

**FLOW**  
**MASTER SERVICES AGREEMENT**

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(whether autonomous or not) of the local jurisdiction of the Customer and/or FLOW, the governments thereof, or any other such body which has jurisdiction over the Parties or all or part of the subject matter of this Agreement;

**Confidential Information:** means any information or data concerning or related to a Party's or its customers' general business operations or affairs, including but not limited to sales, costs, profits, pricing methods, organisation, contracts, business plans, business opportunities, business concepts, marketing and financial data, financial statements, sources of products, customer lists and employee lists, manufacturing and production processes and which is either marked confidential or of such a nature that a reasonable person would believe it to be confidential or proprietary and all other information of a confidential nature or of such a nature that a reasonable person would believe it to be confidential including all information or data concerning or related to a Party's or its affiliate's technology or developments;

**Customer Equipment:** hardware or software not owned by FLOW, which is used with the Service;

**CWIC:** CWI Caribbean Limited, a company incorporated in Barbados whose registered office is at Windsor Lodge, Government Hill, St. Michael, Barbados;

**Delivery:** delivery by FLOW of the FLOW Equipment to the Site pursuant to Clause 3 herein;

**Delivery Date:** the date the FLOW Equipment shall be delivered to the Site as set out in the Service;

**Equipment:** the FLOW Equipment and the Customer Equipment as specified in the Service to be installed at the Site;

**Force Majeure:** events which are beyond the reasonable control of the party claiming Force Majeure which occur after the Commencement Date and whose effects are not capable of being overcome. Events of Force Majeure include but are not limited to governmental act, war, the threat of imminent war, riots, civil commotion, hurricanes, fires, explosions, storms, floods, lightning, earthquakes and other natural calamities. Lack of funds for any reason shall not be considered an event of Force Majeure;

**Insolvency Event:** means, in relation to a party:

- (a) the issue of a petition for its winding up which is not withdrawn or dismissed within 28 days of issue;
- (b) the making of an order for the appointment of an administrator, administrative receiver, trustee, liquidator, manager or similar officer by that party or its directors;
- (c) a provisional liquidator, liquidator, administrative receiver, administrator, trustee or other similar officer taking possession of or being appointed over or taking possession of the whole or substantially the whole of its property;
- (d) a receiver being appointed over any part of its property;
- (e) it entering into a company voluntary arrangement or otherwise entering into a compromise with the majority by value of its unsecured creditors; or

- (f) any proceedings analogous to any of (a) to (e) above occurring in any other jurisdictions;

**Intellectual Property Rights:** mean all rights in software, inventions, patents, copyrights, design rights, semiconductor topography and chip design rights, database rights, trade marks and trade names, domain names, service marks, trade secrets, know-how and other intellectual property rights (whether registered or unregistered) and all applications and registrations for and extensions and renewals of such rights or any of them, anywhere in the world and "Intellectual Property" shall be construed accordingly to mean the subject matter of such "Intellectual Property Rights";

**FLOW:** The trading name of each of the FLOW Companies listed at Schedule A and the collective name of CWIC Caribbean Limited and the FLOW Companies under this Agreement;

**FLOW Company or Cable & Wireless (C&W) Company:** (a) any corporation or other entity of which FLOW owns or controls, directly or indirectly, 50% or more of the voting shares; or (b) any corporation or other entity which owns or controls, directly or indirectly, 50% or more of the voting shares of C&W; or (c) any other corporation or other entity of which an affiliate of C&W (as defined in (a) and (b) above) owns or controls, directly or indirectly, 50% or more of the voting shares;

**FLOW Equipment:** the equipment to be provided by FLOW as specified in the Service to be installed at the Site;

**FLOW Services or Services:** those services to be supplied to the Customer by FLOW as set out in the Service Schedule;

**Non-Recurring Charges;** means the non-recurring Charges payable by Customer to FLOW in connection with the FLOW Service as set out in Clause 10 (Charges);

**Parties:** means the Customer and FLOW collectively, and "Party" means either of them. References to a "Party" or the "Parties" shall include its or their permitted assignees;

**Recurring Charges:** means the recurring Charges payable by Customer to FLOW in connection with the FLOW Services as set out in Clause 10 (Charges);

**Service Commencement Date:** the date on which FLOW notifies the Customer that the Service is ready for use by the Customer or if there is a fault within the first five (5) Working Days from notification by FLOW that the Service is ready for use, the Service Commencement Date is the date on which the fault is rectified and FLOW notifies the Customer of same;

**Service Schedule:** a schedule to this Agreement which sets out the FLOW Service being provided;

**Site(s):** the location(s) at which the Services will be provided as specified in the Service Schedule;

**Software:** any of the software programs to be supplied by FLOW to the Customer as set out in the Service Schedule and shall include any replacements, modifications, variations, enhancements or additions thereto;

