

digifLEX Terms & Conditions - Version 1.0

1 DEFINITIONS

1.1 These words mean the following: **"Account"** the account in which we record your credit and Charges; **"Bar"** a block placed by us on some/all the Services you normally use (except calls to emergency services); **"Bared"** has a corresponding meaning; **"Charges"** all tariffs for Service as published in our periodically updated Price List; **"Content"** all information whether textual, visual, audio or otherwise, appearing on or available through the Service including information supplied between content providers; **"Contract"** these terms and conditions and our current Price List; **"IP Rights"** means copyrights, trademark and other relevant proprietary and intellectual property rights relating to the Content; **"Phone"** a mobile phone and SIM (which remains our property) approved by us for connection to the Network; **"Price List"** a periodically updated publication which list our current Charges for the Services; **"Network"** the mobile telecommunications system run by us in Samoa; **"Registration"** our acceptance of your application for Service once you purchase call time from us in the form of a Voucher and 'Register', 'Registering' and 'Registered' has a corresponding meaning; **"Roaming"** making and receiving calls whilst abroad via a local network operator; **"Service"** any or all (as the case may be) of the following: airtime service enabling you to make or receive calls and to send and receive data by means of the Network, the ability to send and receive email via the internet, the ability to access information from the internet and any additional services we agree to provide to you; **"SIM"** a card or other device bearing a unique telephone number and which is programmed to allow you to access the Network; **"Suspension"** the temporary disconnection of Service. "Suspend" has a corresponding meaning. **"User Guide"** any guide or documentation supplied with your Phone either by us or the manufacturer of your Phone explaining how the Service works, how to purchase a Voucher and/or how to use your Phone; **"Voucher"** our call time voucher that you can purchase from us or our authorised agents, the face value amount of which can be credited against your Account; **"we"**, **"us"** and **"our"** Digicel (Samoa) Ltd.; and **"you"** and **"your"** the person to whom this Contract applies including any person who we reasonably believe is acting with your authority or knowledge.

1.2 The Price List contains explanations, notes and conditions that form part of this Contract a copy of which is available when you purchase your Phone or may be obtained from us.

1.3 You will be deemed to have accepted this Contract once you Register your Account with us or first use the Service, whichever occurs first.

2 PROVISION OF SERVICE

2.1 The Service is not available in all other countries. The quality and availability of Service may vary from place to place, and time to time. Service is not fault free and may be affected by factors outside our control - such as physical obstructions, geographic/atmospheric conditions, radio interference and faults on other telecommunications systems connected to our Network.

2.2 The Network and the Services may from time to time require upgrading, modification, maintenance or other work, which may result in partial or complete non-availability of Service.

2.3 We may using reasonable skill and care exercise our discretion to refuse to provide any part of the Service to you (and this may involve barring certain numbers from the Service on a temporary or permanent basis) in circumstances where it is necessary for us to do so.

2.4 We may vary Content or the technical specification of Service from time to time.

2.5 We will use reasonable endeavours to maintain Content but it may be incomplete, out of date or inaccurate and is provided on an "as is" basis. It is a condition of us allowing you access to Content that you accept that we will not be liable for any action you or any other party takes in reliance on the Content or the accuracy, completeness or continuous supply of the Content.

2.6 You may only use Content in a way that does not infringe the IP Rights of others ("Approved Use") and you must comply with all other instructions issued by us regarding use of Content. You shall not store, modify, transmit, distribute, broadcast or publish any part of the Content other than for an Approved Use. The reselling, copying or incorporation into any other work of part or all the Content in any form is prohibited save you may print or download extracts of Content for your personal use only.

You are solely responsible for evaluating the accuracy and completeness of any Content and the value and integrity of goods and services offered by third parties over the Service. We will not be a party to nor in any way be responsible for any transaction concerning third party goods and services.

3 PAYMENT FOR THE SERVICE

3.1 You pay for the Service by purchasing a Voucher and Registering it with us. We will not be under any obligation to make a refund to you where you purchase more call time than you intended, for whatever reason.

