

Digicel Samoa Limited

Postpaid Terms and Conditions: Digicel Select

1. Interpretation

“Account” means our record of your credit and charges and, where applicable, personal details.

“Agreement” means the agreement between us and you consisting of the terms and conditions in this document, the terms and conditions of any applicable product, service, promotion and competition, the applicable tariffs and charges and the application form.

“Bar” means a block placed by us on some or all the Services you use, with the exception of access to emergency services such as the police and fire departments. “Barred” has a corresponding meaning.

“Call” means a transmission made over our Network for the purpose of communicating a voice or data message, which includes without limitation short text messages and messages.

“Chargeable Event” means the sending of Calls from the Equipment to the Digicel Network and/or outside the Digicel Network and/or receiving Calls on the Equipment from the Digicel Network and/or outside the Digicel Network.

“Customer Care Centre” means our customer care centre which contact details are listed on our Website.

“Digicel SIM Card” means the Digicel subscriber identity module card which is connected by us to the Network.

“Equipment” means the Handset together with the Digicel SIM Card.

“Handset” means the type-approved mobile handset or any other device used by you to access the Network and approved at its sole discretion by Digicel for use on its Network.

“Lock” means (with reference to Equipment) Sim lock, network lock or subsidy lock built into the Handset or Handset firmware by mobile phone manufacturers.

“Network” means our mobile and/or other telecommunications network and systems used to provide the Service.

“Registration” means our acceptance of your application for Service. “Register”, “Registering” and “Registered” have a corresponding meaning.

“Service” means the mobile telecommunications services and related products and services that are made available to you by us or our agents from time to time.

“unlock” or “unlocking” means the removal of the Equipment Sim lock, network lock or subsidy lock built into the Handset or Handset firmware by mobile phone manufacturers by any method.

“Website” means our website at www.digicelsamoa.com.

“we” or “us” means Digicel Samoa Limited and “our” has a corresponding meaning.

“you” means the customer having a billing relationship with us and “your” has a corresponding meaning.

The English text of this Agreement represents the definitive Agreement between you and us, with any translations into Samoan or other languages being for information purposes only.

2. Agreement

This Agreement begins once we have accepted your application for the provision of the Service and activated your connection to the Service and will remain in effect for so long you continue to use the Service.

You agree that various related services, promotions and competitions of ours and third parties may be subject to additional terms and conditions which may from time to time form part of this Agreement.

You agree that the application of any consumer legislation to this Agreement shall be excluded (or, if it cannot be excluded, limited) to the maximum extent permitted by law. To the extent that the application of any consumer legislation cannot be excluded (or limited, as the case may be), this Agreement shall not prohibit you from exercising your rights under that legislation.

You agree that we have the right to unilaterally amend a part or the whole of the Service or this Agreement from time to time subject to notifying you of any material amendment, the materiality of which shall be determined at our sole discretion. Such notification may be by way of notice in writing or in any other means we choose, such as printed collateral, national media, our website, SMS, voice message or email. I. You agree that using the Service after our notice of amendment shall be deemed acceptance of that amendment. Please note that our partner dealers or any third parties are not authorised to amend this Agreement or to agree to any provision which is inconsistent with this Agreement.

Any notice that you are required to send to us must be sent to our principal office at Digicel Samoa Ltd, PO Box 847, Apia, Samoa.

Your interests in this Agreement are personal to you. You shall not assign or otherwise transfer this Agreement in whole or in part. If you are a business and your effective management or control is changed in any way, then this will be treated by us as a transfer of this Agreement entitling us to end it.

We may assign or otherwise transfer this Agreement in whole or in part without your consent.

This Agreement is governed by and construed in accordance with the Laws of Samoa, and we and you agree to submit to the exclusive jurisdiction of the Courts of Samoa.

