



# Asymmetric Digital Subscriber Line Internet Access Terms

## CABLE & WIRELESS

### A. Definitions:

1. "Service Authorization" means the Cable & Wireless (West Indies) Limited ("C&W") form signed by C&W and its customer ("Customer") which incorporates these terms.
2. "Agreement" means the Service Authorization and these terms together.

### B. Service Description:

1. The Cable & Wireless ("C&W") Digital Subscriber Line Internet Access Service ("Service") is an Internet access service that provides dedicated connections from a Customer's premise to the Internet via Digital Subscriber Line local facilities and C&W's Internet network.
2. At the originating Customer premise, the Customer's equipment places data into Internet Protocol packets ("IP") and gives each packet a terminating address, and C&W routes registered IP packets over its Internet network to the terminating Internet location or peering point with another Internet service provider.
3. The term "Service" shall also include any C&W - provided equipment ("Equipment") used at Customer's premises to provide the Service.
4. Customer will configure, and install each item of Equipment (to be purchased by Customer from C&W) as indicated on the Service Authorization.
5. Title to an item of Equipment will pass to Customer upon C&W's receipt in full of payment therefor, and risk of loss for or damage to an item of Equipment will pass to Customer upon its delivery to Customer.
6. In the event that C&W determines that an item of Equipment requires replacement, Customer will replace it with a functionally equivalent new or used item of Equipment.

### C. Charges:

1. Customer will pay all applicable charges for the Service.
2. Charges will be invoiced monthly and are due before the next monthly invoice date.
3. Amounts not paid within twenty (21) days after the invoice date are past due.
4. Interest shall be applied on balances that remain unpaid twenty one (21) days following the invoice date, in the amount of two percent (2%) above the prime lending rate of local bankers for C&W for the time being in force in respect of all overdue amounts, starting from the invoice date
5. The prices stated in this Agreement do not include any applicable taxes
6. The monthly charges will be billed effective as of the date the Service is first made available for Customer's use.
7. C&W reserves the right to change the charges upon thirty (30) days advance notice to Customer.
8. If Customer requests C&W to expedite the delivery of Service, C&W will use its reasonable efforts to so expedite delivery, and Customer will pay any applicable charges therefor.
9. To assure payment and if requested by C&W, Customer will post a bond or provide a security deposit acceptable to C&W.

### D. Term and Termination:

1. The term of the Service ("Term") will start as of the billing effective date ("Term Start Date") and will continue for a minimum period of 12 months..
2. After the expiration of the minimum period, the Term will automatically renew for successive thirty (30) day Terms at C&W's then-current month-to-month rates, regardless of the original Term, unless either party provides the other party thirty (30) days prior written notice that it does not wish for the Term to renew.
3. Customer may terminate Service at any time on thirty (30) days prior written notice, except during the cooling off period when cancellation can be effected without prior written notice. Such cooling off period shall be 15 calendar days from the service Start date ("Service Start Date"). Upon such cancellation, Customer shall be liable for the service installation charge and the pro-rated portion of the monthly service charge for the period when the Customer had the service. Also, C&W shall credit the Customers account with the cost of any modem purchased directly from C&W, less a 10% restocking fee. For cancellations after the cooling off period the Customer shall be liable for any applicable early termination charges as set forth below.

4. If Customer orders Service subject to a term commitment and if Service is discontinued prior to the end of that term commitment, Customer will pay an early termination charge equal to fifty percent (50%) of the total monthly charges for the Service multiplied by the number of months remaining in the term commitment; provided, however, that this charge will not apply if (i) Customer terminates Service due to C&W being in default hereunder, or (ii) C&W terminates Service due to any reason other than the Customer being in default hereunder.
5. C&W may suspend Service and/or terminate this Agreement if Customer breaches this Agreement and fails to cure such breach within three (3) days after receiving notice thereof from C&W; provided, however, that C&W may immediately suspend Service and/or terminate this Agreement without notice (i) in order to prevent damage to or degradation of its Internet network integrity which may be caused by the Customer or anyone using Customer's access, (ii) to comply with any law, regulation, court order, or other governmental request or order which requires immediate action, (iii) for a violation of C&W's Internet Acceptable Use Policy ("AUP") as C&W may advise from time to time and as may be modified by C&W without notice from time to time, or (iv) for other behavior that in C&W's sole discretion may be deemed to be illegal or otherwise to protect C&W from legal liability.
6. C&W will endeavor to give Customer notice regarding the reason(s) for suspension or termination as soon as reasonably practicable after such suspension or termination.

