunications Licence Pass Through Amount; and
- (iv) the basis on, date from and period over which that Approved Telecommunications Licence Pass Through Amount may be applied to Customers are as specified in Telikom's statement.

- (e) The Commission may require Telikom to pass through to Customers or otherwise apply for the benefit of Customers or potential Customers an amount that is equal to the Permitted Telecommunications Licence Pass Through Amount in respect of any Regulatory Year (to the extent that amount is negative).

- (f) If the Commission requires Telikom to pass through to Customers, or otherwise apply for the benefit of Customers or potential Customers, a Permitted Telecommunications Licence Pass Through Amount as referred to in clause 5.4(e), the Commission must decide:

- (i) that amount (such amount being referred to as the **Required Telecommunications Licence Pass Through Amount**);
- (ii) the basis on which that Required Telecommunications Licence Pass Through Amount must be passed through to or applied for the benefit of Customers or potential Customers; and
- (iii) the date from, and period over, which that Required Telecommunications Licence Pass Through Amount must be passed through to or applied for the benefit of Customers or potential Customers,

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and notify Telikom in writing of the Commission's decision and the reasons for the Commission's decision.

- (g) Telikom agrees to provide the Commission with such information as the Commission may request for the purpose of making a decision under clause 5.4(f) within the time specified by the Commission.
- (h) Telikom may, after:
- (i) receipt or deemed receipt of a notice under clause 5.4(c) or (d) allowing Telikom to pass through an Approved Telecommunications Licence Pass Through Amount; and
  - (ii) publishing a notice in a daily newspaper circulating nationally that sets out:
    - (A) the Approved Telecommunications Licence Pass Through Amount which the Commission has approved or is deemed to have approved;
    - (B) the circumstances giving rise to the Approved Telecommunications Licence Pass Through Amount; and
    - (C) the basis on, date from and period over which Telikom will apply the Approved Telecommunications Licence Pass Through Amount to Customers,apply the Approved Telecommunications Licence Pass Through Amount on the basis, from the date and over the period specified or deemed to be specified in the notice from the Commission.
- (i) Telikom agrees that, after receipt of a notice under clause 5.4(f) requiring Telikom to pass through a Required Telecommunications Licence Pass Through Amount to Customers or apply a Required Telecommunications Licence Pass Through Amount for the benefit of Customers or potential Customers, it will do so on the basis, from the date and over the period specified in the notice from the Commission.
- (j) The effect of an Approved Telecommunications Licence Pass Through Amount or a Required Telecommunications Licence Pass Through Amount must be:
- (i) shown on the bill of each affected Customer; or
  - (ii) notified by public advertisement in a national newspaper; or
  - (iii) otherwise notified to such Customers in a manner agreed by Telikom and the Commission.

## **6. Methods of Calculation and Review of Average Local Call Minutes**

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### **6.1 Methods of Calculation**

#### Call Minutes

- (a) Telikom agrees that, by 1 January 2007, it will give the Commission a statement which sets out the method which Telikom proposes to use to estimate the number of minutes of utilisation by Customers of the Fixed Network Services (other than Fixed Network

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Access Services) and Mobile Network Services (other than Mobile Network Access Services) supplied by Telikom where the equipment used by Telikom does not automatically or with sufficient accuracy record that information.

- (b) Within six months after 1 January 2007 the Commission must, after consulting with Telikom in relation to any alternative methods, either approve the method proposed by Telikom under clause 6.1(a) or advise Telikom in writing of an alternative method which it is to use to estimate the number of minutes of utilisation by Customers of the Fixed Network Services (other than Fixed Network Access Services) and Mobile Network Services (other than Mobile Network Access Services) supplied by Telikom where the equipment used by Telikom does not automatically or with sufficient accuracy record that information, whereupon Telikom must use that method for that purpose. In deciding on the method to be used, the Commission will take into account:
- (i) accepted international practices for estimating the number of minutes of utilisation of similar services;
  - (ii) the need to ensure that the method used provides reasonable and consistent data;
  - (iii) the measures which Telikom can reasonably be expected to implement for the purposes of estimating the number of minutes of utilisation of the relevant Fixed Network Services and Mobile Network Services;
  - (iv) any other factors the Commission considers relevant; and
  - (v) any other factors put to the Commission by Telikom.
- (c) If the Commission has not advised Telikom of the method which Telikom is to use as described in clause 6.1(b) within six months after 1 January 2007, the method to be used by Telikom for that purpose will be the method proposed by Telikom under clause 6.1(a).

Network and Service Performance Delivery

- (d) Telikom agrees that, by 1 January 2007, it will give the Commission a statement which sets out the process (including details of the equipment required) which Telikom proposes to use to measure its network and service performance against the requirements for that performance as set out in this Contract and in any licence issued to Telikom under the *Telecommunications Act*.
- (e) The Commission must, within 6 months of receiving Telikom's statement under clause 6.1(d), and after consulting with Telikom in relation to any alternative processes, either approve the process proposed by Telikom under clause 6.1(d) or advise Telikom in writing of an alternative process which Telikom is to use to measure its network and service performance, whereupon Telikom must (subject to clause 6.1(g)) use that process for that purpose. In deciding on the process to be used, the Commission will take into account:
- (i) accepted international practices for measuring network and service performance;

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- (ii) the need to ensure that the process used provides reasonable and consistent data;
  - (iii) the measures which Telikom can reasonably be expected to implement for the purposes of measuring its network and service performance;
  - (iv) any other factors the Commission considers relevant; and
  - (v) any other factors put to the Commission by Telikom.
- (f) If, within 6 months of receiving Telikom's statement under clause 6.1(d), the Commission has not advised Telikom of the process which Telikom is to use as described in clause 6.1(e), the process to be used by Telikom for that purpose will be the process proposed by Telikom under clause 6.1(d).
- (g) Telikom agrees to establish and have commenced the application of the process (including the establishment of all necessary equipment) to measure its network and service performance as required under clause 6.1(e) or (f) (as the case may be) by such date as Telikom and the Commission agree or, failing agreement, by the second anniversary of the Commencement Date.
- (h) If, within 6 months from the date specified in clause 6.1(d), or by any later date agreed to by the Commission, Telikom fails to give the Commission the statement referred to in clause 6.1(d), Telikom will be deemed for all purposes to have failed to meet its network and service performance, from that date until the date, if any, Telikom gives that statement to the Commission.

#### Billing

- (i) Telikom agrees that, by 1 July 2006, it will give the Commission a statement that sets out the billing procedure that Telikom proposes to use to bill and monitor payment by its customers.

### **6.2 Review of Average Local Call Minutes of Use**

- (a) Once only following the time at which Telikom is able to measure minutes of use for local calls on a timed basis for at least 70% of the subscriber lines included in the fixed telecommunications network that is operated by it (the **Relevant Time**), Telikom may require the Commission to determine the average minutes of use of that fixed telecommunications network for local calls made over any consecutive period of 12 months occurring after the Relevant Time (the **Relevant Period**). For these purposes, this amount (the **Average Local Call Minutes** or **ALCM**) is to be determined as follows:

$$\text{ALCM} = \frac{\text{TLCM}}{\text{LC}}$$

where:

TLCM is the total number of minutes of use, for local calls made over the Relevant Period, of the subscriber lines in respect of which minutes of use for local calls on a timed basis are able to be measured (being subscriber lines that are included in the fixed telecommunications network that is operated by Telikom); and

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LC is the average number of subscriber lines over the Relevant Period (being subscriber lines that are included in the fixed telecommunications network that is operated by Telikom) in respect of which minutes of use for local calls on a timed basis are able to be measured, and is calculated as follows:

$$\frac{\sum_{m=1}^{12} SL_{m, FN}}{12}$$

where:

$SL_{m, FN}$  is the number of such subscriber lines used by Customers as at the last day of month  $m$ ; and

$m$  is a calendar month in the Relevant Period, with the first such month being  $m=1$  and the last such month being  $m=12$ .

- (b) Telikom agrees that it will provide to the Commission such information as the Commission may request for the purposes of determining whether this clause 6.2 applies and, if so, determining the Average Local Call Minutes.

## **7. Service Standards and Customer Rebates**

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### **7.1 Appointments for Connection and Service Restoration**

In addition to any other service standards contained in any licence held by Telikom which is issued under the *Telecommunications Act*, when requested by a Customer, Telikom agrees that it will use its best endeavours (in respect only of Designated Operations Areas):

- (a) to connect that Customer to the fixed telecommunications network that is operated by Telikom, with such connection being effected on or prior to the Required Connection Date which applies in respect of that connection; or
- (b) to rectify any fault in a service provided to that Customer by the fixed telecommunications network that is operated by Telikom, with such rectification being achieved on or prior to the Required Service Restoration Date which applies in respect of that rectification.

### **7.2 Customer rebates**

- (a) Where, in any calendar month occurring after June 2006 (the **Relevant Calendar Month**) Telikom fails:
- (i) on or prior to the Required Connection Date which applies in respect of that connection, to connect a Customer to the fixed telecommunications network that is operated by Telikom; or
- (ii) on or prior to the Required Service Restoration Date which applies in respect of that rectification, to rectify any fault in a service provided to a

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Customer by the fixed telecommunications network that is operated by  
Telikom,

and that failure is not an Uncontrollable Failure, Telikom agrees to pay to that  
Customer, in respect of each and every such failure, an amount ( $R_m$ ) calculated as  
follows:

$$R_m = ARP_t * TLR_c$$

where:

$ARP_t$  is the applicable rebate proportion for the Regulatory Year in which  
the Relevant Calendar Month occurs, as set out in Table 3 of Schedule 5;  
and

$TLR_c$  is the standard telephone line rental charge (in Kina) in respect of the  
Relevant Calendar Month.

- (b) The amount referred to in clause 7.2(a) must be paid:
- (i) in the case of a failure referred to in clause 7.2(a)(i), by way of a separate  
sum which is paid to the relevant Customer within four months after the  
applicable Required Connection Date; and
  - (ii) in the case of a failure referred to in clause 7.2(a)(ii), either:
    - (A) by way of deduction against the first bill in respect of Fixed  
Network Services provided to the relevant Customer which is  
rendered after the applicable Required Service Restoration Date;  
or
    - (B) where no such bill is rendered within three months after the  
applicable Required Service Restoration Date, by way of a  
separate sum which is paid to the relevant Customer within four  
months after the applicable Required Service Restoration Date;  
and
- (c) Telikom agrees that it will provide to the Commission such evidence of any  
Uncontrollable Failure referred to in clause 7.2(a), and such evidence of its payment of  
amounts required to be paid pursuant to this clause 7.2, as the Commission may  
request and within such time as the Commission specifies.
- (d) Telikom agrees that it will provide information to its Customers about their eligibility for  
rebates under this clause 7.2.

## **8. Review of Maximum Average Price Caps**

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### **8.1 Proposal for Variation of Maximum Average Price Caps**

- (a) Telikom may, at the times set out in clause 8.1(b) and in accordance with and subject  
to clauses 8.1(c) and (d), submit a proposal to the Commission that the Commission  
agree to vary the calculation of any of the Maximum Average Price Caps prescribed by  
this Contract.

