



CABLE & WIRELESS
ANGUILLA

POSTPAID MOBILE TELECOMMUNICATIONS SERVICES TERMS AND CONDITIONS

1. EXPRESSIONS USED IN THIS AGREEMENT

In this Agreement:-

“**Agreement**” means these terms and conditions including any documents, Schedules, referred to or incorporated herein, the terms on the Cable & Wireless Application Form, and any additional or varied terms and conditions as we may notify you;

“**Activation Charges**” means the charges payable by you for connection of the Equipment;

“**Airtime**” means use of the Mobile Network in consideration of payment of usage charges;

“**Cloned**” means the copying of the unique identification number and telephone number of the Equipment into another piece of Equipment which enables fraudulent use of the Mobile Network.

“**Customer’s Equipment**” means the telecommunications equipment supplied by the Customer connected to Cable & Wireless’ Mobile Network;

“**Effective Date**” means the date that this Agreement becomes effective which shall be the date on the Application Form;

“**Equipment**” means New Equipment, or the Customer’s Equipment connected to Cable & Wireless’ Mobile Network;

“**Mobile Network**” means the analogue and/or digital mobile communications system provided by Cable & Wireless under this Agreement;

“**New Equipment**” means the telecommunications equipment that we agree to provide to you and any replacement equipment and/or parts provided by us pursuant to Schedule 1;

“**our normal working hours**” means 8.00am to 5.00pm Monday to Friday and 9:00am to 1:00pm Saturday (except public holidays);

“**Price Lists**” means our most current published Price Lists for Service, and New Equipment. It includes any special pricing that we may offer for promotions, copies of which are available from our Customer Service Department;

“**Service**” means mobile telephone and associated services to be provided by us under this Agreement;

“**Service Address**” means the address (or any subsequent address to which you move) at which we will bill you for the Service;

“**Service Charges**” means our charges for the provision of the Service to you;

“**Service Start Date**” means the date that the Service is operational;

“**Usage Charges**” means our charges for airtime and toll charges, additional telephone services, and any other charges not covered by the Service Charges;

“**us**” or “**we**” means Cable and Wireless (Anguilla) Limited, its successors in title and assigns;

“**you**” means the Customer with whom we make this Agreement and includes a person who we reasonably believe is acting with your authority or knowledge.

2. SALE OF NEW EQUIPMENT

2.1 If we sell you New Equipment it shall be upon the terms and conditions set out in Schedule 1 and this Agreement.

2.2 Operating supplies are not included as part of the New Equipment.

2.3 The Price for the New Equipment is set out in our Price List.

2.4 The Price does not include:

2.4.1 any sales tax, or any other levy or charge imposed by the Government of Anguilla, which shall be paid by you in such manner and at such rate prescribed by law.

2.5 The Price shall remain valid for 30 days from the date on which we issue a written quotation to you showing the Price. We may vary the Price if we do not receive a written Application from you within such 30-day period.

3. ACTIVATION

3.1 We will agree to a date for activation of Equipment with you in advance. We will, where possible, keep to the activation date but cannot be liable for any loss you may suffer if we fail to meet the date for reasons beyond our reasonable control.



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4. SERVICE

- 4.1 We agree to provide the Service to you for as long as you comply with the terms of this Agreement. We do not guarantee that our standard channels and international telephone connections will support data or fax. We will use our reasonable skill and care in providing the Service, but cannot guarantee fault-free performance.
- 4.2 We shall maintain the Service to the best of our ability. We may, because of matters outside our control or for commercial or technical reasons, need to amend the Service provided. We will give you reasonable notice of any change of Service, where possible.
- 4.3 We may from time to time provide Service to you as part of a trial or test service. If so, we reserve the right to withdraw such trial or test service at any time without notice.
- 4.4 If you take the Service you cannot sell or agree to transfer the telephone number to anyone else without our prior written approval.

