

John Crook.


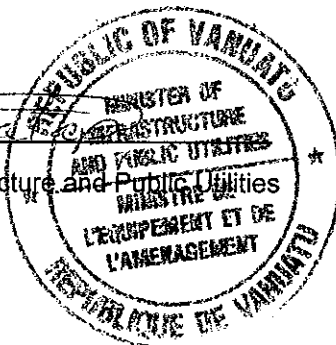
GOVERNMENT OF THE REPUBLIC OF VANUATU

TELECOMMUNICATIONS LICENCE

DIGICEL (VANUATU) LIMITED

Pursuant to the exercise of the powers conferred under section 16 of the Telecommunications Act 1989 (the **Telecommunications Act**), the Minister of Infrastructure and Public Utilities (the **Minister**) hereby grants to Digicel (Vanuatu) Limited (**Digicel**), for the period specified in clause 2 of this licence, a licence in respect of the provision of the telecommunications services referred to in clause 1 of this licence and subject to the other terms and conditions specified in this licence.

Made at Port Vila this 14th day of March 2008.

  
Minister of Infrastructure and Public Utilities  


## **1. Scope of the licence**

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### **1.1 Licence to provide telecommunications services**

This licence authorises Digicel to:

- (a) provide mobile telecommunications services to end users in Vanuatu; and
- (b) provide international telecommunications services to end users in Vanuatu, and to persons outside Vanuatu,

and any other telecommunications services that are supplementary to those telecommunications services. For the purposes of this licence, telecommunications services does not include broadcasting.

### **1.2 Licence to operate telecommunications facilities**

- (a) This licence authorises Digicel to construct and operate all telecommunications apparatus or facilities that are used to provide the telecommunications services referred to in clause 1.1 in accordance with this licence.
- (b) Where additional radio spectrum is required to construct and operate these telecommunications apparatus or facilities, then the Regulator may grant the right to use that additional radio spectrum under clause 7.

### **1.3 Non-exclusive licence**

This licence is granted to Digicel on a non-exclusive basis.

### **1.4 Functions of the Regulator**

This licence confers certain powers, duties, functions, rights and obligations on the Regulator. For the purposes of this licence, the Regulator shall be:

- (a) the person or persons appointed by the Minister to exercise the powers, duties and functions contemplated by this licence; and
- (b) until that time, the Minister.

### **1.5 Basis of the licence**

- (a) This licence is a unilateral grant of permission from the Minister on behalf of the Government of Vanuatu to provide a telecommunications service and shall not be regarded as a contract or bilateral agreement.
- (b) Nothing in this licence shall be construed to:

- (i) allow Digicel to begin or continue any activities in breach of any applicable provisions of any law, regulation, order or rule relating to the necessity, in certain circumstances, of obtaining rights of use for certain scarce resources including, without limitation, land; or
  - (ii) grant a right to Digicel to begin or continue any activities where a requirement to acquire certain rights under a law, regulation, order or rule applies to Digicel, and such rights have not been acquired.
- (c) Neither this licence, nor any rights under this licence, may be ceded, transferred, assigned, pledged or otherwise disposed of by Digicel without the prior written consent of the Minister. The Minister's consent may be made subject to such reasonable terms and conditions as the Minister may impose.

## 1.6 References to licensed operator

For the purposes of this licence, a licensed operator is a provider of telecommunications services that has received a license to provide those telecommunications services from the Minister.

## 1.7 Actions of the Regulator

The Regulator shall act in an open, non-discriminatory, objective and transparent manner in exercising its powers, duties and functions contemplated by this licence. The Regulator will, upon request by Digicel, provide reasons for its decisions. This clause 1.7 does not require the Regulator to disclose information that has been provided to it on a confidential basis.

## 2. Term

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The term of this licence shall be 15 years from the date of this licence. This licence comes into effect on a date notified by the Minister to Digicel (the **effective date**). The Minister may notify Digicel that it is permitted to undertake (after the date of this licence, but prior to the effective date and for testing purposes only) certain activities that are set out in that notice and that are expressly contemplated by the terms of this licence.

## 3. Licence Fees

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Digicel shall, within 20 Working Days following the end of each calendar quarter after the date of this licence, pay to the Regulator an amount of 2.25% of Net Revenues in relation to that calendar quarter. This amount is known in this licence as the **Licence Fee**.

For the purposes of this clause 3 and clause 8.3(c), **Net Revenues** means, in respect of any relevant period:

- (a) the gross revenue (including all interconnection revenue) received by the Digicel from the provision of telecommunications services under this licence during that period; less
- (b) the sum of:

- (i) the interconnection charges paid by Digicel to another Licensed Operator during that period;
- (ii) the out payments made by Digicel, on an arm's length basis, to any person outside Vanuatu for the carriage of telecommunications traffic that originates in Vanuatu to destinations outside Vanuatu during that period; and
- (iii) any general business licence fees (not including the Licence Fee) paid by Digicel to the Government or the Regulator during that period.

## **4. Amendment and revocation of licences**

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### **4.1 Ability to amend or revoke this licence**

The Regulator may amend the terms and conditions of, or revoke, this licence if:

- (a) the amendment or revocation has been requested or agreed to by Digicel;
- (b) Digicel has materially failed to comply with a term or condition of this licence, the Telecommunications Act, a regulation, rule or order made under that Act and has not remedied that failure within a period of 30 days after notice by the Regulator under clause 4.2;
- (c) changes to international treaties, commitments by Government to other governmental organisations or international agencies or the laws of Vanuatu require an amendment or a revocation, and then the amendment or revocation shall be only to the extent that is reasonably required as a result of such changes; or
- (d) Digicel enters into receivership or liquidation, takes any action for its voluntary winding-up or dissolution, or is the subject of any order by a competent court or tribunal for its compulsory winding-up or dissolution.

