

Digicel

DIGICEL (PNG) LIMITED

General Terms forming part of an Agreement between Digicel and the Supplier for the sale of Goods or provision of Services by the Supplier to Digicel

1. Definitions and interpretation

1.1 Details Schedule

The Formal Agreement includes a Details Schedule. The words or expressions in the left hand column of the Details Schedule have the meanings set out next to them in the right hand column of the Details Schedule when used in this Agreement.

1.2 Other words or expressions used in this Agreement

Unless the context otherwise requires, the following words or expressions have the meanings given when used in this Agreement:

Affiliate in relation to Digicel means a person who directly or indirectly:

- (a) controls Digicel;
- (b) is controlled by Digicel: or
- (c) is together with Digicel under the common control of a third person.

Agreement means the contract for the Delivery of Goods or Services by the Supplier to Digicel, which consists of:

- (a) the Formal Agreement;
- (b) any Purchase Order, schedule of special conditions or other schedule attached to or referred to in the Formal Agreement; and
- (c) these General Terms.

Business Day is a day when banks are open for business in Port Moresby and in the place at which an act or payment is required under this Agreement.

Claim means a claim, demand, proceeding or other action.

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 this Agreement; or
- (e) has been independently acquired or developed by a party to this Agreement.

Consequential Loss means any indirect, incidental, special, or consequential, exemplary or punitive loss or damage including but not limited to, damages for lost profits, lost revenues, loss of goodwill, loss of data, loss of anticipated savings, or loss of customers.

Contract Material means all Material created for the purposes of this Agreement or provided to Digicel as part of the Goods or Services.

Corrupt Conduct means conduct that is or is likely to be:

- (a) corrupt; or
- (b) regarded as corrupt by a reasonable person,

whether or not such conduct would be regarded as normal, usual or acceptable by the Supplier or its peers. Corrupt Conduct includes:

- (c) any facilitation payments, which are payments to induce Government Officials to perform routine functions they are otherwise obligated to perform; or
- (d) a breach of applicable commercial and public anti-bribery laws, including the U.S. Foreign Corrupt Practices Act of 1977 and the UK Bribery Act of 2010, which prohibit corrupt offers of anything of value, either directly or indirectly to anyone, including Government Officials, to obtain or keep business or to secure any other improper commercial advantage.

Delivery means:

- (a) in the case of Goods:
 - (i) if no installation, commissioning or acceptance testing of the Goods is required under this Agreement, the supply and physical delivery of the Goods to the Place of Delivery, acknowledged for Digicel by Digicel's Agreement Manager or a Digicel Staff authorised for the that purpose by Digicel's Agreement Manager; or
 - (ii) if installation, commissioning or acceptance testing of the Goods is required under this Agreement, the satisfactory completion as required under this Agreement of all installation, commissioning and acceptance testing after the supply and physical delivery of the Goods; and
- (b) in the case of Services, completion of performance of the Services, and the satisfactory completion of any commissioning or acceptance testing required under this Agreement in relation to them, in all respects to the Required Standards.

Dispute has the meaning given to it in clause 29.1.

Digicel's System means all the terminals, telecommunications network, data security, database software, operating systems (including all developed software, related object and source codes and all related supporting documentation and media), that Digicel or its agents use to connect with the Top Up System and to sell Prepaid Airtime.

Force Majeure Event has the meaning given in clause 20.1.

Formal Agreement means a document headed "Formal Agreement" signed between Digicel and the Supplier in relation to the Goods or Services to be Delivered under this Agreement.

General Terms means this schedule headed “General Terms forming part of an Agreement between Digicel and the Supplier for the sale of Goods or provision of Services by the Supplier to Digicel” and forming part of the Agreement, and all terms set out in this schedule.

Government Authority means any transnational, domestic or foreign national, provincial or local, authority, department, court, agency or official, including any political subdivision thereof.

Government Officials include any government employee; candidate for public office; and employee of government-owned or government-controlled companies, public international organizations, and political parties.

Information of a party includes data or information relating to that party’s business, customers, employees, technology, operations, facilities, consumer markets, products, capacities, systems, procedures, security practices, research, development, business affairs and finances, inventions, designs, business methodologies, improvements, trade secrets, copyrightable and patentable subject matter and other proprietary information.

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) resolves to reduce its shareholder capital or gives notice to so resolve; or
- (g) 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) any and all rights in any part of the world pertaining to discoveries, trade secrets, confidential business information, financial, marketing or business data, concepts, ideas and improvements to existing technology (whether or not written down or otherwise converted to tangible form), trade names, trade marks, logos, service marks, patents, patent applications, patent disclosures, designs, algorithms, database rights, goodwill, copyright(s), moral rights, know-how, reputation, get-up, computer programs and analogous property, plans, models, and all other rights in any domain names, literary, dramatic, musical and artistic works and all other forms of industrial or intellectual property (whether or not registered or registerable and to the fullest extent thereof and for the full period thereof and all extensions and renewals thereof) including any domain names, pricing and cost information, business and marketing plans and customer and supplier lists and information together with the benefit of all applications for registration thereof and all rights and interest, present and future, thereto and therein; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

Internet includes any medium in which information is accessible contemporaneously in two or more countries.

Law means rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, rules, regulatory principles and requirements, statutory rules of an industry body, statutory mandatory codes of conduct, writs, orders, injunctions and judgments.

Losses include, without limitation:

- (a) any cost, expense, injury, damage, tax, penalty, fee, levy, loss (including loss of revenue), liability, claim or action;
- (b) any Consequential Loss; and
- (c) reasonable legal fees (on a solicitor and own client basis) and reasonable costs of investigation, litigation and settlement (including disbursements).

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

Neutral Adviser has the meaning given in clause 1.1(a).

PNG Kina or PGK means the lawful currency for the time being of Papua New Guinea.

Subcontractor means any person to whom the Supplier has sub-contracted performance of all or any part of its obligations under this Agreement, whether or not Digicel has approved the subcontract.

Staff in relation to a party means any of that party's officers, employees, agents or Subcontractors.

System of a party means that party's information technology systems and includes all communication and network equipment peripheral thereto and all software and related documentation.

1.3 **Interpretation:** In this Agreement:

- (a) a reference to a party includes the party's Staff but does not make those Staff a party to this Agreement or confer any rights or obligations on them;
- (b) the singular includes the plural and vice versa;
- (c) a reference to one gender includes a reference to all other genders;
- (d) another grammatical form of a defined word or expression has a corresponding meaning;
- (e) clause headings are included for the sake of convenience only and will not affect the interpretation of the clauses to which they relate;
- (f) references to clauses or schedules are to clauses of or schedules to the document forming part of this Agreement in which those references occur, unless otherwise indicated;
- (g) 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 other subordinate legislation made under the relevant statute;
- (h) references to a person includes reference to an individual, corporation, partnership, association, trust, limited liability company, joint venture, unincorporated organisation or any other entity or organisation, including a Government Authority; and
- (i) any phrase introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms.