3. Your Obligations

You are responsible for the acts and omissions of all persons using the Equipment, whether or not authorised by you. Without prejudice to the generality of the former obligation or to any provision of this Agreement, you agree to:

- (a) only use the Service in accordance with this Agreement or otherwise in a manner approved by us;
- (b) provide valid proof of your identity that we deem acceptable;

- (c) ensure that information you provide to us is correct, complete and up to date, and in particular notify us in writing at least five (5) business days prior to billing if any of your customer information, contact information or financial information has changed;
- (d) not use or permit the use of the Service or the Equipment for any improper, abusive, indecent, obscene, unlawful, unauthorised, defamatory or fraudulent purpose or to cause any injury, offence or annoyance to any person, including by way of sending unsolicited commercial messages to any person;
- (e) not do anything that may harm our, or any third party, property;
- (f) not interfere with any part of our Network and/or Service;
- (g) not use or permit the use of the Service or the Equipment or introduce anything (including any virus) so as to cause the operation of the Network or the quality of the Service to be jeopardised, impaired or interrupted including using any unauthorised Voice over Internet Protocol service or to interfere with the integrity or security of any telecommunications or IT network or system;
- (h) not use the Service to spam, mail bomb, publish any offensive or unlawful material, harvest information about others, create a false identity, transmit or upload material which breaches any third party right, or any other similar activity;
- (i) not incite, encourage or induce members of the public to call particular numbers simultaneously where this may adversely affect the Service and/or the Network;
- (j) ensure that nothing is connected to the Network other than equipment that we have approved;
- (k) be solely responsible for the manner in which the Equipment is used, including being solely responsible for paying all tariffs and charges arising from the use of the Digicel SIM Card (whether authorised or unauthorised);
- (l) comply with all of our reasonable instructions and requests and those of authorised authorities, in particular with respect to the manner of using the Equipment and/or Service, the investigation of offences and/or the migration to newer technologies;
- (m) immediately report, and confirm in writing, if your Handset and/or Digicel SIM Card has been lost, stolen, damaged or used without authorisation;
- (n) protect us against any legal action taken against us in connection with your use of the Services and any other use of the Equipment;
- (o) reimburse us for all costs and expenses, including reasonable legal fees, incurred as a result of us deeming it necessary to enforce our rights under this Agreement by way of legal or other action; and
- (p) ensure that anyone that uses the Equipment also meets the obligations of this Agreement.

If you do not comply with the obligations in this clause we may be entitled to cancel or suspend the service under clause 17.

4. Service Period

By signing the application form you agree to a minimum Service Period of twenty four (24) months from the date of signature on your application form.

After the (24) month period, this Agreement shall remain in effect for so long you use the Service until terminated as provided for in this Agreement.

5. Security Deposit

You may, at our sole discretion, be required to make a security deposit in order to be connected or reconnected to the Network. This security deposit is refundable without interest after this Agreement is terminated and all outstanding monies due to us have been recollected, or at any such earlier time that we may, at our sole discretion, determine. You may also be required to pay an additional security deposit, to be specified by us, for the ability to roam, use your phone on another GSM network with which we have a roaming agreement or use a specific Service. These security deposits may be used by us to settle any outstanding debts owed to us at any time. A security deposit does not absolve you from your liability to pay for the Services rendered through the Digicel SIM Card, including all costs associated with its unauthorised use. If you are required to pay a security deposit and this is not collected by us for whatever reason at any time, we reserve our rights to request this security deposit from you at any time, including after such time that we have accepted your application for the provision of the Service and activated your connection to the Service.

6. Credit Limit

We may, at our sole discretion, set a credit limit for you. We reserve the right to increase or lower your credit limit at any time following a seven (7) days notice. You agree that your debt to us for the Service we provide to you will not exceed your credit limit. Your credit limit, established at our discretion, relates to your current usage. Your use of the Service may be restricted or suspended if your debt to us exceeds your credit limit. However, you will continue to be liable for all charges in excess of any credit limit in place. Any Services that are restricted or suspended as a result of you exceeding your credit limit will be reinstated once your debt to us is reduced below the level of your credit limit.

7. Provision of Service

Our Services are provided by radio transmission. The quality and availability of our Services and our related products and services are subject to limitations including radio interference, physical obstruction, atmospheric conditions, network congestion, maintenance, outages, the configuration or limitations of your intended recipient's Equipment, or other operational and technical difficulties.

We will always do our best to provide a reasonable quality of service but we do not warrant that they will be continuously available or fault free.

