

Digicel™

DIGICEL (PNG) LIMITED

MASTER SERVICES TERMS:	<u>Department Negotiator:</u> Lloyd Trusty (__/__/2017)
<u>L&R Drafts Person:</u> _____ (__/__/2017)	<u>HOD Approval:</u> Gary Cobain (__/__/2017)
<u>L&R Approval:</u> Andrew Kidu (__/__/2017)	<u>CFO Approval:</u> Ketan Mehta (__/__/2017)

MASTER SERVICES TERMS

INTRODUCTION

These are Digicel's standard Master Services Terms which, together with Digicel's standard Service Terms, apply to Services that Digicel supplies to end users (each a **Customer**) unless the Customer signs a negotiated Master Services Agreement. If a Customer signs a Master Services Agreement with Digicel, the Master Services Agreement and any agreed Service Terms apply to Services that Digicel supplies to the Customer. If the Customer signs a Master Services Agreement without agreeing to Service Terms, Digicel's standard Service Terms apply where relevant.

Digicel may change these Master Services Terms and any Service Terms relevant to services supplied to the Customer from time to time without notifying the Customer provided that if a change has a material adverse effect on the Customer:

- (a) Digicel will notify the Customer of the change; and
- (b) the Customer may terminate the Service without incurring any Early Termination Fee.

If the Customer continues to use the Service, the Customer is deemed to accept the change notified by Digicel.

These Master Services Terms and Digicel's standard Service Terms (as varied from time to time) are available from the Digicel Business website at www.digicelpng.com. Subject to Digicel notifying the Customer of any material adverse change, the Customer is deemed to have notice of the Master Services Terms and any relevant Service Terms as published on the Digicel Business website and varied from time to time.

RECITALS

- A Digicel (PNG) Limited (**Digicel**) operates and maintains a communications network and provides services over the network to end users (including the Customer) on the terms of these Master Services Terms.
- B The Customer wishes to acquire certain services from Digicel on the terms of an agreement (**Service Agreement**) that are constituted by:
 - (a) these Master Services Terms;
 - (b) the terms of any Service Terms applicable to the relevant category of service; and
 - (c) the Service Order applicable to the relevant service.
- C The Customer acknowledges that a new Service Agreement is created in respect of a service (**Service**) when Digicel accepts a Service Order for that Service. Unless agreed otherwise, each Service is independent of other Services. Expiry or termination of one Service does not affect the continuation of another Service unless the latter depends on the former.
- D Digicel may revise these Master Services Terms from time to time in accordance with its provisions.

DETAILS

Item 1 Territory: Papua New Guinea

Item 2 Digicel Contact Matrix*

	Contact	Phone / Email	Availability
Level 1	Digicel Business Call Centre	+675 7373 0000 Support_DB@digicelgroup.com	24 hours/day 7 days per week
Level 2	Network Operations Centre	+675 7222 8865, +675 7222 8839 techsupport_DB@digicelgroup.com	24 hours/day 7 days per week
Level 3	Mairi Sabila	+675 72221882 Mairi.Sabila@digicelgroup.com	24 hours/day 7 days per week

Level 4	Joris Vierboom	+675 7222 3755, Joris.Vierboom@digicelgroup.com	24 hours/day 7 days per week
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* unless revised by Digicel

Item 3 Address for Notices (Clause 13)*

Digicel	Contact Person	The Head of Legal
	Address	Section 494, Section 1 & 2, Kennedy Road, Gordons Industrial Estate, PO Box 1618 Port Moresby, Papua New Guinea PO Box 1618Port Moresby, Papua New Guinea
	Fax No.	+ 675 7222 4447

* unless revised

Customer	Contact Person	<i>As specified by the Customer in the Service Order*</i>
	Address	<i>As specified by the Customer in the Service Order*</i>
	Fax No.	<i>As specified by the Customer in the Service Order*</i>

* if the Customer does not specify notice details in a Service Order, Digicel will use reasonable efforts to serve notice at the Customer's last known address or fax number recorded by Digicel. Notice served using such reasonable efforts shall be deemed sufficient notice to the Customer.

1. DEFINED TERMS AND INTERPRETATION

1.1. Defined terms

In these Master Services Terms:

Acceptable Use Policy – see Clause 2.12.

Agreement means these Master Services Terms. If these Master Services Terms is incorporated into, or applies to, a Service Agreement, the term **Agreement** also refers to the Service Agreement unless the context indicates otherwise.

Additional Services means additional services requested under Clause 2.7 of these Master Services Terms.

Advisers means:

- (a) the financial or legal advisers of a party; and
- (b) the respective officers and employees of those financial or legal advisers.

Affiliate, in relation to either party, means:

- (a) a person under the control of that party, a person who controls that party, and a person who together with that party is under the common control of a third person; and
- (b) any director, officer, employee, agent, consultant or professional advisor of that party and of any of the persons identified in paragraph (a).

Arbitration Law means the Arbitration Act Chapter 46 (PNG).

Base Interest Rate is the indicative lending rate for loans to business customers published by the Bank of South Pacific or an equivalent reputable financial institution in the Territory. If there is more than one such indicative lending rate, the Base Interest Rate is the indicative lending rate that Digicel considers is that rate that would likely apply to an overdraft facility made available to Digicel.

Business Day is a when banks are open for business in the place where the Services are provided.

Commencement Date is the date an agreement comes into effect.

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is treated by each party as confidential; or
- (c) each party knows or ought to know is confidential,

except information that:

- (d) is or becomes public knowledge otherwise than by breach of these Master Services Terms; or
- (e) has been independently acquired or developed by a party to these Master Services Terms.

Contract Material means all Material created for the purposes of these Master Services Terms.

The **Due Date** for paying a bill is the 7th day of the date of the bill.

Unless a Service Order provides otherwise, "Early Termination Fee" or "ETF" is an amount calculated as follows:

$ETF = 90\% \text{ of the Total Contract Value } \times ('A' / 'B')$

where:

Total Contract Value is the sum of all monthly recurring charges or minimum monthly spend that the Customer agrees to pay over the Minimum Service Period;

'A' is the number of months remaining of the Minimum Service Period when the Service is terminated;

'B' is the total number of months in the Minimum Service Period.