**Software Documentation:** the instruction manuals, user guides and other information in respect of the Software to be made available by FLOW to the Customer at its discretion in either printed or machine readable form;

**Specification:** the specification of equipment and services to be provided to the Customer as set out in the Service Schedule;

**Taxes:** all taxes, levies, imposts, duties, fines, withholdings or other charges of whatsoever nature imposed by any country or any subdivision or authority thereof, in any way connected with this Agreement or any instrument or agreement required hereunder, and all interest, penalties or similar liabilities with respect thereto, except such taxes as are imposed or measured by a Party's net income or property;

**Technical Support:** means any technical support to be provided to the Customer by FLOW during the Term as set out in the Service Schedule;

**Term:** the period commencing on the Commencement Date until the Termination of this Agreement for any reason;

**Territory:** the various jurisdictions in which the Service is to be provided.

**Updates:** means an update to the Software provided pursuant to this Agreement;

**Working Day:** means a day which is not a public holiday or a normal non-working day in the country in which each Party has its place of business.

## 1.2 Construction

In this Agreement, unless otherwise specified or the context otherwise requires:

- (a) words importing the singular only shall include the plural and vice versa;
- (b) words importing the whole shall be treated as including a reference to any part;
- (c) reference to this Agreement or to any other document is a reference to this Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time as permitted by the provisions of this Agreement;
- (d) any phrase in this Agreement introduced by the term "include", "including", "in particular" or similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.
- (e) headings used in this Agreement are for reference only and shall not affect its construction or interpretation.

## 1.3 Other references

In this Agreement a reference to:

- (a) "this Agreement" means this agreement and all Schedules, Exhibits and other attachments and recitals to this agreement;
- (b) "day" means calendar days and "weeks" means calendar weeks unless otherwise specified;

- (c) "person" includes any individual, firm, company, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body of two or more of the foregoing (whether or not having separate legal personality and wherever incorporated or established); and
- (d) "written" or "in writing" includes faxes and any non-transitory form of visible reproduction of words but not email or text messaging via mobile phone.

#### 1.4 **Terms of Agreement to Prevail.**

If there is any inconsistency between the terms of this Agreement and its Schedules, this Agreement shall take precedence. If there is any inconsistency between the terms of this Agreement, its Schedules, an Adoption Agreement, and the terms of an Application Form, the order of precedence, in descending order of importance, shall be as follows: (1) the terms and conditions of the Adoption Agreement (if any), (2) the terms and conditions of the Agreement; (3) the terms and conditions of the Schedules, and (4) the Application Forms. Each Application Form shall be subject to this Agreement and the terms and conditions of the Service Schedule(s) hereto. All Application Forms shall incorporate and include a reference to this Agreement, and the rights and obligations of the parties shall be interpreted accordingly

## 2 **TERM**

This Agreement shall come into force on the date of execution and (subject to the provisions for early termination contained at Clause 17 shall remain in force for a period of ( ) years unless terminated in accordance with Clause 17 or any of the Service Schedules. At the end of the initial ( ) year period, this Agreement shall be automatically renewed for successive one year periods unless one Party gives written notice to the other Party to terminate this Agreement at least three (3) months prior to the expiry of the initial ( ) year period or the renewed period.

## 3 **FLOW SERVICES**

- 3.1 FLOW hereby agrees to provide the FLOW Services to the Customer as set out in the Service Schedule.
- 3.2 Where FLOW Services are to be provided to the Customer or its Affiliate by a FLOW Company other than CWIC, the FLOW Company and the Customer or its Affiliate shall enter into an Adoption Agreement.
- 3.3 The FLOW Companies are hereby severally liable for FLOW's obligations under this Agreement in respect of the Territory set against their name in Schedule A. In addition, it is specifically agreed by the Parties that this Agreement shall apply to such other entities as may be mutually agreed by Customer and the relevant C&W Group and Affiliated Company.
- 3.4 Any dates for the delivery and/or provision of the FLOW Equipment or FLOW Services are estimates only.
- 3.5 FLOW shall be entitled to change the Specification insofar as it refers to the FLOW Equipment or FLOW Services where necessary for operational reasons (provided that such changes do not materially affect the performance of the FLOW Equipment or FLOW Services) or to comply with Applicable Legislation.

- 3.6 The Customer acknowledges and accepts that it is technically impracticable to provide the FLOW Equipment or FLOW Services free of faults although FLOW will use reasonable endeavours to provide reliable services. FLOW does not warrant that the FLOW Equipment or FLOW Services will be fault free or free of interruptions.
- 3.7 This Agreement may be varied from time to time to incorporate additional Services upon mutual agreement, by both parties signing the relevant Service Schedule.