In the case of paragraph (b) above, the Regulator shall consider amending the terms and conditions of this licence, before considering revoking this licence, as a means of addressing the failure to comply.

### **4.2 Steps to be taken prior to any amendment or revocation**

Prior to amendment or revocation of this licence under clause 4.1, the Regulator shall notify Digicel in writing that it is considering the relevant action, and consider any comments made by Digicel within the time frame stated by the Regulator for comments. The notice:

- (a) shall give Digicel sufficient time to prepare comments on the relevant action, taking into account the nature of the proposed action;
- (b) shall set out any procedures the Regulator will follow in considering the relevant action; and

- (c) may invite comments from other interested parties or the general public, at the Regulator's discretion.

#### **4.3 Other matters**

- (a) If the Regulator amends or revokes a licence pursuant to this clause 4, it shall provide Digicel with sufficient time to comply with the amendment or revocation.
- (b) Where this licence is revoked or not renewed, the Regulator shall take into account continuity of service to customers and include in its order such terms and conditions as it deems appropriate.
- (c) Further procedures related to the amendment or revocation of a licence may be set out in rules or orders issued by the Regulator.

### **5. Renewal**

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#### **5.1 Renewal of the licence**

Upon application of Digicel, this licence shall be renewed by the Regulator on the same conditions, subject to clause 5.2.

#### **5.2 Renewal on different conditions, etc.**

The Regulator may renew this licence on different conditions, or deny the renewal of this licence, if:

- (a) Digicel has materially failed to comply with a term or condition of this licence, the Telecommunications Act, or any regulation, rule or order made under the Telecommunications Act and has not remedied that failure within a period of 30 days after notice by the Regulator; or
- (b) changes to international treaties, commitments by Government to other governmental organisations or international agencies or the laws of Vanuatu require a renewal on new conditions or the denial of a renewal.

### **6. Interconnection**

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#### **6.1 Development of a reference interconnection offer**

Digicel shall, within 90 days of the date of this licence, propose the terms and conditions of a reference interconnection offer for interconnection with its network. The Regulator will consult with Digicel in assessing Digicel's proposed terms and conditions and may make such changes as the Regulator may require to these terms and conditions. Once the Regulator has determined the terms and conditions, then this will become Digicel's reference interconnection offer (**RIO**).

## 6.2 Entry into interconnection agreement

Promptly upon receipt of a written request by another licensed operator, Digicel shall enter into an interconnection agreement in the form of the RIO and, once entered into, Digicel shall comply with its obligations under the interconnection agreement.

## 6.3 Right to interconnect

Digicel has the right to require any other licensed operator that has an access network in Vanuatu (that has not otherwise made a request under clause 6.2) to negotiate in good faith for the purposes of enabling the provision of telecommunications services to end users in Vanuatu, an agreement for interconnection with the telecommunications network of that licensed operator, in respect of the telecommunications services to be provided by that licensed operator to Digicel.

## 7. Radio spectrum

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### 7.1 Right to use certain radio spectrum

Digicel may use the following radio spectrum:

<b>900MHz Cellular</b>	906.7 to 914.7 MHz  951.7 to 959.7 MHz
<b>7 GHz Microwave</b>	The first three Annex 1 channels in the spectrum range 7.426 GHz to 7.725 GHz (in accordance with ITU-R F.385-7)
<b>13 GHz Microwave</b>	12.863 to 12.975 GHz  13.129 to 13.241 GHz
<b>C Band Satellite</b>	3.819 to 3.828 GHz  6.044 to 6.053 GHz

### 7.2 Right to request further radio spectrum

Digicel may, from time to time, request a further allocation of radio spectrum. The Regulator will consider such request in accordance with the Telecommunications Act.

### 7.3 Reassignment of radio spectrum

The Regulator may, solely in order to comply with international spectrum coordination requirements, ITU-R allocations or re-allocations:

- (a) reassign radio spectrum used by Digicel; or
- (b) require Digicel to surrender its rights with respect to radio spectrum which are not required for the operation of the telecommunications services provided under this licence.

In such cases, the Regulator and Digicel shall consult with each other before any such action is taken and the Regulator shall provide Digicel with adequate time and, where applicable, assign appropriate alternative spectrum, to permit Digicel to carry on its business without unreasonable costs or disruption.

#### **7.4 Approvals for radio station sites, etc.**

- (a) Digicel shall obtain approvals from the Regulator in respect of each of its radio station sites used to provide the telecommunications services provided under this licence and/or used for radio transmission links in advance of site construction.
- (b) The Regulator shall make a decision in respect of any such approvals as soon as possible, but in any event within 30 days, after receipt of an application by Digicel, setting out the geographic location, co-ordinates, radiated power, frequency assignments and any other specifications deemed necessary by the Regulator.
- (c) Digicel shall comply at all times with all applicable construction and other permit requirements and standards applicable to its business under Vanuatu law.

#### **7.5 Environmental issues**

The radiation limits of the radio emission of Digicel's radiocommunication and other network equipment must comply with:

- (a) existing Vanuatu radiation safety standards, if any; or
- (b) one or more applicable radiation safety standards, as approved by an internationally recognised health and safety standards body, determined by the Regulator.

Digicel shall install, manage and operate the radiocommunications and other equipment in its network based on:

- (c) the technical radiation limits as identified by existing Vanuatu health and safety standards bodies; or
- (d) the limits identified by one or more internationally recognised health and safety standards bodies, as determined by the Regulator.

Digicel shall take appropriate steps with respect to the installation, operation and maintenance of the network and all network specific equipment for the purposes of environmental protection within Vanuatu, including the deployment of masts, base stations and terminal devices.

