

digiselect Terms & Conditions - Version 1.0

1 DEFINITIONS

1.1 These words mean the following: **"Account"** the account where we record your credit and charges and personal details; **"Content"** all information whether textual, visual, audio or otherwise, appearing on or available through the Service including information supplied between content providers; **"Contract"** the application form, these terms and conditions and our current Price List; **"Deposit"** sum we may ask you to pay from time to time before (a) Registration; (b) supplying you with Optional Services; (c) reinstating Service after Suspension; **"IP Rights"** means copyrights, trademark and other relevant proprietary and intellectual property rights; **"Minimum Period"** a 12 month period, or such longer period agreed between ourselves in writing; **"Optional Services"** all goods, products and value-added and other services provided by us in addition to cellular telephone services as set out in the application form; **"Phone"** a mobile phone and SIM approved by us for connection to the Network; **"Price List"** a periodically updated publication which list our current Tariffs for Services; **"Network"** the mobile telecommunications system run by us in Samoa; **"Registration"** our acceptance of your application for Service. 'Register' has a corresponding meaning; **"Rate Plan"** a bundle of airtime and supplementary Services (if any) offered to you for an agreed monthly fee; **"Roaming"** making and receiving calls whilst abroad via a local network operator; **"Service"** the cellular telephone services and the Optional Services provided by us to you; **"SIM"** a card or other device (which remains our property) bearing a unique telephone number and which is programmed to allow you to access the Network; **"Suspension"** the temporary disconnection placed by us on some and/or all the Services you normally use (except calls to emergency services). 'Suspend' has a corresponding meaning; **"Tariffs"** all charges for Service as published in our periodically updated Price List; **"User Guide"** any guide or documentation supplied with your Phone either by us or the manufacturer of your Phone explaining how the Service works and/or how to use your Phone; **"we", "us" and "our"** Digicel (Samoa) Limited; and **"you"** and **"your"** the person set out in the application form, including persons we reasonably believe are 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 This Contract constitutes a legally binding agreement between you and us that will be effective on the Registration date until the end of the Minimum Period. At the end of the Minimum Period, Service will be supplied to you until the Contract is terminated. By using the Service you agree to be bound by this Contract.

2 CREDIT ASSESSMENT AND DEPOSIT

2.1 All applications for Registration are subject to a credit assessment. If in our assessment you do not meet our credit requirements we reserve the right not to Register you or require a Deposit from you. We accept no responsibility for the accuracy of information provided by credit reference agencies. Nor do we accept any liability for the consequences of our declining to Register you. If we request a Deposit we will not pay interest on it. Without prejudice to any other rights or remedies available to us under this Contract, at law or in equity, we may set-off the Deposit against amounts due by you. The Deposit is refundable after this Contract has terminated and you have paid all amounts due to us.

3 PROVISION OF SERVICE

3.1 Service is not available in all parts of Samoa, nor 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, including but not limited to physical obstructions, geographic and atmospheric conditions, radio interference and faults on other telecommunications systems connected to our Network.

3.2 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.

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

3.4 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 Content that you accept that we will not be liable for any action you or any other party take in reliance on the Content or the accuracy, completeness or continuous supply of the Content.

3.5 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.

3.6 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.

4 YOUR TERMINATION RIGHTS

4.1 You may terminate this Contract after the Minimum Period by giving us at least 30 days prior written notice.

4.2 If you terminate this Contract prior to the expiration of the Minimum Period you agree to pay us: (a) all charges that are due, plus (b) a lump sum equivalent to all of the monthly subscription charges still remaining up to the end of the Minimum Period.

5 PAYMENT FOR THE SERVICE

5.1 Ordinarily we bill you monthly in advance for fixed charges (e.g., Rate Plans) and monthly in arrears for call and message charges and other non-fixed charges (e.g., non-bundled minutes, international calls, handset support, messaging, text and information services) and charges for Services used earlier if they have not previously been billed (e.g., Roaming charges may be billed several months in arrears). We reserve the right to amend the billing period and/or submit interim bills to you. If applicable, VAT is added to bills at the relevant rate.

5.2 Bills are sent to the billing address found on the application form, unless you notify us in writing.

5.3 Charges for using a Service will be calculated using the details we have recorded unless you can provide contrary evidence that is satisfactory to us. You must advise of any dispute on a bill by its due date. Failure to do so by the due date means you will be liable for those charges. We will investigate disputed charges and notify you of the results. If charges are indeed errors, a credit will be applied to your Account.

5.4 Payment is due on the date you receive your bill. You must pay your bill by the date stated on the bill. If payment is overdue we may charge interest on a daily basis at a minimum of 5% above the ECCB Discount Rate. We reserve the right to make a charge for reasonable cost (including attorney and collection agency fees) incurred by us for late payment, non-payment of bills, for return fees should your method of payment be dishonoured, or in enforcing our rights hereunder.