#### **4 CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer undertakes to:
- (a) promptly provide to FLOW, any information which FLOW may reasonably require from time to time to enable FLOW to provide the FLOW Equipment and the FLOW Services;
  - (b) provide to FLOW full access to the Site as necessary for the inspection of the Site prior to installation of the FLOW Equipment, during the installation of the FLOW Equipment, during Installation Tests and to the extent necessary to enable FLOW to provide Technical Support;

#### **5 INSTALLATION**

- 5.1 Each party shall comply with its responsibilities as set out in the Service Schedule and shall provide to the other all necessary assistance in the installation process.
- 5.2 FLOW may, provide to the Customer written Site preparation specifications in such detail as to ensure that the FLOW Services shall operate efficiently at the Site. The Customer shall provide that the Site is prepared in accordance with any such specifications provided by FLOW.
- 5.3 FLOW may test the Site prior to installation or procure that the Site is tested to ensure that the Site is suitable for the installation of the FLOW Services.
- 5.4 If in the reasonable opinion of FLOW it is necessary to remove or otherwise disconnect any of the existing equipment, system or network at the Site in order to carry out the installation of the FLOW Services, then the Customer shall permit or procure and obtain all necessary consents for such removal and/or disconnection, and shall give FLOW all necessary assistance to enable such work to be carried out.

#### **6 SERVICE COMMENCEMENT DATE**

- 6.1 FLOW shall confirm the Service Commencement Date in writing to the Customer.

#### **7 TITLE AND RISK**

- 7.1 Title to the FLOW Equipment which FLOW procures on the Customer's behalf shall only pass to the Customer on payment in full and in cleared funds of the Charges and any other sums which may then be due under this Agreement.
- 7.2 Risk in the FLOW Equipment shall pass to the Customer on Delivery to the Site and the Customer shall be responsible for insuring the FLOW Equipment against all normal risks with effect from the time risk passes. For the purposes of this sub-clause, FLOW Equipment shall include equipment owned and operated by FLOW but held on the Customer's Site.



## 8 **WARRANTIES AND UNDERTAKINGS**

- 8.1 The Customer warrants and undertakes as a condition of this Agreement that it shall not use the FLOW Services:
- (a) in a way that contravenes the terms of any Applicable Legislation or any codes of practice, regulations or any licence or authorisation, or in a manner which is in any way unlawful or fraudulent or to the knowledge of the Customer has any unlawful or fraudulent purpose or effect;
  - (b) in connection with the carrying out of fraud or a criminal offence;
  - (c) in a way that contravenes any instructions given to the Customer by FLOW in relation to the Services;
  - (d) in a way that in FLOW's reasonable opinion could materially affect the quality of the FLOW Service or other service(s) provided by FLOW or any third party.
  - (e) in a manner which constitutes a violation or infringement of the rights of any person, firm or company (including but not limited to rights of copyright or confidentiality);
  - (f) in a manner which is likely to cause damage to any telecommunications system, equipment or property of FLOW or any third party; or
  - (g) in contravention of FLOW's AUP.

## 9 **INDEMNITIES**

- 9.1 The Customer shall indemnify and keep indemnified FLOW against all losses of whatsoever nature suffered or incurred, directly or indirectly, by FLOW or CWIC in consequence of any breach, non performance or non observance by the Customer of any of its obligations under this Agreement including, without limitation, where these arise from or in connection with any claim made by any Competent Authority, or any other third party as a result of:
- (a) any physical injury or death caused by the negligence of the Customer;
  - (b) any physical damage to any telecommunications system, equipment or property caused by the negligence of the Customer;

## 10 **CHARGES**

- 10.1 In consideration of the provision of the FLOW Services, the Customer shall pay to FLOW the Charges as set out in the Service Schedule and any other sums due under this Agreement.
- 10.2 The Charges are confidential and shall not be disclosed to any third party without FLOW's written consent.
- 10.3 The Charges payable to FLOW include:
- (a) Non-Recurring Charges; and
  - (b) Recurring Charges;

for each FLOW Service and/or FLOW Equipment supplied.

- 10.4 The Charges applicable to each FLOW Service and/or FLOW Equipment shall be those set out in the Service Schedule as may be varied by the Parties from time to time in accordance with the terms of this Agreement.

## 11 PAYMENT

- 11.1 All payments shall be made by the Customer in the currency specified in the Service Schedule by transfer to such bank account as FLOW may from time to time notify in writing to the Customer.
- 11.2 The Charges shall be invoiced to the Customer on a monthly basis.
- 11.3 Payment of the Charges shall be made within thirty (30) days of the date of the relevant invoice. Payment shall be made by electronic transfer, cheque or other method as the parties agree from time to time.
- 11.4 In the event of non-payment of any invoice within such thirty day period, FLOW reserves the right to charge and receive interest at a rate equal to three percent (3%) per annum above the base lending rate of FirstCaribbean International Bank of the Territory in which the invoice is issued then in force on any outstanding amounts which are not the subject of a bona fide dispute, until payment is received in full, whether before or after judgment, together with all costs, reasonably incurred by FLOW in securing such payment and/or obtaining such judgment, as the case may be.

