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**PART E DATA SERVICES**

**Item 504 Frame Relay**

**1. Service Description**

- 1) This item is subject to the terms and conditions of Item 500 of this Tariff.
- 2) C&W Frame Relay is an international, end-to-end managed data transmission service. It transports traffic efficiently and securely at data rates from 56 kbit/s to 45 Mbit/s (depending on location). It is designed to handle fluctuating, or 'bursty', traffic patterns, making it ideal for connecting local area networks (LANs) over a wide area.
- 3) C&W Frame Relay uses PVCs to create a virtual private network, which means that, unlike networks based on International Private Leased Circuits, each site requires only one connection to the C&W network to link with all other sites on the network, and that C&W Frame Relay is a cost-effective solution for any organization with multiple sites.
- 4) C&W Frame Relay offers high efficiency with minimum network delay. It supports prioritized PVCs, which enable customers to prioritize certain transmission types. It is also protocol-transparent, which means that different traffic types can be carried over a common network.
- 5) Frame Relay Port speeds available range from 56 kbps to 1536 kbps, subject to limitations of relevant location.
- 6) Frame Relay PVCs are characterised by the CIR. As PVCs are “simplex” (one directional), PVCs must be ordered in pairs. The CIR of the PVCs shall be provided at no less than 25% and no more than 75% of the relevant Frame Relay Port speed.
- 7) Initial Terms available for Frame Relay Services: 1 year, 2 years or 3 years.

**2. Definitions**

“Burst” means the ability to send data at speeds that exceed the CIR. This ability is not guaranteed.

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**Item 504 Frame Relay – continued**

"Frame Relay Port" is the point where the local loop used to provide Frame Relay Service to the Customer, interconnects to the C&W Frame Relay Network.

"CIR" means Committed Information Rate, the minimum sustained throughput (Bandwidth) available to the customer in a given PVC under normal network conditions, measured in kbps. Customers can Burst above the CIR to the maximum speed equal to the sum of the CIR and the EIR, on a best-efforts basis.

"EIR" means the additional Bandwidth, above the CIR, within which the Customer can Burst. The sum of the EIR and CIR will be equal to the speed of the smallest Frame Relay Port.

"PVC" means Permanent Virtual Circuit, the transmission path across a network from source to destination, which is established during the installation process. Several PVCs can normally be carried on a single access bearer.

"Zone" means, for the purpose of this Item, an Overseas geographic region in which the distant end of the PVC terminates.

**3. Terms and Conditions**

- 1) The provision of Frame Relay Service is subject to the terms and conditions detailed in C&W's Global Services Customer Contract, the form of which is set out in Item 504.5, for an Initial Term agreed between C&W and the Customer. After the Initial Term, C&W will continue to provide Frame Relay Services on a month-to-month basis until terminated by either party giving not less than three months' prior written notice to the other.
- 2) In the event that the Customer terminates Frame Relay Service during the Initial Term or any extension thereof, C&W shall be entitled to receive from the Customer, by way of liquidated damages, a sum equal to the aggregate amount of charges that would have been payable under the Agreement had it continued in force for the full Initial Term commitment or any extension thereof, as applicable.

**PART E DATA SERVICES - continued**

**Item 504 Frame Relay – continued**

3) The Charges for the Frame Relay Service will be the sum of the Frame Relay Port and CIR Charges.

**4. Rates and Charges**

The following rates and charges shall apply to Service Addresses in the Cayman Islands:

a) Frame Relay Port

<b>Description</b>	<b>Installation Charge</b>	<b>Monthly Fee</b>
Frame Relay: 56 kbps	\$800.00	\$584.00
Frame Relay: 64 kbps	\$800.00	\$584.00
Frame Relay: 128 kbps	\$800.00	\$944.00
Frame Relay: 192 kbps	\$800.00	\$1,104.00
Frame Relay: 256 kbps	\$800.00	\$1,304.00
Frame Relay: 384 kbps	\$800.00	\$1,520.00
Frame Relay: 512 kbps	\$800.00	\$1,784.00
Frame Relay: 768 kbps	\$800.00	\$2,344.00
Frame Relay: 1024 kbps	\$800.00	\$3,000.00
Frame Relay: 1536 kbps	\$800.00	\$3,624.00

Note: the Frame Relay Port Charge includes the local loop.

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b) Frame Relay Committed Information Rate

Description	Monthly Fee			
	Zone 1	Zone 2	Zone 3	Zone 4
CIR: 16 kbps	\$229.00	\$528.00	\$544.00	\$1,527.00
CIR: 24 kbps	\$287.00	\$640.00	\$632.00	\$1,923.00
CIR: 32 kbps	\$345.00	\$696.00	\$712.00	\$2,310.00
CIR: 40 kbps	\$403.00	\$800.00	\$832.00	\$2,706.00
CIR: 48 kbps	\$448.00	\$920.00	\$936.00	\$3,094.00
CIR: 56 kbps	\$520.00	\$1000.00	\$1,032.00	\$3,489.00
CIR: 64 kbps	\$578.00	\$1,096.00	\$1,120.00	\$3,884.00
CIR: 96 kbps	\$680.00	\$1,480.00	\$1,512.00	\$4,469.00
CIR: 128 kbps	\$895.00	\$1,910.00	\$1,904.00	\$4,797.00
CIR: 192 kbps	\$1,222.00	\$2,600.00	\$2,656.00	\$6,560.00
CIR: 256 kbps	\$1,523.00	\$3,320.00	\$3,384.00	\$8,171.00
CIR: 384 kbps	\$2,080.00	\$4,200.00	\$4,288.00	\$9,486.00
CIR: 512 kbps	\$2,504.00	\$4,928.00	\$5,032.00	\$10,810.40
CIR: 768 kbps	\$3,024.00	\$6,256.00	\$6,384.00	\$11,796.00
CIR: 1024 kbps	\$3,248.00	7,504.00	\$7,616.00	(not available)

Notes:

- 1) Prices may be quoted in U.S. Dollars at the above CI\$ rates / 0.82.
- 2) This Charge is for the outbound PVC charge only. The Charge for the inbound PVC is quoted by the Overseas C&W affiliate providing the distant end of the Service.
- 3) Zone 1 includes Anguilla, Antigua & Barbuda, Barbados, British Virgin Islands, Dominica, Grenada, Jamaica, Montserrat, St. Lucia, St. Kitts and Nevis, St. Vincent & the Grenadines, Trinidad & Tobago and Turks & Caicos.
- 4) Zone 2 includes Canada and the USA.
- 5) Zone 3 includes Europe and the UK.
- 6) Zone 4 includes Japan, Hong Kong, Australia, New Zealand, Singapore, South Korea, Philippines, Taiwan, Indonesia, Malaysia and Thailand.