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- (b) A proposal under clause 8.1(a) may only be submitted:
- (i) at any time after the occurrence of a Force Majeure Event; or
  - (ii) at any time after 1 October 2007, provided that no such proposal may be submitted under this paragraph (ii) within the period of 3 years after the last such proposal (if any) was submitted under this paragraph (ii).
- (c) A proposal under clause 8.1(a) must specify the variations proposed by Telikom and the reasons for the proposed variations.
- (d) Subject to clause 8.1(h), Telikom may only propose a variation under this clause 8.1 if:
- (i) it is appropriate because:
    - (A) the actual operational and maintenance or capital expenditures made by Telikom are different from the forecast operational and maintenance or capital expenditures as set out in Schedule 8;
    - (B) the actual weighted average ages and total economic lives of the assets specified in Schedule 8 are different from the assumed weighted average ages and total economic lives of those assets as set out in Schedule 8; or
    - (C) the actual value of the asset base as at 31 December 2001 is different from the assumed value of the asset base as at 31 December 2001 as set out in Schedule 8 (K454,285,751); or
  - (ii) in the case of a variation that is not proposed under paragraph (i), it is a variation to:
    - (A) the calculation of the change in the Cumulative Weighted Index under paragraph B of Schedule 2;
    - (B) the variables in the table contained in paragraph A.1 of Schedule 3; or
    - (C) the pre-tax, real, weighted average cost of capital of 16.9% for the years 2002 to 2006 inclusive and 14.1% for 2007 and subsequent years .
  - (iii) For the avoidance of doubt the parties acknowledge and agree that the figures contained in Schedule 8 are only forecasts and assumptions, formulated or predicated on information which may or may not be correct. Accordingly they have no status in this Contract other than for the purpose of this clause 8.
- (e) If Telikom submits a proposal to the Commission under clause 8.1(b)(i), the Commission may (but need not) review the calculation of the Maximum Average Price Caps prescribed by this Contract under this clause 8. The Commission must not decide not to conduct a review under this clause 8 following the submission of a proposal under clause 8.1(b)(i) unless it has first:

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- (i) notified Telikom that it does not propose to conduct such review and allowed Telikom a reasonable opportunity to make submissions to the contrary; and
  - (ii) taken into account any matters contained in the submissions referred to in paragraph (i).

If the Commission decides under this clause 8.1(e) not to conduct a review under this clause 8, the Commission must give written reasons for this decision to Telikom as soon as reasonably practicable. If, following the submission of a proposal under clause 8.1(b)(i), the Commission decides to conduct a review under this clause 8, the Commission must notify Telikom of this decision as soon as reasonably practicable and, in conducting such review, the Commission must take into account the reasons for the proposed variations given by Telikom under clause 8.1(c) and any other matters the Commission, acting reasonably, considers to be relevant.

- (f) If Telikom submits a proposal to the Commission under clause 8.1(b)(ii), the Commission must review the calculation of the Maximum Average Price Caps prescribed in this Contract under this clause 8, taking into account the reasons for the proposed variations given by Telikom under clause 8.1(c) and any other matters the Commission, acting reasonably, considers to be relevant.
- (g) If the Commission conducts a review under this clause 8 then, subject to clause 8.1(h), it may by written notice propose to Telikom such variations to the calculation of the Maximum Average Price Caps prescribed by this Contract as the Commission determines resulting from that review. After giving Telikom a reasonable opportunity to make submissions in relation to those proposed variations, and taking into account any matters contained in those submissions, the Commission may make those variations to the calculation of the Maximum Average Price Caps prescribed by this Contract of which it has given notice under this clause 8.1(g) (as such have been varied by the Commission to take account of submissions made by Telikom under this clause 8.1(g)) and those variations will be deemed to take effect as at the date specified by the Commission for that purpose, being a date that is not earlier than the date of the notice given by the Commission under this clause 8.1(g).
- (h) This Contract must not be varied under this clause 8.1 where:
  - (i) in the case of a proposal submitted by Telikom under clause 8.1(b)(i), Telikom has not waived any right that it would otherwise have to be compensated for the occurrence of the relevant Force Majeure Event by virtue of the operation of clause 5.1;
  - (ii) in any case, the variation will result in Telikom being compensated for any expenditure which is not reasonable, prudent or efficient or for any expenditure for which Telikom is otherwise compensated by virtue of the operation of any other provision of this Contract; or
  - (iii) in any case, the variation would result in the provisions of clause 4 or of paragraph A.2 of Schedule 3 being amended.

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- (i) If, where Telikom submits a proposal to the Commission under clause 8.1(b)(ii), the Commission does not, within 120 Business Days of the Commission receiving the proposal, either notify Telikom of the Commission's proposed variations to the calculation of the Maximum Average Price Caps prescribed by this Contract or notify Telikom that the Commission does not intend to agree to any of Telikom's proposed variations to the calculation of the Maximum Average Price Caps prescribed by this Contract, the Commission is deemed to have agreed to the proposal and the variations to the calculation of the Maximum Average Price Caps prescribed by this Contract as proposed by Telikom.
  - (j) Telikom agrees to pay all of the reasonable costs (both external and internal) incurred by the Commission in undertaking a review of the calculation of the Maximum Average Price Caps prescribed by this Contract under this clause 8.

## **9. Subsequent Regulatory Contract**

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### **9.1 Setting next Regulatory Contract**

- (a) Telikom may, in accordance with clause 9.1(b), submit to the Commission a draft Telecommunications Regulatory Contract which Telikom considers should bind it for a period of not more than seven years commencing with effect from (and including) 1 January 2012 and any written proposal as to its form and content that Telikom considers appropriate.
- (b) The draft Telecommunications Regulatory Contract and any proposal, as referred to in clause 9.1(a), must be given to the Commission by 31 December 2010.
- (c) After considering:
  - (i) the draft Telecommunications Regulatory Contract and any proposal submitted by Telikom under clause 9.1(a);
  - (ii) any submissions made by any other person in relation to the form or content of the Telecommunications Regulatory Contract which should bind Telikom following the expiry of this Contract; and
  - (iii) the particular circumstances of the telecommunications industry in Papua New Guinea,the Commission must publish a draft Telecommunications Regulatory Contract that is proposed to bind Telikom for a period of not more than seven years commencing with effect from (and including) 1 January 2012.
- (d) In preparing the draft Telecommunications Regulatory Contract referred to in clause 9.1(c), the Commission must also take into account:
  - (i) the legitimate business interests of Telikom;
  - (ii) the legitimate interests of suppliers to, and customers of, Telikom;
  - (iii) the nature and uses of the services the prices of which would be regulated under the draft Telecommunications Regulatory Contract;

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- (iv) the costs of providing the services the prices of which would be regulated under the draft Telecommunications Regulatory Contract;
  - (v) the costs of complying with relevant health, safety, environmental, social and other legislation and regulatory requirements applying to the telecommunications industry in Papua New Guinea;
  - (vi) the return on assets required to sustain past and future investment in the telecommunications industry in Papua New Guinea;
  - (vii) any relevant international benchmarks for prices, costs and return on assets in comparable industries, taking into account the particular circumstances of Papua New Guinea;
  - (viii) the financial implications of the draft Telecommunications Regulatory Contract (if it were to come into force) for Telikom and the telecommunications industry in Papua New Guinea;
  - (ix) the degree of actual and potential competition in the supply of the services the prices of which may be regulated under the draft Telecommunications Regulatory Contract;
  - (x) the provisions of this Contract and the requirement that similar provisions to those contained in clauses 14, 15 and 16 should, to the extent appropriate, be included in the draft Telecommunications Regulatory Contract;
  - (xi) any other factors specified in or under relevant legislation; and
  - (xii) any other factors the Commission considers relevant.
- (e) In addition, the draft Telecommunications Regulatory Contract referred to in clause 9.1(c):
- (i) must not be inconsistent with, and must be prepared in accordance with, the Regulatory Principles; and
  - (ii) must comply with the requirements of the *Independent Consumer and Competition Commission Act 2002*.
- (f) The Commission must publish the draft Telecommunications Regulatory Contract referred to in clause 9.1(c) by 30 April 2011.
- (g) Telikom may, in accordance with clause 9.1(h), make such further written submissions to the Commission as it thinks appropriate in relation to the form and content of the draft Telecommunications Regulatory Contract referred to in clause 9.1(c).
- (h) The submissions referred to in clause 9.1(g) must be given to the Commission by 30 June 2011.
- (i) After considering:
- (i) any submissions made by Telikom under clause 9.1(g); and

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- (ii) any submissions made by any other person in relation to the form or content of the draft Telecommunications Regulatory Contract referred to in clause 9.1(c),  
  
the Commission must publish a final draft of the Telecommunications Regulatory Contract referred to in clause 9.1(c) by not later than 30 November 2011.
  - (j) In preparing the final draft of the Telecommunications Regulatory Contract referred to in clause 9.1(c), the Commission must also take into account the matters referred to in clause 9.1(d).
  - (k) In addition, the final draft of the Telecommunications Regulatory Contract referred to in clause 9.1(c):
    - (i) must not be inconsistent with, and must be prepared in accordance with, the Regulatory Principles;
    - (ii) must comply with the requirements of the *Independent Consumer and Competition Commission Act 2002*; and
    - (iii) must be for:
      - (A) such period of not more than seven years commencing with effect from (and including) 1 January 2012 as Telikom and the Commission may agree prior to the publication of the final draft of the Telecommunications Regulatory Contract pursuant to clause 9.1(i); or
      - (B) if Telikom and the Commission fail to agree to the period of the Telecommunications Regulatory Contract prior to the publication of the final draft of it pursuant to clause 9.1(i) - a period of seven years commencing with effect from (and including) 1 January 2012.
  - (l) The Commission may issue statements of regulatory intent which elaborate on how the Commission will exercise its rights and perform its obligations under this clause 9.1.

## **10. Exclusivity and the Introduction of Competition**

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### **10.1 Competition**

- (a) The Commission agrees not to issue any licence under the *Telecommunications Act* or any other applicable legislation that permits any person other than Telikom:
  - (i) to operate as a general carrier within a Designated Operations Area before the expiry of the period that ends three months after the fifth anniversary of the Commencement Date; or
  - (ii) to operate as a mobile carrier before the expiry of the period that ends on 31 March 2006.
- (b) Clause 10.1(a) does not prevent the Commission from licensing a carrier to supply to any person:
  - (i) Excluded Services, or

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- (ii) Fixed Network Services in a Designated Operations Area or Mobile Network Services, where Telikom agrees in writing (such consent not to be unreasonably withheld) that it is not practicable for technical or other reasons for Telikom to supply those services to that person.
- (c) The Commission agrees not to issue any value added service licence under the *Telecommunications Act* or any other applicable legislation which permits any person to operate, within 21 months of the Commencement Date, as a simple reseller of:
- (i) Fixed Network Services in a Designated Operations Area; or
  - (ii) Mobile Network Services,
- which are in either case acquired from Telikom.

## **10.2 Failure to meet Service Standards**

- (a) If Telikom persistently fails to comply with the service standards imposed on it under any licence held by it under the *Telecommunications Act*, the Commission may notify Telikom in writing of the nature of the claimed non-compliance and the reasons why the Commission believes Telikom has persistently not complied with the service standards, by reference to the extent and seriousness of the claimed non-compliance. Telikom must within 60 days accept or dispute the claimed non-compliance. If Telikom accepts that it has not complied as claimed, the Commission and Telikom must agree corrective measures to overcome the non-compliance. If the Commission and Telikom cannot agree on such corrective measures, or Telikom rejects the Commission's claim and the Commission does not agree with Telikom's views, the Commission may vary the dates referred to in clauses 10.1(a) and (c) to such earlier dates as the Commission may decide.
- ii. The Commission may not seek to suspend or revoke any licence held by Telikom under the *Telecommunications Act* for the reason only that Telikom has failed to meet the network performance standards imposed on it under that licence.