## 12. TAXES

- 12.1 The Charges are exclusive of Value Added Tax or similar taxes levied on sales or services where applicable, and any other present or future levy, duties and taxes, applicable from time to time, which either Party shall pay as required by law and provide acceptable evidence to the other party of the tax paid. FLOW shall not be liable for any interest, penalty or other charges that may be incurred by the Customer as a result of any failure to comply with the relevant tax regulations. FLOW has the right to recover any interest, penalties or other charges arising from the failure of the Customer to comply with any relevant tax regulations.
- 12.2 If Customer is required by law to deduct any Taxes from or in respect of any amount paid or payable hereunder, such amount shall be increased as necessary so that FLOW receives a net amount after the deduction or withholding equal to the sum it would have received had no such deduction been required.. The payer shall provide acceptable evidence to the other Party of the tax withheld and paid.
- 12.3 Notwithstanding anything else herein contained, the Customer agrees that it shall be responsible for the payment of all Taxes payable by it and the Customer further acknowledges that FLOW may, if statutorily obligated, remit payment of such Taxes directly to the applicable taxing authority from any payment due to the Customer. FLOW shall if so required provide to the Customer receipts of such payments in the name of the Customer within such period as may be reasonable in the circumstances, of such payments being made to the applicable taxing authority.
- 12.4 The Parties shall co-operate to take whatever actions, and provide whatever documents are necessary to mitigate any Taxes potentially due under this Agreement, in strict compliance with all relevant tax authorities.

### **13. SOFTWARE LICENCE**

- 13.1 FLOW grants to the Customer without further charge an irrevocable, non-exclusive, non-transferable licence to use the Software and any Updates, to possess and refer to the Software Documentation, and to make such copies of the Software as are necessary to Use the Software with the Facility. For the purposes of this Clause, "Use" shall mean the copying or transmission of the Software or (where in machine readable form) the Software Documentation for use in accordance with the instructions contained in the Software or (as the case may be) the Software Documentation.
- 13.2 The Customer shall be permitted to make copies for back-up purposes as well as all other ancillary rights implied by law.

### **14. INTELLECTUAL PROPERTY**

- 14.1 As between FLOW and the Customer, all Intellectual Property created pursuant to this Agreement which subsists now or at any time in the future shall without limitation vest in and be the absolute property of FLOW. To the extent that any Intellectual Property created pursuant to this Agreement vests in the Customer by operation of law or otherwise, the Customer hereby assigns (by way of assignment of present and future rights) without payment all such Intellectual Property to FLOW with full title guarantee. If a further assignment is required or if the Customer is unable to assign such Intellectual Property the Customer shall forthwith execute all documents that may be necessary to effect the transaction that most closely resembles the commercial intent of an assignment and is permitted in the relevant Territory. Pending the above assignments and remaining formalities relating to such assignments, the Customer shall hold all such Intellectual Property on trust for FLOW.

### **15. LIABILITY**

- 15.1 Subject to clauses 15.2 and 15.3, FLOW's liability in connection with this Agreement (whether based in contract, tort (including liability for negligence), misrepresentation, warranty or any other legal or equitable grounds) shall in all cases, be limited to direct damages suffered by the Customer and shall not exceed an amount equal to US\$[ ] per event or series of related events and US\$[ ] in aggregate over the duration of this Agreement.
- 15.2 FLOW shall not be liable to the Customer in contract, tort, or otherwise, including any liability for loss of profits, consequential, collateral, special, incidental or indirect damages (such as, without limitation, loss of revenue, loss of data, loss of use, loss of goodwill, loss of savings or interruption of service) or any punitive or exemplary damages howsoever arising.
- 15.3 Except as expressly set out in this Agreement, all conditions, warranties, terms undertakings and obligations implied by statute, common law, custom, trade usage or otherwise are hereby wholly excluded.

Nothing in this Agreement shall exclude or restrict FLOW's liability for death or personal injury resulting from the negligence of FLOW or its employees while acting in the course of their employment, or for fraud.