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7) Other destinations may be quoted upon request. C&W does not guarantee availability of service in any other location and does not guarantee ICTA approval of the associated charge.

c) Discounts

Discounts apply based on the following total overall monthly Frame Relay network spend with C&W worldwide:

Total Monthly Contract Period Spend (\$U.S.)	Contract Period (percentages indicate monthly service discount)		
	1 Year	2 Years	3 Years
\$3,000 - \$8,000	3%	5%	8%
\$8,001 - \$20,000	9%	12%	15%
\$20,001 - \$40,000	11%	14%	18%
\$40,001 - \$100,000	14%	17%	19%
\$100,000 +	18%	19%	20%

**Notes:**

1) The above rates may be quoted in C.I. Dollars (CIS) at 0.82

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**5. Form of C&W Global Service Customer Contract**



CWGM/GSCC/1.9

**Global Services Customer Contract  
Version 1.9 (Cayman Islands)**

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**Item 504 Frame Relay – continued**

This Schedule documents the commercial arrangements which apply between Cable & Wireless (Cayman Islands) Ltd. and the Customer for the provision by Cable & Wireless (Cayman Islands) Ltd. of any Cable & Wireless Managed Services to Customer. It will be periodically updated to reflect product changes or changes in the commercial terms agreed with Cable & Wireless (Cayman Islands) Ltd. and all recipients of this document must treat the information that it contains as company confidential. No part of this document should be reproduced or released for commercial purposes by a recipient without the express consent of an officer or director of Cable & Wireless Markets Ltd. (Cable & Wireless).

*This Schedule shall not apply to the extent contrary to any regulatory restrictions on the resale of telecommunications services or operation of telecommunications equipment applicable to Cable & Wireless from time to time.*

**STANDARD TERMS FOR GLOBAL SERVICES**

**1. General**

These terms and the terms of any Schedules and other supplements hereto apply to the provision by Cable & Wireless (Cayman Islands) Ltd. of global telecommunications services. The term “*Agreement*” means these terms, the terms of any Schedules and any other supplements hereto, and any order form (“*Order Form*”) executed by Cable & Wireless (Cayman Islands) Ltd.] customer (“*Customer*”) and accepted by Cable & Wireless (Cayman Islands) Ltd. for Cable & Wireless Managed Services. The Cable & Wireless Managed Services ordered by a Customer are referred to herein as “*Service(s)*”.

**2. Implementation of Services**

- 2.1 Cable & Wireless (Cayman Islands) Ltd. shall, where applicable, complete a Service’s acceptance tests by its “*Services Provision Guarantee Date*” (or “*SPG Date*”). No SPG Date shall be changed except by express agreement in writing, or if a delay is reasonably necessary by virtue of the Customer’s wilful act or failure to fulfil its obligations here under or otherwise due to any Force Majeure Event as defined below. The date acceptance tests are successfully completed by Cable & Wireless (Cayman Islands) Ltd. for a particular Service at a particular Customer location (“*Premises*”) demonstrating that such Service is ready for use by the Customer, or the date when the Customer uses the Service (if earlier), is referred to as the “*Service Commencement Date*” for that Service at that Premises.
- 2.2 Cable & Wireless (Cayman Islands) Ltd. shall supply the Customer in reasonable time with such relevant information as may be necessary to enable the Customer to prepare a particular Premises suitably and at the Customer’s expense prior to the delivery and installation of any equipment to be provided at the Premises by Cable & Wireless (Cayman Islands) Ltd. to make the Services available to the Customer, including any multiplexer, router, telecommunications apparatus, cabling, communications channel, hardware or software embodied therein (“*Services Equipment*”).
- 2.3 The Customer shall provide and procure the provision of reasonable assistance and facilities to Cable & Wireless (Cayman Islands) Ltd. in the installation of the Services Equipment and suitable accommodation, assistance, facilities, and environmental conditions as reasonably requested by Cable & Wireless (Cayman Islands) Ltd. for the housing of the Services Equipment and all necessary electrical and other installations and fittings.

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- 2.4 In respect of each item of the Services Equipment delivered to the Premises from time to time, if Cable & Wireless (Cayman Islands) Ltd. presents a delivery certificate to the Customer's designated representative ("**Customer Representative**") for signature, the Customer Representative shall sign such certificate. Cable & Wireless (Cayman Islands) Ltd. shall carry out all Services acceptance tests. Cable & Wireless (Cayman Islands) Ltd. shall give Customer Representative reasonable notice of the date when the Services acceptance tests will be carried out so as to enable Customer Representative to be present to acceptance tests. If, notwithstanding reasonable notice is given by Cable & Wireless (Cayman Islands) Ltd. to Customer Representative, Customer Representative fails to attend acceptance tests, Cable & Wireless (Cayman Islands) Ltd. will carry out such tests at the date originally notified, in Customer Representative's absence. If Cable & Wireless (Cayman Islands) Ltd. considers that the acceptance tests have been successfully concluded, Cable & Wireless (Cayman Islands) Ltd. presents a written acceptance notice to the Customer and the Customer shall procure that the Customer Representative shall counter-sign such acceptance notice, and in any event the Services shall be deemed to be accepted by Customer .
- 2.5 If required by Cable & Wireless (Cayman Islands) Ltd., the Customer shall procure a secure primary electricity power supply at the Premises of a suitable type for the installation, operation and maintenance of the Services Equipment, at suitable points and with suitable connections as specified by Cable & Wireless (Cayman Islands) Ltd..
- 2.6 Back-up power with sufficient capacity to conform to the stand-by requirements specified by Cable & Wireless (Cayman Islands) Ltd. shall be provided by the Customer if the Customer desires for the Services to continue uninterrupted in the event of a primary power supply failure.
- 2.7 In respect of the provision of the Services in any particular geographic area ("**Territory**") in which Cable & Wireless (Cayman Islands) Ltd. is not itself permitted to provide the Services, the Customer hereby agrees that Cable & Wireless (Cayman Islands) Ltd. shall, at Cable & Wireless (Cayman Islands) Ltd.'s sole discretion, obtain the facilities for the provision of these Services, either on its own behalf or as the Customer's agent, from an entity nominated by Cable & Wireless (Cayman Islands) Ltd. which is authorised to operate a public telecommunications system in that Territory or which otherwise provides telecommunication services in that Territory ("**Operator**"). The Customer hereby appoints Cable & Wireless (Cayman Islands) Ltd. as its agent for these purposes, and authorises Cable & Wireless (Cayman Islands) Ltd. to negotiate and enter into such contracts with Cable & Wireless (Cayman Islands) Ltd.'s parent company or any subsidiary thereof (collectively, "**Channel Partner Associated Companies**") and other Operators on the Customer's behalf, and to take such other steps as may be considered necessary by Cable & Wireless (Cayman Islands) Ltd. in order to obtain such facilities. Cable & Wireless (Cayman Islands) Ltd. shall advise the Customer of the terms of any such contracts, and the Customer shall fully comply with such terms.

