

Advaxis, Inc.  
Form 10-Q  
October 02, 2012

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 10-Q**

(Mark One)

**QUARTERLY REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended July 31, 2012

**TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE EXCHANGE ACT**

For the transition period from to \_\_\_\_\_ to \_\_\_\_\_

Commission file number 000-28489

**ADVAXIS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**02-0563870**

(IRS Employer Identification No.)

305 College Road East, Princeton, NJ 08540

(Address of principal executive offices)

(609) 452-9813

(Registrant's telephone number)

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(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (Section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller Reporting Company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The number of shares of the registrant's common stock, \$0.001 par value, outstanding as of September 22, 2012 was 392,282,046.

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All other items called for by the instructions to Form 10-Q have been omitted because the items are not applicable or the relevant information is not material.

**PART I-FINANCIAL INFORMATION****Item 1. Financial Statements****ADVAXIS, INC.****(A Development Stage Company)****BALANCE SHEETS**

	(unaudited) July 31, 2012	October 31, 2011
<b>ASSETS</b>		
Current Assets:		
Cash	\$5,288	\$1,096,538
Other Current Asset Receivable	-	477,788
Prepaid expenses	39,926	37,474
Other Current Assets	33,182	2,221
Total Current Assets	78,396	1,614,021
Deferred expenses - clinical	1,014,178	1,380,103
Property, Plant & Equipment (net of accumulated depreciation)	82,660	-
Intangible Assets (net of accumulated amortization)	2,405,934	2,256,852
Deferred Financing Cost	68,188	65,848
Interest Receivable & Other Assets	473,848	323,738
<b>TOTAL ASSETS</b>	<b>\$4,123,204</b>	<b>\$5,640,562</b>
<b>LIABILITIES AND SHAREHOLDERS' DEFICIENCY</b>		
Current Liabilities:		
Accounts payable and Accrued Expenses	\$6,053,853	\$5,396,594
Deferred Investment Funds	50,000	-
Notes Payable – convertible promissory notes and fair value of embedded derivative	1,085,571	5,091,298
Notes payable –Officer (including interest payable)	395,566	408,069
Notes Payable – other	250,000	-
Interest Payable – other	2,260	-
Total Current Liabilities	7,837,250	10,895,961
Deferred Rent	19,212	62,441
Long-term Convertible Notes	-	570,802

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Common Stock Warrant	1,265,985	6,391,071
Total Liabilities	9,122,447	17,920,275
Shareholders' Deficiency:		
Preferred stock, \$0.001 par value; 5,000,000 shares authorized; Series B Preferred Stock; issued and outstanding 740 at July 31, 2012 and at October 31, 2011.		
Common Stock - \$0.001 par value; authorized 500,000,000 shares, issued and outstanding 375,135,008 at July 31, 2012 and 250,173,570 at October 31, 2011.	375,135	250,173
Additional Paid-In Capital	50,235,200	33,000,064
Promissory Note Receivable	(9,998,210 )	(9,998,210 )
Deficit accumulated during the development stage	(45,611,368)	(35,531,740)
Total Shareholders' Deficiency	(4,999,243 )	(12,279,713)
<b>TOTAL LIABILITIES AND SHAREHOLDERS' DEFICIENCY</b>	<b>\$4,123,204</b>	<b>\$5,640,562</b>

The accompanying notes are an integral part of these financial statements.

