

**Interim
Interconnection
Agreement**

relating to

between

Telecom Vanuatu Limited

and

Digicel (Vanuatu) Limited

Date 13 March 2008

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Date **13 March 2008**

Parties

- **Telecom Vanuatu Limited**, at Port Vila; and
- **Digicel (Vanuatu) Limited**, at Port Vila.

The parties agree as follows:

1. Definitions and interpretation

1.1 Unless the context otherwise requires, the following terms have the following meanings when used in this Agreement:

- (a) **Bill Rate** means the average 3 month bank bill mid rate as quoted by the Vanuatu branch of the ANZ Bank as at the relevant date, provided that if on or about that date for any reason that rate is not then available, the last such rate quoted by the Vanuatu branch of the ANZ Bank before it became unavailable;
- (b) **Confidential Customer Information** means all information which one party (the **first party**) provides to the other party on a confidential basis or which the other party otherwise holds or obtains, concerning any particular customer of the first party or any particular person who intends to become a customer of the first party, but does not include any such information:
 - (i) which is obtained from sources independent of the first party's group, including (for the avoidance of doubt and without limitation) information obtained from the relevant customer of the first party;
 - (ii) which was known to the other party at the time of receipt or which is or becomes publicly available otherwise than as a result of a breach of an obligation of confidence; and
 - (iii) which is both contained in and generated from the other party's own billing records related to the other party's customers, other than billing records relating to the provision of Interconnection Services;
- (c) **Confidential Information** means all information which is confidential or proprietary to a party (the **first party**) or any member of the first party's group, but does not include any such information:
 - (i) which is independently developed by the receiving party outside the scope of this Agreement;

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- (ii) which is other confidential or proprietary information obtained from sources independent of either party;
- (iii) which was publicly available at the time of receipt or the date of this Agreement;
- (iv) which was known to a party at the time of receipt or becomes publicly available after the execution of this Agreement otherwise than as a result of a breach of an obligation of confidence; or
- (v) required to be released under any applicable law, the regulations of a stock exchange on which a party's (or their parent company's) shares are listed, or order of any court, governmental agency or body having legal power to compel disclosure.

The terms and conditions of this Agreement will be Confidential Information of each party;

(d) **Due Date** means:

- (i) where an invoice is received by the Paying Party no more than 7 calendar days following the last day of the period covered by the invoice, the 20th day of the month following the last day of the period covered by the invoice (for example, where the last day of the period covered by the invoice is 31 July, and the invoice is received by the Paying Party on 7 August, the Due Date shall be 20 August); or
- (ii) where an invoice is received by the Paying Party after 7 calendar days following the last day of the period covered by the invoice, the 20th day of the month following the month in which the invoice is received by the Providing Party (for example, where the last day of the period covered by the invoice is 31 July, and the invoice is received by the Paying Party on 8 August, the Due Date shall be 20 September);

(e) **Interconnection Services** means those telecommunications services set out in clause 4.1 of this Agreement;


(f) **Invoicing Party** means, in relation to any invoice in respect of any payment due under this Agreement, the party which renders the invoice;

(g) **Launch Date** means the date on which [New Entrant] Limited begins offering mobile telecommunications services to the public generally in Vanuatu, other than on a testing or trial basis (e.g., a "soft launch" basis);

(h) **Licensed Operator** means a provider of telecommunications services that has received a license to provide those telecommunications services from the Government;

(i) **Manifest Error** means:

- (i) any erroneous duplication of the items charged in;
- (ii) any error in a calculation shown on;

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- (iii) any error in the total of the amounts shown on;
- (iv) any erroneous calculation of discounts shown on;
- (v) any erroneous calculation of the VAT shown on;
- (vi) any erroneous inclusion of services not to be provided under this Agreement in; or
- (vii) any erroneous application of an incorrect price to a call or text message, where the parties are in agreement on the price which should apply to that call or text message in;

an invoice rendered by the Invoicing Party, which is apparent on the face of the invoice, or where the Paying Party's CDR records for call minutes show a discrepancy of 10% or more as compared to the call minutes set out in the invoice;

- (j) **Numbering Information** means the A-number of the calling party end user subscriber that originated that traffic:
 - (i) provided in the form of the national significant number as defined by CCITT/ITU Recommendations, including (where the traffic originates outside of Vanuatu) the country code for non-Vanuatu numbers; and
 - (ii) including any CLIR Flags (an indicator provided together with an A-number for the purposes of calling line presentation information which indicates that the A-number is not to be forwarded to the called party) and any other numbering information relating to that traffic, but not including billing name and address;
- (k) **Paying Party** means, in relation to any invoice in respect of any payment due under this Agreement, the party to whom the invoice is addressed;
- (l) **Regulator** means the person or persons appointed by the Government from time to time to regulate the telecommunications sector in Vanuatu; and
- (m) **Working Day** means a day other than a Saturday, a Sunday or a statutory holiday in Port Vila.

1.2 The headings are for convenience only and do not form part of this Agreement. References to clause numbers in this Agreement are to clause numbers in this Agreement, unless otherwise specified. The singular includes the plural, and vice versa.

2. Term and changes to this Agreement

2.1 This Agreement expires at midnight on the fourth anniversary of the Launch Date, unless terminated earlier by law or under the terms of clause 9. The expiry of this four year period is known in this Agreement as the **Expiry Date**.

