

## SCHEDULE 1

### REGULATORY PRINCIPLES

#### **Interpretation**

1. In this document, the terms not specifically defined in this clause have the meanings defined in the ICTA Law.
2. In this document:
  - “Access Deficit” Shall mean the difference between the total cost to any Licensee of providing retail Fixed Line Access Services (including the capital, operational and depreciation costs of providing access lines that originate at the customer’s network interface device and terminate in the line card) and local calls and the revenues derived from providing the same services (i.e. line rental, installation, reconnection and local call services);
  - “Authority” Shall mean the Information and Communications Technology Authority;
  - “Category 1” Shall mean the category of universal service obligation set out in section 11 of this document;
  - “Category 1 Provider” Shall mean a Licensee that has, as part of its Licence, an obligation to provide Category 1 ICT services:
    - Within sixty (60) days of a request by any person anywhere in the Cayman Islands;
    - separately and not bundled with any other product or service; and
    - on terms and conditions, including price, which are uniform throughout the Cayman Islands;
  - “Effective Date” Shall mean the date of signing the Main Agreement;
  - “Eligible Revenue” Shall mean, for each category of universal service, the total revenues a Licensee receives from its Subscribers and foreign and domestic service providers associated with the provision of the applicable list of retail ICT services for that category less any out-payments made to foreign and domestic carriers for providing those retail ICT services;

“Fixed Line Access Service”	Shall mean the ICT service offered by a Licensee for the provision of a fixed wireless or wireline connection from a specific fixed location to the public switched telephone network over that Licensee’s own ICT Network and includes access to domestic directory assistance and free access to emergency services;
“ICTA Law”	Shall mean the Information and Communications Technology Authority Law, 2002.
“Indirect Access”	Shall mean the method whereby a Subscriber is able to access international ICT services provided by another Licensee, through the ICT network and ICT services of the Licensee with whom the Subscriber is directly and physically connected;
“Loss Creating Subscriber”	Shall mean a Licensee’s Subscriber to whom the costs of providing a particular class of universal service exceed the revenues derived from that Subscriber for providing that class of service; and
“Number Portability”	Shall mean the ability of Subscribers to change their provider of ICT services without changing the telephone number or telephone numbers associated with those ICT services;

### **Licensing**

3. The Authority shall assess Licence applications (including applications for renewal) and grant Licences on terms which are fair and transparent.

### **Spectrum Management**

4. Electromagnetic spectrum shall be allocated in a fair, transparent and non-discriminatory manner.
5. Where a Licensee is required by the Authority to relinquish or move spectrum assigned to it, and there is a substantial cost to the Licensee associated with this change, the Licensee will be entitled to recover such costs in a manner to be agreed with the Authority. Such costs are to be substantiated.

### **Numbering**

6. Telephone numbers shall be allocated in a fair, transparent and non-discriminatory way.
7. Licensees’ terms and conditions with their Subscribers shall ensure that if the Authority orders the Licensee to cease using a number that is already in use by a Subscriber, the Licensee will be able to reclaim that number from the Subscriber within 120 days of such an order. In such a case, those terms and

conditions will make it clear that the Licensee is not liable for any direct or indirect costs of the Subscriber as a result of this order. Licensees shall forthwith undertake all arrangements necessary to return all numbers it has been ordered to be relinquished to the Authority.

### **Universal Service**

8. In accordance with Section 38 of the ICTA Law, the Authority shall develop mechanisms for the provision and funding of universal service. Mechanisms for funding may include a “virtual” universal service fund whereby universal service fund payments are made directly between Licensees rather than distributed via a central universal service fund.
9. The Governor in Cabinet, on the recommendation of the Authority, will determine which categories of service are to be included in any universal service obligation, and from time to time may alter the categories of service included in universal service obligations provided that it is in the public interest and will not place an unreasonable burden on any Licensee or group of Licensees.
10. The requirement to fulfil any universal service obligation will be set out in a Licensee’s Licence. Absent a force majeure (as that term is defined in that Licence), the Licensee shall be required to fulfil its universal service obligation(s) to the extent technically feasible and economically reasonable.
11. Universal service regulations will establish a category of universal service obligation which requires Licensees subject to this obligation to provide:
  - Fixed Line Access Service and domestic calls at a rate set by the Authority with touch-tone dialling, provided by a digital switch with capability to provide voice grade access to the public switched telephone network;
  - Public telephones to meet reasonable demand; and
  - A light user scheme in a manner approved by the Authority.
12. The Authority shall establish the same retail rates for Fixed Line Access Service and domestic calls and light user schemes for all Category 1 Providers. For the avoidance of doubt, in the case of a Licensee that is subject to retail rate regulation by the Authority, the rate for Fixed Line Access Service and domestic calls established under this clause and any light user schemes, will be set by the retail rate regulation regime used by the Authority to set that Licensee’s retail rates.
13. Category 1 Providers will be required to fulfil their Category 1 obligation using only their own ICT network for the local loop portion. In other words, they cannot fulfil their Category 1 obligation by reselling Fixed Line Access Service or a local loop from another Licensee.
14. The universal service provision and funding mechanisms for Category 1 will accommodate the concept of “pay or play”. This means that Licensees will

be able to opt either to be a Category 1 Provider (“play”) or a contributor to the universal service funding for Category 1 (“pay”). These options shall be subject to transparent and objective criteria to ensure that the mechanisms enable provision and funding of universal service to be competitively neutral.