We do not represent or warrant that the Service or our related products and services shall be available in all parts of Samoa or in any other country. We do not represent or warrant that the operation of the Service or our related products and services will be uninterrupted, timely, secure or error-free or that it will meet your or any other person's specific requirements. In particular, we do not represent or warrant that calls will not be dropped, that GPRS connections will not be lost, that transmission of data calls shall occur at any particular speed or that all traffic can or shall be transmitted by the Network.

We do not accept responsibility for the security of any calls, including, but not limited to, GPRS connections. You use the Service at your own risk and you are solely responsible for adopting such appropriate security measures against unauthorised access to and interference with the Equipment or Service (or associated software/hardware and data) as may be necessary.

We may modify or suspend the Service and our related products and services wholly or partially, with or without notice, if we, in our sole discretion, reasonably believe it to be necessary or consider that such action is necessary or desirable for the purpose of upgrading, maintaining, modifying or otherwise the Network or other systems or if such action is required or reasonably requested of us by an authorised authority. We shall attempt to minimise such Service disruptions.

We reserve the right, without prejudice to any other provisions of this Agreement, to issue reasonable instructions concerning the use of the Service and/or the Network as may be necessary in the interests of safety, quality of service, other customers or telecommunications services as a whole, or for any other reason that we consider is necessary or desirable. As a result of such instructions or the modification or suspension of the Service, you acknowledge that you may not be able to make certain types of calls and messages using the Equipment.

We make no representation and give no warranty as to the quality, availability, suitability, authenticity or timeliness of any service provided by a third party. We reserve the right to suspend or withdraw access to all or any such services provided by a third party on a temporary or permanent basis at any time. Your use of such services provided by a third party is at your sole risk and we shall not be responsible or liable for any loss or damage suffered by you arising from the use of such services. You acknowledge that we may be required to pass on charges to you for such services.

8. Service Charges

Digicel shall normally offer a range of price lists with different tariffs and methods of charging. You are advised to read the relevant Digicel price lists and tariff rules, the details of which are available from us, our authorised dealers, the Customer Care Centre and from our Website and/or media. Tariff rates and tariff rules may vary depending on the type of Call sent or received. Our price lists, tariffs and tariff rules for the Service also form part of this Agreement and may, in the absolute discretion of Digicel, be amended from time to time. We reserve the right to amend such price lists, tariffs and tariff rules and will notify you of such amendment by notice in writing or by any other means we choose, such as via printed collateral, including outdoor signage, national media, our Website, SMS, voice message, post or email. You agree that using the Service after our notice of amendment shall be deemed acceptance of that amendment. Digicel reserves the right to cease offering and/or replace its price lists and rules from time to time, including due to currency devaluations.

You may be able to use the Service while located outside Samoa. However, access to networks outside of Samoa shall depend upon the arrangements between us and the operators of those other networks. Special tariffs and charges shall apply to you if you use the Service while located outside Samoa, the details of which are available from our authorised dealers, local media, Customer Care Centre and Website.

9. Payment

When you use the Digicel SIM Card and/or Services, you incur a debt to us. You agree to pay for the Service we provide to you, and related services, no matter who uses them (with or without your knowledge and/or consent), Service charges, subscription fees, VAT (which will be added on charges where applicable), regulatory fees, surcharges, administration fees and other charges or taxes incurred in relation to the Service will be added to your debt and will form part of it.

You agree to pay this debt to us at a designated collection centre or in any such other manner that is reasonably determined by us and notified to you. We reserve the right to impose conditions on payment and to set mandatory methods of payment, including the right to reject and/or disallow cheque payments made otherwise than by certified or company cheque. If payment is made by cheque or any other instrument, we may charge a return fee should the cheque or other

instrument be dishonoured. We reserve the right to reject and/or disallow cheque payments from you once dishonoured cheques have been processed through your Account.

We reserve the right to charge interest on overdue amounts at a rate of 15% per annum.

