

Digicel Flex Terms & Conditions

1 Definitions

1.1 These words have the following meanings: "Account" - the account in which we record your credit and Charges; "Charges" - all the tariffs associated with the Service described in the Price List; "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; "IP Rights" - means copyrights, trademark and other relevant proprietary and intellectual property rights relating to the Content; "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 Customer; "Registration" - our acceptance of your application to register with us for the Service once you purchase calltime from us in the form of a Voucher and 'Register', 'Registering' and 'Registered' has a corresponding meaning; "Roaming" – making and receiving calls whilst abroad via a local network operator; "Service" - any or all (as the case may be) of the following 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" - 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; "Voucher" - our calltime voucher that you can purchase from us or our authorized agents, the face value amount of which can be credited against your Account; ", "us" and "our" - Digicel (BV) Limited, having its principle place of business on the 5th floor Jayla building, Wickhams Cay 1, Road town, Tortola , "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 once you Register your Account with us or first use our Service, whichever occurs first.

2 Provision and Use of Service

2.1 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.

2.2 If you use your Mobile Phone abroad, you will also be charged for incoming calls. You may be charged to receive certain premium rated text-messaging Service.

2.3 Roaming charges may vary according to the foreign network and exchange rates and may include minimum charges.

2.4 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.

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

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

2.7 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.

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

2.9 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.

2.10 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.

2.11 The Services 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.

3 Payment For The Service

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

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

3.3 If at the time we attempt to deduct recurring service Charges for additional Service you have subscribed to and you do not have enough credit on your Account: (a) you will not be able to make any outbound calls (except to emergency numbers and to us), send or receive any additional services, or receive any reverse billed services on that day; and (b) you will not be able to make or receive calls while Roaming. If later during that day you credit your Account we will deduct the relevant recurring service Charges and reinstate your Service.

3.4 When the credits on your Account have been used up you will not be able to use the Service until a further credit is made to your Account. You will still be able to make calls to emergency services and to us and receive calls whilst the SIM Card is connected to the Network.

3.5 In order to make a chargeable call, retrieve a voice message, send a text or picture message, receive a reverse billed service or open a data session you must have paid up any recurring service Charges that may apply. You must also have sufficient credit on your Account to enable you to make the call, to send (or receive) the service in question; or to open a data session, to send or receive a minimum of 2Kb of information. Minimum balances reserved for the first Service activated will not be available for any subsequently activated, yet concurrently used service. Services used simultaneously will be charged for concurrently. We will not pay any interest on credits.

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

4 Your Responsibilities

4.1 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.

4.2 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; and (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.

4.3 If the Mobile Phone is lost, stolen, damaged or destroyed or used without your authorization: (a) you agree to inform our customer care department immediately and confirm the same in writing; (b) we will be under no obligation to make a refund to you of the credits left on your Account; (c) we are under no obligation to replace the Mobile Phone and if it is replaced we may charge you for its replacement.

4.4 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.

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

5 Things We May Have To Do

5.1 Occasionally we may have to: (a) alter the mobile telephone number associated with the 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.

6.1 If you do not make or receive a call at least once in any three month period the SIM Card may (at our absolute discretion) be disconnected from the Network, you will not be able to use the Service at all and any credits left on your Account will be forfeited.

6.2 Each Voucher has a date by which you must Register the Voucher and use the amount credited to your Account ("Expiration Dates"). In the event that the Expiration Dates lapse (irrespective of your Account being in credit); (a) and you do not credit your Account with a new Voucher within a maximum of 60 days of the Expiration Date, the SIM Card may (at our absolute discretion) be disconnected from the Network, and any credits left on your Account will be forfeited. During this period you will still be able to make calls to emergency services and to us and receive calls whilst the SIM Card is connected to the Network you will not, however, be allowed to make a chargeable call, retrieve a voice message, send a text or picture message, receive a reverse billed service or open a data session; (b) and you credit your Account with a new Voucher within a maximum of 60 days of the

Expiration Date, the amount of the new Voucher will be credited to your Account and any existing credit in your Account will expire on the date the new Voucher expires.

6.3 In addition to anything else we may bar or disconnect the SIM Card from the Network and/or suspend Service without warning if: (a) you fail to comply with the Terms and Conditions in any material way; (b) you report that your Mobile Phone has been lost, stolen, damaged or destroyed; (c) the Service is used (with or without your knowledge) to make calls or send data, which is offensive, indecent, obscene menacing, a hoax or nuisance, in breach of any rights or privacy of others or is unlawful; (d) you or anyone that uses the SIM Card damages the Network or puts it at risk; (e) we have reasonable cause to suspect fraudulent use of the Mobile Phone or Voucher; (f) we need to carry out repairs, modifications or upgrades to any part of our Network; (g) we believe that any equipment used in connection with the Service poses any danger to person or property or interferes with any service; (h) 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.

6.4 Where the SIM Card is disconnected from the Network and/or Service is suspended, we are not obliged to refund any credits held in your Account.

6.5 If the SIM Card is disconnected from the Network and you wish it to be reconnected to the Network, you must purchase a new SIM Card. For the avoidance of doubt once the SIM Card is disconnected from the Network you will lose the mobile phone number associated with the SIM Card.

7 Exclusion of Liability

7.1 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).

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

7.3 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;

7.4 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.

7.5 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.

7.6 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 the value of the Voucher Registered and being used by you at the time when the liability arises.

7.7 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 .

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

7.9 This Clause 7 will apply even after these Terms and Conditions have ended.

8 Changes to the Terms and Conditions

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

9 Mobile Phone Locking

9.1 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.

10 Trade In

10.1 If you seek 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 phone that was traded in by you and indemnify us from any claims made by any third party.

11 Use and Disclosure of Information

11.1 You authorize us to use and disclose, in BVI 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, 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.

11.2 You also agree to the information described in clause 11.1 being used, analyzed and assessed by us, and the other parties identified in clause 11.1 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.

12 Internet Access

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

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

12.3 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.

12.4 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.

12.5 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.

12.6 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.

13 General

13.1 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 the you and us relating to the subject matter hereof.

13.2 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.

13.3 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.

13.4 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.

13.5 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.

13.6 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 these Terms and Conditions in any other way.

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

13.8 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) messages on our system when you call to Register a Voucher, (c) the issue of messages to you by means of the Service, or (d) advertisement on our website.

13.9 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.