Emergency means any crisis that, in Digicel's sole but reasonable discretion, necessitates prompt action by Digicel.

Equipment Charges means charges for the supply and/or installation of Equipment. Unless agreed otherwise, Equipment Charges exclude import duty, freight cost and other levies or costs.

Equipment means, depending on the context, equipment belonging to Digicel (**Digicel Equipment**) or to the Customer (**Customer Equipment**) or both.

Helpdesk means the helpdesk at the Digicel Business Call Centre at Item 2 of the Details which is responsible for receiving and responding to customer calls, fault report, and queries about the Service, logging such calls, pursuing them to resolution, and reporting back to the Customer.

Insolvency Event means conduct by any party whereby that party:

- (a) stops or suspends, or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent within the meaning of the relevant legislation on corporations;
- (c) is presumed by a court to be insolvent;
- (d) fails to comply with a statutory demand;
- (e) has an administrator appointed over it or any step preliminary to the appointment of an administrator is taken; other than for the purpose of reconstruction;
- (f) passes a resolution for reduction of capital; or
- (g) gives notice of intention to propose such a resolution; or
- (h) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to

enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

Intellectual Property means all intellectual property rights, including:

- (a) patents, copyright, rights in circuit layouts, registered designs, trade marks, know how, trade secrets, domain names, website contents, and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

Material includes property, information and the subject matter of any category of Intellectual Property.

Minimum Service Period is 24 months unless specified otherwise in a Service Order.

Network means the telecommunications system owned and/or operated by Digicel.

Other Network means any telecommunications system network other than the Network

People of a party mean the officers, employees, contractors (including subcontractors and their employees), and the agents of that party, but exclude the other party.

Security means any security, in a form acceptable to Digicel, for the payment of the charges or the meeting of Customer's other obligations under a Service Agreement. The form of a Security may include a bank guarantee, a letter of credit, security over a bank deposit, a deposit with Digicel, a parent company guarantee, a deed of cross guarantee, a related company guarantee, a fixed charge or a floating charge security.

Service means the service or services specified in a Service Order issued by the Customer and accepted by Digicel.

Service Agreement means an agreement between Digicel and the Customer in respect of a Service, being an agreement that is constituted by:

- (a) these Master Services Terms,
- (b) any terms and conditions applicable to the Service (**Service Terms**); and
- (c) any order accepted by Digicel in relation to the Service (**Service Order**).

Service Charges means the charges paid or payable to Digicel by the Customer for a Service, being:

- (a) the non-recurring and recurring charges specified in a Service Order; and
- (b) the charges advised by Digicel for any variation to the Service Order.

Depending on the context, a reference to Service Charges may include Equipment Charges.

Service Order means a Customer's order for a Service that Digicel has accepted. A Service Order must be made in a form specified by Digicel and contain the details (**Service Details**) applicable to the Service.

Service Terms are the terms and conditions that apply only to a specific set of Services. The Service Terms are Digicel's standard Service Terms unless the parties have signed a negotiated Service Agreement.

Site Regulations means such health and safety and security rules and procedures applicable to a Customer's Premises as may be notified in writing by the Client to Digicel from time to time during the Term of these Master Services Terms.

Start Date means the date a Service is provisioned or the date Equipment is installed. The Start Date can be the Commencement Date of an agreement or later.

Subcontractor means a Digicel subcontractor appointed in accordance with Clause 4.

Subcontracting arrangement refers to the use of a third party to provide the whole or part of a Service specifically for the Customer but excludes any arrangement that Digicel would employ independently of whether the Service is provisioned for the Customer.

Term is the term in Clause 3.1 of these Master Services Terms.

Territory – see Item 1 of the Details.

Third Party Material means Material owned by a third party that is included, embodied in or attached to the Contract Material.

1.2. Interpretation

In these Master Services Terms:

- (a) a reference to the Customer includes the Customer's People but does not make them a party to these Master Services Terms or confer any rights or obligations on them;
- (b) a reference to Digicel includes Digicel's People but does not make them a party to these Master Services Terms or confer any rights or obligations on them;
- (c) the singular includes the plural and vice versa;
- (d) a reference to one gender includes a reference to all other genders;
- (e) headings to clauses are included for the sake of convenience only and shall not affect the interpretation of the clauses to which they relate;
- (f) references to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or

- (g) other subordinate legislation made under the relevant statute; references to these Master Services Terms includes the schedules and attachments hereto, references to a Service Agreement includes the schedules and attachments thereto, and references to a Service Order includes the schedules and attachments thereto;
- (h) When a party compromises two or more persons the rights and obligations of such persons pursuant to these Master Services Terms shall endure for the benefit of and bind all of them jointly and each of them severally;
- (i) the word 'person' means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not; and
- (j) these Master Services Terms shall bind each party's legal personal representatives, successors and assigns.

Each party agrees that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction of interpretation of these Master Services Terms.

1.3. Precedence

Any inconsistency between these Master Services Terms, a Service Terms and a Service Order shall be resolved according the following order of precedence (from the highest precedence to the lowest precedence):

- (a) Service Terms;
- (b) Master Services Terms;
- (c) Service Order.

2. SERVICES

2.1. Scope of Services

- (a) Upon Digicel accepting a Service Order issued by the Customer, Digicel shall provide the Service to the Customer in accordance with the Service Order.
- (b) If the Service Order specifies a Start Date for the Service, Digicel will endeavour to provision the Service by the Start Date, but does not guarantee it will do so.
- (c) Digicel is only responsible to ensure connectivity up to the defined Points of Demarcation.
- (d) Digicel shall not be responsible for calls, data, information, or otherwise routed over Other Networks once such calls, data, information or otherwise have been handed over Other Networks.