1.4 **Neutral reading:** Any rule of construction to the effect that ambiguities are to be resolved against the party who drafted the relevant provision will not be applied in the construction or interpretation of this Agreement.

1.5 **Approvals, consents, etc.:** Unless this Agreement expressly says otherwise, where this Agreement requires the Supplier to obtain Digicel's consent or approval or allows Digicel to determine or direct anything, Digicel may:

- (a) give its consent or approval subject to conditions;
- (b) withhold its consent or approval; or
- (c) make the direction or determination on any terms

in Digicel's sole and absolute discretion.

- 1.6 **Communication to be in writing:** If this Agreement requires a notice, permission, authorisation or other communication, that notice, permission, authority or communication must be in writing.

2 Performance of obligations

2.1 For Goods

- (a) The Supplier must at its cost Deliver (including, if required under the Formal Agreement, in addition to physical delivery, installation and commissioning) the Goods to or at the Delivery Place by not later than the Delivery Date.
- (b) The Goods delivered (and if applicable, installed and commissioned) must meet the Required Standards and any other requirements specified in this Agreement.

2.2. For Services

- (a) The Supplier must at its cost Deliver the Service from the date of this Agreement at the Delivery Place either by not later than the Delivery Date or (if a Term is specified) for the Term.
- (b) The Supplier must perform the Service in accordance with the Required Standards and in accordance with any other requirements specified in this Agreement.

2.3 In addition to any other obligations under this Agreement, the Supplier must:

- (a) provide the Goods or Services to Digicel's satisfaction in accordance with any agreed timeframes or a reasonable timeframe (if none is agreed);
- (b) comply with all legal, regulatory or contractual requirements applicable to the Goods or Services and their Delivery including licensing obligations;
- (c) exercise skill, care and diligence to an industry best practice standard and to Digicel's satisfaction in Delivering the Goods or Services;
- (d) abide by and perform efficiently and effectively any and all directions of Digicel's Agreement Manager subject to and consistent with the terms and scope of this Agreement;
- (e) liaise with and comply with any reasonable requests made by Digicel's Agreement Manager;
- (f) keep accurate written and auditable records relating to the Delivery of the Goods or Services; and
- (g) provide information, including any Contract Material to Digicel or its nominee.

2.4 Supplier warranties

The Supplier represents and warrants that:

- (a) the Supplier and the Supplier's Key Staff are suitably qualified and licensed and have sufficient expertise to Deliver the Goods or Services;
- (b) the Supplier has informed itself on all aspects of the work required to be performed by it;
- (c) Goods Delivered are newly manufactured, of at least merchantable quality and fit for Digicel's required purpose;
- (d) any defective or faulty Goods, or Services not performed to the Required Standards, will be replaced or reperformed by the Supplier at no cost to Digicel, provided any defect or fault or deficiency has not been caused by any negligent act or omission of Digicel;
- (e) the Supplier has all the necessary licenses, consents, approvals and permits to lawfully deliver the Goods or Services; and
- (f) in Delivering the Goods or Services, neither the Supplier nor its Staff will:
 - (i) engage in Corrupt Conduct;

- (ii) breach an obligation owed to another person; or
- (iii) infringe the Intellectual Property rights of another person.

2.5 Warranties for Goods

In so far as any warranty given under this Agreement relates to the Delivery of Goods, that warranty must:

- (a) be valid for 12 months or the period of the manufacturer's standard warranty, whichever is longer; and
- (b) commence on:
 - (i) acceptance of the Goods by Digicel in accordance with any acceptance testing procedures; or
 - (ii) the day upon which Digicel receives the Goods (if there are no acceptance testing procedures).

2.6 **Occupational health & safety:** When entering and or using Digicel's premises or facilities for the purposes of performing its obligations under this Agreement, the Supplier must, and must procure that the Supplier's Staff will, comply with all of Digicel's reasonable directions and procedures relating to occupational health and safety and security (including a smoke-free policy) whether specifically drawn to the attention of the Supplier or as might be reasonably inferred from the circumstances.

2.7 No avoidance

The Supplier is not relieved of any of its obligations under this Agreement only because of any:

- (a) involvement by Digicel in the Delivery of the Goods or Services;
- (b) payment made to the Supplier on account of the Delivery of the Goods or Services;
- (c) subcontracting any or all parts of the Delivery of the Goods or Services; or
- (d) acceptance by Digicel of replacement personnel.

3 Required Standards

3.1 The Supplier must at all times meet or exceed any Required Standards specified under this Agreement. If no Required Standards are specified, the Supplier must:

- (a) Deliver the Goods at least to the standard required under clause 2; or
- (b) Deliver the Services at least consistent with levels of performance achieved by well managed operations performing services similar to the Services and the standard required under clause 2.

3.2 The Supplier must not take any action or make a decision that may adversely affect the function or performance or decrease the efficiency of the Goods, or adversely affect the efficacy of the Services, without Digicel's prior approval.

4 Price

4.1 In consideration of the Delivery of the Goods or Services in accordance with this Agreement, Digicel will pay the Price to the Supplier as set out in this Agreement.

4.2 **No incidental expenses:** The Supplier must not charge Digicel any fees, charges or expenses in addition to the Price.

4.3 **Taxes, duties and charges:** The Supplier must pay, and indemnify Digicel in respect of, any taxes, duties, charges imposed or levied in connection with its performance of this Agreement.

4.4 The Supplier acknowledges that Digicel has no obligation to pay any amount to or on behalf of the Supplier except as specified in this Agreement.

4.5 **Deferral of payment:** Digicel may defer payment of the Price or any part of it until the Supplier has completed, to Digicel's satisfaction, that part of the obligations of the Supplier under this Agreement to which the payment relates.

4.6 **Payment Terms:** Unless specified otherwise in this Agreement Digicel's obligation to pay the Price:

- (a) accrues only on Delivery of the Goods or Services;

- (b) must be invoiced by the Supplier in arrears after the obligation accrues, by a valid tax invoice; and
 - (c) must be paid by Digicel in accordance with the Payment Terms.
- 4.7 **Billing procedure:** Nothing in this Agreement requires Digicel to pay an invoice unless the invoice:
- (a) shows the name of the Supplier and its registration number;
 - (b) specifies the Goods or Services to which the invoice relates and the period during which the Goods or Services were Delivered;
 - (c) identifies the Agreement under which the Goods or Services were Delivered; and
 - (d) shows the amount of tax (if any) applicable to the Goods or Services Delivered to Digicel.
- 4.8 **Billing warranty:** The Supplier must not issue an invoice in relation to Goods or Services until they have been Delivered. By issuing an invoice, the Supplier represents and warrants that Delivery of the Goods or Services has occurred under an Agreement.
- 4.9 **Billing dispute:** If Digicel disputes any amount of an invoice, Digicel must pay the undisputed amount by the due date for payment of that invoice under this Agreement and may withhold the disputed amount until the dispute is resolved in favour of the Supplier, in which case the amount owed must be paid within 5 days of the date the dispute is resolved.