**3. Equipment and Use of Services**

- 3.1 The Customer shall procure all permissions, licenses, waivers, consents, registrations and approvals necessary for or reasonably considered desirable by Cable & Wireless (Cayman Islands) Ltd. to deliver, install and keep installed the Services Equipment at each Premises. The Customer shall permit Cable & Wireless (Cayman Islands) Ltd. to have immediate access to the Services Equipment, and the Customer shall provide Cable & Wireless (Cayman Islands) Ltd. with or procure such facilities and co-operation as Cable & Wireless (Cayman Islands) Ltd. shall reasonably request. Cable & Wireless (Cayman Islands) Ltd. will carry out such work between the hours of 9 a.m. and 5 p.m., on business days, but may require the Customer to provide immediate access at other times. The Customer shall advise Cable & Wireless (Cayman Islands) Ltd. of any rules relating to health and safety at work ("**Rules**") applicable at the Premises and Cable & Wireless (Cayman Islands) Ltd. shall observe such Rules while at the Premises.
- 3.2 The Customer shall be responsible for ensuring that the equipment or cabling other than the Services Equipment installed at the Premises and used by the Customer with the Services ("**Customer Equipment**") is



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compatible with Cable & Wireless (Cayman Islands) Ltd.'s facilities and the facilities of any Operators used by Cable & Wireless (Cayman Islands) Ltd. to provide Service for the Customer (collectively, "*C&W Network*") in conformance with the relevant addressing structure, if any, as adopted in the C&W Network and notified by Cable & Wireless (Cayman Islands) Ltd. to the Customer.

- 3.3 The Customer undertakes to use the Services and to ensure that the Services are used in accordance with such reasonable instructions as may be given by Cable & Wireless (Cayman Islands) Ltd. from time to time and in accordance with all applicable regulations, statutes or other rules applicable to the Service or to this Agreement in any relevant jurisdiction including any amendment, replacement or re-enactment thereof for the time being in force and to include any by-laws, licenses, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made thereunder and any conditions attaching thereto ("*Regulations*"). Without limitation to the generality of the foregoing, the Customer undertakes not to use the Services nor permit the Services to be used: (i) for any purpose other than utilising the Services for the Customer's own internal use or (ii) for the transmission display or presentation of any material which is defamatory, offensive or abusive or of an obscene or menacing character; or (iii) in a manner which constitutes a violation or infringement of the rights of any third party (including but not limited to rights of copyright or confidentiality); or (iv) in a manner that does not comply with all specifications provided from time to time by Cable & Wireless (Cayman Islands) Ltd.. For the avoidance of doubt and, without limitation, the obligations under this paragraph 3.3 shall constitute material obligations.
- 3.4 The Customer shall, if required by any applicable license, consent or authorization granted under the Regulations or if so requested by Cable & Wireless (Cayman Islands) Ltd., notify or obtain any necessary permission or co-operation of an Operator or other relevant entity for the connection of the Customer Equipment to the Cable & Wireless (Cayman Islands) Ltd.. The Customer shall ensure at all times that the Customer Equipment shall to the extent and manner necessary be approved for connection to telecommunication systems under any Regulations and the relevant ITU-T recommendations and the Customer shall at all times comply with the conditions of such approval. Cable & Wireless (Cayman Islands) Ltd. may disconnect any Customer Equipment from the C&W Network if the Customer does not fulfil its obligations under this paragraph, or if in the reasonable opinion of Cable & Wireless (Cayman Islands) Ltd. it is liable to cause the death of, or personal injury to, or damage to the property of Cable & Wireless (Cayman Islands) Ltd. or any entity engaged in the operation of the C&W Network, or materially impair the quality of any telecommunications service, including but not limited to the Services, provided by means of the C&W Network.
- 3.5 The Customer shall be responsible at all times for the safe custody and use of the Services Equipment after installation at the Premises and in particular (but without limitation to the generality of the foregoing) the Customer undertakes the following with respect to such equipment: (i) to house, keep and use it at the Premises at which it is installed by Cable & Wireless (Cayman Islands) Ltd. in accordance with such reasonable instructions as may be given by Cable & Wireless (Cayman Islands) Ltd. to the Customer from time to time; (ii) not to add to, modify, repair or attempt to repair or service, or in any way interfere with, it; (iii) not to cause any attachments to be fitted to the Services Equipment other than those approved for connection under the Regulations except as expressly approved by Cable & Wireless (Cayman Islands) Ltd.; (iv) not to do anything nor to allow to subsist any circumstance, matter or thing which is likely to damage the Services Equipment or detract from or impair its performance or operation; and (v) to permit Cable & Wireless (Cayman Islands) Ltd. to inspect or test the Services Equipment remotely or otherwise at such times as may be agreed between the parties, such agreement not to be unreasonably withheld or delayed.
- 3.6 Cable & Wireless (Cayman Islands) Ltd. may assess an additional charge(s) if the Customer (i) prevents or delays scheduled maintenance services from being performed, or (ii) fails to comply with the terms of this Agreement and as a result Cable & Wireless (Cayman Islands) Ltd. or associated operators, incur additional costs to protect or preserve the Services Equipment and/or the C&W Network.