**ADVAXIS, INC.****(A Development Stage Company)****STATEMENTS OF OPERATIONS****(unaudited)**

	Three Months Ended July 31,		Nine months Ended July 31,		Period from March 1, 2002 (Inception) to July 31, 2012
	2012	2011	2012	2011	\$ 1,863,343
Revenue	\$-	\$-	\$-	\$-	\$ 1,863,343
Research & Development Expenses	1,331,415	1,958,518	5,760,158	6,392,919	28,916,898
General & Administrative Expenses	2,251,725	1,638,287	4,297,110	3,581,888	25,476,943
Total Operating expenses	3,583,140	3,596,805	10,057,268	9,974,807	54,393,841
Loss from Operations	3,583,140	(3,596,805 )	(10,057,268 )	(9,974,807 )	(52,530,498 )
Other Income (expense):					
Interest expense	(1,045,297 )	(1,769,974 )	(4,241,805 )	(2,721,020 )	(14,691,142 )
Other Income	25,375	(4,004 )	25,715	53,603	273,422
(Loss) on note retirement	(932,421 )	(115,396 )	(2,173,491 )	(109,492 )	(978,646 )
Net changes in fair value of common stock warrant liability and embedded derivative liability	2,430,914	9,127,394	6,020,434	7,134,709	20,423,120
Net (Loss) Income before benefits for income taxes	(3,104,569 )	3,641,215	(10,426,415 )	(5,617,007 )	(47,494,744 )
Income tax benefit	-	-	346,787	379,472	1,927,260
Net Income (Loss)	(3,104,569 )	3,641,215	(10,079,628 )	(5,237,535 )	(45,567,484 )
Dividends attributable to preferred shares	185,000	185,000	555,000	1,353,686	2,137,570
Net Income (Loss) applicable to Common Stock	\$(3,289,569 )	\$3,456,215	(10,634,628 )	\$(6,591,221 )	\$(47,705,054 )
Net Income (Loss) per share, basic	(.01 )	\$ .02	(.03 )	(.03 )	
Net Income (Loss) per share, diluted	\$(.01 )	\$ .01	(.03 )	\$(.03 )	
	346,851,744	228,375,277	298,430,345	212,269,995	

Weighted average number of shares  
outstanding, basic

Weighted average number of shares outstanding, diluted	346,851,744	300,847,826	298,430,345	212,388,256
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The accompanying notes are an integral part of these financial statements.



**ADVAXIS, INC.****(a development stage company)****STATEMENT OF SHAREHOLDERS' DEFICIENCY****Period from November 1, 2011 to July 31, 2012****(Unaudited)**

	Preferred Stock Number of Shares of Outstanding	Amount	Common Stock Number of shares of outstanding	Amount	Stock Subscription Receivable	Additional Paid in Capital	Deficit Accumulated During the Development Stage	Shareholders' Equity (Deficiency)
Balance at October 31, 2011	740	\$ -	\$250,173,570	\$250,173	\$(9,998,210)	\$33,000,064	\$(35,531,740)	\$(12,279,713)
Common Stock Issued Upon Exercise of Warrants			2,745,097	2,745		409,019		411,764
Options granted to employees and directors						289,725		289,725
Options granted to consultants						10,459		10,459
Common stock issued upon conversion of Bridge Notes			1,126,667	1,127		167,873		169,000
Common stock issued upon conversion of May 2011 Notes			12,827,060	12,827		2,332,698		2,029,936
Common stock issued upon conversion of			8,183,333	8,183		1,636,237		1,348,784

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October 2011								
Notes								
Issuance of common stock warrants with December 2011 Notes						279,807		279,807
Interest on Optimus Notes						50,402		50,402
Common stock issued upon partial conversion of long-term convertible promissory notes		3,600,000	3,600			382,237		385,837
Net Loss							(4,365,544 )	(3,754,319 )
Balance at January 31, 2012	740	\$ -	278,655,727	\$278,655	\$(9,998,210)	\$38,558,521	\$(39,897,284 )	\$(11,058,318 )
Common Stock Issued Upon Exchange of Warrants								
Options granted to employees								
Options granted to consultants								
Common stock issued upon conversion of May 2011 Notes								
Common stock issued upon conversion of December 2011 Notes								
			1,597,112	1,597		221,998		223,595
						279,045		279,045
						8,333		8,333
			253,333	253		37,745		35,460

- (d) The two arbitrators so appointed shall, within ten (10) days as of the date on which the second arbitrator was appointed, jointly appoint the third arbitrator and chairman of the arbitral tribunal. If the two party-appointed arbitrators cannot agree on the appointment of the third arbitrator within such 10-day period, then such arbitrator shall be appointed by the Chamber, pursuant to the provisions of the Rules.