## **16. INSURANCE**

- 16.1 Each Party shall throughout the period of the Agreement maintain with a reputable insurance company at its own cost:
- 16.1.1 employer's liability insurance in accordance with any legal requirement for the time being in force; and
  - 16.1.2 a comprehensive policy or policies of professional indemnity and other insurance providing an adequate level of cover in respect of all insurable liability which may be incurred by the Party under the Agreement, including (without limitation) in respect of death or personal injury, or loss of or damage to property, intellectual property infringement and product liability, provided that the terms of any insurance policy or the amount of the cover shall not relieve the Party of any liabilities under the Agreement.
- 16.2 It shall be the responsibility of each Party to determine the amount of insurance cover that will be adequate to enable that Party to satisfy any liability referred to in Clause 15.1.
- 16.3 The Parties shall produce to each other on request copies of all insurance policies referred to in Clause 16.1 or other evidence confirming the existence and extent of cover given by those policies, together with receipts or other evidence of payment of the premiums due under those policies.

## **17. TERMINATION**

- 17.1 Without prejudice to its other rights and remedies FLOW may terminate this Agreement on giving notice to the Customer, taking immediate effect, if the Customer:
- 17.1.1 experiences an Insolvency Event;
  - 17.1.2 the Customer fails to pay any invoice when due;
  - 17.1.3 commits a material breach of this Agreement and fails to remedy the breach within thirty (30) days of a written notice so to do;
  - 17.1.4 commits a material breach of this Agreement which is incapable of remedy;
  - 17.1.5 is directed by the relevant regulatory or other Competent Authority to cease to provide or allow the provision of the Facility or any part thereof and FLOW has given the Customer thirty (30) days written notice of such intent to terminate unless such notice is not allowed by such relevant regulatory or other Competent Authority;
  - 17.1.6 if Control of the Customer is transferred to any person or persons other than the person or persons in Control of the Customer at the date hereof.
- 17.2 Where the Customer fails to pay an invoice when due, in addition to the rights specified in Clause 17.1 above, FLOW may suspend the provision of the FLOW services, or any other service provided by FLOW to the Customer.
- 17.3 Termination or expiry of this Agreement for any reason, whether under this Clause 17 or otherwise, shall not affect any accrued rights and liabilities of either Party on the date of such termination or expiry, nor shall it affect the coming into force or the continuing in

force of any provision of this Agreement which is expressly or by implication intended to come into force on or after the expiry of this Agreement.

- 17.4 For the purposes of this Clause, a breach shall be considered capable of remedy:
- 17.4.1 if the Party in breach can comply with the provision in question in all respects other than as to the time of performance; and
  - 17.4.2 if time of performance is not of the essence.
- 17.5 Upon the termination of this Agreement for any reason, unpaid invoices for the Charges or any part thereof rendered by FLOW in respect of the FLOW Equipment and FLOW Services will become immediately payable by the Customer.
- 17.6 Save where the Service is terminated by reason of material breach by FLOW, in the event that a Service is terminated prior to the expiry of the initial period the Customer shall pay all remaining monthly recurring Charges specified in the relevant Service Schedule as being payable by the Customer during the initial period.

## 18. CONFIDENTIALITY

- 18.1 Except as otherwise provided herein, each Party undertakes that it shall:
- 18.1.1 only use Confidential Information disclosed by the other Party for the purposes of this Agreement;
  - 18.1.2 not disclose to any third party Confidential Information disclosed to it by the other Party or by any affiliate of the other Party without the prior written consent of such other Party save that either Party (the "**Recipient**") may disclose Confidential Information disclosed to it by the other to its employees or affiliates and affiliates' employees, agents, advisors and/or sub-contractors (collectively, the "**Representatives**"), to enable the Recipient to perform its obligations in this Agreement; and provided that where the Confidential Information is to be disclosed to any such Representatives, the Party making such disclosure shall ensure that such Representatives undertake to treat the Confidential Information as confidential under the same terms and conditions as contained in this Agreement; and
  - 18.1.3 provide reasonable precautions to ensure that all Confidential Information disclosed to it by the other Party is treated as confidential and not disclosed.
- 18.2 The provisions of this Clause 18 shall not apply to any information which:
- 18.2.1 is or becomes public knowledge other than by breach of this Clause 18;
  - 18.2.2 is in the possession of the Recipient without restriction in relation to disclosure before the date of receipt from the disclosing party; or
  - 18.2.3 is required to be disclosed by law or a Competent Authority but only to the extent required by law or such Competent Authority.
- 18.3 The obligations of confidentiality in this Clause 18 shall survive the expiration or termination of this Agreement.
- 18.4 The Parties agree to keep confidential the terms of this Agreement, and neither Party shall make any announcement in relation to this Agreement or otherwise publicise its

existence or its contents or use or refer to the name, trade mark or trade name of the other Party in any disclosure without the prior written consent of the other Party.

