



Digicel™

Expect More. Get More.

terms and conditions

Digicel (Barbados) Limited
Terms & Conditions of Contract Mobile Telephone Service
Version 1.0

1 Definitions

1.1 These words have the following meanings:

“Account” – our records of your payments and outstanding

Charges, plus your personal details;

“Charges” – all the tariffs associated with the Service described in the Price List;

“Connection” – the process of giving you access to a Service and ‘Disconnection’ and ‘Reconnection’ have corresponding meaning;

“Content” – all information whether textual, visual, audio or otherwise, appearing on or available through the Service including all information supplied between content providers from time to time;

“Deposit” – amount we may ask you to pay before we Connect or Reconnect you to the Network or before providing any Service;

“IP Rights” – means copyrights, trademark and other relevant proprietary and intellectual property rights relating to the Content;

“Minimum Period” means a period of twelve (12) months, or such longer period as set out in the application form, from the date that Service is first provided;

“Mobile Phone” - a mobile telephone and SIM Card (which remains our property) approved by us for connection to our Network;

“Network” – the cellular telecommunications system run by us;

“Price List” – our periodically updated list of Charges for the provision of Service to you;

“Price Plan” – a bundle of airtime and supplementary Services (if

any) offered by us for an agreed monthly payment; “Registration” – our acceptance of your application to register with us for the Service and your personal data 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 services: 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 Card” – the card or other device bearing a unique telephone number programmed to allow a mobile telephone to access the Service;

“Terms and Conditions” - your application details which you have provided to us when accepted, these terms and conditions and our current Price List;

“User Guides” - any guides or documentation supplied with your Mobile Phone either by us or by the manufacturer of your Mobile Phone, which explains to you how the Service works, how to purchase a Voucher and/or how to use your Mobile Phone;

“we”, “us” and “our” - Digicel (Barbados) Limited, having its principle place of business at the Courtyard, Hastings, Christ Church, Barbados, registered in Barbados under No. 19797;

and “you”, “your” and “customer” – the person to whom these Terms and Conditions apply, and it includes 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 these Terms and Conditions. A copy of the Charges is available when you purchase your Mobile Phone and will be

included in your welcome pack or may be obtained from us.

1.3 These Terms and Conditions shall govern the relationship between us and you for the provision of Service and shall constitute legal and binding obligations on us and you from the date of Registration until the end of the Minimum Period.

1.4 After the Minimum Period ends, we will continue to supply you with Service as normal until these Terms and Conditions are terminated in accordance with clause 6 or 11.

2 Credit Assessment

2.1 All applications for Registration and additional Services are subject to a credit assessment before we can connect you to the Network. If our assessment of you does not meet our normal requirements we reserve the right to decline to connect you or to supply additional Services. Alternatively, we may ask you to lodge a Deposit with us or increase the Deposit you have lodged with us before we Connect you or supply additional Services. We accept no responsibility for the accuracy of the information provided by the database of a credit reference agency. Nor can we accept any liability for the consequences of our declining to Connect you.

3 Deposit

3.1 We may request a Deposit from you (a) before Connection; (b) before making additional services available to you; or (c) before reinstating the Services after suspension. We do not pay interest on Deposits. If you owe us money, we may set off the Deposit against the amount due to us, without prejudice to any other rights or remedies available to us under these Terms and Conditions, or otherwise, howsoever, at law or in equity. If there is a balance left

over on termination of these Terms and Conditions we will remit this to you by cheque.

4 Changes to the Terms and Conditions

4.1 We may modify these Terms and Conditions, the Charges at any time (including the introduction of tariffs for aspects of the Service previously provided for free). If we increase the Charges for the elements of the Service you are using such modification becomes effective immediately upon our having notified you. Our means of notification may include, without limitation, nation wide advertising campaigns, messages to you by means of the Service, advertisement on our website, or by mail.

4.2 Notwithstanding clause 4.1, you may terminate these Terms and Conditions if we vary its terms, resulting in an excessive increase in the Price Plan or changes that alter your rights under this contract to your detriment. In such case you will need to give us notice in writing within 14 days of us notifying you about the changes). If you do not give us notice at least 14 days of us telling you about the changes, you will be deemed to have accepted the changes. This right of termination does not apply if:

(a) we have increased the charges once in any 12 month period by an amount equal to or less than the percentage increase in the Retail Price Index for the preceding 12 months published by the Government of Barbados;

(b) if the variation we have made have been imposed on us as a direct result of a court order, legislation, statutory instrument government regulation or licence; or

(c) the variation does not relate to the Price Plan, in which case you may cancel the additional services by giving us at least 14

days written notice prior to your Monthly Billing Date (and within fourteen days of us telling you about the changes).