We are not liable for any loss or damage suffered as a result of the use of, or failure in, any bill payments services. You agree to pay us any reasonable costs incurred by us in pursuing the payment of amounts owed to us by you following failed deductions of debt from your Account including legal and administrative costs. We are in no way obligated to provide Service to you if you have defaulted in payment of any sums due by you. You agree that, in this event, we may charge a reconnection fee and/or revise your payment terms and/or restrict your Service/feature types, prior to restoration of the Service. Should you refuse to accept this Agreement, we reserve the right to refuse to reconnect you.

We may require you or your estate to pay your total debt immediately if you do not carry out your obligations under this Agreement or if you become bankrupt or insolvent, or die, or upon legal attachment, levy or execution against you, your estate or your property or if the Digicel SIM Card is used contrary to this Agreement.

Invoices will be sent to your billing address unless otherwise specified. Invoices will include:

- fixed charges, which we may charge in advance;
- call charges and other charges and credits, which are charged in arrears or as otherwise determined by us;
- details of any charges which have been invoiced previously but not yet paid; and
- interest, if any.

Invoices will be deemed to be received by you two (2) business days after the date that we have sent it to you, whether or not you have received it. Payment of the entire amount billed is due on fourteen (14) days from that date.

Invoices are available by methods other than post by contacting our Customer Care Centre. We will not be held responsible for non-receipt of invoices delivered by post. You must continue to make payments even when postal service is disrupted. We reserve the right to contact you by methods other than post to seek payment of amounts due. All invoices generated will be available for reprint on request. You may be required to pay for reprints.

We reserve the right to change billing cycles and/or to issue interim invoices.

10. Settling Disputed Charges

Invoices are based on our records. If you believe that there is a mistake in your invoice, please let us know as soon as possible by contacting our Customer Care Centre and provide us with evidence supporting your belief. You agree to pay the undisputed charges of the invoice in accordance with the remainder of this Agreement. We will investigate the matter and will notify you of the results of our investigation. If we agree that there has been a mistake in your invoice, a credit of the amount disputed will be applied to your account to offset the disputed amount incorrectly charged. If we do not believe that there has been a mistake, the unpaid charges on the invoice, plus any interest owing in relation to the disputed amount, shall become payable by you immediately. You agree that you may not dispute the charges on an invoice after the date which is three (3) months from the date of the invoice.

11. Foreign Currency Transaction

The amount of any transaction charged in any currency other than Samoan Tala will be billed and payable by you in Samoan Tala. We will make conversion from a foreign currency to Samoan

Tala at a rate of exchange determined by the Central Bank of Samoa, plus any transaction charges, on the date we receive notification of the transaction and the relevant amount to be charged to your account.

12. Numbers, Digicel SIM Card, Handsets and Connection to the Network

You shall have no proprietary rights, legal interest, or goodwill whatsoever in any mobile number or any other number allocated to you by us from time to time. We reserve the right at any time to alter or replace a mobile number or other number allocated to you or any other person at any time. We will use reasonable efforts to give you notice of any change required. We will not be liable for any costs which you, or anyone else, may incur as a result of such a change.

We shall issue you with, and license you to use, a Digicel SIM Card on the condition that the Digicel SIM Card shall remain our sole property and shall be returned to us upon a request from us or anyone authorised to act on our behalf. You must not interfere with or destroy the Digicel SIM Card for any reason. Any Digicel SIM Card that is lost, stolen or damaged (through no fault of ours or the manufacturer) will require payment from you for its replacement, exchange or repair. Any Digicel SIM Card found defective due to faulty workmanship or design may be replaced free of charge once returned to us within the warranty period specified. You will be required to pay for all Service charges up to the time you notify us of the loss or theft of your SIM Card and your SIM Card is deactivated.

You acknowledge that the Handset provided to you under this Agreement has been subsidised by us and remains the property of Digicel for the Term of this Agreement. You will only connect it to the Network and not use it to connect to any other Network for the Term of this Agreement.

Any Handset provided to you under this Agreement and through our authorised dealer channel is locked to the Network.

Should you wish to unlock the Handset prior to the expiry of this Agreement, you shall require our prior written approval and you agree to be liable to pay us an unlocking fee of \$35 per Handset per month for the remainder of the Term of this Agreement and associated costs, including administrative costs.

