



## CONSULTATION PAPER

**The Draft Operator Licence Conditions (Standard Licence Conditions) Rules 2018, the Draft Operator Licence Conditions (Kumul Telikom Holdings Limited) Rules 2018 and the Draft Operator Licence Conditions (Digicel (PNG) Limited) Rules 2018**

*Issued on 20 December 2018*

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# 1 EXECUTIVE SUMMARY

This discussion paper has been prepared to inform the public consultation into three proposed Rules which NICTA is considering, notably the Draft Operator Licence Conditions (Standard Licence Conditions) Rules 2018, the Draft Operator Licence Conditions (Kumul Telikom Holdings Limited) Rules 2018 and the Draft Operator Licence Conditions (Digicel (PNG) Limited) Rules 2018.

It is intended that the comments and feedback received in relation to this paper will contribute to the enhancement of the quality of the services offered to the public further to the provisions of the National ICT Act 2009.

Chapter 2 details the consultation procedure and timetable; Chapter 3 provides an overview of the proposed standard licences conditions; Chapter 4 assesses the significant terms and conditions for each of the proposed Rules; Chapter 5 contains concluding remarks; and the Appendices present explanatory notes on each of the proposed Rules. Appendix I presents a table setting out each condition and its purpose of the Operator Licence Conditions (Standard Licence Conditions) Rules 2018, Appendix II presents a table setting out each condition and its purpose of the Operator Licence Conditions (Kumul Telikom Holdings Limited) Rules 2018 and Appendix III presents a table setting out each condition and its purpose of the Operator Licence Conditions (Digicel (PNG) Limited) Rules 2018.

Respondents are requested to comment on the proposed terms and conditions as set out in Appendices I, II and III. Respondents are also requested to respond to the questions set out in chapters 3 and 4 in relation to the completeness of the conditions, their appropriateness and whether they achieve the stated objectives.

The draft Rules appear as Appendix IV (Draft Operator Licence Conditions (Standard Licence Conditions) Rules 2018); Appendix V (Draft Operator Licence Conditions (Kumul Telikom Holdings Limited) Rules 2018); and Appendix VI (Draft Operator Licence Conditions (Digicel (PNG) Limited) Rules 2018) to this paper.

## 2 BACKGROUND

### 2.1 Standard and Specific Conditions of Individual Licences

2.1.1 NICTA has reviewed the Standard and Specific Conditions of Individual Licences Rule 2011 in order to reflect obligations now appropriate to the current state of development of the sector and the changes that have occurred since 2011. The National ICT Act 2009 (the “Act”), section 58, which empowers NICTA to modify an individual licence by agreement, or in its sole discretion, subject to:

*1 Prior to varying an individual licence, NICTA shall –*

*(a) issue a notice in writing to the individual Licensee setting out – the reasons for the proposed variation; and the details of the variation; and the period during which the individual Licensee may make submissions to NICTA, in writing in relation to the proposed variation, being at least thirty (30) days from the date on which NICTA serves the notice on the individual Licensee; and*

*(b) give due and proper consideration to any such submission; and*

*(c) issue a direction in writing to the individual Licensee setting out the details and effective date of the variation.*

*2 Any variation of an individual licence agreed or determined by NICTA shall be consistent with this Act.*

As a result, the following draft Licensing Conditions Rules were prepared:

- Operator Licence Conditions (Standard Licence Conditions) Rules 2018
- Draft Operator Licence Conditions (Kumul Telikom Holdings Limited) Rules 2018
- Draft Operator Licence Conditions (Digicel (PNG) Limited) Rules 2018

### 2.2 Submissions in response to this Discussion Paper

2.2.1 NICTA invites written submissions in response to the issues raised in this discussion paper from any interested parties. Arguments and assertions (as distinct from statements of opinion) should be supported with evidence and data, particularly if they are contrary to the current understanding or tentative conclusions set out in this discussion paper.

2.2.2 Submissions should be submitted via email to [inquiry.submission@nicta.gov.pg](mailto:inquiry.submission@nicta.gov.pg) and must be received by 12 noon on Friday 1<sup>st</sup> February, 2019.

2.2.3 Copies of all submissions received will be published on NICTA’s Public Register consistent with the requirements on NICTA under subsection 229(3) of the Act. Claims for confidentiality regarding any written information submitted to NICTA in response to this public consultation process are governed by section 44 of the Act. Under section 44 of the Act, NICTA ultimately determines whether or not it will accept a claim for confidentiality and exclude from publication the information that

is subject to that claim. The process for claiming confidentiality is set out in the *Guidelines on the submission of written comments to public consultations and public inquiries*. Any respondent that wishes to claim confidentiality over information that it submits in response to this discussion paper should follow the procedures described therein.

### 3 PROPOSED LICENSING RULES - STRUCTURE

The table below summarizes the Standard conditions contained in the draft Operator Licence Conditions (Standard Licence Conditions) Rules 2018.

**Table 1** Standard Conditions: Operator Licence Conditions (Standard Licence Conditions) Rules 2018.

Condition	Comment
<b>Part I</b> 1-4	General conditions on the preliminary provisions governing the official title of the Rules and Entry into Force. Further establishes the definitions of terms used in the Rules to be used and the application and scope of the Rules.
<b>Part II</b> 5	Standard conditions of operator licences in respect of the obligations of the Licensee to pay applicable fees, adhere to the provisions contained under mandatory legislative instruments and all other laws of PNG, comply with registered RIOs, and abide by the requirements of NICTA, ITU and all relevant international agreements and conventions. The provision also requires that licensees to notify NICTA of changes on ownership or control, and to implement safety measures in relation to apparatus, systems, etc. Licensees are required to indemnify NICTA in relation to proceedings arising out of licence breaches or failings of the licensee.
<b>Part III</b> 6	Standard condition when a voice telephony service is supplied to also provide access to an emergency service free of charge at all times.
<b>Part IV</b> 7	Standard condition prohibiting international refile, subject to NICTA, upon application by the Licensee, authorising the routing of domestic traffic via another country if considered necessary
<b>Part V</b> 8-12	Specific terms and conditions applicable to content licences that authorise free television broadcasts or radio broadcasts and addresses conditions for the provision of service in mandatory broadcast coverage areas.

*Q 3.1: Do Respondents consider that this range of conditions covers all relevant matters? If not, what additional conditions should be included in the Rules and why?*

*Q 3.2: Do respondents consider that there are any conditions in these draft Rules that are unnecessary? If so, which ones and why?*

*Q 3.3: Do respondents consider that there are any conditions in these Draft Rules that should be expressed differently? Of so, which ones, and how might they be better expressed?*

The table below summarizes the conditions contained in the Draft Operator Licence Conditions (Kumul Telekom Holdings Limited)) Rules 2018. Part II contains more detail on key conditions relating to the establishment and use of public number directories, while Part IV deals with the conditions applicable to Rules for Mandatory Network Coverage

**Table 2** Special Conditions: Draft Operator Licence Conditions (Kumul Telikom Holdings Limited) Rules 2018

<b>Condition</b>	<b>Comment</b>
<b>Part I</b> 1-4	Conditions governing the preliminary conditions to be applied to the Rules, establishing the definition of terms used in the Rules, conditions governing entry into force and the scope of application of the licences pursuant to section 56 of the Act and subject to the special terms and conditions of the relevant Parts.
<b>Part II</b> 5-7	Sets out all matters relating to Public Number Directories, in terms of the provision of services, management and regulation of these services and treatment of unlisted numbers.
<b>Part III</b> 8 - 12	Specific conditions for Mandatory Network Coverage in the areas of Network Coverage Obligations (maintaining supply of a public cellular mobile service in nominated locations and service coverage, together with consequences of the failure to satisfy and fulfil such obligations), Network Plans (maintenance of accurate, current and comprehensive plans with specific details to be included), Certificates of completion of network coverage obligations (after satisfaction or verification by NICTA) and Performance Bonds (maintained to NICTA, for fulfilment of network coverage obligations and the conditions under which this bond can either be reduced or forfeited.)
<b>Part IV</b> 13	General condition establishing that the Licensee is required to maintain a Reference Interconnection Offer (RIO), pursuant to section 142 of the Act in relation to its supply of certain wholesale services for the services outlined in the rule and the specific terms and conditions to be stipulated in the RIO.
<b>Part V</b> 14-15	The regulatory objective of Accounting Separation is to enable NICTA to monitor to confirm that the Licensee’s internal transfer pricing arrangements do not amount to an anti-competitive cross subsidisation of its Retail Services (most of which compete with Retail Services offered by other Operator Licensees) using revenues received from its Wholesale Services. The Accounting Separation Obligation requires the provision of an annual report which must satisfy specific terms and conditions.
<b>Part VI</b> 16	Specific conditions prescribing the Operational Separation Obligation of the Licensee

*Q 3.4: Respondents are invited to comment on the special licence conditions proposed in relation to KTH.*

The table below summarises the Special conditions contained in the draft Operator Licence Conditions (Digicel (PNG) Limited) Rules 2018. Part I describes general conditions, while Part II and III contain more detail on key conditions governing the use of operator licences.