## 8. Universal service

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### 8.1 Establishment of a UAP Fund

- (a) The Government will establish a Universal Access Policy Fund (the **UAP Fund**) that will be administered by the Regulator.
- (b) The UAP Fund will fund (in order of priority):
  - (i) the compensation payable to Telecom Vanuatu Limited (**TVL**) under the terms of the Settlement Agreement relating to TVL loss-making customers; and
  - (ii) annual subsidies to licensed operators awarded UAP Access Obligations under clause 8.2.
- (c) Where the UAP Fund is insufficient to meet the compensation payable to TVL under paragraph (b)(i) for any given year, the Government will make up any shortfall.
- (d) Where the UAP Fund receives donor funding and if required by the donor, the Regulator may ring-fence the amount of such donor funding exclusively for the provision of subsidies for UAP Access Obligations under clause 8.2. For the avoidance of doubt, TVL will have no claim under paragraph (b)(i) for compensation for such ring-fenced funds, except to the extent that TVL is successful in tendering for UAP Access Obligations.
- (e) The UAP Fund shall be operated out of a separate bank account from the accounts of the Government and/or the Regulator. The accounts of the UAP Fund will be subject to an annual audit by Government auditors.

### 8.2 UAP Access Obligations

- (a) The Government may, from time to time, define new voice and data access obligations for presently unserved remote communities (**UAP Access Obligations**). Prior to defining such UAP Access Obligations, the Government will consult with Digicel and all other licensed operators on appropriate quality standards for both voice and data services.
- (b) The Government may also define UAP Access Obligations in respect of relevant TVL loss-making customers where the Government has terminated compensation in respect of those customers under the Settlement Agreement.
- (c) The Government intends that all UAP Access Obligations will be competitively tendered. The Government expects that a tender will be awarded to the licensed operator, irrespective of technology used, who seeks the lowest annual subsidy from the UAP Fund in order to meet the UAP Access Obligations (however, other transparent criteria may also be relevant and, if so, will be published prior to any tender).

### 8.3 Levy of licensed operators

- (a) The Regulator will annually levy licensed operators (including Digicel) for the amount reasonably estimated as being necessary for meeting the actual or forecast allocations of



the UAP Fund for that year (a **UAP Fund Levy**). This is separate to, and in addition to, any License Fee.

- (b) Licensed operators (including Digicel) will be required to pay annually on receipt of any invoice from the Regulator a proportion of the UAP Fund, with that proportion being based on the proportion that the licensed operator's retail revenues from providing telecommunications services in Vanuatu (**retail revenues**) bears to the aggregate retail revenues of all licensed operators (as determined by the Regulator).
- (c) No licensed operator (including Digicel) will be obliged to pay a UAP Fund Levy that is greater than 4% of its Net Revenues in any single year.
- (d) Digicel's proportionate contribution to the UAP Fund in any year will not be greater than 80% of the total annual contributions of all licensed operators to the UAP Fund. Until such time as other licensed operators (as a whole) make contributions that reach 20% of the total annual contributions of all licensed operators (including Digicel) to the UAP Fund, the Government will fund any difference between the other licensed operators contributions and the amount equalling 20% of the total annual contributions of all licensed operators to the UAP Fund.

## 9. Essential services

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### 9.1 Provision of essential services

Digicel shall provide the following services (the **essential services**), twenty-four (24) hours a day, seven (7) days a week, at a reasonable level of quality (as determined by the Regulator), without discrimination:

- (a) emergency service with priority routing, enabling any member of the public to make contact, with, in particular, the police, the fire brigade and the ambulance service;
- (b) directory assistance service, enabling any subscriber to obtain a telephone number through the assistance of an operator or through automated means;
- (c) operator assistance service, enabling any subscriber to obtain assistance regarding, amongst other things, accessing services, setting up calls and remedying faults; and
- (d) such other services as may be reasonably determined by the Minister, after consultation with the Regulator, from time to time and published in the Gazette.

### 9.2 Provision of emergency service, etc., free-of-charge

The following essential services shall be provided free-of-charge by Digicel:

- (a) emergency service; and
- (b) operator assistance for remedying faults.

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This clause 9.2 applies to the extent that the essential services are not provided by one or more licensed operators pursuant to a universal service policy implemented by the Government.

## **10. Designation as a dominant service provider**

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### **10.1 Designation if greater than 40% market share**

Digicel (and any other licensed operator) will be designated a dominant service provider by the Regulator in any telecommunications market in Vanuatu if its gross revenues in that market (including services provided using an international gateway) constitutes forty per cent (40%) or more of the total gross revenues of all licensed operators in that market (as determined by the Regulator).

### **10.2 Designation if less than 40% market share**

The Regulator may designate Digicel (and any other licensed operator) to be a dominant service provider in any telecommunications market in Vanuatu with less than forty per cent (40%) of the total gross revenues in that market (including services provided using an international gateway) if the Regulator reasonably considers that, either individually or acting together with others, it enjoys a position of economic strength or controls an essential facility affording it the power to behave to an appreciable extent independently of competitors or customers in that market.

### **10.3 Determination of dominance**

If the Regulator has designated Digicel to be a dominant service provider in any telecommunications market in Vanuatu under clause 10.1 (and that designation still applies), Digicel may request that the Regulator determine whether it enjoys a position of economic strength or controls an essential facility affording it the power to behave to an appreciable extent independently of competitors or customers in that market. If the Regulator determines that Digicel does not have that strength or control, then (notwithstanding that Digicel may have greater than forty per cent (40%) of the total gross revenues in that market) Digicel shall not be a dominant service provider in that market.

### **10.4 The Regulator to specify reasons**

The Regulator will specify the reasons relied on by the Regulator to support its findings regarding dominance.