4.3 If this situation arises the provisions of clause 6.2 do not apply.

5 Provision and Use of Service

5.1 The Service is not available in all places nor in all countries and the quality and coverage of Service may vary from place to place, and from time to time. Service is not fault free and it may be impaired by physical obstructions, geographic and atmospheric conditions, other causes of radio interference or other conditions or circumstance beyond our control, including but not limited to, defects on other telecommunications systems not owned by us but to which our Network is connected.

5.2 Our Network may from time to time require upgrading, modification, maintenance or other work, which may result in partial or complete non-availability of Service.

5.3 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).

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

5.5 We will use reasonable endeavours to maintain Content but it may be incomplete, out of date or inaccurate and is provided to you 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.

5.6 If the Service enables access to Content you may need a handset that enables access to Content.

5.7 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.

5.8 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 by means of the Service. We will not be a party to nor in any way be responsible for any transaction concerning third party goods and services.

5.9 The Service is made available provided: (a) they are not used for anything unlawful, immoral or improper; (b) they are not used to make offensive or nuisance communications in whatever form, or to make or receive reverse charge calls; (c) they are only used with equipment approved for use with our Network; (d) you comply with all relevant laws and regulations; (e) they are not used 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) they are not used to access or use Content that infringes the rights of others; (g) they are not used otherwise than in accordance with any connected network's policies for acceptable use, and (if appropriate)

any relevant internet standards; (h) you give us (or our agents) information we (or our agents) reasonably ask for; and (i) all reasonable instructions we give you are followed.

6 Your Termination Rights

6.1 You may terminate these Terms and Conditions at any time after the Minimum Period by giving us at least one month's written notice. You are free to restore these Terms and Conditions throughout this notice period, should you change your mind.

6.2 You may terminate these Terms and Conditions before the Minimum Period has expired if you 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 initial Minimum Period.

7 Payment For The Service

7.1 Ordinarily we will invoice you monthly in advance for monthly Charges, which are non-refundable, and monthly in arrears for call and message Charges any for any Charges for Services used at any earlier time if they have not previously been billed. We reserve the right to amend the invoicing period and submit interim invoice to you. VAT will be added to all invoices at the relevant rate if applicable.

7.2 Charges for using the Service will be calculated using the details we have recorded. As soon as the Network responds call Charges will start.

7.3 You must pay your monthly bill by the date stated on the bill. For any overdue payments we may charge interest at a minimum of 2% above the base lending rate of First Caribbean International

Bank (Barbados) Limited. We reserve the right to make a charge for reasonable cost (including attorney fees and collection agency fees) that we incur in the case of late payment or non-payment of bills.

7.4 We may at our discretion apply a credit limit to your account (which we may alter by advising you) and may suspend your Service if this limit is exceeded. As our billing system is not instantly updated each time you use the Service it is possible, especially when making international calls or Roaming, to exceed your usage limit. You will be liable for all Charges incurred including any Charges exceeding your usage limit. You may be asked to pay any Charges incurred in excess of your usage before Service is reinstated.

7.5 You must pay the Charges to us or as we direct.

7.6 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.

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

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

7.9 Calls are charged in one second increments rounded up to the nearest second and then up to the nearest cent

7.10 You will be responsible for paying all Charges on your Account, whether or not they have been incurred by you personally.

8 International and Roaming Service

8.1 International and Roaming services are subject to status. Roaming charges may vary according to the foreign network and exchange rates and may include minimum charges. For the avoidance of doubt the charges associated with international and Roaming services do not form part of the bundled airtime included in a Price Plan.

8.2 If you use your Mobile Phone abroad, you will be charged for incoming calls.

8.3 If you send a text message while abroad you are charged by us. You may also be charged to receive text-messages while abroad.

9 Your Responsibilities

9.1 You must use your Mobile 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 it may be necessary for us to amend or supplement our advice to you on the introduction or withdrawal of products and/or Service. It is important that you read and understand the information contained in the User Guides and other instructions, as they will apply to your use of the Service from when you Register with us.

