

22 October 2021

Mr. Kila Gulo-Vui
Chief Executive Officer
National Information and Communications Technology Authority
P. O Box 8222
BOROKO 111
National Capital District

Dear Mr. Gulo-Vui,

**RE: RESPONSE TO COMMENTS REPORT PUBLIC CONSULTATION ON DATACO'S
REFERENCE INTERCONNECTION OFFER (RIO)**

We refer to your letter of 24 September 2021 including NICTA staff response to the submissions received from interested parties on the Discussion Paper (copy **enclosed**).

We have considered the comments and responses made and have undertaken some further amendments to the RIO which we hope are now satisfactory to NICTA in order to bring it to finalisation. The changes we have undertaken are as follows:

- 1) Clause 3.3 – Every 1st of January each year, the prices set out in Annexure A of the MSA shall be reviewed in accordance with a review conducted prior to that date. It also allows for any changes to rates to be incorporated into the Service Agreement as soon as they are in effect.
- 2) Clause 3.4 – A customer can be able to set a period or term for the MSA that is either 12 months or such other period as may be agreed with DataCo.
- 3) Clause 7.6 (c) – The price in Annexure A is to be reviewed annually in such time for variations to be made and to come into effect from 1st January of each year covered by the RIO unless otherwise approved by NICTA.
- 4) Clause 9.1 - Customer may upon fifteen (15) days written notice to DataCo require DataCo to suspend a Service provided under a Service Agreement for cause, and where it is reasonable to do so having regard to the other options available to Customer.
- 5) Clause 10.1 - DataCo may terminate a Service Agreement to Customer for reasonable justification, and where it is reasonable to do so having regard to the other options available to DataCo.
- 6) Clause 10.3(a) – DataCo may terminate if customer fails to make payment of amounts under a Service Agreement after being provided notice of it and if applicable after resolution of a billing dispute. DataCo may also terminate where customer fails to cease a violating activity even after being given reasonable notice of such violation.
- 7) Clause 18.9 – An assignment may be done with the written consent of the other party. Consent not to be unreasonably withheld.

yes, you'll be covered



Level 1, Wokples Building, Savannah Heights, Waigani, NCD,
P.O Box 1744, Port Moresby, NCD, Papua New Guinea
Telephone: (675) 3133900 / 3133901
Email: dataco@pngdataco.com

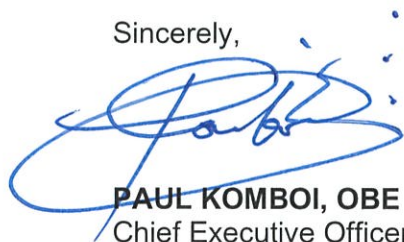


- 8) Annexure A – RIO pricing offer has being reviewed for WIS with a reduction of up to 12.6% at the lower capacities and for P2P Metro all price breaks have being reduced between 66%-94% across all capacities. Refer to Attachment '1' for the revised pricing.

Find **enclosed is** a copy of the revised RIO which captures the changes summarised above.

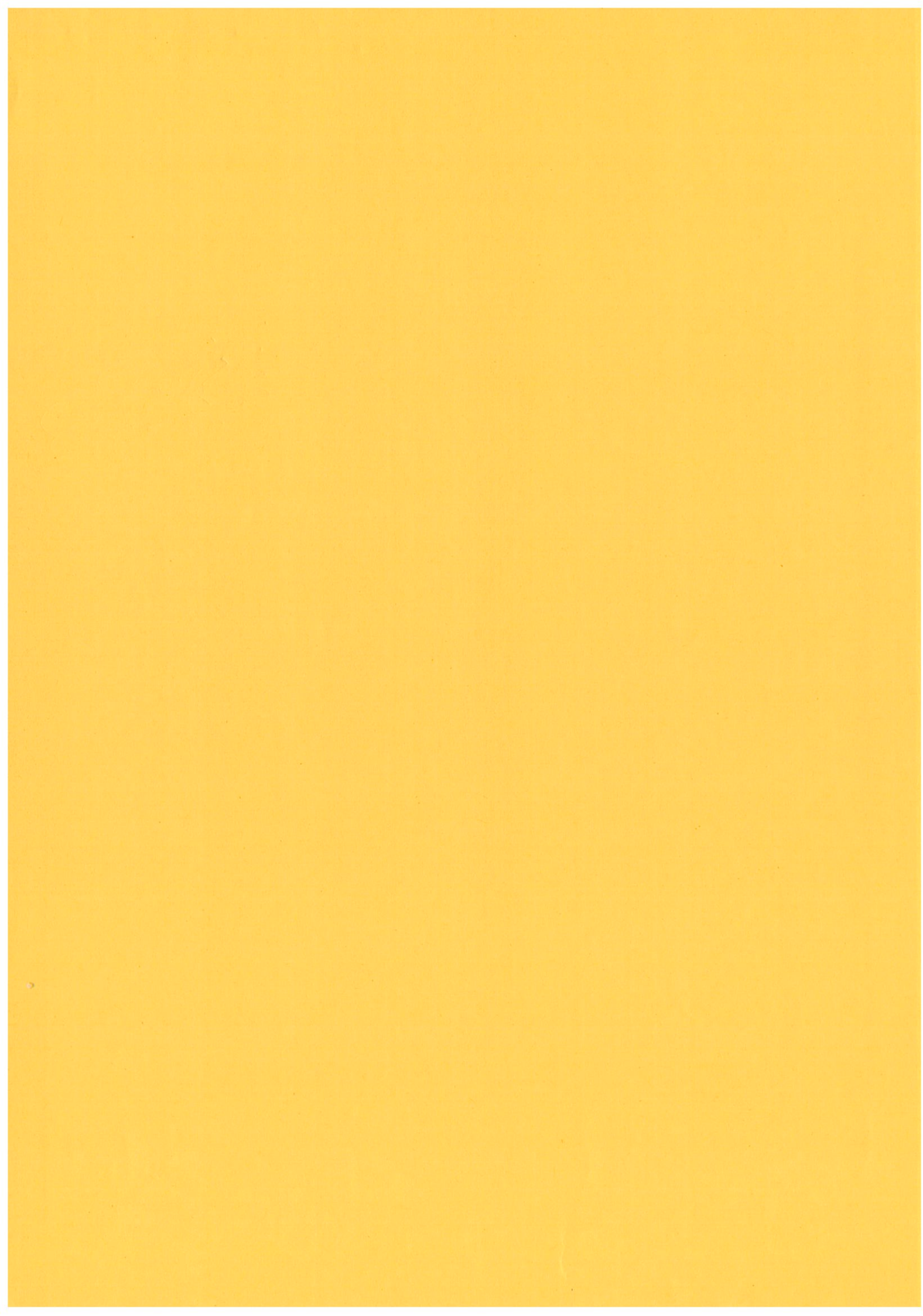
Please do contact our Mr Une O'ome, General Manager Commercial Services on email uome@pngdataco.com or phone 3133900 if you wish to discuss this matter.

Sincerely,



PAUL KOMBOI, OBE
Chief Executive Officer

Encl.



Jan 2021 pricing
RIO

SERVICE PRICING OFFER

RIO PRICING OFFER

Effective 1 January 2022
(reduce 300Mbps by 12.6%, 500 Mbps by 9.9%, 1000 Mbps by 7.5% and 2000Mbps by 4.9%)

Service	Capacity (Mbps) from	Unit Price/Month (PGK)	Conditions
Wholesale Internet Service (WIS)	-	309	1. WIS over Fibre can be delivered in all locations were DataCo has a fibre PoP. 2. The Service can be delivered to customer's single PoP. 3. This service is protected in the core network only. Other Protection requirements will be at an additional cost.
	500	294	
	1,000	280	
	2,000	263	
	5,000	235	
	10,000	223	
	20,000	223	
	50,000	223	
	100,000	223	

Capacity (Mbps) from	Unit Price/Month (PGK)	% Reduction
-	270	-12.6%
500	265	-9.9%
1,000	259	-7.5%
2,000	251	-4.6%
5,000	235	
10,000	223	
20,000	199	
50,000	177	
100,000	168	

Domestic P2P Metro -over Fibre delivered to Customer Premises	-	145	1. DP2P-M1 over Fibre can be delivered in all locations were DataCo has a fibre PoP. 2. The Service can be delivered to customer's single PoP. 3. This service is unprotected. Protection will be at additional cost.
	10	145	
	50	145	
	100	100	
	150	70	
	300	60	
	500	52	
	1,000	40	
	2,000	30	
	5,000	20	
	10,000	16	
	20,000	16	
	50,000	16	
	100,000	16	

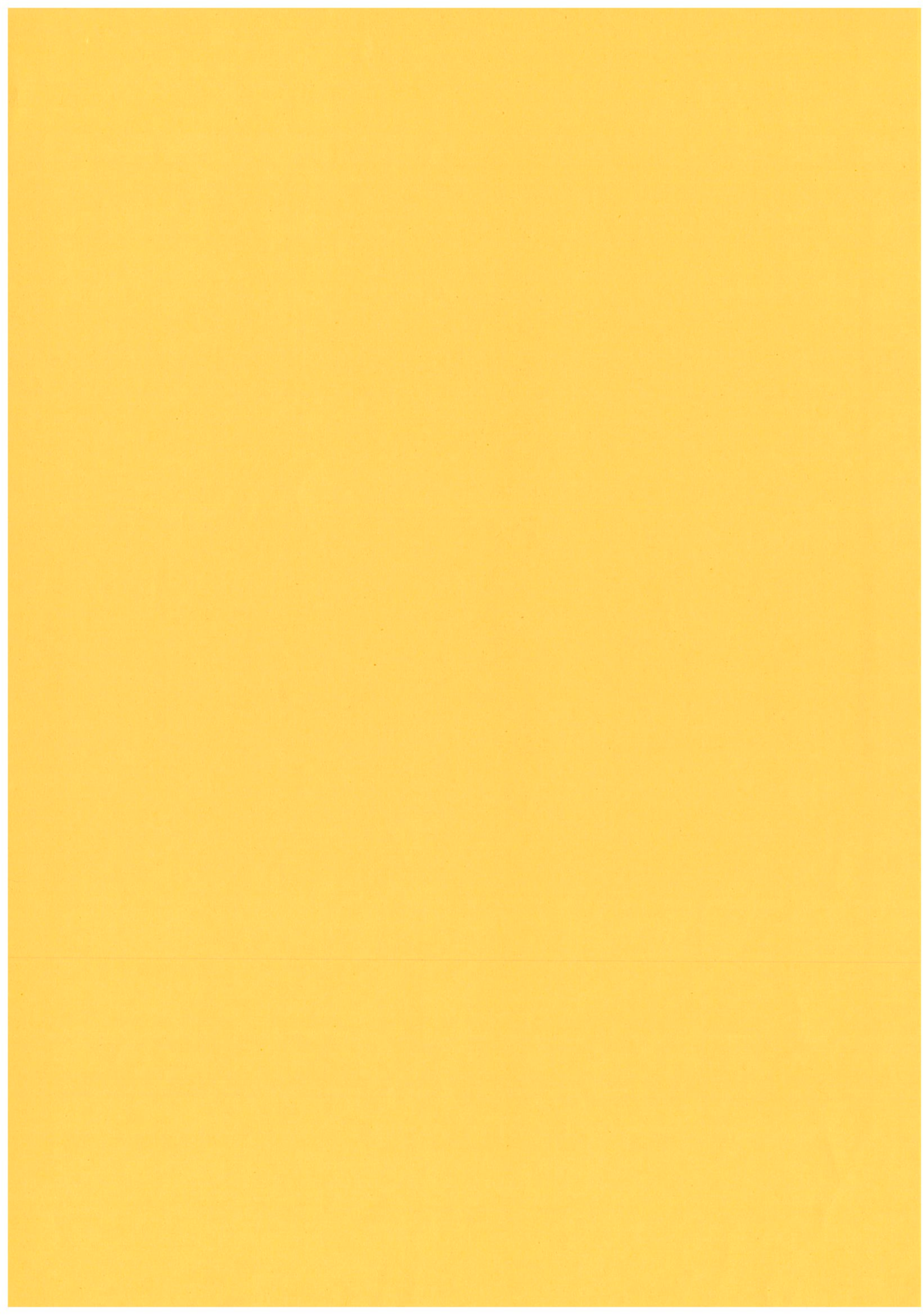
-	49.5	-65.9%
10	49.5	-65.9%
50	49.5	-65.9%
100	34.2	-65.8%
150	23.8	-65.8%
300	20.5	-65.8%
500	17.8	-65.8%
1,000	11.6	-71.0%
2,000	8.0	-73.3%
5,000	5.6	-72.0%
10,000	3.9	-75.6%
20,000	2.7	-83.1%
50,000	1.6	-90.0%
100,000	1.0	-93.8%