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- (e) The arbitration shall take place in the City of Brasilia, DF, Brazil, and the language to be used in the arbitration proceedings shall be English.
- (f) The arbitrators shall not decide or render judgments in equity.
- (g) The arbitration award shall be issued and delivered in the City of Brasilia, DF, Brazil , and shall contain (i) a report, including the name of the parties and a summary of the dispute submitted to arbitration; (ii) the basis and grounds of the decision, addressing the matters of fact and matters of law; (iii) the decision, in which the arbitrators shall solve the matters submitted to the arbitration and shall establish the deadline for the parties to comply with the decision, if applicable; and (iv) the date on which and the place where the arbitration award has been issued. The arbitration award shall be signed by all of the arbitrators. The arbitration award shall be final, conclusive and binding upon all parties.
- (h) Prior to the institution of the arbitration, any party can seek in court the required interim, urgent, preventive or coercive measures. After the institution of the arbitration, the arbitrators shall be authorized to, at their own initiative or at the request of either party, to seek in court any required urgent, preventive or coercive measures, as per the provisions of article 22, paragraph 4, of Law No. 9,307 of September 23, 1996.
- (i) Should a party resist to the institution of arbitration, such party shall be subject to a penalty in an amount equivalent to 1 million, payable to the other party, without prejudice to such other party's right to initiate the lawsuit contemplated by article 7 of Law No. 9,307/96. Any challenges by a party to the appointment of an arbitrator based on such arbitrator's suspicion or impediment shall not be deemed as resistance to the institution of the arbitration.

**IN WITNESS WHEREOF**, the parties execute this instrument on the date and in the place first above written, in five (5) counterparts of same tenor and content, in the presence of the undersigned witnesses.

**TIM INTERNATIONAL N.V.**

\_\_\_\_\_  
Marco De Benedetti  
Managing Director

\_\_\_\_\_  
Francesco S. Lobianco  
Managing Director

**TIM BRASIL SERVIÇOS E PARTICIPAÇÕES S.A.**

\_\_\_\_\_  
Marco E. Patuano  
Attorney-in-fact

**BRASIL TELECOM S.A.**

\_\_\_\_\_  
Carla Cico  
Chief Executive Officer

\_\_\_\_\_  
Sami Arap Sobrinho  
Chief Legal Officer

**14 BRASIL TELECOM CELULAR S.A.**

\_\_\_\_\_  
Carla Cico  
Chief Executive Officer

\_\_\_\_\_  
Sami Arap Sobrinho  
Chief Legal Officer

**Witnesses:**

**1.** \_\_\_\_\_  
Name:  
RG:  
CPF:

**2.** \_\_\_\_\_  
Name:  
RG:  
CPF:

ANNEX 1

**PROTOCOL AND JUSTIFICATION  
OF THE MERGER OF 14 BRASIL TELECOM CELULAR S.A. INTO  
TIM BRASIL SERVIÇOS E PARTICIPAÇÕES S.A.**