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- 3.7 If, as part of a Service, the Customer is allocated access codes, user names or identifiers (“*Access Codes*”), then Cable & Wireless (Cayman Islands) Ltd. shall allocate Access Codes to the Customer in order to permit the Customer to access that Service, and the Customer shall: (i) not disclose the Access Code to any other party; (ii) use its Access Codes in accordance with the instructions given to it by Cable & Wireless (Cayman Islands) Ltd. from time to time; (iii) notify Cable & Wireless (Cayman Islands) Ltd. promptly in the event that the Customer believes or has reason to believe that an Access Code is known or being used by a third party without the knowledge, consent or permission of Cable & Wireless (Cayman Islands) Ltd. or the Customer; (iv) be responsible for all charges incurred through use of the Service when access to the Service is obtained through the use of any Access Code; Cable & Wireless (Cayman Islands) Ltd. shall have the right to withdraw any Access Code if this Agreement is terminated or suspended for any reason whatsoever or if Cable & Wireless (Cayman Islands) Ltd. has reason to believe the Access Code has been discovered and/or used without the knowledge, consent or permission, express or implied, of the Customer. Cable & Wireless (Cayman Islands) Ltd. shall have the right to alter or replace any Access Code for technical, operational or regulatory reasons. This may require Customer to reconfigure the Customer Equipment, which will be the Customer’s responsibility and at the Customer’s expense. Cable & Wireless (Cayman Islands) Ltd. shall give the Customer all reasonable notice and assistance.
- 3.8 If Cable & Wireless (Cayman Islands) Ltd. provides any software (whether embedded in hardware as firmware or otherwise) and any related documentation (collectively “Software”) to Customer, Customer shall use the Software only with Cable & Wireless (Cayman Islands) Ltd. and/or associated operator’s -furnished equipment, and Services. Customer shall not (a) reproduce, reverse engineer, disassemble, decompile, modify, adapt, translate, create derivative works from, or transfer or transmit the Software in any form or by any means, or (b) use the Software for any purpose other than as set forth in this Section. Customer shall not have any ownership rights in, or obtain rights to, the Software. If a license agreement accompanies the Software, Customer agrees to abide by the terms of such agreement.
- 3.9 If, as part of a Service, Cable & Wireless (Cayman Islands) Ltd. allocates dial plans, network design, IP address schemes (“Plans”) to the Customer, the Customer shall utilise those Plans in accordance with the Plan instructions provided by Cable & Wireless (Cayman Islands) Ltd. from time to time.

**4. Charges**

- 4.1 For a Service at a particular Premises, the Customer shall pay to Cable & Wireless (Cayman Islands) Ltd. the charges set out in the applicable Order Form, or as otherwise agreed. The Customer shall be liable for the charges for a particular Service as of the Service Commencement Date for that Service. Where a “*B-End Customer*” is also signatory to a particular Order Form, Cable & Wireless (Cayman Islands) Ltd. shall apportion the charges payable by the Customer and the B-End Customer identified on such Order Form in accordance with instructions received from the Customer, and if no such instructions are received, shall apportion the bill between the Customer and the B-End Customer on an equitable basis taking into consideration relevant factors such as use and the costs of providing the Services. Where appropriate to the Services provided, the charges payable by the Customer shall include all payments made to Operators by Cable & Wireless (Cayman Islands) Ltd. in respect of charges for any PSTN element of the Services which shall be passed on to the Customer without any mark-up or handling fee .
- 4.2 Cable & Wireless (Cayman Islands) Ltd. agrees to receive from an Operator whose facilities are used to provide Service for the Customer invoices in respect of the provision of Services to the Customer in the Operator’s Territory and to pay such invoices properly rendered in the appropriate currency on behalf of the Customer.
- 4.3 The Customer shall contact the Cable & Wireless (Cayman Islands) Ltd. Service Management Centre (details of which shall be notified to the Customer from time to time) in respect of all queries relating to or arising from an invoice sent by Cable & Wireless (Cayman Islands) Ltd. to the Customer.

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- 4.4 If Customer has a bona fide dispute with any amounts due on an invoice, Customer must pay all amounts not in dispute as set forth above, and must notify Cable & Wireless (Cayman Islands) Ltd. in writing of such disputed amounts within fourteen (14) days of the invoice date. No late payment charge will be applied to any amounts subject to a bona fide dispute provided that Customer (i) notifies Cable & Wireless (Cayman Islands) Ltd. of such disputed amounts as set forth above, (ii) works with Cable & Wireless (Cayman Islands) Ltd. in good faith to resolve such dispute as quickly as practicable, and (iii) pays the agreed-upon amount of the disputed charges upon resolution of the dispute.
- 4.5 All sums due to Cable & Wireless (Cayman Islands) Ltd. under this Agreement shall be paid by the Customer in the billed currency within thirty (30) days of the date of invoice. All sums due under this Agreement are exclusive of any taxes and duties leviable in any jurisdiction on the Services or any element or component thereof, including, but not limited to Value Added Tax and any sales or withholding tax, which shall be paid by the Customer at the rate and in the manner prescribed by law from time to time.
- 4.6 Subject to 4.4 above payment of all sums due to Cable & Wireless (Cayman Islands) Ltd. under this Agreement shall be made by the Customer in full (without any set-off, deductions or withholding whatsoever) by cheque, or by such other method as may reasonably be specified from time to time by Cable & Wireless (Cayman Islands) Ltd..
- 4.7 Subject to 4.4 above but without prejudice to any other rights or remedies of Cable & Wireless (Cayman Islands) Ltd. under this Agreement, Cable & Wireless (Cayman Islands) Ltd. reserves the right to charge interest on outstanding amounts from the date such amounts are due, until payment in full is received by Cable & Wireless (Cayman Islands) Ltd. at a rate of 12%, or the maximum amount permitted by law, whichever is less. Interest shall continue to accrue notwithstanding termination of this Agreement for any cause whatsoever.
- 4.8 The charges on any Order Form are subject to change by Cable & Wireless (Cayman Islands) Ltd. as notified in writing to the Customer from time to time.

