

Interconnection Agreement

Legal Framework

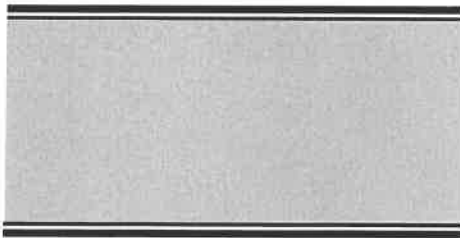


Table of Contents

1.	DEFINITIONS AND APPLICABILITY	4
2.	DURATION	5
3.	INTERCONNECTION	6
4.	FORECASTING, ORDERING AND PROVISION OF INTERCONNECT CAPACITY	6
5.	TESTING	6
6.	OPERATION AND MAINTENANCE	6
7.	SYSTEM CHANGES	7
8.	TELECOMMUNICATION SERVICES	8
9.	CHARGES AND PAYMENT	8
10.	VARIATION OF CHARGES	10
11.	BILLING	10
12.	INFRASTRUCTURE SHARING	11
13.	CLI/ANI	11
14.	NUMBERING	12
15.	SERVICE PERFORMANCE AND STANDARDS	12
16.	SAFETY AND SYSTEM PROTECTION	12
17.	PREVENTION OF FRAUD	13
18.	CONFIDENTIALITY	13
19.	NOT USED	14
20.	INTELLECTUAL PROPERTY RIGHTS	15
21.	AUTHORISED REPRESENTATIVES	16
22.	REVIEW AND AMENDMENT	16
23.	SUSPENSION AND TERMINATION	17

24. EFFECTS OF TERMINATION 19

25. FORCE MAJEURE..... 19

26. LIABILITY 20

27. RELATIONSHIP OF THE PARTIES..... 21

28. REPRESENTATIONS OF THE PARTIES..... 22

29. SEVERABILITY 22

30. NO WAIVER..... 23

31. ENTIRE AGREEMENT 23

32. ASSIGNMENT..... 23

33. NOTICES..... 24

34. DISPUTE RESOLUTION..... 25

35. FILING OF AGREEMENT 26

36. GOVERNING LAW AND JURISDICTION 27

37. COUNTERPARTS 27

This Agreement is made this th day of August, 2009.

BETWEEN

- A) Digicel (BVI) Limited, a company duly incorporated under the laws of the British Virgin Islands, having its registered office at The Simmonds Building, 30 DeCastro Street, P.O. Box 961, Road Town, Tortola, British Virgin Islands (“**Digicel**”); and
- B) Caribbean Cellular Telephone Limited, a limited liability company duly incorporated and existing under the laws of the British Virgin Islands, having its registered office at 333 Waterfront Drive, Geneva Place, Road Town, Tortola, British Virgin Islands (“CCT”).

RECITALS

- A) Digicel is entitled by its Public Network Operator Licence to establish and operate public telecommunications networks and to provide public telecommunications services in the British Virgin Islands.
- B) CCT is entitled by its Public Network Operator Licence to establish and operate public telecommunications networks and to provide public telecommunications services in the British Virgin Islands.
- C) The Parties have agreed to interconnect their respective Networks in accordance with the terms of the *Telecommunications Act 2006*, on the terms and conditions set out herein.

1. Definitions and Applicability

- 1.1 In this Agreement, unless the context otherwise requires or explicitly states, the terms used shall have the meanings assigned to them in the Definitions schedule.
- 1.2 In this Agreement, unless the context otherwise requires or explicitly states:
 - a) The singular includes the plural and vice versa;
 - b) Reference to an agreement or other instrument includes any variation or replacement to or of either of them;
 - c) Reference to any Clause, Schedule, Annex or other Attachment is a reference to a clause of or schedule, annex or attachment to this Agreement and any reference to this Agreement includes any such Schedule, Annex or other Attachment. Reference to any Paragraph is a reference to a paragraph of a Schedule, Annex or Attachment.

- d) Reference to any statute, act, ordinance, code or other law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements thereof at any time;
 - e) The expression “person” includes any individual, firm or company;
 - f) All references to US\$ or other payable amounts refer to United States Dollars unless otherwise stated; and
 - g) If a day on which payment of money falls due is not a Business Day, the due date for such payment shall be deemed to be the next following Business Day.
- 1.3 References in this Agreement to either Party shall include any legitimate successors or assigns of that Party pursuant to Clause 32.
- 1.4 Headings are included for convenience and do not affect the interpretation of this Agreement.
- 1.5 In the event of any inconsistency between the numbered Clauses of this Agreement and the Schedules, Annexes or other Attachments, the numbered Clauses of this Agreement shall prevail. In any other event the following order of priority will apply:
- a) Definitions
 - b) Service Descriptions
 - c) Tariff Schedule
 - d) Joint Working Manual
 - e) Service Schedule and
 - f) Parameter Schedule

2. **Duration**

- 2.1 Subject to the approval by the Commission this Agreement takes effect as of November 25, 2008, and continues in full force and effect for a period of five (5) years unless terminated in accordance with Clause 23, or otherwise varied in accordance with the provisions of Clause 22. In the event of any variation pursuant to Clause 22, the Agreement as amended shall continue in full force and effect unless terminated in accordance with Clause 23 or further otherwise varied in accordance with the provisions of Clause 22. At any time within the year prior to the expiration of the then-current term, either Party may request that the Parties commence negotiations for an Agreement to replace this Agreement.

2.2 The Parties agree that in the event that the period set out in Clause 2.1 expires and the Parties have not concluded an agreement replacing this Agreement, the terms and conditions of this Agreement shall continue in full force and effect until such time as a replacement agreement is negotiated and approved, provided however that, neither Party shall be obliged to continue to provide service if no agreement is reached and approved within six (6) months of the conclusion of the term referenced in Clause 2.1.

3. **Interconnection**

3.1 Subject to the provisions of this Agreement, CCT shall connect and keep connected the CCT System to the Digicel System and Digicel shall connect and keep connected the Digicel System to the CCT System in the manner described in this Agreement in order to convey Calls and Messages to, from, or in transit over their respective System.