5 Tax

- 5.1 **Goods and Services Tax:** A party making a **taxable supply** (being a supply of goods or services that is subject to the PNG Goods and Services Tax or a consumption, sales or value added tax) under this Agreement is entitled to bill the recipient of the taxable supply for any Goods and Services Tax, consumption or value added tax correctly chargeable in respect of the taxable supply. The party making that supply will provide a valid tax invoice to support any consumption tax or value added tax chargeable.
- 5.2 **Withholding tax:** All sums to be paid under this Agreement must be paid after deducting applicable withholding tax, if any, as required by any applicable legislation or regulation. To the extent withholding tax is deducted by a party, a receipt from the tax authority to whom the tax was paid confirming the amount and date of payment of the withholding tax must be provided to the party receiving payment at the earliest opportunity.

6. Agreement Management

- 6.1 Digicel and the Supplier have each appointed an Agreement Manager. Those Agreement Managers serve as the single point of contact for and the primary representative of the party appointing them for the purposes of this Agreement. A party's Agreement Manager is:
- (a) responsible for managing and coordinating the performance of that party's obligations under this Agreement; and
 - (b) authorised to act for and on behalf of that party regarding all matters relating to this Agreement, except that any variation of this Agreement or any notice of termination given by Digicel is not effective unless signed by the person who is Digicel's Chief Financial Officer at the time.
- 6.2 Digicel's Agreement Manager may delegate performance of other administration tasks under this Agreement to other Digicel staff.
- 6.3 If at any time no person is appointed as Digicel's Agreement Manager, the person who is Digicel's Chief Financial Officer at the time will be considered as Digicel's Agreement Manager for all purposes under this Agreement until an appointment of a person as Digicel's Agreement Manager.

7 Supplier's Staff

- 7.1 The Supplier must:

- (a) use an adequate number of Staff who are properly educated, trained, fully qualified, licensed and appropriately experienced for the work they perform to Deliver the Goods or Services;
- (b) ensure that all Staff comply with all applicable obligations of the Supplier under this Agreement;
- (c) promptly replace at no cost to Digicel any Staff who Digicel in its sole and reasonable discretion considers is not performing to the standards required by this Agreement with another staff member who meets the requirements in clause (a); and
- (d) obtain Digicel's prior consent (such consent not to be unreasonably withheld) for any change in the Staff.

7.2 Key Staff

If any Key Staff are named in the Details Schedule, the Supplier must not replace the Key Staff without Digicel's prior consent, which will not be withheld unreasonably.

7.3 The Supplier must ensure that it complies with all requirements imposed on an employer under relevant Law.

8 Subcontract

8.1 The Supplier:

- (a) must not subcontract Delivery of all or any part of the Goods or Services to another person without Digicel's prior approval;
- (b) must ensure that each approved Subcontractor complies with this Agreement and any direction from Digicel's Agreement Manager; and
- (c) remains responsible to Digicel for the performance of all of the Supplier's obligations under this Agreement despite any subcontract that may be entered and whether or not that subcontract is approved by Digicel.

8.2 Despite any approved subcontract, the Supplier must be Digicel's sole point of contact regarding the Delivery of the Goods or Services including with respect to payment.

8.3 Digicel may revoke its approval of any Subcontractor, in which case, the Supplier must promptly cease using that Subcontractor.

8.4 Each subcontract with an approved Subcontractor must:

- (a) include a right (but not an obligation) for Digicel to take a novation of the subcontract if this Agreement is terminated for any reason;
- (b) impose on the Subcontractor obligations that match those imposed on the Supplier under this Agreement; and
- (c) include an assignment to Digicel of all title to and Intellectual Property rights in Material created by the Subcontractor in the course of Delivering the Goods or Services under the subcontract.

9 Acceptance Testing Procedure

9.1 If this Agreement contemplates that acceptance of the Goods or Services is subject to any acceptance testing, this clause applies subject to any modification agreed by the parties.

9.2 On completing a Delivery of the Goods or Services, the Supplier will notify Digicel that those Goods or Services are ready for acceptance testing. Digicel will, within 10 Business Days of such notification, carry out the acceptance tests required under this Agreement to establish whether the Goods or Services meet the Required Standards.

9.3 During acceptance testing:

- (a) Digicel is responsible for:
 - (i) setting the tests to establish whether the Goods or Services meet the Required Standards;
 - (ii) arranging times for, and carrying out, testing;

- (iii) requesting the Supplier to verify, diagnose or correct any failure to meet the Required Standards (a “**Fault**”); and
 - (iv) making available to the Supplier details of any Fault, together with the tests and the expected and actual test results to ensure that the Supplier can replicate the Fault;
 - (b) The Supplier is responsible for:
 - (i) giving Digicel written details of the action the Supplier intends to correct any Fault;
 - (ii) verifying, diagnosing and correcting any Fault; and
 - (iii) giving reasonable assistance and guidance to Digicel’s Staff when carrying out testing.
- 9.4 Digicel will promptly submit the results of the acceptance tests to the Supplier.
- 9.5 If Goods or Services fail an acceptance test, Digicel will give the Supplier all relevant information reasonably available that will assist the Supplier to identify the reason for the failure and may (having regard to any matters raised by the Supplier):
- (a) agree a new date with the Supplier for the Delivery of the Goods or Services;
 - (b) extend the time to complete the acceptance tests, during which time the Supplier must remedy the failure;
 - (c) accept the Goods or Services subject to such conditions as the parties may agree; or
 - (d) reject the Goods or Services and exercise any of its rights or remedies under this Agreement.
- 9.6 Acceptance testing will be deemed to be completed only when:
- (a) Digicel provides a certificate of acceptance to the Supplier confirming that the Goods or Services meets the Required Standards; or
 - (b) Digicel unreasonably delays or fails to give written reasons for not issuing a certificate of acceptance, notwithstanding expiry of 5 Business Days after the Supplier requests the certificate of acceptance,
- whichever happens first.
- 9.7 A minor defect or deficiency in Goods that does not prevent normal use of the Goods does not justify a refusal to sign a certificate of acceptance. However, the Supplier must rectify any such minor defect or deficiency as soon as reasonably practicable and a failure to so rectify invalidates the certificate of acceptance.

10 Variation of this Agreement

- 10.1 Digicel may propose varying any part of this Agreement by notifying the Supplier in writing (“**Variation Notice**”).
- 10.2 Within 5 Business Days of receipt of a Variation Notice, the Supplier must notify Digicel of:
- (a) any change to the Price (provided that if a Price List forms part of this Agreement, the change to the Price cannot exceed the Price that would be calculated under the Price List); and
 - (b) any change to the Delivery Date;
- due to the variation (“**Variation Quote**”). On receipt of a Variation Quote:
- (c) Digicel may accept a Variation Quote within 5 Business Days or such longer period that the Supplier specifies (“**Validity Period**”). If Digicel accepts a Variation Quote within the Validity Period:
 - (i) this Agreement is varied as set out in the Variation Notice and the Variation Quote;
 - (ii) the variation takes effect from the date Digicel accepts the Variation Quote; and
 - (iii) all other terms of this Agreement remain the same; and
 - (d) If Digicel does not accept the Variation Quote, this Agreement continues in force without being varied.