Domestic P2P Longhaul (DP2P-LH) over Fibre delivered to Customer Premises	-	400	1. DP2P-LH over Fibre can be delivered in all locations were DataCo has a fibre PoP. 2. The Service can be delivered to customer's single PoP. 3. This service is unprotected. Protection will be at additional cost.
	10	400	
	50	340	
	100	300	
	150	283	
	300	266	
	500	246	
	1,000	225	
	2,000	214	
	5,000	191	
	10,000	191	
	20,000	191	
	50,000	191	
	100,000	191	

-	400	
10	400	
50	340	
100	300	
150	283	
300	266	
500	246	
1,000	225	
2,000	214	
5,000	191	
10,000	169	
20,000	152	
50,000	135	
100,000	118	

International P2P (IP2P) over Subsea Fibre delivered to at the CLS	-	380	1. IP2P Product over Subsea Fibre is only delivered in Madang and Port Moresby. 2. The Service is only delivered between Cable Landing Stations (Kila-Pad and Mad-GS). 3. DataCo can deliver to customers premise and to other international PoP but at additional cost. 4. This service is unprotected. Protection will be at additional cost.
	10	380	
	50	323	
	100	285	
	150	269	
	300	253	
	500	234	
	1,000	214	
	2,000	203	
	5,000	182	
	10,000	160	
	20,000	144	
	50,000	128	
	100,000	112	

-	380	
10	380	
50	323	
100	285	
150	269	
300	253	
500	234	
1,000	214	
2,000	203	
5,000	182	
10,000	160	
20,000	144	
50,000	128	
100,000	112	



MASTER SERVICE AGREEMENT

This Master Service Agreement is made this _____ day of _____ 2021.

By and Between

PNG DATACO LIMITED, incorporated in Papua New Guinea with company number 1-15739 and having its registered office at Level 1 Wokples Building, Section 531, Allotment 12, Savannah Heights, Waigani, Port Moresby, National Capital District, Papua New Guinea (hereafter "**DataCo**")

and

[Customer Name] incorporated in **[Country of Incorporation]** with company number **[Company Number]** and having its registered office at **[registered office address]** (hereafter "**Customer**")

(each a '**party**' and together the '**parties**')

1. PURPOSE AND SCOPE OF MASTER SERVICE AGREEMENT

This Master Service Agreement ("**MSA**") sets out the rights and obligations of the parties with respect to the provision of a Service to Customer by DataCo. This MSA shall be read and construed together with the Annexure and Service Agreement hereto attached and each shall form an integral part of this MSA. By executing this MSA, the Customer hereby agrees that a Service procured under this MSA shall be provided by DataCo on a non-exclusive and non-discriminatory basis to Customer in accordance with and subject to the terms and conditions of this MSA and any Service Agreement related to that Service established under this MSA.

2. MANNER OF CONSTRUCTION

Any discrepancy or ambiguity in or between any documents comprising this MSA is to be read and construed by adopting the following manner of construction in order of precedence-

- (a) the terms of the Service Agreement relating to a Service;
- (b) the terms of this MSA; and
- (c) any other document relating to the terms of this MSA and/or comprising this MSA.

3. TERM

3.1 Subject to clause 3.2 and 3.4, this MSA shall remain in effect as an offer by DataCo until the earlier of:

- (a) three (3) years from the date of NICTA's acceptance of the Reference Interconnection Offer; or
- (b) the expiry of the NICTA Declaration of the International Submarine Transmission Capacity Service.

3.2 The Service Prices set out in Annexure A to this MSA shall remain in effect until the earlier of:

- (a) 1st January of each year following the date of NICTA's acceptance of the Reference Interconnection Offer at which time the prices shall be revised in accordance with a review conducted before that date; ; or
- (b) the expiry of the NICTA Declaration of International Submarine Transmission Capacity Service.

3.3 (a) Where the rates included for a Service provided under any rate review for a Service

provided under an active Service Agreement are prices included in Annexure A, amendments to prices in Annexure A shall be incorporated into the Service Agreement as soon as they come into effect.

(b) Subject to (a), agreement may be reviewed by the parties at each Anniversary of the Service Agreement or at any other time that the parties agree,

3.4 For the avoidance of doubt, a Customer shall be entitled to set a term under a Service Agreement that is either:

(a) a period of 12 months, providing that period does not extend beyond the period in clause 3.1 when the MSA is on offer; or

(b) any other period agreed with DataCo.

4. EFFECTIVENESS

This MSA shall be binding and effective upon the last date of execution by a party to this MSA. A Service Agreement shall not be binding or effective on either party until the MSA and the Service Agreement are fully executed by both parties. DataCo reserves any and all rights to refuse execution of any Service Agreement with Customer, as the case, may be for any reason subject to it having a reasonable and proper basis for doing so.

5. INTERPRETATION AND DEFINITION

5.1 Interpretation

Unless the context otherwise requires:

- (a) a word in its singular form also includes its plural; and
- (b) a reference to ‘day’ or ‘Day’ or ‘days’ or ‘Days’ refers to a weekday except for Saturday, Sunday or any day appearing in the National Gazette as a public holiday in Papua New Guinea.
- (c) A reference to ‘party’ or ‘Party’ or ‘parties’ or ‘Parties’ refers to a party or parties to this MSA as they case may be.

5.2 Definition

The following words are defined herein:

“**Annexure**” refers to an annexure, schedule or addendum to this MSA and any subsequent annexure, schedule or addendum agreed by the parties to be annexed to this MSA and any lawful amendments made to any of them.

“**Acceptance Testing**” a test or series of tests conducted by DataCo to ensure a Service meets the requirements stated for that Service in the Service Agreement before it is commissioned by DataCo for use by Customer.

“**Anniversary**” refers to 12 months from the date of execution of the Service Agreement and each successive 12 month periods thereafter.

“**Customer Facilities**” refers to Customer’s (and its End User) physical business locations including its equipment, network, systems and infrastructure.

“**Commission Date**” means the date specified in the notice from DataCo to Customer where a Service under a Service Agreement for that Service is stated to be commissioned by DataCo for use by Customer.

“**Confidential Information**” means any and all information that:

- (a) is marked or stated by the Disclosing Party as confidential;
- (b) a Receiving Party knows or ought to know is confidential; or

(c) is by its nature confidential.

“Confirmed Outage(s)” means failure (whether full failure or partial failure) or degradation of Service suffered by the Customer or in the event that a Service, or any portion thereof, fails to meet the applicable service specifications for the Service as stated in the Service Agreement for that Service.

“DataCo” refers to PNG DataCo Limited.

“DataCo Facilities” refers to DataCo’s physical business locations including the DataCo Network, systems and infrastructure.

“DataCo Network” means the network owned and/or managed by DataCo which enables it to provide a Service to Customer under a Service Agreement for that Service.

“DataCo Equipment” means any equipment belonging to DataCo (or third-party equipment being utilised by DataCo) which is used in connection with the provision of a Service to Customer under a Service Agreement for that Service.

“Declaration of the International Submarine Transmission Capacity Service” refers to the NICTA determination of specific pricing principles (submarine cable services) dated 17th December 2019 made effective 01st January 2020.

“Disclosing Party” means the party disclosing their Confidential Information to the Receiving Party.

“Dispute” means any issue, dispute or claim arising out of this MSA.

“Emergency Maintenance” refers to any unscheduled maintenance activity undertaken by DataCo to a DataCo Equipment, DataCo Facility, DataCo Network or a Service under a Service Agreement.

“End User” refers to Customer’s client.

“Execution Date” means the date last signed by a party to this MSA.

“Force Majeure” means any of the following and the effects thereof if and only to the extent that such event is not caused by, and the effects are beyond the reasonable control of the affected Party or parties including law or directive or policy of an applicable governmental entity or regulating body or authority, governmental action (whether in its sovereign or contractual capacity), industrial action on a national or provincial level, war or civil war (whether declared or undeclared) or armed conflict, invasion and acts of foreign enemies, blockades and embargoes; acts of government or local authority or regulatory body; civil unrest or rebellion or disorder; strikes, any act or credible threat, terrorism; sabotage; cyber security or cybercrime, nuclear, chemical or biological contamination; epidemics, a pandemic or outbreak of a communicable disease leading to extraordinary restrictions including quarantine or movement of people and/or goods; quarantines; embargoes; explosion, including any acts of God such as earthquake, extraordinary storm or weather conditions, fire, flooding or hurricane.

“IPLC” refers to International Private Leased Circuit which means a dedicated international point to point transmission service delivered over submarine cable to a cable landing station in either Madang or Port Moresby.

“Incident” means an incident or issue arising in relation to a Service provided to Customer under a Service Agreement for that Service.

“Incident Classification Matrix” refers to the Incident Classification matrix at clause 7.5 of the Service Level Terms and Conditions.

“Incident Report” refers to a report submitted by Customer about an Incident.

“Installation Fee” refers to the installation fees for installing a Service to a Customer and which is payable by Customer to DataCo.

“Law(s)” refers to all laws and regulations in force in Papua New Guinea from time to time.

“Licences” means any and all licences, permits, approvals and authorisations issued by a relevant

regulating authority in order to receive a Service or provide a Service.

“Maintenance Events” refers to any scheduled maintenance activity undertaken by DataCo to a DataCo Equipment, DataCo Facility, DataCo Network or a Service under a Service Agreement.

“MSA” refers to this Master Service Agreement entered into between DataCo and Customer and includes any lawful amendments made to it.

“Monthly Fee” means the monthly recurring service fees for a Service which is payable by the Customer to DataCo.

“NICTA” refers to National Information and Communication Technology Authority of Papua New Guinea.

“NOC” refers to DataCo Network Operations Centre.

“Outage Credit” means the service credits which Customer is entitled to for any relevant outages in relation to a Service provided under a Service Agreement.

“Practical Completion” means the completion of all required tests on the Service as part of the Acceptance Testing process.

“Purchase Order” means the standard purchase order document by the Customer which contains a reference number and maximum value payable by the Customer to DataCo for the provision of Services (by DataCo) described in it.

“Receiving Party” means the party to whom Confidential Information is disclosed to by the Disclosing Party.

“Reference Interconnection Offer” refers to the Reference Interconnection Offer registered with the NICTA containing the standard terms and conditions of offer for a Service.

“Service Agreement” comprises the Service Level Terms and Conditions and a duly signed Service Order between DataCo and Customer describing the Service to be provided by DataCo to Customer and any specific terms and conditions associated with the Service.

“Service Application” means an application by the Customer for Service to be provided by DataCo and such application shall include an accompanying Purchase Order.

“Service Bond” refers to the service bond stated in the Service Agreement for the Service.

“Service Commissioning Certificate” refers to the written certificate issued by DataCo confirming the successful Acceptance Testing of a Service to Customer under the Service Agreement for that Service.

“Service Level Terms and Conditions” refers to the service level terms and conditions for a Service attached as **Annexure C** to this MSA.

“Service Order” means the service order for a Service which shall be in the form attached as **Annexure B** to this MSA.

“Service” means any one or more services listed in **Annexure A** to this MSA which Customer may procure from DataCo.

“Service Connectivity Work” refers to the connectivity work undertaken by DataCo to connect Customer to a Service under a Service Agreement for that Service.

“WIS” refers to Wholesale Internet Service which means a carrier grade, bundled international and domestic transmission service delivering global internet (IP Transit) to the Customer.

“TT” refers to Trouble Ticket and is a unique reference number assigned by the NOC to Customer when

an Incident is reported to NOC.

“Unavailable Time” refers to the time in which a Service does not meet the minimum Service level indicated for that Service as stated in the Service Agreement.

6. PROCURING SERVICES

6.1 Ordering a Service

- (a) Customer shall order a Service from DataCo by completing a Service Order and submitting the completed Service Order to DataCo for consideration. Upon receipt of a Service Order from Customer, DataCo shall consider the Service sought by Customer in the Service Order including any special terms and conditions associated with the Service requested which shall include service delivery time.
- (b) Where the terms and conditions in a completed Service Order is mutually accepted by the parties, the parties shall execute the Service Order. Upon dual execution of the Service Order, DataCo shall undertake the Service Connectivity Work to the Customer subject to any special conditions stated in the Service Order for the Service which shall include payment of the Initial Deposit by the Customer.