5.5 We may apply a credit limit to your Account and Suspend Service if it is exceeded. We may alter your credit limit by advising you. For avoidance of doubt, you are liable for charges incurred in excess of your credit limit.

5.6 Where tariffs include inclusive minutes, which apply to certain call types up to a monthly limit, unused inclusive call minutes cannot be carried forward from one month to the next. Eligible calls will be set against inclusive minutes in the order in which such calls are made.

5.7 Monthly charges incurred for periods of less than a month will be calculated on a pro rata basis.

5.8 Call charging rates that vary according to time of day ("Band") which extend across more than one Band are billed according to the duration of the call in each Band multiplied by the applicable tariff for the Band.

5.9 Calls are charged in 1 second increments rounded up to the nearest second and then to the nearest cent (unless otherwise stated in the Price List).

5.10 You will be responsible for paying all charges on your Account, whether or not incurred by you personally.

5.11 While Roaming you will be charged for incoming calls, to send text message and you may be charged to receive text-messages. Roaming charges may include minimum charges and vary depending on the foreign network used and exchange rates.

6 YOUR RESPONSIBILITIES

6.1 You agree: (a) and warrant that all factual information provided by you is correct; (b) to take adequate precautions to prevent damage to, or unauthorised use or theft of the Phone; (c) that the telephone numbers and SIM allocated to you remains our property; (d) not to interfere with the SIM for any reason; (e) at our request, to return the SIM to us, or anyone acting on our behalf; (f) to comply with all reasonable requests 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, that will impair the operation of the Network or any part of it, or put it in jeopardy (h) to give us (or our agents) information we (or our agents) reasonably ask for, including but not limited to, security checks before providing you with information about the Account; (i) to follow reasonable instructions we give you; (j) to use the Phone exclusively with our Service; (k) not to do anything intended to avoid or evade our legitimate charges; (l) not to do anything that is intended to, or results in, or is likely to bypass our Network and/or Service; (m) to inform us in writing if any information on your application form changes; (n) to exclusively use the Phone and SIM in Samoa other than when Roaming with our Service; (o) not to export the Phone for profit.

6.2 You agree not to use the Phone or Services: (a) other than as described in the User Guides or instructions issued by us (or our agents) from time to time; (b) for anything unlawful, immoral or improper; (c) with equipment we have not approved for use with our Network; (d) other than in accordance with all relevant laws and regulations; (e) to send, receive, upload, download or otherwise facilitate 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; (g) other than in accordance with acceptable use policies of any connected systems and (if appropriate) any relevant Internet standards; and (h) in a fraudulent or improper manner.

6.3 If the Phone or SIM is lost, stolen, damaged or destroyed or used without your authorisation you agree to inform our customer care department immediately and confirm the same in writing within 3 days. In such an event we will be under no obligation to replace the Phone or SIM and if we do so a charge may be imposed.

6.4 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 use of the Service or the Content.

7 OUR TERMINATION RIGHTS

In addition to anything else we can do we can terminate this Contract or at our absolute discretion Suspend

7.1 Service without warning if: (a) you fail to pay your bill when due (d) you fail to pay a Deposit when due; (c) you fail to comply with this Contract in a material way; (d) we have reasonable cause to believe that you are unable to pay your bills; (e) you fail any credit assessment we reasonably consider necessary from time to time; (f) you are subject to a bankruptcy order, become insolvent, or make any arrangements with or for the benefit of your creditors; (g) you report your Phone lost, stolen, damaged or destroyed; (h) you do not comply with the provisions of Clause 6 and/or 11; (i) at any time after the Minimum Period by giving you at least 30 days prior written notice; (j) any information you provided is false or misleading. If Services are Suspended pursuant to this Clause we may charge you a fee prior to reconnecting you to the Network.

8 THINGS WE MAY HAVE TO DO

8.1 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 for operational reasons, 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.

9 LIABILITY

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

9.2 We have no liability to you (or anyone claiming through you) in contract, tort or otherwise for any loss or damage which is: (a) not our fault; (b) indirect and/or not reasonably foreseeable; (c) purely economic, special, punitive or consequential loss or damage (whether foreseeable or not) or any other form of economic loss, arising from our performance or non-performance of our obligations under this Contract including through negligence or breach of statutory duty to the extent permitted by law.

9.3 We have no liability to you (or anyone claiming through you) if we are unable to carry out our duties or provide Service because of factors beyond our control including, but not limited to, the following: (a) Acts of God; (b) outbreak of hostilities, civil riots, acts of terrorism; (c) act of any government or authority (including refusal or revocation of any licence or consent); (d) power failures, failure of telecommunications lines, failure or breakdown of plant, machinery or equipment; (e) default or failures of suppliers, subcontractors or other telecommunications operators; (f) theft, malicious damage; (g) industrial action of any kind.