**Table 3** Special Conditions: Draft Operator Licence Conditions (Digicel (PNG) Limited) Rules 2018

<b>Condition</b>	<b>Comment</b>
<b>Part I</b> 1-4	Describes general conditions governing preliminary provisions such as delineation of terms used in the Rules, entry into force and further sets out the scope of application of the licences pursuant to section 56 of the Act and subject to the special terms and conditions of the relevant Parts.
<b>Part II</b> 5-7	Specific conditions governing all matters relating to Public Number Directories, in terms of the provision of services, management and regulation of these services and treatment of unlisted numbers.
<b>Part III</b> 8	Establishes that the Licensee shall continue to maintain a public cellular mobile service network that provides geographic coverage and retail services that are equivalent to or better than the geographic coverage and retail services provided by the Licence in 2017.

*Q 3.5: Respondents are invited to comment on the special licence conditions proposed in relation to Digicel (PNG) Limited.*

## **4 SIGNIFICANT TERMS AND CONDITIONS**

This section describes in detail some of the more complex terms and conditions that are included in the Licences Rule, 2018.

### **4.1 Standard Conditions of Individual Licences Rule, 2018**

#### **4.1.1 Public Emergency Call Access (draft, section 6)**

This condition requires the Licensee to ensure that all users of telecommunications equipment can access the emergency services at all times free of charge. The conditions will apply to all Licensees who supply voice telephony services.

#### **4.1.2 International Call refile (draft, section 7)**

Call refiling occurs when a carrier terminates traffic and regenerates it for further conveyance. Under certain circumstances, usually accompanied by a lack of transparency, call refiling may be a form of fraud or anti-competitive behaviour in which one carrier tampers with CID (caller-ID) or ANI data to mask the number from which a call originated before handing the call off to another carrier. To avoid such outcomes international call refiling is prohibited subject to approval in cases where it may be specifically justified, such as when it is necessary as a result of widespread failure of national telecommunications infrastructure.

### **4.2 Special Conditions in the proposed Rule relating to KTH**

#### **4.2.1 Public Number Directory (draft, sections 5, 6 and 7)**

This condition imposes an obligation on the Licensee to ensure that all users have access to a Directory Information service and that the information held by the Licensee is kept up-to-date and not used for any purpose other than in the provision of the Directory Information Service.

The Licensee is also required to co-operate with other licensed operators in providing this service. Licensees may decide to provide a single directory service that covers all relevant Public Numbers, although there is no obligation to coordinate to this extent.

The Directory Information Service required by the proposed Rule need not take the form of a hard copy directory but may include such media. The important requirement is that all users must have access to the service.

#### **4.2.2 Network Coverage Obligations (draft, sections 8 - 12)**

KTH component licensees are currently committed to specific Network Coverage Obligations. Under the Rules, the Licensee shall continue to maintain a public cellular mobile service network that provides geographic coverage and retail services that are equivalent to or better than the geographic coverage and retail services provided by the Licensee in a nominated reference date.

The Licensee shall give NICTA 12 months' notice prior to decommissioning or removing any telecommunications transmission tower that the Licensee owned and operated in a nominated reference date if, as a consequence of the decommissioning or removal, the Licensee will cease to supply a public cellular mobile service in a geographic area.

The provisions set out the detailed arrangements for determining compliance with the obligations and the procedures surrounding the bond and bond administration.

#### **4.2.3 Requirement to maintain a Reference Interconnection Offer (draft, section 13)**

Under the proposed Licence conditions, KTH shall provide to NICTA and maintain for the duration of its relevant licences, a Reference Interconnection Offer pursuant to section 142 of the Act in relation to its supply of the following wholesale services:

- (a) an International Submarine Cable Transmission Service;
- (b) an International Submarine Cable Gateway Access Service; and
- (c) a National Broadband Transmission Capacity Service supplied via terrestrial and/or submarine fibre optic cable

The Licence conditions require a Reference Interconnection Offer given to NICTA to include both price-related terms and non-price terms and conditions in relation to the supply of each RIO service.

The RIO shall address a full range of considerations to the extent that they are relevant to the Licensee's supply of the RIO services, namely:

- (i) the procedures that will apply to the handling of requests from Access Seekers for the supply of a RIO service or for changes to the existing supply of a RIO service;
- (ii) ordering and provisioning processes;
- (iii) traffic management principles and processes;
- (iv) any relevant technical and standardisation matters;
- (v) billing processes and procedures;
- (vi) fault detection, handling and rectification processes and procedures;
- (vii) matters relating to network protection and system safety;
- (viii) dispute resolution processes and procedures;
- (ix) points of interconnection;
- (x) contact details for relevant personnel; and
- (xi) any relevant forms or templates.

#### **4.2.4 Accounting Separation (draft, sections 14 and 15, and Schedule 4)**

Accounting Separation is a regulatory tool to assist NICTA to ascertain whether there are anti-competitive cross-subsidies among services provided by a Licensee, or whether the Licensee is engaging in any form of anti-competitive pricing.

Separating the costs and revenues of relevant services will enable NICTA to ascertain whether there are anti-competitive cross-subsidies between those services provided by the Licensee, or whether the Licensee is engaging in any form of anti-competitive pricing. Accounting separation will also be used to assist in ensuring that charges for telecommunications services are cost-based, transparent and non-discriminatory.

Accounting separation requires the preparation of separate accounts for each of the different businesses operated by the same Licensee, by identifying and allocating the costs and revenues associated with each business as well as the dealings between them.

A requirement for accounting separation will enable NICTA to monitor that KTH's internal transfer pricing arrangements do not amount to anti-competitive cross subsidisation of its retail services (most of which compete with the retail offerings of other service providers) from revenues received from its wholesale services. A detailed procedural manual will be necessary to give effect to accounting separation, and will be required to be prepared by KTH for NICTA's approval.

The need for both accounting separation and operational separation (discussed below) arises in the case of KTH because it has sole management and control of PNG's submarine cable assets, and, through DataCo, has control of existing onshore fibre assets. It is in relation to these assets and the wholesale services that they support that KTH is required to provide a Rio under the proposed Licence conditions.

#### **4.2.5 Operational Separation (draft, section 16 and Schedule 5)**

A requirement for operational separation (sometimes referred to as functional separation) will ensure that KTH does not and cannot use its provision of the nominated wholesale services to unfairly advantage its retail businesses compared to competitive retail operators which also use those wholesale services. This will be much more than accounting (covered in 3 above), and will include separation of personnel and systems.

It may be useful in the fullness of time and after experience of operating under the new licence conditions for the principles for operational separation outlined in Schedule 5 to be described in further detail or to be augmented by procedural guidance.

*Q 4: Respondents are invited to comment on these proposed KTH Special Licence conditions and to make any further suggestions they consider appropriate.*

### **4.3 Special Conditions in the proposed Rule relating to Digicel (PNG) Limited**

#### **4.3.1 Public Number Directory (draft, sections 5, 6 and 7)**

The same special licence obligation proposed in relation to a Directory Information Service that applies in the case of KTH at section 4.2.1 above, is also proposed in the case of Digicel.

Itf is open for the licensees to collaborate to provide a combined Directory Information Service or to provide services separately to all users who wish to obtain information about Public Numbers.

#### **4.3.2 Network Coverage Obligations (draft, section 8)**

The proposed Network Coverage Obligation that is proposed to apply to Digicel relates to maintaining the service coverage (or an equivalent coverage) that Digicel had a particular point in time and which met its original licence network and service rollout obligations.