6.2 Service Agreement

A duly executed Service Order signed under clause 6.1 and the Service Level Terms and Conditions shall together constitute a Service Agreement between DataCo and Customer for that Service. This Service Agreement shall form part of the MSA and shall constitute an individual and binding agreement between DataCo and Customer for the provision of the Service described therein. The Service Agreement shall become effective upon the date of execution of the Service Order by the last party to the Service Order.

6.3 Service Acceptance Testing

- (a) Prior to commissioning a Service to Customer under a Service Agreement, the parties shall first perform Acceptance Testing to confirm that the provision of the Service to the Customer under a Service Agreement is successful and its operation meets the requirements specified in the relevant Service Agreement to which the Service relates.
- (b) The Acceptance Testing shall be conducted at a mutually agreed date and time and may include a series of tests to be conducted over a time period. On Practical Completion of the Acceptance Testing, DataCo shall issue to Customer a written notice confirming the results of the Acceptance Testing within two (2) days of practical completion of the Acceptance Testing.

6.4 Service Commissioning

- (a) Where the Acceptance Testing of a Service under a Service Agreement is confirmed as successful, the notice from DataCo to Customer shall include a Service Commissioning Certificate which shall state the success of the Acceptance Testing including the Commission Date of the Service under its Service Agreement. The Customer through its Head of IT or its equivalent officer or any other of its duly authorised officer is required to execute the Service Commissioning Certificate and return it within seven (7) days of receipt. Failing return of a signed Service Commissioning Certificate within that period, DataCo shall be entitled at any time and at its absolute discretion suspend or terminate the Service to Customer without any penalty or liability. Any reconnection of the Service to Customer shall incur a reconnection fee which shall be at cost to Customer.
- (b) In the event that the Acceptance Testing for the Service is unsuccessful, DataCo shall state so in the notice to Customer and the relevant Service Agreement for that Service shall be deemed terminated as at the date of the notice from DataCo to Customer. Where Acceptance Testing

is unsuccessful, neither party shall be liable to the other for any costs incurred by each of them. Any Installation Fee paid by the Customer including any Service Bond and Monthly Fee paid in advance shall be refunded to Customer.

6.5 Cancellation of Service Agreement prior Commission Date

- (a) Where Customer cancels a Service under a Service Agreement after DataCo commences the Service Connection Work and during an Acceptance Testing, Customer shall be liable for all costs and expenses incurred by DataCo as a direct consequence of the cancellation of the Service Agreement. and/or DataCo Facilities; and

6.6 Service Assurance

DataCo shall be responsible for managing the Service to Customer in accordance with the Service Agreement, in particular:

- (a) managing the Service assurance;
- (b) receiving and handling Incident Reports from Customer;
- (c) repairing any Incident occurring in the DataCo Network and/or DataCo Facilities; and
- (d) updating the Customer regularly on any TT given for an Incident.

6.7 Maintenance and Modification

- (a) Customer acknowledges that DataCo may at times undertake modifications to a Service, the DataCo Network and/or DataCo Facilities which may be connected to a Service provided under a Service Agreement. Where in DataCo's opinion, such modifications are likely to affect the features and functionalities of a Service provided under a Service Agreement with Customer, DataCo shall provide a written notice to Customer explaining the modification undertaken by it and the features and/or functionalities of the Service affected by the modification.
- (b) DataCo may also suspend a Service provided to Customer under a Service Agreement during any such modification work or during a Maintenance Event and/or Emergency Event. Any notice required to be given by DataCo for any Maintenance Event or Emergency Maintenance shall be so given in accordance with the Service Level Terms and Conditions.

7. CHARGES AND PAYMENT

7.1 Service Charge

The charges for a Service under a Service Agreement for that Service shall generally consist of:

- (a) the Installation Fee;
- (b) the Monthly Fee; and
- (c) the Service Bond.

7.2 Initial Deposit

Unless otherwise specified in the Service Agreement for a Service, the Installation Fee, the Monthly Fee, and the Service Bond (collectively the '**Initial Deposit**') shall be due and payable within five (5) days of execution of the Service Agreement. Provision of a Service to a Customer is subject to DataCo receiving from Customer the Initial Deposit prior to the Commission Date of a Service.

7.3 Service Bond

- (a) Service Bonds shall be determined based on DataCo's reasonable assessment of the creditworthiness of Customer and shall be no more than is required to protect DataCo's interests in the event of a payment default having regard to the maximum liability incurred for

the provision of the Service at any given time in the course of the MSA.

- (b) The Service Bond for a Service under the Service Agreement for that Service shall be held by DataCo for the term of the Service Agreement related to that Service and shall be refunded to Customer at the expiration of the Service Agreement less any outstanding amounts that may be owed by Customer to DataCo for that Service.

7.4 Payment

Unless otherwise specified in the Service Agreement for a Service, the Monthly Fee for a Service under a Service Agreement is due and payable in advance on the first day of each calendar month. Customer shall make all payments in the currency indicated in the Service Agreement without offset, deduction or withholding either by way of bank transfer to a bank account as designated by DataCo.

7.5 Taxes

- (a) The charges for a Service under a Service Agreement for that Service are exclusive of any applicable taxes, duties, usage or other fees (including, without limitation, withholding taxes, value added taxes, stamp duty taxes, and other similar taxes, if any) (collectively, "**Taxes**").
- (b) Customer shall be responsible for all and any Taxes that are asserted and assessed against Customer by any governmental or regulatory body or entity with respect to or arising out of a Service Agreement for the Service.
- (c) If any Taxes are so required to be deducted or withheld from any charges payable under a Service Agreement for a Service, such charges shall be increased such that DataCo receives an amount equal to the charge it would have received under the Service Agreement for the Service without any deduction or withholding.
- (d) Neither party shall be liable for any taxes on the other party's income or profits.

7.6 Invoicing

- (a) DataCo shall invoice Customer in advance for all charges for a Service under a Service Agreement. Customer shall settle the invoice in full (without offset or deduction) within thirty (30) days of the date of the invoice. Any sum that is not paid when due shall incur an interest charge of 12% per annum from the date after the due date of the invoice and shall be charged to Customer's account monthly until the over-due balance is settled in full inclusive of interest charges.
- (b) A rebate shall be given to Customer if the invoice is settled in full prior to 25th of the month of invoicing and shall be calculated at 1% of the invoice value that is paid in full subject to confirmation and verification with the bank records. If Customer settles the invoice for more than one (1) month in advance, Customer shall be entitled to a rebate calculated at 1% for each month in advance settled to the value of one (1) month invoice.
- (c) DataCo shall only charge in relation to a service covered by this MSA in accordance with Annexure A, and in accordance with any variations to Annexure A that have appropriate regulatory approval. The price in Annexure A shall be reviewed annually in such time for variations to be made and to come into effect from 1st January of each year covered by the Reference Interconnection Offer, unless otherwise approved by NICTA.
- (d) If there is a bona fide dispute on an invoice issued by DataCo to Customer relating to a Service provided under a Service Agreement, Customer must no later than fifteen (15) days after receipt of the invoice from DataCo:
 - (i) notify DataCo of the dispute under the invoice;
 - (ii) the amount of charge(s) which is/are in dispute in the invoice; and
 - (iii) the ground(s) upon which the charge(s) in an invoice is/are in dispute.
- (e) A dispute on invoice shall be dealt with in accordance with the dispute resolution procedure in

clause 17 of this MSA. Customer may withhold payment of that part of an invoice that is subject to bona fide dispute until the dispute is resolved in accordance with clause 17.

- (f) Where the invoice under dispute is the last invoice for the term of the Service, the undisputed portion of the invoice only shall be paid, any amount withheld under dispute by Customer is ultimately determined (under the terms herein) to be due to DataCo and shall be paid within seven (7) business days of such determination. Inadvertent overpayments shall be reimbursed to Customer.

8. CUSTOMER RESPONSIBILITIES

8.1 Compliance

A Service provided under a Service Agreement for that Service is subject to the Laws and Licences of DataCo. Customer shall ensure that its actions or omissions do not in any way cause DataCo to be in breach of such Laws or its Licences. In the event, this occurs, Customer shall fully indemnify DataCo for any loss, costs and expenses arising out of such act or omission of the Customer causing DataCo to be in breach of the Laws or its Licences.

8.2 Use of Services

- (a) Customer shall follow established practices and procedures and Laws (including those under its Licence) governing the use of a Service provided under a Service Agreement for that Service and shall use the Service for the purposes for which it is being provided by DataCo. Any breach of such practice and procedure or Laws or its Licence by Customer or expected use of the Service shall entitle DataCo to suspend the provision of the Service to Customer and no Outage Credits shall apply to Customer.

8.3 Maintenance of Licenses

Throughout the term of the MSA, Customer shall procure and maintain all Licences required by applicable law and regulations in order to receive, use a Service, including where permitted under the Service Agreement to lease, distribute, sub- lease, resell, promote, and provide to End User any Service under a Service Agreement for that Service.

8.4 Care of DataCo Equipment

Where DataCo provides and/or installs any DataCo Equipment in connection with the Service at Customer's Facilities, Customer acknowledges and agrees that unless otherwise specified in the Service Agreement for the Service:

- (a) title to the DataCo Equipment provided or installed by DataCo at the Customer's premises in connection with the Service remains with DataCo;
- (b) Customer is responsible for preparing the Customer Facilities for installation, including providing adequate space, heating and cooling and electrical power for the DataCo Equipment;
- (c) Customer shall provide DataCo with reasonable access to Customer Facilities for installation and maintenance of the DataCo Equipment;
- (d) Customer shall use reasonable care in protecting the DataCo Equipment from damage or loss and repair or replace any DataCo Equipment that is damaged or lost due to theft, negligence, intentional acts, unauthorized acts or other causes that are within Customer's reasonable control;
- (e) upon termination of the Service Agreement or the MSA or any reason, make available all DataCo Equipment for removal or return in the same condition as originally installed (ordinary wear and tear excepted);
- (f) not hold DataCo liable for any interruption of or inability to use the Service under a Service Agreement for that Service where such event is caused by Customer's failure to comply with any of the foregoing; and

- (g) be responsible for connection from Customer's Facilities to DataCo Equipment.

9. SUSPENSION OF SERVICE AND DENIAL OF ACCESS TO SERVICE

9.1 Customers Request to Suspend Service

Customer may upon fifteen (15) days written notice to DataCo require DataCo to suspend a Service provided under a Service Agreement for cause, and where it is reasonable to do so having regard to the other options available to Customer.

9.2 DataCo's Right to Suspend Service

- (a) Customer recognizes that DataCo may suspend on appropriate and reasonable notice a Service provided to Customer under a Service Agreement for that Service where:
 - (i) there has been a breach by Customer of a material term of the MSA, Service Agreement, Laws, Licence or some practice or procedure related to the provision of the Service to Customer and Customer has failed to rectify the breach after receiving appropriate and reasonable notice in writing from DataCo; or
 - (ii) suspension to Customer's use of the Service is solely in order to protect the overall safety, security and performance of the Service (through no fault of Customer).
- (b) In relation to suspension of Service under clause 9.2, to the extent technically feasible, DataCo shall give Customer appropriate and reasonable notice in writing, and, in relation to clause 9.2(a)(i) shall provide Customer with an opportunity to rectify the breach. Any suspension under clause 9.2(b) may entitle Customer to Outage Credit for the period of suspension.

10. TERMINATION

10.1 Termination of Service Agreement

DataCo may terminate a Service Agreement to Customer for reasonable justification, and where it is reasonable to do so having regard to the other options available to DataCo.