### E. Additional Rights and Obligations:

1. C&W will operate and maintain the Service, contingent upon C&W's (i) ability to maintain necessary licenses or permissions, and (ii) availability of network capacity and connections.
2. Customer will, at its own expense, be responsible for all site preparation activities necessary for installation of the Service.
3. C&W is not responsible for the installation, maintenance, compatibility or performance of any third party equipment or software not provided by C&W, and if such third party equipment or software impairs the Service, (i) Customer remains liable for payment, and (ii) if it is likely to cause hazard or service obstruction, Customer will eliminate such likelihood at C&W's request.
4. In the event Customer provides any router to interface with the Service, Customer will cooperate with C&W in configuring and managing such router(s) in order to implement and operate the Service.
5. Customer will give C&W and its suppliers reasonable access to its premises at all reasonable times.
6. Customer will not misuse the Service (i.e. violate the AUP, permit any use of the Service which is unlawful, harassing, or which infringes upon another's intellectual property rights, or which otherwise constitutes network abuse), and Customer will be responsible for any such misuse.
7. Although C&W may configure the Service so as to provide some security features, the Customer shall be solely responsible for providing for any security or privacy that it may desire for its computer network and any data stored on that network or accessed through the Service. The Customer acknowledges and assumes all liabilities relating to, and risks associated with, unauthorized access by a third party via the Service to such computer network and data.
8. C&W may communicate security issues to Customer from time to time when misuse is observed or reported by others.
9. C&W has no obligation to monitor the Service; however, C&W may monitor the Service and disclose information gained from such monitoring in order to (i) satisfy any law, regulation or other governmental request, (ii) operate the Service and administer C&W's networks, or (iii) protect itself or its subscribers.
10. C&W reserves the right to refuse to post or to remove any information or materials, in whole or in part, that in its sole discretion are unacceptable, undesirable, or in violation of this Agreement.
11. The Customer shall not use the Service for the transmission of voice data or to allow the Service to be used, modified or adapted to transmit voice or data on the public telecommunications system of either C&W or any foreign telecommunications Provider, and the Customer shall not connect to the PSTN at either the local or the distant end.



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### **F. Warranties and Liabilities --**