*Q 5: Respondents are invited to comment on these proposed Digicel Special Licence conditions and to make any further suggestions they consider appropriate.*

## 5 CONCLUSION

In conclusion, respondents are requested to comment on the matters set out in sections 3 and 4 of this paper. It would assist in the consideration of responses if the question numbers in these sections were quoted in any replies. Respondents are also requested to comment on the conditions in the draft Rules as set out in Appendices I, II and III, and the appropriateness of those conditions. Comments on any additional conditions, which respondents believe should be included, are also welcome.

### **Next steps**

NICTA will consider the contributions of respondents and then finalise the Rules. Following that, NICTA shall vary individual operator licences to the extent required by the Rules, and shall do so in accordance with the requirements of section 58 of the National ICT Act 2009.

## 6 APPENDICES

### Appendix I

#### Operator Licence Conditions (Standard Licence Conditions) Rules 2018 – Explanatory Note

Condition No. Heading	Heading	Purpose
<b>Part I</b>		
3	Definitions	Delineates the terms used in these operator licence conditions (standard licence conditions) rules 2018.
4	Application	Determines the standard terms and conditions for an operator licence, applications licence and network licence
<b>Part II</b>		
5	Standard licence conditions	Establishes the standard conditions of operator licences in respect of the licensee's roles, responsibilities and relationship with NICTA, ITU and other Licensees
<b>Part III</b>		
6	Emergency call access	Establishes the provision of Emergency call access services
<b>Part IV</b>		

7	Prohibition of international refile	Determines prohibition of international refile on all traffic that originates on its network in Papua New Guinea and which is intended to be terminated in Papua New Guinea, ensuring that this is not through a switching centre or other facility that is located in a country other than Papua New Guinea
<b>Part V</b>		
8	Application	Defines and delineates the scope of application and coverage of Part V, establishing its application to Content Licence which are determined to be an Individual Licence, which relates to the supply of a Broadcast Service that is either a free television broadcast service or a radio broadcast service.  Further determines the procedure to be undertaken if the Licensee was not an Existing Licensee on the Succession Date
9	Mandatory broadcast coverage areas—national market segment	Provides for the provision of mandatory broadcast coverage areas and attached conditionality where the Licensee is authorised under the terms of its Content Licence to broadcast in the national market segment
10	Mandatory broadcast coverage areas—provincial market segment	Determines the mandatory broadcast coverage areas where the Licensee is authorised under the terms of its Content Licence to broadcast in the provincial market segment only
11	Mandatory broadcast coverage areas—district market segment	Establishes that, where the Licensee is authorised under the terms of its Content Licence to broadcast in the district market segment only, then the Licensee must provide Broadcast Coverage to the district centre or centres specified in its licence within six months of the grant of the licence.

<b>12</b>	Conditions to continue to provide Mandatory broadcast coverage areas	Determines that the Licensee must continue to provide Broadcast Coverage in the areas required by the terms of its licence until NICTA specifically authorises otherwise.
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## Appendix II

### Explanatory note on Operator Licence Conditions (Kumul Telikom Holdings Limited) Rules 2018

Condition No.	Heading	Purpose
<b>Part I</b>		
3	Definitions	Sets out the meaning attributed to key terms used throughout the licence document.
4	Application	Establishes the scope and application of the Rules noting that it is applicable to the Applications Licence granted to KTH by NICTA pursuant to section 56 of the NTA Act; the Network (Gateway Service) Licence granted to KTH by NICTA pursuant to section 56 of the NTA Act and the Network Licence granted to KTH by NICTA pursuant to section 56 of the NTA Act.
<b>Part II</b>		
5	Recording of customers' directory listing preference	Establishes the requirements for the Licensee to provide its customers with access to any Directory Information Service offered by any licensed operator and in making information available to enable a Directory Information Service to be provided. The Licensee must comply with data protection legislation.
6	Unlisted numbers not to be included in Directory Information Services	Provides that the Directory Information in relation to a Subscriber that has recorded a directory listing preference for an Unlisted Number shall not be included in, or accessible via, a Directory Information Service; or shared with any other Applications Licensee for the purpose of inclusion in a Directory Information Service.

7	Obligation to supply Directory Enquiry Services	Determines that the Licensee shall provide its Subscribers access to, free of charge, a Voice-based Directory Enquiry Service; and an Internet-based Directory Enquiry Service.  Also sets out examples of such services and gives stipulations for the management and regulation of those services.
<b>Part III</b>		
8	Network Coverage Obligations	Determines Network coverage obligations establishing that the Licensee shall commence the supply of, and thereafter maintain the ability to supply, a Public Cellular Mobile Service in each geographic area, specific to the conditions set out in the applicable Schedule to the Rules.
9	Network plans	Establishes that the Licensee shall give NICTA and thereafter maintain an accurate, current and comprehensive plan that includes maps and other key information as prescribed under this Rule.
10	Certificates of completion	Delineates the definition to be ascribed to “Certificate of Completion, establishing that it conveys a certification given by NICTA to a Licensee, in response to an application from a Licensee, that the Licensee has fulfilled a Network Coverage Obligation in relation to specific localities.
11	Performance bond	Establishes the condition that the Licensee shall provide NICTA and thereafter maintain a bank guarantee in favour of NICTA for the Licensee’s fulfillment of its Network Coverage Obligations.
12	Maintenance of Network Coverage	Requires the Licensee to maintain the network coverage and retail services that it provided in 2017.

<b>Part IV</b>		
<b>13</b>	Requirement to maintain a Reference Interconnection Offer	Provides for the establishment of a Reference Interconnection Offer, in relation to nominated wholesale services.
<b>Part V</b>		
<b>14</b>	Accounting Separation Obligation regulatory objective	Establishes that the regulatory objective of Accounting Separation under these Rules is to enable NICTA to monitor to confirm that the Licensee's internal transfer pricing arrangements do not amount to an anti-competitive cross subsidisation of its Retail Services (most of which compete with Retail Services offered by other Operator Licensees) using revenues received from its Wholesale Services.
<b>15</b>	Account Separation Obligation	Determines that the rationale of the accounting separation obligation is to aid NICTA in ensuring compliance with other conditions, and the ability of the Licensee to show that there is no below cost and/or cross subsidisation of any element of the business will be paramount. The clause sets out the requirements for keeping separate accounts for different activities.
<b>Part VII</b>		
<b>16</b>	Operational Separation Obligation	Sets out that the Licensee must organise and operate its wholesale business units responsible for the supply of Declared Services in a manner in accordance with the provisions and requirements contained under the rules.

## Appendix III

### Explanatory note on Operator Licence Conditions (Digicel PNG Limited) Rules 2018

Condition No.	Heading	Purpose
<b>Part I</b>		
3	Definitions	Sets out the meaning attributed to certain terms used throughout the licence document.
4	Application	Establishes that the applications licence granted to Digicel by NICTA pursuant to section 56 of the Act is subject to the special terms and conditions specified in Part II of these Rules.
<b>Part II</b>		
5	Recording of customers' directory listing preference	Sets out that the Licensee is to provide its customers with access to any Directory Information Service offered by any licensed operator and make information available to enable a Directory Information Service to be provided. The Licensee must comply with data protection legislation.
6	Unlisted numbers not to be included in directory information services	Provides that the Directory Information in relation to a Subscriber that has recorded a directory listing preference for an Unlisted Number shall not be included in, or accessible via, a Directory Information Service; or shared with any other Applications Licensee for the purpose of inclusion in a Directory Information Service.
7	Obligation to supply directory enquiry services	Provides that the Licensee shall provide its Subscribers access to, free of charge, a Voice-based Directory Enquiry Service; and an Internet-based Directory Enquiry Service.

		Further outlines examples of these services and gives stipulations for the management and regulation of these said services.
<b>Part III</b>		
<b>8</b>	Maintenance of network coverage	Establishes that the Licensee shall continue to maintain a public cellular mobile service network that provides geographic coverage and retail services that are equivalent to or better than the geographic coverage and retail services provided by the Licensee in 2017.

**Appendix IV**

**Draft Operator Licence Conditions (Standard Licence Conditions) Rules 2018**

# 7 OPERATOR LICENCE CONDITIONS (STANDARD LICENCE CONDITIONS) RULES 2018

*National Information and Communications Technology Act 2009*

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The NATIONAL INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY makes these Rules under sections 55 and 218 of the *National Information and Communications Technology Act 2009*.