10.2 Customer's Right to Terminate Service Agreement

- (a) Without prejudice to any other accrued rights or remedies, Customer may terminate a Service Agreement by providing thirty (30) days' notice to DataCo if DataCo:
 - (i) commits a material breach of the Service Agreement for a Service and fails to remedy that breach within thirty (30) days of receipt of such notice of the breach from Customer;
 - (ii) commits a material breach of the Service Agreement for a Service which is incapable of being remedied;
 - (iii) fails to perform or comply with any one or more of its obligations under the Service Agreement for a Service for more than thirty (30) days; and
 - (iv) is subject to any material change in the business, ownership or control unless otherwise advised by the DataCo and it is demonstrated by DataCo to Customer that this shall not affect the performance of the Service Agreement relating to that Service.
- (b) For any termination of a Service Agreement by Customer under clause 10.2(a):
 - (i) DataCo shall refund the Service Bond for that Service to Customer less any amounts owing to DataCo; and
 - (ii) DataCo shall be entitled to payment of all charges up to and including the date of termination of the Service Agreement for that Service.

10.3 DataCo's Right to Terminate MSA and/or Service Agreement

DataCo may terminate this MSA and/or a Service Agreement:

- (a) immediately, where: -
 - (i) Customer fails to make payment of any amount due under a Service Agreement for a Service after being provided notice of it and failing to pay within the period stated in the notice and, if applicable, after the resolution of billing dispute as provided for in this Agreement; or
 - (ii) Customer fails to cease any other activity in violation of the MSA and/or Service Agreement despite being given reasonable notice by DataCo of such violation.
- (b) Upon sixty (60) Days' notice, where:
 - (i) the Service is no longer offered or available as a Service to Customer;
 - (ii) due to regulatory changes or changes to its licensing conditions, DataCo is not able to provide the Service to Customer;
 - (iii) Customer is subject to any material change in its business, ownership or control unless otherwise advised by DataCo and it is demonstrated by Customer that this shall not affect their performance of the MSA and/or Service Agreement;
 - (iv) Customer breaches a term of the MSA and/or Service Agreement;
 - (v) Customer breaches any Laws and/or Licences relating to the MSA and/or Service Agreement;
 - (vi) a Force Majeure is not able to be remedied within the period specified in the notice from DataCo to Customer; or
 - (vii) where the Customer and/or DataCo is declared bankrupt or insolvent or is the subject of any proceedings relating to its liquidation, insolvency, bankruptcy or has a receiver or receiver administrator appointed over or in respect of its assets.

10.4 Effect of Termination

At termination of an MSA and/or Service Agreement, DataCo may in addition to any other rights and remedies it may have available to it, also apply the Security Bond under a Service Agreement against any other amounts owing to DataCo by Customer. Upon termination of a Service Agreement, DataCo shall be entitled to use the Service for whatever purpose DataCo sees fit.

11. FORCE MAJEURE

Any failure or delay in the performance by DataCo of its obligation to commence or to continue to provide a Service under a Service Agreement shall not be a breach of the Service Agreement if such failure or delay results from a Force Majeure.

12. SURVIVAL

The termination of the MSA and/or a Service Agreement for any reason under clause 10 shall extinguish all of DataCo's obligations to provide the Service to Customer, and Customer's obligations to accept the Service, but shall not relieve either party of any obligation to the other that may have arisen prior to such termination.

13. LIABILITY, INDEMNITY AND INSURANCE

13.1 Limitation of Liability

- (a) Any and all express and implied warranties, including, but not limited to, warranties of merchantability or fitness for any purpose or use, are expressly excluded and disclaimed. It is expressly agreed that DataCo's sole obligation and Customer's exclusive remedy for any cause

whatsoever arising out of relating to this MSA and/or Service Agreement under any theory of law or equity are limited to those set forth herein, where applicable, and all other remedies, including without limitation, any that might otherwise apply under other applicable law or any uniform commercial code of any kind are expressly excluded.

- (b) In no event shall DataCo be liable for any incidental or consequential damages or loss of revenue, whether foreseeable or not, occasioned by:
 - (i) any defect in DataCo Facilities or in any facility provided or arranged for Customer by DataCo; or
 - (ii) the provision of a Service to Customer; or any delay in the provision of a Service to Customer; or any failure of DataCo to provide a Service to Customer; or
 - (iii) any cause whatsoever.
- (c) In addition, without limiting the generality of the foregoing, Customer acknowledges and agrees that it shall have no right of recovery for the satisfaction of any cause whatsoever, arising out of or relating to the Agreement, against:
 - (i) any parent company of DataCo or any of its affiliated or commonly controlled entities, and all officers, employees, agents, partners and shareholders of any of them;
 - (ii) any supplier of services or equipment to DataCo necessary for the provision of the Service to Customer in any circumstances in which DataCo would be obligated to indemnify the supplier; or
 - (iii) any officer, director, employee, agent, partner or shareholder of DataCo, any DataCo Companies and/or any such supplier.

13.2 Indemnification

Each party releases, discharges and indemnifies the other from and against any claim that may be brought against or made upon or incurred by it (whether in contract, tort including negligence, or otherwise) in connection with any;

- a. Failure to comply with applicable Law by the other party or its agent or servant; or
- b. Any claim by a third party relating to the contract,

except to the extent that it or its agent or servant caused or contributed to the claim.

13.3 Insurance

Each party warrants to the other that it has all relevant and adequate insurances in place for the receipt and/or provision (as the case may be) of a Service under a Service Agreement and that each shall where necessarily required note the other party's interest on those insurances during the term of the MSA and any Service Agreement.

14. CONFIDENTIALITY AND PROPERTY INTEREST

14.1 No Property Interest Created

This MSA and any Service Agreement does not grant, and Customer shall not assert, any right, interest, or lien upon the property or assets of DataCo, including, but not limited to any DataCo Facilities, DataCo Network and DataCo Equipment.

14.2 Confidential Information

- (a) The Receiving Party shall hold the Confidential Information of the Disclosing Party in confidence for such the Disclosing Party. Except as otherwise required by the Laws of Papua New Guinea or authorised by the Disclosing Party to the Receiving Party, the Receiving Party shall not, during the Term or at any time thereafter, transmit Confidential Information of the Disclosing Party to any third party either in whole or in part.
- (b) The Receiving Party shall take reasonable precautions to safeguard the Confidential Information of the Disclosing Party from unauthorized disclosure and, at a minimum, shall afford the Confidential Information of the Disclosing Party such precautions and safeguards as it affords to its own Confidential Information of a similar nature. The Receiving Party shall not disclose the Disclosing Party's Confidential Information to any person within its organization, or to its legal advisors or auditors except on a need to know basis and shall only use such information in connection with its obligations hereunder.
- (c) The obligations under this clause continue indefinitely and survive termination of this Agreement.

15. CUSTOMER DATA

- (a) Customer acknowledges and agrees that DataCo may at any time and during the term of the MSA and/or any Service Agreement for a Service obtain data of Customer and may utilise it for any the following purposes:
 - (i) for the provision of or the improvement in the provision of a Service under a Service Agreement to Customer;
 - (ii) authenticating, analyzing or checking Customer's credit worthiness with third parties including for processing payment instructions; or
 - (iii) disclosure as required by Law, regulating authority, or by a court order or for the prevention or detection of a crime by relevant or investigating authorities.
- (b) Unless otherwise prevented by Law, regulating authority, court order, investigating authority or similar, consent shall be obtained from Customer for DataCo to obtain, gather and/or use relevant data in accordance with this clause.

16. REPRESENTATIONS, WARRANTIES AND COVENANTS

16.1 Representations, Warranties and Covenants

DataCo and Customer each represents and warrants to, and agrees with, the other that:

- (a) it has the right, power and authority to enter into and perform its obligations under this MSA;
- (b) it has taken all requisite partnership or corporate action, as applicable, to approve execution, delivery and performance of this MSA, and this MSA constitutes a legal, valid and binding obligation upon itself;
- (c) the fulfillment of its obligations will not constitute a material violation of any existing applicable law, rule, regulation or order of any governmental authority, anti-money laundering and counter-terrorism laws or contract to which it is subject;
- (d) all public or private consents, permissions, agreements, licenses or authorizations necessary for the performance of its obligations under this MSA which it is subject have been obtained, or it will use all reasonable efforts to obtain, in a timely manner;
- (e) it does not know of any broker, finder or intermediary involved in connection with the negotiations and discussions incident to the execution of this MSA, or of any broker, finder or intermediary who might be entitled to a fee or commission upon the consummation of the transactions contemplated by this MSA; and

- (f) it will comply with all Laws, rules, regulations, order of any governmental authority or contract including anti-money laundering and counter-terrorism finance laws to which is applicable to it by reason of entry into this MSA

17. DISPUTE RESOLUTION

- (a) Any disputes, controversies or claims ("**Dispute**") arising out of this MSA shall be addressed by parties to this MSA.
- (b) Where a Dispute arises between the parties, the disputing party shall send written notice to the other party. The notice shall contain all relevant details including the nature and extent of the Dispute. On receipt of the notice, the parties must appoint at least nominate a senior representative, who must, within five (5) working days from the date of a party receiving the notice of the Dispute, meet with each other, and attempt to resolve the Dispute.

17.1 Structured Negotiations

- (a) Following notice under clause 17.2, the parties shall consult in good faith to try to resolve the Dispute.
- (b) Either party may propose to the other in writing that structured negotiations be entered into with the assistance of a neutral mediator ("**Neutral Mediator**") provided that neither party shall be compelled to participate in structured negotiations unless the Dispute relates to a claim (made reasonably) for an amount of PGK50,000 (or equivalent in foreign currency value) or more.
- (c) If the parties are unable to agree on a Neutral Mediator or if the Neutral Mediator agreed upon is unable or unwilling to act, the President of the Papua New Guinea Law Society may appoint the Neutral Mediator at a party's request. To the extent practicable, the Neutral Mediator must have expertise relevant to the subject matter of the Dispute and is a duly accredited Mediator pursuant to the Alternative Dispute Resolution Rules of the National and Supreme Courts of Papua New Guinea.
- (d) The Parties will within fourteen (14) days of the appointment of the Neutral Mediator meet with the Neutral Mediator to agree a program for the exchange of any relevant information and the structure to be adopted for the negotiation to be held at Port Moresby or other place as agreed to by the Parties.
- (e) Request the Neutral Mediator to complete the structured negotiations within the shortest possible time and as informally and as inexpensively as possible.
- (f) If the parties accept the Neutral Mediator's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be reduced to writing and once, it is signed by their duly authorised representatives, shall be final and binding on the Parties.
- (g) Failing agreement, any of the Parties may invite the Neutral Mediator to provide a non-binding but informative opinion in writing as to the merits of the Dispute and the rights and obligations of the Parties. Such opinion will be provided on a without prejudice basis and will be private and confidential to the Parties and may not be used in evidence in any proceedings commenced pursuant to the terms of this MSA without the prior written consent of all the parties.

17.2 Costs

The costs of the Neutral Mediator and all other costs associated with the structured negotiation will be borne equally by the parties.

17.3 Confidentiality

Any information or documents disclosed by a Party under this clause 17:

- (a) must be kept confidential;
- (b) may only be used to attempt to resolve the Dispute; and
- (c) must not be used as evidence in court proceedings arising out of this Agreement.

17.4 Other Rights and Remedies

The above procedures are without prejudice to any other rights and remedies that may be available in respect of any breach of any provisions of this MSA.

18. MISCELLANEOUS

18.1 Governing Law

This MSA including any Service Agreement shall be governed by and constructed in accordance with the Laws of Papua New Guinea. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Papua New Guinea and waives any right it has to object to an action being brought in those courts including, but not limited to claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

18.2 Further Assurances

Either Customer or DataCo shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other Party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this MSA.

18.3 Benefit of the Agreement

This MSA and any Service Agreement shall ensure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties hereto.

18.4 Entire Agreement

- (a) This MSA Agreement and any Service Agreement including any Annexure to this MSA and Service Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understanding and agreements between the Parties hereto with respect thereto.
- (b) There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this MSA.

18.5 Waiver

No waiver of a right or any breach of any term or provision of this MSA or Service Agreement is effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, is limited to the specific breach or right waived.

18.6 Publicity and Advertising

Neither Party shall publish or use any advertising, sales promotion, press releases or other publicity which uses the other party's name, logo, trademarks or service marks without the prior written consent of the other Party

18.7 Relationship

The relationship of DataCo and Customer to each other provided for herein shall be that of

independent contractors, and neither Party shall be the agent or legal representative of the other for any purpose. Neither Party shall have the right or authority to bind or obligate the other to any third Party for any purpose whatsoever.

18.8 Severability

If any provision of this MSA or Service Agreement is determined to be unenforceable, it shall attach only to such provision thereof and the remaining provisions hereof and in the Service Agreement shall continue in full effect.

