

DIGICEL CURACAO ORDER FORM

DIGICEL INFO				
Curacao Telecom N.V. (t/u Digicel Curacao, hereafter 'Digicel') Biesheuvel 24/25, Willemstad, Curaçao				
Digicel BSE / CAM				
Email Address				
Telephone Number				
CUSTOMER INFO				
Company Name				
Company Address				
Nominated Contact				
Email Address				
Telephone Number				
SERVICE INFO				
Effective Date				
Minimum Period		Years		
Bandwidth		MB		
Installation address				
BILLING INFO				
E-bill Email Address				
PRICING INFO (in Nalf. Ex. OB)				
Monthly Fee				
Deposit				
Installation Fee				
Credit Limit				
APPLICABLE TERMS AND CONDITIONS				
Part of this Agreement are:	<input checked="" type="checkbox"/>	Order Form		
	<input checked="" type="checkbox"/>	Schedule	<input checked="" type="checkbox"/>	Received
	<input checked="" type="checkbox"/>	Terms and Conditions Digicel	<input checked="" type="checkbox"/>	Received
AGREED AND EXECUTED BY DULY AUTHORIZED REPRESENTATIVES				
Customer				
Name			Name	Julius Girigori
Title/Function	Managing Director		Title/Function	Managing Director- Digicel
Signature			Signature	

Although Digicel monitors circuits proactively, the Customer is required to promptly report all faults and acknowledges that the timelines in the SLA below only apply from the time of first reporting to Digicel.

Priority	1	2
Description	Total loss of service – business impacting	Partial loss of service – non business impacting
Response Time	1/2 hour	5 hours
Target Repair Time	48 hours	72 hours
Updates	½ hourly	Every 4 hours

For the purposes of providing new connections, changing routing tables, updating facilities and general inspection, repair and maintenance, scheduled downtime may be required from time to time. Digicel will use all reasonable endeavors to schedule Planned Maintenance to cause as little hindrance as possible. Except in the case of an emergency, Digicel shall give prior notice to the Customer of any scheduled Planned Maintenance. Planned Maintenance means any work planned in advance to be carried out by Digicel or on behalf of Digicel which requires the availability of the Service to be suspended. Planned Maintenance will not be regarded as down time.

Where Digicel carries out an investigation of faults on its Service and/or Goods which are reported by the Customer, and the faults identified, are attributed to the Customer's acts or omission, Digicel reserves the right to invoice the Customer reasonable costs of carrying out the investigations and repairs and the Customer shall pay the costs within thirty days of the date of the invoice.

Technical escalation procedure:

Level	Type	Name	Telephone	Email
I	Corporate Support	Helpdesk	+5999 6540000	DigicelBusinessCuracao@digicelgroup.com
II	Digicel BSE / CAM	See Order Form	See Order Form	See Order Form
III	ICT Technical Support	Carryoles Maria	+5999 6854585	DC_ICT_Support@digicelgroup.com
IV	Head of Sales	Des Wynne	+5999 6854600	des.wynne@digicelgroup.com
V	Service Delivery Manager	Donald Dindial	+5999 6855497	donald.dindial@digicelgroup.com
VI	Chief Technical Officer	Julius Girigori	+5999 6962139	julius.girigori@digicelgroup.com



1. DEFINITIONS

Agreement means, in order of precedence, the Order Form these Terms and Conditions, the Schedule and any other document agreed by both Parties which is expressly stated to form part of this Agreement and sets out the terms under which Digicel will provide the Goods and Services to the Customer;
Customer means the individual, company, corporation or other legal entity so named and described in the Order Form with whom Digicel contracts to provide the Goods and Services;
Customer Nominated Contact means a person designated in the Order Form who will be Digicel's point of contact for all matters relating to the Agreement;
Goods means equipment (including but not limited to any CPE, IDU or ODU and associated software) sold by Digicel and placed on the Premises by Digicel for the sole use of the Customer.
Minimum Period means the period set out in the Order Form or where none is specified, a period of thirty six (36) months, to commence from the operational date of the Service;
Network means the telecommunications system owned and/or operated by the Customer including but not limited to LAN;
Premises means a place or service address at which Digicel installs the Goods and provides the Services; and
Services means the installation of the Goods and the ongoing services to be provided by Digicel as particularized in the Agreement.