- 10.3 Any inconsistency between a Variation Notice and a Variation Quote will be resolved in the manner set out in this clause. If the inconsistency relates to:
- (a) Price – the Variation Quote prevails provided the Price is based on a Price List otherwise the Variation Notice prevails;
 - (b) Delivery Date – the Variation Quote prevails; or
 - (c) any other matter – the Variation Notice prevails.

11 Audit Rights

- 11.1 Digicel may from time to time and acting reasonably commission an audit of the Supplier's records, Systems and processes to verify the accuracy of any information obtained from the Supplier or to verify performance of the Supplier's obligations under this Agreement provided:
- (a) the audit is undertaken at Digicel's cost;
 - (b) Digicel must reimburse costs reasonably incurred by the Supplier in connection with the audit; and
 - (c) Digicel gives the Supplier 5 Business Days' notice of a proposed audit.
- 11.2 Notwithstanding clause 11.1, the Supplier waives any right to be reimbursed for audit costs unless the costs exceed US\$10,000 in relation to that audit and any other audits that are undertaken within any 12 month period.
- 11.3 The Supplier must facilitate an audit undertaken under this Agreement notwithstanding any Dispute between the parties, including a Dispute in relation to the costs of the audit.
- 11.4 The Supplier must procure that its Staff cooperate with and support an audit undertaken under this Agreement.
- 11.5 Any information provided or disclosed under this clause 11 will be provided and received on a confidential basis and without prejudice to the rights and obligations of the parties.
- 11.6 A report prepared in connection with an audit ("**Audit Report**") will be accepted by the Supplier as evidence as to its subject matter in connection with any Dispute provided the Supplier is given a reasonable opportunity to review and comment on the Audit Report.
- 11.7 If an Audit Report determines that the Supplier has underreported amounts payable to Digicel or otherwise misled Digicel as to the Supplier's performance of this Agreement, the Supplier must:
- (a) immediately remedy any payment shortfall or non-performance;
 - (b) waive any rights to be reimbursed for the costs of the audit; and
 - (c) reimburse Digicel for costs reasonably incurred by Digicel in connection with the audit if a payment shortfall is 5% or more of the amount payable or if Digicel incurs a cost, expense, liability or claim due to the non-performance that is US\$ 5,000 or more.
- 11.8 This clause 11 survives termination or expiry of this Agreement for whatever reason for five (5) years.

12 Intellectual Property

- 12.1 **Contract Material:** Intellectual Property in all Contract Material vests in Digicel immediately upon its creation.
- 12.2 **Supplier's pre-existing Material:**
- (a) Clause 12.1 does not affect the ownership of Intellectual Property in any of the Supplier's pre-existing Material.
 - (b) The Supplier grants to Digicel a permanent, irrevocable, royalty free, worldwide, non-exclusive (including the right to sublicense) license to use, reproduce, adapt, communicate and exploit that pre-existing Material in connection with the Contract Material.

12.3 Third party Material:

- (a) The Supplier must obtain all necessary copyright and Intellectual Property rights permission before including any third party Material in the Contract Material or using any third party Material as part of the Goods or Services or Services.
- (b) The Supplier must grant to Digicel a license in the manner contemplated under clause 12.2(b) of this Agreement in relation to any third party Intellectual Property which it includes in the Contract Material.
- (c) The Supplier must immediately notify Digicel in writing of any Claim threatened or brought against the Contractor arising from an infringement or alleged infringement by the Contractor of the Intellectual Property Rights of any third party.

13 Marketing and Branding [Optional – use if there is marketing involved]

13.1 Marketing slogans and mottos:

- (a) Any marketing slogans and mottos designed and developed by Digicel for the Supplier or by the Supplier for Digicel for the purposes of this Agreement will be owned by Digicel.
- (b) The Supplier agrees to execute any documents or take any other actions as may reasonably be necessary, or as Digicel may request, to perfect Digicel’s ownership of any copyright in material developed hereunder.

13.2 Royalty free license: During the Term of this Agreement, Digicel will have a royalty-free, paid-up, irrevocable, non-exclusive license, with the right to grant sublicenses, to make, have made and use the Supplier’s trademark for the limited purpose of promoting the distribution or sale of any of Digicel’s products in any market.

13.3 Permission process: Before using a party’s trademark in any Material for or in connection with the promotion, distribution or sale of its products or services (whether written or recorded in any other medium or used on the Internet), the other party must submit (in relation to each proposed use) a request for approval of the proposed use to the trademark owner via email to the trademark owner’s Agreement Manager. Each such request must include the final form of the proposed use of the trademark and a description of specifically when, where, to whom, and by what means or media it is proposed to distribute or display the Materials. The trademark owner may reject or approve the proposed use in its sole discretion.

13.4 Monitoring: A party owning a trademark may inspect any products and Materials, including without limitation, literature, brochures, data books, data sheets, web site mentions, or advertising produced, distributed, sold or displayed by or on behalf of the other party User to assess the level of consistency and quality of any approved use of the trademark.

13.5 Guidelines: A party using a trademark owned by the other party must comply with all written guidelines provided to it by the trademark owner related to use of the trademarks including revisions of such guidelines as the trademark owner may in its sole discretion modify from time to time.

13.6 Copyright in manuals, material, etc belongs to Digicel: Literary works or other works of authorship created under this Agreement created by Digicel, by the Supplier or jointly by Digicel and the Supplier, such as manuals, training materials and documentation will be owned by Digicel. The Supplier agrees to execute any documents or take any other actions as may reasonably be necessary, or as Digicel may request, to perfect Digicel’s ownership of any copyright in any such works.

14 System and Software [Optional – use if there are IT systems involved]

14.1 Title to Digicel’s System, including communication and network equipment peripheral thereto, will remain the sole and exclusive property of Digicel. The Supplier does not acquire any right, title or interest in Digicel’s System hereunder or upon expiration or termination of this Agreement.

14.2 Digicel’s System:

- (a) All software and related documentation which is owned, acquired or developed by or on behalf of Digicel or its licensees prior to or after Commencement of this Agreement which is part of Digicel's System) will be and remain the exclusive property of Digicel and the Supplier will have no rights or interests in that software and related documentation.
 - (b) Digicel will have all right, title and interest, including ownership of copyright, in and to:
 - 14.2.b.1 all developed software, related object and source codes and all related supporting documentation and media, that perform tasks basic to the functioning of terminals, telecommunications network, data security, database software, operating systems or which are required to operate the applications software or otherwise support the provision of Digicel's System; and
 - 14.2.b.2 any modifications, enhancements, revisions, or supplements to such programs and methods from time to time.
- The Supplier agrees to execute any documents or take any other actions as may reasonably be necessary, or as Digicel may reasonably request, to perfect Digicel's ownership of any software developed hereunder.
- (c) Digicel represents and warrants that it has all legal and equitable rights to the Intellectual Property comprised in Digicel's System and is entitled to the use of and/or to licence such rights as are used or reasonably required for the performance of this Agreement.