9.2 You agree: (a) and warrant that all factual information you provide to us is correct; (b) to take adequate precautions to prevent damage to or unauthorized use or theft of the your Mobile Phone; (c) that the SIM Card and mobile telephone numbers allocated to you will at all times remain our property; (d) not to interfere with the SIM Card for any reason; (e) to use the SIM Card exclusively in connection with our Service; (f) to

return the SIM Card to us, or anyone acting on our behalf, at our request; (g) 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; (h) to co-operate with us in our reasonable security checks (which may include us making phone calls to you) and (i) to inform us in writing if any of the factual information (including but not limited to address for billing purposes) you provided us changes. You also warrant (if applicable) that the person stated to be authorised to sign for a company or firm is duly authorised and any individual applying as a member of a company is of full contractual capacity and is able both the pay for the Service he or she has requested and meet his or her obligations under these Terms and Conditions.

9.3 If the Mobile Phone 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; (b) we are under no obligation to replace the Mobile Phone and if it is replaced we may charge you for its replacement.

9.4 You must not use your Mobile Phone or the Service other than in accordance with acceptable use policies of any connected systems and (if appropriate) any relevant Internet standards.

9.5 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.

9.6 Where there are one or more Users other than you under these Terms and Conditions, you remain liable for all Charges incurred to your Account by those Users.

10 Things We May Have To Do

10.1 Occasionally we may have to: (a) alter the mobile telephone number associated with your SIM Card or any other name, code or number associated with the Service; (b) temporarily 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 on a temporary or permanent basis in order to prevent fraud or in circumstances where we would suffer direct loss.

11 Our Termination Rights

11.1 In addition to anything else we can do, we can terminate these Terms and Conditions immediately at any time in respect of any or all SIM Cards used by you, in whole or in part, without the need of prior notice if: (a) you fail to pay your bills from us when they are due, including any Deposits we have asked for; (b) you break this Agreement in any other material way or break a number of less important conditions; (c) we have reasonable cause to believe that Service is being used in a way forbidden by clause 5.9, even if you do not know the Service is being used in such a way (d) we have reasonable cause to believe that you are unable to pay your bills; (e) you fail to pass any credit assessments which we may reasonably consider necessary from time to time; (f) we have reason to believe that any information you have given us is false or misleading; or (g) we have reasonable cause to suspect fraudulent use of the Service or SIM Card; (h) we believe that any equipment used in connection with the Service poses any danger to person or property or interferes with any service; (i) we are required to comply with an order, instruction or request of any government body, an emergency service organisation or any other person or organisation

with the appropriate authority; (j) you are the subject of a bankruptcy order, or become insolvent, or make any arrangements with or for the benefits of creditor; (k) you or anyone that uses the SIM Card damages the Network or puts it at risk.

11.2 We may terminate these Terms and Conditions at any time after the Minimum Period by giving you at least one month's written notice.

12 Our Rights to Bar The SIM Card

12.1 In addition to anything else we can do, we may bar the SIM Card from the Network and/or suspend Service without warning if:

- (a) we have a right to terminate these Terms and Conditions pursuant to clause 11;
- (b) you report that your Mobile Phone has been lost, stolen, damaged or destroyed;
- (c) for operational reason or in an emergency or for your security;
- (d) any of the provisions for use of the Service, including but not limited to those set out in clause 5.9 or 9, are not complied with.

12.2 Where the SIM Card is bared or disconnected, other than for the reasons set out in clause 12.1(c) from the Network and/or Service is suspended, we may charge an unbarring charge and, if applicable a reconnection charge. As a condition of unbarring or reconnecting we may require a Deposit from you or an increase in the Deposit held by us.

13 Exclusion of Liability

13.1 We are only liable to you (or any one claiming through you) as set out in these Terms and Conditions. We have no other duty or liability to you (or any one claiming through you).

13.2 Nothing in these Terms and Conditions removes or limits the liability for death or personal injury to any person resulting from our own negligence.

13.3 We are not liable to you (or any one claiming through you) 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) for suspension or non-availability of any Service; (e) for suspension or termination of these Terms and Conditions; (f) for interruption of or failure to connect any call made to or by the equipment; (g) for any call made to or by the equipment being overheard or intercepted by any third party; and (h) for any data/information transmitted to or by the equipment being altered or lost.