3.2 Subject to Clause 15, Points of Connection shall be established between the CCT Interconnect Switch Location (ISL) and the Digicel Interconnect Switch Location specified in the Service Schedule in accordance with the Joining Service as more particularly described in the Service Descriptions.

3.3 Each Party shall ensure that any Telecommunications Apparatus, which is necessary to the provision of interconnection pursuant to this Agreement, conforms to the technical requirements set out in the Joint Working Manual.

4. **Forecasting, Ordering and Provision of Interconnect Capacity**

4.1 The Parties will exchange Forecasts for each Service as required in the Service Descriptions in accordance with the procedures set out in the Joint Working Manual and shall comply with all the applicable provisions of the Joint Working Manual relating to forecasting.

4.2 The Parties will order and provision capacity in accordance with the procedures set out in the Joint Working Manual and comply with all applicable provisions of the Joint Working Manual relating to ordering and provisioning.

5. **Testing**

5.1 The Parties will carry out the Acceptance Testing and commissioning procedures described in the Joint Working Manual, or as otherwise agreed by both Parties in Writing.

6. **Operation and Maintenance**

6.1 Subject to Clause 9.1, each Party shall be responsible for planning, providing, operating and maintaining all Telecommunications Apparatus located on its side of the Point of Connection.

- 6.2 Each Party shall manage traffic on its System so as to avoid disruption to the other Party's System and Services to the maximum extent reasonably practicable and each Party shall take all necessary steps as are reasonably practicable to minimise service failures and congestion and signalling system disturbances within its own System which would affect the ability of the other Party to carry Calls across such other Party's System in accordance with the routing principles set out in the Joint Working Manual and the Parameter Schedule.
- 6.3 Each Party shall advise the other Party of any Faults or planned maintenance in accordance with the procedures set out in the Joint Working Manual and shall resolve the Faults or conduct the maintenance in accordance with the Joint Working Manual.
- 6.4 Each Party may make reasonable tests and inspections of any Services it provides to the other and any Telecommunications Apparatus it uses to provide the Services, and may upon reasonable notice temporarily interrupt Services being tested or inspected in accordance with the provisions of the Joint Working Manual relating to planned maintenance. Where a test or inspection will affect telecommunications traffic originating or terminating on or transiting either Party's System, the testing or inspection shall be carried out in such a way as to minimise disruption to each Party's System.
- 7. System Changes**
- 7.1 Either Party shall notify the other Party of Developments with its System that may impact on the provision of Services to the other Party upon finalisation of a decision to make such a change.
- 7.2 Where a Party intends to make or permit to be made any alteration, adjustment or addition to its System which would have the effect of materially impairing the operation of the other Party's System or otherwise to materially affect the conveyance of Calls or Messages over the Point of Connection, that Party shall provide as much notice as is practicable in the circumstances to enable the other Party to make modifications to its own System which are necessary to maintain interconnection at the agreed standards. When giving such notice, the Party shall, where possible, give at least six (6) months written notice of any such alteration, adjustment or addition, but will not be liable in the event that six (6) months' notice is not possible. Each Party shall take appropriate and reasonable steps to minimise the impact on the other Party of such alteration, adjustment or addition (including but not limited to cost).
- 7.3 In the event that at any time either Party intends to change any standards or implement additional standards or standards with different features which may affect the operation of the other Party's System, the Party shall so notify the other Party as soon as practicable, in order that the other Party has a reasonable opportunity to attempt to meet such standards or adjust its System accordingly. When giving such notice, the Party shall, where possible, give at least six (6) months written notice of any such alteration,

adjustment or addition, but will not be liable in the event that six months' notice is not possible. Each Party shall take appropriate and reasonable steps to minimise the impact on the other Party of such alteration, adjustment or addition (including but not limited to cost).

- 7.4 Subject to Clauses 7.2 and 7.3, nothing in this Agreement shall limit either Party's ability to upgrade its System through the incorporation of new equipment, new software or otherwise or to change, in part or in whole, the design, function, operation or layout of its System.
- 7.5 The applicable standards of operation of each Party's System for the purpose of the Services will be those specified in the Joint Working Manual and, in the absence of any specified standards, will be such applicable international standards as proposed by CCT and agreed to by the affected parties in writing, such agreement not to be unreasonably withheld or delayed.

8. Telecommunication Services

- 8.1 Each Party shall provide the other with the Services for which that Party is indicated as being the Service Supplier in the Service Schedule, provided that each Party's System and the Points of Connection are suitable for the conveyance of Calls pursuant to the relevant Service Description. Subject to Clause 15 the Services shall be provided in accordance with the Service Descriptions and the Joint Working Manual.
- 8.2 For the avoidance of doubt, and notwithstanding the interconnection of the Parties' Systems, neither Party shall hand over to the other Party, nor have an obligation to convey Calls or Messages of any category, unless the Parties have agreed to convey Calls or Messages of that category pursuant to a Service Description. In the event that Calls or Messages not expressly provided for are handed over and accepted for conveyance, the following supplementary charges will be applied: (i) where the Call or Message is of a type described in a Service Description, the charges for that Service as set out in the Tariff Schedule, and (ii) where the Call or Message is of a type not described in a Service Description, such amount as is reasonable having regard to all the circumstances.
- 8.3 Each Party shall be solely responsible for the switching and routing of all telecommunication services on its System and shall not be liable for telecommunications services provided by a Third Party Telecom Provider. Such switching and routing shall be consistent with the principles in the Joint Working Manual.

9. Charges and Payment

- 9.1 Each Party shall pay to the other the relevant Charges applicable to each Service as more particularly described in the Service Descriptions and in accordance with the tariffs in the Tariff Schedule.

- 9.2 Payments shall be made in an agreed form and will be deemed made on the date of receipt of such payments in cleared funds.
- 9.3 Subject to Clause 9.5, all Charges payable under this Agreement shall be payable within thirty (30) days of deemed receipt of an invoice.

Before such an invoice is submitted, DIGICEL and CCT will notify each other, within ten (10) business days from the end of each month, by means of a traffic summary (the "Traffic Summary"), containing the total amount of Conversation Minutes terminated on the network of each Party applicable for settlement. For the avoidance of doubt, the Traffic Summary will be submitted by the Party on whose network the traffic was terminated.