18.9 Assignment

- (a) A party (“**assignor**”) may upon notice to the other party , and with the written consent of the other party, assign its rights and interests under this MSA including any of its rights and obligations under any Service Agreement to a Third-Party. Each party agrees that upon notice by the assignor to the other party of such assignment, the other party shall continue to perform all of its obligations under the Agreement. Upon notice of such assignment, the assignor agrees to execute and deliver to the other party such documentation, as may reasonably be required from the assignor.
- (b) The consent of the other party to an assignment shall not be unreasonably withheld.

18.10 No Third-Party Beneficiaries

This MSA is not intended to be for the benefit of any Third-Party, is not enforceable by a third party and does not confer upon any third party any remedy, claim or right.

18.11 Regulatory Changes

- (a) Customer acknowledges and agrees that a Service provided under a Service Agreement may be subject to laws and regulations in one or more jurisdictions. If the provision of a Service under a Service Agreement in a jurisdiction is found to be in breach or violation of any law or regulation of that jurisdiction or would result in any additional licensing requirement, DataCo may suspend or cancel the Service upon notice to Customer.
- (b) Any costs associated with such suspension or cancellation or reconnection of the Service following compliance to the law or regulation in that jurisdiction or any provision of an equivalent substituted service to Customer shall be borne by Customer.

18.12 Variation and Amendments

Any modifications to or variation of this MSA and any Service Agreement must be consented to in writing and signed off by the authorized representatives of both Parties.

18.13 Notices

Any notice, demand, consent or other communication (for the purposes of this clause, a Notice) given or made under this MSA and Service Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by email and prepaid post (if posted to an address in another country, by registered airmail) or by hand as indicated for the Parties below or last notified by the intended recipient to the sender.

<i>DATA CO</i>	
Attention:	Chief Executive Officer

Mailing Address:	PNG DataCo Limited P.O Box 1774, Port Moresby National Capital District Papua New Guinea
Email:	pkomboi@pngdataco.com
Registered Address:	Level 1 Wokples Building, Savannah Heights, Section 531, Allotment 12, Waigani Drive, Port Moresby National Capital District Papua New Guinea

CUSTOMER	
Attention:	[insert name and position]
Mailing Address:	[insert mailing address]
Email:	[insert email]
Registered Address:	[insert registered address]

- (c) will be taken to be duly given or made in the case of:
- (i) delivery in person, when delivered; and
 - (ii) email, on receipt by the sender of a delivery receipt report or return email confirming received within one (1) Business Day of being sent; and
- if the result is that a Notice would be taken to be given or made on a day that is not an ordinary business day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the start of business on the next business day in that place.

Executed by the Parties this day of 2021:

SIGNED for and on behalf of
PNG DATACO LIMITED,
by its duly Authorised Officer with the Company Common Seal:

PAUL KOMBOI, OBE
Chief Executive Officer

in the presence of:

.....
MADSMOLLY IKOSI
Company Secretary

[Insert Customer Execution Format]

ANNEXURE A

SERVICE PRICING OFFER EFFECTIVE 1ST JANUARY 2022

Note: DataCo undertakes to review the prices set out below within 12 months of their date of effect to ensure that they reflect changes in costs and in demand.

	Service	Capacity (Mbps)	Unit Price/Month (PGK)	Conditions
1	Wholesale Internet Service (WIS)	Up to 499	270	1. WIS over Fibre can be delivered in all locations where DataCo has a fibre PoP. 2. The Service can be delivered to customer's single PoP. 3. This service is protected in the core network only. Other Protection requirements will be at an additional cost.
		500	265	
		1,000	259	
		2,000	251	
		5,000	235	
		10,000	223	
		20,000	199	
		50,000	177	
		100,000	168	
2	Domestic P2P Metro -over Fibre delivered to Customer Premises	10	50	1. DP2P-M1 over Fibre can be delivered in all locations where DataCo has a fibre PoP. 2. The Service can be delivered to customer's single PoP. 3. This service is unprotected. Protection will be at additional cost.
		50	50	
		100	34	
		150	24	
		300	21	
		500	18	
		1,000	12	
		2,000	8	
		5,000	6	
		10,000	4	
		20,000	3	
		50,000	2	
		100,000	1	
3	Domestic P2P Longhaul (DP2P-LH) over Fibre delivered to Customer Premises	10	400	1. DP2P-LH over Fibre can be delivered in all locations where DataCo has a fibre PoP. 2. The Service can be delivered to customer's single PoP. 3. This service is unprotected. Protection will be at additional cost.
		50	340	
		100	300	
		150	283	
		300	266	
		500	246	
		1,000	225	
		2,000	214	
		5,000	191	
		10,000	169	
		20,000	152	
		50,000	135	
		100,000	118	
4	International P2P (IP2P) over Subsea Fibre delivered to at the CLS	10	380	1. IP2P Product over Subsea Fibre is only delivered in Madang and Port Moresby. 2. The Service is only delivered between Cable Landing Stations (Kila-Pad and Mad-GS). 3. DataCo can deliver to customers premise and to other international PoP but at additional cost. 4. This service is unprotected. Protection will be at additional cost.
		50	323	
		100	285	
		150	269	
		300	253	
		500	234	
		1,000	214	
		2,000	203	
		5,000	182	
		10,000	160	
		20,000	144	
		50,000	128	
		100,000	112	

ANNEXURE B**TELECOMMUNICATION SERVICE ORDER FORM**

Customer Name								
Contact Details	Name:	Email:	Ph:					
Service Order for	☐ New	☐ Relocation	☐ Upgrade	☐ Downgrade				
Service Type	<table border="1"> <tr> <td>☐ WIS</td> <td>☐ P2P LH</td> </tr> <tr> <td>☐ P2P-Metro</td> <td>☐ IEPL</td> </tr> </table>				☐ WIS	☐ P2P LH	☐ P2P-Metro	☐ IEPL
☐ WIS	☐ P2P LH							
☐ P2P-Metro	☐ IEPL							
Service Description	<table border="1"> <tr> <td>☐ Speed/Bandwidth</td> <td>1000 Mbps</td> </tr> </table>				☐ Speed/Bandwidth	1000 Mbps		
☐ Speed/Bandwidth	1000 Mbps							
Service Locations	A End:		B End:					
Service Availability	Service availability per month 1. Wholesale Internet Service (WIS): 99.9% 2. Domestic P2P Metro (more than 1km) over Fibre: 98.9% 3. Domestic P2P Metro (less than 1km) over Fibre: 98.9% 4. Domestic P2P Long Haul (D2PLH) over Fibre: 98.9% 5. International P2P (IP2P) over Subsea Fibre: 99.9% 6. Satellite VSAT and DOMSAT links: 98.9%							
Term	12months							
Installation Fee	K							
Service Bond	K							
Monthly Fee	K_____ per month excluding 10% GST							
Reconnection Fee	K							
Early Termination Fee	0-6 months : Penalty fee equivalent to 3 month's rental 7-12 months : Penalty fee equivalent to 2 month's rental 13-24 months : Penalty fee equivalent to 1 month's rental							
Special Terms and Conditions								

Signed for and on behalf of:

PNG DATACO LTD	Customer
Name: PAUL KOMBOI, OBE	Name:
Position: CHIEF EXECUTIVE OFFICER	Position:
Signature:	Signature:
Date:	Date:

ANNEXURE C

SERVICE LEVEL TERMS AND CONDITIONS

1. SERVICE AGREEMENT

- 1.1** This Service Level Terms and Conditions together with the duly signed Service Order signed between Customer and DataCo constitutes the Service Agreement for the Service specified in the signed Service Order.
- 1.2** The Service Agreement forms part of the MSA between DataCo and Customer and commences on the date the Service Agreement for that Service is established.

2. INTERPRETATION AND DEFINITION

- 2.1** All word(s) or phrase(s) that is/are emphasized in this Service Agreement shall carry the same meaning as provided in the MSA.
- 2.2** Any interpretation required in this Service Agreement shall be interpreted in accordance with the interpretation clause in the MSA.

3. TERM

- 3.1** The Service Agreement commences on the last date in which the last party to the Service Order executes the Service Order for the Service.
- 3.2** The term of the Service shall be stated in the duly signed Service Order between Customer and DataCo and shall become effective from the Commission Date of the Service.

4. DURATION OF SERVICE

- 4.1** For the duration of the Service Agreement, DataCo agrees to:
 - (a) Provide the Customer with the Service on the terms of the Service Agreement;
 - (b) Exercise the reasonable skill and care of a competent communications provider in providing the Service and if required, in determining how best to provide the Service to the Customer; and
 - (c) Use its reasonable endeavors to provide the Service by the Commission Date and in accordance with the Service Agreement.
- 4.2** It is technically impracticable to provide a fault free Service and DataCo does not undertake to do so. However, DataCo agrees to repair any faults in accordance with the service standards as set out in this Service Agreement.
- 4.3** The minimum downtime for restoration of the Service is as provided for in the table at clause 6.5 below.

5. DESCRIPTION OF SERVICE

- 5.1** DataCo will provide the Service as described in the Service Agreement to and at the locations identified in the Service Agreement.

6. SUPPORT SERVICES

6.1 Network Operations Centre

The DataCo Network Operation Centre (“NOC”) shall provide customer service and administration

for the benefit of Customer. This service is available 24 hours a day 7 days a week. NOC shall accept calls for English language telephone support in connection with the Service Agreement and Incidents.

6.2 NOC Contact Details

- (a) The NOC is operated by DataCo to receive calls for reporting on all Incidents via telephone numbers + (675) 326 1119; + (675) 326 1281; + (675) 326 1341 or email noc@pngdataco.com
- (b) A support function will deliver proactive updates via customercare@pngdataco.com to Customer.

6.3 Maintenance

- (a) From time to time DataCo may interrupt the Service to maintain, update or enhance software equipment or other aspects of the Service and/or the DataCo Network and/or DataCo Facility (“**Maintenance Events**”). Appended hereto as **Schedule 1** is the Maintenance Schedule. Customer will be notified at least two (2) days in advance if there are any changes to this Maintenance Schedule.
- (b) Wherever possible, Customer will be given a minimum of three (3) days advance notice of such events and where possible will schedule Maintenance Events so as to cause minimum interruption to the provision of the Service to Customer. For avoidance of doubt, it may not be possible to give such advance notice where interruption to the Service is necessary to deal with Incidents occurring in connection with the Service.
- (c) From time to time DataCo may with or without notice interrupt the Service to carry out immediate maintenance to the DataCo Network and/or DataCo Facility in order to protect the overall health, performance of the Service or safeguard the DataCo Network and/or DataCo Facility from degradation or other threat or otherwise to maintain appropriate levels of service and quality of the Service to the Customer (“**Emergency Maintenance**”). Where Emergency Maintenance is carried out, DataCo will ensure to provide where possible minimum impact to the Service.
- (d) Customer shall give all reasonable assistance to DataCo to enable Maintenance Events to commence on the planned date and time and for them to be completed efficiently and to support and assist DataCo where requested by DataCo during Emergency Maintenance.
- (e) Any Maintenance Events shall not be considered a Confirmed Outage and will not entitle Customer to any Outage Credits. However, an Emergency Maintenance shall be considered a Confirmed Outage for the purpose of service availability measurement set out in clause 6 and may entitle Customer to Outage Credit.

6.4 Customer Support

The table below sets out the contact details for Customer Support.