## **11. Transfer of control**

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### **11.1 Prior approval of the Regulator**

No transfer of control of Digicel shall be effected without the prior approval of the Regulator (such approval not to be unreasonably withheld) if:

- (a) a dominant service provider, or an affiliate of a dominant service provider, is:

- (i) the person ultimately acquiring control of Digicel; or
- (ii) the person whose control is being transferred, provided that:
  - (A) a transfer of control between persons that are shareholders of Digicel at the date of this licence; or
  - (B) any reorganisation of the group structures of any shareholders of Digicel at the date of this licence that does not result in any change of control of the ultimate holding company,

shall not require the approval of the Regulator; or

- (b) as a result of the transfer:
  - (i) a person, alone or with its affiliates, would control licensed operators whose gross revenues in a telecommunications market in Vanuatu (including services provided using an international gateway) constitute forty per cent (40%) or more of the total gross revenues of all licensed operators in that market; or
  - (ii) a person, alone or with its affiliates, would be in a position of economic strength affording it the power to behave to an appreciable extent independently of competitors or customers in a telecommunications market in Vanuatu.

## 11.2 Requirement for written approval

No transfer of control that requires approval under clause 11.1 shall be completed or have any legal force or effect unless the person applying for approval of the transfer has received written approval for the transfer from the Regulator in accordance with this Act.

## 11.3 Response from the Regulator

Upon receipt of a duly completed application for a transfer of control that requires approval under clause 11.1, the Regulator shall:

- (a) within 30 days of receipt of that application for transfer of control, either:
  - (i) approve the transfer of control without conditions;
  - (ii) approve the transfer of control with such conditions as are reasonably related to promoting the development of open and competitive telecommunications markets in Vanuatu, and maximising the benefits of the transaction for telecommunications end users in the long-term;
  - (iii) deny the transfer of control; or
  - (iv) issue a notice initiating an investigation of the proposed transfer of control; and

- (b) where a notice has been issued under paragraph (a)(iv) above, complete that investigation within 90 days of the date the notice has been issued and, following such investigation, take one of the actions set out in paragraph (a)(i) to (iii) above .

## **12. Anti-competitive practices**

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### **12.1 Abuse of a dominant position**

If Digicel is a dominant service provider in any telecommunications market in Vanuatu, Digicel shall not abuse its dominant position in that market. Without limitation, the following types of actions and activities shall prima facie be considered to be abuse of a dominant position:

- (a) failing to supply essential facilities to a competitor within a reasonable time after a request and on reasonable conditions, or discriminating in the provision of interconnection or other telecommunications services or facilities to other licensed operators; except under circumstances that are objectively justified based on differences in supply conditions, including different costs or a shortage of available facilities or resources;
- (b) bundling of telecommunications services, whereby Digicel requires, as a condition of supplying a service to a competitor, that the competitor acquire another service that it does not require, where it is technically and economically feasible to unbundle the telecommunications service required by the competitor;
- (c) offering another licensed operator more favourable terms or conditions that are not justified by cost differences if it acquires another service that it does not require;
- (d) supplying competitive telecommunications services at prices below variable costs (or such other cost standard as is established by the Regulator) for an extended period of time as determined by the Regulator;
- (e) using revenues or the allocation of costs from one telecommunications service to cross-subsidise a more competitive telecommunications service, except where such cross subsidy is specifically approved by order of the Regulator or by approval of tariffs for relevant telecommunications services;
- (f) deliberately and intentionally reducing the margin of profit available to another licensed operator that acquires or seeks wholesale telecommunications services from Digicel, by increasing the prices for the wholesale telecommunications services provided to that licensed operator, or decreasing the prices of the retail telecommunications services in markets where they compete, or both; and
- (g) failing to make available to other licensed operators within a reasonable period of time technical specifications, information about essential facilities, or other commercially relevant information which is required by such other licensed operators to provide telecommunications services and which is not available from other sources.

### **12.2 Other anti-competitive practices**

Digicel shall not engage in a practice which has the purpose, effect, or is likely to have the effect, of substantially lessening competition in a telecommunications market. Without

limitation, activities which prima facie have the effect of substantially lessening competition in a telecommunications market include the following:

- (a) contracts, arrangements or understandings between Digicel and one or more licensed operators that directly or indirectly fix the prices or other terms or conditions of a telecommunications service in telecommunications markets;
- (b) contracts, arrangements or understandings between Digicel and one or more licensed operators that directly or indirectly determine which person will win a contract or business opportunity in a telecommunications market;
- (c) contracts, arrangements or understandings between Digicel and one or more licensed operators to apportion, share or allocate telecommunications markets among themselves or other licensed operators;
- (d) adopting technical specifications for networks or systems to deliberately prevent interoperability with a network or system of Digicel;
- (e) using information obtained from another licensed operator, for purposes related to interconnection or supply of telecommunications services by Digicel, to compete with such licensed operators; and
- (f) requiring or inducing a supplier to refrain from selling to another licensed operator.

### **12.3 Determination of abuse of dominance and anti-competitive practices**

The Regulator may, on application by any person, or on its own initiative, determine:

- (a) whether or not the actions or activities of Digicel, if Digicel is a dominant service provider, constitute abuse of its dominant position, within the meaning of clause 12.1;
- (b) whether or not the actions or activities of Digicel amount to an anti-competitive practice within the meaning of clause 12.2; and
- (c) that an action or activity of Digicel under clauses 12.1 or 12.2 is authorised and shall not be considered to contravene this licence, on the grounds that such actions or activities are in the public interest and are otherwise consistent with the objectives listed in section 14 of the Telecommunications Act.