2.2. Performance of Services

- (a) Without limiting specific provisions of these Master Services Terms, Digicel will:

- (i) comply with all legal, regulatory or contractual requirements applicable to the Services including licensing obligations;
 - (ii) exercise reasonable skill, care and diligence in providing the Services;
 - (iii) keep reasonable records on the performance of the Services; and
 - (iv) use reasonable endeavours to perform the Services at least consistent with levels of performance achieved by well managed operations performing services similar to the Services.
- (b) The Customer must not take or allow any action or make or allow to be made a decision that may adversely affect the function or performance of, or decrease the efficiency of, Digicel's ability to perform the Services without Digicel's prior written approval.
- (c) Digicel may from time to time change the technical specifications of a Service if:
- (i) the change does not materially and adversely affect the Customer; or
 - (ii) there is an Emergency.

2.3. Warranties

- (a) Digicel warrants that it has sufficient expertise to perform the Services and all necessary licences, consents, approvals, permits and authorisations that may be required to provide the Services.
- (b) The Customer acknowledges and agrees that except as expressly set out in these Master Services Terms, neither Digicel nor any person acting on behalf of or associated with Digicel has made any representation, given any advice or given any warranty or undertaking, promise or forecast of any kind in relation to the Services, Digicel or these Master Services Terms except as set out in these Master Services Terms.
- (c) Digicel will do its best to provide a reasonable quality of service but does not warrant that the Service will be continuously available or fault free.

2.4. Access to Customer premises

- (a) **(Preparing premises)** The Customer must, at its own expense, prepare relevant Premises according to any reasonable instructions provided by Digicel (including, but not limited to, obtaining all such consents and authorisations as may be necessary to provide Digicel with access to those Premises and installing all Customer Premises Equipment) and must provide Digicel with reasonable access to selected parts of the Premises for the purpose of line testing, surveys, installation and maintenance of Digicel Equipment.

- (b) **(Access)** The Customer will, where necessary, and at all reasonable times, permit access or secure access to the Premises to Digicel and anyone acting on Digicel's behalf, on production of a valid identity card, to enable Digicel to carry out its obligations under these Master Services Terms. Digicel will normally only require such access during the Customer's usual working hours, however, Digicel may, on reasonable notice, require the Customer to provide it with access at other times. Such request shall not be unreasonably denied. The Customer will provide a suitable and safe working environment for Digicel at the Premises throughout the Term of these Master Services Terms.
- (c) **(Digicel to observe site regulations)** Digicel will observe all reasonable Site Regulations of the Customer, which have been advised in writing to Digicel prior to the date of access to the Premises by Digicel. In the event of any conflict between the Site Regulations and the terms of these Master Services Terms, Digicel shall proceed with the installation only upon receipt of the Customer's written authorization to do the installation in accordance with the terms of these Master Services Terms and may waive adherence to the Site Regulations
- (b) **(Repair)** The Customer will also be responsible for making good any damages reasonably arising from Digicel's modifications and/or alterations unless such damages are caused by the negligence of Digicel or otherwise agreed in writing by the parties.
- (c) **(OH&S)** The Customer must, when permitting Digicel to use the Customer's premises or facilities for the purposes of Digicel providing the Services, make all Digicel Personnel present aware of, and promulgate all procedures relating to occupational health and safety and security in operation at those premises or facilities (including a smoke-free policy)
- (d) **(Stakeholder approvals)** Where it is necessary for Digicel to lay cables, lines, equipment at, in, on or to, or to otherwise acquire access, leave, or permission to traverse, Premises not owned or in the possession or under the control of, or accessible under consent granted to, the Customer, the Customer must secure all necessary approvals from the relevant persons, including, as applicable, the owner, landlord, or their agents so as to enable Digicel to lawfully carry out its installation, maintenance and provision of the Services, including Digicel Equipment, to the Customer.
- (e) **(Planning consents)** The Customer will, at its own expense, obtain all necessary building or planning consents, permissions and approvals

for any modifications required to any Premises.

2.5. Digicel equipment

- (a) **(No interference)** The Customer must not, without Digicel's prior written consent, add to, modify or in any way interfere with the Digicel Equipment and will be liable to Digicel for any loss of, or damage to, the Digicel Equipment, except where such loss or damage is due to fair wear and tear, acts of God, or is caused by the negligent or wilful act or omission of Digicel.
- (b) **(Safety and security)** The Customer must comply with all Digicel's reasonable safety and security requirements in relation to the use of Digicel Equipment and the Services of which, from time to time, it is notified in writing by Digicel.
- (c) **(Legal title)** All legal title, right to and interest in the Digicel Equipment will remain with Digicel and nothing in these Master Services Terms is to be construed or interpreted as passing any such right or interest to the Customer. The Customer acknowledges that equipment that is affixed to the Premises is not a fixture if the equipment can be removed without causing irreparable material damage to the Premises.
- (d) **(Ongoing support)** The Customer agrees to provide, at its expense, a suitable place, conditions and support for Digicel Equipment and Services, including all necessary trunking, conduits and cable trays in accordance with relevant installation and use standards and, where required, a continuous mains electricity supply and connection point.
- (e) **(Demarcation point)** Digicel will not be responsible nor liable for any fitting, cable, ducting, equipment (including Customer Premises Equipment) on the Customer's side of the Point of Demarcation and all risk, responsibility and liability for such, or arising from or related to such, will remain at all times with the Customer.

2.6. Digicel relieved of its obligations

- (a) Digicel is relieved of any of its obligations under these Master Services Terms to the extent of the Customer's involvement in the performance or alteration of the Services without Digicel's consent during the Term.
- (b) Digicel will not be liable for any delays in meeting its obligations under these Master Services Terms where the delay is due to acts outside its reasonable control or to any act or default of the Customer.

2.7. Additional Services

- (a) The Customer may request Digicel to supply Additional Services from time to time by issuing a Service Order in a form specified by Digicel.
- (b) Service Charges for Additional Services will be based on Digicel's standard rates applicable at that time.

2.8. Termination of Services

- (a) The Customer may terminate a Service before the Minimum Service Period (if any) expires by giving Digicel a decommissioning notice in the form specified by Digicel and paying Digicel the Early Termination Fee calculated by Digicel. The Service terminates in accordance with the decommissioning notice.
- (b) The Customer may terminate a Service on or after expiry of the Minimum Service Period by giving Digicel one month's notice.
- (c) The Customer agrees that the Early Termination Fee is a genuine pre-estimate of any loss that Digicel will suffer, including in the recovery of any upfront subsidy provided by Digicel, any reliance loss and the loss of expectations.