Dated [DATE]

[THIS VERSION NOT FOR SIGNATURE]

[NAME]

Chairman

Charles Punaha  
Chief Executive Officer

National Information and Communications Technology Authority

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## PART I – PRELIMINARY

### 1 Name of Rule

These Rules may be cited as the *Operator Licence Conditions (Standard Licence Conditions) Rules 2018*.

## 2 Commencement

These Rules shall come into force on the date they are published in the National Gazette.

## 3 Definitions

- (1) Subject to subsection (2), unless the context otherwise requires, terms used in these Rules have the same meaning as in the Act.
- (2) In these Rules, unless the context otherwise requires:
  - (a) “**Act**” means the *National Information and Communications Technology Act 2009* and includes any regulations made under that Act;
  - (b) “**voice telephony service**” means a PSTN Telephony service, a public cellular service, or an IP telephony service.
- (3) Each of the following terms used in these Rules has the meaning given to it by the *National Information and Communications Technology (Operating Licensing) Regulation 2010*:
  - (a) international gateway;
  - (b) IP telephony;
  - (c) ITU Convention;
  - (d) PSTN telephony;
  - (e) public cellular service; and
  - (f) switching centre.

NOTE: The following terms are defined in the Act:

- applications licence;
- emergency services number;
- facilities right;
- ICT;
- mandatory instrument;
- network licence;
- NICTA;
- operator licence;
- radiocommunications licence;
- RIO;
- regulations;
- universal access and service levy.

## 4 Application

- (1) An operator licence issued by NICTA pursuant to section 56 of the Act is subject to the standard terms and conditions specified in Part II of these Rules.

- (2) An applications licence issued by NICTA pursuant to section 56 of the Act is subject to the standard terms and conditions specified in Part III of these Rules.
- (3) A network licence issued by NICTA pursuant to section 56 of the Act that entitles the holder to a facilities right in respect of an international gateway is subject to the standard terms and conditions specified in Part IV of these Rules.

## **PART II – STANDARD CONDITIONS OF OPERATOR LICENCES**

### **5 Standard licence conditions**

- (1) The licensee shall:
  - (a) pay all applicable licence fees and levies when they fall due, including but not limited to the universal access and service levy;
  - (b) comply with:
    - (i) the Act, all applicable mandatory instruments, and all other applicable laws of the Independent State of Papua New Guinea;
    - (ii) any radiocommunications licence issued to the licensee;
    - (iii) any reference interconnection offer (“*RIO*”) given by the licensee and accepted by NICTA in accordance with sections 141 and 142 of the Act;
    - (iv) the requirements of all relevant international conventions relating to ICT, including the ITU Convention and the recommendations made under that convention, that are notified to the licensee by NICTA; and
    - (v) any written commitment given by the licensee to NICTA as a part of the licensee’s application for an individual licence; and
  - (c) notify NICTA within 14 days in advance of any:
    - (i) change in the shareholding or beneficial ownership of the licensee of more than 10% in any one year or more than 25% as from the date of issue of the licence;
    - (ii) joint ventures or consortia which the licensee enters into with any other Individual Licensee after the grant of the licence;
    - (iii) restructuring or rationalisation of the licensee’s corporate structure material to the operation of the licensee;
    - (iv) change of the particulars of the licensee lodged with NICTA; and
  - (d) notify NICTA before any:

- (i) transfer of shares which would result in the direct or indirect ownership of more than one quarter of the issued voting share capital of the licensee changing hands; and
  - (ii) change in the ownership of the licensee's issued voting share capital that would result in change to the composition of more than one quarter of the licensee's board of directors.
- (e) take all proper and adequate safety measures to safeguard life or property in respect of all apparatus, equipment and installations possessed, operated, maintained or used under the licence, including exposure to any electrical emission or radiation emanating from the apparatus, equipment or installation so used;
  - (f) take all reasonable steps to ensure that the charging mechanisms used in connection with any of its facilities or services are accurate and reliable in all material aspects; and
  - (g) indemnify NICTA against any claims or proceedings arising from any breaches or failings on the part of the licensee.

### **PART III – STANDARD CONDITIONS OF APPLICATIONS LICENCES**

#### **6 Emergency call access**

If the licensee supplies a voice telephony service, the licensee shall provide the users of that service with access at all times and free of charge to emergency service numbers.

### **PART IV – STANDARD CONDITIONS OF NETWORK (GATEWAY SERVICE) LICENCES**

#### **7 Prohibition of international refile**

- (1) The licensee shall ensure that all traffic that originates on its network in Papua New Guinea and which is intended to be terminated in Papua New Guinea is not routed through a switching centre or other facility that is located in a country other than Papua New Guinea.
- (2) NICTA may, upon application by the licensee, authorise the routing of domestic traffic via another country where such is necessary for purposes related to network continuity or disaster recovery.

### **PART V – TERMS AND CONDITIONS APPLICABLE TO CONTENT LICENCES THAT AUTHORISE FREE TELEVISION BROADCASTS OR RADIO BROADCASTS**

#### **8 Application**

- (1) This Part applies to a Content Licence that:
  - (a) is an Individual Licence; and
  - (b) relates to the supply of a Broadcast Service that is either a free television broadcast service or a radio broadcast service.
- (2) If the licensee was not an Existing Licensee on the Succession Date, then NICTA may, at any time, specify by written notice issued under this clause:
  - (a) the particular parts of this Part, if any, that do not apply to the licensee;
  - (b) the date from which this Part, or particular parts thereof, apply to the licensee; and
  - (c) the dates by which the licensee must comply with this Part or particular sections thereof.

## **9 Mandatory broadcast coverage areas—national market segment**

Where the licensee is authorised under the terms of its Content Licence to broadcast in the national market segment, then the licensee is required to provide Broadcast Coverage in each of the main centres specified in Schedule 1 and each of the mid-sized centres specified in Schedule 2 by 31 December 2018 or any alternative date or dates specified by NICTA with respect to the licensee for the purpose of this clause.

## **10 Mandatory broadcast coverage areas—national market segment**

- (1) Where the licensee is authorised under the terms of its Content Licence to broadcast in the provincial market segment only, then the licensee must provide Broadcast Coverage in the main centres and the mid-sized centres of that province as per Schedules 1 and 2 within six months of the grant of the Content Licence.
- (2) The licensee must progressively extend its Broadcast Coverage to the administrative district centres of the province or provinces for which it is licensed so that it provides Broadcast Coverage to:
  - (a) at least half of the administrative district centres in the relevant province or provinces as per Schedule 3 within five years of the grant of the licence; and
  - (b) all of the administrative district centres in the relevant province or provinces as per Schedule 4 within 10 years of the grant of the licence.

## **11 Mandatory broadcast coverage areas—national market segment**

Where the licensee is authorised under the terms of its Content Licence to broadcast in the district market segment only, then the licensee must provide Broadcast Coverage to the districts centre or centres specified in its licence within six months of the grant of the licence.

## **12 Mandatory broadcast coverage areas—national market segment**

The licensee must continue to provide Broadcast Coverage in the areas required by the terms of its licence until NICTA specifically authorises otherwise.

**Appendix V**

**Draft Operator Licence Conditions (Kumul Telekom Holdings Limited) Rules 2018**

**OPERATOR LICENCE CONDITIONS (KUMUL TELIKOM HOLDINGS LIMITED) RULES 2018**

*National Information and Communications Technology Act 2009*

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The NATIONAL INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY makes these Rules under sections 55 and 218 of the *National Information and Communications Technology Act 2009*.

Dated [DATE]

**[THIS VERSION NOT FOR SIGNATURE]**

[NAME]

Chairman

Charles Punaha  
Chief Executive Officer

National Information and Communications Technology Authority

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**PART I – PRELIMINARY**

**2 Name of Rule**

These Rules may be cited as the *Operator Licence Conditions (Kumul Telikom Holdings Limited) Rules 2018*.

### 3 Commencement

These Rules shall come into force on the date they are published in the National Gazette ("***the commencement date***").