### **12.4 Remedies for abuse of dominance and anti-competitive practices**

If the Regulator determines that, in a particular case, or in a number of cases, the actions or activities of Digicel constitute an abuse of its dominant position under clause 12.1 or an anti-competitive practice under clause 12.2, the Regulator may issue an order to:

- (a) require Digicel to take one or more of the following actions:
  - (i) cease the actions or activities specified in the order immediately, or at such time prescribed in the order, and subject to such conditions prescribed in the order; and

- (ii) make specific changes in actions or activities specified in the order, as a means of eliminating or reducing the abusive or anti-competitive impact;
- (b) impose a fine for breach of this licence pursuant to clause 20;
- (c) require Digicel, and the persons affected by such actions, activities or practices to meet and attempt to determine remedies to prevent or eliminate continuation of such actions, activities or practices, and to resolve any remaining dispute;
- (d) require Digicel to publish an acknowledgement and apology for such actions, activities or practice in Bislama, French and English languages in the Vanuatu Daily Post and one other newspaper of general circulation in Vanuatu, in such a form and at such times as the Regulator specifies in the order; and
- (e) require Digicel to provide periodic reports to the Regulator to assist in determining whether the actions or activities are continuing and to determine their impact on telecommunications markets, competitors and customers.

## 12.5 Enforcement of order

The Regulator may apply to the Supreme Court of Vanuatu to enforce an order made in accordance with clause 12.4.

## 13. Tariff filing and approval

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### 13.1 Filing of tariffs etc.

- (a) Digicel shall file with the Regulator all tariffs, rates or charges for telecommunications services that are provided by Digicel.
- (b) If:
  - (i) Digicel is a dominant service provider in a fixed or (subject to paragraph (c)) a mobile telecommunications market in Vanuatu; and
  - (ii) if required at any time by order of the Regulator,it must, in addition to complying with the requirements of paragraph (a) and subject to paragraph (c), obtain the Regulator's prior approval for all increases in any tariffs, rates or charges Digicel intends to charge for telecommunications services provided in that market.
- (c) The Regulator may make an order in relation to a mobile telecommunications market determined by the Regulator only if the per minute charges of Digicel's most expensive pre-paid calling package (based on per minute charges) have increased, over a period of a year, more than 20% (in the Regulator's opinion).
- (d) The Regulator will not refuse any increase in any tariffs, rates or charges Digicel intends to charge for calls originating from any network of Digicel that are handed over to any

network of any licensed operator, where the Regulator determines that the increase is necessary to ensure that Digicel maintains a reasonable commercial margin over the interconnection charges that Digicel must pay to that licensed operator for calls originating from its network. For the avoidance of doubt, in making this determination, the Regulator will take into account any differences that may exist between the rounding of call duration for interconnection charges and the rounding of call duration for Digicel's retail tariffs, rates or charges and the impact that these differences have on Digicel's commercial margin for calls originating from its network.

- (e) Tariffs that are subject to approval by the Regulator shall enter into force only after they have been approved by an order of the Regulator. Any agreement or arrangement between Digicel and any customer to apply such a tariff other than one approved by the Regulator shall have no legal effect.
- (f) Digicel shall not charge or accept tariffs, rates, charges, or other consideration, terms or conditions that are contrary to the provisions of an applicable tariff approved by the Regulator.
- (g) For the purposes of this clause 13, tariffs, rates and charges do not include interconnection charges, which are subject to clause 6.

### **13.2 Removal of requirement to file or obtain approval**

The Regulator may issue an order to remove any requirement for Digicel to file and/or obtain approval of tariffs under this clause 13 where the Regulator determines that:

- (a) competitive market forces will be sufficient to protect the interests of customers; and
- (b) there is not a significant risk of harm to competitive markets as a result of the removal of the requirement to file and obtain approval of tariffs.

## **14. Staffing**

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### **14.1 Employment of Vanuatu nationals**

Digicel shall employ Vanuatu nationals in the business of the company and in all ancillary and related activities, except where the employment on secondment to Digicel of non-Vanuatu nationals is necessary for the proper running and management of the business of the company.

### **14.2 Permits for non-Vanuatu nationals**

The Minister shall ensure that all necessary residency and work permits for non-Vanuatu nationals on secondment to Digicel shall be granted promptly.

## **15. Fair dealing practices**

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### **15.1 Charging**

Digicel shall only charge a customer for the specific telecommunications service or equipment that the customer has ordered. The customer shall have no liability to pay for any telecommunications service or equipment that the customer has not ordered.

## **15.2 Invoicing**

Except in the case of pre-paid services where invoices are not provided, Digicel shall provide customers with invoices:

- (a) in writing (although they may be provided electronically if the customer consents);
- (b) on a regular basis;
- (c) in a plain and simple format;
- (d) that provide accurate information on the services provided and the amounts due for each service;
- (e) that clearly indicate the method of calculation of tariffs for any service for which invoices are based on the length of calls or other measure of usage; and
- (f) that comply with this licence and any regulations, rules, and orders dealing with customer invoices.

## **15.3 False and misleading claims**

Digicel shall not make, or cause to be made, any false or misleading claim or suggestion regarding:

- (a) the availability, price or quality of its telecommunications services or equipment; or
- (b) the telecommunications services or equipment of another licensed operator.

For the purposes of this clause 15.3, a claim or suggestion is misleading if, at the time it was made, Digicel knew or reasonably ought to have known that it was false or misleading in any material respect or that it was reasonably likely to confuse or mislead the person to whom it was made.

## **16. Confidentiality of customer information**

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### **16.1 Confidentiality of customer information**

Digicel shall not disclose customer information other than the customer's name, address and listed telephone number to anyone without the customer's written consent or unless disclosure is required or permitted by the Regulator or by law to another legally authorised public authority.

### **16.2 Confidentiality of customer communications**



Digicel shall take all reasonable steps to ensure the confidentiality of customer communications.