LEVEL	TIME FRAME	TIMING	NAME	ESCALATION	KEY TASK	DESIGNATION/ RESPONSIBILITY
1	Day 1	15-30 Minutes	DataCo NOC	Shift Officers	1. Record Fault and Issuance of TT. 2. Tier 1 Network Support	Email: noc@pngdataco.com Phone: 326 1119/3133936/ 3133937 HQ Contact: 313 3900

2	Day 1	15-30 Minutes	Customer Account Managers	Customer Account Managers	1. Receive Fault and Escalate. 2. Provide Updates	Mr. Kaime Kipi (Customer Account Manager) Phone: 7565 7221/313 3900 Email: kkipi@pngdataco.com Mr. James Lani (Customer Account Manager) Phone: 7888 0290/3133900 Email: jlani@pngdataco.com
3	Day 1	30-60 Minutes	NOC/Network Management Restorations	Network Operations Managers/Technical Vendor Support	1. Perform Tier 1&2 Technical Support to restorations. 2. Provides timely updates to customer. 3. Vendor support as per SLAs	Mr. Henry Gima Manager Network Operations Phone: 78290814/3133931 Email: hgima@pngdataco.com Mr. Shannon Sariman Manager IP Core & Network Management Phone: 3133930/78880025 Email: ssariman@pngdataco.com
4	Day 1	1-24 Hours	Management Team	General Manager Engineering Services	1. Escalate to resolve by Vendor Technical Support. 2. Decision by management going forward.	Mr. Tony Morisause General Manager Engineering Services Phone: 76060309/73545155/78428929/3133908 Email: tmorisause@pngdataco.com

7. SERVICE MANAGEMENT

7.1 Incident Reporting

- In the event that any Incident is experienced by Customer that has not been identified by DataCo, Customer must submit a report of the Incident (“**Incident Report**”) to the NOC by telephone or via email.
- An Incident Report submitted by Customer to the NOC must provide a complete description of the Incident and any other information reasonably requested by the NOC.
- The NOC will allocate a unique Trouble Ticket (“**TT**”) reference number to identify an Incident after first line diagnostics have been performed as an initial assessment of the cause of an Incident. The NOC will require the Customer to conduct first line diagnostics with any of its End Users where appropriate.
- After allocation of a TT to Customer, all corresponding communications made by Customer to the NOC must reference the TT. Regular updates will be provided to Customer through email by the NOC.
- An Incident Report will be allocated a priority level by the NOC in accordance with the Incident Classification Matrix in clause 7.2.

7.2 Incident Response Timescales

- DataCo shall use best endeavours to assign an Incident to a DataCo team or officer within 30 minutes of receipt of receiving an Incident Report.
- DataCo shall use best endeavours to provide an update to Customer on an Incident Report via email within the response times specified in clause 7.2.

7.1 Incident Resolution Targets

The NOC shall use reasonable endeavours to resolve an Incident within the timescales specified within the Incident Classification Matrix set out in clause 7.2.

7.2 Incident Classification Matrix

- (a) The Incident Classification Matrix below outlines the description, resolution and response times for the associated Incident priority levels.

Priority Level	Description of Fault/Incident	Target Resolution Time	Response Time
Critical	Total loss of Service or outage of Service or inability to transmit/receive due to total break on communication link either fiber or wireless where customers operates. IP Transit Failure to main gateways, routers or switches.	20 Minutes	• Immediate; followed by updates per hour. • Must be immediately escalated to DataCo Account Managers or NOC Management for immediate action.
Major	Partial loss of Service or degradation of Service resulting from one event. Severe degradation of the Internet Service from IP Transit.	20 Minutes	• Immediate; followed by updates per hour. • Fault registration with DataCo NOC and system engineers.
Minor	Degradation of Service whereby the service can still operate but with reduced performance.	2 Hours	• Periodic follow up every 2 hour • Fault reported to DataCo NOC.
Low	There exists a potential for future problems or there is a minor issue.	12 Hours	• Periodic follow up, every 4 hours. • Issue reported to DataCo NOC.
Warning	Service Enhancement Upgrades that requires a change to the existing Service and/or Network components that will facilitate Service.	3 Business Days	• Nil

- (b) Customer understands and accepts that it may be necessary to extend the timescales in the Incident Classification Matrix above due to the complexity of the Incident or where it is dependent on DataCo's third party for resolution of the Incident. In such circumstances, DataCo shall use reasonable endeavours to eliminate or reduce the impact of the Incident on the Service by provision of a workaround, with permanent correction to follow.

7.3 Resolving an Incident

An Incident reported by Customer shall be resolved in accordance with this Service Agreement. An Incident Report will be considered to have been resolved where either:

- (a) it is corrected/resolved by DataCo (including provision of a temporary fix) in accordance with the Incident Classification Matrix; or
- (b) the Incident has been investigated and the initial fault diagnostic testing indicates that the Incident is not found and/or is not the fault of DataCo; and this has been relayed to Customer.

7.4 Escalation Process

A fault escalation process is provided in Schedule 2.

8. SERVICE AVAILABILITY AND OUTAGE CREDITS

8.1 Overall Service Availability

- (a) End to end availability for each Service is guaranteed to be at least 98.9% over a calendar month [based on twenty-four (24) hours/day, seven (7) days/week network availability] following the Commission Date of Service. Where the availability of the Service falls below the availability level above (excludes service outage caused by

event of Force Majeure and Maintenance Events), Customer shall be entitled to Outage Credits described in clause 8.3(a).

- (b) For the purposes of clause 8.1(a), overall service availability excludes:
 - (i) repairs completed within the Target Resolution Times in the Table at clause 7.2;
 - (ii) scheduled Maintenance Events as described in clause 6.3;
 - (iii) Customer-caused; or
 - (iv) outages or disruptions attributable in whole or in part to Force Majeure.
- (c) For the purpose of calculating Service Availability, "**Unavailable Time**" means the period of time failure (whether full failure or partial failure) or degradation of Service suffered by Customer or in the event that a Service, or any portion thereof, fails to meet the applicable Service specifications in the Service Agreement.

8.2 Limit on Compensation

The maximum compensation for Unavailable Time the Customer can receive in any month is an amount equal to the Outage Credit calculated in clause 8.3(a).

8.3 Service Outage Credits

- (a) Customer shall be entitled to Outage Credit for a Confirmed Outage in the event that a Service fails to meet the applicable Service Availability or uptime commitment described in clause 8.1(a) or in a Service Agreement for that Service. Outage Credit is calculated when the total Service Availability in the month is below the Service Availability commitment according to the formula below:

$$\text{Outage Credit (K)} = [\text{Service Availability Commitment (\%)} - \text{Monthly Availability (\%)}] \times \text{Monthly Charge (K)}$$

- (b) Outage Credit is only applicable where the Service Availability commitment is **LESS THAN** the monthly availability.
- (c) If a failure to maintain Service Availability has occurred, the Confirmed Outage shall be measured as commencing from the later to occur of:
 - (a) Customer's cessation of use of the Service; and
 - (b) notice from Customer to DataCo of such outage within seven (7) days of occurrence.
- (d) Any such Confirmed Outage shall be deemed to have ended upon the earlier to occur of: -
 - (i) Customer's resumption of use of the Service; and
 - (ii) notice from DataCo to Customer that the Service Availability described in clause 8.1.1 or in a Service Agreement for that Service has been satisfactorily met.
- (e) Customer shall make all claims for Outage Credit within thirty (30) days from the date of the first occurrence of the relevant Confirmed Outage. Under no circumstances shall any Outage Credit exceed the amount to which Customer would have been entitled during the period of failure to meet the applicable Service specifications.
- (f) Any compensation payable under clause 8.3(a) above will be credited to Customer's tax invoice for the Monthly Fee for the following month unless the Service is terminated or it is the last invoice for the Service in which case a specific payment may be made to Customer. DataCo may offset all or part of any such amounts against any outstanding amounts due for the Service which has not been paid by the Customer, except where these amounts may be disputed.

8.4 Non-Entitlement of Service Outage Credit

Customer is not entitled to any Outage Credit if:

- (a) the failure by DataCo is due to Customer Facilities, or its own network or equipment or any other network or equipment outside the DataCo Network and/or DataCo Facilities;
- (b) Customer is in breach of any part of the Service Agreement and/or the MSA;
- (c) through no fault of its own or because of circumstances beyond its reasonable control, DataCo is unable to carry out any necessary work at, or gain access to the Customer's Facility;
- (d) Customer and DataCo agree on a different timescale for performance of the Service, but will apply to any new Commission Date agreed, provided that the new date is after any previous Commission Date(s) and it is agreed between Parties that clause 8.4 will apply; or
- (e) reasonable assistance is required, or information is reasonably requested by DataCo from the Customer and such assistance or information is not provided; or
- (f) the failure is due to Force Majeure; or
- (g) the failure is due to a Maintenance Event; or
- (h) the failure is due to an inaccurate Service being requested by Customer and DataCo has provisioned the Service in relation to such inaccuracy provided by Customer.

9. DATACO EQUIPMENT

9.1 All DataCo Equipment remains the property of DataCo at all times.

9.2 Customer agrees to:

- (a) prepare Customer Facilities and provide a suitable place, condition, connection points and electricity for the DataCo Equipment in accordance with DataCo's reasonable instructions, if any;
- (b) obtain all necessary consents, including for example, consents for any necessary alterations to buildings, permission to cross third party land or permission to put Equipment on their property; and
- (c) be responsible for DataCo Equipment installed at Customer Facilities and agrees to take reasonable steps to ensure that it or any person on its premises (other than someone authorised by DataCo) adds to, modifies or in any way interferes with it. Customer will be liable to DataCo for any loss of or damage to DataCo Equipment, except where such loss or damage is due to fair wear and tear or is caused by DataCo, or anyone acting on DataCo's behalf.

10. CONNECTION OF EQUIPMENT

10.1 Any Customer Facilities, network or equipment connected to a Service must be:

- (a) technically compatible with the Service and not harm the DataCo Network, the Service or DataCo Equipment;
- (b) connected and used in line with any relevant instructions from DataCo or any Laws and Licences held by DataCo and Customer; and
- (c) connected and used in line with any relevant standards including, in the order of precedence set out as below:
 - (i) any legal requirements imposed upon the parties including requirements arising from NICTA Act;
 - (ii) any recommendations by the International Telecommunications Union (ITU); and

- (iii) any recommendations by the Regional Telecommunications Regulatory Authorities which DataCo has membership.
- (d) Customer agrees to connect Customer Facilities, network or equipment to a Service only by using equipment approved by DataCo with the Service.
- (e) DataCo will not be liable for failure to meet any Service level or other obligations under this Service Agreement if any Customer Equipment is found to be connected otherwise than in accordance with this clause 10.
- (f) DataCo reserves the right to disconnect any Customer Facilities, network or equipment if Customer does not fulfil its obligations under this clause 10 or if in the reasonable opinion of DataCo Customer Facilities, network or equipment is liable to cause the death of, or personal injury to any person.

11. ACCESS AND SITE REGULATIONS

- 11.1** Customer agrees to take reasonable steps to provide DataCo with access to the Customer's Facilities for the purpose of installation and use of the DataCo Equipment at the Customer's Facilities.
- 11.2** DataCo agrees to observe the Customer Facilities reasonable site safety and security requirements.
- 11.3** Customer agrees to provide and agrees to take reasonable steps to ensure it provides a suitable and safe working environment for DataCo at the Customer Facilities. Customer agrees to indemnify DataCo against all loss, damages, liabilities, costs and expenses arising or incurred in respect of any actions, claims or legal proceedings which are brought or threatened against DataCo if Customer is in breach of this sub-clause. The limitation of liability provisions of the MSA does not apply to this indemnity.
- 11.4** It is the responsibility of Customer to carry out any making good or decorator's work required but DataCo accepts responsibility for any property damage caused by DataCo's negligence subject to the limitation of liability provisions of the MSA.

12. CHARGES

- 12.1** This section should be read and interpreted in conjunction with section 7 of the MSA.
- 12.2** Customer shall pay to DataCo all charges due under the Service Agreement. Such charges shall be invoiced monthly in advance. The first billing period shall commence on the Commission Date.
- 12.3** All charges payable hereunder by Customer shall be payable to DataCo in Papua New Guinean national currency (Kina and Toea) and/or United States Dollars (USD) for payments originating overseas no later than thirty (30) days after receipt of DataCo's tax invoice.
- 12.4** Where any Commission Date is delayed at Customer's request or by virtue of the Customer's act, neglect or failure to fulfil its obligations hereunder, the charges for the first billing period for that Service shall be payable no later than the Commission Date for that Service unless otherwise agreed in writing between the Parties.
- 12.5** Without prejudice to DataCo's right to treat non-payment or late payment as a repudiatory breach of the Service Agreement, in the event of non-payment of any tax invoice which is not the subject of a bona fide dispute DataCo reserves the right to charge daily interest on any outstanding amounts until payment is received in full as current from time to time whether before or after judgment until the date actual payment is received together with all external costs reasonably and necessarily incurred by DataCo in securing such payment and/or obtaining such judgment, as the case may be. The rate of such interest shall not exceed the interest rate stated in clause 7.6 of the MSA.