## **11. Amendment of Regulatory Contract**

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### **11.1 Agreed Amendments**

- (a) Subject to clause 11.1(b), this Contract may be varied from time to time by written agreement between the Commission and Telikom but any such variation must not be inconsistent with the Regulatory Principles or the requirements of the *Independent Consumer and Competition Commission Act 2002*.
- (b) No variation may be made to this Contract (whether pursuant to this clause 11.1 or pursuant to clause 8) unless:
- (i) at least 40 Business Days prior to any such variation taking effect:

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- (A) the Commission has published a notice describing the proposed variation in both the National Gazette and a daily newspaper circulating nationally and inviting the making of submissions in relation to the proposed variation not less than 20 Business Days after the date of publication of that notice;
  - (B) the Commission has provided a notice to the Minister responsible for the *Telecommunications Act* describing the proposed variation; and
  - (C) the Commission has made available, for inspection or purchase by the public, copies of the precise form of the proposed variation; and
- (ii) the Commission has considered such submissions in relation to the proposed variation as it receives under clause 11.1(b)(i).

## **11.2 Amendments made by virtue of the operation of the Independent Consumer and Competition Commission Act 2002**

If, with the prior written consent of Telikom, any Fixed Network Services, Mobile Network Services or Excluded Services cease to be regulated services (as that term is defined in the *Independent Consumer and Competition Commission Act 2002*), this Contract will be varied, in accordance with the operation of section 33(4) of the *Independent Consumer and Competition Commission Act 2002*, by deleting any reference in this Contract to such of those services as have ceased to be regulated services.

## **12. Termination of Regulatory Contract**

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### **12.1 Agreed termination**

This Contract may be terminated at any time by written agreement between the Commission and Telikom.

### **12.2 Cessation of Telikom as a regulated entity**

If, with the prior written consent of Telikom, Telikom ceases to be a regulated entity (as that term is defined in the *Independent Consumer and Competition Commission Act 2002*), this Contract will terminate automatically.

## **13. Authorisation**

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In the event that:

- (a) Telikom makes an application for authorisation under Division 4 of Part VI of the *Independent Consumer and Competition Commission Act 2002*; and
- (b) the application is in respect of a contract, arrangement or understanding entered into prior to the Commencement Date that is governed by the laws of a country other than Papua New Guinea,

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the Commission irrevocably agrees that in considering the extent of the public benefit that is likely to result from the contract, arrangement or understanding, the privatisation of Telikom will be regarded as a significant benefit to the public.

## 14. Radio Spectrum Licences

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### 14.1 Definitions

For the purposes of this clause 14:

**Apparatus** has the same meaning as it has under the Regulations.

**Approved Apparatus** has the same meaning as it has under the Regulations.

**Authorized Station** has the same meaning as it has under the Regulations.

**Initial Spectrum Licences** means radio spectrum licences for all frequency assignments held by Telikom as at the Commencement Date.

**New Radio Spectrum Licences** means any radio spectrum licences other than the Initial Spectrum Licences (including bulk spectrum licences referred to in Section 6(3) of the Regulations) which Telikom reasonably requires from time to time to allow Telikom to effectively operate its licensed telecommunications network and to adapt that licensed telecommunications network to changing circumstances.

**Radio Spectrum Act** means the *Radio Spectrum Act 1996* and any regulations made pursuant to that Act.

**Radio Spectrum Licences** means the Initial Spectrum Licences and the New Radio Spectrum Licences.

**Regulations** means the *Radio Spectrum Regulation 1997*.

**Telecommunications Licences** means the general telecommunications, public mobile and value added services licences granted to Telikom on or about the Commencement Date.

### 14.2 Grant of Radio Spectrum Licences

- (a) For the purposes of facilitating PANGTEL in the performance of its obligations under clause 14.2(c), Telikom must provide PANGTEL as soon as possible with the details of all frequency assignments held by Telikom as at the Commencement Date in the format specified in Schedule 3 of the Spectrum Usage Agreement dated 25 May 2001 between PANGTEL and Telikom.
- (b) Once Telikom has provided the details of all frequency assignments held by Telikom, PANGTEL shall consult Telikom with regards to the Initial Spectrum Licences to be granted to it.
- (c) PANGTEL must then exercise its powers under the Radio Spectrum Act to grant the Initial Spectrum Licences to Telikom within 30 days of Telikom providing PANGTEL with the details referred to in clause 14.2(a).

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- (d) To the full extent permitted by law, PANGTEL must from time to time promptly exercise its powers under the Radio Spectrum Act to grant to Telikom any New Radio Spectrum Licence which is requested by Telikom (but not where the use of that spectrum by Telikom would obstruct, repeatedly interrupt or seriously degrade a radiocommunications service that is then being operated by another licensee), including for bulk spectrum licences issued under clause 6(3) of the Regulations where this is appropriate.
- (e) Without limiting clause 14.2(d), but subject to clause 14.2(f) and clause 14.2(g), the parties agree that it is appropriate for PANGTEL to issue bulk spectrum licences with geographic coverage of Papua New Guinea so as to enable Telikom to operate the following types of services:
- (i) cellular mobile telecommunications services;
  - (ii) fixed wireless access point-to-multipoint services;
  - (iii) local multi-point distribution services;
  - (iv) multi-point distribution services; and
  - (v) any other service where spectrum re-use arrangements permit.
- iii. The Department of Treasury shall review the operation of clause 14.2(e) as and when Telikom ceases to have the exclusive right to supply one or more of the services referred to in that clause.
- (f) Nothing in clause 14.2(e) prevents PANGTEL from issuing bulk spectrum licences to other persons where:
- (i) the issue of such licences is appropriate to enable a person other than Telikom to provide services; and
  - (ii) the provision of the services referred to in paragraph (i) will not obstruct, repeatedly interrupt or seriously degrade a radiocommunication service that is then being operated by Telikom.

### **14.3 Renewal of Radio Spectrum Licences**

- (a) To the full extent permitted by law, PANGTEL must exercise its powers under the Radio Spectrum Act to grant the Radio Spectrum Licences for a period not less than the period of the Telecommunications Licences.
- (b) If the period of any Radio Spectrum Licence expires prior to the period of any Telecommunications Licence, PANGTEL must, to the full extent permitted by law, exercise its powers under the Radio Spectrum Act to renew, and if necessary to continue to renew, that Radio Spectrum Licence such that it remains in force for as long as the period of the Telecommunications Licences.
- (c) If PANGTEL considers that:
- (i) Telikom is not using any part of the radio spectrum or is not using any part of the radio spectrum efficiently; and

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- (ii) that part of the radio spectrum is capable of being used without obstructing, repeatedly interrupting or seriously degrading a radiocommunication service that is then being operated by Telikom,

PANGTEL may (after giving Telikom a reasonable opportunity to make submissions in relation to that matter and after taking into account those submissions) request Telikom in writing to surrender its right to use that part of the radio spectrum and, unless Telikom disputes that request under clause 14.3(d) within 30 Business Days after the giving of that request, Telikom must surrender that right within 40 Business Days after the giving of that request.

- (d) In the event of a dispute between PANGTEL and Telikom as to whether Telikom's right to use any part of the radio spectrum should be surrendered pursuant to clause 14.3(c), Telikom may refer that dispute to the Commission for determination by it. Prior to making any such determination, the Commission must give both Telikom and PANGTEL a reasonable opportunity to make submissions in relation to that matter and must take into account those submissions. If the Commission determines that Telikom must surrender its right to use any part of the radio spectrum, Telikom must surrender that right within 20 Business Days of being notified of that determination.
- (e) On the surrender of a right by Telikom under clause 14.3(c) or (d), PANGTEL must pay to Telikom a rebate on any fee paid by Telikom under the Radio Spectrum Licence that permits Telikom to exercise that right, such rebate being the amount of that fee that (on a pro rata basis) is referable to that right and to the unexpired period to which that fee pertains.
- (f) For the purposes of clauses 14.3(c) and (d), a part of the radio spectrum may comprise:
  - (i) the whole of the spectrum for a part of the geographic area for which Telikom is licensed to use that spectrum under a licence or licences issued under the Radio Spectrum Act;
  - (ii) a part of the spectrum for the whole of the geographic area for which Telikom is licensed to use part of the spectrum under a licence or licences issued under the Radio Spectrum Act; or
  - (iii) a part of the spectrum for a part of the geographic area for which Telikom is licensed to use that part of the spectrum under a licence or licences issued under the Radio Spectrum Act.
- (g) Where:
  - (i) a surrender pursuant to clause 14.3(c) or (d) is effected by the surrender of a licence issued under the Radio Spectrum Act; and
  - (ii) only part of the radio spectrum the subject of that licence is required to be surrendered,

PANGTEL must, contemporaneously with the surrender of that licence, issue to Telikom a new licence on the same terms and conditions as the surrendered

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licence save that the new licence must relate only to that part of the radio spectrum the subject of the surrendered licence which is not required to be surrendered.

#### **14.4 Suspension or revocation of Radio Spectrum Licences**

Except in circumstances where Telikom has committed a material breach of a Radio Spectrum Licence or where there is an immediate or serious threat to life, PANGTEL may only exercise its powers under the Radio Spectrum Act to suspend or revoke a Radio Spectrum Licence with the written consent of Telikom (which consent shall not be unreasonably withheld).

#### **14.5 Variation of conditions of Radio Spectrum Licences**

PANGTEL must not at any time exercise its powers under the Radio Spectrum Act to:

- (a) vary the conditions of any Radio Spectrum Licence; or
- (b) impose any additional terms, requirements or conditions which may affect the conditions of any Radio Spectrum Licence,

in a manner that is materially adverse to Telikom unless Telikom has given its written consent to such variation or imposition (which consent shall not be unreasonably withheld).

#### **14.6 Standards for Apparatus**

(a) This clause 14.6 applies where:

- (i) PANGTEL intends to exercise its powers under the Radio Spectrum Act to fix minimum requirements and/or performance standards to be met by Apparatus for use in or in connection with Authorized Stations; and
- (ii) the fixing of such requirements and/or standards would result in any Apparatus that:
  - (A) is of material value or is of importance to the operation of Telikom's telecommunications network; and
  - (B) is used, or proposed to be used, by Telikom,no longer being Approved Apparatus.

(b) Where clause 14.6(a) applies, PANGTEL must not exercise the powers referred to in that clause without the written consent of Telikom (which consent shall not be unreasonably withheld).

#### **14.7 Regulatory and technical policies**

(a) Before PANGTEL introduces or revises any regulatory or technical policy in relation to radio spectrum used by Telikom, PANGTEL must first:

- (i) give notice of its intention to do so to Telikom; and
- (ii) give Telikom an opportunity to make written submissions to PANGTEL in relation to that matter within a period of at least 30 Business Days after receiving the notice referred to in paragraph (i).

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- (b) If, after considering any submissions made pursuant to clause 14.7(a)(ii), PANGTEL decides to introduce or revise any regulatory or technical policy in relation to radio spectrum used by Telikom, PANGTEL must notify Telikom of its decision and provide Telikom with a copy of the new or revised policy within 10 Business Days of its decision.