### **16.3 Protection of personal information**

Digicel shall be responsible for customer information and customer communications in the custody or control of Digicel or its agents. Digicel shall operate its telecommunications services with due regard for the privacy of its customers. Except as permitted or required by law, or with the consent of the person to whom the personal information relates, Digicel shall not collect, use, maintain or disclose customer information or customer communications for any purpose.

### **16.4 Access by Government authorities**

Nothing in this licence shall be interpreted to prohibit or infringe upon the rights of interested Government authorities to exercise their lawful rights to access otherwise confidential information or communications relating to a customer. Such access shall be made in accordance with the laws of Vanuatu.

### **16.5 Customer complaints**

- (a) Digicel shall identify a specific person or group of persons to receive complaints from customers other than licensed operators.
- (b) Digicel shall establish procedures to deal with complaints of customers other than licensed operators. The procedures, and any amendments to the procedures, shall be subject to approval by the Regulator. The procedures shall be published in a suitable manner that is approved by the Regulator.
- (c) Digicel shall not disconnect or otherwise change any of the telecommunications services then being provided to a customer and which are the subject of a complaint or dispute, other than in accordance with the Terms of Service approved by the Regulator pursuant to clause 16.7 or as permitted by order made by the Regulator.

### **16.6 Terms of Service**

- (a) The Regulator may issue an order requiring Digicel to submit draft Terms of Service to the Regulator for approval. The order shall prescribe the schedule for preparation, approval and implementation of the Terms of Service.
- (b) Draft Terms of Service must be consistent with this licence, the rules, licence conditions and orders made by the Regulator, and shall describe the basic terms of the business relationship between Digicel and its customers in the provision and use of telecommunications services.
- (c) The Regulator shall approve all draft Terms of Service with or without changes, after consultation with Digicel and other interested parties, as determined by the Regulator. Once approved, these Terms of Service will replace the customer Terms of Service then in use by Digicel and shall become binding on Digicel and its customers.

### **16.7 Quality of service**

If the Regulator requires, Digicel, if it is a dominant service provider in any telecommunications market in Vanuatu, shall provide telecommunications services in that market that meet specific quality of service standards. These standards shall be developed by the Regulator in consultation with Digicel and will be consistent with internationally recognised standards.

## **17. Numbering**

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### **17.1 Use of numbers**

- (a) Digicel and its customers shall not have any property rights in numbers.
- (b) Digicel shall only change a customer's number:
  - (i) on request of the customer;
  - (ii) if a fixed service customer's location changes (for these purposes, a "fixed service customer" means a customer who normally receives a particular telecommunications service in a fixed geographic location); or
  - (iii) if it has reasonable grounds for doing so and if it has given reasonable advance written notice to the customer in question, stating the reason and anticipated date of change. In cases of emergency, oral notice with subsequent written confirmation shall be sufficient.

### **17.2 Allocation of numbers**

- (a) The Regulator will allocate blocks of numbers to Digicel in accordance with the national numbering plan. All allocations of numbers shall be made under non-discriminatory terms and conditions by the Regulator upon request by Digicel and other licensed operators for services they reasonably anticipate providing in the foreseeable future.
- (b) Digicel will in turn allocate individual numbers to customers and maintain suitable records of utilisation of numbering capacity.
- (c) Digicel and other licensed operators will be required to reprogram or re-engineer their networks to convey calls or messages to numbers in a newly allocated block, either directly to customers on the same network or via points of interconnection with other licensed operators' networks.
- (d) Any mobile numbers used by Digicel will have seven-digits with a leading number of "5".

### **17.3 Number portability**

- (a) The Regulator may, after consultation with Digicel and other interested parties, issue an order directing Digicel and other licensed operators to develop or to assist in the development of a number portability implementation plan, for approval and implementation by order of the Regulator. Any such order shall not take effect earlier than the date that is two years from the date of this licence.

**23. Governing law**

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This licence shall be governed in all respects by and construed in accordance with the laws of Vanuatu.

- (b) In considering whether to implement number portability, the Regulator shall have due regard to the costs and benefits of such portability, and the availability of technology that permits such portability in Vanuatu on a cost-effective basis.
- (c) The costs of introducing number portability systems and the ongoing costs of administering number portability shall be recovered from Digicel and other licensed operators in accordance with applicable rules or orders made by the Regulator.

#### **17.4 Service provider selection**

- (a) The Regulator may, after consultation with Digicel and other interested parties, issue an order directing Digicel and other licensed operators to develop or to assist in the development of a service provider selection or service provider pre-selection plan, for approval and implementation by order of the Regulator. Any such order shall not take effect earlier than the date that is one year from the date of this licence.
- (b) In considering whether to implement service provider selection or service provider pre-selection, the Regulator shall have due regard to the costs and benefits of such capabilities, and the availability of technology that permits the intended capabilities on a cost-effective basis.
- (c) The costs of introducing service provider selection or service provider pre-selection systems and the ongoing costs of administering service provider selection or service provider pre-selection shall be recovered from Digicel and other licensed operators in accordance with applicable rules or orders made by the Regulator.

### **18. Access to property**

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#### **18.1 Access to Government land and facilities**

Where Digicel cannot, on commercially reasonable terms:

- (a) obtain the consent of the Government authority having jurisdiction over Government land or a Government facility to construct, maintain or operate telecommunications facilities on that Government land or facility; or
- (b) gain access to the pole, duct, tower or other supporting structure of a telecommunications, electrical power, or other utility transmission system constructed on Government land or a Government facility, that is owned or controlled by a Government authority,

Digicel may apply to the Regulator for assistance. Upon receipt of an application for assistance in accordance with this clause 18.1, the Regulator shall consult with the concerned Government department or organisation and attempt to find a solution acceptable to both Digicel and the Government department or organisation.