5. CHARGES

- 5.1 You agree to pay our charges for provision of the Service to you whether you use the Service or someone else does, as set out in our Price List, and explained below:
- 5.1.1 Activation Charges - These are payable once you sign the Agreement.
- 5.1.2 Special Activation Charges - These are payable by you if we provide special connection Service and we shall agree with you on our charges for such Service.
- 5.1.3 Access Charges - These are generally payable monthly in advance for your monthly activation, call plan and features.
- 5.1.4 Usage Charges - These are for airtime use and toll charges and are generally payable monthly in arrears and are billed at the end of the billing cycle in which they were incurred. Usage Charges shall be charged at the rates prevailing at the time of connection of the call.
- 5.2 We may agree with you on different billing cycles depending on your typical spending levels and may change your billing date for operational reasons.

You may make any enquiries relating to a particular account either in person at our local office, or in writing, within three months of the date of the account in question. We are not obliged to consider claims that any account is incorrect made after three months have elapsed from the date of that account, but if we agree to do so we may charge a reasonable fee for carrying out such investigation. If following any such investigation, it is found that such an account was in fact incorrect we shall refund you that reasonable fee.

- 5.3 We shall prepare an account monthly and will send it to you by ordinary post or it will be delivered to the Service Address (or such other address as you may notify us in writing from time to time). You must pay each account by the pay-by date shown on that account. Failure to receive an account does not relieve you of the responsibility to pay the amount due. If you do not receive a bill, you should check with our local office.
- 5.4 If you have agreed to pay your bill by direct debit or credit card, you authorise us to alter your variable direct debit or credit card instruction in accordance with the charges applicable to your Service. We shall notify your bank or card issuer each billing period of the amount due.
- 5.5 Because of the extra administrative costs incurred by us, when accounts are not paid when due we may charge you interest on overdue amounts from the due date until receipt of payment by us, at 3% per annum over the base rate of FirstCaribbean International Bank in Anguilla.

6. CREDIT REFERENCING AND DEPOSITS

- 6.1 On applying for Service you shall pay us a deposit as security for the non-payment of bills.
- 6.2 We may carry out a credit check on you at any time before or during this Agreement and if you do not meet our credit criteria or persistently default in paying your bills on time we may:
- 6.2.1 require you to pay a further deposit as is reasonable in the circumstances;
- 6.2.2 impose such credit limit on your account in respect of Usage Charges (billed and unbilled) as is reasonable in the circumstances and which may be set at the level of your deposit and to



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suspend the Service, if you exceed such credit limit, until we have received payment in respect of outstanding charges.

7. LOSS OR THEFT OF EQUIPMENT

- 7.1 In the event of loss or theft of the Equipment you shall immediately notify us orally of such theft (with faxed confirmation to follow within 24 hours). Upon such oral notification we shall forthwith bar the Equipment from making or receiving calls. If the Equipment is subsequently recovered you shall provide a faxed request to us to lift the bar on the Equipment.
- 7.2 You agree that until such notice of the loss or theft has been properly received by us in accordance with Clause 7.1 above, any call charges incurred with or without your knowledge, using the Equipment, shall be payable by you.
- 7.3 New Equipment that has been lost or stolen shall be replaced in accordance with the terms set out in Schedule 1.

8. CLONED EQUIPMENT

- 8.1 We have carried out a technological change to our Network which allows analogue mobile phones to be programmed with a special authentication number which protects that equipment from being Cloned.
- 8.2 Where you have analogue Equipment connected to our Network which:-
- 8.2.1 is not capable of being authenticated; or
- 8.2.2 is capable of being authenticated but has not been
- you agree to accept liability for any usage charges generated as a result of the phone being Cloned.
- 8.3 It is our policy to recommend an upgrade to the digital Network where an item of Equipment has been Cloned. In the event that you do not wish to upgrade then you agree to accept liability for any subsequent usage charges generated as a result of the Equipment being Cloned.