3. **Obligation to interconnect**

Each party (the **first party**) will, within 30 Working Days of written request to the first party by the other party (the **other party**), connect its network to the other party's network at trunkside (inter-switch or inter-exchange) level at any technically feasible point in Port Vila (a **Handover Point**), agreed by the parties or (failing agreement) determined by the Regulator for the purposes of the making available and provision of Interconnection Services to each other. Each party will bear its own costs of providing interconnect links from its network that connect to the Handover Point and all other costs incurred by that party associated with providing Interconnection Services to the other party.

4. **Provision of Interconnection Services**

4.1 Each party (the **first party**) will provide the following interconnection services to the other party (the **other party**) (the **Interconnection Services**):

- (a) the acceptance of all calls handed over from the other party's network (whether or not it originates in that network) to the first party's network at a Handover Point for which the first party's geographic number or the first party's mobile number is provided, and delivery or offer of delivery of each such call to the designated destination in respect of that call (**call termination service**);
- (b) the handing over of or, where a free circuit is not available in the other party's network, offering to hand over to the other party's network at a Handover Point, calls that originate on the first party's network to toll free numbers allocated to the other party (**call origination service**); and
- (c) the acceptance of all text messages handed over from the other party's network (whether or not it originates in that network) to the first party's mobile telecommunications network at a Handover Point for which a first party's mobile number is provided and delivery or offer of delivery of each such text message to the designated destination in respect of that text message (**text message termination service**).

4.2 Neither party is responsible for the conveyance of any call or text message in the Network of the other party.

4.3 A party (the **first party**) may be required to provide Interconnection Services under this Agreement to the other party, whether or not:

- (a) the other party has both geographic numbers and mobile numbers allocated to it;
- (b) the other party has toll free numbers allocated to it; and
- (c) the other party is able to provide Interconnection Services to the first party (for example the other party may not have its own access network in Vanuatu and may not have any numbers allocated to it, such as a licensed operator that is licensed to provide international telecommunications services).

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4.4 A party (the **first party**) may be required to provide Interconnection Services under this Agreement to the other party, even if:

- (a) it has only geographic numbers or mobile numbers allocated to it;
- (b) it has toll free numbers allocated to it,

however the first party must have its own access network in Vanuatu.

4.5 Neither party is responsible for the conveyance of any call or text message where a charge for the conveyance of the call or text message by that party is not specified in, or has not been agreed or determined pursuant to, this Agreement.

4.6 Except as expressly provided in this Agreement, neither party is responsible for the conveyance of calls or text messages to another network if it does not have an agreement to do so with the operator of that network. This Agreement does not require either party to transit calls or text messages for the other party.

4.7 Each party shall, for all calls and text messages that are handed over by one party to the other party under this Agreement, provide to the other party the Numbering Information with respect to that traffic. There shall be no charge for the making available and provision of Numbering Information.

4.8 Neither party (the **first party**) shall delete or change, or permit or procure any other person to delete or change, any Numbering Information in respect of any call or text message provided to (or otherwise received by) the other party with the objective or effect that:

- (a) the definition of any call or text message or applicable charges that would not otherwise apply but for the deletion or change, does apply (based on the Numbering Information provided to (or otherwise received by) the other party); and/or
- (b) the definition of any call or text message or applicable charges that would otherwise apply but for the deletion or change, does not apply (based on the Numbering Information provided to (or otherwise received by) the other party); and/or
- (c) it is no longer possible for the other party to accurately determine whether a call or text message is or is not any particular type of call or text message.

4.9 A party shall only use Numbering Information for the following purposes:

- (a) routing calls or messages;
- (b) compilation of inter party invoices;
- (c) compilation of end user bills (provided that numbering information is disclosed on the end user bill);
- (d) call trace, malicious call identification and fraud prevention and detection; and

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- (e) display to end users.

5. Charges for Interconnection Services

5.1 Each party (the **first party**) will provide the Interconnection Services at the following prices:

- (a) call termination service for calls to the first party's geographic numbers where the designated destination is in a fixed telecommunications network: 2.5 vatu per minute;
- (b) call termination service for calls to the first party's mobile numbers where the designated destination is in a mobile telecommunications network (other than those referred to in paragraph (c) below): 9.9 vatu per minute;
- (c) call termination service for calls to the first party's mobile numbers where:
 - (i) the designated destination is in a mobile telecommunications network; and
 - (ii) the call originates from the other party's mobile telecommunications network, no charge (i.e., "bill and keep");
- (d) call origination service for calls from the first party's geographic numbers where the call originates from a fixed telecommunications network: 2.5 vatu per minute;
- (e) call origination service for calls from the first party's mobile numbers where the call originates from a mobile telecommunications network: 9.9 vatu per minute;
- (f) text message termination service: no charge (i.e., "bill and keep").

5.2 The pricing in clause 5.1 applies for a period of 24 months from the Launch Date.

- (a) If any party wishes changes to be made to the pricing in clause 5.1, that would apply from the date that is 24 months from the Launch Date until the Expiry Date, they will notify the other party (with a copy to the Regulator).
- (b) This notice may be given no earlier than 20 months from the Launch Date.
- (c) The parties will then enter into negotiations in good faith with a view to reaching agreement on any such changes.
- (d) The Regulator may attend any such negotiations and, if requested by the Regulator, will be copied by the parties on all correspondence related to the negotiations.
- (e) If the parties have not reached agreement on any such changes within 20 Working Days of commencement of those negotiations, then either party may refer the dispute to the Regulator for determination.