**5. Ownership of and Responsibility for the Services Equipment**

- 5.1 Title to the Services Equipment shall be retained by Cable & Wireless (Cayman Islands) Ltd., a Cable & Wireless (Cayman Islands) Ltd. Associated Company, another Operator, or any third party lessor of such party (“**Services Equipment Owner**”) at all times and the Customer shall not remove, or tamper with any identification mark(s) affixed to the Services Equipment or to any part thereof showing such ownership. On all occasions when the ownership of the Services Equipment is relevant, the Customer shall make clear to third parties that the same is the property of the Services Equipment Owner.
- 5.2 The Customer shall: (i) be responsible for the Services Equipment while it is in the Customer's custody and shall be liable to Cable & Wireless (Cayman Islands) Ltd. for any loss or damage to the Services Equipment (unless caused by Cable & Wireless (Cayman Islands) Ltd.'s or a Cable & Wireless (Cayman Islands) Ltd. Associated Company's negligence); the Customer shall notify Cable & Wireless (Cayman Islands) Ltd. immediately of any such loss or damage; (ii) without prejudice to the scope of the Customer's liability hereunder, maintain suitable insurance in respect of all relevant risks relating to the Services Equipment in an amount deemed reasonable by Cable & Wireless (Cayman Islands) Ltd., and, if requested by Cable & Wireless (Cayman Islands) Ltd., shall provide evidence thereof to Cable & Wireless (Cayman Islands) Ltd. ; (iii) not permit or suffer any attachment, execution or distress to be levied or used against the Services Equipment nor permit or suffer the Services Equipment to be seized under or affected by any distress, execution or other legal process; and (iv) not attempt to let, sell, charge or otherwise deal with the Services Equipment in a manner prejudicial to the rights of the Services Equipment Owner.

**6. Service Periods and Cancellation and Termination of Services by Customer**

Except as otherwise provided for in this Agreement:

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- 6.1 A Service shall be provided to a particular Premises for an “*Initial Period*”, the length of which will be agreed between Cable & Wireless (Cayman Islands) Ltd. and Customer, beginning on the Service Commencement Date, as set forth on the applicable Order Form, and thereafter shall automatically continue for a “Continuation Period” unless and until terminated by either party giving three (3) months’ prior written notice to the other;
- 6.2 If at any time prior to the Service Commencement Date for a particular Service at a particular Premises the Customer requests Cable & Wireless (Cayman Islands) Ltd. by notice in writing that such Service should not be provided to that Premises, then Cable & Wireless (Cayman Islands) Ltd. shall be reimbursed by the Customer for all costs and expenses incurred by Cable & Wireless (Cayman Islands) Ltd. including, without limitation, cancellation charges (if any) in complying with the Customer’s request;
- 6.3 If at any time after the Services Commencement Date for a particular Service at a particular Premise but prior to the expiry of the Initial Period for such Service the Customer requests Cable & Wireless (Cayman Islands) Ltd. by notice in writing that such Service should not be provided to that Premises or requests that any Services Equipment be removed from that Premises, then Cable & Wireless (Cayman Islands) Ltd. shall be reimbursed by the Customer for all costs and expenses incurred by Cable & Wireless (Cayman Islands) Ltd. in complying with the Customer’s request plus a termination charge (as a Services discontinuance fee and not as a penalty) equal to the balance of the charges that would have been payable by the Customer if the Customer had continued to receive the Service for the whole of that Service’s Initial Period; and
- 6.4 If either party terminates a Service during the Continuation Period referenced in 6.1 above, in addition to the Customer paying for such Service up through the date of its discontinuance, the Customer shall reimburse Cable & Wireless (Cayman Islands) Ltd. for any costs it incurs (such as early termination charges) and charges from any Operator (including any C&W Associated Company) as a result of such discontinuance.

**7. Termination**

- 7.1 Either party shall have the right to terminate this Agreement (including all Order Forms executed in connection herewith) in the event that a liquidator (other than for the purpose of amalgamation or reconstruction), administrative receiver, administrator or receiver is appointed in respect of the whole or a material part of the assets and/or undertaking of the other party or the other party enters into an arrangement or composition with its creditors, or if it becomes unable to pay its debts within the meaning of the relevant insolvency legislation of its place of incorporation or other circumstances arise which would entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to make a winding up order in relation to the other party or any circumstances arise in respect of the other party in the jurisdiction in which it is incorporated which are similar or equivalent to those described above.
- 7.2 Cable & Wireless (Cayman Islands) Ltd. shall have the right to terminate this Agreement (including all Order Forms executed in connection herewith), without prejudice to its other rights and remedies, by notice in writing taking immediate effect in the event that the Customer is in breach of any material obligation under this Agreement and (in the case of a remediable breach other than a payment obligation) fails to remedy the breach within a reasonable time (not less than thirty (30) days) specified by Cable & Wireless (Cayman Islands) Ltd. in such notice so to do.
- 7.3 Upon termination of this Agreement or the Services (or part thereof) for any reason, the Customer shall: (i) forthwith cease to make use of the relevant Services Equipment and Services (or the relevant part thereof); and (ii) for a reasonable period following termination permit Cable & Wireless (Cayman Islands) Ltd. to enter the Premises during between the hours of 9 a.m. and 5 p.m. on business days, for the purpose of removing any or all of such equipment.
- 7.4 In the event that this Agreement is terminated, prior to expiry of any Initial Period or any extension thereof by Cable & Wireless (Cayman Islands) Ltd., Cable & Wireless (Cayman Islands) Ltd. shall, without prejudice to

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**Item 504 Frame Relay – continued**

its other rights and remedies under this Agreement, be entitled to receive from the Customer, by way of liquidated damages, a sum equal to the aggregate amount of charges that would have been payable under this Agreement had the Agreement continued in force for the full term of any Initial Period or any extension thereof, as applicable.