3.2 Each time you incur Charges, the credits that are Registered on your Account will be reduced according to the duration of the call/message and the type of call/message by reference to the Charges set out in the Price List. If you have selected a Service with recurring service Charges, the Charges will be deducted at the time(s) and for the period(s) set out in the Price List.

3.3 If at the time we attempt to deduct recurring service Charges for a Service you subscribe to and you do not have enough credit on your Account Services will be Bared. Once you credit your Account we will deduct the relevant recurring service Charges and reinstate your Service.

3.4 When credits on your Account have been used up Services will be Bared.

3.5 If for whatever reason you are not able to obtain your current Account balance by using the Service we are not obliged to provide that information in another format.

3.6 If you use your Phone abroad, you will be charged for incoming calls and to send text message you may be charge to receive text-messages. Roaming charges vary depending on the network used and exchange rates and may include minimum charges.

4 YOUR RESPONSIBILITIES

4.1 You must use your Phone and the Service in the way described in the User Guides or any other instructions issued by us (or our agents) from time to time.

4.2 You agree: (a) and warrant that all factual information you provide us is correct; (b) to take adequate precautions to prevent damage to or unauthorized use or theft of the SIM or your Phone; (c) that the SIM and mobile telephone numbers allocated to you is done so under licence and remain our property; (d) not to interfere with the SIM for any reason; (e) to return the SIM to us, or anyone acting on our behalf, at our request; (f) to comply with all reasonable request by us (or our agents), particularly in relation to the investigation of fraud or other offences or as required by law or in legal proceedings; (g) not to act in a way, whether knowingly or otherwise, which will impair the operation of the Network or any part of it, or puts it in jeopardy (h) to give us (or our agents) information we (or our agents) reasonably ask for; (i) to follow reasonable instructions we give you; and (j) to use the Phone exclusively with our Service.

4.3 You agree that you will not use the Phone or Services (a) for anything unlawful, immoral or improper; (b) with equipment not approved by us for use with our Network; (c) other than in accordance with all relevant laws and regulations; (d) to send, receive, upload, download or otherwise facilitate any material which is offensive, indecent, defamatory, of a menacing nature, a nuisance, a breach of privacy or unlawful; (f) to access or use Content that infringes the rights of others; and (g) other than in accordance with acceptable use policies of any connected systems and (if appropriate) any relevant Internet standards.

4.4 If the Phone or SIM is lost, stolen, damaged or destroyed or used without your authorisation: (a) you agree to inform our customer care department immediately and confirm the same in writing. In such an event we will be under no obligation to make a refund to you of the credits left on your Account nor to replace the Phone or SIM.

4.5 You must tell us immediately by advising us in writing if anyone makes or threatens to make a claim or issue legal proceedings against you relating to your uses of the Service or the Content.

5 THINGS WE MAY HAVE TO DO

5.1 Occasionally we may have to: (a) alter the telephone number associated with the SIM, or any other name, code or number associated with the Service; (b) Suspend the Service (or any part of it) for operational reason or in an emergency or for your security; (c) Bar certain numbers from the Service in order to prevent fraud or in circumstances where we would suffer direct loss.

6 OUR RIGHTS TO BAR OR DISCONNECT THE PHONE

6.1 If you do not make or receive a call at least once in any 3 month period the Phone may (at our absolute discretion) be disconnected.

6.2 Each Voucher has a date by which you must Register the Voucher and use the amount credited to your Account ("Expiration Date"). In the event that the Expiration Date lapse (even if your Account is in credit): (a) and you do not credit your Account with a new Voucher within 60 days of the Expiration Date, the SIM may (at our absolute discretion) be disconnected from the Network. During this period Services may be Bared at our absolute discretion; (b) and you credit your Account with a new Voucher within 60 days of the Expiration Date, the amount of the new Voucher will be credited to your Account and any existing credit in your Account will expire on the date the new Voucher expires.