2.9. Suspension

Without prejudice to its rights to terminate these Master Services Terms, Digicel may suspend or interrupt the provision of one or more Services under these Master Services Terms:

- (a) in the event of an Emergency;
- (b) due to reasonable technical expediency;
- (c) in the event that the Customer fails to comply with any of the provisions of these Master Services Terms;
- (d) if in Digicel's reasonable discretion the Customer's use of the Service would result in a substantial risk that Digicel or its suppliers become:
 - (i) indicted as a criminal defendant in any country; or
 - (ii) subject to any government proceedings that could result in fines, sanctions or non-monetary remedies including loss of any license or consents;
- (e) should the Service be used in any way that will cause interference with Digicel's Equipment;
- (f) should payment of any bills not be made within 10 days of the Due Date for payment;
- (g) should the Customer not comply with reasonable instructions or directions given to it by Digicel which are, in Digicel's sole but reasonable opinion, necessary to maintain the safety or the quality of the Services;
- (h) in order to prevent damage to, or degradation of, the Network which may be caused by the Customer or anyone using the Customer's access;
- (i) to comply with any law, regulation, court order or other lawful governmental requirement or order;

- (j) to comply with any request of an emergency service organization; or
- (k) to prevent use of the Services which, in the reasonable opinion of Digicel is fraudulent, illegal or improper.

Except where to do so would require the Customer to engage in unethical, misleading or deceptive conduct, the Customer must not attribute Digicel blame for any fault or other circumstances or the suspension or partial suspension of a Service.

2.10. Change to technical specifications

Digicel reserves the right, from time to time, to:

- (a) change the technical specification or any other aspect of the Services provided that the change does not materially and adversely affect the Services;
- (b) in the case of an Emergency, change the technical specification or other aspect of the Service which may materially or adversely affect the Services; or
- (c) give the Customer such instructions as may, in Digicel's sole opinion, be necessary to maintain the safety and/or quality of the Service.

2.11. Customer's obligations

The Customer shall:

- (a) use the Service in accordance with reasonable instructions or directions given by Digicel which, in Digicel's sole opinion, are necessary to maintain the safety or the quality of the Service;
- (b) not use the Service in a manner that would jeopardize the operation of the Network, the network of any Digicel customer, or other third party;
- (c) permit Digicel to examine, test or repair the Digicel Equipment on the Premises at all reasonable times;
- (d) be responsible for the maintenance of all Customer Equipment;
- (e) be responsible for the security of Customer and Digicel Equipment at the Customer's premises;
- (f) promptly report faults in the Service to the Helpdesk facility provided by Digicel;
- (g) bear all costs relating to the provision of commercial power to the Customer's premises, Customer Equipment and the Equipment and the provision of additional infrastructure such as pole mounts, bases, grounding equipment required to facilitate the installation of the Equipment;
- (h) not, nor permit any other person to:
 - (i) attach anything directly or indirectly to any Digicel Equipment;
 - (ii) interfere with any labels on Digicel Equipment;
 - (iii) place anything in electrical connection with any Digicel Equipment; and

- (iv) connect or attach any equipment to the Digicel Equipment and/or the Customer Premises Equipment which may adversely affect the operation of such equipment and/or the provision of the Services by Digicel; and
- (i) not connect nor allow a third party to connect equipment or Other Networks to the Network without Digicel's prior approval.

2.12. Acceptable Use Policy

- (a) In the event of activity which Digicel considers to be deliberately or otherwise abusive or in violation of this Clause 2 by the Customer or a user of the Customer, Digicel may immediately suspend a Service or, by giving 24 hours notice to the Customer, terminate a Service if Digicel in its sole discretion considers this necessary to address the abuse or violation. Digicel reserves the right, at its sole discretion, to determine what constitutes an abuse or violation and the Customer agrees that Digicel's determination is final and binding on it.
- (b) The Customer agrees not to use the Service for any purpose or in any manner that:
 - (i) does not comply with the terms of any legislation, regulation, policy or any license or authorization applicable to the Customer or Digicel;
 - (ii) does not comply with any instructions given to Digicel by any other telecommunications operator or any competent regulatory authority and which has been notified in writing by Digicel to the Customer;
 - (iii) would or could result in Digicel being in breach of any agreement between Digicel and any public telecommunications operator which has been notified in writing by Digicel to the Customer;
 - (iv) in the reasonable opinion of Digicel is or could be improper.
- (c) The Customer shall not and hereby undertakes to procure that any of its users do not engage in activity that is abusive or violates any system or network including but not limited to:
 - (i) gaining or seeking to gain unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system and/or network or to breach security or authentication measures nor

- (ii) without express authorization of the owner of that system or that network; using or seeking to use or distribute tools designed for compromising security including, but not limited to, password guessing programs, cracking tools, packet sniffers or network probing tools;
- (iii) interfering with service to any internet user, host or network including, but not limited to:
 - (A) mail-bombing;
 - (B) packet flooding;
 - (C) deliberate attempts to overload a system; or
 - (D) broadcast attacks;
- (iv) forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting;
- (v) sending data, or causing data to be sent, to or through Digicel's network that hides or obscures the source of the data, that contains invalid or forged headers or domain names or deceptive addressing;
- (vi) relaying data from a third party's mail server without permission or which employs similar techniques to hide or obscure the source of the data;
- (vii) collecting or harvesting screen names or e-mail addresses of others for the purpose of sending unsolicited e-mails or for exchange;
- (viii) monitoring of data and/or traffic on any network or system without the express authorisation of the owner of the system or network;
- (ix) transmitting, distributing or storing any material in violation of any applicable law, regulation, policy, licence or authorisation;
- (x) sending unsolicited mail messages ("SPAM"), including, without limitation, commercial advertising, charity requests, petitions for signatures, chain letters, informational announcements and political or religious messages, unless requested by the specific recipient;
- (xi) collecting or redirecting responses from SPAM sent from other Internet hosts which would violate these Master Services Terms or being directed by SPAM