- 7.5 In addition to Cable & Wireless (Cayman Islands) Ltd. rights of termination set forth above, Cable & Wireless (Cayman Islands) Ltd. may at its sole discretion elect to suspend forthwith provision of the Services either in whole or in part until further notice on notifying the Customer either orally or in writing in the event that: (i) Cable & Wireless (Cayman Islands) Ltd. shall be entitled to terminate this Agreement; or (ii) Cable & Wireless (Cayman Islands) Ltd. shall be obliged to comply with an order, instruction or request of Government, an emergency services organisation, or other competent administrative authority; or (iii) Cable & Wireless (Cayman Islands) Ltd. needs to carry out work relating to upgrading or maintenance of the C&W Network; provided, however, that Cable & Wireless (Cayman Islands) Ltd. gives the Customer the maximum period of notice practicable in the circumstances beforehand.
- 7.6 If Cable & Wireless (Cayman Islands) Ltd. suspends the provision of Service when it is entitled to terminate this Agreement, the Customer shall reimburse Cable & Wireless (Cayman Islands) Ltd. for all reasonable costs incurred by the implementation of such suspension and/or the re-commencement of the provision of the Services as appropriate.
- 7.7 Cable & Wireless (Cayman Islands) Ltd. shall, where applicable, have the right to refuse to post or to remove any information or material that in Cable & Wireless (Cayman Islands) Ltd.'s sole discretion is unacceptable or it is likely to breach any law or the provisions of Paragraph 3.3.

**8. Warranty, Liability, and Indemnification**

- 8.1 If a Service Level Schedule is included in this Agreement for a particular Service, that Service shall be delivered and provided in conformance with the service level criteria set out in the relevant Service Level Schedule. The Customer shall, as its sole and exclusive remedy and as C&W's Cable & Wireless (Cayman Islands) Ltd. sole and exclusive liability, be entitled to "**Performance Remedies**" as set forth in the applicable Service Level Schedule if a Service fails to meet its service accessibility criteria and/or its Service Commencement Date is later than its SPG Date (collectively, "**Service Levels**"). For the avoidance of doubt, Performance Remedies will not be available to the Customer if the failure to meet any Service Levels results from any Force Majeure Event or the Customer's act, fault or omission. The Customer shall contact a Cable & Wireless (Cayman Islands) Ltd. Service Management Centre (details of which shall be notified to the Customer from time to time) in respect of all queries relating to the conformity of the Services with the Service Levels or arising from any fault reporting procedures Cable & Wireless (Cayman Islands) Ltd. may provide to the Customer.
- 8.2 In no event shall Cable & Wireless (Cayman Islands) Ltd. be liable to the Customer for any loss of profits or for any indirect, incidental, special, exemplary, or consequential damages. Cable & Wireless (Cayman Islands) Ltd.'s maximum liability for any damages arising out of or related to this Agreement shall be limited to and not exceed the aggregate sum of \$10,000.
- 8.3 The Customer shall defend, indemnify and hold Cable & Wireless (Cayman Islands) Ltd. harmless from and against all claims, demands, actions, causes of action, judgements, costs and reasonable attorneys' fees and expenses of any kind or nature ("**Claim**") for any and all damages of any kind arising from or related to (i) any use of the Services or Services Equipment, (ii) any use of any Customer Equipment or the connection of any such equipment to the C&W Network, (iii) any Claim from the Customer's ultimate holding company or any subsidiary thereof which Claim the Customer would be obligated to indemnify Cable & Wireless (Cayman Islands) Ltd. against if asserted by the Customer, (iv) any activities, agreements or relationships between the Customer and Operators, or otherwise arising under this Agreement unless the Claim is due to Cable & Wireless (Cayman Islands) Ltd. negligence or wilful misconduct.



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**PART E DATA SERVICES - continued**

**Item 504 Frame Relay – continued**

8.4 The Customer shall be solely liable under the terms of this Agreement for a particular Order Form from the date upon which the Order Form has been signed by both the Customer and Cable & Wireless (Cayman Islands) Ltd.; provided, however, that where a B-End Customer countersigns an Order Form, the Customer and the B-End Customer shall be jointly and severally liable for such Order Form.

8.5 Cable & Wireless (Cayman Islands) Ltd. warrants that it shall provide Services as set forth in this Agreement.

**Cable & Wireless (Cayman Islands) Ltd. DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

9. **Additional Terms**

9.1 Headings are included in these terms for ease of reference only and shall not affect their interpretation or construction.

9.2 If in the course of or as a result of any Services provided by Cable & Wireless (Cayman Islands) Ltd. to the Customer, Cable & Wireless (Cayman Islands) Ltd. or any of Cable & Wireless (Cayman Islands) Ltd.'s employees or agents create any document or other material protected by copyright or other intellectual property right, it is agreed that all legal and beneficial rights therein shall be owned by Cable & Wireless (Cayman Islands) Ltd., and the Customer shall have no rights therein beyond a non-exclusive license to make copies for internal use of any document (but not other material) for the purpose of making use of the Services which may be delivered to the Customer by Cable & Wireless (Cayman Islands) Ltd.. The Customer shall execute any assignment or other instrument which may be necessary to give effect to this provision.

9.3 Cable & Wireless (Cayman Islands) Ltd. may at any time modify, change, add to or replace the C&W Network or the Services Equipment or any part thereof provided that any such modification, change, addition or replacement is carried out at Cable & Wireless (Cayman Islands) Ltd.'s own expense and does not materially detract from, reduce or impair the overall performance or operation of the Services.

9.4 The Customer shall promptly provide Cable & Wireless (Cayman Islands) Ltd. (free of charge) with all such information and co-operation that Cable & Wireless (Cayman Islands) Ltd. may reasonably require and which the Customer is able to provide from time to time to enable Cable & Wireless (Cayman Islands) Ltd. to proceed with the performance of its obligations under this Agreement.

9.5 Neither party shall 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; provided that any such event is not due to the fault or negligence of the affected party. Any such event is referred to as a "**Force Majeure Event**".