- 12.6** All sums due to DataCo under the Service Agreement shall be payable by Customer in full (without any set-off, deductions or withholding whatsoever) by direct debit or bank transfer or bank cheque payable to DataCo.
- 12.7** DataCo reserves the right when Customer defaults in payment of the charges to require the Customer to issue a Security Bond, irrevocable letter of credit or other form of security acceptable to DataCo of the Customer's financial circumstances or payment history is or become unacceptable to DataCo.

13. USE OF THE SERVICE

- 13.1** Customer shall use the Service strictly in accordance with any reasonable operating instructions issued by DataCo from time to time.
- 13.2** Customer shall not itself or knowingly permit any of its End Users to use the DataCo Network or Services to do any of the following:
- (a) publish, post, distribute or disseminate defamatory, infringing, obscene, indecent or other unlawful material or information;
 - (b) threaten, harass, stalk, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others;
 - (c) engage in illegal or unlawful activities through the DataCo Network;
 - (d) knowingly make available or upload and download files that contain software or other material, data or information not owned by or licensed to Customer, the End User or additional user (as appropriate);
 - (e) knowingly make available or upload and download files that contain a virus or corrupt data;
 - (f) falsify the true ownership of software or other material or information contained in a file that the Customer, any End User or additional user makes available via the DataCo Network;
 - (g) "spam" or otherwise deliberately abuse any part of the DataCo Network;
 - (h) obtain access, through whatever means, to notified restricted areas of DataCo Network.
- 13.3** If Customer becomes aware that any of its End User is using the DataCo Network to perform any of the activities listed in clause 13.2 it shall use all best endeavors to stop such End User from doing so.
- 13.4** In the event that DataCo becomes aware that a Customer's End User is performing any of the activities listed in clause 13.2, DataCo shall bring the activity to the attention of Customer as soon as is reasonably practicable. If DataCo has not received, within one (1) day of dispatch of such a message, a satisfactory response from Customer detailing the actions that have been taken to stop the violation by its End User, then DataCo shall have the right to restrict the access of and/or disconnect the Customer's End User in question, and if necessary restrict the access of/disconnect Customer from the entire Service.
- 13.5** Each Party shall provide the other with all reasonably necessary co-operation, information and support to prevent and/or stop any misuse of DataCo Network by Customer's End User.

14. ASSIGNMENT

- 14.1** Any assignment of a right or obligation under this Service Agreement shall follow the requirements under clause 18.9 of the MSA.

15. THIRD PARTIES

- 15.1** A person who is not a Party to this Service Agreement and/or the MSA has no rights under this Service Agreement to enforce any term stated therein.

16. DISPUTES

- 16.1** Any Dispute arising under this Service Agreement shall be addressed in accordance with the procedure stated under clause 17 of the MSA.

SCHEDULE 1

MAINTENANCE SCHEDULE

Customer will be informed 48hours (2days) in advance by Dataco NOC and Sales Account Manager of any planned maintenance outage on the network that will directly affect services to any of the Customer sites.

Preferred planned outage days will be on Saturdays or Sundays of any week to minimize impact on services.

#	Common Maintenance Tasks	Planned Outage times and duration	Updates as per escalation matrix
1.0	Network/IP Gateway and CE software upgrades	0100hrs-0200hrs >60minutes	1. NOC 2. IP Manager Operations
2.0	Network/ IP Gateway/CE Hardware Changes directly connecting to Customer	0100hrs-0200hrs >60minutes	1. NOC 2. IP Manager/Operations
3.0	Network and IP Configurations Changes	0100hrs-0200hrs >60minutes	1. NOC 2. IP Manager/Operations
4.0	Fibre Cable Upgrades and Changes	1300-1800hrs >6hrs	1. NOC 2. Fibre Manager/Operations
5.0	Network Monitoring device changes and upgrades	0100hrs-0200hrs >60minutes	1. NOC 2. IP Manager/Operations
6.0	Satellite RF/IF Upgrade changes (ODU/IDU)	2100-2300hrs >2 hours	1. NOC 2. Satellite Manager/Operations
7.0	Satellite Antenna realignment	0800-1200hrs >3hours	1. NOC 2. Satellite Manager/Operations

SCHEDULE 2

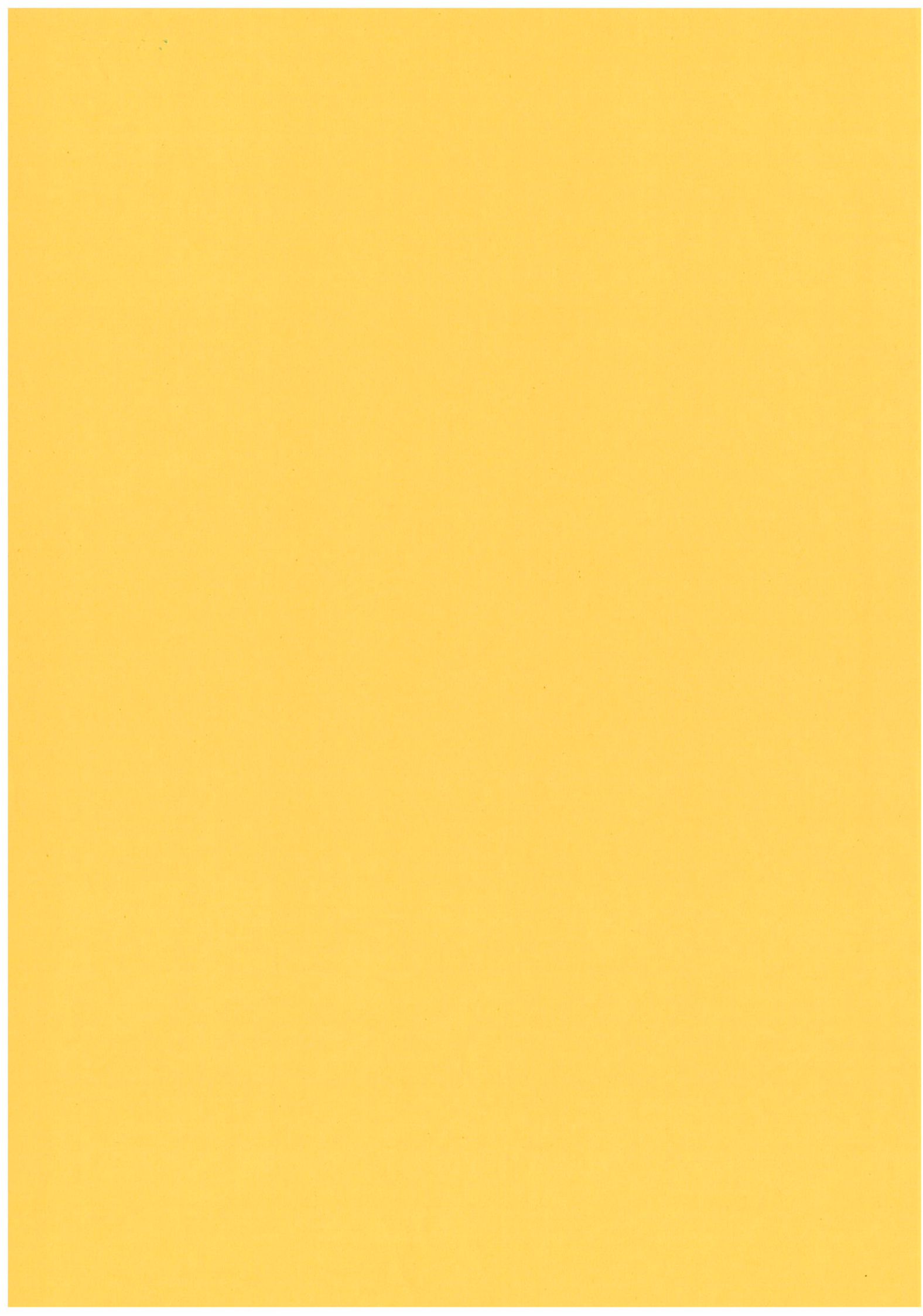
ESCALATION PROCEDURE

Customer Network Support Contacts and Escalation Levels

LEVEL	TIME FRAME	TIMING	NAME	ESCALATION	KEY TASK	DESIGNATION/RESPONSIBILITY
1	Day 1	15-30Minutes	DataCo NOC	Shift Officers	1. Record Fault and Issuance of TT 2. Tier 1 Network Support	Email: noc@pngdataco.com Phone: 3133937/3261341 HQ Contact: 3133900
2	Day 1	15-30 minutes	Customer Account Managers	Customer Account Manager	1. Receive Fault and Escalate 2. Provides Updates	Mr. Kaime KIPI (Customer Account Manager) Phone: 7565 7221 /3133921 Email: kkipi@pngdataco.com Mr. James Lani (Customer Account Manager) Phone: 7888 0290/3133900 Email: jlani@pngdataco.com
2	Day1	30-60Minutes	NOC/Network Management Restorations	Network Operations Managers/Technical Vendor Support	1. Perform Tier 1&2 Technical Support to restorations. 2. Provides timely Updates to Customer. 3. Vendor Support as per SLAs	1. Mr. Henry Gima Manager Network Operations Phone: 76266430/3133931 Email: hgima@pngdataco.com 2. Mr. Shannon Sariman Manager IP Core & Network management Phone: 3133932/78880025 Email: ssariman@pngdataco.com
3	Day 1	1-24HRS	Management Team	General Manager Engineering Services	1. Escalate to resolve by Vendor Technical Support 2. Decision by management going forward.	Mr. Tony Morisause General Manager Engineering Services Phone: 76060309/3133908 Email: tmorisause@pngdataco.com

Severity Levels

SEVERITY	SEVERITY CRITERIA	INCIDENT RESPONSE
1 Critical	IP Transit Failure to Main Tiare and O3B Gateways	Requires immediate and sustained response from DataCo. Must be immediately escalated to DataCo Account Managers or NOC Management for immediate action
2 Major	Severe Degradation of the internet service from IP Transit.	Requires immediate response and sustained effort. Fault registration with DataCo NOC and system engineers.
3 Minor	Degradation of service whereby the service can still operate but with reduced performance.	Fault reported to DataCo NOC
4 Warning	There exists a potential for future problems or there is a minor issue	Warning alarms should be reported to DataCo NOC





National Information and Communications Technology Authority
Punaha ICT Haus, Section: 34, Allotment: 19 & 20, Corner of Frangipani & Croton Street,
HOHOLA | PO Box 8444, BOROKO 111, National Capital District, Papua New Guinea |
☎ : (+675) 3033200 / 3033202 | ✉ : kgulovui@nicta.gov.pg | 🌐 : www.nicta.gov.pg

Office of the Chief Executive Officer

September 24, 2021

Our Ref: CE14/3/1

Paul Komboi
Chief Executive Officer
PNG DataCo Limited
PO Box 1744
PORT MORESBY
National Capital District

By Hand and Email : pkomboi@PNGDATACO.com

Dear Mr. Komboi,

**SUBJECT: RESPONSE TO COMMENTS REPORT PUBLIC CONSULTATION ON DATACO'S
REFERENCE INTERCONNECTION OFFER (RIO)**

We refer to the above captioned subject matter and hereby advise that NICTA Staff has prepared a Response to Comments Report ("the Report") on the Public Consultation on DataCo's revised RIO. The Report sets out NICTA's Staff responses to the main comments that interested parties made in their Submissions on the Discussion Paper. This Report and all Submissions received during the Public Consultation are now available at NICTA's Public Registry on www.nicta.gov.pg

We will share with you the final outcome of the public consultation into the revised RIO soon.