- (xii) sent from other internet hosts or messaging services to any web site or resource that uses the Digicel Network;
- (xiii) sending large or numerous amounts of data for the purpose of, or likely to have the effect of, disrupting another's computer or account;
- (xiv) knowingly transmitting or disseminating any information or software, which contains a virus or other harmful feature.
- (d) The Customer shall notify Digicel immediately of any unauthorised or attempted unauthorised use of a Service, and any breach or attempted breach of system or network security, and any breach or attempted breach of this Clause 2.12.
- (e) The Customer shall not make or allow unreasonable or excessive demands on the Network nor make or allow improper or abusive use of the Network.
- (f) The Customer authorises Digicel to cooperate with:
 - (i) law enforcement authorities in the investigation of suspected criminal violations; and
 - (ii) system administrators at other Internet service providers, as well as other network or computing facilities
 such cooperation may include providing, for example, the username, IP address or other identifying information about a Customer.

2.13. Monitoring

- (a) Digicel is under no obligation, but has the right to monitor transmissions made or received using a Service (including content posted, disseminated or accessed by using the Service) to ensure that the Customer is complying with the terms of these Master Services Terms, and to disclose that content as required under these Master Services Terms or by law.
- (b) Digicel does not monitor content transmitted or posted over its network but reserves the right to do so and to block or remove any content in Digicel's sole discretion, to the extent this is permitted by an applicable law. Digicel takes no responsibility for any material, input or content transmitted or posted by any user. Digicel is not responsible for the content of any web sites linked to the Digicel network.

3. TERM

- 3.1. If not otherwise specified, each Service Agreement commences on the date Digicel

provisions a Service pursuant to the Service Order and shall continue:

- (a) for the Minimum Service Period; unless
- (b) terminated earlier under Clause 2.8(a) or Clause 11.

3.2. Upon the expiry of the Minimum Service Period, the Service Agreement shall continue on a monthly basis unless terminated under Clause 2.8(b).

3.3. These Master Services Terms:

- (a) is deemed to apply to any Service Order accepted by Digicel when Digicel gives the Customer a copy of this document and the Customer continues to receive the Service from Digicel;
- (b) continues for so long as Digicel provides a Service to the Customer; and
- (c) expires upon the disconnection of the last Service provided to the Customer.

3.4. Digicel may revise these Master Services Terms and any standard Service Terms from time to time in the manner specified in the Introduction to these Master Services Terms.

4. SUBCONTRACTORS

4.1. Digicel:

- (a) may subcontract any part of the Services and shall promptly notify the Customer of any subcontracting arrangement;
- (b) will use reasonable endeavours so that each Subcontractor complies with the terms of these Master Services Terms; and
- (c) will despite any Subcontractor appointment, be the Customer's sole point of contact regarding the Services including with respect to payment.

4.2. Digicel may at its election change any Subcontractor, in which case, the new Subcontractor will perform the Services.

5. CUSTOMER INFORMATION

5.1. General

- (a) Digicel will use reasonable endeavours to protect the security of information it collects from the Customer ("**Customer Information**").
- (b) The Customer acknowledges that Digicel may use or disclose Customer Information to for the purpose of providing the Services and for ancillary purposes including:
 - (i) to improve the Services that Digicel provides to its customers; and
 - (ii) to inform the Customer about other services or

products that the Customer may be interested in.

- (c) Digicel may transfer the Customer Information to another party (including an Affiliate of Digicel) as part of a corporate restructure or a sale of business.
- (d) Digicel may use or disclose Customer Information for the purpose of a credit assessment.

5.2. Numbers or codes

- (a) The Customer shall, at no time, acquire any rights or title in the numbers and/or codes allocated to it by Digicel. Digicel reserves the right to withdraw or replace any numbers or codes allocated to the Customer:
 - (i) for operational or technical reasons; or
 - (ii) where any such withdrawal is required by the telecommunications regulatory authoritybut will use its best endeavours to provide the Customer with the maximum notice practicable having regard to the circumstances of the withdrawal or replacement.
- (b) Digicel shall not be liable to the Customer for any losses, claims, damages, costs and attorneys costs arising from such withdrawals or replacements

6. SERVICE CHARGES

6.1. General

- (a) In consideration of the performance of the Services by Digicel, The Customer must pay the Service Charges specified in the Service Order.
- (b) Unless Digicel has accepted a Service Order at agreed Service Charges for a Minimum Service Period, Digicel may revise the Service Charges from time to time upon 28 days notice to the Customer, in writing and/or via national newspaper.
- (c) Where the Services under these Master Services Terms includes voice services, the Customer is liable for all calls made via the Service. This provision shall apply irrespective of whether the Customer knows or consents to such use.
- (d) Where Digicel investigates faults reported by the Customer, and no faults are identified, or if identified, are attributed to the Customer's acts or omission, Digicel may charge the Customer its reasonable costs of investigation and any repair.
- (e) Where Digicel investigates faults reported by the Customer and such faults are attributed to Digicel's acts or omissions, Digicel shall be responsible for costs of investigations and any repairs.
- (f) Unless otherwise specified, Service Charges are exclusive of any

- consumption or value added tax, regardless of which party the taxes are levied on.
- (g) Unless otherwise specified, Digicel may pass on to the Customer any import duty, freight costs and other levies or costs in connection with the supply of Equipment to the Customer.
- (h) Each party must pay, and indemnify the other in respect of, any taxes, duties, charges imposed or levied on that party in connection with its performance of these Master Services Terms.

6.2. Payment

- (a) Digicel shall bill the Customer monthly.
- (b) All charges shall be payable to Digicel by the Due Date.
- (c) The Customer shall pay Service Charges in full without set-off or counter claim.