9.6 The Customer shall not disclose the terms of any Order Form to any third party. The Customer hereby consents to Cable & Wireless (Cayman Islands) Ltd. exchanging with any Cable & Wireless (Cayman Islands) Ltd. Associated Company or any other Operator such information about the Customers use of the Services as Cable & Wireless (Cayman Islands) Ltd. may deem necessary or desirable to enable Cable & Wireless (Cayman Islands) Ltd., any Cable & Wireless (Cayman Islands) Ltd. Associated Company or any Operator to provide the Services to the Customer.

9.7 The Customer shall not assign all or any of its rights and obligations under this Agreement without Cable & Wireless (Cayman Islands) Ltd.'s prior written consent given by Cable & Wireless (Cayman Islands) Ltd.'s duly authorised representative. In the event of a permitted assignment, the Customer shall continue at all times to remain bound to Cable & Wireless (Cayman Islands) Ltd. as primary obligor hereunder.

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**PART E DATA SERVICES - continued**

**Item 504 Frame Relay – continued**

- 9.8 Cable & Wireless (Cayman Islands) Ltd. shall have the right to assign, novate or sub-contract at any time or from time to time all or any of its rights and obligations under this Agreement to any other Person upon serving notice in writing on the Customer; provided, however, that Cable & Wireless (Cayman Islands) Ltd. shall continue at all times (in the case of a sub-contract or assignment) to remain bound to the Customer as primary obligor hereunder.
- 9.9 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any other occasion.
- 9.10 Any notice, invoice or other document which may be given by either party under this Agreement shall be deemed to have been duly given if left at or sent by mail (whether by letter or, where the parties agree in writing, in any other form), or facsimile transmission (confirmed by letter sent by mail) to each party's principal place of business or any other address notified to each other in writing in accordance with this Paragraph as an address to which notices, invoices and other documents may be sent. Any such communication shall be deemed to have been made to the other party upon delivery to addressee.
- 9.11 This Agreement may only be modified if such modification is in writing and signed by a duly authorised representative of each party.
- 9.12 This Agreement shall be governed by and construed in accordance with the laws of England and the parties hereby agree to submit to the jurisdiction of the courts therein.
- 9.13 This Agreement represents the entire understanding between the parties in relation to the subject matter hereof and supersedes all previous agreements and representations made by either party, whether oral or written. No Customer purchase order or similar documents shall vary or add to the terms of this Agreement including any Order Form.
- 9.14 Except with the written permission of Cable & Wireless (Cayman Islands) Ltd., Customer may not use the services for the transmission of voice or video including voice over the internet and video phones.

**PART E DATA SERVICES - continued**

**Item 504 Frame Relay – continued**

**APPENDIX 4**

**GLOBAL MANAGED DATA SERVICES: STANDARD SERVICE LEVEL**

**1. Introduction**

- (A) This document sets out the parameters against which the provision of the service will be measured. Failure to meet these critical parameters will result in the payment of performance remedies listed in this document (subject to the provisions included below).
- (b) In this document month means a calendar month; where a service commencement date (“SCD”), as defined in the customer contract, is not at the beginning of a month, the period from the premises service commencement date until the beginning of the next month shall not be included in any calculation of availability [as defined under paragraph 4] in accordance with the terms of this schedule; provided, however, that cable & wireless (Cayman Islands) ltd. Shall measure its availability during that period.
- (c) If C&W receives a request from the customer, for performance remedies C&W will credit the amount to the customer in a future bill. All such requests must be made within 60 days of the end of the month in which the failure of the service to meet the standard service levels occurred, and will be shown as a credit against the monthly charges, as defined under paragraph 4(f), payable in respect of the affected service provided during that month, provided, however, that in no circumstances shall Cable & Wireless (Cayman Islands) ltd. Be required to pay an amount greater than the total of one hundred percent (100%) of the monthly charge paid for the affected service” at the relevant premises.

**2. Committed Services Commencement Date**

- (a) If C&W fails to meet any committed SCD agreed with the Customer in respect of particular Premises, then the Customer shall be entitled to a Performance Remedy, being a credit of a percentage of the Installation Charge in respect of such Premises, calculated as follows:

No of calendar days beyond the SCD date	% of Installation Charge
1 to 10	25%
11-20	50%
21+	100%

- (b) The Service is defined as the end-to-end connection between the Service Demarcation Points, defined in paragraph 4.
- (c) Premises is defined as installation area where Customer’s “Service” terminates.
- (d) Installation Charges” are limited to the Frame Relay port and Router installation charges only. Where the port and tail installation charges are consolidated into a single charge, the Installation charges shall be equal to 50% of the aggregate charges.
- (e) C&W will use reasonable endeavors to quote a lead time for the provision of Service, both in respect of the initial service requirements and subsequent network or hardware changes, within 7 calendar days of the request, submitted



**PART E DATA SERVICES - continued**

**Item 504 Frame Relay – continued**

by Customer in the form of a signed Order Form, being made by customer. It is understood by the the parties that , owing to the varying nature of the possible Customer’s requests, Cable & Wireless (Cayman Islands) Ltd. may not be able, at times, to provide such quote within 7 days from the request. Cable & Wireless (Cayman Islands) Ltd. shall therefore not be bound by the abovementioned 7 days time framend shall in no event be liable to Customers for not meeting such time frame.

**3. Committed Services Subsequent Software Configuration Changes Guarantee Date**

- (a) C&W will use reasonable efforts to make configuration changes within 14 Calendar days of the Customer request being accepted by C&W, but due to the varying nature of the possible requests it cannot commit to do so in all cases within this time frame and consequently cannot offer compensation for not achieving this target on any particular occasion. The following changes are excluded from this SLA:

Changes that involve reconfiguration of more than three separate, Premises  
 Changes that require C&W to upgrade hardware or network capacity  
 Changes that require a visit to the customer’s premises,

**4. Service Availability**

- (a) The availability levels set out in this Paragraph (“Availability”) are only applicable where the Service is provided by C&W or third party suppliers acting on C&W’s behalf and where permanent connection to the C&W network is provisioned.
- (b) The C&W Service Demarcation Point (“SDP”) at the Premises” is defined as being:

<i><b>SERVICE</b></i>	<i><b>SDP</b></i>
C&W Frame Relay, X25	NTU, CSU, DSU Physical Connection Point
C&W Managed Router + Frame Relay	The LAN Interface Point (Ethernet Or Token Ring)

- (c) The Committed Availability will be deemed to be satisfied if, the Service is available at the C&W SDP at the Premises for not less than the following percentage of the time in any complete Month after the Service Commencement Date:

<i><b>“Service”</b></i>	<i><b>“Committed Availability Figure”</b></i>	
C&W Frame Relay, X25	100%	
C&W Managed Router+Frame Relay	100%	

- (d) The Guaranteed Availability will be deemed to be satisfied if, the Service is available at the C&W SDP at the Premises for not less than the following percentage of the time in any complete Month after the Service Commencement Date.