Any reference to a Party in the Agreement includes his servants, successors, personal representatives, agents and permitted assigns.

2. PROVISION OF THE GOODS AND SERVICES

2.1 Digicel shall not be obliged to provide the Goods and Services, unless and until access to the Premises has been satisfactorily provided for the installation of the Goods.
 2.2 If either the Goods and/or Services cannot be provided because the Customer has failed to provide such access Digicel, shall be entitled to terminate this Agreement by giving fourteen (14) days' written notice to the Customer and further Digicel shall be entitled in case of such termination to a refund of Digicel's lost earnings as a result of this termination by the Customer to Digicel.

3. ACCESS TO AND PREPARING THE CUSTOMERS' PREMISES

3.1 The Customer shall, at its own expense, prepare the Premises according to any reasonable instructions as may be provided by Digicel and/or any regulatory body and shall provide Digicel with access to all parts of the Premises for the purpose of provide the Service, line testing, surveys, installation and maintenance of Goods.
 3.2 The Customer agrees to provide, at its own expense a suitable place, conditions and support for Goods and Services including all necessary trunking, conduits and cable trays in accordance with relevant installation and standard use. Digicel shall undertake to install Ethernet cabling as determined necessary during initial site survey.
 3.3 On completion of any modifications or alterations to the premises reasonably required by Digicel to prepare the premises for the provision of the Service, the Customer will also be responsible for making good any damages caused by Digicel's modifications and/or alterations.

4. GOODS

4.1 The ownership of any equipment which Digicel installs on the Premises or provides to the Customer remains with and belongs with Digicel unless the Parties agree otherwise in this Agreement and Customer has paid Digicel for any such equipment in which case title passes to the Customer on receipt of such payment.
 4.2 Where the Customer adds to- or modifies the Goods without Digicel's express prior written approval, Digicel shall not be held liable by Customer or any third party for any loss of or damage to the Goods (directly nor indirectly), except where such loss or damage is due to or is directly caused by the negligent or willful act or omission by Digicel, its agents, employees or its subcontractors.

5. ACCESS AND SITE REGULATIONS

5.1 The Customer will, with prior notice from Digicel, permit and secure access to the Premises to Digicel staff and/or anyone acting on Digicel's behalf, on production of a valid identity card enabling Digicel to carry out its obligations under this Agreement.

6. CUSTOMER'S RESPONSIBILITIES

6.1 The Customer undertakes:
 a. Not to use the Goods and Services in a manner that would jeopardise the operation of the Digicel network;
 b. To use the Service strictly in accordance with this Agreement, applicable law and the instructions provided by Digicel;
 c. It is ultimately responsible for any and all activity and content that originates from its Internet circuit regardless of its knowledge of and consent to such activity. This includes but is not limited to activity by its employees;
 d. not to make unreasonable or excessive demands on the network nor make improper or abusive use of the network. Digicel, acting reasonably, shall determine whether Customers have made excessive, improper or abusive use of this service and if deemed to be making such use, the service may be restricted, suspended or terminated.
 e. Not to interfere with any labels or warnings affixed to the Goods; and
 f. Not to create or permit any charges, pledges, liens or encumbrances of any kind to be created in respect of Goods on the Premises which the Customer has not paid for in full, except for liens caused by Digicel.

7. CHARGES, PAYMENT TERMS AND DEPOSITS

7.1 The Customer agrees to pay all charges for the Goods and Services in the amount and manner as set out in the Schedule and/or Order Form hereto. All charges set out in the Schedule and/or Order Form hereto are exclusive of any installation, taxes and other surcharge unless stated otherwise in this Agreement.
 7.3 Charges for the Goods and Services are payable in accordance with the payment schedule as set out in the Schedule and/or Order Form hereto.
 7.4 Digicel shall present the Customer an invoice on a monthly basis for the amounts due which shall be paid by Customer within thirty (30) days of the provisioning date thereof.