### 4 Definitions

- (1) Subject to subsection (3), unless the context otherwise requires, terms used in these Rules have the same meaning as in the Act.
- (2) In these Rules, unless the context otherwise requires:
  - (a) "***Act***" means the *National Information and Communications Technology Act 2009* and includes any regulations made under that Act;
  - (b) "***accounting separation***" means the preparation of accounting information (including costs and revenues) related to regulated and non-regulated activities of KTH, at a level of detail that allows NICTA, or a third party appointed by NICTA, to trace back and forth all internal and external transactions and ensure compliance with relevant regulatory obligations;
  - (c) "***directory information***" means information about a subscriber that is obtained by the licensee in the course of its provision of a voice telephony service to the subscriber and which identifies:
    - (i) the name of the subscriber;
    - (ii) the village or other address indicator of the subscriber; and
    - (iii) the telephone number issued to the subscriber by the licensee as part of its supply of a voice telephony service;
  - (d) "***directory information service***" means a voice-based directory enquiry service, an Internet-based directory enquiry service, or a telephone directory;
  - (e) "***force majeure event***" means:
    - (i) a cyclone, storm, earthquake, volcanic eruption, tidal wave, landslide or other natural disaster; or
    - (ii) an act of public enemy, war (declared or undeclared), sabotage, blockage, revolution, riot, insurrection, civil commotion or any violent or threatening act; or
    - (iii) any other event which NICTA and the licensee agree in writing to be a force majeure event for the purposes of subsection 9(4) of these Rules;
  - (f) "***international submarine cable transmission service***" has the meaning given to it in a declaration of such a service by the Minister under section 130 of the Act, regardless of whether or not that declaration remains in force;

- (g) **“international submarine cable gateway access service”** has the meaning given to it in a declaration of such a service by the Minister under section 130 of the Act, regardless of whether or not that declaration remains in force;
- (h) **“Internet-based directory enquiry service”** means a service which enables a person to search via a website or Internet-based application for a particular telephone number by reference to information about the subscriber to whom that number is issued (for example, the subscriber’s name);
- (i) **“KTH”** means Kumul Telikom Holdings Limited with company registration number 1-26889;
- (j) **“licensee”** means KTH;
- (k) **“listed number”** means a telephone number that is recorded in a directory information service;
- (l) **“national broadband transmission capacity service”** has the meaning given to it in a declaration of such a service by the Minister under section 130 of the Act, regardless of whether or not that declaration remains in force;
- (m) **“network coverage obligation”** has the meaning given to it in subsection 9(1) of these Rules;
- (n) **“publish”** includes:
  - (i) publish on the Internet; and
  - (ii) publish in a hard copy form that is made available to the public at large through publicised delivery or collection arrangements;
- (o) **“standard entry”** means an entry in a voice-based directory enquiry service or an Internet-based directory enquiry service that comprises of:
  - (i) the name of the subscriber;
  - (ii) the village or other address indicator of the subscriber; and
  - (iii) one telephone number;
- (p) **“subscriber”** means, in respect of an applications licensee, a person who contracts with that licensee for a voice telephony service;
- (q) **“telephone directory”** means a published directory of subscribers that lists, in alphabetical order of the subscribers’ names, the telephone numbers and other directory information of subscribers;
- (r) **“telephone number”** means either a fixed number or a mobile number that has been issued by the licensee to a subscriber for use in conjunction with voice telephony service;
- (s) **“unlisted number”** in relation to a voice telephony service or a telephone number means a telephone service and/or telephone number that is not recorded in any directory information service;

- (t) **“voice-based directory enquiry service”** means a service which enables a person to call a particular telephone number and speak to an operator to find a particular telephone number by reference to information about the subscriber to whom that number is issued, but excludes services with additional or enhanced functionality or a service for which a charge may be imposed; and
  - (u) **“voice telephony service”** means a PSTN Telephony service, a public cellular service, or an IP telephony service;
- (3) Each of the following terms used in these Rules has the meaning given to it by the *National Information and Communications Technology (Operating Licensing) Regulation 2010*:
- (a) IP telephony;
  - (b) PSTN telephony;
  - (c) public cellular mobile service; and
  - (d) public cellular service.

NOTE: The following terms are defined in the Act:

- access seeker;
- applications licence;
- applications licensee;
- customer equipment;
- declared service;
- facility;
- network
- network licence;
- NICTA;
- operator licence;
- RIO;
- retail customer;
- retail service;
- wholesale customer;
- wholesale service.

## 5 Application

- (1) The applications licence granted to KTH by NICTA pursuant to section 56 of the Act on [DATE] is subject to the special terms and conditions specified in Part II of these Rules.
- (2) The network licence granted to KTH by NICTA pursuant to section 56 of the Act on [DATE] is subject to the special terms and conditions specified in Parts III to VI of these Rules.

## PART II – PUBLIC NUMBER DIRECTORY

## **6 Recording of customers' directory listing preference**

- (1) The licensee shall, in relation to each subscriber to its voice telephony services and free of charge, record whether or not the subscriber wishes directory information in relation to that subscriber to appear in, or be accessible via, a directory information service (*“directory listing preference”*).
- (2) A subscriber's directory listing preference shall indicate whether the subscriber wants:
  - (a) a listed number; or
  - (b) an unlisted number.
- (3) When seeking a subscriber's directory listing preference, the licensee shall present a listed number as the default option.
- (4) The licensee shall:
  - (a) enable a subscriber to its voice telephony service to change or update his or her directory listing preference free of charge; and
  - (b) reflect that change to the subscriber's directory listing preference within 48 hours in all directory information services.

## **7 Unlisted numbers not to be included in directory information services**

Directory information in relation to a subscriber that has recorded a directory listing preference for an unlisted number shall not:

- (a) be included in, or accessible via, a directory information service; or
- (b) be supplied to, or shared with, any other applications licensee for the purpose of inclusion in a directory information service.

## **8 Obligation to supply directory enquiry services**

- (1) The licensee shall give its subscribers access, free of charge, to:
  - (a) a voice-based directory enquiry service; and
  - (b) an Internet-based directory enquiry service;that, subject to subsection (8), includes all subscribers of voice telephony services regardless of which applications licensee supplies the subscriber with that service.
- (2) Examples of an Internet-based directory enquiry service include:
  - (a) a service accessible from a website; and
  - (b) a smartphone application.

- (3) For avoidance of doubt, the licensee may charge for access to an enhanced voice-based directory enquiry service.
- (4) Examples of an enhanced voice-based directory enquiry service include:
  - (a) a service that establishes a call to a telephone number; or
  - (b) a service that is offered to the subscribers of other applications licensees.
- (5) The licensee shall include, and manage the inclusion of, the directory information, of the subscribers of another applications licensee on conditions that are no less favourable than for a subscriber of the licensee.
- (6) The licensee shall not charge a subscriber for the inclusion of one standard entry in a directory information service.
- (7) The licensee may offer to replace a standard entry with a non-standard entry and charge the subscriber for the non-standard entry.
- (8) The licensee shall comply with its obligation under subsection 0:
  - (a) to the extent made possible by the information provided by other applications licensee; and
  - (b) before 1<sup>st</sup> January 2020.
- (9) Any arrangements between the licensee and another applications licensee in relation to the sharing of directory information for purposes relating to the supply of directory enquiry services under these Rules:
  - (a) must be in writing;
  - (b) must not require the payment of any fee or charge for the supply or sharing of directory information;
  - (c) must exclude the sharing of directory information in relation to those subscribers that have recorded a directly listing preference for an unlisted number.

## **PART III – MANDATORY NETWORK COVERAGE**

### **9 Network coverage obligations**

- (1) The licensee shall commence the supply of, and thereafter maintain the ability to supply, a public cellular mobile service in each geographic area specified in column 4 in Schedule 1 by the date specified in the corresponding entry in column 5 in Schedule 1 (each a “*network coverage obligation*”).
- (2) A public cellular mobile service supplied for the purposes of a network coverage obligation must:

- (a) be effective 24 hours a day, including during busy times; and
  - (b) satisfy any minimum network performance or end-to-end quality of service standards that NICTA may determine in rules made under section 218 of the Act.
- (3) The licensee may satisfy a network coverage obligation through reliance on, or the sharing of, the facilities of another network licensee or other person.
- (4) If the licensee fails to fulfil a network coverage obligation and the licensee is able to demonstrate to the satisfaction of NICTA that:
- (a) the failure was due to a force majeure event; and
  - (b) the licensee has taken all reasonable steps open to it to reinstate or repair the facilities affected by the force majeure event within a reasonable time after the occurrence of the force majeure event;

then that failure shall be disregarded by NICTA when determining whether or not to issue a certificate of completion under section 11 in relation to that particular network coverage obligation.