6.3. Billing Dispute

- (a) Unless the Customer disputes a bill ("**Billing Dispute**"), the Customer shall not defer or suspend payment of the Service Charges once that part of the Services to which the payment relates has been completed.
- (b) The Customer may dispute a bill only on grounds that there is a manifest error in the bill. The Customer acknowledges that Service Charges are based on Digicel's billing records.
- (c) The Customer may not dispute a bill on grounds that the Service is below agreed service levels.
- (d) If there is a Billing Dispute, the Customer must pay the amount of a bill that is not in dispute and may withhold the amount in dispute until it is resolved.
- (e) If a Billing Dispute is resolved in Digicel's favour, the Customer must pay the amount withheld within 7 days notice from Digicel plus interest at the Base Interest Rate. Interest will accrue daily from the Due Date to the time of payment and shall be compounded monthly.
- (f) If the Customer withholds payment on amounts that are not in dispute, interest will accrue daily on the amount withheld at the Base Interest Rate plus 5% pa from the Due Date to the time of payment and shall be compounded monthly.

6.4. Finality

The Customer may dispute a bill only if this is done within 6 months of the date of the bill.

7. MANAGING FINANCIAL EXPOSURE

- 7.1. Digicel may require the Customer to provide Security or vary the form or value of the existing Security if:

- (a) the Customer acquires Services on a post-paid basis;
- (b) the Customer fails to make payment in full by the due date (which for the avoidance of doubt, excludes disputed charges);
- (c) the Customer is subject to an Insolvency Event; or
- (d) a material adverse change to Customer's creditworthiness occurs.

- 7.2. Digicel may draw against any Security in respect of any amounts payable by the Customer to Digicel under a Service Agreement which are overdue or to compensate Digicel for any loss, liability or expense Digicel suffers or incurs as a result of any breach of a Service Agreement by the Customer including if the Customer fails to pay any charges when due and the Customer must immediately restore or procure the restoration of the Security to the value determined under this Clause 7.1 ("Managing Financial Exposure").

- 7.3. The Security is refundable without interest.

- 7.4. The Customer must:

- (a) maintain any Security provided to Digicel until the expiry of a six month period after termination or expiration of the applicable Service Agreement; and
- (b) ensure the terms of any Security provided to Digicel are complied with fully.

- 7.5. The Customer's usage of a Service may be subject to a credit limit determined by Digicel. If so, the Service may be suspended if the Customer exceeds the credit limit.

8. INTELLECTUAL PROPERTY

8.1. Vests in Digicel

Intellectual Property in all Contract Material vests in Digicel immediately upon its creation.

8.2. Ownership of pre-existing material

- (a) Clause 8.1 does not affect the ownership of Intellectual Property in any of the Customer's or Digicel's pre-existing Material.
- (b) If Digicel requires any of the Customer's pre-existing material to provide the Services then the Customer grants to Digicel an irrevocable, royalty free, worldwide, non-exclusive (including the right to sublicense) license to use, reproduce, adapt, communicate and exploit the Customer's pre-existing Material to provide the Services for the Term of the Agreement.

8.3. Third Party Material

If the Customer requires Digicel to use a third party's Material for the Services then the Customer must procure:

- (a) from that party all necessary copyright and Intellectual Property rights permission in Digicel's favour; and
- (b) licenses in the manner contemplated under Clause 8.28.2(b) of these Master Services Terms in relation to any third party Intellectual Property which the Customer requires Digicel to include or use for the Services.

9. NEGATION OF EMPLOYMENT, PARTNERSHIP OR AGENCY

These Master Services Terms does not create a relationship of employment, agency or partnership between the parties.

10. CONFIDENTIAL INFORMATION

10.1. Prohibition on Disclosure

Subject to Clause 10.4, the Customer must not, without prior written consent, and sole discretion, of Digicel disclose any Confidential Information of Digicel to a third party.

10.2. Conditions to Approval

In giving written consent to the disclosure in accordance with Clause 10.1, Digicel may impose such conditions as it thinks fit, and the Customer must comply with these conditions.

10.3. Advisers

Digicel may at any time require the Customer to arrange for:

- (a) its Advisers; or
- (b) any third party to whom Digicel Material may be disclosed to pursuant to Clause 10.1 or 10.4,

to give a written undertaking in relation to the use and non-disclosure of Digicel's Confidential Information.

10.4. Exceptions to obligations

The obligations under Clause 10 will not have been taken to have been breached to the extent that Confidential Information of the other party:

- (a) is disclosed to a party's Advisers or employees solely to comply with obligations, or to exercise rights under these Master Services Terms; or
- (b) is authorized or required by law, to be disclosed.

10.5. Period of confidentiality

The obligations under this Clause 10 continue indefinitely.

11. TERMINATION

11.1. The Customer's right to terminate

- (a) Without prejudice to any other accrued rights or remedies, the Customer may terminate a Service Agreement by written notice if Digicel:
 - (i) commits a material breach of the Service Agreement and fails to remedy that breach within Three (3)months of receipt of written notice of the breach;
 - (ii) commits a material breach of the Service Agreement which is incapable of being remedied;
 - (iii) persistently fails to perform or comply with any one or more of its obligations under the Service Agreement in any 3 month period and Digicel has been given notice of such failure in that period by the Customer; or
 - (iv) is subject to an Insolvency Event.
- (b) The Customer may not terminate a Service Agreement as a result of a material change in the ownership or control of Digicel.

11.2. Digicel's right to terminate

Digicel may, at anytime terminate a Service Agreement:

- (a) for convenience by giving the Customer 20 business days notice;
- (b) if the Customer commits a material breach of these Master Services Terms or fails to pay Service Charges and fails to remedy that breach or failure within 20 business days of receipt of a notice from Digicel of that breach or failure.
- (c) if the Customer fails to provide or maintain any Security required under Clause 7 ("**Managing Financial Security**") or comply with that clause; or
- (d) if the Customer is subject to an Insolvency Event or in Digicel's reasonable opinion is unable to pay its debts when they fall due.

- 11.3. If Digicel terminates a Service Agreement under Clause 11.2(b), Digicel shall be entitled to declare immediately due and payable the Early Termination Fee in addition to all of Digicel's other remedies at law or in equity.

12. GUARANTEE, INDEMNITY, LIABILITY AND INSURANCE

12.1. Guarantee

The Customer guarantees to Digicel the due and faithful performance by the Customer of each and every part contained in these Master Services Terms.