6.3 In addition to anything else we can do we may Bar or disconnect your SIM without warning if: (a) you fail to comply with this Contract in any material way; (b) you report that your Phone has been lost,

6.4 stolen, damaged or destroyed; (c) you fail to comply with the provisions of Clause 4 or 9.

6.5 If your Phone is disconnected any credits in your Account will be forfeited. If you are disconnected and wish to be reconnected, you must purchase a new SIM. Once the SIM is disconnected from the Network the telephone number associated with the SIM will be lost.

7 LIABILITY

7.1 Nothing in this Contract removes our limits our liability for death or personal injury to any person resulting from our own negligence.

7.2 We do not accept liability in contract, tort (including negligence or breach of statutory duty) or otherwise however and whatever the cause thereof (a) for any increased cost or expenses; (b) for any loss of profits, revenues, business, contracts, anticipated savings, wasted expenses, or loss property or use of property; (c) for any other special, indirect or consequential loss of any nature whatsoever; (d) if Services is Bared, Suspended or disconnected or non-availability of any Service; (e) for interruption of or failure to connect any call made to or by the equipment; (f) for any call made to or by the equipment being overheard or intercepted by any third party; and (g) for any data/information transmitted to or by the equipment being altered or lost.

7.3 We do not accept liability if we are unable to carry out our duties or provide the Service because of something beyond our control including, but not limited to, the following: (a) Acts of God; (b) outbreak of hostilities, riot, civil disturbances acts of terrorism; (c) the act of any government or authority (including refusal or revocation of any licence or consent); (d) fire, flood, fog or bad weather; (e) power failure, failure of telecommunications lines, failure or breakdown of plant, machinery, equipment or vehicles; (f) default or failures of suppliers, subcontractors or other telecommunications operators; (g) theft, malicious damage, strikes, lock-outs or industrial action of any kind.

7.4 We limit our liability under this Contract up to the value of the Voucher Registered and being used by you at the time when the liability arises, except if we are found to be liable under Clause 7.1.

7.5 Save as expressly set out in this Contract, all conditions, warranties, terms and undertakings expressed or implied by statute, common law or otherwise (including but not limited to fitness for a particular purpose) are expressly excluded from this Contract to the extent permitted by law.

7.6 You agree to indemnify and hold us, our agents, employees, directors, successors and assignees from and against all liabilities, losses, damages, claims, suits and expenses, including but not limited to reasonable legal expenses and other costs incurred in enforcing this Contract, of whatsoever nature and kind imposed upon, incurred by or asserted against us, our agents, employees, directors, successors and assignees relating to or arising out of your use of the Services or your obligations under this Contract.

7.7 Each provision of this Clause 7 operates separately. If any part is found by a Court to be unenforceable or inapplicable the other parts will continue to apply.

7.8 This Clause 7 will apply even after this Contract has ended.

8 CHANGES TO THE CONTRACT

8.1 We may modify this Contract and the Charges at any time (including the introduction of tariffs for aspects of the Service previously provided for free), such modification becomes effective immediately upon our having notified you. Our means of notification may include, without limitation, nation wide advertising campaigns, messages on our system when you call to Register a Voucher, the issue of messages to you by means of the Service, or advertisement on our website. By continuing to use the Service following any such modification you will be deemed to accept such modification. If we vary any of the Charges or change the Contract to your disadvantage, you may stop using the Service.

9 PHONE LOCKING

9.1 Your Phone is locked to the Network. You agree not to unlock the Phone in order to insert another operator's SIM. Attempting to unlock your Phone may result in your Phone becoming permanently blocked. We accept no responsibility for any Phone blocked in this way.