#### **14.8 Fees**

- (a) The aggregate of all licence fees paid or payable by Telikom to PANGTEL for Initial Spectrum Licences must not exceed:
- (i) for fees referable to the period of 12 months expiring on the first anniversary of the Commencement Date, the sum of K4,300,000;
  - (ii) for subsequent periods of twelve months or less commencing on the first anniversary of the Commencement Date, and where the Initial Spectrum Licences apply (and no additional spectrum has been allocated), the pro rata amount per day assuming K4.3 million applies for each 365 days;
- (b) The aggregate of all licence fees paid or payable by Telikom to PANGTEL for Subsequent Spectrum Licences must not exceed:
- (iii) for fees referable to the period of 12 months expiring on 31 December 2004, the sum of K4,977,376;; and
  - (iv) subject to clauses 14.8(c),(d) and (e), for fees referable to the period of 12 months expiring on 31 December of each subsequent year, the sum of K4,977,376.
- (c) PANGTEL must, by 30 June 2006 and after consulting with Telikom and any other persons PANGTEL considers appropriate, publish details of the methodology which PANGTEL proposes to adopt for the purposes of imposing licence fees under the Radio Spectrum Act. Without limitation, this methodology must comply with the following principles:
- (v) the methodology must be transparent;
  - (vi) the licence fees must be set on the basis of identifiable economic principles;
  - (vii) the licence fees must not unjustifiably discriminate between licensees and must be based on the proportion of the radio spectrum which each such licensee is permitted to use;
  - (viii) subject to paragraph (vi), the aggregate licence fees payable by all licensees in respect of a particular period must not exceed the reasonable direct and indirect costs which PANGTEL has incurred, or is likely to incur, for that period in performing its functions under the Radio Spectrum Act (for these purposes the reasonableness of such costs is to be assessed against international "best practice" within the radio communications industry);

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- (ix) the costs referred to in paragraph (iv) must be substantiated by PANGTEL at the request of a licensee;
  - (x) the licence fees may include a component which constitutes a resource rental fee and, if so, the method of calculation of that component must be transparent and must be such as not to unjustifiably discriminate between licensees; and
  - (xi) licensees who hold a substantial portion of the radio spectrum will be eligible for a bulk user rebate on their licence fees in recognition of the reduced management necessary by PANGTEL of those holdings.
- (d) Unless Telikom, acting pursuant to clause 14.8(d), disputes the methodology proposed by PANGTEL under clause 14.8(b), PANGTEL must comply with that methodology in imposing licence fees under the Radio Spectrum Act in respect of all periods from 1 January 2007.
- (e) If Telikom wishes to dispute the methodology proposed by PANGTEL under clause 14.8(b) it must, within 40 Business Days after the publication of the details of that proposed methodology pursuant to clause 14.8(b), refer that dispute to the Commission for determination by it. Prior to making any such determination, the Commission must give both Telikom and PANGTEL a reasonable opportunity to make submissions in relation to that methodology and must take into account those submissions. In imposing licence fees under the Radio Spectrum Act in respect of all periods from 1 January 2007 PANGTEL must comply with the methodology which is determined by the Commission pursuant to this clause 14.8(d).

#### **14.9 Assignment of Radio Spectrum Licences**

- (a) When granting any Radio Spectrum Licence to Telikom, PANGTEL must exercise its powers under the Radio Spectrum Act to grant that licence on the condition that the relevant licensee is permitted:
- (i) without the consent of PANGTEL:
    - (A) to transfer part or all of the rights under that licence to a Controlled Corporation, whether by way of transfer of the licence, transfer of some or all of the rights under that licence in respect of some or all of the spectrum to which that licence relates, or the surrender of that licence and the issue of a replacement licence or licences;
    - (B) to conduct operations under that licence through an operator; and
    - (C) to encumber that licence in favour of a reputable financial institution where that encumbrance is granted as security for financial accommodation provided by that financial institution to Telikom in the ordinary course of that financial institution's business,
- provided that doing so will not relieve Telikom from any obligation under that licence except to the extent PANGTEL consents to Telikom being

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relieved from that obligation (which consent shall not be unreasonably withheld); and

(ii) with the consent of PANGTEL (which consent shall not be unreasonably withheld), to transfer part or all of the rights and obligations under that licence to any person not referred to in paragraph (i), whether by way of transfer of the licence, transfer of some or all of the rights and obligations under that licence in respect of some or all of the spectrum to which that licence relates, or the surrender of that licence and the issue of a replacement licence or licences.

(b) Where obligations under a licence are transferred to a person as described in clause 14.9(a)(ii), Telikom will be relieved from such of those obligations under that licence as are transferred to that person.

(c) PANGTEL must not at any time exercise its powers under the Radio Spectrum Act to vary or revoke any condition imposed pursuant to clause 14.9(a) with respect to any Radio Spectrum Licence without the consent of Telikom (which consent shall not be unreasonably withheld).

#### **14.10 Spectrum Usage Agreements**

PANGTEL must not enter into, or require Telikom or any other person to enter into, any agreement in relation to radio spectrum usage which is in any way inconsistent with the terms of this clause 14.

#### **14.11 New Spectrum Usage Agreement**

PANGTEL must negotiate in good faith with Telikom with a view to entering into a new spectrum usage agreement that replaces the Spectrum Usage Agreement dated 25 May 2001 between PANGTEL and Telikom and that reflects the principles contained in this clause 14.

### **15. Telecommunications Licences**

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#### **15.1 Definitions**

For the purposes of this clause 15:

***Telecommunications Licences*** means the general telecommunications, public mobile and value added services licences granted to Telikom on or about the Commencement Date.

#### **15.2 Suspension or revocation of Telecommunications Licences**

Except in circumstances where Telikom has committed a material breach of a Telecommunications Licence or where there is an immediate or serious threat to life, the Commission may only exercise its powers under the *Telecommunications Act* to suspend or revoke a Telecommunications Licence with the written consent of Telikom (which consent shall not be unreasonably withheld).

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### **15.3 Variation of conditions of Telecommunications Licences and declarations**

The Commission must not exercise its powers under the *Telecommunications Act* to:

- (a) vary the conditions of any Telecommunications Licence;
- (b) impose any additional terms, requirements or conditions which may affect the conditions of any Telecommunications Licence; or
- (c) make a declaration under section 63 of the *Telecommunications Act* that any Telecommunications Licence is subject to conditions specified in the declaration, where such conditions, terms or requirements are materially adverse to Telikom, unless that variation, imposition or declaration is expressed not to come into operation:
- (d) for a period of 10 days after the date Telikom was notified of the Commission's decision; and
- (e) where Telikom has lodged an application with the Appeals Panel for review of the Commission's decision to make that variation, imposition or declaration under section 182A of the *Telecommunications Act* within 10 days after the date Telikom was notified of the Commission's decision, until the time (if any) the Appeals Panel confirms that decision.

### **15.4 Code of Practice**

The Commission must not exercise its power under the *Telecommunications Act* to determine a code of practice pursuant to section 66 or 66A of that Act to the extent that the code of practice would be inconsistent with any of the provisions of a Telecommunications Licence.

### **15.5 Technical codes and standards**

(a) Before PANGTEL:

- (i) determines any technical code of practice under section 66B of the Telecommunications Act that applies to Telikom; or
- (ii) makes any determination under section 87 of the Telecommunications Act with respect to the technical standards relating to a telecommunications network that is operated by Telikom or relating to customer equipment or customer cabling that is connected to such a telecommunications network,

PANGTEL must first:

- (iii) give notice of its intention to do so to Telikom; and
  - (iv) give Telikom an opportunity to make written submissions to PANGTEL in relation to that matter within a period of at least 30 Business Days after receiving the notice referred to in paragraph (iii).
- (b) If, after considering any submissions made pursuant to clause 15.5(a)(iv), PANGTEL decides to make a determination referred to in clause 15.5(a)(i) or (ii), PANGTEL must notify Telikom of its decision and provide Telikom with a copy of the determination within 10 Business Days of its decision.

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## **15.6 Assignment of Telecommunications Licences**

- (a) When granting any Telecommunications Licence to Telikom, the Commission must exercise its powers under the Telecommunications Act to grant that licence on the condition that the relevant licensee is permitted:
- (i) without the consent of the Commission:
    - (A) to assign all or part of the of the rights under that licence to a Controlled Corporation;
    - (B) to conduct operations under that licence through an operator; and
    - (C) to encumber that licence in favour of a reputable financial institution where that encumbrance is granted as security for financial accommodation provided by that financial institution to Telikom in the ordinary course of that financial institution's business,  
  
provided that doing so will not relieve Telikom from any obligation under that licence except to the extent the Commission consents to Telikom being relieved from that obligation (which consent shall not be unreasonably withheld); and
  - (ii) with the consent of the Commission (which consent shall not be unreasonably withheld), to assign that licence to any person not referred to in paragraph (i), whereupon Telikom will be relieved from such obligations as accrue under that licence following its assignment.
- (b) The Commission must not at any time exercise its powers under the Telecommunications Act to vary or revoke any condition imposed pursuant to clause 15.6(a) with respect to any Telecommunications Licence without the consent of Telikom (which consent shall not be unreasonably withheld).

## **16. Information relating to Commission's costs and fees other than licence fees**

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### **16.1 Information relating to Commission's costs**

- (a) Within three months after the end of each calendar year the Commission must publish, and make available to the public, a set of annual audited accounts in respect of services rendered by the Commission in the performance of its functions or the exercise of its powers attributable to its regulation of the telecommunications industry for the immediately preceding calendar year.
- (b) The Commission shall prepare such accounts in accordance with generally accepted accounting principles.
- (c) In the discharge of the functions of the Commission, the Commission shall make a recommendation to the Treasurer as to the licence fees payable consistent with the provisions of this clause.

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- (d) The Commission acknowledges that Telikom has paid licence fees for the months in the 2002 calendar year completed prior to the Commencement Date and that further telecommunications licence fees shall not be payable by Telikom with respect to those months.

## **16.2 Fees other than licence fees**

Where the Commission or PANGTEL has the discretion to fix the amount of a fee that may be imposed under the *Telecommunications Act* or the *Radio Spectrum Act 1996*, and that fee is not a licence fee, the Commission or PANGTEL (as the case may be) must fix that fee at an amount that is no greater than the costs incurred by the Commission or PANGTEL in providing the service for which that fee is charged.

## **17. Warranties**

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### **17.1 Reciprocal Warranties**

Each party represents and warrants to the other parties as at the date of this Contract and as at the Commencement Date that:

- (a) it validly exists under the laws of Papua New Guinea;
- (b) the execution and delivery of this Contract has been properly authorised by all necessary action on its part;
- (c) it has full power and lawful authority to execute and deliver this Contract and to perform its obligations under this Contract;
- (d) this Contract constitutes legal, valid and binding obligations on its part, enforceable in accordance with their terms under the Independent Consumer and Competition Commission Act 2002; and
- (e) this Contract will not result in a breach of any other agreement or arrangement to which it is a party.

### **17.2 Continuing Warranties**

The warranties given by each party above are continuing warranties and shall not merge on the Commencement Date.

## **18. Provision of Information by Telikom**

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The Commission acknowledges and agrees that in considering requesting information from Telikom under this Contract or any legislation the Commission must take into account:

- (a) whether Telikom can reasonably provide the information; and
- (b) the cost to Telikom of providing the information.

## **19. Notices**

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Any notice given under this Contract:

- 
- (a) must be in writing addressed to the intended recipient at the address last notified by the intended recipient to the sender;
  - (b) must be signed by a person duly authorised by the sender; and
  - (c) will be taken to have been given or made (in the case of delivery in person or by post or fax) when delivered, received or left at the above address; but if delivery or receipt occurs on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time) it will be taken to have been duly given or made at the commencement of business on the next day on which business is generally carried on in the place.

## **20. Governing Law**

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This Contract is governed by the laws of the Independent State of Papua New Guinea.

## **21. Injunctions**

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The Commission waives any State immunity it may have but only to the extent that such State immunity may have prevented a Court issuing an injunction against the Commission.