## 19. GENERAL

### 19.1 Dispute Resolution

19.1.1 In the event of any dispute between the Parties arising out of or in connection with this Agreement, representatives of the Parties from the first level of management who have authority to settle any dispute shall, within seven (7) Working Days of receipt of a written notice from either Party to the other, meet in an effort to resolve the dispute. If the dispute is not resolved at that level within fifteen (15) days of that meeting, the dispute shall be referred to a second level of management who must meet within fifteen (15) days (or such other period as may be agreed) of the referral to attempt to resolve the dispute. In such circumstances, the Parties shall promptly prepare and exchange memoranda stating the issues in dispute, their respective positions and a summary of the negotiations which have taken place and attaching all relevant documents. The levels of escalation are set out in Clause 19.1.2.1.2. If any of the persons named in Clause 19.1.2 are unable to attend a meeting, their nominated substitute may attend provided that such substitute has a similar level of seniority and is fully authorised to settle the unresolved dispute. Until concluded with a written legally binding agreement, all negotiations connected with any dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings. In the event that the Parties have exhausted the escalation process and the dispute has not been resolved, then either Party may refer the matter to the courts in accordance with Clause 19.14 (Governing Law and Jurisdiction).

19.1.2 For the purposes of Clause 19.1.1, the levels of escalation are:

	FLOW	CUSTOMER
First Level		
Second Level		

19.1.3 This Clause 19.1 (Dispute Resolution) shall not operate to restrict either Party from:

19.1.3.1 initiating any proceedings in respect of a matter where such Party has reasonable cause to do so to avoid damage to its business or to protect or present any right of action it may have; or

19.1.3.2 applying for or obtaining emergency or interlocutory relief.

19.1.4 Without prejudice to either Party's right to seek redress in court, the other Party shall continue to perform its obligations under this Agreement notwithstanding any disputed matter or the implementation of the procedures set out in this Clause 19.1 (Dispute Resolution).

## 19.2 Subcontracting and Assignment

- 19.2.1 The Customer may not sub-contract to any other person the performance of any of its obligations, and may not, without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed), assign, transfer (in whole or in part), charge or deal in any manner with this Agreement or the benefit or burden of or the rights under this Agreement.
- 19.2.2 FLOW may sub-contract the performance of its obligations under this agreement to any other person who is qualified to perform them, and may assign, transfer (in whole or in part), charge or deal in any manner with this Agreement or the benefit or burden of or the rights under this Agreement.

## 19.3 Force Majeure

- 19.3.1 No party shall be liable to the other under this Agreement for failure to perform any obligations under this Agreement, or for any Losses which may be suffered by the other party due to any Force Majeure event;
- 19.3.2 An event of Force Majeure shall not affect the Customer's obligation to pay the Charges.
- 19.3.3 Where an event of Force Majeure subsists for a period of sixty (60) days or more, either Party may notify the other that it wishes to suspend its obligations under the Agreement until such time as it is possible to recommence those obligations without being affected by the event of Force Majeure. In such cases, the Term of this Agreement shall automatically be extended by an period of time equal to that for which the obligations in the Agreement have been suspended.

## 19.4 Amendments

No amendment of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the Parties.

## 19.5 Waivers and Remedies

- 19.5.1 Except as otherwise stated in this Agreement, the rights and remedies of each Party under this Agreement:
- 19.5.1.1 are in addition to and not exclusive of any other rights or remedies under this Agreement or the general law; and
  - 19.5.1.2 may be waived only in writing and specifically.
- 19.5.2 Delay in exercising or non-exercise of any right under this Agreement is not a waiver of that or any other right.
- 19.5.3 Partial exercise of any right under this Agreement shall not preclude any further or other exercise of that right or any other right under this Agreement.
- 19.5.4 Waiver of a breach of any term of this Agreement shall not operate as a waiver of breach of any other term or any subsequent breach of that term.

## 19.6 Severability

- 19.6.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:
- 19.6.1.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
  - 19.6.1.2 the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.
- 19.6.2 Whilst the Parties consider the provisions contained in this Agreement reasonable, having taken independent legal advice, if any one or more of the provisions are adjudged alone or together to be illegal, invalid or unenforceable, the Parties shall negotiate in good faith to modify any such provision(s) so that to the greatest extent possible they achieve the same effect as would have been achieved by the invalid or unenforceable provision(s).

## 19.7 Entire Agreement

- 19.7.1 This Agreement:
- 19.7.1.1 constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement; and
  - 19.7.1.2 supersedes and extinguishes any prior drafts, agreements, undertakings, understandings, promises or conditions, whether oral or written, express or implied between the Parties relating to such subject matter.
- 19.7.2 Each Party acknowledges that it has not been induced to enter into this Agreement by nor has it relied upon any representation, promise, assurance, warranty or undertaking (whether in writing or not) by or on behalf of the other Party or any other person save for those contained in this Agreement. Accordingly, each of the Parties acknowledges and agrees that the only remedy available to it in respect of the subject matter of this Agreement shall be for breach of contract under the terms of this Agreement and it shall have no right of action against any other Party in respect of any such representation, promise, assurance, warranty or undertaking.
- This Clause shall not exclude any liability which either Party would otherwise have to the other or any right which either of them may have to rescind this Agreement in respect of any statements made fraudulently by the other prior to the execution of this Agreement or any rights which either of them may have in respect of fraudulent concealment by the other.
- 19.7.3 In the event of a conflict between any of the terms of this Agreement and those of any Service Schedules attached hereto, the conflict shall be resolved according to the following order of priority, (i) the Clauses of this Agreement, then (ii) the Schedules.