14.3 Supplier's System:

- (a) All software and related documentation which is owned, acquired or developed by or on behalf of the Supplier or its licensees prior to or after the Commencement of this Agreement which is a part of the Supplier's System, will be and remain the exclusive property of the Supplier and Digicel will have no rights or interests in that software and related documentation.
 - (b) The Supplier will have all right, title and interest, including ownership of copyright, in and to:
 - 14.3.b.1 all developed software, related object and source codes and all related supporting documentation and media, that perform tasks basic to the functioning of terminals, telecommunications network, data security, database software, operating systems or which are required to operate the applications software or otherwise support the provision of the Supplier's System; and
 - 14.3.b.2 any modifications, enhancements, revisions, or supplements to such programs and methods from time to time.
- Digicel agrees to execute any documents or take any other actions as may reasonably be necessary, or as the Supplier may request, to perfect the Supplier's or ownership of any software developed hereunder.
- (c) The Supplier represents and warrants that it has all legal and equitable rights to the Intellectual Property comprised in the Supplier's System and is entitled to the use of and/or to licence such rights as are used or reasonably required for the performance of this Agreement.

15 Guarantee and Indemnity

- 15.1 Each party's liability under this clause 15 is subject to clause 17 ("**Liability Limitation**").
- 15.2 The Supplier guarantees to Digicel the due and faithful performance by the Supplier of each and every part contained in this Agreement.
- 15.3 The Supplier irrevocably fully indemnifies Digicel, its Staff, successors and assigns against any Losses relating to:
 - (a) a failure by the Supplier or its Staff to perform or properly perform any of their obligations under this Agreement unless the failure is attributable to Digicel;

- (b) any claim by the Supplier or its Staff that they Digicel's employees, agents or otherwise act for or on behalf of Digicel;
- (c) any Claim whatsoever relating to any breaches of the Intellectual Property Rights of any third party in connection with the performance of the Supplier's obligations under this Agreement;
- (d) any negligent, wilful, unlawful or wrongful act or omission by the Supplier or its Staff;
- (e) any breach of this Agreement or any Purchase Order by the Supplier or its Staff;
- (f) a material breach of any representation or warranty made by the Supplier to Digicel; or
- (g) the revocation, suspension or removal of any required license, authorization or approval by a Government Authority for a violation of a Law by the Supplier or its Staff.

Each provision of this clause 15.3 operates independently of every other provision. If any part is found by a Court to be unenforceable or inapplicable (in whole or in part) the other parts continue to apply.

15.4 This Guarantee and indemnity survives termination or expiry of this Agreement or any Purchase Order.

16 Third party claims

16.1 If a claim arises ("**Third Party Claim**") in relation to which any indemnity is given under this Agreement, the following provisions apply:

- (a) The party indemnified ("**Indemnified Party**") must immediately or as soon as the Indemnified Party is aware of the Third Party Claim give the party giving the indemnity ("**Indemnifying Party**") notice of the Third Party Claim.
- (b) If the Indemnifying Party admits its obligations to indemnify the Indemnified Party in respect of the Third Party Claim:
 - (i) the Indemnified Party must give the Indemnifying Party full control over any proceedings and negotiations and full authority to reach any settlement and must provide any assistance reasonably requested by the Indemnifying Party;
 - (ii) the Indemnifying Party may use the lawyer of its choice;
 - (iii) the Indemnifying Party must at its cost and discretion ensure that the Third Party Claim is promptly and fully defended;
 - (iv) in defending the Third Party Claim, the Indemnifying Party must not unreasonably or unnecessarily take or fail to take into account any action if to do so would damage the Indemnified Party's name and reputation; and
 - (v) the Indemnifying Party must obtain the Indemnified Party's written approval to any proposed settlement of the Third Party Claim, such approval not to be unreasonably withheld, delayed or conditioned.
- (c) If:
 - (i) the Indemnifying Party does not admit its obligations to indemnify the Indemnified Party of the Third Party Claim; or
 - (ii) in the Indemnified Party's reasonable view, the Indemnifying Party is not acting in accordance with the requirements in clauses 16(iii), 16(iv) or 16(v),

the Indemnified Party may after so notifying the Indemnifying Party:

- (iii) defend the Third Party Claim and keep the Indemnifying Party informed of the progress; and

- (iv) settle the Third Party Claim for a commercially reasonable result and consult with the Indemnifying Party before agreeing to the settlement.

17 Liability Limitation

17.1 Neither party excludes or limits its liability for:

- (a) death or personal injury;
- (b) property damage; or
- (c) a matter that may not by applicable law be excluded or limited.

17.2 Despite any other provision of this Agreement, neither party will be liable to the other party or to any third party for any Consequential Loss arising out of the performance or failure to perform under the terms of this Agreement, unless that Consequential Loss is both:

- (a) caused by the intentional or negligent act or omission of that party or its Staff (acting within the scope of their responsibility to that party); and
- (b) reasonably foreseeable or the party has been informed of the possibility or likelihood of such damages.

18 Insurance

18.1 In connection with the Delivery of the Goods or Services, the Supplier must maintain the following valid and enforceable insurance policies until the later of Delivery of the Goods or Services or expiry of the Term:

- (a) public liability insurance in respect of each occurrence for at least the Public Liability Amount; and
- (b) property insurance for any loss or damage to property belonging to Digicel or its Staff;
- (c) insurances required by law including any relevant workers or accident compensation legislation;
- (d) any other insurance (including Professional Indemnity, Marine and other Insurance) relevant to the Goods or Services as reasonably required by Digicel from time to time,

which insurance must be issued by companies with a Best's Key Rating of at least A.

19 Change in Law or Government Authority action

19.1 If there is a change in the Law or an action of a Government Authority preventing either party from performing that party's obligations under this Agreement, the parties will cooperate and negotiate in good faith changes to the parties' respective obligations to address those circumstances so that the Supplier may continue to Deliver the Goods or Services under this Agreement.

19.2 If the change or action cannot be reasonably addressed under clause 19.1:

- (a) each party is excused from performing its obligations under this Agreement to the extent prevented by the change or action; and
- (b) the other party may terminate this Agreement if that party reasonably considers that non-performance by the party excused is material to the party terminating.

20 Force Majeure

20.1 If and to the extent that a party's performance of any of its obligations under this Agreement is prevented, hindered or delayed, by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, sabotage, civil disorders, rebellions or revolutions or general labour strife, acts or omissions of utilities or of government entities or any other cause beyond the reasonable control of such Party (each, a "Force Majeure Event"), and such non-performance could not have been prevented by reasonable precautions, the non-performing party will be excused from any further performance of those obligations to the extent that such non-performance is due to the occurrence

of the Force Majeure Event and for as long as such Force Majeure Event continues and such Party continues to use commercially reasonable efforts to recommence performance.