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- (f) The parties must be given the opportunity to provide written submissions (and if required by the Regulator, oral submissions) on the dispute. The Regulator must use best endeavours to complete a draft determination within 20 Working Days of notice of the dispute and provide that to the parties for comment. The parties will then have 5 Working Days to provide written comments on the draft determination.
- (g) The Regulator shall use best endeavours to complete the determination within 40 Working Days of notice of the dispute.
- (h) The Regulator must determine any changes to the prices based on benchmarking of countries that have applied cost-based pricing methodologies and the Regulator must include in his or her consideration countries that are comparable to Vanuatu that have applied such methodologies.
- (i) However, clauses 5.3 to 5.5 shall not change and the price for the text message termination service will always be no charge (i.e., "bill and keep").

5.3 In order to be chargeable, all calls must give rise to the transmission of an answer line signal and no call with a duration of two seconds or less will be chargeable. For the avoidance of doubt, calls of more than two seconds duration will be charged for the full period of the call, including the first two seconds.

5.4 The price for calls under the call termination service and the call origination service applies on a minute plus minute basis, with the duration of calls being rounded up to the next minute.

5.5 Unless expressly provided otherwise, all references in this Agreement to charges are deemed to mean charges exclusive of VAT. To the extent that charges are payable under this Agreement by the parties, the VAT on such charges shall be invoiced to and payable by the parties in the same way as the charges themselves under clause 6, and in accordance with applicable VAT legislation in Vanuatu.

6. Payment of charges

6.1 The quality of billing of services under this Agreement by the Invoicing Party shall be to a standard which is comparable to the quality of the billing provided by the Invoicing Party to its major customers and other licensed operators in respect of comparable services. Without limiting the foregoing, all charges and costs payable by the Paying Party, when invoiced to the Paying Party, include reasonable information in accordance with normal commercial practice to enable the Paying Party to check the accuracy of the amount charged.

6.2 Unless the parties otherwise agree in writing, the period to be covered by an invoice under this Agreement shall be a calendar month.

6.3 Each party shall co-operate with the other on billing and invoice verification matters, including:

- (a) the information to be provided to each other with respect to an invoice;
- (b) the methods by which that information is provided;

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- (c) the need to meet from time to time to resolve billing disputes; and
- (d) the need to discuss other matters relating to billing and the verification of charges.

6.4 Subject to clause 6.7, all amounts invoiced by the Invoicing Party to the Paying Party under this Agreement shall be due and payable on or before the Due Date of the relevant invoice, but shall accrue from the date on which the relevant service was provided.

6.5 Subject to clauses 6.7 and 6.15, all charges and other amounts payable by the Paying Party under this Agreement (including any amount which the Paying Party disputes or intends to dispute pursuant to clause 6.11):

- (a) shall be paid by the Paying Party to the Invoicing Party, at the place or to a bank account nominated from time to time by the Invoicing Party, and (except to the extent required by law) free of any deductions, set off or withholding on account of any amount; and
- (b) shall be paid in vatu.

No payments may be made under this Agreement by credit card or debit card.

6.6 Acknowledging that the interests of the parties and their respective customers require that:

- (a) as far as reasonably practicable, services under this Agreement be continuously available, and when in use, continuous and fault-free; and
- (b) subject to clauses 6.7 and 6.15, payments for such services be made without deduction, set off or withholding on account of any amount;

the parties agree that, in the event of any dispute about the validity or enforceability of this Agreement or of its implementation (in either case in whole or in part), each party shall continue to perform its obligations in accordance with the terms of this Agreement until a court of competent jurisdiction (or the arbitrator of an arbitration under clause 11) determines that this Agreement or its implementation (in either case in whole or in part), is invalid or unenforceable.

6.7 If the Paying Party:

- (a) believes on reasonable grounds that there is a Manifest Error in an invoice provided by the Invoicing Party which has resulted in the Invoicing Party overcharging the Paying Party in that invoice; and
- (b) has on or before the Due Date, served on the Invoicing Party a notice of Manifest Error, (setting out in the notice details of the relevant invoice and the reasonable grounds in support of the Paying Party's view that the Manifest Error exists),

then the Paying Party shall be entitled to withhold payment to the Invoicing Party of the amount by which, in the reasonable opinion of the Paying Party, the Invoicing Party has overcharged the Paying Party in the invoice as a result of the Manifest Error. The remainder of the amounts charged in the invoice shall be paid by the Paying Party on or before the Due Date in the normal manner. The amount withheld may be withheld until such time as the Invoicing Party and the

Paying Party have settled between them in accordance with the disputes procedure set out in clause 6.8, whether or not there is a Manifest Error in the invoice and, if there is, the amount of it and the amount properly payable on that invoice after correcting it.