By this private instrument, 1) BRASIL TELECOM S.A., a Brazilian company with head office at SIA SUL, ASP, Lote D, Bloco B, Brasília, DF, Brazil, CNPJ/MF no. 76.535.764/0001-43, herein represented by its Officers, [*name and personal data of signing officers*] (hereinafter referred to as BRASIL TELECOM ); 2) TIM INTERNATIONAL N.V., a Dutch company with head office at 1629 Strawinskylaan WTC, Tower B, 16th floor, 1077 ZX Amsterdam, The Netherlands, herein represented by its attorney-in-fact, [*name and personal data of attorney-in-fact*] (hereinafter TIMINT ); 3) 14 BRASIL TELECOM CELULAR S.A., a Brazilian wholly-owned subsidiary of BRASIL TELECOM with head office at SIA SUL ASP, Lote D, Bloco B, Térreo parte, Brasília, DF, Brazil, CNPJ/MF no. 05.423.963/0001-11, herein represented by its Officers, [*name and personal data of signing officers*] (hereinafter referred to as BRASIL TELECOM CELULAR ); and 4) TIM BRASIL SERVIÇOS E PARTICIPAÇÕES S.A., a Brazilian company with head office at Avenida das Américas, 3434, Bloco 1, 6.º andar, Centro Empresarial Mário Henrique Simonsen, Barra de Tijuca, Rio de Janeiro, RJ, Brazil, CNPJ/MF no. 02.600.854/0001-34, herein represented by its Officers, [*name and personal data of signing officers*] (hereinafter referred to as TIM );

WHEREAS, BRASIL TELECOM is the only shareholder of BRASIL TELECOM CELULAR;

WHEREAS TIMINT is the controlling shareholder of TIM BRASIL SERVIÇOS E PARTICIPAÇÕES S.A.;

The parties agree to enter into this Protocol and Justification of the merger of BRASIL TELECOM CELULAR into TIM, pursuant to articles 224 and 225 of Law 6,404/76, as follows:

**1. REASONS AND PURPOSES OF THE OPERATION**

The merger of BRASIL TELECOM CELULAR into TIM, once implemented and followed by the other actions described below, will result in higher efficiency for BRASIL TELECOM, the only shareholder of BRASIL TELECOM CELULAR, and for TIM.

1.1 Background.

The National Telecommunications Agency Anatel issued a competitive bidding process in August 2002 for the award of new personal communication service ( SMP ) in the D and E frequency sub-bands (the Tender ).

BRASIL TELECOM holds (i) concessions to exploit domestic long distance ( LDN ) switched fixed telephony service ( STFC ) and local STFC in Region II under the General Licensing Plan ( PGO ); (ii) authorizations to exploit Local STFC and LDN STFC in Regions I and III and Sectors 20, 22 and 25 of Region II of the PGO; and authorizations to exploit International Long Distance ( LDI ) STFC in Regions I, II and III of the PGO;

BRASIL TELECOM CELULAR, a wholly-owned subsidiary (*subsidiária integral*) of BT, holds authorizations to render personal mobile service ( SMP ) in Region II, Areas 5, 6, 7 covering all such Region II of the PGA-SMP, (the BRASIL TELECOM CELULAR Authorizations ) and the relevant E radiofrequency sub-bands associated with the BRASIL TELECOM CELULAR Authorizations (the BRASIL TELECOM CELULAR Frequencies );

TIMINT is the controlling shareholder of TIM, which, in turn, is the direct or indirect controlling shareholder of certain companies that hold SMP Authorizations in Regions I, II and III of the PGA-SMP and LDN STFC and LDI STFC authorizations in Regions I, II and III of the PGO;

ANATEL, on January 16, 2004, issued Act no. 41.780, which was published in the Diário Oficial da União on January 19, 2004. Such Act acknowledges certain regulatory overlaps regarding BRASIL TELECOM, BRASIL TELECOM CELULAR, and TIM, providing specific rules for their solution.

1.2 The Merger and Further Transactions.

After BRASIL TELECOM CELULAR is merged into TIM, it is envisaged that its activities, assets, liabilities and clients relating to the provision of SMP are absorbed by operational subsidiaries of TIM (the Subsidiaries ).

1.3 Strategic Advantages of the Merger.

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The implementation of the merger and of the operations referred to in section 1.2 will enable the group of Telecom Italia International N.V. and BRASIL TELECOM, including BTC and TIM, to eliminate the overlapping of licenses referred to in ANATEL's Act no. 41.780/2004 and to comply with ANATEL's orders contained in such Act.