- 20.2 The party whose performance is prevented, hindered or delayed by a Force Majeure Event must immediately notify the other party of the occurrence of the Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event.
- 20.3 If the Force Majeure Event prevents, hinders or delays performance of a material obligation of this Agreement for a period of 60 days, either party may terminate this Agreement as of a date specified in a termination notice without liability.

21 Termination

21.1 Either party may terminate this Agreement immediately and without notice to the other party if the other party ("**defaulting party**"):

- (a) engages in or becomes subject to an Insolvency Event; or
- (b) fails to materially perform any of its respective material obligations under this Agreement, and does not cure such failure within 60 days after receipt of notice specifying such failure (provided however such period will be extended if the defaulting party is working diligently and in good faith during such 60 day period to remedy the default).

21.2 Digicel may terminate all or part of this Agreement immediately if:

- (a) the Supplier or its Staff offers or solicits a bribe or otherwise engages in Corrupt Conduct;
- (b) Delivery of the Goods or Services infringes any Law or the Intellectual Property rights of any person; or
- (c) the Supplier or any member of the Supplier's Staff has breached any laws applicable to the Delivery of the Goods or Services or has infringed the Intellectual Property rights of any third party;

Termination will take effect by Digicel giving to the Supplier a written Termination Notice specifying the date ("**Termination Date**") as of which the termination of this Agreement will come into effect and those parts of the Agreement to which the Termination Notice relates.

21.3 When this Agreement terminates or expires for any reason, each party must immediately:

- (a) cease using the Confidential Information and trademarks belonging to the other party;
- (b) return to the other party all Material containing the Confidential Information or bearing the trademark of the other party.

21.4 **Handover:** If for any reason Digicel terminates this Agreement before completion of Delivery of Goods or Services ("**Uncompleted Delivery**"):

- (a) the Supplier will cease that Delivery either immediately upon receipt of a termination notice from Digicel (if Digicel does not specify a later date in the termination notice) or if Digicel does specify a later date in the termination notice, on such later date;
- (b) within 5 Business Days of the termination notice, the Supplier and Digicel will, acting reasonably, agree on a plan ("**Handover Plan**") to handover the Uncompleted Delivery to Digicel or another party; and
- (c) the Supplier will:
 - (i) give effect to the Handover Plan as agreed, or
 - (ii) if no Handover Plan is agreed, give effect to directions ("**Handover Directions**") specified by Digicel (acting reasonably) provided that Digicel must reimburse the Supplier for any costs the Supplier reasonably incurs to give effect to the Handover Directions.

During handover, each party must act reasonably and take all reasonable steps to mitigate any damage, harm, injury, cost, expense or loss on each party.

- 21.5 **Finality:** The Supplier must issue any invoice or submit any claims under this Agreement within 30 days of the termination or expiry of this Agreement. Digicel may, at its sole and reasonable discretion, reject any invoice or claim that is submitted late.
- 21.6 **No public statement.** The Supplier must not make any public statement about the termination of this Agreement without Digicel's prior written approval.
- 21.7 If a party or its Staff ("**User**") fails to cease using the Confidential Information of the another party ("**Owner**"), the User agrees and hereby specifically consents to the Owner obtaining a decree of a court ordering the User and its Staff to stop the use of the Confidential Information in any form.
- 21.8 If a party or its Staff fails to cease using the trademark of another party, the party using the trademark agrees and hereby specifically consents to the party owning the trademark obtaining a decree of a court ordering the party using the trademark and its Staff to stop the use of the trademark in any form.
- 21.9 The following clauses of these General Terms survive expiry or termination of this Agreement (for whatever reason):
- (a) this clause 21 ("**Termination**");
 - (b) clause 26 ("**Notices**");
 - (c) clause 27 ("**Confidential Information**");
 - (d) clause 29 ("**Structured Negotiations**");
 - (e) clause 30 ("**Arbitration**"); and
 - (f) any other provision of this Agreement which by their nature survives expiry or termination of this Agreement.
- 21.10 A party's payment obligation survives expiration or termination of this Agreement only with respect to amounts that accrue prior to such expiration or termination.

22 Termination for convenience

- 22.1 Digicel may terminate this Agreement for convenience by giving the Supplier written notice. Termination takes effect 7 days after the notice is given or such longer period as Digicel may specify in the notice ("**Termination Date**").
- 22.2 Subject to clause 22.3, If Digicel terminates this Agreement for convenience:
- (a) clauses 21.4 to 21.6 (inclusive) and clause 21.10 apply in relation to the termination;
 - (b) Digicel must:
 - (i) pay the Supplier the Price for any Delivery of Goods or Services accruing before the Termination Date; and
 - (ii) reimburse the Supplier for any costs reasonably incurred by the Supplier in connection with the termination to the extent the Supplier cannot reasonably avoid or mitigate that cost; and
 - (c) Digicel will not be liable for any loss of profits or revenue, or for any costs that are consequential in nature that may be connected with the termination.
- 22.3 Notwithstanding clause 22.2:
- (a) Digicel is not liable for any loss of profit, loss of revenue or any other Consequential Loss; and
 - (b) Digicel's maximum liability in connection with a termination of this Agreement is the lower of the following amounts:

- (i) **(unpaid balance of consideration)** the total consideration payable to the Supplier under this Agreement less any amounts paid under this Agreement; or
- (ii) **(12 month's consideration)** the total consideration payable to the Supplier under this Agreement for the 12 month period ending on the Termination Date.

23 Conflict of interest

- 23.1 The Supplier warrants that, to the best of its knowledge after making diligent inquiry, at the signing of this Agreement no conflict of interests exists or is likely to arise in the performance of the Delivery of the Goods or Services.
- 23.2 If, during the Delivery of Goods or Services a conflict of interest arises, or appears likely to arise, the Supplier must:
 - (a) notify Digicel promptly;
 - (b) make full disclosure of all relevant information to the conflict; and
 - (c) take such steps as Digicel reasonably requires to resolve or otherwise deal with the conflict.
- 23.3 The Supplier agrees not to (and agrees to ensure that any Staff the Supplier does not) engage in any activity or obtain any interest during the course of this Agreement that is likely to conflict with or restrict the Supplier in Delivering the Goods or Services to Digicel fairly and independently.
- 23.4 A breach of this clause 23 is deemed to be a material breach of this Agreement. Digicel may terminate this Agreement or any Deliverable provided under this Agreement immediately by notifying the Supplier.

24. Relationship between the parties

- 24.1 The parties intend to create an independent contractor relationship and nothing contained in this Agreement will be construed to make the Supplier and Digicel partners, joint ventures principals, agents or employees of the other. Neither party will have any right, power or authority, express or implied, to bind the other party.
- 24.2 The Supplier must not represent itself, and must ensure that its Staff do not represent themselves as being Digicel's employees, partners or agents, or otherwise bind Digicel.