## **10 Network plans**

- (1) The licensee shall give NICTA and thereafter maintain an accurate, current and comprehensive plan that includes maps and which sets out:
- (a) the location and type of the facilities that the licensee will construct for the purposes of fulfilling its network coverage obligations;
  - (b) a construction and deployment timetable; and
  - (c) the actual and planned geographic areas covered by its public cellular mobile service network.
- (2) The licensee shall ensure that the plan it gives NICTA under subsection (1) is updated at least once every six months until such time as NICTA has issued a certificate of completion under section 11 in respect of every network coverage obligation.

## **11 Certificates of completion**

- (1) Upon the fulfilment of a network coverage obligation, the licensee may apply to NICTA for a certificate of completion in respect of that particular network coverage obligation.
- (2) NICTA shall issue a certificate of completion in response to an application under subsection (1) if it is satisfied that the relevant network coverage obligation has been fulfilled.
- (3) If NICTA determines that a field verification survey is necessary to determine whether or not the licensee has satisfied a network coverage obligation, the licensee shall bear the full costs incurred by NICTA in its conduct of such a survey or its commissioning of a third party to conduct such a survey.

## 12 Performance bond

- (1) Within 30 calendar days of the commencement date, the licensee shall provide to NICTA and thereafter maintain a bank guarantee in favour of NICTA (*“the performance bond”*) and in a form accepted by NICTA in writing as a performance bond for the licensee’s fulfilment of its network coverage obligations.
- (2) The performance bond shall be for an amount of [fourteen million] Kina (PGK[14,000,000]) (*“the original value”*).
- (3) Where NICTA has issued a certificate of completion to the licensee pursuant to section 11 in respect of a network coverage obligation before the date specified in the corresponding entry in column 5 in Schedule 1, then the licensee may proportionally reduce the original value of the performance bond by a percentage determined by the following formula:

$$(A / B) \times 100$$

where:

- (a) *A* is the number of individual network coverage obligations for which NICTA has issued the licensee a certificate of completion and which have not been taken into account in any previous application of this formula under this subsection; and
  - (b) *B* is the total number of network coverage obligations listed in Schedule 1.
- (4) Where NICTA has not issued a certificate of completion to the licensee pursuant to section 11 in respect of a network coverage obligation, then the licensee shall forfeit a portion of the original value of the performance bond that is equal to the amount that would have been returned to the licensee if subsection (3) had applied on its terms.
  - (5) The licensee shall not be released from its network coverage obligations under this section 12 by any breach or forfeiture of the performance bond.

## 13 Maintenance of network coverage

- (1) Subject to subsection (3), the licensee shall continue to maintain a public cellular mobile service network that provides geographic coverage and retail services that are equivalent to or better than the geographic coverage and retail services provided by the licensee in 2017.
- (2) The licensee shall give NICTA 12 months’ notice prior to decommissioning or removing any telecommunications transmission tower that the licensee owned and operated in 2017 if, as a consequence of the decommissioning or removal, the licensee will cease to supply a public cellular mobile service in a populated geographic area.
- (3) A facility constructed or operated by the licensee under a project agreement with NICTA shall be disregarded for the purposes of:
  - (a) determining geographic coverage at any time under subsection (1); and

- (b) determining the telecommunications transmission towers the licensee owned or operated in 2017 under subsection (2).

## **PART IV – REFERENCE INTERCONNECTION OFFER**

### **14 Requirement to maintain a reference interconnection offer**

- (1) The licensee shall give NICTA and thereafter maintain a reference interconnection offer (“*RIO*”) pursuant to section 142 of the Act in relation to its supply of the following wholesale services, regardless of whether or not the service is a declared service:
  - (a) an international submarine cable transmission service;
  - (b) an international submarine cable gateway access service; and
  - (c) a national broadband transmission capacity service supplied via terrestrial and/or submarine fibre optic cable(collectively and individually, “*RIO services*”).
- (2) A RIO given to NICTA for the purposes of subsection (1) shall:
  - (a) include both price-related terms and non-price terms and conditions in relation to the supply of each RIO service;
  - (b) be presented in a form that will enable the terms, if accepted by an access seeker, to become the terms of a contract for the supply of one or more RIO services without the need for further negotiation; and
  - (c) address the following aspects to the extent that they are relevant to the licensee’s supply of the RIO services:
    - (i) the procedures that will apply to the handling of requests from access seekers for the supply of a RIO service or for changes to the existing supply of a RIO service;
    - (ii) ordering and provisioning processes;
    - (iii) traffic management principles and processes;
    - (iv) any relevant technical and standardisation matters;
    - (v) billing processes and procedures;
    - (vi) fault detection, handling and rectification processes and procedures;
    - (vii) matters relating to network protection and system safety;
    - (viii) dispute resolution processes and procedures;

- (ix) points of interconnection;
  - (x) contact details for relevant personnel; and
  - (xi) any relevant forms or templates.
- (3) For the avoidance of doubt, a RIO given to NICTA for the purposes of subsection (1) may, at the discretion of the licensee:
- (a) specify different terms and conditions, including different types of terms, for the different RIO services; and
  - (b) specify terms and conditions that relate to the supply of wholesale services other than the RIO services specified in subsection (1).

## **PART V – ACCOUNTING SEPARATION**

### **15 Regulatory objective**

- (1) The regulatory objective of accounting separation under these Rules is to enable NICTA to monitor to confirm that the licensee’s internal transfer pricing arrangements do not amount to an anti-competitive cross subsidisation of its retail services (most of which compete with retail services offered by other operator licensees) using revenues received from its wholesale services.

### **16 Account separation obligation**

- (1) The licensee shall prepare and provide NICTA with an annual report (“*the accounting separation return*”) in relation to each individual retail service, internal wholesale service, and external wholesale service that the licensee supplies to itself or another person (including a related party).
- (2) The accounting separation returns given to NICTA for the purposes of subsection (1) shall:
- (a) include separate profit and lost statements in relation to:
    - (i) the retail services specified in Schedule 2(a);
    - (ii) the internal wholesale services specified in Schedule 2(b);
    - (iii) the external wholesale services specified in Schedule 2(c).
  - (b) report against each of the sources of revenues specified in Schedule 3(a);
  - (c) report against each of the cost items specified in Schedule 3(b);
  - (d) report against each asset (other than cash and short term investments) specified in Schedule 3(c) employed in the provision of each service mentioned in paragraph (a);

- (e) report on the weighted average cost of capital (“*WACC*”) associated with each service mentioned in paragraph (a), including a statement identifying the value and source of all variables used in calculating the WACC associated with each service;
  - (f) be consistent with the principles specified in Schedule 4;
  - (g) be prepared and submitted in any format specified by NICTA, if any, for the purposes of this paragraph;
  - (h) be accompanied by a statement signed by an authorised director or officer of the licensee as to:
    - (i) the accuracy of the return;
    - (ii) the extent to which the return complies with this section 0; and
    - (iii) the extent to which the return complies with any applicable record keeping rules made by NICTA under 251 of the Act.
- (3) The licensee shall give NICTA its initial accounting separation return under this section 0 by 1<sup>st</sup> March 2019.

## **PART VI – OPERATIONAL SEPARATION**

### **17 Operational separation obligation**

- (1) The licensee must organise and operate its wholesale business units responsible for the supply of declared services in a manner:
  - (a) such that it is substantially separate from the licensee’s retail business units;
  - (b) that ensures that the standard of delivery of declared services supplied to external wholesale customers is equivalent to the standard of the delivery of comparable services supplied to the licensee’s own retail business units; and
  - (c) that complies with the principles specified in Schedule 5.