## **22. Accession of Controlled Corporation**

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### **22.1 Controlled Corporations**

- (a) Telikom may from time to time by notice to the Commission request that a Controlled Corporation be made a party to this Contract by the execution of a Deed of Accession.
- (b) The Commission will accept this request if the Controlled Corporation will be associated with the provision of Fixed Network Services, Mobile Network Services or Excluded Services.
- (c) If, within 20 Business Days after receiving notice of Telikom's request, the Commission does not give a notice to Telikom that it has accepted or rejected Telikom's request, the Commission is deemed to have accepted Telikom's request.

### **22.2 Deed of Accession**

- (a) If a request made by Telikom under clause 22.1 is accepted or deemed to be accepted, Telikom must execute, and must procure that the Controlled Corporation executes, a Deed of Accession.
- (b) The Commission will execute a Deed of Accession that has been executed by Telikom and a Controlled Corporation under clause 22.2(a) within 10 Business Days of that Deed of Accession being given to the Commission.

### **22.3 Declaration**

Prior to executing a Deed of Accession in relation to a Controlled Corporation, the Commission must declare the Controlled Corporation to be a regulated entity under Section 32 of the *Independent Consumer and Competition Commission Act 2002*.

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## **23. Survival of certain provisions**

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### **23.1 Definitions**

For the purposes of this clause 23:

**Telecommunications Licences** means the general telecommunications, public mobile and value added services licences granted to Telikom on or about the Commencement Date.

### **23.2 Survival**

Notwithstanding the expiry of the term of this Contract pursuant to clause 1.6, clauses 14, 15 and 16 shall continue in force until the first to occur of:

- (a) the revocation of all of the Telecommunications Licences;
- (b) unless a Telecommunications Licence is renewed, the expiry of the initial term of the Telecommunications Licences; and
- (c) if a Telecommunications Licence is renewed, the expiry of the term of the first renewal of that Telecommunications Licence.

## **24. Counterparts**

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This Contract may be executed in any number of counterparts. All counterparts will be taken to constitute one instrument.

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## Schedule 1 - Regulatory Principles

1. There will be an examination of:
  - (a) the value of capital stock at the end of the term of this Contract, which will be based on the depreciated value of the initial capital value used in this Contract (K454,285,751 as at 31 December 2001) and the depreciated value of the actual prudent capital expenditures undertaken during the term of this Contract. The depreciation method to be applied to these capital amounts will be the current cost accounting approach applying a depreciated optimised replacement cost (the DORC methodology). The actual capital expenditure made during the term of this Contract will be reviewed to ensure that it was prudent and should be included in the asset base going forward; and
  - (b) the continued suitability of the weights of 0.47 and 0.53 in the calculation of the change in the Cumulative Weighted Index as set out in paragraph B of Schedule 2, given the movement of costs during the term of this Contract.
2. The Commission will have regard to:
  - (a) Telikom's ability to recover an appropriate rate of return through the pricing and supply of its telecommunications services;
  - (b) the long term interest of the end-users of the telecommunications services provided by Telikom by considering the objectives of:
    - (i) promoting competition in markets for telecommunications services;
    - (ii) achieving any-to-any connectivity in relation to telecommunications services that involve communication between end-users; and
    - (iii) encouraging the economically efficient use of, and economically efficient investment in, the infrastructure by which telecommunications services are supplied;
  - (c) the level of future capital expenditure and operating expenditure to maintain service levels, including any efficiency factor to be applied to operating expenditure (other than to depreciation);
  - (d) the timing for the introduction of competition in the market for the provision of Fixed Network Services, Mobile Network Services or Excluded Services;
  - (e) the nature and type of access to be made available to competitors, and the time within which such access is to be provided;
  - (f) service and capacity availability; and
  - (g) the need to provide an allowance for accelerated depreciation of any assets identified by Telikom as being stranded or potentially being stranded by the introduction of competition in the provision of any Fixed Network Services, Mobile Network Services or Excluded Services.
3. An incentive regulation approach will be adopted in the regulation of the prices for the telecommunications services supplied or capable of being supplied by Telikom.

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4. In giving consideration to the pricing and supply of telecommunications services provided by Telikom at either the wholesale or retail level the Commission will have regard to the recovery of the following costs and will apply a building block approach, consisting of the following components:
    - (a) initial capital stock;
    - (b) return on capital (WACC);
    - (c) new capital expenditure;
    - (d) return of capital - economic depreciation;
    - (e) operating expenses.
    - (f) required contribution to common or shared overheads; and
    - (g) the extent to which any costs can be avoided through the supply of services through wholesale channels.
  5. Consideration will be given to establishing a glide path adjustment with a sharing of efficiency gains between Telikom and telecommunications customers.
  6. The extent of regulation of the prices for the telecommunications services supplied or capable of being supplied by Telikom will have regard to the degree of actual and potential competition in the supply of those services such that increasing competition will result in reduced regulation.
  7. Any Over/Under Recovery Adjustment as calculated pursuant to paragraph C of Schedule 2 which would have been made had the term of this Contract been extended by one year will be carried forward as an adjustment to be made in respect of the first year under the new Telecommunications Regulatory Contract.

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## Schedule 2 - Tariff Formulae

### A. Maximum Average Price Caps

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#### A.1 Maximum Average Price Cap – Fixed Network Services ( $MAP_{t, FN}$ )

The Maximum Average Price Cap for Fixed Network Services (expressed in Kina/subscriber line) for Regulatory Year t ( $MAP_{t, FN}$ ) is calculated as follows:

$$MAP_{t, FN} = MAP_{t-1, FN} * CWI_t * (1 - X_{t, FN}) * (1 - CEF_{t, C}) * (1 + OUR_{t, FN})$$

where:

$MAP_{t-1, FN}$  is the Maximum Average Price Cap for Fixed Network Services (expressed in Kina/subscriber line) for Regulatory Year t-1. Where Regulatory Year t is 2003,  $MAP_{t-1, FN}$  is 3,889.3 Kina/subscriber line;

$CWI_t$  is the change in the Cumulative Weighted Index over the 12 month period ending on 30 September in Regulatory Year t-1 and is calculated in accordance with paragraph B of this Schedule 2;

$X_{t, FN}$  is the value of  $X_{t, FN}$  for Regulatory Year t as set out in paragraph A.1 of Schedule 3;

$CEF_{t, C}$  is:

- (a) where Regulatory Year t is a Regulatory Year preceding 2008; and
- (b) where Regulatory Year t is 2008 or a subsequent Regulatory Year – the value of  $CEF_{t, C}$  as calculated pursuant to paragraph A.2 of Schedule 3; and

$OUR_{t, FN}$  is the Over/Under Recovery Adjustment for Fixed Network Services (if any) (expressed in Kina/subscriber line) for Regulatory Year t and is calculated in accordance with paragraph C of this Schedule 2.

#### A.2 Maximum Average Price Cap – Fixed Network Access Services ( $MAP_{t, FA}$ )

The Maximum Average Price Cap for Fixed Network Access Services (expressed in Kina/subscriber line) for Regulatory Year t ( $MAP_{t, FA}$ ) is calculated as follows:

$$MAP_{t, FA} = MAP_{t-1, FA} * CWI_t * (1 - X_{t, FA}) * (1 + OUR_{t, FA})$$

where:

$MAP_{t-1, FA}$  is the Maximum Average Price Cap for Fixed Network Access Services (expressed in Kina/subscriber line) for Regulatory Year t-1. Where Regulatory Year t is 2003,  $MAP_{t-1, FA}$  is 491.4 Kina/subscriber line;

$CWI_t$  is the change in the Cumulative Weighted Index over the 12 month period ending on 30 September in Regulatory Year t-1 and is calculated in accordance with paragraph B of this Schedule 2;

$X_{t, FA}$  is the value of  $X_{t, FA}$  for Regulatory Year t as set out in paragraph A.1 of Schedule 3; and

OUR<sub>t,FA</sub> is the Over/Under Recovery Adjustment for Fixed Network Access Services (if any) (expressed in Kina/subscriber line) for Regulatory Year t and is calculated in accordance with paragraph C of this Schedule 2.

### A.3 Maximum Average Price Cap – Mobile Network Services (MAP<sub>t,MN</sub>)

The Maximum Average Price Cap for Mobile Network Services (expressed in Kina/mobile service) for Regulatory Year t (MAP<sub>t,MN</sub>) is calculated as follows:

$$MAP_{t,MN} = MAP_{t-1,MN} * CWI_t * (1 - X_{t,MN}) * (1 - CEF_{t,C}) * (1 + OUR_{t,MN})$$

where:

MAP<sub>t-1,MN</sub> is the Maximum Average Price Cap for Mobile Network Services (expressed in Kina/mobile service) for Regulatory Year t-1. Where Regulatory Year t is 2003, MAP<sub>t-1,MN</sub> is 1,692.6 Kina/mobile service;

CWI<sub>t</sub> is the change in the Cumulative Weighted Index over the 12 month period ending on 30 September in Regulatory Year t-1 and is calculated in accordance with paragraph B of this Schedule 2;

X<sub>t,MN</sub> is the value of X<sub>t,MN</sub> for Regulatory Year t as set out in paragraph A.1 of Schedule 3;

CEF<sub>t,C</sub> is:

- (a) where Regulatory Year t is a Regulatory Year preceding 2008-zero; and
- (b) where Regulatory Year t is 2008 or a subsequent Regulatory Year – the value of CEF<sub>t,C</sub> as calculated pursuant to paragraph A.2 of Schedule 3; and

OUR<sub>t,MN</sub> is the Over/Under Recovery Adjustment for Mobile Network Services (if any) (expressed in Kina/mobile service) for Regulatory Year t and is calculated in accordance with paragraph C of this Schedule 2.

## B. Change in the Cumulative Weighted Index (CWI<sub>t</sub>)

The change in the Cumulative Weighted Index over the 12 month period ending on 30 September in Regulatory Year t-1 (CWI<sub>t</sub>) is calculated as follows:

$$CWI_t = \{(0.47 * \delta PNGCPI_{t-1}) + (0.53 * \delta RUSER_{t-1})\} / \{(0.47 * \delta PNGCPI_{t-2}) + (0.53 * \delta RUSER_{t-2})\}$$

where:

δPNGCPI<sub>t-1</sub> is calculated as:

$$\delta PNGCPI_{t-1} = PNGCPI_{t-1} / PNGCPI_{2001}$$

where:

PNGCPI<sub>t-1</sub> is the Adjusted PNG CPI for the 12 month period ending on 30 September in Regulatory Year t-1 or calendar year t-1 and is calculated in accordance with paragraph B.1 of Schedule 3; and

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PNGCPI<sub>2001</sub> is the Adjusted PNG CPI for the 12 month period ending on 30 September 2001 and is calculated in accordance with paragraph B.1 of Schedule 3;

δPNGCPI<sub>t-2</sub> is calculated as:

$$\delta\text{PNGCPI}_{t-2} = \text{PNGCPI}_{t-2} / \text{PNGCPI}_{2001}$$

where:

PNGCPI<sub>t-2</sub> is the Adjusted PNG CPI for the 12 month period ending on 30 September in Regulatory Year t-2 or calendar year t-2 and is calculated in accordance with paragraph B.1 of Schedule 3; and

PNGCPI<sub>2001</sub> is the Adjusted PNG CPI for the 12 month period ending on 30 September 2001 and is calculated in accordance with paragraph B.1 of Schedule 3;

δRUSER<sub>t-1</sub> is calculated as:

$$\delta\text{RUSER}_{t-1} = \left( \frac{\text{USER}_{2001}}{\text{USER}_{t-1}} \right) * \frac{\text{USCPI}_{t-1}}{\text{USCPI}_{2001}}$$

where:

USER<sub>t-1</sub> is the United States Dollar/Kina Exchange Rate for the 12 month period ending on 30 September in Regulatory Year t-1 or calendar year t-1 and is calculated in accordance with paragraph B.2 of Schedule 3;

USCPI<sub>t-1</sub> is the US CPI for the 12 month period ending on 30 September in Regulatory Year t-1 or calendar year t-1 and is calculated in accordance with paragraph B.3 of Schedule 3;

USER<sub>2001</sub> is 0.3036; and

USCPI<sub>2001</sub> is 177.80; and

δRUSER<sub>t-2</sub> is calculated as:

$$\delta\text{RUSER}_{t-2} = \left( \frac{\text{USER}_{2001}}{\text{USER}_{t-2}} \right) * \frac{\text{USCPI}_{t-2}}{\text{USCPI}_{2001}}$$

where:

USER<sub>t-2</sub> is the United States Dollar/Kina Exchange Rate for the 12 month period ending on 30 September in Regulatory Year t-2 or calendar year t-2 and is calculated in accordance with paragraph B.2 of Schedule 3;

USCPI<sub>t-2</sub> is the US CPI for the 12 month period ending on 30 September in Regulatory Year t-2 or calendar year t-2 and is calculated in accordance with paragraph B.3 of Schedule 3;

USER<sub>2001</sub> is 0.3036; and

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USCPI<sub>2001</sub> is 177.80.