Your Equipment is your responsibility. You must take every precaution to keep it safe. You may only connect to the Service using Equipment, as well as related accessories, that we have approved. We may from time to time specify the type of equipment that may be connected to or used by you in respect of the Service, including Voice over Internet Protocol services. You must immediately disconnect any equipment or device from the Network which is not approved or does not comply with our specifications. In no event shall you interfere with any equipment provided to you by us for use with the Service. We accept no responsibility for the maintenance, repair or condition of equipment or devices which are not our property or have not been supplied by us and you will maintain all equipment and devices in good condition which are used or connected to the Service.

Using or agreeing to use the Services does not give you any rights in any part of the Services. You must not resell, in any way whatsoever, the whole or any part of the Services without the period written approval of Digicel. You agree to be wholly liable for an account of lost revenues and related expenses of Digicel where you have resold the Services without our prior written approval.

13. Warranty Policy

All handsets supplied by us come with a manufacturer's warranty against production defects. In addition to the manufacturer's warranty, we offer a 7-day dead on arrival (DOA) replacement policy. We may offer a 21-day DOA replacement policy for certain handsets. Should this apply to

your handset, you will be notified of same. Warranty and DOA conditions are available at any of our stores or by calling our Customer Care Centre.

14. Mobile Caller ID

Our Network may allow the display of your mobile number on receiving equipment. Where possible, if you have requested to have the display of your mobile number restricted, we will prevent your number being shown on any receiving equipment. Your number may still be displayed to emergency or other services, when you send a SMS and when you make calls to us. We also reserve the right to include any mobile number allocated to you in our directory lists, subject to any objection or preference you may have indicated to us. You must not connect any device to the Network which has not been approved by Digicel, including but not limited to, SIM boxes, mobile gateways or any other related devices. You must not mask or in any way alter the true origination or termination of any call or other transmission on the Network.

15. Customer Information and Disclosure

You acknowledge and expressly agree to us, and companies in our group, collecting personal information about you. Such information may be collected from you and others or generated within our Network when you or anyone else uses the Service or any other service.

You acknowledge and expressly consent to us, and companies in our group, using your information for any lawful purpose including providing you with the Service, account management, billing, debt collection, credit assessments, directory purposes, market research, customer profiling, product and service development, marketing and customer care.

Your customer information may be retained for a reasonable period of time in a secure environment. You acknowledge that calls to our Customer Care Centre may be recorded for training and quality control purposes.

You acknowledge and expressly consent to us, and companies in our group, disclosing your information to third parties (such as to our agents, credit agents and other carriers) for purposes including credit referencing, fraud detection and prevention, debt collection, investigating insurance claims, directory purposes, for any reason required by law and for any other lawful purpose.

You may ask to see your account information and any other information that we hold about you and ask for any details that are wrong to be corrected. We reserve the right to refuse such a request where we are unable to verify that the person requesting the information is in fact you or a person authorised by you. We shall not be liable for the disclosure or non-disclosure of such information or for any inaccuracy or lack of completeness of any information disclosed.

You agree that we may contact any person or reference provided by you to verify the accuracy of your account details. You acknowledge that we, or our agents, may from time to time contact you by post, telephone, in person, email or text message regarding details of promotions, competitions or our other products and services. You hereby expressly consent to such contacts. If you no longer wish to be contacted in such a manner please notify us in writing.

15. Suspension & Termination

We may, without notice, suspend or terminate this Agreement wholly or partially for any of the following reasons:

- (a) we are required to do so by a regulatory authority, by law, or by law enforcement agency;