12.2. Indemnity

The Customer indemnifies and agrees to keep Digicel indemnified against all claims, losses, expenses, damages and costs (on a solicitor

and own client basis and whether incurred by or awarded against Digicel) that Digicel may sustain or incur as a result, whether directly or indirectly of:

- (a) any breach of the Acceptable Use Policy by the Customer or its People;
- (b) any breach of these Master Services Terms including, but not limited to, a breach in respect of which the Customer exercises an express right to terminate these Master Services Terms;
- (c) any negligent act or omission or willful misconduct of the Customer or its People; or
- (d) any infringement by the Customer or its People of the Intellectual Property rights of a third party.

In the event any claim is brought against a party that is subject to an indemnity ("**Indemnified Claim**" or "**Claim**"), that party will immediately notify the indemnifying party in writing, and the indemnifying party, upon the request of the indemnified party, must assume the cost of the defence of the Claim, on behalf of the indemnified party or its Affiliates. The indemnifying party will pay all associated expenses and satisfy all judgments which may be incurred by or rendered against the indemnified party, provided that the indemnified party shall not be liable for any settlement of any Claim effected without its consent.

12.3. **Liability**

- (a) In no event shall Digicel be liable to the Customer in contract, in tort (including but not limited to negligence and or economic torts), in equity, under statute, under an indemnity, under a warranty breach or otherwise for any direct, indirect or consequential cost, injury, damage, expense (including legal and other professional fees and expenses), loss (including deterioration in or loss of profits, anticipated savings, revenue, data, business opportunity, bargain, or goodwill), liability or claim incurred by the other party or a third party (including the Customer's People or users) in connection with any act or omission by the liable party in relation to these Master Services Terms, whether foreseeable or not.
- (b) As far as the law permits, Digicel excludes all warranties, rights and remedies that the Customer would otherwise be entitled to at law.
- (c) As far as the law permits, Digicel may, at its option discharge any of its liability under any statutory warranty by:
 - (i) repairing or replacing any defective goods;
 - (ii) re-supplying any defective service; or
 - (iii) paying for the cost of repairing, replacing or resupplying the goods or services.
- (d) Each party is liable to the other for death or personal injury or damage to

property to the extent caused by that party and foreseeable by that party provided that a party liable for property damage may in its sole discretion discharge that liability by repairing the damage or replacing the property.

- (e) Subject to paragraph (g) below, each party's liability to the other in connection with a Service is limited to:
 - (i) the total Service Charges paid under the Service Agreement in respect of the 12 months immediately preceding the date of the cause of action giving rise to the liability ("**Liability Date**"); less
 - (ii) any amount that the party liable has agreed to pay in respect of any other liability with a Liability Date falling within that 12 month period.
- (f) To avoid doubt, the Customer's liability to pay charges or fees for Services is not limited under any provision limiting liability in connection with a Service.
- (g) The limitation of liability in paragraph 12.3(e) above does not apply to liability in connection with:
 - (i) Clause 8 (**Intellectual Property**),
 - (ii) Clause 10 (**Confidentiality**),
 - (iii) paragraph 12.2(a) (**Acceptable Use Policy**),
 - (iv) paragraph 12.2(d) (**third party Intellectual Property**), and
 - (v) paragraph 12.3(d) (**property damage and personal injury**).

12.4. **Insurance**

The Customer will have and maintain during the Term valid and enforceable insurance policies of sufficient cover to enable the Customer to meet all its obligations under these Master Services Terms, including but not limited to:

- (a) public liability insurance for an insured amount of not less than US\$ 10 million per occurrence and in aggregate for each calendar year;
- (b) property insurance that covers the Customer for any loss or damage to the Customer's property;
- (c) insurances required by law including any relevant workers or accident compensation legislation.

13. **NOTICES**

13.1. Any notice, demand, consent or other communication (Notice) given or made under a Service Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post (if posted to

- an address in another country, by registered airmail) or by hand or fax to the address or fax number in Item 3 of the Details or the address or fax number last notified by the intended recipient to the sender.
- (c) will be taken to be duly given or made in the case of:
- (i) delivery in person, when delivered; and
 - (ii) fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error,
- 13.2. If the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the start of business on the next Business Day in that place.

14. DISPUTE RESOLUTION

- 14.1. Where a disagreement arises between the Parties from or in relation to the performance or interpretation of these Master Services Terms (“**Dispute**”) and a party (for the purposes of this paragraph the “**disputing party**”) wishes to invoke the dispute procedure specified in this paragraph, it shall send written notice of the Dispute to the other party (for the purposes of this paragraph the “**receiving party**”). The notice shall contain all relevant details including the nature and extent of the Dispute. Upon receipt of the notice, the parties must appoint at least one senior representative, who must, within five (5) working days from the date the receiving party received the notice of the dispute, meet with each other, and attempt to resolve the Dispute.
- 14.2. Following notice under Clause 14.1, the parties shall consult in good faith to try to resolve the Dispute. If agreement is not reached within ten (10) working days from the date of the meeting, the Dispute may be escalated by either party under Clause 14.3.
- 14.3. If the Dispute is not resolved under Clause 14.2, the Dispute will be escalated to each of the parties' respective Chief Executive Officers or the Chief Executive Officer's nominee, who must then meet and attempt to resolve the Dispute within five (5) working days.
- 14.4. If the Dispute is not resolved under Clause 14.3, the parties agree to submit to and settle by arbitration proceedings conducted in the capital city of the Territory accordance with the provisions of the Arbitration Law by a single arbitrator with the appropriate qualifications and experience to arbitrate the dispute (including knowledge of the telecommunications industry and legal qualifications) agreed on by the parties or, in the absence of such agreement, appointed

by the President for the time being of the Law Society of the Territory.