#### **18.2 Access to private land and facilities**

Where Digicel:

- (a) requires access to private land or private facilities to provide telecommunications services; and
- (b) cannot, on commercially reasonable terms, reach an agreement with the lessee of the private land or private facility.

Digicel may apply to the Regulator for assistance either in reaching an agreement with the lessee of the private land or private facility or for the exercise of other powers to obtain the desired access. Upon receipt of an application for assistance in accordance with this clause 18.2, the Regulator shall take the steps it deems necessary to assist the concerned parties to reach agreement.

### **18.3 Access to customary land and facilities**

Where Digicel:

- (a) requires access to customary land or facilities located on customary land to provide telecommunications services; and
- (b) cannot, on commercially reasonable terms, reach an agreement with the owner of the customary land or facilities,

Digicel may apply to the Regulator for assistance either in reaching an agreement with the owner of the customary land or facilities or for the exercise of other powers to obtain the desired access. Upon receipt of an application for assistance in accordance with this clause 18.3, the Regulator shall take the steps it deems necessary to assist the concerned parties to reach agreement.

## **19. Disputes**

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### **19.1 Licensed operator disputes**

Where Digicel and other licensed operators have been unable to agree on the resolution of a matter governed by this licence or the laws of Vanuatu, then following reasonable efforts to reach an amicable settlement, Digicel or one or more of the other licensed operators may apply to the Regulator for assistance in resolving the dispute.

### **19.2 Customer disputes**

Where a Digicel customer has a dispute with Digicel that the parties have been unable to resolve among themselves, by means of Digicel's customer complaint process or otherwise, either party may refer the dispute to the Regulator for assistance.

## **20. Monitoring and enforcement**

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### **20.1 Monitoring**

In addition to any other powers contained in this licence, any regulations, rules, licences or under any other laws, the Regulator shall, for the purposes of exercising his or her responsibilities, functions and powers under this licence, have the power to make orders to:

- (a) require the production of documents and information by Digicel and any other persons, subject to reasonable restrictions on the making public of any such documents or information;
- (b) search Digicel's premises and seize documents, equipment and other items;
- (c) require attendance and examination of Digicel personnel as witnesses; and
- (d) require Digicel to undertake specific actions or to cease specific actions in the event of a breach of this licence, any regulation, rule or order.

## 20.2 Maintaining books

- (a) Digicel shall at all times, at its principal place of business in Vanuatu, keep accurate and up-to-date all proper books of account in accordance with international generally accepted accounting principles (GAAP), Vanuatu law and good business practices.
- (b) All financial information submitted by Digicel to the Regulator for any purpose shall be prepared and presented in accordance with GAAP or as the Regulator shall direct, provided that such direction does not result in any unreasonable additional costs being incurred by Digicel.

## 20.3 Fines

- (a) Without limiting any other right or remedy available to the Regulator at law, if Digicel fails to comply with any of its material obligations under this licence, Digicel shall be subject to a maximum fine payable to the Regulator in an amount not to exceed 300 million vatu (which will be increased at the end of each calendar year by the rate of inflation) in respect of each such compliance failure.
- (b) The amount of any sanction imposed pursuant to this clause 20.3 shall be, among other things:
  - (i) proportionate to Digicel's compliance failure; and
  - (ii) determined with reference to the severity, frequency and wilfulness of Digicel's non-compliance and any co-operation Digicel has provided to the Regulator in relation to the non-compliance.

## 20.4 Interest

Without limiting any other right or remedy available to the Regulator at law, if Digicel fails to make payment of any amount of fee, fine or penalty to the Regulator pursuant to this licence, interest shall accrue and be payable monthly in arrears on the outstanding amount, including accrued interest, at the rate of 12% per annum.

## 20.5 Rights of appeal or review

Nothing in this licence is intended to limit in any way any rights of appeal or review which Digicel may have available to it under the laws of Vanuatu.

## 21. Force majeure

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### 21.1 Force Majeure event

Subject to the other provisions of this clause 21, if Digicel fails to observe or perform any of its obligations under this licence (other than an obligation to make payment), and such failure shall have been caused by reason of Force Majeure, such failure shall be deemed not to be a breach of such obligation.

### 21.2 Meaning of Force Majeure

In this licence, **Force Majeure** means any:

- (a) act of God;
- (b) confiscation or expropriation;
- (c) embargo;
- (d) public mains electrical supply failure;
- (e) fire, flood or storm;
- (f) explosion or nuclear accident;
- (g) sabotage, revolution, riot, terrorism, act of war (whether declared or not) or warlike operations;
- (h) requirement or restriction of governmental authorities (but, for the avoidance of doubt, not including any determination of the Regulator):
  - (i) by which, or as a result of which, it is illegal for a party to observe or perform an obligation under this licence; or
  - (ii) which frustrates the observance or performance of that obligation:
- (i) earthquake, land slide or volcanic eruption;
- (j) epidemic or quarantine restriction;
- (k) strike, lockout, work stoppage or other labour hindrance;

in each case, beyond the reasonable control of Digicel.