13.4 We will not be liable to you (or any one claiming through you) 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.

13.5 Save as expressly set out in these Terms and Conditions, 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 these Terms and Conditions to the extent permitted by law.

13.6 If we are found liable to you (or any one claiming through you), our liability to you (or any one claiming through you) under these Terms and Conditions shall be limited to a maximum of the monthly recurring charges paid for the preceding six calendar months or in the event that this is unascertainable BBS 1,000 per claim or series of related claims which are direct financial loss or direct physical damage to or loss of property resulting from our breach of contract or negligence when providing the Service.

13.7 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 these Terms and Conditions, 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 these Terms and Conditions .

13.8 Each provision of this clause 13 operates separately. If any part is found by a Court to be unenforceable or inapplicable the other parts will continue to apply.

13.9 This clause 13 will apply even after these Terms and Conditions have ended.

14 Mobile Phone Locking

14.1 Your Mobile Phone is locked to the Network. You must not attempt to unlock the phone in order to insert another operator's

SIM card. Attempting to unlock your Mobile Phone may result in your Mobile Phone becoming permanently blocked. We accept no responsibility for any Mobile Phone blocked in this way.

15 Trade In

15.1 If you took advantage of an offer to obtain a rebate for a mobile telephone that meets specified requirements by signing the rebate receipt you assume all liabilities associated with the mobile telephone that was traded in by you and indemnify us from any claims made by any third party.

16 Use and Disclosure of Information

16.1 You authorise us to use and disclose, in Barbados and abroad, information about you and your use of the Service and how you conduct your Account for the purposes of operating your Account and providing you with the Service to our associated companies or agents, any telecommunications company, debt collection agency or credit reference agency or as required by law. You agree that the information may be used by other parties in assessing 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.

16.2 You also agree to the information described in clause 16.1 being used, analysed and assessed by us, and the other parties identified in clause 16.1 and selected third parties for marketing purposes including amongst other things to identify and offer you by phone, post, the Network, your Mobile 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 full name, address and mobile telephone number associated with the SIM Card.

17 Internet Access

17.1 If you have a Mobile Phone that enables access to the Internet (“Mobile Internet Phone”) the following terms and conditions also apply to you.

17.2 Certain parts of the Service are only available if you register with us or an Internet service provider.

17.3 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.

17.4 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.

17.5 Your dealings with, and interest in, promotions, services, or merchants found by using your Mobile 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.

17.6 Access to secure financial transactions will be dependant on the make and model of your Mobile 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.

18 General

18.1 Your mobile telephone and accessories are acquired by you outside these Terms and Conditions.

18.2 These Terms and Conditions (including the documents and instruments referred to herein) supersedes all prior representations, arrangements, understanding and agreements between you and us (whether written or oral) relating to the subject matter hereof and sets forth the entire and complete understanding between you and us relating to the subject matter hereof.

18.3 You agree that the mobile telephone number associated with the SIM Card may be displayed by our Network on receiving handsets and that unless you inform us in writing to the contrary we may include your mobile telephone number associated with the SIM Card in telephone directories.

18.4 You warrant to us that you have not relied on any representation, arrangements, understanding and agreements between you and us (whether written or oral) not expressly set out or referred to in these Terms and Conditions.

18.5 You may not transfer or try to transfer any of your rights and responsibilities under these Terms and Conditions unless we have agreed in writing beforehand. We may transfer any of our rights and responsibilities without your permission.

18.6 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.

18.7 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 these Terms and Conditions in any other way.

18.8 Any notice you are required to send to us under these Terms and Conditions must be sent to our registered office.

18.9 Any notices we are required to provide to you under these terms and conditions may be provided, without limitation, by (a) nationwide advertising campaigns, (b) the issue of messages to you by means of the Service, (c) by post or (d) advertisement on our website

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

18.11 For the avoidance of doubt once this agreement is terminated or SIM Card is disconnected from the Network you will lose the mobile phone number associated with the SIM Card.

18.12 If a clause in these Terms and Conditions 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 these Terms and Conditions 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.

18.13 You acknowledge that Digicel is 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 Digicel.

18.14 The laws of Barbados will apply to these Terms and Conditions and any dispute will be settled in the courts of Barbados.