Yours sincerely,

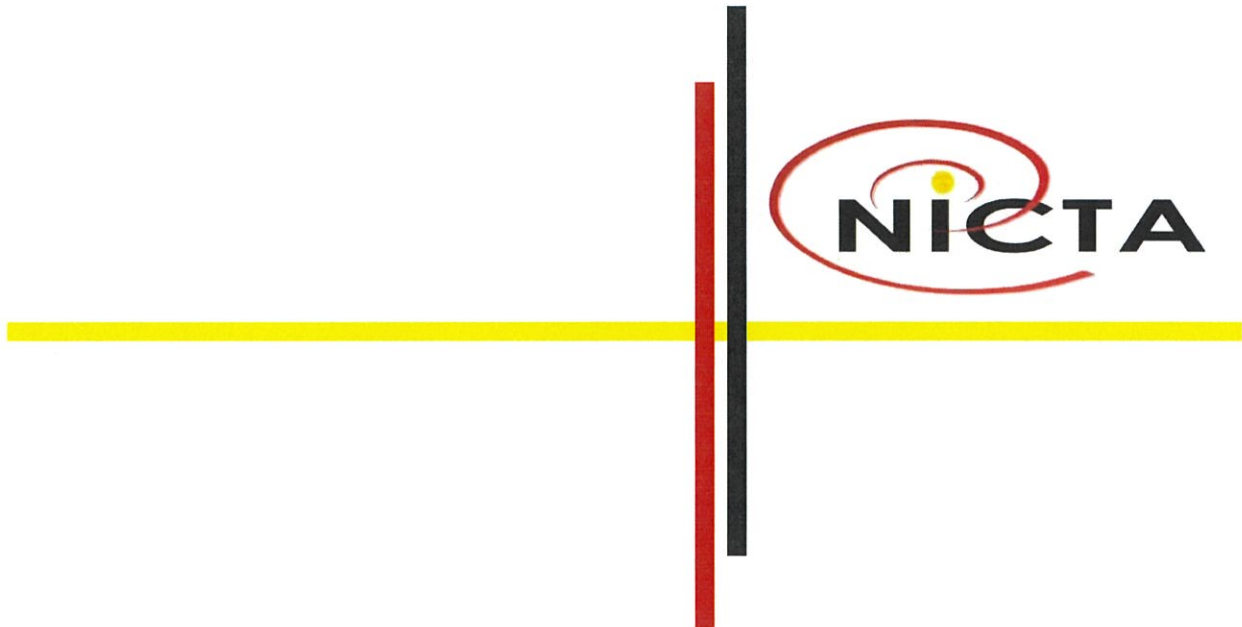
KILA GULO-VUI
CHIEF EXECUTIVE OFFICER

- Cover coughs and sneezes with a bent elbow and wash hands after
- Avoid touching your eyes, nose and mouth
- Keep at least 1.5m distance away from others
- Avoid close contact with someone who is sick
- Clean and disinfect frequently touched objects and surfaces
- Work at home where possible and avoid social venues

PREVENT COVID-19



Wash hands
frequently
with soap
and water



DISCUSSION PAPER
Public Consultation on Revised Reference
Interconnection Offer from PNG DataCo Limited on
various wholesale access services.

NICTA'S STAFF RESPONSE TO COMMENTS
REPORT

24th September 2021

1. Purpose of this Report

This Response Report sets out NICTA's Staff responses to the main comments that interested parties have included in their submissions on the Discussion Paper.

NICTA Staff has considered carefully all submissions and comments received and responded to key comments. These comments are set out in the table below and will form the basis for NICTA's consultation with DataCo.

Submissions received from Kumul Telikom Holdings Limited Retail Business and Digicel and these have been posted on NICTA's website.

The Annex to this Report only considers main comments in submissions. However, all comments have been considered carefully by NICTA's staff. The comments and responses set out in this Report combine all submissions from each party for convenience.

NICTA thanks the stakeholders who have made submissions to this consultation. Their contribution to the process and to improving ICT regulation in PNG is appreciated.

Annex: Summary of Key Comments received in Submissions

Summary of the Key Comments

1. Kumul Telikom Holdings Limited (KTHL)				
Item	Issue	subject reference	Summary of comment	Summary of NICTA response
1	Market Classification as Retail/Wholesale	June 2021, Section 2, pp. 3	KTHL submits that current public consultation on Reference Interconnection Offer (RIO) is an opportunity for NICTA to clearly distinguish between a retail and wholesale market.	NICTA understands the point made but disagrees with this comment. The Act defines Wholesale Service very clearly in terms of the customer to whom a service is sold and the purpose to which that customer then puts the service. In addition, RIO is intended to form the basis for negotiation of an interconnection agreement for the provision of wholesale declared services, so there is no need to consider retail services or the distinction. There are other issues associated with the wholesale / retail distinction that are of concern to KTHL, and NICTA is taking these up separately.

Item	Issue	subject reference	Summary of comment	Summary of NICTA response
2	DataCo Licence	June 2021, Section 2, pp. 3	KTHL comments that DataCo should concentrate on the wholesale market (upstream) for the provision of access facilities necessary for communications services.	NICTA disagrees with this point. DataCo's licence allows it to serve both the wholesale and retail markets. NICT Act does not categorize who is going to be an "access seeker" or "access supplier". All licences issued to all operators including DataCo are unified licences, which qualify them to provide telecommunication services to the public. NICTA has already raised this matter (whether, as a matter of policy, any SOEs should have more limited licences) with the Minister
3	Market definition	June 2021, Section 2, pp. 3	The RIO in its current form lacks clear market definition	NICTA disagrees with this point. This point appears to relate to the wholesale-retail demarcation issue, which is more fully dealt with in the items below, especially item 10.
4	Customer Definition under RIO	June 2021, Section 3, pp. 3	KTHL submits that term customer should be defined to mean "KCT Retail Customer or Telco Operators"	NICTA disagrees with this point. There is no need to re-define the term as it is a wholesale access agreement and customer under MSA means wholesale customer. A RIO only relates to the

					provision of declared wholesale access services to wholesale customers.
Item	Issue	subject reference	Summary of comment	Summary of NICTA response	
5	Licensed re-sellers (wholesalers)	June 2021, Section 2, pp. 4	KTHL comments that NICTA should issue separate licenses only to access seekers who are in the business to re-sell capacity	NICTA disagrees. This is a licensing matter, not a RIO matter.	
6	Definition of Network services, access provider & access seekers	June 2021, Section 2, pp. 4	KTHL submits that the definition of the terms- network services, access provider and access seekers implies that there must be a clear demarcation between the wholesale and retail services	NICTA disagrees with this comment for the reasons already given above.	
7	NICTA lacks mandate to properly regulate wholesale	June 2021, Section 2, pp. 4	KTHL submits that there are ambiguities and lack of proper demarcation between wholesale and retail market. Thus, creating more challenges for NICTA to effectively regulate the different markets.	NICTA disagrees with this comment for the reasons already given above.	
8	Internet Service Providers Licenses	June 2021, Section 2, pp. 4	KTHL submits that NICTA issued end users with ISP license that allowed the end users to bypass the wholesale service	This is untrue, and not related to the RIO in any case.	
9	Supply of Declared wholesale services	June 2021, Section 2, pp. 4	KTHL pose a first question “Is it not a requirement under the NICT Act than an access seeker of declared services must seek access for its purpose and not for its own consumption”	NICTA agrees with the comment. The definition in Section 4 of the Act makes it clear that wholesale services are not for own use, but for inclusion in retail services, whether as components or as resold services.	

Item	Issue	subject reference	Summary of comment	Summary of NICTA response
10	Supply of Declared wholesale services	June 2021, Section 2, pp. 4	KTHL second question “does the NICT Act permit an access provider of declared services to bypass a wholesale customer or retail service provider”	The NICT Act does allow for that, but in those circumstances the sale will be of a retail service not a wholesale service, and will be subject to terms and conditions that apply to retail services. The RIO has terms and conditions that apply to wholesale services. This is a matter that NICTA is addressing separately to the RIO. NICTA is now preparing an instrument to provide guidance to the industry about the definitions of ‘wholesale’ and ‘retail’ in the Act and the consequences of those definitions for the way services may be provided and for NICTA’s monitoring and enforcement activities.
11	Supply of Declared wholesale services	June 2021, Section 2, pp. 4	KTHL third question was “NICTA aware that end user customer approaching DataCo for wholesale broadband capacity at a cost way less than 90% of the cost”	NICTA was recently made aware of this and is addressing it as a separate matter. It is not a RIO issue.
12	Supply of Declared wholesale services	June 2021, Section 2, pp. 4	KTHL fourth question was “does NICT Act permit NICTA to issue an end user a licence for the purpose of seeking access to declared services”	The question is confused. Once licensed, the licensee is not an end-user, but a licensed operator subject to the licensing requirements under the Act.

Item	Issue	subject reference	Summary of comment	Summary of NICTA response
13	Public Register on licensing	June 2021, Section 2, pp. 4	KTHL fifth question was “could NICTA provide the register of operator licence data”	NICTA does have such a public register and it is available on-line on NICTA's website (www.nicta.gov.pg)
14	Form and requirement of RIO	June 2021, Section 2, pp. 5	KTHL agrees with the DataCo's RIO submission.	NICTA notes the comments offered by KTHL. Refer to NICTA's response to Digicel's key comments below.
15	Services covered in the RIO	June 2021, Section 2, pp. 5	KTHL commented that the current bandwidth offering by DataCo as Wholesale Internet Service (WIS) should start from 500Mbps instead on 300Mbps.	NICTA disagrees with this proposal. The proposal is based on the incorrect assumption that capacity determines what is wholesale and what is not. This is incorrect and the Act makes the distinction between wholesale and retail very clear without using capacity as a determinant. The proposal would have the further problem of unfairly disadvantaging smaller retail service providers

2. Digicel PNG Limited				
Item	Issue	subject reference	Summary of comment	Summary of NICTA response
1	Proposed amendments	June 2021, Section A, para 8, p 2	Digicel claims that NICTA has not satisfactorily analyze the proposed variation prior taking a decision	NICTA disagrees with this comment. NICTA has done a lengthy analysis and published it under the statement of reasons for NICTA's decision in December 2020 and published the analysis on its website.
2	Review period	June 2021, Section A, para 9, p 3	Digicel is concerned that the proposed RIO only permit prices to be reviewed on the anniversary of the agreement.	NICTA notes this point and will approach DataCo to reword the clause to allow for review in such time for changes to take effect at the beginning of each calendar year, while the Declaration is in force.
3	Term	June 2021, Section A, para 21, p 4	Digicel is concerned about the term of the agreement that might affect any future revised price change.	The term of the agreement does not necessarily mean price will remain unchanged for the duration of the contract. NICTA will request DataCo to consider including a review clause requiring review at the beginning of each year for the duration of the contract.
4	Term	June 2021, Section A, para 22, p 4	Digicel objected to the proposed wording under clause 3.3. Digicel claims that any agreement reached can only be reviewed after the expiry of the contract.	NICTA agrees with the comment. NICTA will propose to DataCo rewording the clause so that the contract can be reviewed annually (12 months basis) in a

					timely and fair manner, with timing consistent with item 3 above.
Item	Issue	subject reference	Summary of comment	Summary of NICTA response	
5	Objective criteria	June 2021, Section A, para 28, p 5	Digicel submits that clauses under service bond still does not include any objective criteria.	NICTA disagrees with the comment. Credit worthiness is an objective criterion that can be reasonably applied and objectively determined.	
6	Billing disputes	June 2021, Section A, pp. 5	Digicel commented that the 5 days allowed to raise any billing disputes is not sufficient.	NICTA agrees with this comment and will propose to DataCo to consider setting an extended time period.	
7	Suspension of Service	June 2021, Section A, para 36, p 6	Digicel raised a valid point against clauses 9 "suspension of service". Wording under the clause is vague.	NICTA agrees with this point. NICTA will propose to DataCo to add more clarity into the relevant clause.	
8	Termination	June 2021, Section A, para 45, p 6	Digicel commented that despite DataCo's effort to rectify mutual grounds for contract termination the current wording under the revised RIO has not addressed the concern.	NICTA agrees with this point and will approach DataCo to address the concern expressed.	
10	Service level standard	June 2021, Section A, para 49, p 7	Digicel submits that the current service level promised by DataCo is below the international standards.	No, PNG standards apply here because of the limitations of the domestic network at this stage. Will be reviewed however, outside of the RIO.	

Item	Issue	subject reference	Summary of comment	Summary of NICTA response
11	Internal ambiguity	June 2021, Section A, para 58(b), p 8	Digicel commented that there is confusion under clause 18.9 of the RIO on the use certain terms.	NICTA agrees and will ask DataCo to remove the ambiguity identified.
12	Prices	June 2021, Section A, para 62, p 8	Digicel submits that the proposed pricing has not been meaningfully analysed.	NICTA disagrees. NICTA has independently examined the basis of pricing and is satisfied with the levels and structure in the RIO.
13	Further consultation of final draft.	June 2021, Section A, para 67.p8	Digicel expresses its interests to comment on the RIO draft determination prior NICTA finalizing.	A final draft will be circulated following further discussions with DataCo as suggested in this report, but it will not be circulated as a new RIO. However, NICTA believes that the RIO has gone through the consultation required by the Act and sees that as sufficient.