9. TERMINATION

- 9.1 You may cancel this Agreement prior to the Service Start Date by giving us written notice. We may

charge you our reasonable expenses for any work that we carried out prior to receipt of your notice.

- 9.2 After the expiration of 12 months from the Service Start Date you may terminate this Agreement by giving us 30 days written notice. You agree that you will pay the Service Charges and Usage Charges up to the end of the notice period or until you stop using the Service, whichever is later. If you terminate this Agreement otherwise than in accordance with this clause you will pay us a penalty for early termination in the amount set out in the Application Form.
- 9.3 We may terminate this Agreement prior to the Service Start Date where it proves impossible, by reason of our construction or network requirements, to provide the Service. In such circumstances we will refund to you any monies paid to us.

10. USE OF THE SERVICE

- 10.1 You must use the Service in accordance with our reasonable instructions notified to you in writing from time to time.
- 10.2 You must not use the Service
- 10.2.1 to send any message which is defamatory, abusive, offensive, obscene, menacing or illegal;
- 10.2.2 fraudulently or in connection with any criminal offence, or for any purpose prohibited by common law, statute, regulation, rule, by-law international convention or other law;
- 10.2.3 in a manner which causes needless anxiety or inconvenience to or infringes the rights of any other person.
- 10.2.4 in any manner which interferes with, modifies or adapts New Equipment supplied by us whether under this or any other Agreement or causes anything to be placed in electrical contact with or to be used in such a manner or position in relation to New Equipment that it transmits a message or other communication to or from such New Equipment;
- 10.2.5 in any manner or for any purpose which may circumvent, frustrate or diminish our right to provide telecommunications systems and service in Anguilla, including Callback;



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- 10.2.6 in such a way as to avoid, evade or reduce payment of our standard charges for the Service, including Callback;
- 10.2.7 to provide or receive any telecommunications service which is not provided by or with our written consent;
- 10.2.8 in a manner that, we reasonably believe adversely affects the provision of telecommunications Service to our other customers; or
- 10.2.9 in any manner to transmit voice or data communications to a destination outside Anguilla by a telecommunications route other than that established or approved by us for that purpose, and you agree that we may block transmission over such unauthorised routes.
- 10.3 You agree to be responsible for any claims or liabilities arising out of your failure to observe this condition relating to your use of the Service.

11. UNUSUALLY HIGH USAGE OF THE SERVICE

- 11.1 In exceptional circumstances, for your and our protection, we can suspend the Service if the number of Calls or charges for Calls made by you has increased to such an extent that it appears, in our reasonable opinion, that the Service is not being used by you in a manner consistent with your previous use.
- 11.2 We will make reasonable efforts to contact you before we suspend the Service, but we are not liable for any loss you may suffer if we fail or are unable to do so or if we suspend the Service for a reason covered by this Clause 11.
- 11.3 If we suspend the Service, we will not provide it again until you satisfy us that you know of the increase in use of the Service and that you will pay the Usage Charges relating to such increased usage. We may in addition:
- 11.3.1 bar you from making international calls and/or premium rated calls if, in our reasonable opinion, the charges for such calls form a significant proportion of the Usage Charges.

We will act reasonably in deciding whether to do any of these things.

12. MAINTENANCE

- 12.1 We shall provide such maintenance and repair as we reasonably consider necessary to provide the Service.
- 12.2 You agree to notify us promptly of any defect in the operation of our Network or provision of the Service by telephoning or writing to our Customer Services Department. We aim to respond as soon as possible during our normal working hours. If you request, we will consider working outside our normal working hours, but you must pay us our additional charges at our charging rates set out in the Price List.
- 12.3 You must not attempt to restore the Service nor permit anyone else to do so.
- 12.4 We may charge you for our reasonable costs and expenses attending to fault reports or in providing maintenance and repairs if the need for such maintenance arises out of:
- 12.4.1 misuse, neglect or damage to the New Equipment; or
- 12.4.2 your failure to reasonably comply with the provisions of this Agreement.