The information in the Traffic Summary will be based on the call detail records of each Party. Both parties shall then render an invoice to the other within a further thirty (30) business days after receipt of the Traffic Summary, for payment based on the amount of Conversation Minutes contained in the Traffic Summary.

- 9.4 In the event that either Party shall fail to pay any amount due hereunder within such thirty (30) day period, (i) the payee shall be entitled to charge and receive interest at the base lending rate of First Caribbean International Bank in the British Virgin Islands in force plus two per cent (2%), from and including the day following the due date for payment until the date of payment in full, and whether before or after any court judgement or other award, and (ii) the payee may deduct the amount it is owed from any amount it owes the other Party under this Agreement.
- 9.5 The Parties may agree separately in writing to make payments under this Agreement on a "net" basis. If one Party is owed an amount by the other Party, the first Party may deduct the amount it is owed from the amount it owes the other Party, and pay only the "net" amount. Notwithstanding this, the Parties agree to issue invoices showing full amounts owing by the other Party.
- 9.6 In the event that either Party disputes the specific amount of any invoice delivered by the other Party under this Agreement the Parties shall resolve the dispute in accordance with the investigation and determination procedures set out in the Joint Working Manual. Notwithstanding any dispute as to any payment, the Parties shall remain obliged to continue to observe and perform the provisions of this Agreement.
- 9.7 Any amount in dispute shall, for the purposes of Clause 9.4, be deemed not payable pending resolution of the dispute under Clause 9.6. Nothing in this Clause shall be taken as permitting a Party to withhold payment of an amount that is not in dispute. For the avoidance of doubt, a Party may withhold payment only of the amount in dispute.

9.8 Where appropriate, any value added or other applicable tax shall be added to all or any part of the Charges under this Agreement, and shall be paid by the Party responsible for making such payment.

10. Variation of Charges

10.1 Either Party may from time to time notify the other of changes to specific Charges,

- i) where the Commission has approved changes to those Charges; or
- ii) where a Third Party Telecom Provider has made changes to its charges, and these charges form part of the specified Charges.

10.2 Such notice shall specify the date on which the variation is to become effective. In the case of changes falling within (i) above, the changes will take effect from the effective date approved by the Commission. In the case of changes falling within (ii) above, evidence of the change in Charges by the Third Party Telecom Provider shall be provided to the other Party, and the changes will take effect from the date set out in the notice as being the effective date, such date being at least four (4) weeks from the date such notice is deemed to be received unless, in the case of changes falling within (ii) above, either Party does not receive sufficient notice from the Third Party Telecom Provider. In the case of changes falling within (ii) above, to the extent that either Party does not receive sufficient notice from the Third Party Telecom Provider to give at least four (4) weeks' notice of any changes, that Party will give as much notice as is reasonably practicable.

11. Billing

11.1 Each Party shall be responsible for invoicing its own Subscribers.

11.2 Each Party shall be entitled to invoice the other Party for the relevant Usage Charges and Monthly Recurring Charges following the expiration of each Billing Period. Each Party shall use reasonable endeavours to deliver invoices in a timely manner in accordance with the Joint Working Manual.

11.3 Subject to Clauses 11.2 and 11.4, each Party shall be entitled to invoice the other Party for applicable One-off Charges and any other amounts expressed as being payable in accordance with the specific provisions of this Agreement.

11.4 Invoicing for the Joining Service shall be carried out in accordance with the relevant Service Description and all reasonable endeavours shall be used to ensure that all information necessary to produce a complete invoice for such Services is obtained in a timely manner.

- 11.5 Any failure to deliver invoices in accordance with Clause 11.2, 11.3 or 11.4 shall not be deemed to be a waiver of the invoicing Party's rights in respect of payment or a breach of a material obligation of the invoicing Party.
- 11.6 For the purpose of reconciling accounts, each Party shall use all reasonable endeavours to provide the other with Billing Data in respect of Calls conveyed from its System and handed over to the other Party at the Point of Connection in accordance with the Joint Working Manual.
- 11.7 Notwithstanding the above, in the event that:
- a) Billing Data is temporarily or permanently unavailable;
 - b) in the first twelve (12) months following signature of this Agreement, a billing error is discovered that occurred in the previous three (3) Billing Periods; or
 - c) at any time after the first twelve (12) months following signature of this Agreement, a billing error is discovered that occurred in the previous Billing Period

the Parties shall follow the procedures set out in the Joint Working Manual.

12. Infrastructure Sharing

- 12.1 Nothing in this Agreement shall be taken as requiring a Party to share Telecommunications Facilities or to provide co-location.
- 12.2 Co-location or sharing of a Party's Telecommunications Facilities may be provided under a separate agreement between the Parties.

13. CLI/ANI

- 13.1 The Parties will pass CLI in accordance with the Joint Working Manual and any agreed code of practice for CLI from time to time in force. For the avoidance of doubt, neither Party is required to pass CLI for any Call in respect of which CLI is not available.
- 13.2 No Party shall alter or amend ANI or permit or accept the alteration or amendment of ANI unless such alteration or amendment is agreed in advance in writing by both Parties. Without in any way restricting any other breaches of this Agreement being deemed to be material breaches, a breach of this clause 13.2 shall be deemed a material breach of the Agreement.

14. Numbering

- 14.1 Each Party shall make the necessary adjustments to its System to route Calls to the other Party's System in accordance with the number ranges and other numbers assigned to the other Party under the National Numbering Plan and in accordance with the Service Descriptions and the Service Schedule.
- 14.2 Each Party shall use numbers in accordance with the National Numbering Plan and, in the absence of any such Plan, in accordance with the applicable ITU recommendations.

15. Service Performance and Standards

- 15.1 Subject to Clause 15.3, the Parties shall use all reasonable endeavours to comply with the provisions relating to quality of service set out in the Joint Working Manual and the Parameter Schedule.
- 15.2 Subject to Clause 15.3, the Parties shall use all reasonable endeavours to at all times apply standards (including signalling standards) and operating guidelines which are consistent with the Joint Working Manual.
- 15.3 Save as is set out in Clause 15.1 and 15.2, the Parties provide no other warranties, representations, undertakings or commitments in respect of quality of service including, but not limited to, warranties, representations, undertakings or commitments in respect of difficulties or faults which result in a failure to establish service, in-service interruption or loss of or distortion of communication, and all implied warranties are hereby excluded.