15. The universal service fund will compensate Licensees for the net avoidable costs of providing their universal service obligations. The methodology to calculate net avoidable cost within the context of universal service shall be the difference between costs of providing that category of universal service to Loss Creating Subscribers and the revenues received from Loss Creating Subscribers (including in relation to that Subscriber under any access deficit contribution scheme) for providing ICT Service listed in Types noted in section 16 below to those Subscribers.
16. For each category of universal service, the Authority shall determine the list of ICT services and ICT networks the revenues from which will be used to fund that obligation. For Category 1, the list of ICT services will include Type 1, 2, 3, 4, 5 and 9 (and, in the case of 9, limited to Internet Service Providers) as set out in the first Section 23(2) notice issued by the Authority.
17. A contribution rate shall be calculated for each Universal Service category for each financial year. This rate will be calculated as the industry’s total net avoidable cost associated with the provision of the universal service for the relevant category divided by the industry’s total Eligible Revenue for the relevant category. Each Licensee’s contribution to each category of universal service in each financial year shall be calculated as the relevant contribution rate multiplied by the Licensee’s Eligible Revenue for the relevant category.

### **Retail Rate Regulation**

18. At any time from two (2) years after the Effective Date, the Authority will entertain applications in relation to forbearance. If the Authority determines that rate regulation is not necessary:
  - to prevent unreasonable or discriminatory practices; or
  - for the protection of consumers,and that forbearance is consistent with the interests of the public including promoting competition among Licensees, then the Authority will forbear from applying rate regulation to an ICT Service. One of the factors that the Authority shall have regard to, among others, in deciding whether to forbear shall be whether there is effective competition in relation to the relevant market.
19. Any Licensee making an application for forbearance is under the onus to prove to the Authority that the test for forbearance has been met. The Authority will make a finding in relation to an application within nine (9) months of receipt of said application. The Authority may exercise its power to forbear conditionally or unconditionally as it determines is appropriate in all the circumstances. Nothing in this section prevents the Authority from

exercising its power to forbear or reduce the level of rate regulation of ICT services in the absence of a finding as contemplated above, or from making a subsequent finding that it is no longer appropriate to forbear, and therefore that rate regulation should be reinstated.

20. Every licence of the same class shall have the identical provisions relating to restrictions on anti-competitive conduct.

#### **Interconnection and Access to Facilities**

21. Charges for interconnection shall conform to the following principles:

- Charges shall be
  - Reciprocal for the same service (except for any applicable contribution toward a Access Deficit in accordance with a determination under section 23 below);
  - cost oriented where cost oriented means that the charges shall be established in a manner that conforms to the methodology determined by the Authority; and
  - arrived at in a transparent manner;
- Licensees shall agree as to which Licensee's costs are to be used for setting the charges for interconnection. In the absence of agreement, the Authority will make a determination with regard to which Licensee has produced a detailed cost model that conforms to the requirements of this section;
- The burden of proof that charges are derived from costs shall lie with the Licensee upon whose cost model those charges are based;
- Costs shall be borne by the Licensee whose activity causes those costs to be incurred;
- It is preferable that non-recurring costs shall be recovered through non-recurring charges and recurring costs shall be recovered through recurring charges;
- Costs that do not vary with usage should be recovered through flat charges and costs that vary with usage shall be recovered through usage-sensitive charges; and
- Rates shall be set to allow the Licensee providing interconnection to recover a reasonable rate of return on its capital appropriately employed, all attributable operating expenditures, depreciation and a proportionate contribution towards that Licensee's fixed and common costs.

22. Any Licensee licensed to operate an ICT network must offer a cost oriented termination interconnection service. For avoidance of doubt, this means that, in the case of calls from fixed to mobile phones, the ICT service provider of the calling party shall set the retail rate provided that such a retail rate is approved by the Authority if such approval is required. A Licensee will not be required to provide an originating service where that Licensee is purchasing termination from the Licensee seeking origination.
23. If the Authority determines that a Licensee incurs an Access Deficit, the Authority will determine a competitively equitable means of recovering that Access Deficit. A Licensee would only be eligible to collect contributions for its Access Deficit if that:
  - (a) Licensee is constrained by regulation from raising its retail rates for Fixed Line Access Service; or
  - (b) Licensee offers Fixed Line Access Service and domestic calls at the same or below rate as a Licensee identified in (a) on similar terms and conditions and throughout the Cayman Islands, but may only collect contribution based upon the rates for the Licensee identified in (a).
24. The party seeking interconnection shall pay the cost of establishing interconnection. The period for recovery of time for recovering these charges is to be negotiated between the parties.
25. Indirect Access shall be mandated to be provided by any Licensee if the Authority has first determined after consultation with interested parties that the benefits to consumers from such mandate would outweigh the costs to all parties, and that the mandate will not impose an unfair burden on any Licensee.
26. The Licensee shall not deny access to its infrastructure or infrastructure arrangements, save and except when there is insufficient capacity, taking into account its reasonably anticipated requirements, or for reasons of safety, security or difficulty of a technical or engineering purpose.
27. Charges for infrastructure sharing shall cost-oriented. Charges for infrastructure sharing should be negotiated between the parties. Where agreement cannot be reached through commercial negotiation, the Governor in Cabinet, or the Authority, as the case may be, shall make a determination.