- (b) the provision of the Service becomes illegal or we believe on reasonable grounds that it may become illegal;
- (c) you supply or have supplied at any time false, inaccurate or misleading information to us;
- (d) you fail to observe and/or comply with any material provisions of this Agreement the materiality of which we shall at our sole discretion determine or any relevant law or any of our property rights;
- (e) if for any reason we are unable to provide the Service to you or if intermittent checks, modifications and/or maintenance are deemed necessary to the Network;
- (f) you fail to pay us any sums due under this Agreement or any other agreement between us and you on the due date specified in the invoice, notwithstanding the issue of any invoices thereafter;
- (g) you are adjudicated bankrupt, become insolvent or make any composition or arrangement with or assignment for the benefit of creditors;
- (h) you die or, in the case of a partnership, its or is intended to be dissolved;
- (i) you access the Service other than with the Equipment with mobile handset or device other than the Equipment as well as related accessories, that we have approved;
- (j) we reasonably believe that you are unable to comply with payment obligations, represent a credit risk, exceed any credit limit, or if we are unable to contact you following reasonable efforts;
- (k) your usage of the Service is unusual or excessive;
- (l) you notify us that your Equipment has been lost or stolen;
- (m) we are reasonably of the view that you or any other person in connection with the Service are conspiring to defraud us or interfere with the operation and quality of our Network, including without limitation causing congestion; or
- (n) you attempt to bypass the Service and or Network or use your Handset for Voice of Internet Protocol or Messaging of Internet Protocol services;
- (o) we are of the view, in our sole discretion, that your usage and monthly spend warrants a different Service from the one provided to you under this Agreement;
- (p) we are otherwise entitled to do so under the Agreement.

We do not need to suspend your Service before we terminate this Agreement.

Should your access to the Service be interrupted or suspended in any of the circumstances outlined in this Agreement, we are in no way obligated to provide the Service to you. During any period of Service suspension, we may disconnect your equipment from the Network and you shall remain liable for all charges owing to us unless we decide otherwise. We reserve the right to reconnect you to the Network and to levy a reconnection fee on each suspended subscription and/or require revised payment terms, including additional security deposits. Where we exercise any of our powers under this clause, such exercise shall not prejudice or affect the exercise of any other right or remedy which may be available to us.

We may, voluntarily and at our sole discretion, terminate this Agreement by giving you at least one (1) month's notice.

If you want to terminate this Agreement, please contact our Customer Care Centre to arrange this. This Agreement will terminate (unless terminated earlier) on a date one (1) month after we receive your notice of termination, provided that this date is a date no earlier than twenty four (24) months from the date of signature on your application form.

Where you terminate this Agreement prior to the expiry of the term of this Agreement, for whatever reason, you shall be liable to pay us a termination fee in the sum of \$35 per month (exclusive of VAT) for each Equipment for the remainder of the Term of this Agreement, and all your benefits shall cease and you shall reimburse us, the pro-rated retail value of any (and all) complimentary handsets/phones provided to you by us, pay all amounts owing to us, any bills owing and any disconnection fee as may be determined by us from time to time, including any costs of recovery within 14 days of the termination by you of this Agreement.

Where you terminate this Agreement after the minimum Service Period of (24) twenty-four months, you shall be liable to pay all amounts owing to us, any bills owing and any disconnection fee as may be determined by us within 14 days of the termination by you of this Agreement.

18. Remedies for Breach

If you breach any term of this Agreement, you consent to the granting of injunctive relief by any court having jurisdiction over the enforcement of this Agreement restraining any or any further breach of this clause and you further will indemnify and hold harmless Digicel from any and all losses or damages sustained by Digicel by virtue of any breach of this clause, including but not limited to the cost involved of obtaining injunctive relief against you.

19. Rights and Responsibilities that Continue

The termination of this Agreement does not affect any rights and responsibilities which are intended to continue or to come into existence after this Agreement ends, such as restricting the use of the Handset on another network and the return of the Digicel SIM Card and any other of our property and the payment of any outstanding debt or sums due to us.

20. Force Majeure

If we are prevented from carrying out or in our reasonable opinion we are or will be unable to carry out any obligation in this Agreement by reason of any act of God, act of State, act of a national or international regulatory body, riot, insurrection, civil commotion, strike, sanctions, boycott, carrier dispute, embargo, an act or default of any supplier, agent or other person, or any other circumstance (a "force majeure event") which in our sole opinion is beyond our reasonable control, our performance of this Agreement will, to the extent that it is made impossible under the circumstances, be suspended until such circumstances cease to exist. We will not be liable to you for a failure to perform, or a delay in performing, any such obligation set out in this Agreement.