## C. Over/Under Recovery Adjustment (OUR<sub>t</sub>)

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### C.1 Over/Under Recovery Adjustment – Fixed Network Services (OUR<sub>t, FN</sub>)

The Over/Under Recovery Adjustment for Fixed Network Services (expressed in Kina/subscriber line) for Regulatory Year t (OUR<sub>t, FN</sub>) is calculated as follows:

If:

$$(AAP_{t-1, FN} / MAP_{t-1, FN}) \leq 0.95$$

then OUR<sub>t, FN</sub> = 0.05.

If:

$$(AAP_{t-1, FN} / MAP_{t-1, FN}) > 0.95$$

then OUR<sub>t, FN</sub> = (MAP<sub>t-1, FN</sub> - AAP<sub>t-1, FN</sub>) / MAP<sub>t-1, FN</sub>.

For these purposes:

MAP<sub>t-1, FN</sub> is the Maximum Average Price Cap for Fixed Network Services (expressed in Kina/subscriber line) for Regulatory Year t-1. Where:

- (a) Regulatory Year t – 1 is the First Regulatory Year, MAP<sub>t-1, FN</sub> is 3,889.3 Kina/subscriber line; or
- (b) the Commission has determined the Average Local Call Minutes pursuant to clause 6.2 during Regulatory Year t-1, MAP<sub>t-1, FN</sub> is the Maximum Average Price Cap for Fixed Network Services for Regulatory Year t-1 as calculated in accordance with paragraph A of this Schedule 2 except that, for these purposes, the Over/Under Recovery Adjustment for Fixed Network Services for Regulatory Year t-1 shall be recalculated using the value of ATCM determined pursuant to paragraph (b) of the definition of ATCM (see below), with the value of ALCM<sub>FN</sub> for these purposes being the amount determined by the Commission pursuant to clause 6.2 to be the Average Local Call Minutes;

AAP<sub>t-1, FN</sub> is the Actual Average Price for Fixed Network Services (expressed in Kina/subscriber line) for Regulatory Year t-1 and is calculated as the following amount (disregarding units):

$$AAP_{t-1, FN} = AAAP_{t-1, FA} + (AAP_{t-1, FN} * ATCM)$$

where:

AAAP<sub>t-1, FA</sub> is the Actual Average Access Price for Fixed Network Access Services (expressed in Kina/subscriber line) for Regulatory Year t-1 and is calculated in accordance with paragraph D of this Schedule 2;

AACP<sub>t-1, FN</sub> is the Actual Average Call Price for Fixed Network Services (expressed in Kina/minute) for Regulatory Year t-1 and is calculated in accordance with paragraph D of this Schedule 2; and

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ATCM is:

- (a) prior to any determination by the Commission of the Average Local Call Minutes pursuant to clause 6.2 – 5,947 minutes; and
- (b) after any determination by the Commission of the Average Local Call Minutes pursuant to clause 6.2 – an amount calculated as:

$$[CM_{2002, FN} + (LC_{2002, FN} * ALCM_{FN})] / SL_{2002, FN} = 4,433 + (1,032 * ALCM_{FN})$$

where:

$CM_{2002, FN}$  is 279,856,218 minutes (being the estimated minutes of use in 2002, of the fixed telecommunications network operated by Telikom, for outgoing international calls, national long distance calls, fixed to mobile calls and internet dial-up calls);

$LC_{2002, FN}$  is 65,180,255 (being the estimated number of local calls in 2002 using the fixed telecommunications network operated by Telikom);

$SL_{2002, FN}$  is 63,135 (being the estimated average number of subscriber lines included in 2002 in the fixed telecommunications network operated by Telikom); and

$ALCM_{FN}$  is such amount (if any) as is determined by the Commission pursuant to clause 6.2 to be the Average Local Call Minutes.

## **C.2 Over/Under Recovery Adjustment – Fixed Network Access Services ( $OUR_{t, FA}$ )**

The Over/Under Recovery Adjustment for Fixed Network Access Services (expressed in Kina/subscriber line) for Regulatory Year  $t$  ( $OUR_{t, FA}$ ) is calculated as follows:

If:

$$(AAAP_{t-1, FA} / MAP_{t-1, FA}) \leq 0.95$$

then  $OUR_{t, FA} = 0.05$ .

If:

$$(AAAP_{t-1, FA} / MAP_{t-1, FA}) > 0.95$$

then  $OUR_{t, FA} = (MAP_{t-1, FA} - AAAP_{t-1, FA}) / MAP_{t-1, FA}$ .

For these purposes:

$MAP_{t-1, FA}$  is the Maximum Average Price Cap for Fixed Network Access Services (expressed in Kina/subscriber line) for Regulatory Year  $t-1$ . Where Regulatory Year  $t-1$  is the First Regulatory Year,  $MAP_{t-1, FN}$  is 491.4 Kina/subscriber line; and

$AAAP_{t-1, FA}$  is the Actual Average Access Price for Fixed Network Access Services (expressed in Kina/subscriber line) for Regulatory Year  $t-1$  and is calculated in accordance with paragraph D of this Schedule 2.

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### C.3 Over/Under Recovery Adjustment – Mobile Network Services ( $OUR_{t, MN}$ )

The Over/Under Recovery Adjustment for Mobile Network Services (expressed in Kina/mobile service) for Regulatory Year  $t$  ( $OUR_{t, MN}$ ) is calculated as follows:

If:

$$(AAP_{t-1, MN} / MAP_{t-1, MN}) \leq 0.95$$

then  $OUR_{t, MN} = 0.05$ .

If:

$$(AAP_{t-1, MN} / MAP_{t-1, MN}) > 0.95$$

then  $OUR_{t, MN} = (MAP_{t-1, MN} - AAP_{t-1, MN}) / MAP_{t-1, MN}$ .

For these purposes:

$MAP_{t-1, MN}$  is the Maximum Average Price Cap for Mobile Network Services (expressed in Kina/mobile service) for Regulatory Year  $t-1$ . Where Regulatory Year  $t-1$  is the First Regulatory Year,  $MAP_{t-1, MN}$  is 1,692.6 Kina/mobile service; and

$AAP_{t-1, MN}$  is the Actual Average Price for Mobile Network Services (expressed in Kina/mobile service) for Regulatory Year  $t-1$  and is calculated as the following amount (disregarding units):

$$AAP_{t-1, MN} = AAAP_{t-1, MN} + (ACCP_{t-1, MN} * 1,278)$$

where:

$AAAP_{t-1, MN}$  is the Actual Average Access Price for Mobile Network Services (expressed in Kina/mobile service) for Regulatory Year  $t-1$  and is calculated in accordance with paragraph D of this Schedule 2; and

$ACCP_{t-1, MN}$  is the Actual Average Call Price for Mobile Network Services (expressed in Kina/minute) for Regulatory Year  $t-1$  and is calculated in accordance with paragraph D of this Schedule 2.

## D. Actual Average Call and Access Prices

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### D.1 Actual Average Call Price – Fixed Network Services ( $AACP_{t, FN}$ )

The Actual Average Call Price for Fixed Network Services (expressed in Kina/minute) for Regulatory Year  $t$  ( $AACP_{t, FN}$ ) is calculated as follows:

$$AACP_{t, FN} = R_{t, FN} / CM_{t, FN}$$

where:

$R_{t, FN}$  is the total revenue (expressed in Kina) derived by Telikom from the sale of Fixed Network Services other than Fixed Network Access Services during the 12 month period ending on 30 September in Regulatory Year  $t$  or calendar year  $t$ , excluding any amount that Telikom has applied to Customers during that 12 month period pursuant to clause 5; and

$CM_{t, FN}$  is the number of Fixed Network Call Minutes for the 12 month period ending on 30 September in Regulatory Year  $t$  or calendar year  $t$ .

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**D.2 Actual Average Call Price – Mobile Network Services (AAP<sub>t,MN</sub>)**

The Actual Average Call Price for Mobile Network Services (expressed in Kina/minute) for Regulatory Year t (AAP<sub>t,MN</sub>) is calculated as follows:

$$AAP_{t,MN} = R_{t,MN} / CM_{t,MN}$$

where:

R<sub>t,MN</sub> is the total revenue (expressed in Kina) derived by Telikom from the sale of Mobile Network Services other than Mobile Network Access Services during the 12 month period ending on 30 September in Regulatory Year t or calendar year t, excluding any amount that Telikom has applied to Customers during that 12 month period pursuant to clause 5; and

CM<sub>t,MN</sub> is the number of Mobile Network Call Minutes for the 12 month period ending on 30 September in Regulatory Year t or calendar year t.

**D.3 Actual Average Access Price – Fixed Network Access Services (AAP<sub>t,FA</sub>)**

The Actual Average Access Price for Fixed Network Access Services (expressed in Kina/subscriber line) for Regulatory Year t (AAP<sub>t,FA</sub>) is calculated as follows:

$$AAP_{t,FA} = R_{t,FA} / SL_{t,FA}$$

where:

R<sub>t,FA</sub> is the total revenue (expressed in Kina) derived by Telikom from the sale of Fixed Network Access Services during the 12 month period ending on 30 September in Regulatory Year t or calendar year t, excluding any amount that Telikom has applied to Customers during that 12 month period pursuant to clause 5; and

SL<sub>t,FA</sub> is the average number of subscriber lines used by Customers for the 12 month period ending on 30 September in Regulatory Year t or calendar year t, which is calculated as follows:

$$SL_{t,FA} =$$

$$\frac{\sum_{m=1}^{12} SL_{m,FA}}{12}$$

where:

SL<sub>m,FA</sub> is the number of subscriber lines used by Customers as at the last day of month m; and

m is a calendar month in the 12 month period ending on 30 September in Regulatory Year t or calendar year t, with the first such month (m=1) being the month of October in Regulatory Year t-1 or calendar year t-1 and the last such month (m=12) being the month of September in Regulatory Year t or calendar year t.