- 6.8 Following the giving of any notice under clause 6.7(b), the parties shall use reasonable endeavours to settle any claim of Manifest Error. If they do not settle any claim of Manifest Error within 20 Working Days after the due date for payment of the invoice, either party may give notice referring the matter directly to an independent telecommunications accounting expert (the **Expert**) to be finally resolved and, unless otherwise agreed in writing:
- (a) the parties shall endeavour to appoint a single Expert. If, within 5 Working Days of the notice under this clause 6.8 being given, the parties are unable to agree on a single Expert, the Expert shall be appointed by the Regulator;
 - (b) the Expert shall adopt a procedure which, in the Expert's opinion, is the most simple and expeditious procedure possible in the circumstances;
 - (c) the carriers shall provide the Expert with any information that the Expert reasonably requires;
 - (d) the Expert shall use reasonable endeavours to make a decision on the claim of a Manifest Error within 30 Working Days of appointment; and
 - (e) the costs of the Expert shall be paid as follows:
 - (i) if the Expert decides that there is no Manifest Error or, as a result of a Manifest Error the amount of the invoice is increased after correction, then the Paying Party shall pay the costs of the Expert;
 - (ii) if the Expert decides that there is a Manifest Error and the amount of the invoice is reduced by 5% or less after correction, then the Paying Party and the Invoicing Party shall equally share and pay the costs of the Expert; and
 - (iii) if the Expert decides that there is a Manifest Error and the amount of the invoice is reduced by more than 5% after correction, then the Invoicing Party shall pay the costs of the Expert.
- 6.9 If it is agreed by the parties or found by the Expert that there was a Manifest Error in the invoice, then if:
- (a) the amount by which the Paying Party was overcharged in the invoice as a result of the Manifest Error is less than the amount withheld by the Paying Party, the Paying Party shall forthwith pay to the Invoicing Party the amount of the difference, and shall pay to the Invoicing Party interest on a daily basis at the Bill Rate (as at the Due Date of the invoice) plus 1 percent per annum on the amount of the difference for the period from and including the Due Date to but excluding the date of payment of the amount of the difference, such interest to be paid contemporaneously with the amount of the difference;

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- (b) the amount by which the Paying Party was overcharged in the invoice as a result of the Manifest Error is equal to the amount withheld by the Paying Party, the Paying Party shall retain the amount withheld;
- (c) the amount by which the Paying Party was overcharged in the invoice as a result of the Manifest Error is greater than the amount withheld by the Paying Party, then the Invoicing Party shall forthwith refund to the Paying Party the amount of the difference and shall pay to the Paying Party interest on a daily basis at the Bill Rate (as at the date on which the overpayment was made by the Paying Party) plus 1 percent per annum on that refunded amount for the period from and including the date on which the overpayment was made by the Paying Party to but excluding the date of payment of the refunded amount, such interest to be paid contemporaneously with the payment of the refunded amount.

6.10 If it is agreed by the parties or found by the Expert that there was not a Manifest Error in the relevant invoice, then the Paying Party shall forthwith pay in full the amount withheld and shall pay to the Invoicing Party interest at the Bill Rate (as at the Due Date) plus 1 percent per annum for the period from and including the date of the invoice to but excluding the date of payment of the amount withheld, such interest to be paid contemporaneously with the amount withheld. Nothing in this clause 6.10 shall prevent the Paying Party from claiming an amount in accordance with clause 6.11, if the Paying Party has reasonable cause to believe that the invoice contains a billing error which is not a Manifest Error.

6.11 If the Paying Party has a claim in respect of the accuracy or correctness of an invoice issued by the Invoicing Party (other than any claim in respect of a Manifest Error which has been made under clause 6.7), the Paying Party shall, no later than 12 months after the Due Date of the invoice which it disputes, serve notice on the Invoicing Party setting out details of the relevant invoice, the disputed amount and the grounds for the dispute together with supporting evidence. All disputes under this clause 6.11 shall be bona fide disputes for which the Paying Party has reasonable cause to believe that there has been a billing error. For the avoidance of doubt, clauses 6.8 to 6.10 (inclusive) do not apply to any notice given under this clause 6.11, and clauses 6.12 and 6.13 do not apply to any notice given under clause 6.7(b).

6.12 The Invoicing Party and the Paying Party shall use their reasonable endeavours to settle promptly any claim of which the Invoicing Party is notified under clause 6.11. Failing resolution within 40 Working Days of the date of the service of the notice under clause 6.11, either party may serve notice on the other that it wishes the dispute to be arbitrated and the dispute shall be referred directly to arbitration in accordance with clause 11, on the expiry of 10 Working Days from the date of service of such notice (without the need for prior negotiation). The terms of reference of such an arbitration shall be agreed between the parties but shall relate only to that claim or dispute on the accuracy or completeness of the invoice.

6.13 If a claim under clause 6.11 is resolved in favour of the Paying Party, then the Invoicing Party shall forthwith refund to the Paying Party:

- (a) the disputed amount, or so much of it as the resolution of the dispute dictates should be refunded; and
- (b) interest on a daily basis at the Bill Rate (as at the date on which the overpayment was made by the Paying Party) plus 1% per annum on the refunded amount referred to in clause 6.13(a) for the period from and including the date on which the overpayment was made by the Paying Party to but excluding the date of payment of the refunded amount, such interest to be paid contemporaneously with the payment of the refunded amount.

6.14 Nothing in this Agreement or in the terms of any invoice or statement shall prejudice the Invoicing Party's right to charge the Paying Party for any services under this Agreement, the charges or costs for which should have been included within earlier invoices or statements but which were inadvertently omitted. This right shall be limited to a period of 12 months from the date of the provision of the relevant service, after which no charge may be made for that service. This clause 6.14 shall survive termination of this Agreement.

6.15 The Invoicing Party may at the direction of the Paying Party apply any amounts payable under clauses 6.9(c) and 6.13 as a credit towards other charges payable by the Paying Party under this Agreement.