13. SUSPENSION OF SERVICE

- 13.1 We may immediately suspend the Service if:
- 13.1.1 you fail to make payment when due, of our charges for the Service;
- 13.1.2 you exceed the agreed credit limit;
- 13.1.3 you fail to satisfy us as to your creditworthiness at any time;
- 13.1.4 we are entitled to terminate this Agreement;
- 13.1.5 we need to carry out repairs, maintenance or improvements to any part of our Mobile Network;
- 13.1.6 we believe that any Equipment used in connection with the Service poses a danger to persons or property or interferes with any Service;
- 13.1.7 there is an emergency or in order to provide or safeguard service to a hospital or emergency or other medical services;



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- 13.1.8 we are required to do so by any lawful authority;
or
- 13.1.9 we believe that the Service is being used in a way prohibited by Clause 10 or fraudulently.

13.2 Where we suspend the Service as a result of your breach of this Agreement, we may not restore the Service unless we are satisfied that there will be no repetition of the circumstances giving rise to the suspension. In the case of non-payment by you of any of our charges we may not restore Service until you have paid us all outstanding charges, a reconnection charge and a deposit to secure your future liabilities.

14. CHANGING THE AGREEMENT

- 14.1 You may add to or reduce the Service from time to time by contacting our Customer Services Department. Any upgrade or downgrade in service level or any other change in Service must be effective for a minimum period of one month (or such longer period up to one year as we may in future notify you in writing) before a further change in the same Service may be implemented. The charges applicable to your changed Service will be as set out in our current Price List at the time we agree to the change.
- 14.2 We may from time to time change the terms of this Agreement including our Service Charges and/or Usage Charges. Where possible we shall give you advance notice of any changes which significantly affect the Service or increase your Service charges and/or Usage Charges.

15. IF YOU BREAK THIS AGREEMENT

- 15.1 We may terminate this Agreement with immediate effect if you:
- 15.1.1 break or continue to break your obligations under this Agreement. In the case of minor breaches which are capable of remedy, we shall give you notice of the breach and at least 7 days in which to remedy the breach before we terminate this Agreement;
- 15.1.2 if you become bankrupt or insolvent; or
- 15.1.3 our Licence expires or is revoked.

16. IF WE BREAK THIS AGREEMENT

- 16.1 We accept liability for our failure to perform our obligations. However our liability is limited as set out in Clauses 16.3 to 16.4 below.
- 16.2 We do not exclude or restrict our liability:
- 16.2.1 for death or personal injury caused by our negligence; or
- 16.2.2 for any liabilities that cannot by law be excluded.
- 16.3 Our liability under this Agreement is limited to the total charges for the Service provided during the month in which such liability arises.
- 16.4 We shall not be liable for special, incidental or consequential damages, including any damages resulting from loss of use, loss of data, loss of profit or loss of business, whether arising out of or in connection with the performance of Services or arising from a tort.

17. MATTERS OUTSIDE OUR REASONABLE CONTROL

- 17.1 We shall not be liable to you if the performance of any of our obligations contained in this Agreement is delayed or prevented by matters outside our reasonable control. Such matters include, but are not limited to, fire, flood, hurricane, lightning, extreme weather conditions, industrial disputes, actions of local or national government, war or acts of terrorism or vandalism, location of Equipment, and atmospheric or topographical conditions.

18. TRANSFER OF SERVICE FROM ONE CUSTOMER TO ANOTHER

- 18.1 The Service is provided by us to you and you may not assign the benefit of this Agreement or otherwise transfer the Service whether temporarily or permanently to a third party without our prior written approval.
- 18.2 You may apply for the transfer of Service to a new customer. Application must be made to us in writing signed by both parties. Where the prospective customer is not already our customer, he will be required to complete and submit a Cable & Wireless Application Form to us. An application for the transfer of Service shall be treated in all respects as a new application for Service. All



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outstanding charges must be paid before the transfer can take place.