21. Exclusion of Liability

Insofar as it permissible by law, we shall not be liable for any injury, loss or damage, whether foreseen or unforeseen, directly or indirectly (and including Consequential Loss) resulting from:

- (i) any failure, interruption, delay, suspension or restriction in providing the Service to you which is due to a force majeure event set out in Clause 18 above;

- (ii) any suspension or non-availability of a part or the whole of the Service;
- (iii) suspension or termination of this Agreement;
- (iv) any unlawful or unauthorised use of or access to the Equipment, Service and/or Network by you or third parties;
- (v) any claim arising out of any act or omission by you, your servants or agents or arising out of any reliance placed by such persons on call content;
- (vi) any loss, theft or malfunction of the Digicel SIM Card and/or your Handset;
- (vii) any claim arising in relation to the provision or non-provision, maintenance or use of telecommunications lines, channels, equipment, networks or services or arising out of calls being dropped or data connections being lost or the failure to connect any call made to or by the Equipment for whatever reason.

In Clause 19, Consequential Loss means and includes: indirect loss and special damages; loss of revenue; loss of profits; loss of business; loss of anticipated savings; loss of goodwill; loss of data; claims of third parties; and loss or costs associated with any of the above.

Further to above, we, our associated or affiliated companies, and our and their respective officers, agents, directors, principals, employees, attorneys, underwriters, advisors, successors and assigns will not be liable for or in respect of any effects, claims, actions, proceedings, suits and causes of action (whether at law or in equity and including emotional distress), liens, debts, damages, fatalities, losses or injury (whether property or personal, consequential or otherwise), judgments, liabilities, costs and expenses of every nature kind whatsoever, whether known or unknown, suspected or unsuspected arising out of or in respect to the Equipment, Service, Network and/or any electronic or radio systems in equipment, vehicles or aircraft in your vicinity, or of any emissions or transmissions to, from, by or through the Network and/or Equipment.

If we offer goods and/or services as agents of any principal provider or providers, or as contractors, we will accept neither responsibility nor liability to you for the performance, loss of profit, emotional or mental distress or disappointment, or provision thereof by such providers so long as we have identified the providers to you and identified ourselves as agents or contractors.

Nothing in this Clause 21, or otherwise in this Agreement, shall limit our liability for

- (a) fraud or other criminal act,
- (b) personal injury or death caused by our negligence, or
- (c) any other liability that cannot be limited or excluded by law.

In the event that we are liable to you under any rights you may have under any legislation, for which our liability is not able to be excluded, then where our liability is able to be limited, then we choose to limit our liability to re-supplying, repairing or replacing the relevant goods or services (or payment of the cost of re-supply, repair or replacement) where it is fair and reasonable to do so.

22. Hold Harmless

You will indemnify and hold us harmless against all loss, damage and injury caused to the Service and Network as a result of your negligence or failure to abide by this Agreement and all claims arising out of your act or omission in conjunction with the Service provided by us.

Failure on your part to comply with the provisions set out in this Agreement shall constitute a material breach of these Terms and Conditions and you shall be liable to a penalty.

Notwithstanding any damage/compensation/penalty paid for material breach of this Agreement, failure on your part to comply with the provisions of Clause 12 above shall constitute a material breach of these Terms and Conditions and you shall be liable to indemnify Digicel Samoa Limited for all costs incurred in the provision of products and services listed in Clause 12 of this Agreement including, inter alia, any subsidiary provided by Digicel for promotional handsets.

Pursuant to this Clause 22, Digicel shall be entitled to retrieve all handsets and SIM Cards in possession of the person in breach of this Agreement.

23. Unenforceability

If a provision of this Agreement is determined by any competent authority to be invalid or unenforceable in whole or in part for any reason whatsoever, it shall not affect the validity and enforceability of the remainder of this Agreement 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.

24. Inconsistency

In the event of any inconsistency between this Agreement and any marketing or advertising material which relate to the Service or this Agreement then this Agreement shall prevail to the extent of the inconsistency.

25. Waiver

Any waiver, concession or extra time permitted by us is limited to the specific circumstances in which it is given and does not affect our rights under this Agreement in any other way.

If we fail or delay to exercise any right or power under this Agreement, this will not be a waiver of that right or power. Any failure or delay will not prevent us from exercising that right or power in the future.