6.16 Where:

- (a) an amount due from the Paying Party to the Invoicing Party under this Agreement remains unpaid after the Due Date of the relevant invoice and that amount is not one to which clauses 6.9(a) or 6.10 applies; or
- (b) an amount due from the Paying Party to the Invoicing Party under clauses 6.9(a) or 6.10 remains unpaid on the sixth Working Day after the date of resolution of the dispute;

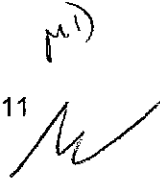

then the Paying Party shall be liable to pay to the Invoicing Party interest on a daily basis on that amount at the Bill Rate (as at the Due Date or the date 6 Working Days after the date of resolution of the dispute, as the case may be) plus 5 percent per annum, such interest to be charged:

- (c) in the case of interest payable in respect of amounts unpaid after the Due Date of the relevant invoice, from and including the Due Date of the relevant invoice to but excluding the date of payment of the amount due, such interest to be paid contemporaneously with the payment of the amount due;
- (d) in the case of interest payable in respect of amounts unpaid on the sixth Working Day after the date of resolution of the dispute, from and including the sixth Working Day after the date of resolution of the dispute to but excluding the date of payment of the amount due, such interest to be paid contemporaneously with the payment of the amount due.

6.17 Where an amount due from the Invoicing Party to the Paying Party under clauses 6.9(c) or 6.13 remains unpaid on the sixth Working Day after the date of resolution of the dispute, then the Invoicing Party shall be liable to pay to the Paying Party interest on that amount at the Bill Rate (as at the date 6 Working Days after the date of resolution of the dispute) plus 5 percent per annum, such interest to be charged on a daily basis from and including the date 6 Working Days after the date of the resolution of the dispute until, but excluding the date the amount due is paid, such interest to be paid contemporaneously with the payment of the amount due.

6.18 The Paying Party shall continue to be liable to pay for any charges incurred between the time of termination of any service of the Invoicing Party and the actual discontinuance of the service of the Invoicing Party.

6.19 The parties record that the interest payable under this clause 6 constitutes liquidated damages and that the interest rate formulae set out in this clause 6 represent a genuine forecast of the approximate loss a party may suffer as the result of non-payment after taking into account the complexity of each party's business.

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7. Confidential Information

7.1 For the purposes of this clause 7, the party:

- (a) owning or supplying Confidential Information shall be called the Supplying Party; and
- (b) receiving Confidential Information shall be called the Receiving Party;

and either expression shall include all members of the relevant party's Group.

7.2 The Receiving Party shall, in respect of Confidential Information received from the Supplying Party or of which the Receiving Party otherwise becomes aware through its implementation or operation of this Agreement:

- (a) adopt (if necessary) and maintain procedures adequate to protect the Confidential Information;
- (b) hold the Confidential Information in confidence with the same degree of care with which it holds its own confidential and proprietary information, unless the Supplying Party approves in writing the release of the Confidential Information by the Receiving Party;
- (c) ensure that neither it nor any of its officers, employees, contractors or agents who receive the Confidential Information discloses or causes or permits to be disclosed, without the prior written consent of the Supplying Party, the Confidential Information or any part of it to any person other than to:
 - (i) the Receiving Party's professional advisers; or
 - (ii) those of the Receiving Party's officers, employees, contractors or agents directly concerned in the implementation or operation of this Agreement,

and shall advise the Supplying Party from time to time on request of the professional advisers, contractors and agents who are or may be recipients of Confidential Information.

- (d) not make use of, or cause or permit use to be made of, the Confidential Information or any part of it in any manner whatsoever other than as necessary for the implementation or operation of this Agreement;
- (e) enter into such other agreements as the Supplying Party may reasonably require regarding any part of the Confidential Information which is disclosed by the Supplying Party under licence from a third party; and
- (f) at the Supplying Party's request, use reasonable endeavours to cause any person to whom the Confidential Information is disclosed in accordance with clause 7.2(c) (other than officers and employees of the Receiving Party) to provide a written undertaking to the Supplying Party, in terms reasonably acceptable to the Supplying Party, to receive and preserve in confidence the Confidential Information.

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For the avoidance of doubt, the parties agree that if an officer, employee, contractor or agent of the Receiving Party discloses or uses Confidential Information other than as permitted by this clause 7.2, then the Receiving Party shall be responsible for that use or disclosure as if the use or disclosure had been made by the Receiving Party itself.

7.3 Subject to clause 7.4:

- (a) each party agrees to use all reasonable care to ensure that, to the extent that it obtains any Confidential Customer Information of the other such information shall not be used by it for sales or marketing purposes; and
- (b) for the purposes of this clause 7, the use of Confidential Customer Information for sales or marketing purposes means the use by a party (the **first party**) of such information in a manner designed to prevent or encourage a person that is at that time a customer of the other party:
 - (i) to transfer from the other party to the first party; or
 - (ii) to subscribe to a service offered by the first party (whether or not that service is offered by the other party).

7.4 The parties acknowledge that in certain circumstances members of their respective staffs engage in multiple roles or functions, which traverse divisional lines within their respective entities. A party shall not be deemed to have failed to take all reasonable care not to use Confidential Customer Information for sales and marketing purposes merely because Confidential Customer Information may in some circumstances be available to a person who has multiple roles or functions (one of which is sales or marketing) for purposes other than sales or marketing. Nevertheless, nothing in this clause 7.4 derogates from, or releases a party from its absolute obligation to use all reasonable care under, clause 7.3.