16. Safety and System Protection

- 16.1 Each Party shall be responsible for the safe operation of its System and shall take all steps reasonably necessary or required by law to ensure that such operation and the implementation of this Agreement:
- a) comply with any specific safety and protection requirements contained in this Agreement (including, without limitation, the Joint Working Manual);
 - b) do not endanger the safety or health of the officers, employees, contractors, representatives, agents, invitees or Subscribers of the other Party;
 - c) do not damage, interfere with or cause any impairment to or deterioration in the operation of the other Party's System;
 - d) do not interfere with the use or provision of licensed telecommunication services provided by the other Party, provided that this principle shall not preclude the taking of action by either Party in the normal operation of its System to protect its

System, on condition that any such action is in compliance with the Joint Working Manual.

16.2 In the event that it is agreed to be necessary or desirable for representatives of a Party to access the premises of the other Party for the purposes of this Agreement, each Party shall use its reasonable endeavours to comply with all reasonable security and safety practices and procedures applicable to access to and operations on the premises of the other Party notified to it by the Party whose premises are being visited. Subject to the indemnified Party complying with Clause 26.6, and subject to the limitation in Clause 26.3, each Party shall indemnify and keep indemnified the other against all risks and damages, costs, claims and expenses arising out of any breach by the indemnifying Party of this Clause 16.2.

17. Prevention of Fraud

17.1 A Party shall not be obliged to convey, receive or terminate Calls or Messages

(i) where the volume of such Calls or Messages materially exceeds that which could reasonably be expected and such traffic impedes the transmission of other Calls or Messages, or

(ii) such Calls or Messages are otherwise harmful to the integrity of the Party's System.

17.2 A Party shall not be restrained from taking any reasonable actions, including not conveying, receiving or terminating Calls or Messages, in the event of fraud relating to such Calls or Messages being carried out against the Party, provided that the same action is taken in respect of all affected Calls or Messages.

17.3 To the extent permitted by law, the Parties will promptly upon becoming aware of fraudulent use, theft or misuse of the Parties' respective Services and associated Telecommunications Apparatus inform the other of such circumstances.

17.4 If requested, the Parties shall co-operate in the provision of information to the Commission or to other relevant regulatory bodies, in relation to fraudulent use, theft or misuse of the Parties' respective Services and associated Telecommunications Apparatus.

18. Confidentiality

18.1 Subject to the following provisions of this Clause 18, a Receiving Party shall keep in confidence Confidential Information and will not (and will use its best efforts to ensure that its directors, employees, agents, representatives, affiliates and professional advisers will not) disclose such information to any third party.

- 18.2 A Receiving Party shall exercise no lesser security or degree of care over Confidential Information than that Party applies to its own Confidential Information and in any event such security or degree of care shall be no less than would be exercised by a reasonable person with knowledge of the confidential nature of the information.
- 18.3 A Receiving Party may disclose Confidential Information to a contractor or agent, subject to the contractor or agent having a reasonable need to know and undertaking in writing to comply with obligations equivalent to those contained in this Clause 18.
- 18.4 A Receiving Party may disclose Confidential Information to an Associated Company, subject to the Associated Company having a reasonable need to know and undertaking to comply with obligations equivalent to those contained in this Clause 18.
- 18.5 All Confidential Information is acknowledged by the Receiving Party to be the property of the Disclosing Party and the disclosure of the Confidential Information shall not be deemed to confer any rights to that Confidential Information on the Receiving Party.
- 18.6 The Disclosing Party may request in writing at any time any written Confidential Information (and/or Confidential Information in machine readable form) disclosed pursuant to the terms and conditions of this Clause 18 and any copies thereof be returned with a written statement to the effect that upon such return the Receiving Party has not knowingly retained in its possession or under its control, either directly or indirectly, any Confidential Information or copies thereof and the Receiving Party shall comply with any such request within seven (7) days of receipt of such request.
- 18.7 Unless otherwise agreed in writing, a Receiving Party shall not use the other Party's Confidential Information to provide commercial advantage to its Customer Facing Divisions.
- 18.8 In the event a Receiving Party receives information from the Disclosing Party for the purposes of interconnection, where such information received is of a competitive nature, such as customer orders, market forecasts, plans for the development of new services, network plans, new customers and current or proposed business plans, the Receiving Party shall treat such information in confidence and shall share it only amongst those employees who have a need to know for provisioning services to the Disclosing Party and shall not provide such information to personnel involved in the provision of services offered in competition, and shall use such information solely for the purpose for which such information is received. Without in any way restricting any other breaches of this Agreement being deemed to be material breaches, a breach of Clauses 18.7 and 18.8 shall be deemed a material breach of the Agreement.

19. Use of Subscriber Information

Information in respect of a Party's Subscribers which is passed to the other Party for any purpose shall not in any way be used by that other Party to the commercial advantage of the other Party and specifically not by its Customer Facing Divisions

20. **Intellectual Property Rights**

- 20.1 Where any IPR is developed in connection with performance of this Agreement then, in the absence of any other Agreement between the Parties, the owner of the IPR shall be the Party who developed the IPR. Each Party grants to the other a non-exclusive, royalty free licence to use any IPR for the purposes of this Agreement and for its term subject to the other provisions in this Clause 20.
- 20.2 Each Party ("**the IP Indemnifying Party**") agrees to indemnify the other Party ("**the IP Indemnified Party**") against all liability or loss arising from, and all reasonable costs, charges and expenses incurred in connection with, any claim, action, suit or demand alleging infringement by the IP Indemnified Party of the rights in the British Virgin Islands of a third person arising from the use by the IP Indemnified Party of IPR disclosed or licensed by the IP Indemnifying Party under this Agreement except where such IPR has been modified or used other than in accordance with this Agreement subject to the IP Indemnified Party complying with Clause 26.6.. The liability of each Party under this Clause 20 to the other, shall be limited, to the extent permitted by law, to US\$ 1.0 million for any one incident or series of events arising from a single incident, and US\$ 1.5 million for all events (connected or unconnected) in any period of twelve consecutive calendar months.
- 20.3 If a Party becomes aware of an infringement or threatened infringement of IPR belonging to the other Party ("**the IP Owner**") disclosed or licensed by the IP Owner under this Agreement, then that Party shall make timely and reasonable efforts to notify the IP Owner of all the relevant details relating to the infringement, or threatened infringement.
- 20.4 The IP Owner may take such steps and proceedings as it considers necessary or desirable to protect its rights in respect of the IPR, and any rights of the other Party in the IPR, and the other Party must render all reasonable assistance to the IP Owner in this regard at the IP Owner's expense.
- 20.5 If a Party ("**the Infringing Party**") licenses or otherwise provides IPR to the other Party for the purposes of this Agreement and that IPR infringes the rights of a third Party, then the Infringing Party must:
- a) at its own expense take such steps as are necessary to cure the infringement, or
 - b) if a) is unreasonable having regard to the likely costs and other relevant matters, provide alternative technology as soon as reasonably practicable.