<i><b>“Service”</b></i>	<i><b>“Guaranteed Availability Figure”</b></i>
C&W Frame Relay, X25	99.7 %
C&W Managed Router+Frame Relay	99.7% *

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**PART E DATA SERVICES - continued**

**Item 504 Frame Relay – continued**

\* The percentage availability figure defined above does not apply to Router equipment provided by Cable & Wireless (Cayman Islands) Ltd. as part of the “Service”’s pursuant to this agreement unless Customer has procured the standard 4 hour or Premium maintenance level for each Router device.

- (e) The percentage Availability will be calculated and measured as the percentage that the Service was available at the Premises, between C&W “Service Demarcation Points”, provided as follows:

$$P = \frac{A \times 100}{B}$$

A is the number of hours for which the end-to-end Service was available, as measured by C&W.

B is no of hours in the relevant Month and

P is the resulting percentage Availability.

- (f) Monthly Charge is defined as the following charges

- The Router management and rental charge
- The Frame Relay port rental charge

Where the port and local loop rental charges are consolidated into a single charge, the Frame Relay port rental charge is limited to 50% of the aggregate charges

Monthly Charge excludes

- The Router maintenance charge

- (g) If the percentage Availability of the Service, calculated in accordance with Paragraph 4(e), is less than the Guaranteed Availability Figure percentage referred to in Paragraph 4(d), then the Customer will be entitled to a Performance Remedy, being a credit of 100% of the Monthly Charge which would otherwise have been payable in respect of the relevant Premises.
- (h) If the percentage Availability of the Service, calculated in accordance with Paragraph 4(e), is less than the Committed Availability percentage referred to in Paragraph 4(c) but exceeds the Guaranteed Availability Percentage referred to in Paragraph 4(d), then the Customer will be entitled to a Performance Remedy, being a credit of ((Monthly charge)/30) for every 1 hour of unavailability which would otherwise have been payable in respect of the relevant Premises. The total compensation payable under this paragraph shall not exceed 100% of the Monthly Charge for the affected Service.
- (i) Subject to Paragraph 4(j) below, the Service will be deemed Available when the Premises to which it is connected in accordance with this Agreement is able transmit or receive information except where this failure is caused by a fault at another Premises.
- (j) Service will not be deemed to be unavailable, for the purposes of the calculation in Paragraph 4(c) above, if the unavailability arises from or is otherwise caused by:

- 1) The Customer requesting C&W to test the service and no fault has been detected or reported;

**PART E DATA SERVICES - continued**

**Item 504 Frame Relay – continued**

- 2) the Service being modified or altered in any way at the Customer’s request in accordance with this Agreement; this does not include where C&W are at fault during a modification, whereby the Service cannot be used.
  - 3) any planned outage in accordance with Paragraph 4(m) of this Schedule;
  - 4) any suspension of the Service in accordance with the terms of this Agreement;
  - 5) a failure or fault of the Customer CPE or application, i.e. customer servers or Personal Computers or failure or fault arising pursuant to a Force Majeure event as defined in the Customer contract;
  - 6) the failure of the Customer to give C&W access to the C&W CPE and any part of the Service upon being requested to do so by C&W for the purposes of investigating and rectifying any fault; or
  - 7) the Customer failing to operate the Service in accordance with the terms of this Agreement.
- (l) For the avoidance of doubt, any period of unavailability shall not count towards the calculation of percentage Availability in accordance with Paragraph 4(c) where C&W can find no fault in the Service
- (m) The period of unavailability of the Service will be measured from the time the unavailability is reported to the appropriate Service Management Centre by the Customer and shall end upon when C&W inform the Customer that the Service is available. Customer shall be deemed to have been informed even if C&W has unsuccessfully tried to contact the Customer.
- (n) C&W will give the Customer notice of any work, as defined in the contract, to be carried out on the C&W Network for the purposes of modifying or enhancing the C&W Network.

**5. Round Trip Delay**

- (a) The Round-Trip Delay (RTD) is defined as the elapsed time between when a 1024 byte IP ‘ping’ packet departs the origination (C&W) node and returns to the same node. The service level is C&W node to C&W node with no local access or Router delay and excludes processing times for encryption and any other network based security systems.
- (b) RTD from Cable & Wireless Network node to Network node shall not exceed the following specifications, shown below 97% of the time, measured on a monthly basis. If a Customer notifies Cable & Wireless (Cayman Islands) Ltd. of a RTD and RTD between these nodes exceeds the values shown below the Customer will be eligible to apply for a Performance Remedy. All numbers are in milliseconds (ms).

From/ To	USA (West Coast)	Western Europe	Eastern Europe	Middle East	Far East	Japan
USA (East Coast)	80 ms	120 ms	300 ms	200 ms	410 ms	400 ms
USA (West Coast)		200 ms	400 ms	300 ms	500 ms	450 ms
Western Europe			100 ms	100 ms	300 ms	400 ms
Eastern Europe				300 ms	600 ms	680 ms
Middle East					200 ms	280 ms
Far East						70 ms

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**PART E DATA SERVICES - continued**

**Item 504 Frame Relay – continued**

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- (b) If Cable & Wireless (Cayman Islands) Ltd. fails to meet the target RTD, for less than 97% of the time in a month, a Performance Remedy will be payable, equal to 10% of the “Monthly Charge” at the Premises affected by RTD.