25 Payout on death or injury of a Staff

- 25.1 If any Staff of the Supplier dies or becomes totally and permanently disabled while engaged or otherwise involved in the Delivery of Goods or Services under this Agreement, the Supplier must:
 - (a) in the case of death, pay to the deceased Staff's dependants an amount equal to 2 years' salary based on the deceased Staff's last salary prior to death; or
 - (b) in the case of total and permanent disability, pay to the injured Staff an amount equal to 2 years' salary based on the injured Staff's last salary prior to injury.
- 25.2 The Supplier must maintain all relevant insurance cover with a cover level that meets or exceeds the benefits payable under clause 25.1 and must provide documentary evidence of such insurance cover to Digicel so often as Digicel requests.
- 25.3 If the Supplier engages a Subcontractor, the Supplier must impose on the Subcontractor obligations equivalent to those imposed on the Supplier under clauses 25.1 and 25.2, failing which the Subcontractor's Staff is deemed to be a Staff of the Supplier for the purposes of clauses 25.1 and 25.2.
- 25.4 If a person suffers an injury, accident, illness or harm in any form ("**injury**") that:
 - (a) substantially impairs the person's capacity to remain in that person's current or last employment prior to the injury on substantially the same terms for 2 years or longer; or
 - (b) substantially impairs the person's capacity to seek alternative employment on terms (including salary) that is substantially the same as the terms of that person's current or last employment prior to the injury for 2 years or longer,

that person is deemed to be **totally and permanently disabled** for the purpose of this clause.

26 Notices

26.1 Any notice, demand, consent or other communication (“**Notice**”) given under this 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 any of:
 - (i) hand delivery;
 - (ii) registered or certified mail, postage prepaid;
 - (iii) a national courier service; or
 - (iv) email or fax followed by confirmation of receipt by telephone;

to the intended recipient’s Address for Notices;

- (c) if given to Digicel, must be delivered in the manner specified in paragraph (b) above with a copy sent to PNG_Legal_AllStaff@digicelgroup.com by email followed by confirmation of receipt by telephone;
- (d) if the Supplier has not provided an address, email address, telephone number or fax number as contemplated in paragraph (b) above, may be delivered in any manner that Digicel deems appropriate; and
- (e) will be taken to be duly given or made:
 - (i) when delivered in person;
 - (ii) five (5) Business Days following dispatch by registered or certified mail, postage prepaid;
 - (iii) one (1) Business Day following dispatch by overnight delivery via a national courier service; or
 - (iv) on confirmation by telephone that the Notice has been received by its intended recipient by email or fax.

26.2 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.

27 Confidential Information

27.1 The obligations under this clause 27 continue indefinitely.

27.2 Confidential Information belongs to a party (“**owner**”) if the relevant Information is:

- (a) disclosed by the owner in circumstances indicating that it is confidential; or
- (b) about the owner or the owner’s business and investments and acquired by any person (not necessarily a party to this Agreement) in breach of confidence owed to the owner,

including where the Information was disclosed or acquired before this Agreement commences.

27.3 **Prohibition on disclosure:**

- (a) A party must not disclose the other party’s Confidential Information to any person except:
 - (i) to its employees, legal and financial advisers, and subcontractors who have a genuine need to receive such Confidential Information, and provided those persons first agree to observe the confidentiality of the information;
 - (ii) with the other party’s prior written consent;
 - (iii) to the extent required by Law, any stock exchange or any regulatory authority; or
 - (iv) if the Information is in the public domain.

- (b) Each party will, however, be permitted to disclose relevant aspects of the disclosing party's Confidential Information to its officers, agents, professional advisors, including attorneys, contractors, subcontractors and employees who have a need to know the Confidential Information in connection with performance of its duties and obligations under this Agreement; provided, however, that such party must:
 - (i) take all reasonable measures to ensure that Confidential Information of the disclosing Party is not disclosed or duplicated in contravention of the provisions of this Agreement by such officers, agents, professional advisors, contractors, subcontractors and employees,
 - (ii) inform such individuals of the confidential nature of the Confidential Information; and
 - (iii) ensure that such individuals treat the Confidential Information in accordance with the terms of this Agreement.
- (c) Each recipient of Confidential Information must:
 - (i) ensure at all times that each employee, legal and financial adviser, and subcontractor to whom the Confidential Information has been disclosed under this clause keeps that Confidential Information secure;
 - (ii) safeguard the Confidential Information disclosed to it by exercising the same degree of care to protect and safeguard the Confidential Information as the receiving Party uses to protect and safeguard its own Confidential Information, which must in no event be less than reasonable care; and
 - (iii) promptly notify the other party of a suspected or actual unauthorized use, copying or disclosure of the Confidential Information.

27.4 **Return of Confidential Information:** Upon request by either party at any time and in the event of termination, a party receiving Confidential Information must:

- (a) promptly erase, destroy or return to disclosing party the original and any copies of the Confidential Information in its possession;
- (b) return all point of sale materials; and
- (c) confirm to the disclosing party in writing that the receiving party has destroyed or returned all Confidential Information.

Any archival media containing Confidential Information must be used by the receiving party solely for back-up purposes, and then only if such data are required in order to perform this Agreement or to determine the Parties' rights hereunder.

28 Privacy and personal information

28.1 Each party must comply with all applicable Laws in relation to collection, use, protection and disclosure of information or opinions (including information or an opinion forming part of a database) whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can reasonably be ascertained from the information or opinion and without limitation must:

- (a) use such information and opinions held or controlled by it in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (b) take all reasonable measures to ensure that such information and opinions in its possession or control in connection with this Agreement is protected against loss and unauthorised access, use, modification or disclosure;
- (c) ensure that anyone engaged by the Supplier in the performance of the Services who requires access to any such information or opinions, not access, use, disclose or retain any of such information or opinions except in performing their duties of employment or engagement;

- (d) notify Digicel immediately if the Supplier becomes aware of any breach of this clause 28.

29 Structured Negotiations

29.1 The parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Therefore, except for an action seeking a temporary restraining order or an injunction relating to the subject matter of this Agreement, or suit to compel compliance with this dispute resolution process, the parties agree to use the Structured Negotiations in this clause 29 with respect to any controversy or claim arising out of or relating to this Agreement or its breach (“Dispute”).

29.2 Notice of Dispute:

- (a) The party invoking these dispute resolution procedures (“**disputing party**”) must send written notice of the Dispute to the other party (“**receiving party**”). The notice must 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) Business Days from the date the receiving party received the notice of the dispute, meet with each other, and attempt to resolve the Dispute.
- (b) Following notice under clause 29.2(a), the parties will consult in good faith to try to resolve the Dispute. If agreement is not reached within ten (10) Business Days from the date of the meeting, the Dispute may be escalated by either party 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) Business Days.