1. Customer understands that, except for certain services specifically identified as C&W services, C&W does not operate or control the Internet.
2. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR ITS USE OF THE INTERNET.
3. C&W MAKES NO EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS REGARDING ANY MERCHANDISE, INFORMATION, PRODUCTS OR SERVICES PROVIDED THROUGH THE INTERNET.
4. C&W does not warrant any item of Equipment in any manner; C&W will, however, transfer to Customer (to the extent permitted by an equipment supplier) any warranty provided by such supplier, with C&W retaining the authority to exercise Customer's rights thereunder until the discontinuation of service.
5. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NONINFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
6. NO ADVICE OR INFORMATION GIVEN BY C&W'S EMPLOYEES, AGENTS OR CONTRACTORS (INCLUDING WITH RESPECT TO ANY EQUIPMENT THAT MAY BE RECOMMENDED FOR PURCHASE AND/OR USE WITH THE SERVICE) SHALL CREATE A WARRANTY.
7. C&W shall not be liable for, and is excused from, any failure or delay in performance that is due to acts of God, acts of civil or military authority, acts of the public enemy, war or threats of war, accidents, fires, explosions, earthquakes, floods, unusually severe weather, epidemics, or due to any other cause beyond its reasonable control.
8. UNDER NO CIRCUMSTANCES SHALL C&W OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT RESULT FROM CUSTOMER OR CUSTOMER'S USERS' USE OF OR INABILITY TO ACCESS ANY PART OF THE INTERNET OR RELIANCE ON OR USE OF INFORMATION, SERVICES OR MERCHANDISE PROVIDED ON OR THROUGH THE SERVICE, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, LOSS, THEFT, OR DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE.
9. Notwithstanding anything to the contrary stated herein, C&W's maximum liability hereunder will not exceed an amount equal to the total of the monthly recurring charges paid by Customer hereunder for the twelve (12) months preceding the month during which such liability arises.
10. Customer shall defend, protect and hold harmless C&W and its affiliates from and against any liabilities, actions, losses, costs, or claims incurred by them as a result of (i) any use or misuse of the Service (whether by Customer or any other party), or (ii) any claims arising out of the use of any third party equipment or software with the Service based on the alleged infringement or misappropriation of any intellectual or other property rights of any third party.
11. C&W and Customer expressly agree that this Agreement does not give rise to any third party being a third party beneficiary or being entitled to any rights whatsoever.
12. In the event an action is brought by C&W against Customer to enforce this Agreement, in addition to any other remedy available to C&W, Customer shall reimburse C&W for reasonable attorneys' fees and expenses of any kind or nature incurred in connection therewith.

### **G. Additional Terms --**

1. Neither party may use the other's name in trademark, tradenames or other proprietary identifying symbols without the prior written approval of the other party.
2. Any notice and similar communications concerning this Agreement ("**Notice**") will be in writing, and will be either (a) delivered in person, or (b) sent to the other party by (i) certified mail (with return receipt requested), (ii) facsimile (electronically confirmed and followed up immediately by regular mail), or (iii) electronic mail (followed up immediately by regular mail). Notices will be delivered or sent to the following addresses or to such other address as either party may hereafter

- establish by notice given in the manner prescribed in this paragraph: (i) if to Customer: to the address and signatory set forth in the Service Authorization, and (ii) if to C&W: Attention: EVP, Legal & Public Policy at the address set forth in the Service Authorization. Notwithstanding the above, C&W may give notice to Customer (other than with respect to breach, default, suspension or termination) by including appropriate notification in Customer's monthly invoice. A Notice will be considered given when delivered in the manner prescribed in this paragraph.
3. Customer may not resell the Service or otherwise assign or transfer this Agreement or any rights or obligations without the prior written consent of C&W.
  4. In the event that one or more of the provisions herein is for any reason held to be illegal or unenforceable, this Agreement will be revised only to the extent necessary to make such provision(s) legal and enforceable; provided, however, that this Agreement as revised is consistent with the parties' original intent.
  5. Either party's failure to insist upon strict performance of the terms of this Agreement or to exercise any rights or remedies hereunder shall not waive any of its rights to require strict performance of such terms, to assert any of the same rights, or to rely on any such terms any time thereafter.
  6. Customer will not disclose the prices or other terms of this Agreement.
  7. This Agreement is made in, governed by and subject to the laws and the jurisdiction of the courts of The British Virgin Islands, without regard to its conflicts of law provisions.
  8. Any cause of action Customer may have with respect to the Service must be commenced within one (1) year after the claim or cause of action arises or such claim or cause of action will be barred.
  9. C&W and Customer are independent contracting parties, and this Agreement will not constitute the parties as principal and agent, partners, joint ventures, or employer and employee.
  10. No Customer purchase orders or similar documents will vary or add to the terms of this Agreement.
  11. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and it supersedes all prior or contemporaneous oral or written agreements, understandings and representations, and can be modified only in writing by the parties.
  12. C&W may at any time on giving 30 days notice to the Customer vary these terms and conditions.