10 USE AND DISCLOSURE OF INFORMATION

10.1 You authorise us to use and disclose, in Samoa and abroad, to any telecommunications company, debt collection agency, credit reference agency, credit or fraud monitoring scheme, security agency or credit provider of (a) information about you and your use of the Service and how you conduct your Account and details of how you have performed in meeting your obligations under this Contract (b) any disclosure required as a result of an order of any court of competent jurisdiction or by statutory authority. You agree that the information may be used by others to assess applications for credit from you and members of your household and for debt tracing, credit management and may be used by us or other parties for crime and fraud detection and prevention.

10.2 You also agree to the information described in Clause 10.1 being used, analysed and assessed by us and the parties identified in Clause 10.1 and selected third parties for marketing purposes including amongst other things to identify and offer you by phone, post, the Network, your Phone or other means, any further products, services and offers which we think might interest you. If you do not wish your details to be used for marketing purposes, please notify us in writing stating your name, address and telephone number associated with the SIM.

11 INTERNET ACCESS

11.1 If you have a Phone that enables access to the Internet ("Internet Phone") the following terms and conditions also apply to you.

11.2 Certain parts of the Service are only available if you register with us or an ISP.

11.3 We or our contractual partners may provide links to other web sites or resources. We neither accept responsibility for third party web sites or resources nor endorse their Content.

11.4 For Internet access, you understand that all the visual, textual or other information published or otherwise made available (directly or indirectly) on the Internet using the Service ("Information") whether publicly posted or privately transmitted, is the sole responsibility of the person from which such Information originated. This means that you, and not us, are entirely responsible for all Information that you upload, email or otherwise transmit via Internet access.

11.5 Your dealings with, and interest in, promotions, services, or merchants found by using your Internet Phone on or via the Internet are solely between you and the person with whom you are dealing. We will not be responsible for any losses or damages that may arise from any such dealings with third parties.

11.6 Access to secure financial transactions will be dependant on the make and model of your Internet Phone and the third party supplier of Content. We will not be responsible for any losses or damages that may arise from any such dealings with third parties.

12 GENERAL

12.1 This Contract supersedes all prior representations, arrangements, understanding and agreements between ourselves (whether written or oral) relating to the subject matter hereof and sets forth the entire and complete understanding between ourselves relating to the subject matter hereof.

12.2 You agree that the telephone number associated with the SIM may be displayed by our Network on receiving handsets and that unless you inform us in writing to the contrary stating your name, address and telephone number associated with the SIM we may include said number in directories.

12.3 You warrant to us that you have not relied on any representation, arrangements, understanding and agreements between ourselves (whether written or oral) not expressly set out in this Contract.

12.4 You may not transfer or try to transfer any of your rights and responsibilities under this Contract unless we agree in writing beforehand. We may transfer any of our rights and responsibilities without your permission.

12.5 We or our agents may record or monitor any conversation between you and us (or our agents) for training quality, control or our lawful business purpose.

12.6 Any concessions of extra time that we allow you only applies to the specific circumstances in which we give it. It does not affect our rights under this Contract in any other way.

12.7 Any notice you are required to send to us must be sent in writing to the address set out above.

12.8 Any notices we are required to send you may be provided, without limitation, by (a) nationwide advertising campaigns, (b) messages on our system when you call to Register a Voucher, (c) the issue of messages to you by means of the Service, or (d) advertisement on our website.

12.9 If either of us fails to enforce any rights under the Contract, it shall not prevent either of us (as the case may be) from taking action later.

12.10 If a clause in this Contract is found to be invalid or unenforceable in whole or in part for any reasons whatsoever it shall not effect the validity and enforceability of the remainder of this Contract and shall whenever allowed by the context be deemed to be replaced by such valid and enforceable clause whose contents are as close as permissible to those of the invalid or unenforceable clause.

12.11 You acknowledge that we are the owner or licensee of a number of copyrights, trademark and other relevant proprietary and intellectual property rights and that nothing herein contained shall be construed as conferring upon you any right, title or interest in any copyrights, trademark and other relevant proprietary and intellectual property rights owned or licensed by us.

12.12 The laws of Samoa apply to this Contract and dispute will be settled in the courts of Samoa.

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