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**D.4 Actual Average Access Price – Mobile Network Access Services (AAAP<sub>t, MA</sub>)**

The Actual Average Access Price for Mobile Network Access Services (expressed in Kina/mobile service) for Regulatory Year t (AAAP<sub>t, MA</sub>) is calculated as follows:

$$AAAP_{t, MA} = R_{t, MA} / MS_{t, MA}$$

where:

R<sub>t, MA</sub> is the total revenue (expressed in Kina) derived by Telikom from the sale of Mobile Network Access Services during the 12 month period ending on 30 September in Regulatory Year t or calendar year t, excluding any amount that Telikom has applied to Customers during that 12 month period pursuant to clause 5; and

MS<sub>t, MA</sub> is the average number of mobile services used by Customers for the 12 month period ending on 30 September in Regulatory Year t or calendar year t, which is calculated as follows:

$$MS_{t, MA} = \frac{\sum_{m=1}^{12} MS_{m, MA}}{12}$$

where:

MS<sub>m, MA</sub> is the number of mobile services used by Customers as at the last day of month m; and

m is a calendar month in the 12 month period ending on 30 September in Regulatory Year t or calendar year t, with the first such month (m=1) being the month of October in Regulatory Year t-1 or calendar year t-1 and the last such month (m=12) being the month of September in Regulatory Year t or calendar year t.

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## Schedule 3 - Calculation of Formulae Variables

### A. Variables

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#### A.1 Smoothing Factor (X)

Regulatory Year t	2003	2004	2005	2006	2007-2011
$X_{t, FN}$	-0.087	-0.129	-0.091	-0.034	+0.048
$X_{t, FA}$	-1.000	-0.600	-0.300	-0.100	+0.048
$X_{t, MN}$	-0.026	+0.133	+0.117	+0.102	+0.063

#### A.2 Capital Efficiency Factor ( $CEF_{t, c}$ )

If the construction and installation of a submarine cable or other equipment or facilities, in either case with the International Transmission Functionality, has not commenced within four years from 1 January 2004:

$$CEF_{t, c} = (0.5340 * ICP/100) + 0.1217.$$

If the construction and installation of a submarine cable or other equipment or facilities, in either case with the International Transmission Functionality, has commenced within four years from 1 January 2004:

$$CEF_{t, c} = 0.6298 * ICP/100.$$

where:

ICP is the numerical amount of the Imprudent Capex Percentage (if any) as defined in clause 4.3(c)(iv)(D) (ie. if the Imprudent Capex Percentage is 15%, ICP is 15).

### B. Indices

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#### B.1 Adjusted PNG CPI

The Adjusted PNG CPI for the 12 month period ending on 30 September in Regulatory Year t or calendar year t ( $PNGCPI_t$ ) is calculated as follows:

$$PNGCPI_t = \{ PNGCPI_{(q4, t-1)} + PNGCPI_{(q1, t)} + PNGCPI_{(q2, t)} + PNGCPI_{(q3, t)} \} / 4$$

where:

$PNGCPI$  for a Quarter (q) is the All Groups Weighted Average CPI for Urban Areas excluding Drinks, Tobacco and Betel Nut, published by the National Statistics Office;

$PNGCPI_{(q4, t-1)}$  is the  $PNGCPI$  for the Quarter ending on 31 December in Regulatory Year t-1 or calendar year t-1;

$PNGCPI_{(q1, t)}$  is the  $PNGCPI$  for the Quarter ending on 31 March in Regulatory Year t or calendar year t ;

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PNGCPI<sub>(q2, t)</sub> is the PNGCPI for the Quarter ending on 30 June in Regulatory Year t or calendar year t; and

PNGCPI<sub>(q3, t)</sub> is the PNGCPI for the Quarter ending on 30 September in Regulatory Year t or calendar year t.

## **B.2 United States Dollar/Kina Exchange Rate**

The United States Dollar/Kina Exchange Rate for the 12 month period ending on 30 September in Regulatory Year t or calendar year t (USER<sub>t</sub>) is calculated as follows:

$$USER_t = \{USER_{(q4, t-1)} + USER_{(q1, t)} + USER_{(q2, t)} + USER_{(q3, t)}\} / 4$$

where:

USER for a Quarter (q) is the United States Dollar/Kina inter-bank mid rate published by the Bank of Papua New Guinea (expressed as \$US/1K) prevailing on the last day of that Quarter or, if that last day is not a Business Day, on the next day which is a Business Day (for example, if US\$0.28 can purchase 1 Kina, then USER is 0.28);

USER<sub>(q4, t-1)</sub> is the USER for the Quarter ending on 31 December in Regulatory Year t-1 or calendar year t-1;

USER<sub>(q1, t)</sub> is the USER for the Quarter ending on 31 March in Regulatory Year t or calendar year t;

USER<sub>(q2, t)</sub> is the USER for the Quarter ending on 30 June in Regulatory Year t or calendar year t; and

USER<sub>(q3, t)</sub> is the USER for the Quarter ending on 30 September in Regulatory Year t or calendar year t.

## **B.3 US CPI**

The US CPI for the 12 month period ending on 30 September in Regulatory Year t or calendar year t (USCPI<sub>t</sub>) is calculated as follows:

$$USCPI_t = \{USCPI_{(q4, t-1)} + USCPI_{(q1, t)} + USCPI_{(q2, t)} + USCPI_{(q3, t)}\} / 4$$

where:

USCPI for a Quarter (q) is the average of the Consumer Price Index for all urban consumers, US city average published by the US Bureau of Labour Statistics for each month of that Quarter in series CUUR 0000SAO;

USCPI<sub>(q4, t-1)</sub> is the USCPI for the Quarter ending on 31 December in Regulatory Year t-1 or calendar year t-1;

USCPI<sub>(q1, t)</sub> is the USCPI for the Quarter ending on 31 March in Regulatory Year t or calendar year t;

USCPI<sub>(q2, t)</sub> is the USCPI for the Quarter ending on 30 June in Regulatory Year t or calendar year t; and

USCPI<sub>(q3, t)</sub> is the USCPI for the Quarter ending on 30 September in Regulatory Year t or calendar year t.

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**B.4 Changes in calculation of CPI and Exchange Rates**

- (a) If a source of data described in any of paragraphs B.1, B.2 or B.3 above is no longer published, or if any other change occurs in relation to such data which would cause the continued use of the source to result in inaccurate comparisons between data calculated using the source prior to the change and data calculated using the source after the change, then such an alternative source as Telikom and the Commission agree shall be substituted.
- (b) If Telikom and the Commission are unable to agree on the alternative source of data pursuant to paragraph B.4(a) within 10 Business Days, the matter must be referred for expert determination to the President or other senior office bearer, for the time being, of the Australian Institute of Valuers, or its successor, the decision of which shall be final.

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## Schedule 4 - Excluded Services

The provision of the following services except to the extent they are used to provide Fixed Network Services or Mobile Network Services:

2. Digital data services, being services for the carriage of communications in a digital form between Customer Premises Equipment and a point of interconnection, where:
  - (a) the Customer Premises Equipment is directly connected to a network operated by a licensee or a Customer;
  - (b) the carriage is capable of occurring at:
    - (i) an X.50 rate using X.50 interfaces; or
    - (ii) an nx64 rate using nx64 interfaces; and
  - (c) the carriage interworks with higher management facilities and network controls.
3. Digital transmission services, being services for the carriage of communications in a digital form from one transmission point to another transmission point via network interfaces and line links at a designated data rate on a permanent basis by means of guided and/or unguided electromagnetic energy where the carriage of such communications utilises digital transmission protocols which are agreed between Telikom and the relevant licensee or customer and which conform to one or more internationally accepted standards.
4. Internet access services, being services for the carriage of communications in a digital form utilising protocols which conform to one or more internationally accepted standards (such as the Transmission Control Protocol / Internet Protocol (TCP/IP)) and which either provide dedicated (that is unshared but either on a dial-up or permanent circuit basis) access between customers and the premises and/or equipment of an Internet Service Provider (ISP) or provide dedicated permanent line links to international gateways or other on-line services from an ISP's premises and/or equipment, at data rates greater than 64kbps requested by the ISP or customer that are technically feasible. They do not include the use of special number ranges or access codes for dial-up customer access which allow Telikom to distinguish those calls across its fixed telecommunications network which are internet access calls (for avoidance of doubt, these dial-up internet access calls are regulated services and are included in the fixed network price cap).
5. Integrated services digital network (ISDN) services that conform to one or more internationally accepted standards.
6. Asynchronous transfer mode (ATM) services that conform to one or more internationally accepted standards.
7. Frame relay services that conform to one or more internationally accepted standards.
8. Other data services utilising data equipment which has been type approved by PANGTEL for telecommunications use.
9. Augmentation to the fixed or mobile telecommunications network operated by Telikom which is associated with access and interconnections (it being acknowledged that the Commission may establish a method for the costs of such network augmentation to be

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shared between Customers who benefit from that augmentation by including provisions for that purpose in a code made under the Independent Consumer and Competition Commission Act 2002 or under the Telecommunications Act).

10. As from the date (if any) on which the Commission, acting in accordance with clause 10, issues a licence under the Telecommunications Act or any other applicable legislation that permits any person other than Telikom:
  - (a) to operate as a general carrier within a Designated Operations Area;
  - (b) to operate as a mobile carrier; or
  - (c) to operate in any other capacity,competitive network access and interconnection services which allow any-to-any connectivity across competing networks.
11. Any other telecommunications services which are agreed between Telikom and the Commission to be Excluded Services.

Where:

An **access seeker network location** is a point in a network operated by a licensee (including Telikom) or a customer of such a licensee that:

- (a) is not a point of interconnection or a customer transmission point; and
- (b) is a point where the transmission services are requested by a licensee (other than Telikom) or a customer of a licensee (including Telikom) and can be technically delivered.

A **customer transmission point** is a point at or near Customer Premises Equipment located at a Customer's premises.

A **designated data rate** is a transmission rate of 2.048 megabits per second, 4.096 megabits per second, 6.144 megabits per second, 8.192 megabits per second, 34 to 45 megabits per second, 140/155 megabits per second or another transmission rate agreed between Telikom and another licensee or a Customer.

A **licensee** means the holder of a value added services licence, a public mobile licence or a general telecommunications licence under the *Telecommunications Act*.

**nx64 interfaces** are X.21, V.35 and G.703/G.704 interfaces, with up to 8 service interfaces per customer access.

An **nx64 rate** is a rate of transmission equal to (n times 64 kilobits per second), where 'n' is a whole number between 1 and 31 (both inclusive).

A **point of interconnection** is a physical point of connection in Papua New Guinea between a network operated by Telikom and a network operated by another licensee, being a point that is agreed between Telikom and that other licensee.

A **transmission point** is any of the following:

- (a) a point of interconnection;
- (b) a customer transmission point; or

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(c) an access seeker network location.

**X.50 interfaces** are X.21, X.21bis and V.35(48 kilobits per second) interfaces, with one service interface per customer access.

An **X.50 rate** is a rate of transmission equal to 1200 bits per second, 2400 bits per second, 4800 bits per second, 9600 bits per second, 19.2 kilobits per second or 48 kilobits per second.