- 14.5. Each party shall bear the cost of preparing and presenting its case. The cost of arbitration, including the arbitrator's fees, will be shared equally by the parties unless the resolution otherwise provides. The language of the arbitration will be English. If either party initiates proceedings relating to a dispute in any forum other than in what is permitted in this Clause 14 (an Inconvenient Forum), the party initiating the proceedings shall indemnify the other party against all costs and expenses incurred in any action in the Inconvenient Forum even if the party initiating the proceeding is successful in the Inconvenient Forum.
- 14.6. In determining the Dispute, the parties must instruct the Arbitrator:
- (a) to decide within the shortest practicable time and as informally and as inexpensively as possible;
 - (b) to consult with each of the parties and give each a reasonable opportunity to make submissions and to put any material before the Arbitrator which the party considers relevant; and
 - (c) to deliver an Award stating its opinion with respect to the matters in the dispute and the reasons for its decision.
- 14.7. The decision of the Arbitrator, in the absence of manifest error, will be conclusive and binding.
- 14.8. The costs of the Arbitrator will be borne equally by both parties.
- 14.9. Any information or documents disclosed by a party under this Clause 14:
- (a) must be kept confidential;
 - (b) may only be used to attempt to resolve the Dispute; and
 - (c) must not be used as evidence in court proceedings arising out of these Master Services Terms.
- 14.10. In any Dispute, both parties must:
- (a) save as otherwise provided herein or as otherwise agreed between them, continue to perform their respective obligations under these Master Services Terms; and
 - (b) not, whether by act or omission impede or otherwise interfere with a party's endeavours to remedy any event which gave rise to the Dispute.
- 14.11. The above procedures are without prejudice to any other rights and remedies that may be available in respect of any breach of any provisions of these Master Services Terms. Each party is free to apply to the court for urgent interlocutory relief.

15. MISCELLANEOUS

- 15.1. **Counterpart**

These Master Services Terms may be executed in any number of counterparts (including facsimile copies or image) and any/all such counterparts shall constitute the one and same binding and enforceable Agreement between the parties provided that these Master Services Terms will be of no force and effect until the counterparts are exchanged.

15.2. **Further action**

Each party must use reasonable efforts to do all things necessary or desirable to give full effect to these Master Services Terms and its subject matter.

15.3. **Alteration**

These Master Services Terms may only be altered in writing signed by the authorised signatories of each party.

15.4. **Severability**

Part or all of any provisions of these Master Services Terms that is illegal or unenforceable may be severed from these Master Services Terms and the remaining provisions of these Master Services Terms remain in force.

15.5. **Waiver**

Waiver of any provision of or right under these Master Services Terms must be in writing signed by the party entitled to the benefit of that provision or right and is effective only to the extent set out in any written waiver. A failure to enforce a right under these Master Services Terms is not a waiver of that right.

15.6. **Governing law**

These Master Services Terms is governed by the law applicable in the Territory excluding its conflict provisions and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.

15.7. **Force Majeure**

- (a) No party to these Master Services Terms their agents, contractors, employees or assigns shall be deemed to be in breach of these Master Services Terms or otherwise liable to the other as a result of any delay or failure in the performance of its obligations under these Master Services Terms if and to the extent that such delay or failure is caused by force majeure and the time for performance of the relevant obligation(s) shall be extended accordingly.
- (b) For the purpose of this Clause "**force majeure**" means any circumstances not foreseeable at the date of these Master Services Terms and not within the reasonable control of the party in question including without limitation any strike lockout or other industrial action or any shortage of or difficulty in obtaining labour or raw materials; any destruction temporary or permanent, breakdown malfunction or

damage of or to any premises, plant, equipment (including computer systems or the Network) or materials which is not attributed to the gross negligence or fraudulent acts or omissions of either party, their agents, employee's or assigns; any action taken by a governmental or public authority of any kind including not granting a consent, exemption, approval or clearance; any civil commotion or disorder, riot, invasion, war, threat of or preparation for war; and any fire or explosion which is not attributed to the gross negligence or fraudulent acts or omissions of either party, their agents, employee's or assigns; any storm, flood, earthquake, epidemic or other natural physical disaster.

- (c) A party whose performance of its obligations under these Master Services Terms is delayed or prevented by force majeure shall forthwith:
 - (i) notify the other party of the nature, extent, effect and likely duration of the circumstances constituting the force majeure;
 - (ii) use all reasonable endeavours to minimise the effect of the force majeure on its performance of its obligations under these Master Services Terms; and
 - (iii) after the cessation of the force majeure, notify the other party thereof and resume full performance of its obligations under these Master Services Terms.
- (d) If any force majeure delays or prevents the performance of the obligations of either party for a continuous period in excess of thirty (30) days, the party not so affected may give notice to terminate these Master Services Terms to the affected party specifying the date (which shall not be less than 7 days after the date on which the notice is given) on which termination will take effect.

15.8. **Survival**

The following Clauses survive termination of any individual Service Agreement:

- (a) Clause 8 ("**Intellectual Property**");
- (b) Clause 10 ("**Confidential Information**");
- (b) Clause 12 ("**Guarantee, Indemnity, Liability and Insurance**").

15.9. **Warranties**

If a party is a corporate entity, the party warrants that it:

- (a) is duly incorporated and validly exists under the law of its place of incorporation;
- (b) has full corporate power and lawful authority to execute and deliver these

Master Services Terms and to consummate and perform or cause to be performed its obligations under these Master Services Terms and each transaction contemplated by these Master Services Terms to be performed by that party;

- (c) is not insolvent and no receiver has been appointed over any part of its assets and no such appointment has been threatened; and
- (d) is not in liquidation and no proceedings have been brought or threatened for the purpose of winding up that party.

15.10. **Assignment**

- (a) Neither party shall transfer, assign (including via any direct or indirect change of control), or dispose of a part or the whole of these Master Services Terms without the prior written consent of the other party,

which must not be unreasonably withheld.

- (b) Notwithstanding the foregoing, either party ("**assignor**") may assign the entirety of these Master Services Terms to any person ("**assignee**") being a person under the control of that party, a person who controls that party, or a person who together with that party is under the common control of a third person ("**Common Parent**") as part of a restructure (including merger, acquisition, amalgamation or reorganization) of a group of entities comprising of that person and its Affiliates ("**Group**") including by adding new entities to the Group provided:

- (i) the assignee is at least as creditworthy as the assignor; and
- (ii) the assignee or its Common Parent is not a competitor of the other party.

[THE SIGNING PAGE FOLLOWS]