- 20.6 The Parties acknowledge that this Clause sets out the only remedies and forms for compensation available in respect of any infringement of third Party rights by IPR licensed for the purpose of this Agreement.
- 20.7 A Party must not use a trademark and/or service mark belonging to another Party without the prior written consent of that other Party.
- 21. Authorised Representatives**
- 21.1 Each Party shall appoint the representatives referred to in the Joint Working Manual to be responsible for the matters indicated in the Joint Working Manual. Each Party shall notify the other of the identity of the representative(s) in writing no later than five (5) Business Days following signature of this Agreement.
- 21.2 Except as otherwise provided herein, all correspondence, meetings and other communications (including notification of matters in dispute) pertaining to issues pertaining to their responsibilities shall be directed to and conducted by and through those representative(s). The representative(s) shall keep an appropriate record of all communication with their counterpart(s).
- 21.3 Each Party is entitled to change the representative(s) by notice in writing to the other Party.
- 22. Review and Amendment**
- 22.1 Without prejudice to the provisions of Clause 10, either Party may seek to amend and re-negotiate this Agreement by serving on the other a review notice if:
- a) a material change occurs in the laws or regulations governing telecommunications which affect the British Virgin Islands (including, without limitation, licence changes, Commission determinations and court decisions that necessitate the amendment of this Agreement);
 - b) a RIO or revised RIO is in effect;
 - c) it is not, or no longer, physically, technically or commercially feasible to provide a Service or fulfil an obligation under this Agreement; or
 - d) both Parties agree in writing that there should be a review.
- 22.2 A review notice shall set out in reasonable detail the events giving rise to the review required by the notice and the nature of the amendments sought by the Party serving the notice.

- 22.3 On service of a review notice, the Parties shall forthwith negotiate the matters to be resolved with a view to agreeing the relevant amendments to this Agreement.
- 22.4 If, after a period of sixty (60) days from commencement of such review, the Parties fail to reach Agreement, the Parties shall resolve the dispute through the dispute process outlined in Clause 34 of this Agreement.
- 22.5 For the avoidance of doubt, the Parties agree, without prejudice to any ultimate decision to the contrary, that the terms and conditions for this Agreement shall remain in full force and effect during such review until such time as this Agreement is terminated in accordance with its terms.

23. **Suspension and Termination**

- 23.1 Either Party may terminate this Agreement or the provision of any Service or Services on notice in writing in the following situations on the following terms. References to “suspension” involve suspension of Services and “termination” involves termination of this Agreement as well as specific Services.
- a) Either Party may suspend where suspension is necessary to deal with a material degradation of either Party’s telecommunications network or services;
 - b) Either Party may suspend where the other Party fails to pay any undisputed invoice or payable undisputed portion of an invoice within thirty (30) days of date due as indicated in invoice, and may terminate where the other Party fails to pay any undisputed invoice or any undisputed portion of an invoice when due and has failed to remedy such non-payment within two (2) months of receipt of a notice from the billing Party that the Agreement will be terminated for non-payment;
 - c) Either Party may suspend where the other Party is engaged in acts or omissions which impair the integrity or security of the Party’s network or services, or which will impair the integrity or security of the Party’s network or services and has failed to take reasonable steps within five (5) days of notice of the Party to ensure that such impairment does not result;
 - d) Either Party may terminate this Agreement where Services have been suspended under the terms of Clause 23.1(c) above for at least 30 days, and the suspended Party fails to remedy the acts or omissions giving rise to the suspension during that period;
 - e) Either Party may suspend where the other Party is in breach of any material obligation contained in this Agreement and may terminate where the other Party fails to take reasonable steps to remedy such breach within fourteen (14) days after suspension;

- f) Either Party may suspend where the other Party knowingly engages in conduct which is harmful to the Party, and which is unlawful or interferes with the obligations of the Party under its licence, the Act or Regulations, and may terminate if the conduct does not cease within two (2) days after suspension;
- g) Either Party may suspend or terminate if either Party's Public Network Operator Licence and/or relevant Frequency Authorization necessary to entitle the Party to interconnection or to enable the Party to carry out its obligations at any time expires or is revoked by the Commission and is not immediately replaced or re-issued or in the process of being replaced or re-issued;
- h) Either Party may suspend where the other Party engages in conduct that would endanger life or safety, or damage the property of the Party, and may terminate if such conduct is not ceased within two (2) days after suspension;
- i) Either Party may suspend or terminate if the other Party ceases to carry on business, enters into liquidation (other than for the purpose of merger or reconstruction where the emergent company assumes its obligations hereunder) or is dissolved or becomes bankrupt or insolvent or takes or suffers any similar action in consequence of debt;
- j) Either Party may suspend or terminate a Service if circumstances arise whereby it is no longer technically feasible for that Party to provide that Service, provided however, that in the unlikely event that it is no longer technically feasible to provide any Services the Party shall be entitled to suspend or terminate this Agreement; or
- k) Either Party may suspend or terminate with the agreement of the Other Party on reasonable notice as agreed by the Parties.