## SCHEDULE 1: NETWORK COVERAGE OBLIGATIONS

<b>Column 1</b>	<b>• Colum 2</b>	<b>• Column 3</b>	<b>• Column 4</b>	<b>• Column 5</b>
<b>• Item</b>	<b>• Province</b>	<b>• District</b>	<b>• Population Centre</b>	<b>• Date</b>

## SCHEDULE 2: LIST OF SERVICES

### (a) Retail services

Column 1	• Column 2	• Column 3
• Item	• Service	• Description
	End user access	
	Local calls	
	Domestic long distance	
	International long distance	
	Packet switched data	
	Fixed to Mobiles	
	Mobiles	
	Payphone services	
	Internet services	
	Specialised call services	
	Directory services	
	xDSL	
	Other retail services	

### (b) Internal wholesale services

Column 1	• Column 2	• Column 3
• Item	• Service	• Description
	Wholesale end user access	
	Wholesale local calls	
	Wholesale domestic long distance	
	Wholesale international long distance	
	Wholesale packet switched data	
	Wholesale fixed to mobiles	

	Wholesale mobile carriage	
	Wholesale payphone services	
	Wholesale internet services	
	Wholesale specialised call services	
	Wholesale directory services	
	Wholesale xDSL	
	Other internal Wholesale Services	

**(c) External wholesale services**

<b>Column 1</b>	<b>• Column 2</b>	<b>• Column 3</b>
<b>• Item</b>	<b>• Service</b>	<b>• Description</b>
	Fixed call terminating access	
	Mobile call terminating access	
	National transmission	
	International submarine cable transmission	
	International submarine cable gateway access	
	Other external Wholesale Services	

## SCHEDULE 3: LIST OF REVENUE AND COST ITEMS

### (a) List of line items for revenues

Column 1	• Column 2	• Column 3
• Item	• Line item	• Description
RETAIL		
	Call revenue	
	Rental revenue	
	Customer connection revenue	
	Equipment sales	
WHOLESALE		
	Interconnection revenue	
	International in-payments	
	Universal Access and Service project receipts	
	Other ICT revenue	
	Non-ICT revenue	

### (b) List of line items for cost

Column 1	• Column 2	• Column 3
• Item	• Line item	• Description
ORGANISATION		
	General administration	
	Information technology	
	Accommodation and property	
	Other non-ICT asset costs	
	Other organisational costs	
PRODUCT AND CUSTOMER		
	Installation	

	Marketing	
	Sales	
	Operator services	
	Customer support	
	Billing	
	Bad debt expenses	
	Interconnection costs	
	International settlement costs	
	Universal Access and Service Levy payments	
	Other product expenses	
NETWORK EXPENSES		
	Ducts and pipes	
	Depreciation	
	Maintenance	
	Other expenses	
	Customer access network cables	
	Switching equipment – local	
	Switching equipment – trunk	
	Switching equipment – other	
	Inter-exchange cables	
	Transmission equipment	
	Radio bearer equipment	
	Data equipment	
	Mobile network and terminal equipment	
	Customer equipment	
	Satellite equipment	
	International network cables	
	International network – other systems	

	Other ICT plant and equipment	
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**(c) List of line items for asset values**

<b>Column 1</b>	<b>• Column 2</b>	<b>• Column 3</b>
<b>• Item</b>	<b>• Line item</b>	<b>• Description</b>
<b>CURRENT ASSETS AND FREE FUNDS</b>		
	Net receivables	
	Other current assets (excluding cash and short term investments) and related receivables	
	Trade creditors	
	Provisions	
<b>NON-CURRENT ASSETS – COMMUNICATIONS PLANT AND EQUIPMENT</b>		
	Communications plant and equipment	
	Customer access network ducts and pipes – primary asset	
	Historical/revalue value	
	Accumulated depreciation	
	Customer access network ducts and pipes – other assets	
	Customer access network cables – primary assets	
	Customer access network cables – other assets	
	Customer assess network radio bearer equipment – primary asset	
	Customer assess network radio bearer equipment – other assets	
	Other customer access network – other assets	
	Switching equipment – local – primary asset	
	Switching equipment – local – other assets	

	Switching equipment – trunk – primary asset	
	Switching equipment – trunk – other assets	
	Switching equipment – other – primary asset	
	Switching equipment – other – other assets	
	Inter-exchange cables – primary asset	
	Inter-exchange cables – other assets	
	Transmission equipment – primary asset	
	Transmission equipment – other assets	
	Radio bear equipment – primary asset	
	Radio bear equipment – other assets	
	Data equipment – primary asset	
	Data equipment – other asset	
	Mobile network and terminal equipment – primary asset	
	Mobile network and terminal equipment – other asset	
	Customer equipment – primary asset	
	Customer equipment – other asset	
	Satellite equipment – primary asset	
	Customer equipment – other assets	
	International network cables – primary asset	
	International network cables – other assets	

	International network – other systems – primary asset	
	International network – other systems – other assets	
	Other communications plant and equipment – primary asset	
	Other communications plant and equipment – other assets	
NON-CURRENT ASSETS – NON-COMMUNICATIONS PLANT AND EQUIPMENT		
	Information technology	
	Buildings and improvements	
	Other	
OTHER NON-CURRENT ASSETS		
	Long term receivables	
	Long term investment	
	Intangibles	
	Land	
	Other	

## SCHEDULE 4: ACCOUNTING SEPARATION PRINCIPLES

The licensee shall apply the following principles in its preparation of its accounting separation returns to NICTA:

- (1) **Services and service categories:** All services provided by the licensee will be included in the return, and shall be grouped into categories of similar services and separately identified as wholesale services and retail services
- (2) **Chart of accounts:** The chart of accounts used for account separation returns should be exhaustive and shall group similar costs in cost categories approved by NICTA in advance.
- (3) **Treatment of revenues:** All revenues attributable to the period to which the account separation return relates shall be allocated to the services to which they relate, and where revenues relate to bundles comprising separate services the allocation shall be based on proportions using volume-weighted standard tariffs for each of the services in the bundle.
- (4) **Treatment of costs:** Costs shall be allocated to the relevant cost category in the chart of accounts, and the costs in each category shall be allocated to services based on the principle of cost causation.
- (5) **Cost causation:** Costs shall be attributed to cost components, services or business units in accordance with the activities that cause the costs to be incurred. In particular, the accounting separation returns should employ activity-based costing, a methodology which identifies and allocates costs through the activities performed and establishes a clear cause-and-effect relationship between activities, their associated costs and the resulting output from those activities
- (6) **Transparency:** The methods and basis used for allocation of revenues, cost, assets and liabilities should be justified and demonstrated, and recorded in manner that makes the allocation clear and transparent. Costs and revenues that are directly allocated should be separately identified from those that are apportioned.
- (7) **Transfer charges:** Where services are provided by one business unit to another, revenues and costs should be attributed between the business units, through the establishment of transfer charges, in accordance with the activities that cause the revenues to be earned, or the costs to be incurred.
- (8) **Current cost accounting.** Although separated accounts may initially be produced using historic cost-accounting techniques, there should be a migration path to current cost accounting. Under this method of accounting, the costs of all assets should reflect the modern equivalent asset value (that is, the cost of the latest technology that provides equivalent functionality and capacity) rather than book value.
- (9) **Consistent cost standard:** The cost standard used for the separated accounts shall be consistent from one period to another, unless NICTA has approved changes.

- (10) **Audit:** The licensee shall arrange for the separated accounts to be audited by a professionally qualified firm of auditors, subject to pre-approval by NICTA. The auditor's unqualified report shall be submitted to NICTA together with the separated accounts.
- (11) **Deadline:** The separated accounts in accordance with these Rules and this Schedule shall be submitted to NICTA by the Licensee within 60 days after the conclusion of each calendar year.
- (12) **Accounting period:** The period shall be the calendar year, unless NICTA approves or determines an alternative period.

## SCHEDULE 5: OPERATIONAL SEPARATION PRINCIPLES

The licensee shall apply and observe the following operational separation principles:

- (1) **Separation of business units:** Business units providing retail services shall be separated within the organisational structure of the licensee from business units supplying declared services to wholesale customers and shall have separate and distinct management structures and report separately to the Board of Directors of the licensee. For the purposes of these principles the business units are referred to as “wholesale business units” and “retail business units”.
- (2) **Common and shared staff:** Where staff provide internal services and support to both wholesale business units and retail business units they shall keep the records and data associated with their functions separate so that they do not become the means by which the retail business units or other competitive business units in the licensee’s organisation have any access to the details of the declared services being supplied to wholesale customers.
- (3) **Separation of sales and marketing:** For the avoidance of doubt, wholesale and retail sales and marketing activities shall be managed and conducted in completely separation.
- (4) **Separation of customer billing:** Billing systems, processes and records for wholesale customers shall be managed separately from the billing systems, processes and records for retail customers.
- (5) **General need-to-know principle:** In general, managers, staff, contractors and other persons in the licensee’s organisation shall only have access to information about wholesale customers and the declared services that they purchase if it is necessary for those managers, staff, contractors and other persons to have that information in order to provide the declared services to such wholesale customers, and only to that extent. All managers, staff and relevant contractors in the licensee’s organisation shall be trained in the principles associated with operational separation and be regularly reminded by the licensee that they must comply with those principles at all times.
- (6) **Equivalence of treatment:** The licensee must ensure that the declared services supplied to external wholesale customers shall be as equivalent as possible in terms of timeliness, delivery, performance quality, price and other terms and conditions as the same or similar wholesale services provided to internal retail and competitive business units. For the avoidance of doubt, this means that no competitive or other advantage of any kind is to be provided to its internal retail business units, including shared planning, early notice or other informational advantage.