7.5 Each party acknowledges that its breach of any of the provisions of this clause 7 may cause the other party (and any third party which has given the other party a licence to use or disclose any Confidential Information for the purposes of this Agreement) irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of this clause 7 in addition to any other remedies that may be available.

8. Suspension or restriction of Interconnection Services

8.1 Either party (the **suspending party**) may immediately suspend (in whole or in part) or restrict the provision of an Interconnection Service by serving notice on the other party. Any such notice shall only be given where, under clauses 9.1(a), the suspending party may terminate this Agreement (without prejudice to any such right of termination). Such notice shall be served under clause 12.1 and shall be identified as a notice of suspension or restriction (as may be the case).

8.2 In suspending or restricting the provision of an Interconnection Service under clause 8.1:

- (a) the suspending party shall only take steps reasonably required to effect that suspension or restriction; and

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- (b) the right to restrict the provision of an Interconnection Service includes the right to lower the capacity for the delivery of, or block, any calls and text messages.

9. Early termination

9.1 This Agreement may be terminated immediately by a party (the **terminating party**) serving notice on the other party (the **other party**) and shall only be given in the event that:

- (a) the other party has committed (in the aggregate) two material breaches of obligations under this Agreement (where each material breach may be of the same obligation or of different obligations) in any 12 month period where, in the case of each material breach:
 - (i) the terminating party has given a notice to the other party specifying the material breach and requiring remedy of that material breach;
 - (ii) (where that material breach is capable of remedy) the other party has not remedied that material breach within 20 Working Days of the date of receipt of the relevant notice; and
 - (iii) the terminating party is not in dispute (excluding any vexatious dispute) with the other party in relation to that material breach;
- (b) distress, attachment or execution is levied or enforced on or against a substantial part of the assets of the other party and is not discharged or stayed within 60 Working Days;
- (c) the other party:
 - (i) is put into (and remains in) liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation approved in writing by the terminating party, such approval not to be unreasonably withheld);
 - (ii) is wound up or dissolved in circumstances where it is not reconstituted;
 - (iii) enters into (and remains in) a scheme of arrangement with its creditors or any class of creditors;
 - (iv) suffers the appointment of a receiver or manager of a substantial part of its assets and the receiver or manager remains in office for 60 Working Days; or
- (d) the other party is required by law and has failed within the time specified by law to obtain and maintain a licence, permit or other form of official authorisation which is required by the other party in order for it to provide lawfully the other party's Interconnection Services and/or end user services, or the other party fails to maintain such licence, permit or other official authorisation, and in either case the failure continues unremedied,

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Such notice shall be served under clause 12.1 and shall be identified as a notice of termination.

9.2 On termination or expiry of this Agreement, either party may:

- (a) carry out disconnection works and removal of its equipment from the other party's premises; and
- (b) after giving the other party reasonable notice and reasonable opportunity to remove its equipment, disconnect and remove the other party's equipment from its premises.

In the event of termination under clause 9.1, the party that did not terminate this Agreement shall pay to the terminating party:

- (c) the terminating party's charges for and in respect of such disconnection and removal of equipment under clause 9.2(a); and
- (d) the terminating party's reasonable costs of such disconnection and removal of equipment under clause 9.2(b).

9.3 Subject to clause 9.4, termination or expiry of this Agreement shall not operate as a waiver of any breach by a party of any of the provisions of this Agreement, and shall be without prejudice to any:

- (a) rights, liabilities or obligations of either party which have accrued up to the date of such termination or expiry; and
- (b) of clauses 6, 7, 9, 10, 11 and 12, which shall continue in full force and effect.

9.4 Notwithstanding the termination or expiry of this Agreement, any sums payable by either party to the other pursuant to this Agreement at termination shall be paid in the same manner as if this Agreement had not terminated or expired.

9.5 On termination or expiry of this Agreement, each party shall return to the other all confidential information which the other has provided to that party.

10. Liability

10.1 Except as provided in clauses 10.2 and 10.6, under no circumstances shall either party (the **first party**) or any member of its group, or any of their respective officers, employees, contractors or agents, be liable in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty, or otherwise to compensate the other party (the **second party**) for any loss, injury, liability, damage, costs or expense arising directly or indirectly from any of the following, in the course of or out of the provision, operation, servicing or termination of services or the performance or non-performance of obligations by the first party or any member of its group, or any of their respective officers, employees, contractors or agents, under or in relation to this Agreement:

- (a) any act, omission or delay of the first party or its group, or any of their respective officers, employees, contractors or agents;

- (b) any act, omission or delay in respect of the making available, continued availability, provision, use or termination of the first party's Interconnection Services;
- (c) the failure by the first party or its group, or any of their respective officers, employees, contractors or agents to connect the first party's Network to the second party's Network or to make available, continue to make available or provide the first party's Interconnection Services;
- (d) any failure of the first party's Interconnection Services;
- (e) any failure of anything which is part of, or associated with, the first party's Interconnection Services;
- (f) any interception, distortion or interruption of any communication or attempted communication (including but not limited to any call or text message) using the first party's Interconnection Services; or
- (g) any act or omission of any customer of the first party or its group and any other third party for whom the first party or its group is not responsible.