### **21.3 Circumstances where cannot claim benefit of Force Majeure**

Digicel shall not be entitled to the benefit of the provisions of clause 21.1 under any or all of the following circumstances:

- (a) to the extent that the failure was caused by, or reasonably could have been prevented if it were not for, the contributory negligence of Digicel;
- (b) to the extent that the failure was caused by, or reasonably could have been prevented if it were not for, a failure or omission of Digicel, and Digicel has failed to mitigate or remedy the event relied upon, and to resume the observance or performance of the particular obligation, with reasonable dispatch;
- (c) Digicel has failed to mitigate or remedy the event relied upon, and to resume the observance or performance of the particular obligation, with reasonable dispatch;
- (d) if the failure was caused by lack of funds of Digicel or its group;
- (e) unless, as soon as possible after the happening of the event relied upon or as soon as possible after determining that the event was in the nature of Force Majeure and would affect the ability of Digicel to observe or perform the particular obligation, Digicel shall have served on the Regulator notice to the effect that it is unable by reason of Force Majeure (the nature of which shall be specified in the notice) to observe or perform the particular obligation (the nature of which shall also be specified in the notice); or
- (f) if, and to the extent that, the particular obligation may be observed or performed notwithstanding the Force Majeure.

### **21.4 Remedy of the Force Majeure event**

Digicel shall:

- (a) immediately use all reasonable endeavours to remedy the Force Majeure;
- (b) serve notice on the Regulator of the event and the likely effect of the event as soon as reasonably practicable after it becomes aware of the event; and
- (c) serve notice on the Regulator, as soon as possible after the Force Majeure shall have been remedied, to the effect that the same has been remedied and Digicel has resumed, or is then in a position to resume, the observance or performance of the particular obligation.

## **22. Coverage obligation and Performance Bond**

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### **22.1 Service coverage**



Digicel shall provide digital cellular voice telephony and SMS services by means of a GSM network (**service coverage**) as follows:

- (a) during the period:
  - (i) from the date that is six months following the date on which Digicel 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) (that second date being the **Launch Date**);
  - (ii) until the date that is eighteen months following the Launch Date,

Digicel shall provide service coverage to at least 75% of the population of Vanuatu, based on the then most recent official population census; and

- (b) during the period:
  - (i) from the date that is eighteen months following the Launch Date;
  - (ii) until the end of the term of this licence,

Digicel shall provide service coverage to at least 85% of the population of Vanuatu, based on the then most recent official population census.

## 22.2 Performance Bond

- (a) On the date of this licence, Digicel shall provide to the Minister a performance bond to guarantee compliance with its obligations in clause 22.1 in substantially the form set out in the Appendix (the **Performance Bond**).
- (b) If Digicel fails to comply with clause 22.1, the Minister shall notify Digicel that it intends to exercise the Performance Bond or take any other enforcement action against Digicel, by a specified date unless Digicel complies with clause 22.1 by that date.
- (c) If, by the date notified by the Minister under paragraph (b), Digicel has failed to comply with clause 22.1 to the Minister's reasonable satisfaction, the Minister may exercise the Performance Bond.
- (d) The Minister may exercise any amount of the Performance Bond under paragraph (c), on any number of occasions where the conditions in paragraph (b) are met, until such time as the total amount guaranteed by the Performance Bond has been paid to the Minister.
- (e) If, at any time during the term of this licence, the total amount guaranteed by the Performance Bond has been paid to the Minister, the Minister may require Digicel to provide a new Performance Bond to guarantee compliance with its obligations under clause 22.1 for the remaining period of the term. Digicel shall comply with any such requirement, provided that the total guaranteed amount of any new Performance Bond given under this paragraph (e) shall not exceed the total amount guaranteed in the previous Performance Bond.

**23. Governing law**

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This licence shall be governed in all respects by and construed in accordance with the laws of Vanuatu.

## APPENDIX

### PERFORMANCE BOND – FORM OF GUARANTEE

To: The Minister of Public Infrastructure and Utilities (the **Minister**)

By: [Name of Bank] (the **Guarantor**)

#### BACKGROUND:

- A. The Minister has issued Digicel (Vanuatu) Limited (**Digicel**) a telecommunications licence on or about the date of this guarantee pursuant to the Telecommunications Act 1989 (the **Licence**), granting Digicel the right to provide certain telecommunications services in the Republic of Vanuatu.
- B. The Licence requires that Digicel provide to the Minister a bank guarantee by a reputable bank for the sum specified in the Licence as security for compliance with Digicel's obligations in clause 22.1 of the Licence.
- C. The Guarantor is a bank operating in Vanuatu, and has agreed with Digicel to provide a guarantee to the Minister, on the terms of this guarantee.

#### THEREFORE:

1. The Guarantor:

- (a) affirms that it is guarantor and responsible to the Minister, on behalf of Digicel, for a total of:
- (i) until the date that the Minister has confirmed to the Guarantor that Digicel has provided service coverage to at least 75% of the population of Vanuatu, based on the then most recent official population census (the **initial confirmation date**): US\$4 million; and
  - (ii) from the initial confirmation date until the date that the Minister has confirmed to the Guarantor that Digicel has provided service coverage to at least 85% of the population of Vanuatu, based on the then most recent official population census (the **subsequent confirmation date**): US\$2 million,

each such amount, in respect of the relevant period, being the **Guaranteed Amount**;

- (b) affirms that the Guaranteed Amount, or any part thereof, may be demanded by the Minister at any time on or before the expiry of the Licence; and

- (c) undertakes irrevocably and unconditionally to pay to the Minister immediately, upon his or her first written demand declaring Digicel to be in default of its obligations in clause 22.1 of the Licence, any sum or sums to a maximum amount of the Guaranteed Amount, without the Minister needing to prove or to show any grounds or provide any reasons for his or her demand,

(the **Guarantee**).

2. The Guarantee is valid until the earlier of:

- (a) the date on which all of the Guaranteed Amount has been paid by the Guarantor to the Minister pursuant to one or more demands made under this Guarantee;
- (b) the date of expiry of the Licence; or
- (c) the date this Guarantee is revoked by written agreement between the Minister and the Guarantor,

(the **Expiry Date**).

**EXECUTED** as a deed

Signature and seal of the Guarantor:

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*[name of bank or financial institution]*

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*[address]*

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*[date]*