**Schedule 5 - Service Standards and Relevant Rebates**

**Table 1 – Required Connection Dates**

	Maximum number of business days after request by Customer by which Telikom must have made connection to its fixed telecommunications network
<b>Manned Exchanges</b> <ul style="list-style-type: none"> <li>• <i>Intact in place connection</i> <ul style="list-style-type: none"> <li>- All Service Categories 3</li> </ul> </li> <li>• <i>With available network infrastructure and spare capacity</i> <ul style="list-style-type: none"> <li>- Service Category 1 5</li> <li>- Service Category 2 7</li> <li>- Service Category 3 10</li> </ul> </li> </ul>	
<b>Unmanned Exchanges</b> <ul style="list-style-type: none"> <li>- Service Category 1 10</li> <li>- Service Category 2 14</li> <li>- Service Category 3 20</li> </ul>	

**Table 2 – Required Service Restoration Dates**

	Maximum number of business days after request by Customer by which Telikom must have rectified fault in a service provided by its fixed telecommunications network
<b>Manned Exchanges</b> <ul style="list-style-type: none"> <li>- Service Category 1 4</li> <li>- Service Category 2 5</li> <li>- Service Category 3 6</li> </ul>	
<b>Unmanned Exchanges</b> <ul style="list-style-type: none"> <li>- Service Category 1 7</li> <li>- Service Category 2 14</li> <li>- Service Category 3 20</li> </ul>	

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**Table 3 - Applicable Rebate Proportions**

	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>ARP</b>	0.50	0.60	0.70	0.75	0.80	0.85	0.90	0.95

## Schedule 6 - Existing Capital Expenditure Program

<b>Capital expenditure (nominal kina)</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
Submarine Cable	-	-	37,290,503	39,826,257	-
Fixed Network	13,502,793	31,500,000	37,593,600	44,142,149	51,163,830
Mobile Network	6,497,207	1,372,504	13,454,418	15,519,148	14,616,898
<b>Total</b>	<b>20,000,000</b>	<b>32,872,504</b>	<b>88,338,521</b>	<b>99,487,553</b>	<b>65,780,729</b>
<b>Capital expenditure (nominal kina)</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Submarine Cable	-	-	-	-	-
Fixed Network	58,676,142	66,695,649	75,237,694	84,316,079	93,942,693
Mobile Network	37,971,628	852,419	910,384	972,290	1,038,405
<b>Total</b>	<b>96,647,770</b>	<b>67,548,068</b>	<b>76,148,077</b>	<b>85,288,368</b>	<b>94,981,098</b>

**Total Capital Expenditure (nominal kina, excluding associated overheads other than directly attributable overheads): 727,092,689K.**

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## **Schedule 7 - Required Functionality**

### **International Transmission Functionality**

1. At least the same functionality which was available to Customers from the Cairns-Port Moresby telecommunications cable as at 31 December 2001 (including at least the same technical performance and data rate capacity of that cable as at that date). For these purposes, the data rate capacity of the Cairns-Port Moresby telecommunications cable as at 31 December 2001 is taken to be 5 x 2 MBit/sec transmission streams from Papua New Guinea to an offshore gateway allowing global interconnectivity.
2. At least the same functionality which was provided by way of satellite as at 31 December 2001 for the purposes of the transmission of data from Papua New Guinea to an offshore gateway allowing global interconnectivity (including at least the same technical performance and data rate capacity of those satellite links as at that date) except to the extent the data rate capacity required is less due to reductions in traffic volume growth or due to the use of capacity on a technology which has better technical performance.
3. An additional 32MBit/sec capacity for growth over the life of the relevant technology, with the technology used to provide such additional capacity having a technical performance which is reasonably comparable to internationally accepted standards of technical performance for submarine telecommunications cables that apply as at the date of the installation of that technology.
4. The capacity to offer international halfcircuits for lease to value added service providers, on request, at commercial rates.

### **Required Functionality other than International Transmission Functionality**

An increase in switching capacity of 55,000 lines compared to switching capacity as at the Commencement Date.

Metropolitan Optical Fibre rings in Port Moresby and Lae.

Replacement of analogue bearer to Rabaul.

Bearer diversity Mt Hagen to Lae.

Refurbishment of the Customer Access Network and provision of transmission functionality such as to enable Telikom to comply with such network and service performance requirements as are set out in this Contract and in any licence issued to Telikom under the *Telecommunications Act*.

## Schedule 8 - Certain Forecasts and Assumptions

### Forecast operational and maintenance expenditure (nominal Kina)

Fixed telecommunications network									
2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
153,135,144	169,933,969	180,237,049	194,160,892	208,535,228	221,856,663	236,414,677	249,337,883	260,096,554	267,099,675
Mobile telecommunications network									
2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
6,721,356	12,087,789	14,037,416	16,724,316	19,635,044	23,009,894	27,151,175	31,610,956	36,800,548	42,852,448
Total									
2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
159,856,500	182,021,758	194,274,465	210,885,208	228,170,272	244,866,557	263,565,853	280,948,839	296,897,102	309,952,123

### Forecast capital expenditure (nominal kina)

Fixed telecommunications network									
2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
13,502,793	31,500,000	74,884,103	83,968,406	51,163,830	58,676,142	66,695,649	75,237,694	84,316,079	93,942,693
Mobile telecommunications network									
2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
6,497,207	1,372,504	13,454,418	15,519,148	14,616,898	37,971,628	852,419	910,384	972,290	1,038,405

Total									
2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
20,000,000	32,872,504	88,338,521	99,487,553	65,780,729	96,647,770	67,548,068	76,148,077	85,288,368	94,981,098

**Assumed value of asset base as at 31 December 2001 and assumed weighted average ages and total economic lives of assets**

Fixed telecommunications network	Value of asset base as at 31 December 2001 (in 2001 Kina)	Weighted Average Age (years from procurement)	Total economic life for new asset
Air Conditioning	4,750,000	6.21	10.00
Customer Equipment	623,000	0.93	5.00
Data	11,850,000	6.13	15.00
External Plant and Equipment	20,338,100	13.04	35.00
Fire & Security	2,188,660	12.16	20.00
Furniture & Fittings	3,158,200	7.21	10.00
IT & Office Equipment	15,213,255	2.39	10.00
Motor Vehicles	2,567,101	2.90	5.00
Multiplex	31,906,330	13.60	15.00
Power	11,630,000	6.45	15.00
Project 552	78,933,500	3.53	20.00
Public Phones	2,859,513	5.55	10.00
Radio Major	20,492,060	10.96	20.00
Radio Small	15,257,300	5.75	15.00
Satellite	41,918,500	5.43	12.00
South Fly Project	6,560,000	2.00	20.00

Switching	58,900,990	3.86	15.00
Test Equipment	5,500,000	8.00	15.00
Buildings & Site Improvement	25,749,500	29.00	40.00
Land	9,015,300	-	-
Submarine Cable	22,000,000	25.00	30.00
<b>Mobile telecommunications network</b>	<b>Value of asset base as at 31 December 2001 (in 2001 Kina)</b>	<b>Weighted Average Age (years from procurement)</b>	<b>Total economic life for new asset</b>
AMPS Network	13,428,090	3.00	6.00
GSM Network	34,547,152	1.00	10.00
Buildings & Site Improvement	11,035,500	29.00	40.00
Land	3,863,700	-	-
<b>Total</b>	<b>454,285,751</b>		

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**Schedule 9 - Assumed Licence and Regulatory Fees Cap payable under the Telecommunications Act and the Radio Spectrum Act by Telikom PNG and PMC**

Nominal Kina	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Telikom PNG	4,200,000	4,300,000	4,300,000	4,592,400	4,904,683	5,238,202	5,594,399	5,974,819	6,381,106	6,815,021
PMC	150,000.	338,653	677,305	723,362	772,550	825,084	881,189	941,110	1,005,106	1,073,453
ICCC	-	2,650,000	2,830,200	3,022,654	3,228,194	3,447,711	3,682,156	3,932,542	4,199,955	4,485,552

This table needs to be read in conjunction with Clause 14.8 under which provision is made for a PNGCPI escalation factor on the licence and regulatory fees cap. The figures in the table above have been projected forward on the basis of the assumed long term inflation rate of 6.8% per annum. Actual inflation rate outcomes will be used to determine the exact cap numbers based on the formula in Clause 14.8 (b)(ii) using the numbers for 2004 in the table above as the base year.

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**Schedule 11 - Deed of Accession**

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## Deed of Accession

[Controlled Corporation]

Telikom PNG Ltd and Pacific Mobile Communications Ltd

The Independent Consumer and Competition Commission

<b>Date</b>	
<b>Parties</b>	<ol style="list-style-type: none"> <li>1. <b>[Controlled Corporation]</b> (the <b><i>New Party</i></b>)</li> <li>2. <b>Telikom PNG Ltd</b> (company number 1-26889) and <b>Pacific Mobile Communications Ltd</b> (company number 1-18901) (collectively, <b><i>Telikom</i></b>)</li> <li>3. <b>The Independent Consumer and Competition Commission</b>, a body corporate established under the <i>Independent Consumer and Competition Commission Act 2002</i> (the <b><i>Commission</i></b>)</li> </ol>
<b>Recitals</b>	<p>A Telikom and the Commission are parties to a Telecommunications Regulatory Contract dated [#] (the <b><i>Regulatory Contract</i></b>).</p> <p>B The New Party is a Controlled Corporation.</p> <p>C The New Party will be associated with the provision of Fixed Network Services, Mobile Network Services or Excluded Services.</p> <p>D Pursuant to clause 22.1 of the Regulatory Contract, Telikom has given notice to the Commission requesting that the New Party be made a party to the Regulatory Contract by the execution of this Deed and the Commission [has accepted this request] [is deemed to have accepted this request].</p> <p>E The Commission has declared the New Party to be a regulated entity under Section 32 of the <i>Independent Consumer and Competition Commission Act 2002</i>.</p>

**It is agreed** as follows.

## **1. Interpretation**

### **1.1 Regulatory Contract definitions to apply**

Subject to clause 1.2, words and expressions which are defined in the Regulatory Contract shall have the same meanings when used in this Deed.

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## **1.2 Defined terms**

In this Deed (including the Recitals), the following terms shall have the following meanings, unless the subject matter or context otherwise requires:

**Effective Date** means the date specified in clause 3.

**Regulatory Contract** means the agreement referred to in Recital A.

## **1.3 Regulatory Contract interpretation provisions to apply**

The provisions of clause 1.2 of the Regulatory Contract shall apply in the interpretation of this Deed, mutatis mutandis.

## **2. New Party becomes party to Regulatory Contract**

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The New Party covenants and agrees with the Commission and Telikom as from the Effective Date to observe, perform and be bound by all of the terms, covenants and obligations of Telikom under the terms of the Regulatory Contract.

## **3. Effective Date**

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This Deed will take effect as and from [date].

## **4. Governing law**

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This Deed is governed by the laws of the Independent State of Papua New Guinea.

## **5. Execution of Deed by several counterparts**

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This Deed may be executed in any number of counterparts. All counterparts will be taken to constitute one instrument.

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**Executed** and delivered as a Deed in [#]

**Executed** by [the New Party]

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Director Signature

---

Director/Secretary Signature

---

Print Name

---

Print Name

**Executed** by **Telikom PNG Limited** on  
behalf of itself and **Pacific Mobile  
Communications Ltd**

---

Director Signature

---

Director/Secretary Signature

---

Print Name

---

Print Name

**Executed** by the **Independent Consumer  
and Competition Commission**

---

Signature

On behalf of the Independent Consumer and Competition Commission

---

---

**Executed by Telikom PNG Limited** on  
behalf of itself and **Pacific Mobile  
Communications Ltd**

---

Director Signature

---

Director/Secretary Signature

---

Print Name

---

Print Name

**Executed by the Independent Consumer  
and Competition Commission**

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Bart Philemon, Minister for Finance and  
Treasury

For and on behalf of the Independent Consumer and Competition Commission pursuant to  
Section 17 of the *Independent Consumer and Competition Commission Act 2002*.

(a)