10.2 Notwithstanding clause 10.1, but subject to all other provisions of this clause 10, the first party does not by this Agreement exclude liability:

- (a) for direct loss suffered by the second party as a result of the wilful misconduct of the first party or its group, or any of their respective officers, employees, contractors or agents, in each case in the course of their engagement by the first party;
- (b) for direct loss suffered by the second party as a result of the gross negligence of the first party or its group, or any of their respective officers, employees, contractors or agents, in each case in the course of their engagement by the first party, (for which purpose, gross negligence is any conscious or voluntary act or omission, which results in serious injury or damage by a person who was aware of a clear and present threat or danger that such injury or damage would occur);
- (c) for physical damage to the second party's property occurring in the course of the provision, operation, servicing or termination of the first party's Interconnection Services that is attributable, directly or indirectly and in whole or in part, to the negligence of the first party or its group, or any of their respective officers, employees, contractors or agents in each case in the course of their engagement by the first party; or
- (d) to indemnify the second party under any express indemnity under this Agreement,

but only to the extent that the liability arises in the course of or out of the provision, operation, servicing or termination of services or the performance or non-performance of obligations by the first party or its group, or any of their respective officers, employees, contractors or agents, in each case in the course of their engagement by the first party, under or in relation to this Agreement.

10.3 In any event, under no circumstances shall the first party or its group, or any of their respective officers, employees, contractors or agents be liable to the second party in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty, or otherwise for loss of profits,

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business or anticipated savings or for any indirect or consequential loss whatever arising in the course of or out of the provision, operation, servicing or termination of services or the performance or non-performance of obligations by the first party or its group, or any of their respective officers, employees, contractors or agents, under or in relation to this Agreement, notwithstanding that the first party or its group, or any of their respective officers, employees, contractors or agents have been advised of the likelihood of such losses.

- 10.4 If for any reason the first party, its group and/or any of their respective officers, employees, contractors and/or agents is or are liable to the second party in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty, or otherwise, the combined maximum liability of the first party, its group and their respective officers, employees, contractors and agents to the second party arising in the course of or out of the provision, operation, servicing or termination of services or the performance or non-performance of obligations by the first party or its group, and/or any of their respective officers, employees, contractors or agents under or in relation to this Agreement shall be:
- (a) in respect of any one event or related series of events, 200 million vatu; and
 - (b) in any 12 month period, irrespective of the number of events, 400 million vatu.
- 10.5 Each limitation or exclusion of this clause 10 and each protection given to the first party or its group, or any of their respective officers, employees, contractors or agents by any provision of this clause 10 is to be construed as a separate limitation, exclusion or protection applying and surviving even if for any reason any of the other provisions is held inapplicable in any circumstances.
- 10.6 Nothing in this clause 10 shall exclude or limit the liability of the first party to pay when due the charges or interest payable to the second party under this Agreement.
- 10.7 In no event shall the first party or its group, or any of their respective officers, employees, contractors or agents be liable to the second party in contract, in tort (including but not limited to negligence), in equity, for breach of statutory duty, or otherwise in respect of any event or related series of events where the combined amount of the loss incurred by the second party arising in the course of or out of the provision, operation, servicing or termination of services or the performance or non-performance of obligations by the first party or its group, and/or any of their respective officers, employees, contractors or agents under or in relation to this Agreement in respect of that event or related series of events is less than 50,000 vatu.
- 10.8 The second party shall use its reasonable endeavours to ensure that a provision shall (to the extent that it is not now included) be included in:
- (a) each contract with a customer of the second party for the provision of its end user service which excludes and limits (to the maximum extent permitted by law) any liability of:
 - (i) the first party, its group, and their respective officers, employees, contractors and agents; and
 - (ii) any Licensed Operator (whose network is connected to and with the first party's Network), its subsidiaries now and from time to time and their respective officers, employees, contractors and agents;

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arising directly or indirectly from or in connection with the second party's end user service;

- (b) each contract with any Licensed Operator (where the Licensed Operator's network is connected to and with the second party's Network) which excludes and limits (to the maximum extent permitted by law) any liability of the first party, its group, and their respective officers, employees, contractors and agents arising directly or indirectly from service provided by the second party to the Licensed Operator; and
 - (c) each customer contract of any Licensed Operator (where the Licensed Operator's network is connected to and with the second party's Network) which excludes and limits (to the maximum extent permitted by law) any liability of the first party, its group, and their respective officers, employees, contractors and agents arising directly or indirectly from service provided by the Licensed Operator to its customer.
- 10.9 The second party agrees that under no circumstances shall any Licensed Operator (whose network is connected to and with the first party's Network), or its subsidiaries now or from time to time, or any of their respective officers, employees, contractors or agents, be liable to compensate the second party for any loss, injury, liability, damage, costs or expense arising directly or indirectly from the provision by the first party of an Interconnection Service that includes a component provided to the first party by that Licensed Operator.