23.2 The Party seeking to suspend or terminate pursuant to Clauses 23.1 (a) through (j) without the agreement of the other Party shall so notify both the Commission and the other Party no less than fourteen (14) days prior to the effective date of such suspension or termination. The notice should detail the nature of the breach and state the intention to suspend or terminate, as the case may be, if the other party not remedy the breach during the notice period.

23.3 Such suspension or termination shall become effective in accordance with such notice, unless the other Party remedies the breach during the notice period or applies to the Commission for relief prior thereto and the Commission issues an order preventing such suspension or termination.

23.4 In each case where service is suspended pursuant to Clause 23.1, it shall be restored once the circumstances warranting suspension have ceased to apply. Exercise of a right to

suspend under Clause 23.1 shall not prejudice the suspending Party's right to exercise any other existing right to terminate pursuant to Clause 23.1. The Party whose service is suspended shall remain liable for any Charges in respect of the suspended Service throughout the period of suspension.

24. **Effects of Termination**

- 24.1 Termination or expiry of this Agreement shall be without prejudice to the rights and obligations of the Parties accruing prior to such termination and such termination shall not affect the continuance in force of any provision of this Agreement which is expressly or by implication intended to continue in force (including but not limited to Clauses 1, 9, 11, 18, 20, 24, 26 and Paragraph 2.3.2.6 of the Joint Working Manual).
- 24.2 Termination or expiry of this Agreement shall not operate as a waiver of any breach by a Party of this Agreement and shall be without prejudice to any rights, liabilities or obligations of either Party which have accrued up to the date of termination.

25. **Force Majeure**

- 25.1 Neither Party shall be liable to the other for any delay or failure to perform or observe any provision of this Agreement by reason of Force Majeure, but only during the period of time the Force Majeure event persist.
- 25.2 The Party affected by any Force Majeure shall use all reasonable efforts to promptly notify the other of the estimated extent and duration of its inability to perform its obligations under this Agreement. Upon cessation of the delay or failure resulting from Force Majeure, the Party affected shall promptly notify the other of such cessation.
- 25.3 If, as a result of Force Majeure, performance by either Party of its obligations under this Agreement is only partially affected, that Party shall nevertheless remain liable for the performance of those obligations not affected by Force Majeure.
- 25.4 If the Force Majeure lasts for six months or less from the date of any notification under Clause 25.2, any obligation outstanding shall be fulfilled by the Party affected as soon as possible after cessation of the Force Majeure, save to the extent that such fulfilment is no longer practically possible or is not required by the other Party.
- 25.5 If the Force Majeure lasts for more than six (6) months from the date of any such notification and notice of cessation has not been given and such Force Majeure prevents the affected Party from performing its obligations in whole or in part during that period, the unaffected Party shall be entitled (but not obliged) to terminate this Agreement by giving not less than thirty (30) days written notice to the other after expiry of such six (6) month period, unless notice of cessation of the Force Majeure is received by the unaffected Party prior to the expiry of such thirty (30) days notice. If this Agreement is not so terminated under the provisions of this Clause 25, any obligations outstanding

shall be fulfilled by the Party affected by the Force Majeure as soon as possible after the Force Majeure has ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party.

26. **Liability**

- 26.1 Except as explicitly stated elsewhere in this Agreement, neither Party shall be liable to the other in respect of any action, claim, suit or demand brought or made against the other by any third person pursuant to a contractual relationship with that other Party.
- 26.2 Notwithstanding any other provision of this Agreement, neither Party shall be liable to the other in contract, tort or otherwise for indirect, purely economic, special, punitive or consequential loss or damage, foreseeable or not, arising from its performance or non-performance of its obligations under this Agreement.
- 26.3 In addition to the other limitations contained in this Clause 26, the liability of each Party to the other in contract, negligence, and otherwise in respect of its performance under this Agreement, and any indemnity obligations hereunder, shall be limited, to the extent permitted by law, to US\$ 1.0 million for any one incident or series of events arising from a single incident, and US\$ 1.5 million for all events (connected or unconnected) in any period of twelve consecutive calendar months.
- 26.4 Nothing in this Agreement shall exclude or limit the liability of one Party to the other arising out of that Party's fraud or fraudulent misrepresentation, wilful acts or wilful omissions.
- 26.5 Subject to Clause 26.6 and subject to the limitation in Clause 26.3, each Party ("**the Indemnifying Party**") shall indemnify the other ("**the Indemnified Party**") against all liability or loss arising directly from, and any reasonable cost, charge or expense incurred in connection with:
- a) damage to or loss of any Telecommunications Apparatus or other property of the Indemnified Party caused by the negligence or wilful acts or omissions of the Indemnifying Party or its employees, directors, representatives or agents arising out of or in connection with this Agreement; and
 - b) any action, claim, suit or demand by any person against the Indemnified Party in respect of or arising out of any negligence or wilful acts or omissions of the Indemnifying Party in the course of providing services to the Indemnified Party.
- 26.6 If any action, claim, suit or demand ("**Claim**") is made by any person against the Indemnified Party which, if satisfied or paid by the Indemnified Party, would result in liability by the Indemnifying Party under the indemnity set out in Clause 26.5:

- a) the Indemnified Party must give written notice of the Claim to the Indemnifying Party as soon as practicable after the making of the Claim; and
- b) within thirty (30) days after receipt of that notice, the Indemnifying Party must:
 - i) cause the Indemnified Party to be put in sufficient funds to satisfy or pay the Claim; or
 - ii) give notice to the Indemnified Party directing it to take such action (including legal proceedings) in respect of the Claim as notified at the Indemnifying Party's expense; and
- c) the Indemnifying Party must cause the Indemnified Party to be put, and therefore maintained, in sufficient funds in sufficient time to pay all reasonable costs and expenses of any action or settlement directed by the Indemnifying Party under Clauses 26.6(b) and 26.6(d) and
- d) the Indemnified Party:
 - i) must take such action as the Indemnifying Party reasonably directs to avoid, dispute, defend, appeal, settle or compromise (“Deal With”) the claim and any adjudication thereof; and
 - ii) must not Deal With the claims except as directed by the Indemnifying Party.