The Brazilian market is characterized by an increasing competition on pricing. The larger, nationwide mobile players, capable of exploiting significant economies of scale, will have competitive advantages, leading to a concentration of the market. BRASIL TELECOM is aware that BRASIL TELECOM CELULAR, as a fourth entrant in only one region, will face a disadvantage in developing profitably only a regional business.

In addition, BRASIL TELECOM, in order to retain its most valuable customers, needs to provide them a nationwide mobile offer, enriched by innovative value added services, focusing on convergent services as distinctive element.

With the merger and the operations referred to in section 1.2 above, (i) TIM and the Subsidiaries, after the required prior approvals of Anatel and any prior consent of CADE, will absorb the operations and customers of BRASIL TELECOM CELULAR, (ii) the Licenses will be returned to the Brazilian granting authority, and (iii) TIM's Subsidiaries will renounce their long distance licenses and, to the extent permitted by existing regulation, rely on BRASIL TELECOM for all its long distance requirements that would be granted on a preferred customer basis (subject to any requirements of non-discrimination), providing significant additional scale to BRASIL TELECOM.

### 1.4 Regulatory Approvals.

The merger and the transactions referred to in section 1.2 above must be submitted for approval of ANATEL and CADE.

### 1.5 Operational Agreements.

Concurrently with the merger of BRASIL TELECOM CELULAR into TIM and the other operations referred to in section 1.2 above, it is envisaged that BRASIL TELECOM and TIM, or the Subsidiaries, as the case may be, will, in order to increase for BRASIL TELECOM the advantages of the merger, enter into a Long Distance services agreement, pursuant to which BRASIL TELECOM will provide such services to TIM, or the Subsidiaries, as the case may be, and into other operational agreements. In addition, the existing agreements between BRASIL TELECOM and BRASIL TELECOM CELULAR will be reviewed and amended, or integrated into the new agreements, as necessary for their terms and conditions to reflect arms length bases. The specific terms and conditions of each of such new agreements and of any amendments to existing agreements will be negotiated and agreed to by BRASIL TELECOM and TIM, or the Subsidiaries, as the case may be, on an arms length conditions respecting the existing sectorial and antitrust regulations, and will be based on the following principles:

- a) BRASIL TELECOM will rely on the mobile network of TIM and the Subsidiaries to continue offering its distinctive offer based on convergent services in compliance with current regulation;
- b) BRASIL TELECOM will exploit the highest know-how of the GSM technology provided by TIM in order to offer innovative value added services and mobile office solutions to its customers;
- c) BRASIL TELECOM will create synergies between the two distribution networks:
  - (i) BRASIL TELECOM will increase the capillarity of its commercial presence by exploiting the distribution network of TIM and the Subsidiaries in Region II (more than 3.400 Points of Sale, of which more than 700 Corporate and 15 owned Points of Sale), where a range of services would be provided, from a friendly contact point (information on BRASIL TELECOM services) to the sale of convergent services, and
  - (ii) BRASIL TELECOM will earn from the promotion of services of TIM and the Subsidiaries through its distribution network;
- d) BRASIL TELECOM will be the preferred provider of TIM and the Subsidiaries for long distance services and on a preferential and on a most favored customer basis, to the extent permissible under applicable regulation;
- e) BRASIL TELECOM will be a preferred provider of TIM and the Subsidiaries for leased lines, cables and backbone transmission facilities that will be granted on a most favored customer basis and subject to any requirements of non-discrimination;

f)

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BRASIL TELECOM will be a preferred provider of TIM and the Subsidiaries, on a most favored customer basis, for Site and Infra-Structure Sharing to support its Network rollout plan;

g)

BRASIL TELECOM and TIM will jointly evaluate the opportunities of creating synergies from the optimization of operating processes like logistics (e.g. optimal management of network and IT spare parts using the warehouses of both operators).