11. Dispute resolution

- 11.1 For the purposes of the procedures set out in the rest of this clause 11, a **dispute** is any matter (other than a matter to be determined by the Regulator under clauses 3 and 5.2 or a matter to be determined by the independent account expert under clause 6.8) arising under or in connection with this Agreement about which the parties disagree or are unable to agree.
- 11.2 The parties may at any time give notice describing a dispute and invoking the procedures set out in the rest of this clause 11.
- 11.3 If notice under clause 11.2 is given, then:
- (a) during a maximum negotiation period of 20 Working Days from the date the notice was given, the parties shall attempt in good faith to negotiate a resolution of the dispute;
 - (b) at any time during the negotiation period, either party may give 3 Working Days' notice requiring a meeting, specifying a time and place in Port Vila for the meeting and designating its representative with authority to resolve the dispute;
 - (c) the other party shall give 1 Working Day's notice before the meeting designating its representative with authority to resolve the dispute;
 - (d) the authorised representatives shall meet at the specified time and place and as many times as necessary during the negotiation period to attempt in good faith to resolve the dispute;
 - (e) at any time during the negotiation period, the parties may agree to refer the dispute to mediation;

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- (f) a party's refusal to mediate shall not be grounds for sanction or censure, regardless of the reasons for such refusal;
- (g) unless otherwise agreed in writing, the LEADR New Zealand Inc mediation protocol, in effect at the time of the referral to mediation, shall be used and mediation shall be completed within 20 Working Days of the parties agreeing to refer the dispute to mediation;
- (h) all documents disclosed in the course of any mediation proceedings shall be used for purposes of the mediation only, and shall be returned to the party providing the documents at the termination or conclusion of the proceedings; and
- (i) unless otherwise agreed in writing, neither party may refer a dispute to arbitration before the end of the negotiation period and, if applicable, the mediation period.


11.4 If a dispute has not been resolved by the end of the negotiation period, either party may then refer the dispute, or any part of the dispute, to arbitration:

- (a) the parties agree that all disputes shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules;
- (b) the seat of the arbitration shall be Port Vila;
- (c) the parties shall take all reasonable steps to ensure the confidentiality of any arbitration, ancillary proceedings, or application for interim relief;
- (d) all documents disclosed in the course of the proceedings shall be used for purposes of the arbitration only, and shall be returned to the parties providing the documents at the conclusion of the proceedings; and
- (e) a party's refusal to mediate shall not be grounds for sanction or censure, regardless of the reasons for such refusal.

11.5 Neither party may use, other than to attempt to resolve the dispute, any information disclosed by the other in the course of negotiation, mediation or arbitration under the above procedures. Any such information remains the property of the party supplying it and remains confidential to that party. Disclosure in the course of negotiation, mediation or arbitration under the above procedures is not a waiver of confidentiality.

11.6 Neither party may disclose any such information to anyone other than an adviser or an expert witness who has entered into a deed undertaking:

- (a) not to disclose any of the information, or any analysis of the information, other than for the purposes of resolving the dispute or the negotiation, mediation or arbitration;
- (b) not to disclose any of the information, or any analysis of the information, other than to the other party, a mediator, the arbitrator or a court, except as compelled by law; and

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- (c) to return all material on which such information is recorded on completion of the adviser's or expert witness's services.

12. Miscellaneous

12.1 Any notice required to be served upon a party or given to a party shall be in writing and shall be deemed to have been served or given:

- (a) as soon as the same is personally delivered to such address as a party may notify to the other by notice;
- (b) 2 Working Days following the posting of the same by prepaid registered mail to such address;
- (c) immediately if transmission by facsimile is effected to the facsimile number set out below (or such other facsimile number as a party may notify to the other by notice); or
- (d) immediately if transmission is effected by such other electronic medium as the parties may from time to time agree in accordance with clause 12.1(a) to such place, number or code as a party may notify to the other by notice;

provided that if transmission by facsimile or other electronic means is effected after 5.00 pm on a Working Day or any time on a day other than a Working Day, then such notice shall be deemed to be given the next Working Day following the facsimile or electronic transmission.

12.2 Nothing in this Agreement shall:

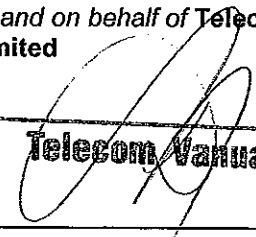
- (a) limit the right of a party:
 - (i) to enforce this Agreement by seeking an order for specific performance; or
 - (ii) to apply for an injunction;whilst the parties are participating in an arbitration under clause 11; or
 - (iii) to apply for an interim injunction in any court of competent jurisdiction;
- (b) exclude or limit any liability of a party arising under a statute from which it is prohibited by law to exclude or limit liability, to the extent of such prohibition;
- (c) exclude or limit any liability of a party to pay costs (if any) in any court proceedings, arbitration or mediation.

12.3 This Agreement is made in Vanuatu and shall be governed in all respects by and construed in accordance with the laws of Vanuatu.

12.4 This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which counterparts together shall constitute one and the same instrument.

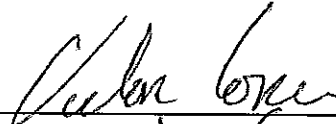
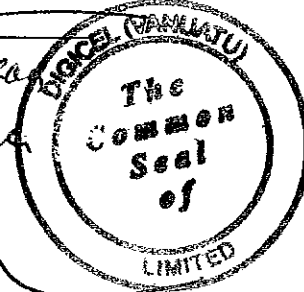
Executed as an agreement.

SIGNED for and on behalf of Telecom
Vanuatu Limited
by:



Telecom Vanuatu Limited
Name: Michel Dupuis
Title: Administrateur Directeur Général

Authorised Signatory

SIGNED for and on behalf of Digicel
(Vanuatu) Limited
by:


Name: Victor Corcoran
Title: Rollout Manager


Authorised Signatory


Ron Godfellow
Chief Financial Officer