8. EXCLUSION OF LIABILITY

8.1 Digicel shall not be held liable for any direct, indirect, or consequential loss suffered by Customer (or any third party claiming through Customer) due to any of the following:
 a) suspension or non-availability of any Service; and/or
 b) suspension or termination of this Agreement; and/or
 c) interruption of or failure to connect to the equipment; and/or
 d) any connection made to or by the equipment being overheard or intercepted by any third party; and/or
 e) any data/information transmitted to or by the equipment being altered or lost.
 All liability for the above incidents, damages or losses, is expressly denied by Digicel and acknowledged by Customer. In any event Digicel's total liability under this Agreement will not exceed 100% of the fees paid by Customer in the six months preceding the event giving rise to liability.
 8.2 Digicel shall not be liable to Customer or any joint user, for any claims whatsoever resulting from the inability to provide the Services due to factors beyond its control, including but not limited to, Acts of God, Acts of war, Acts of terrorism and other enemies, weather events, civil disturbances, industrial action, governmental action, force majeure, power failures, accidents, the act or omission of any other telecommunication carrier in Curaçao or elsewhere and/or default or failure of any third party.
 8.3 Digicel, its associated or affiliated companies, their respective officers, agents, managing-directors, supervisory-directors, principals, employees, attorneys, underwriters, successors and assigns will not be liable for or in respect of any effects, claims, actions, proceedings, suits and causes of action (whether at law or in equity and including emotional distress), liens, debts, damages, fatalities, losses or injury (whether property or personal, consequential or otherwise), judgments, liabilities, costs and expenses of every nature or kind whatsoever whether known or unknown, suspected or unsuspected, (altogether, "claims whatsoever") arising out of or in respect to our equipment and/or any electronic or radio systems in equipment, vehicles or aircraft in your vicinity, or of any emissions or transmissions to, from, by or through our Network and/or equipment.
 8.4 If Digicel offers Goods and/or Services as agents of any principal providers(s), we will accept neither responsibility nor liability to Customer for the performance, loss of profit, emotional or mental distress or disappointment, or provision thereof by such providers.
 8.5 Digicel shall not be liable to the Customer in contract, tort (including negligence) or otherwise for direct or indirect loss of profits, business or anticipated savings or for any indirect or consequential loss or damage whatsoever or for any failure of interruption of the operation of the Goods for whatever reason.
 8.6 Notwithstanding anything else herein, Digicel's liability to the Customer in contract, tort (including negligence) or otherwise in relation to this Agreement or the provision by it of the Goods or Services to the Customer for any one incident or series of related incidents shall be limited to an amount equal to all payments made to Digicel by the Customer.

9. HOLD HARMLESS

9.1 Customer shall fully indemnify and hold Digicel harmless against the following:
 a) All damages or injury(y)(ies) caused to the Service(s) and the network as a result of Customer's negligence or failure to abide by your obligations hereunder;
 b) All claims arising out of your act or omission in conjunction with the Service(s) provided by the Company.

10. FORCE MAJEURE

10.1 If a Party (the "Affected Party") is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event the Affected Party's obligations under this Agreement will be suspended while the Force Majeure Event continues to the extent that it is so prevented, hindered or delayed however either Party may terminate this Agreement if the Force Majeure continues for more than one month. For the avoidance of doubt in the event that Digicel is the Affected Party, the Customer's obligations to pay for Services shall be suspended for so long as the Services themselves are suspended. If a Party asserts Force Majeure as an excuse for failure to perform any of its obligations hereunder, the Affected Party must prove that it took reasonable steps to minimize delay or damages caused by foreseeable events, that the Affected Party substantially fulfilled all non-excused obligations, and that the other Party was timely notified of the likelihood or actual occurrence of an event described in Article 10.2 below.
 10.2 For the purposes of this Agreement, a Force Majeure Event means: fire; flood; lightning; explosion; war; strike; embargo; labor dispute; government requirement; civil or military authority; act of God or nature; act or omission of carriers or suppliers; acts or failures to act of any governmental or competent authority, or any other causes beyond a Party's reasonable control, whether or not similar to the foregoing.