29.3 Neutral Adviser:

The following process applies subject to any modification agreed by the parties:

- (a) If a Dispute cannot be resolved amicably, either party may propose to the other in writing that structured negotiations be entered into with the assistance of a neutral adviser or mediator (“**Neutral Adviser**”) before resorting to litigation.
- (b) If the parties cannot agree on a Neutral Adviser or if the Neutral Adviser agreed upon is unable or unwilling to act, the president of the Papua New Guinea Law Society may appoint the Neutral Adviser at the application of a party.
- (c) Within 14 days of the appointment of the Neutral Adviser, the parties will meet with the Neutral Adviser to agree a program for the exchange of any relevant information and the structure to be adopted for the negotiation to be held at Port Moresby.
- (d) All negotiations will be conducted in complete confidence, and the parties undertake not to divulge details of such negotiations except to their professional advisers who will also be subject to such confidentiality, and will be without prejudice to the rights of the parties in any future proceedings.
- (e) If the parties accept the Neutral Adviser’s recommendations or otherwise reach agreement on the resolution of the dispute, such agreement must be reduced to writing and once, it is signed by their duly authorised representatives, will be final and binding on the parties.
- (f) Failing agreement, any of the parties may invite the Neutral Adviser to provide a non-binding but informative opinion in writing as to the merits of the dispute and the rights and obligations of the parties. Such opinion will be provided on a without prejudice basis and will be private and confidential to the parties and may not be used in evidence in any proceedings commenced pursuant to the terms of this Agreement without the prior written consent of all the parties.
- (g) If the parties fail to reach agreement in the structured negotiations within 30 days of the Neutral Adviser being appointed, such a failure will be without prejudice to the right of any party subsequently to refer any dispute or difference to litigation but the parties agree that before resorting to litigation, structured negotiations in accordance with this clause 29 must have taken place.

29.4 Nothing contained in this clause 29 will restrict either party’s freedom to commence legal proceedings to preserve any legal right or remedy or protect any proprietary or trade secret right.

30 Arbitration

- 30.1 If a Dispute is not resolved under clause 29, Digicel may by notice require the Supplier to settle the Dispute by arbitration proceedings. Unless Digicel specifies otherwise in the notice or revokes the notice, the parties will submit to arbitration conducted in Sydney, Australia in accordance with the Arbitration Rules of the Australian Centre for International Commercial Arbitration (“**ACICA**”), by a single arbitrator with the appropriate qualifications and experience to arbitrate the dispute (including legal qualifications) agreed on by the parties or, in the absence of such agreement, appointed by the President for the time being of the ACICA.
- 30.2 If the Supplier initiates proceedings relating to a Dispute in any forum other than in what is permitted in this clause 30 (an **Inconvenient Forum**), the Supplier must indemnify Digicel and Digicel’s Affiliates against all costs and expenses incurred in any action in the Inconvenient Forum even if the Supplier is successful in the Inconvenient Forum.
- 30.3 The parties must instruct the arbitrator to:
- (a) decide within the shortest practicable time and as informally and as inexpensively as possible;
 - (b) 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) deliver an Award stating its opinion with respect to the matters in the dispute and the reasons for its decision.
- 30.4 The decision of the arbitrator, in the absence of manifest error, will be conclusive and binding.
- 30.5 Each party will 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. .
- 30.6 Any information or documents disclosed by a party under this clause 30:
- (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 this Agreement.
- 30.7 In any Dispute, both parties must:
- (a) unless otherwise provided herein, continue to perform their respective obligations under this Agreement; 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.
- 30.8 The procedures above are without prejudice to any other rights and remedies that may be available in respect of any breach of any provisions of this Agreement. Each party is free to apply to the court for urgent interlocutory relief.

31 Assignment

- 31.1 Subject to clause 1.1(b):
- (a) neither party intends that this Agreement benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Supplier and Digicel; and
 - (b) the parties acknowledge that each intends to be bound by the terms and conditions of this Agreement and the rights and obligations of each party hereunder may solely be enforced directly by that party.
- 31.2 The Supplier must not assign or otherwise transfer this Agreement or any rights hereunder in whole or in part, whether voluntarily or by operation of law, without Digicel’s prior written consent, such consent not to be unreasonably withheld, delayed or conditioned. Any attempt to do so without prior consent is void.

- 31.3 Digicel may:
- (a) assign this Agreement or any rights hereunder in whole or in part to an Affiliate or to any entity in which Digicel or an affiliate has any beneficial interest without requiring approval from the Supplier; and
 - (b) may perform its obligations under this Agreement through an Affiliate or through an entity in which Digicel or an Affiliate has any beneficial interest, and such performance is deemed to be performance by Digicel.

32 Specific performance

- 32.1 The Supplier acknowledge that money damages are not an adequate remedy for any violation of this Agreement and that Digicel may, in its sole and absolute discretion, apply to a court for specific performance, an injunction, or such other relief as such court may deem just and proper, in order to enforce this Agreement or prevent any violation hereof, and to the extent permitted by Law, each party waives the posting of bond and any objection to the imposition of such relief.

33 Director guarantee and signatory liability

- 33.1 Unless the Supplier is a company listed on the official list of a stock exchange, the Supplier must, if Digicel requires, obtain the execution of a guarantee by such shareholders and directors of the Supplier as Digicel may require.
- 33.2 Failure to deliver a signed guarantee within the time required will constitute a breach of this Agreement upon which Digicel may at its sole and absolute discretion and at any time thereafter terminate this Agreement or any Purchase Order by written notice to the Purchaser.
- 33.3 If the Supplier is a private company, any signatory for the Supplier is personally liable for performing the Supplier's obligations as if the signatory were the Supplier.

34 Miscellaneous

34.1 Further action

Each party must use reasonable efforts to do all things (including by signing and delivering any further legal instruments) which are or may become necessary or desirable to give full effect to this Agreement and its subject matter.

34.2 Entire agreement

Each party has been advised to take legal advice in relation to statements made during negotiation for this Agreement and acknowledge that this Agreement sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

34.3 Alteration

This Agreement may only be altered in writing signed by the authorised signatories of each party.

34.4 Severability

Part or all of any provisions of this Agreement that is determined to be illegal or unenforceable may be severed from this Agreement and the remaining provisions of this Agreement remain in force so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties will negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

34.5 Waiver

Waiver of any provision of or right under this Agreement 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 this Agreement is not a waiver of that right.

34.6 **Governing law**

The Law of Papua New Guinea (excluding its conflict provisions) governs this Agreement and the parties submit to the non-exclusive jurisdiction of Papua New Guinean courts.

34.7 **Pre-contractual representations and warranties**

Each party enters this Agreement based upon their own judgment and not on reliance on any representation or warranty not expressly recorded herein.

34.8 **Warranties of a corporate entity**

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

- (a) It is duly incorporated, validly existing and in good standing under the Laws of the country in which it is organised;
- (b) It has full corporate power and lawful authority to execute and deliver this Agreement and to consummate and perform or cause to be performed its obligations under this Agreement and each transaction contemplated by this Agreement to be performed by that party;
- (c) It is not insolvent and no receiver has been appointed over any part of its assets and no such appointment has been threatened; and
- (d) It is not in liquidation and no proceedings have been brought or threatened for the purpose of winding up that party.

34.9 **Costs**

Each party is responsible for its own legal and other costs incurred in relation to the negotiation and signing of this Agreement.

34.10 **Successors and assigns**

This Agreement binds each party's legal personal representatives, successors and assigns.