27. Relationship of the Parties

- 27.1 In giving effect to this Agreement, the relationship of the Parties to each other shall be that of independent contractors. Nothing in this Agreement shall be construed as or shall constitute the relationship of the Parties as an agency, partnership, franchise, employment, joint venture or other joint venture relationship between the Parties.
- 27.2 No Party shall have the right to enter into contracts or pledge the credit of or assume or incur expenses or liabilities or any obligation of any kind (including but not limited to the making of any representation or warranty), express or implied, on behalf of the other Party unless otherwise expressly permitted in writing by such other Party.
- 27.3 The only Parties to this Agreement are Digicel and CCT.
- 27.4 This Agreement confers benefits and imposes burdens only upon the Parties to this Agreement and does not confer any benefit of any kind whatsoever or impose any burden of any kind whatsoever upon any person or entity who is not a Party.

27.5 Subject to any express provision of this Agreement to the contrary, this Agreement does not provide any person or entity who is not a Party with any remedy, defence, claim, action, claim of action or other right of any kind, or impose any liability upon such person that that person did not have before this Agreement commenced.

28. Representations of the Parties

28.1 Each Party represents that it is now and will remain in all material aspects in compliance with all laws, regulations, and orders applicable to its performance of its obligations under this Agreement. Each Party shall promptly notify the other Party in writing of any governmental or regulatory action that suspends, cancels, withdraws, limits or otherwise materially affects its ability to perform its obligations under this Agreement.

28.2 Each Party represents and warrants to the other that it:

- a) is a limited liability company duly incorporated or continued and validly existing under the laws of the British Virgin Islands and has all necessary corporate power and capacity to own its properties and carry on its business in the British Virgin Islands as presently carried on and is duly licensed, registered or qualified under the relevant company or corporate legislation in all jurisdictions where the character of its property owned or leased or the nature of the activities conducted by it makes such licensing, registration or qualification necessary or desirable;
- b) has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations in accordance with their terms subject to necessary regulatory approval, and that the execution and delivery of this Agreement have been duly authorised by all necessary corporate action on its part; and
- c) is duly qualified to act as a Public Network Operator under the Act and shall hold all valid licences or permits as deemed or granted under the Act to establish and operate Telecommunications Apparatus and to provide specified services.

29. Severability

29.1 The individuality or enforceability for any reason of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement.

29.2 If further lawful performance of this Agreement or any part hereof shall be rendered impossible by the final judgement or final order of any court of competent jurisdiction, commission or governmental agency or similar authority having jurisdiction over either Party, the Parties undertake that they will exert their best efforts to agree on an amendment or amendments to this Agreement or on modifications of their practices hereunder in such manner as will fully comply with such final judgement or final order and render further performance lawful.

29.3 The enforceability of all rights or obligations of the Parties under this Agreement or the portion thereof judged invalid, illegal or otherwise unenforceable by such final judgement or final order, shall be suspended as from the date thereof pending the outcome of negotiations between the Parties as aforesaid though without prejudice to all or any accrued rights of the Parties in respect of the past performance or observance thereof.

30. No Waiver

30.1 Failure or delay by either Party at any time to enforce any of the provisions of this Agreement shall not be construed by the other as a waiver of any such provision nor in any way affect the validity of this Agreement or any part thereof.

30.2 Subject to Clause 22.4, no variation, modification or waiver of any provisions of this Agreement shall in any event be of any force or effect, unless the same is in writing signed by each of the Parties hereto.

30.3 No forbearance, delay or indulgence by either Party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of such Party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either Party is exclusive of any right, power or remedy available to such Party and each such right, power or remedy shall be cumulative.

31. Entire Agreement

31.1 This Agreement and to the extent applicable governmental regulations, tariffs or rules constitutes the entire Agreement and understanding between the Parties and supersedes all previous Agreements, understandings and representations between the Parties, whether oral or written, as it relates to interconnection.

32. Assignment

32.1 Neither Party may assign the whole or any part of this Agreement or its rights or obligations hereunder other than with the prior consent in writing of the other Party, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, neither Party shall require the consent of the other Party to assign the whole or any part of this Agreement or its rights or obligations hereunder to a subsidiary, parent or Associated Company.

32.2 A Party may only perform an assignment under Clause 32.1 if:

- a) the assignee is granted all applicable Public Network Operator Licences and Frequency Authorizations by the Commission with respect to the ownership and operation of all or part of the Telecommunications Apparatus of the assigning Party and the provision of all or part of the telecommunications services of the assigning Party;

- b) in cases where the assignee is an Associated Company of the assigning Party and ceases to be a Associated Company, the assigning Party shall give prior notification of that fact to the other Party hereto and shall procure that prior to such cessation such assignee reassigns such rights and obligations to it; and
- c) the assigning Party shall procure that the assignee enters into an agreement with the other Party whereby the assignee agrees to observe all of the terms and conditions of this Agreement and, if required by the other Party, the assigning Party shall join in such agreement to guarantee the performance of it by the assignee.

32.3 Either Party may subcontract for the provision of its services or obligations under this Agreement, provided that, in such case, it will not be relieved of its obligations as specified in this Agreement.

33. Notices

33.1 Any notice which may be given by either Party under this Agreement shall be deemed to have been duly given if left at or sent by courier or facsimile transmission (confirming the same by courier) or, where the Parties expressly agree, by electronic mail, to an address to which notices, invoices or other documents may be sent under Clause 33.3 below, or, if no such notification is given, its principal place of business as set out herein.

33.2 Any such notice shall be deemed to have been made to the other Party on the day on which such communication ought to have been received in due course by registered mail or facsimile transmission. Any communication by electronic mail shall be deemed to have been made on the day on which the communication is first stored in the receiving Party's electronic mailbox.