19. NOTICES

- 19.1 Any notices given under this Agreement must be in writing and must be delivered by hand or sent by fax or by post to us at our Customer Service address (as shown on your bill) and to you at your service address (where we send you bills).

20. LEGAL ACTION

- 20.1 If legal proceedings are commenced by us against you as a result of your breach of these terms and conditions, you will accept the presentation of documents produced from microfiche or other electronic means as good and sufficient evidence in any court of law.

21. DATA PROTECTION

- 21.1 We may use and disclose any personal information you give us for the purposes of managing your account and providing the Service. We may also disclose this information to our contractors and agents in connection with these purposes.
- 21.2 As part of our sales and marketing activities, we and our associated companies may write to you to give you details of our other products or services available. We may also disclose your personal information to research organisations for the purpose of surveying our customers' opinions about our Service. If you do not wish us to use your data for these purposes you must notify us in writing.

22. WAIVER

- 22.1 Any waiver by us of a breach of any term of this Agreement shall not operate as or be construed as a waiver of any other breach of such term in this Agreement. Our failure to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered to be a waiver of any rights under this Agreement or operate to deprive us of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

23. ENTIRE AGREEMENT

- 23.1 It is our intention that all the terms of the Agreement between us shall be in writing and you should ask for any variations or special terms to be recorded in writing.

24. JURISDICTION

- 24.1 This Agreement shall be governed and construed in accordance with the laws of Anguilla.



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SCHEDULE 1

TERMS AND CONDITIONS OF SALE OF NEW EQUIPMENT

1. DELIVERY

- 1.1 All risks in the New Equipment shall pass to you upon delivery. Unless otherwise specified, delivery shall be deemed to take place when the New Equipment has been delivered to the location specified by you.
- 1.2 All dates and times specified to you for delivery of New Equipment are best estimates only. We shall have no liability for any losses or other expenses sustained or incurred by you as a result of delay. You shall not be entitled to refuse acceptance of the New Equipment as a consequence of such delay.

2. TITLE

- 2.1 Until we have been paid in full for the New Equipment supplied to you, you shall hold the same in a fiduciary capacity as bailee for us, and legal and beneficial title to the New Equipment shall remain with us and you shall store it in such a way that it is clearly our property.

3. SPECIFICATION

- 3.1 We shall use all reasonable endeavours to supply the New Equipment in accordance with the specification therefore.
- 3.2 We shall use our reasonable endeavours to ensure that all technical information, particulars of New Equipment performance specifications and performance descriptions submitted by us are as accurate as possible, but are not to be treated as binding or as forming part of this Agreement or part of any contract between us. We shall provide you with any user manual for the New Equipment as supplied by the manufacturer.

4. WARRANTY

- 4.1 We warrant that New Equipment sold to you hereunder shall be free of defects in materials and workmanship at the time of delivery. Any New

Equipment which is found to our satisfaction to be defective at the time of delivery to you or within sixty (60) days thereof as a result of faulty design, manufacture or workmanship will be replaced by us during that period at no cost. Thereafter, we agree to repair, free of charge, defective New Equipment for up to a period of twelve (12) months from the Service Start Date provided that in either case:

- (i) the New Equipment has not been misused, mishandled, overloaded, amended, modified or repaired in any way by you, your servants or agents, customers or any other person not authorised by us for the purposes thereof or used for any purpose other than that for which it was designed; and
- (ii) you provide us with proof of purchase of the New Equipment from us.

4.2 Our obligations under clause 4.1 above shall apply during our normal working hours.

4.3 Any New Equipment or component parts of the New Equipment replaced by us pursuant to clause 4.1 shall upon replacement become the property of us unless and until title has passed to you in accordance with clause 2.1.

4.4 Save as expressly set out in this Agreement all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise, in respect of the New Equipment are expressly excluded from this Agreement.

5. LIABILITY

- 5.1 The express warranty and undertaking given above is the only warranty given by us and shall be our entire liability including liability for negligence in respect of the sale of New Equipment to you.