11. TERM AND TERMINATION

11.1 **Term**
 This Agreement is effective as of the effective date and will remain in force for the Minimum Period. After the Minimum Period the Agreement will be renewed automatically for periods of one year, unless one of the Parties notifies the other at least 60 days in advance in writing.
 11.2 **Termination**
 11.2.1 Either Party may terminate this Agreement with immediate effect, if the other is:
 a) the subject of a bankruptcy order, or
 b) becomes insolvent, or
 c) makes any arrangement or composition with or assignment for the benefit of its creditors, or
 d) if it goes into either voluntary liquidation (otherwise than for the purposes of a solvent reconstruction or amalgamation), or
 e) compulsory liquidation or if a receiver, examiner or administrator is appointed over its assets; or
 f) in material breach of its obligations under this Agreement and such breach is not remedied within thirty (30) days written notice of such breach being given to it.
 However, termination hereunder shall not affect any accrued rights and liabilities of the Parties hereto arising prior to the termination of the Agreement.
 11.3 The Customer may at any time on giving thirty (30) days' written notice to Digicel terminate any Service with immediate effect prior to the expiry of the applicable Minimum Period provided always that the Customer pays to Digicel the total of all remaining rental charges for the Service so terminated for the remainder of the applicable Minimum Period.

12. MISCELLANEOUS

12.1 A waiver by either Party of any remedy, right, power, breach, or by the other Party of any of the terms, provisions or conditions of this Agreement or the acquiescence of either Party in any act (whether commission or omission) which but for such acquiescence would be a breach as aforesaid shall not constitute a general waiver of such remedy, right, power, term, provision or condition or an acquiescence to any subsequent act contrary thereto.
 12.2 Neither Party may assign or subcontract this Agreement in whole or in part without the written consent of the other Party except that:
 a) Digicel may assign or subcontract all or part of the Agreement to a company provided that Digicel shall remain obligated for its responsibilities under this Agreement until they are completed; and
 b) The Customer may assign all or part of the Agreement to a company that is an affiliate of the Customer, provided that the Customer shall request prior written approval from Digicel which shall not be unreasonably withheld, and the Customer shall remain fully obligated for its responsibilities under this Agreement until the assignment is fully completed.
 12.3 This Agreement can be amended by Digicel from time to time. The amendments of this Agreement also apply in respect of any other existing Agreement(s) between the Parties. The amendments shall enter into force fourteen (14) days after the written notification or, on an earlier or later date as may be specified in the notification. If Customer doesn't accept the amendment, customer can notify Digicel in writing and parties will enter into good faith negotiations. If such written notification is not received by Digicel within 14 days after the notification of the amendments, customer will be deemed to have accepted the amendments.
 12.4 This Agreement supersedes all prior representations, arrangements, understanding and agreements between the Parties (whether written or oral) relating to the subject matter hereof and sets forth the entire and complete understanding between the Parties relating to the Goods and Services. The Customer warrants that it has not relied on any representation, arrangements, understanding and agreements between the Parties (whether written or oral) not expressly set out or referred to in this Agreement.

13. SEVERANCE

13.1 If any of the provisions of this Agreement, become invalid, illegal or unenforceable in any respect under any law, the validity, legality and/or enforceability of the remaining provisions shall not in any way be affected or impaired.

14. NOTICES

14.1 Any notice to be served under this Agreement shall be in writing and served upon the recipient at its address herein set out below (or such other address as may be notified for this purpose) either by hand, by first class mail, by facsimile or e-mail and shall be deemed served seven (7) days after if sent by regular mail, or upon delivery if delivered by hand, and on confirmation of transmission if sent by facsimile.

15. GOVERNING LAW AND JURISDICTION

15.1 This Agreement shall be governed by the laws of Curaçao. Disputes arising between the Parties as a result of this Agreement shall be submitted exclusively to the competent Courts in Willemstad, Curaçao.