## 19.8 Survival Of Obligations

Notwithstanding any provision of this Agreement to the contrary, the provisions of Clause 18 and any other Clauses which expressly or impliedly survive expiry or termination of this Agreement for any reason whatsoever shall continue in full force and effect after expiry or termination.

## 19.9 Relationship of Parties

In making and performing this Agreement, the Parties are independent contractors. Nothing in this Agreement is intended to or shall operate to create an agency, partnership, employer and employee relationship or joint venture of any kind between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## 19.10 Use of Trademarks

Neither party shall without the other Party's prior written consent engage in advertising, promotion or publicity related to this Agreement, or make public use of any copy or semblance of any trade name, trademark, service mark, insignia, symbol, logo or any other product service or organization designation or any specification or drawing of a Party or its affiliates or evidence of inspection by or for any of them.

## 19.11 Notices

19.11.1 All notices between the Parties with respect to this Agreement shall be in writing and signed by or on behalf of the Party giving it.

19.11.2 Any notice referred in this Clause 19.11 may be served:

19.11.2.1 by delivering it by hand; or

19.11.2.2 by first class pre-paid post or recorded delivery; or

19.11.2.3 by fax, provided that a copy is also sent by post as set out in Clause 19.11.2.2

19.11.3 The addresses and fax numbers of the Parties for the purposes of this Clause are:

FLOW: .

Address: (or other such address as FLOW may subsequently notify to Customer)

For the attention of:

Fax Number: ]

Customer: [ ]

Address: [ ]

(or other such address as Customer may subsequently notify to

FLOW) For the attention of:

Fax number: [ ]

With copies to:

19.11.4 Notices shall be deemed to have been received:

19.11.4.1 if delivered by hand, on the day of delivery;

19.11.4.2 if sent by first class pre-paid post or recorded delivery, [two] business days after posting, exclusive of the day of posting;

19.11.4.3 if sent by fax at the time of transmission unless sent after business hours in the place of receipt in which case it shall be deemed to have been received on the next business day in the place of receipt (provided that a copy has also been sent by post as set out in Clause 19.11.4.2.

## 19.12 Rights of Third Parties

A person who is not a Party has no rights to enforce, or to enjoy the benefit of, any provision of this Agreement, save that this Agreement may be enforced by CWIC.

## 19.13 Counterparts

This Agreement may be executed by the Parties in any number of counterparts and on separate counterparts, each of which shall constitute an original but all the counterparts together shall constitute one and the same instrument.

## 19.14 Governing Law and Jurisdiction

This Agreement is made in and governed by the laws of ( ). In relation to any legal action or proceedings (a) arising out of or in connection with this Agreement or its implementation or effect or (b) relating to any non-contractual obligations arising out of or in connection with this Agreement, each of the Parties irrevocably submits to the exclusive jurisdiction of the ( ) courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their respective duly authorized officers as of the Effective Date.

<b>By:</b> _____ <i>(Signature)</i>	<b>By:</b> _____ <i>(Signature)</i>
<b>Printed Name:</b> _____	<b>Printed Name:</b> _____
<b>Title:</b> _____	<b>Title:</b> _____
<b>Date:</b> _____	<b>Date:</b> _____

**SCHEDULE A**  
**FLOW COMPANIES**

**BUSINESS UNITS**

**TERRITORY**

<p>Cable and Wireless (Anguilla) Limited Telecom House PO Box 77 The Valley Anguilla</p>	<p>Anguilla</p>
<p>Cable &amp; Wireless Antigua and Barbuda Limited PO Box 1516 Clare Hall St John's Antigua</p>	<p>Antigua</p>
<p>Cable &amp; Wireless (Barbados) Limited Windsor Lodge Government Hill St. Michael Barbados</p>	<p>Barbados</p>
<p>Cable and Wireless (BVI) Limited PO Box 440 Road Town Tortola British Virgin Islands, VG1110</p>	<p>British Virgin Islands</p>
<p>Cable and Wireless (Cayman Islands) Limited PO Box 293 One Technology Square, Eastern Avenue Grand Cayman, KY1-1105 Cayman Islands</p>	<p>Cayman Islands</p>
<p>Cable &amp; Wireless Dominica Limited PO Box 6 Roseau, Commonwealth of Dominica</p>	<p>Dominica</p>
<p>Cable &amp; Wireless Grenada Limited PO Box 119 The Carenage St George's Grenada</p>	<p>Grenada</p>