9.4 We have no liability to you (or anyone claiming through you) if we Suspend the Service.

9.5 If we are found to be liable to you (or anyone claiming through you) we limit our liability under this Contract up to a maximum of WST \$1,000 per claim or series of related claims, except under Clause 9.1.

9.6 We, our associated or affiliated companies, their respective officers, agents, directors, principals, employees, attorneys, underwriters, successors and assigns will not be liable for or in respect of any effects, claims, actions, proceedings, suits and causes of action (whether at law or in equity and including emotional distress), liens, debts, damages, fatalities, losses or injury (whether property or personal, consequential or otherwise), judgments, liabilities, costs and expenses of every nature kind whatsoever, whether known or unknown, suspected or unsuspected, (altogether, "claims whatsoever") arising out of or in respect to our equipment and/or any electronic or radio systems in equipment, vehicles or aircraft in your vicinity, or of any emissions or transmissions to, from, by or through our Network and/or equipment. If we offer goods and/or services as agents of any principal provider(s), we will accept neither responsibility nor liability to you for the performance, loss of profit, emotional or mental distress or disappointment, or provision thereof by such providers so long as we have identified the providers to you and identified ourselves as agents.

9.7 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.

9.8 Each provision of this Clause operates separately. If any part is found by a Court to be unenforceable or inapplicable (in whole or in part) the other parts will continue to apply.

9.9 This Clause will apply even after this Contract has ended.

10 CHANGES TO THE CONTRACT

10.1 We may modify this Contract and the Tariffs at any time (including introducing charges for aspects of the Service previously provided for free). Such modification becomes effective immediately upon our having notified you. If Service is used after notification you will be deemed to have accepted the change.

10.2 Notwithstanding Clause 10.1, you may terminate this Contract if we vary its terms, resulting in an excessive increase in the Rate Plan or alter your rights to your detriment. In such case you will need to give us notice in writing within 14 days of us notifying you of the changes. If you do not provide such notice, you will be deemed to have accepted the changes. This right of termination does not apply if (a) the change is required as a direct result of a court order, legislation, statutory instrument government regulation or licence; or (b) the change relates to an Optional Service you may cancel the affected Optional Services by giving us notice in writing within 14 days of us notifying you of the changes. Clause 4.2 will not apply if this Contract is terminated pursuant to Clause 10.2(a).

11 PHONE LOCKING

11.1 Your Phone is locked to the Network. You agree not to unlock or have a third party unlock the Phone without our express prior written consent. In addition, attempting to unlock your Phone may result in your Phone becoming permanently blocked. We accept no responsibility for any Phone blocked in this way.

12 USE AND DISCLOSURE OF INFORMATION

12.1 You authorise us to (a) obtain any information required relative to your credit history or application for credit and any source is authorised to provide such information; (b) to disclose to, debt collection agency, credit reference agency, credit bureau, security agency, credit provider, other communications companies, or any other business or person in any jurisdiction information about you, your use of the Service, how you conduct your Account and details of your performance in meeting your obligations hereunder; (c) make any disclosure required as a result of an order of any court of competent jurisdiction or by statutory authority. You agree to indemnify and save us from any and all claims and damages resulting from such disclosures.

12.2 You agree personal data provided by you to us can be used, analysed and assessed by us and selected third parties for marketing purposes, including amongst other things, to identify and offer you by any means, products, services and offers that we think might interest you. If you do not wish your details to be used in such a manner notify us in writing stating your name, address and mobile telephone number.

13 INTERNET ACCESS

13.1 If you have a Phone that enables access to the Internet ("Internet Phone") the following terms and conditions also apply to you: (a) Certain parts of the Service may only be available by registering with us or an ISP; (b) 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; (c) you understand that all the Content made available (directly or indirectly) on the Internet using the Service whether publicly posted or privately transmitted, is the sole responsibility of the person from which such Content originated. This means that you, and not us, are entirely responsible for all Content that you upload, email or otherwise transmit via the Internet Phone or the Internet; (d) 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 (e) 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.

14 GENERAL

14.1 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.

14.2 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 mobile telephone number we may include said number in directories.

14.3 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.

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

14.5 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.

14.6 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.

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

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

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

14.10 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.

14.11 We accept no responsibility for any loss or damage suffered as a result of the use or failure in any bill payment service.

14.12 You acknowledge that we are the owner or licensee of IP Rights and that nothing herein contained shall be construed as conferring upon you any right, title or interest in any IP Rights owned or licensed by us.

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