**Appendix VI**

**Draft Operator Licence Conditions (Digicel (PNG) Limited) Rules 2018**

**OPERATOR LICENCE CONDITIONS (DIGICEL (PNG) LIMITED) RULES 2018**

*National Information and Communications Technology Act 2009*

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The NATIONAL INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY makes these Rules under sections 55 and 218 of the *National Information and Communications Technology Act 2009*.

Dated [DATE]

**[THIS VERSION NOT FOR SIGNATURE]**

[NAME]

Chairman

Charles Punaha  
Chief Executive Officer

National Information and Communications Technology Authority

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**PART I – PRELIMINARY**

**18 Name of Rule**

These Rules may be cited as the Operator Licence Conditions (Digicel (PNG) Limited) Rules 2018.

## 19 Commencement

These Rules shall come into force on the date they are published in the National Gazette ("***the Commencement Date***").

## 20 Definitions

- (1) Subject to subsection (2), unless the context otherwise requires, terms used in these Rules have the same meaning as in the Act.
- (2) In these Rules, unless the context otherwise requires:
  - (a) "***Act***" means the *National Information and Communications Technology Act 2009* and includes any regulations made under that Act;
  - (b) "***Digicel***" means Digicel (PNG) Limited with company registration number 1-55909;
  - (c) "***directory information***" means information about a subscriber that is obtained by the licensee in the course of its provision of a voice telephony service to the subscriber and which identifies:
    - (i) the name of the subscriber;
    - (ii) the village or other address indicator of the subscriber; and
    - (iii) the telephone number issued to the subscriber by the licensee as part of its supply of a voice telephony service;
  - (d) "***directory information service***" means a voice-based directory enquiry service, an internet-based directory query service, or a telephone directory;
  - (e) "***Internet-based directory enquiry service***" means a service which enables a person to search via a website or Internet-based application for a particular telephone number by reference to information about the subscriber to whom that number is issued (for example, the subscriber's name);
  - (f) "***licensee***" means Digicel;
  - (g) "***listed number***" means a telephone number that is recorded in a directory information service;
  - (h) "***publish***" includes:
    - (iii) publish on the Internet; and
    - (iv) publish in a hard copy form that is made available to the public at large through publicised delivery or collection arrangements;

- (i) **“standard entry”** means an entry in a voice-based directory enquiry service or an Internet-based directory enquiry service that comprises of:
- (i) the name of the subscriber;
  - (ii) the village or other address indicator of the subscriber; and
  - (iii) one telephone number;
- (j) **“subscriber”** means, in respect of an applications licensee, a person who contracts with that licensee for a voice telephony service;
- (k) **“telephone directory”** means a published directory of subscribers that lists, in alphabetical order of the subscribers’ names, the telephone numbers and other directory information of subscribers;
- (l) **“telephone number”** means either a fixed number or a mobile number that has been issued by the licensee to a subscriber for use in conjunction with voice telephony service;
- (m) **“unlisted number”** in relation to a voice telephony service or a telephone number means a telephone service and/or telephone number that is not recorded in any directory information service;
- (n) **“voice-based directory enquiry service”** means a service which enables a person to call a particular telephone number and speak to an operator to find a particular telephone number by reference to information about the subscriber to whom that number is issued, but excludes services with additional or enhanced functionality or a service for which a charge may be imposed; and
- (o) **“voice telephony service”** means a PSTN telephony service, a public cellular service, or an IP telephony service.
- (3) Each of the following terms used in these Rules has the meaning given to it by the National Information and Communications Technology (Operating Licensing) Regulation 2010:
- (a) IP telephony;
  - (b) PSTN telephony;
  - (c) public cellular mobile service;
  - (d) public cellular service; and

NOTE: The following terms are defined in the Act:

- applications licence;
- facility;
- network;
- network licence;
- NICTA;
- project agreement;
- retail service;
- telecommunications transmission tower.

## **21 Application**

- (1) The applications licence granted to Digicel by NICTA pursuant to section 56 of the Act on [DATE] is subject to the special terms and conditions specified in Part II of these Rules.
- (2) The network licence granted to Digicel by NICTA pursuant to section 56 of the Act on [DATE] is subject to the special terms and conditions specified in Parts III of these Rules.

## **PART II – PUBLIC NUMBER DIRECTORY**

### **22 Recording of customers' directory listing preference**

- (1) The licensee shall, in relation to each subscriber to its voice telephony services and free of charge, record whether or not the subscriber wishes directory information in relation to that subscriber to appear in, or be accessible via, a directory information service (*“directory listing preference”*).
- (2) A subscriber's directory listing preference shall indicate whether the subscriber wants:
  - (a) a listed number; or
  - (b) an unlisted number.
- (3) When seeking a subscriber's directory listing preference, the licensee shall present a listed number as the default option.
- (4) The licensee shall:
  - (a) enable a subscriber to its voice telephony service to change or update his or her directory listing preference free of charge; and
  - (b) reflect that change to the subscriber's directory listing preference within 48 hours in all directory information services.

### **23 Unlisted numbers not to be included in directory information services**

Directory information in relation to a subscriber that has recorded a directory listing preference for an unlisted number shall not:

- (a) be included in, or accessible via, a directory information service; or
- (b) be supplied to, or shared with, any other applications licensee for the purpose of inclusion in a directory information service.

### **24 Obligation to supply directory enquiry services**

- (1) The licensee shall give its subscribers access, free of charge, to:
  - (a) a voice-based directory enquiry service; and
  - (b) an Internet-based directory enquiry service;that, subject to subsection (8), includes all subscribers of voice telephony services regardless of which applications licensee supplies the subscriber with that service.
- (2) Examples of an Internet-based directory enquiry service include:
  - (a) a service accessible from a website; and
  - (b) a smartphone application.
- (3) For avoidance of doubt, the licensee may charge for access to an enhanced voice-based directory enquiry service.
- (4) Examples of an enhanced voice-based directory query service include:
  - (a) a service that establishes a call to a telephone number; or
  - (b) a service that is offered to the subscribers of other applications licensees.
- (5) The licensee shall include, and manage the inclusion of, the directory information, of the subscribers of another applications licensee on conditions that are no less favourable than for a subscriber of the licensee.
- (6) The licensee shall not charge a subscriber for the inclusion of one standard entry in a directory information service.
- (7) The licensee may offer to replace a standard entry with a non-standard entry and charge the subscriber for the non-standard entry.
- (8) The licensee shall comply with its obligation under subsection 0:
  - (a) to the extent made possible by the information provided by other applications licensee; and
  - (b) before 1<sup>st</sup> January 2020.
- (9) Any arrangements between the licensee and another applications licensee in relation to the sharing of directory information for purposes relating to the supply of directory enquiry services under these rules:
  - (a) must be in writing;
  - (b) must not require the payment of any fee or charge for the supply or sharing of directory information;

- (c) must exclude the sharing of directory information in relation to those subscribers that have recorded a directly listing preference for an unlisted number.

## **PART III – NETWORK COVERAGE**

### **25 Maintenance of network coverage**

- (1) Subject to subsection (3), the licensee shall continue to maintain a public cellular mobile service network that provides geographic coverage and retail services that are equivalent to or better than the geographic coverage and retail services provided by the licensee in 2017.
- (2) The licensee shall give NICTA 12 months' notice prior to decommissioning or removing any telecommunications transmission tower that the licensee owned and operated in 2017 if, as a consequence of the decommissioning or removal, the licensee will cease to supply a public cellular mobile service in a populated geographic area.
- (3) A facility constructed or operated by the licensee under a project agreement with NICTA shall be disregarded for the purposes of:
  - (a) determining geographic coverage at any time under subsection (1); and
  - (b) determining the telecommunications transmission towers the licensee owned or operated in 2017 under subsection (2).