### 1.6 Anticipated Results of the Merger.

For the reasons above, it is anticipated that the merger will result in increased efficiency for BRASIL TELECOM and for TIM, namely:

a) For BRASIL TELECOM:

- (i) nationwide coverage in providing, whether directly or indirectly in accordance with existing regulation, telecommunication services,
- (ii) enhancement of attractiveness to business customers
- (iii) economies of scale,
- (iv) provision of long distance services to TIM and the Subsidiaries on a preferred and non-discriminatory basis,
- (v) access to value added services of TIM and the Subsidiaries,
- (vi) assurance of technological evolution,
- (vii) avoidance of new mobile capital expenses and start-up losses,
- (viii) minimized risk;

b) For TIM:

- (i) enrichment of convergent offer,
- (ii) exploitation of BRT distribution network and use of the distribution network of TIM and the Subsidiaries for fixed services.

## 2. STATUS OF BRASIL TELECOM CELULAR PRIOR TO THE MERGER

2.1 The capital of BRASIL TELECOM CELULAR, which has been fully paid, is one billion and four hundreds million reais (R\$1,400,000,000.00), divided into 1,400,000 (one million and four hundred thousands) common shares with no par value.

2.2. All shares of BRASIL TELECOM CELULAR's capital are free and clear of liens and encumbrances.

2.3 BRASIL TELECOM CELULAR is a wholly-owned subsidiary (subsidiária integral) of BRASIL TELECOM.

## 3. STATUS OF TIM PRIOR TO THE MERGER

3.1 The capital of TIM, which has been fully paid, is R\$ 9.280.705.828,77, divided into eleven billion seven hundred thirty million five hundred twenty-three thousand one hundred thirty-two (11.730.523.131) common shares with no par value. The authorized capital of TIM is ten billion reais (R\$10.000.000.000,00)

3.2 All shares of TIM's capital are free and clear of liens and encumbrances.

## 4. CRITERIA FOR THE EVALUATION OF BRASIL TELECOM CELULAR AND TIM, AND DATE OF THE MERGER

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4.1 For purposes of determining the amount of the increase of TIM's capital and the exchange ratio of the shares of BRASIL TELECOM CELULAR, BRASIL TELECOM will hire an independent appraiser. Such appraiser will be Merrill Lynch as proposed by BRASIL TELECOM and accepted by TIMINT. Such appraiser will establish the intrinsic equity value of TIM and the intrinsic equity value of BRASIL TELECOM CELULAR as of March 31, 2005, in each case considering any intercompany debt in either BRASIL TELECOM CELULAR or TIM as equity to the extent such debt will be capitalized by the time the merger occurs. Similarly the appraiser's valuation of BRASIL TELECOM CELULAR shall not take into account any commercial arrangements between TIM and BRASIL TELECOM CELULAR entered into after the date hereof. The valuation of BTC shall take into account the effects of the indebtedness of BRASIL TELECOM CELULAR (for these purposes, any vendor financing accounts payable past due by more than 90 days and any accounts payable with a maturity greater than 90 days from the date of this Protocol will also be considered as debt). BRASIL TELECOM CELULAR will furnish to such appraiser its audited (or subjected to limited review) March 31, 2005 financial statements, as well as the historical financial information and forecasts normally required for similar assignments, to the extent available, for such appraiser to establish BRASIL TELECOM CELULAR's intrinsic net equity value. TIM will furnish to such appraiser its audited (or subjected to limited review) March 31, 2005 financial statements, as well as the historical financial information and forecasts normally required for similar assignments, to the extent available, for such appraiser to establish TIM's intrinsic net equity value. All such information and forecasts shall be supplied to the appraiser and used by the appraiser solely for the purposes of establishing TIM's and BRASIL TELECOM CELULAR's respective intrinsic equity value, and will be subject to a confidentiality agreement including a provision that the appraiser shall commit that the information and forecasts of one Party are not furnished to or shared with the other without such Party's prior consent (except to the extent unavoidably reflected in the appraisal report). BRASIL TELECOM will contractually bind such appraiser to prepare its appraisal within 30 days of the date hereof. The appraiser shall also be required to provide a fairness opinion to BRASIL TELECOM on the fairness of the consideration to be received by BT in connection with the merger of BRASIL TELECOM CELULAR into TIM. The appraiser's cost shall be borne exclusively by BRASIL TELECOM. The values determined through the appraisal must be specific point estimates and not a range or ranges.