Cable & Wireless Jamaica Limited 2 - 6 Carlton Crescent, PO Box 21 Kingston 5 Jamaica	Jamaica
Cable and Wireless (West Indies) Limited PO Box 219 Sweeney's Montserrat	Montserrat
Cable & Wireless St. Kitts & Nevis Limited PO Box 86 Cayon Street Basseterre St Kitts	St. Kitts and Nevis
Cable & Wireless (St. Lucia) Limited Corinth Gros Islet St. Lucia	St. Lucia
Cable and Wireless St. Vincent and the Grenadines Limited Halifax Street Kingstown St. Vincent & the Grenadines	St. Vincent and the Grenadines
Cable and Wireless (TCI) Limited PO Box 78 Leeward Highway Providenciales Turks and Caicos Islands	Turks & Caicos Islands

**SCHEDULE B**  
**FORM OF ADOPTION AGREEMENT**

**ADOPTION AGREEMENT** dated: [Insert date]

Between:

[Insert Name and address of the C&W Company] ("**FLOW Company**"); and

[Insert Name and address of Customer or its Affiliate (in this Agreement "**Customer**")].

**BACKGROUND**

On [insert date], [insert name of customer] (" ") and [insert name of FLOW company] (" ") entered into a Master Services Agreement under which C&W provides certain services to (the "**Master Services Agreement**").

Customer now requires the provision of certain Services from the FLOW Company. The FLOW Company has agreed to supply and Customer has agreed to accept those Services on the terms of this Adoption Agreement that incorporates the applicable terms of the Master Services Agreement.

The parties now agree as follows:

**1. SUPPLY OF PRODUCTS AND SERVICES**

The FLOW Company hereby agrees to supply Services to the Customer in accordance with the terms of this Adoption Agreement.

**2. INCORPORATION OF TERMS AND INTERPRETATION**

**2.1 Incorporation of terms**

Subject to the remaining provisions of this Clause, the terms of the body of the Master Services Agreement (other than Clauses 4.1 (*Scope*) and 4.2 (*Adoption Agreements*) of the Master Services Agreement), the Application Form executed by the Parties, the Service Schedules to the Master Services Agreement listed below, and any other Schedules to the Master Services Agreement in effect as at the date of this Adoption Agreement (together "**Agreement Terms**") are incorporated into this Adoption Agreement as if those terms were reproduced in full, amended as provided in this Adoption Agreement.

## 2.2 Interpretation of defined terms

Unless a contrary intention appears (for instance, where a term is separately defined in this Adoption Agreement), any defined term used in this Adoption Agreement has the meaning given to it in the Master Services Agreement except a reference to:

- (a) "**FLOW**" in the Master Services Agreement shall be read as a reference to the FLOW Company;
- (b) "**Customer**" in the Master Services Agreement shall be read as a reference to the Customer that executed this Adoption Agreement; and
- (c) "**Agreement**" in the Master Services Agreement shall be read as a reference to the Adoption Agreement.

## 2.3 Order of precedence

If there is any inconsistency between the Agreement Terms and the terms set out in the body of this Adoption Agreement, the terms set out the Agreement shall prevail to the extent of any inconsistency.

## 3. AMENDMENTS TO AGREEMENT TERMS

The Agreement Terms as incorporated into this Adoption Agreement are amended as follows:

### 3.1 Notices

- (a) The notice details for Customer shall be as follows:

[NAME]  
[ADDRESS]

Facsimile: [NUMBER]

Marked for the attention of: [TITLE]

- (b) The notice details for FLOW Company shall be as follows:

[NAME]  
[ADDRESS]

Facsimile: [NUMBER]

Marked for the attention of:

### 3.2 Governing Law and Jurisdiction

***[Consider the appropriate governing law and jurisdiction and amend as appropriate]***

- (a) This Agreement is governed by and shall be construed in accordance with the laws of [XXXXX].
- (b) The parties agree that the courts of [XXXXX] have exclusive jurisdiction to settle any disputes in connection with the Agreement and accordingly submit to the exclusive jurisdiction of the [XXXXX courts].

**3.3 [Other]**

***Insert any country specific amendments or additions to the Master Services Agreement.***

**(a) Taxation**

***Insert any country specific taxation requirements (if any)***

**4 MUTUAL REPRESENTATION AND WARRANTY**

Each party represents and warrants to the other that it has full power and authority to execute, deliver and perform its obligations under this Adoption Agreement.

**IN WITNESS WHEREOF**, the parties hereto have signed and executed this Adoption Agreement on the date first mentioned above.

\_\_\_\_\_