33.3 All notices under this Agreement shall be sent:

To CCT -

Caribbean Cellular Telephone Limited
Geneva Place
333 Waterfront Drive
Road Town
British Virgin Islands
Attention: Chief Executive

To Digicel –

Digicel (BVI) Limited

Commercial In Confidence

Page 24 of 28

CCT ____

Digicel ____

The Simmonds Building
30 DeCastro Street
P.O. Box 961
Road Town, Tortola
British Virgin Islands
Attention: Chief Executive Officer

34. Dispute Resolution

34.1 Should a dispute or disagreement of any kind (a "**Dispute**") arise with respect to the interpretation or application of this Agreement, the Parties agree to use the following procedures to resolve the Dispute:

34.1.1 A Party that wishes to invoke dispute resolution procedures shall indicate its intention to do so by notice in writing to the other Party. Such notice shall contain all relevant details including the nature and extent of the Dispute, and the Party in receipt of the written notice shall acknowledge receipt of such notice within two (2) Business Days

34.1.2 Within five (5) Business Days of receipt of the dispute notice pursuant to Clause 34.1.1, the Parties shall commence good faith negotiations with the objective of resolving the dispute. If the Dispute is not resolved within fifteen (15) calendar days of receipt of the dispute notice, either Party may escalate the dispute pursuant to Clause 34.1.3.

34.1.3 If the Dispute is not resolved pursuant to the process in Clause 34.1.2, either Party may request in writing that the Dispute be escalated, identifying the Party's representative to whom that Party has escalated the dispute. The Party in receipt of such notice shall acknowledge receipt of the notice within two (2) Business Days, and will identify its representative to whom it has escalated the Dispute.

34.1.4 The Parties shall continue to negotiate in good faith to try to resolve the Dispute at the level of the appropriate senior managers.

34.1.5 If such good faith negotiations have not resolved the Dispute within a period of thirty (30) days from the date when notice is given, either Party may refer the Dispute to the Commission for resolution.

34.1.6 Nothing herein shall prevent a Party from:

- a) using other dispute resolution procedures agreed to by the Parties in writing; or

- b) seeking (including obtaining or implementing) interim relief in circumstances where the Party is, or will be immediately, subject to a pressing and substantial harm due to the conduct of the other Party. Notwithstanding any application for interim relief, the Parties shall resolve the substantive issue in dispute in accordance with the procedures set out in this Clause; or
 - c) referring the Dispute to the Commission in accordance with any dispute resolution procedure that has been adopted by the Commission.
- 34.2 For greater certainty, this process shall not apply to the resolution of faults pursuant to Paragraph 2.5.4 of the Joint Working Manual, or to the resolution of billing disputes or errors pursuant to Paragraphs 3.3 or 3.4 of the Joint Working Manual.

35. **Publicity**

- 35.1 Neither Party shall without the prior approval in writing (such approval not to be unreasonably withheld) of the other, make any public announcement or give any release or statement to the press, television, radio or other media relating to or in any way connected with this Agreement. The Party whose approval is sought shall reply to any request to make such an announcement within forty eight (48) hours. Notwithstanding the above, a Party may provide to the press periodic updates of a strictly general nature on issues related to interconnection. Such updates shall not include detailed information concerning the substance or subject matter of discussions or negotiations between the parties, and shall not include any statement or information the disclosure of which could result in harm to the other Party's reputation.

36. **Insurance Provisions**

- 36.1 Each Party will each maintain suitable and reasonably appropriate commercial general liability insurance sufficient to cover its liabilities under this Agreement and applicable SLA and as required by law. The parties may satisfy this requirement by obtaining appropriate endorsement to any master policy of liability insurance they may maintain.
- 36.2 The limits specified in the insurance policy shall in no way be construed as limits of liability or as constituting acceptance by either party of such responsibility of financial liabilities in excess of such limits. The owner of each policy shall bear all deductibles applicable to any insurance claim.
- 36.3 The policy shall insure against all risks it is prudent for the Parties to insure against. Those risks shall include, but not be limited to:
- a) Liabilities and potential liabilities under or in respect of this Agreement;

- b) Fidelity coverage for losses incurred as a result of dishonesty on the part of the Party's employees, agents, contractors or other personnel;
- c) Liability in respect of intellectual property rights infringement as more fully described in Clause 20.

36.4 The insurance requirements of this Article 36 shall remain in place for the Term of this Agreement or any applicable SLA. Certificates evidencing such insurance coverage shall be submitted to a Party, at their written request, within 10 (ten) working days. The certificates shall certify that the above insurances are in force. No such cancellation, modification or change shall affect the Party's obligation to maintain the insurance coverage required by this Agreement. Failure to maintain the insurances in accordance with this Article 36 shall constitute a default under this Agreement.

37. Filing of Agreement

37.1 Pursuant to Clause 2, this Agreement shall not come into effect until it is executed by both Parties and approved by the Commission. The parties undertakes to file this Agreement with the Commission at least thirty (30) Business Days before the proposed effective date agreed by the Parties.

38. Governing law and jurisdiction

38.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the British Virgin Islands.

39. Counterparts

39.1 This Agreement may be executed in counterparts, all of which shall constitute one agreement, and each such counterpart shall be deemed to have been made, executed and delivered on the date set out at the head of this Agreement, without regard to the dates or times when such counterparts may actually have been made, executed or delivered.

40. Application of the Transit Rate

40.1 In order to expedite interconnection of the networks between the Parties, the Parties agree that the Transit Rate shall not apply to calls originating on any CCT network in the British Virgin Islands and terminating on any DIGICEL network in the British Virgin Islands, or vice versa, conveyed on the Joining Service. For the avoidance of doubt, the Transit Rate shall apply when CCT or DIGICEL transmits calls between two third-party entities, i.e., when CCT or DIGICEL do not also originate or terminate the call in the British Virgin Islands.

40.2 The Parties acknowledge the jurisdiction of the Commission to issue orders in respect of the Transit Rate, following a public consultation and following the licensing of third-

party network or service providers, notwithstanding the above agreement of the Parties in respect of the application of the Transit Rate. Accordingly, the Parties agree to review the application of this charge if so required by the Commission following the licensing of a third party network or service provider in the British Virgin Islands.

41. Other Services

41.1 The Parties acknowledge that their networks would require significant investments and upgrades in order to provide indirect access or call origination services, and agree that, in the interests of expediting interconnection of their networks, they will not request such services of each other until such future date as may be agreed, unless Parties are compelled to do so by the Commission.

Signed as an Agreement on the th day of August, 2009

Signed for and on behalf of Caribbean Cellular Telephone Limited

By: _____
[Name]
[Title]

Signed for and on behalf of Digicel (BVI) Limited

By: _____
[Name]
[Title]