4.2 The intrinsic equity value (as described above) of BRASIL TELECOM CELULAR as per the appraisal report will be the value of the capital increase of TIM.

### 5. ELEMENTS WHICH WILL FORM THE ASSETS TO BE MERGED INTO TIM.

5.1 TIM will succeed BRASIL TELECOM CELULAR in all of its rights and obligations, as provided by applicable law, including but not limited to all contracts, agreements, licenses, agreements related to leased lines, cables and backbone transmission facilities.

### 6. INCREASE OF TIM'S CAPITAL

6.1 It is estimated that the increase of TIM's capital will be in the amount of sixty-seven million Reais (R\$ 67.000.000,00).

6.2 The number of shares that will be issued to BRASIL TELECOM will be the number that assures BRASIL TELECOM a percentage interest in TIM after the merger equal to the ratio obtained by dividing the intrinsic equity value of BRASIL TELECOM CELULAR (resulting from the appraisal report as per 4.1 above) by the sum of the intrinsic value of TIM (resulting from the appraisal report as per 4.1 above) and that of BRASIL TELECOM CELULAR (resulting from the appraisal report as per 4.1 above), as follows:

$$NS = ES(IEVBTC / IEVT),$$

where:

NS = number of new shares of TIM's capital that will be issued to BRASIL TELECOM

ES = number of existing shares of TIM's capital

$IEV_{BTC}$  = intrinsic equity value of BRASIL TELECOM CELULAR as appraised in the appraisal report which is adopted pursuant to paragraph 4 hereof

$IEV_T$  = intrinsic equity value of TIM as appraised in the appraisal report which is adopted pursuant to paragraph 4 hereof

6.3 It is estimated that, after the merger, TIM's capital will be R\$ 9.347.705.828,77, consisting of 11.847.828.360 common shares, all of which with no par value. The definitive figures will be those which result from the foregoing criteria of this section 6 and the appraisal report.

### 7. GENERAL CONDITIONS OF THE MERGER

7.1 The shares of BRASIL TELECOM CELULAR's capital held by BRASIL TELECOM, its only shareholder, will be extinguished with the merger. The new shares of the capital of TIM that, pursuant to paragraph 6.3 hereof, are created as a result of the merger, will be



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attributed to BRASIL TELECOM.

- 7.2 The common shares created by reason of the merger will confer upon its holder the same rights currently conferred by the shares of the same type.
- 7.3 As a result of the merger, TIM s by-laws will be amended in order to reflect the capital increase set forth in section 6. No other amendments will be effected in TIM s by-laws.
- 7.4 As a result of the merger, BRASIL TELECOM CELULAR will be extinguished.
- 7.5 The parties may execute this Protocol in versions in the English and in the Portuguese languages, provided that the Portuguese language version of this Protocol shall be controlling for all purposes.
- 7.6 This Agreement shall be governed by, and construed in accordance with, the laws of Brazil.

And, having thus agreed, the parties execute this instrument in four originals of equal form and content in the presence of the two undersigned witnesses.

Rio de Janeiro, 28 April 2005

**Brasil Telecom S.A.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TIM International N.V.**

By: \_\_\_\_\_  
Name: Marco De Benedetti  
Title: Managing Director

By: \_\_\_\_\_  
Name: Francesco Lobianco  
Title: Managing Director

**14 Brasil Telecom Celular S.A.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TIM Brasil Serviços e Participações S.A.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Witnesses:**

1. \_\_\_\_\_

Name: \_\_\_\_\_

Identity card no.: \_\_\_\_\_

2. \_\_\_\_\_

Name: \_\_\_\_\_

Identity card no.: \_\_\_\_\_

