

# GENERAL TARIFF TERMS AND CONDITIONS

## Conditions Governing Provision of Telecommunications Service

### PART A (Item 101)

This Item sets out the basic rights and obligations (hereinafter referred to as the "Terms") of both C&W and C&W's Customers, in connection with the Services and Equipment and provided under this Tariff.

#### **1. General**

1) Services and Equipment offered by C&W under this Tariff are subject to the terms and conditions contained in:

1. These Terms;
2. The rates, terms and conditions elsewhere in this Tariff. To the extent the rates, terms and conditions elsewhere in this Tariff are inconsistent with these Terms, the former shall override these Terms.
3. The rights, obligations, rates, terms and conditions contained in written agreements for the provision of Telecommunications Services. To the extent that the rights, obligations, rates, terms and conditions contained in written agreements for the provision of Telecommunications Services are inconsistent with these Terms or this Tariff, the latter shall prevail.

#### **2. Service Area**

1) The geographic area covered by the rates, terms and conditions contained in this Tariff are the Cayman Islands.

#### **3. Installation of Equipment**

- 1) C&W will agree to a date for installation of Equipment with the Customer in advance. C&W will, where possible, comply with this agreement, but is not liable for any loss the Customer may suffer if C&W fails to meet the terms of this agreement for reasons beyond its reasonable control.
- 2) To install the Equipment, C&W will need access to the Service Address during C&W's Normal Working Hours. At the Customer's request, C&W may agree to work outside its Normal Working Hours, in which case the Customer will pay C&W reasonable charges for doing so.
- 3) At the Customer's own cost, the Customer will supply suitable facilities necessary for the Equipment to be installed and operated, including a viable environment, a secure electricity supply and all necessary electrical and other installations and fittings, including internal wiring if required.
- 4) C&W will try to install the Equipment where the Customer wants it, but for technical and other reasonable reasons, this may not be possible. C&W, therefore, reserves the right to install the Equipment where it reasonably sees fit.
- 5) C&W may provide Special Installation Services, contingent upon the Customer's prior approval for such Services, if C&W is required to expand its Network in order to provide the Customer with Services.
- 6) C&W and C&W Agents will cause as little disturbance as is reasonably possible when carrying out any work at the Service Address. C&W will compensate the Customer fairly for any damage C&W or its Agent may cause at the Service Address.

#### **4. Access**

1) By applying to C&W for Services and/or by using the Services, the Customer confirms that:

- a) the Customer is the current occupier of the Service Address; and
  - b) the Customer owns the Service Address or is a tenant of the Service Address under a lease or tenancy agreement; and
  - c) the Customer is over 18 years of age.
- 2) By applying to C&W for Services and/or by using the Services, the Customer gives permission to C&W and/or its Agents to:
- a) carry out any work at the Service Address necessary to enable C&W to install, maintain, repair, alter, renew or remove the Equipment;
  - b) keep the Equipment at the Service Address for the term of the Customer's Service agreement;
  - c) enter the Service Address on a mutually agreed upon date if C&W or its Agents need to inspect or remove the Equipment. C&W will give the Customer as much advance notice as reasonably possible prior to inspecting or removing the Equipment;
  - d) place and maintain Telephone Lines upon or over the Service Address, or place and maintain poles upon the Service Address, or cut down any tree or tree limb upon the Service Address likely to interfere with the Customer's Services or C&W's System.
- 3) The Customer agrees not to do anything or allow anything to be done at the Service Address that may cause damage or interfere with the Equipment or prevent C&W from accessing the Equipment.
- 4) The Customer agrees to obtain and is responsible for obtaining all consents necessary for C&W to carry out any work at the Service Address.
- 5) The Customer agrees that the terms of this Item 101.4 shall continue in force after termination of Service provided under this Tariff for so long as we have Equipment at the Customer's Service Address.

#### **5. Services**

1) C&W agrees to provide Services to the Customer for as long as the Customer complies with the terms of this Tariff and any associated Agreement. C&W will use reasonable skill and care in providing Services, but cannot guarantee fault-free

performance.

2) C&W shall maintain Services to the best of its ability. C&W may, because of matters outside its control or for commercial or technical reasons, need to amend the Services. C&W will give the Customer reasonable advance notice of any change to the Customer's Services. If C&W withdraws a Service or any part of a Service, including Telephone Features, which it currently supplies to the Customer, the Customer may cancel his or her Services upon giving C&W written notice.

3) C&W may from time to time provide Services to the Customer as part of a trial or test service. If so, C&W reserves the right to withdraw such trial or test Service at any time without notice.

4) The Customer agrees that the Customer has no proprietary right to the Telephone Number (or other code used to denote the Network address of the Customer) allocated to the Customer's Services, and shall not sell or transfer the Telephone Number or any such code to anyone else. C&W reserves the right to change in whole or in part any such Telephone Number or codes.

5) C&W may make available to other companies authorized to manage C&W's directory information, the Customer's name, the Customer's telephone number, the Customer's Service Address, and the Customer's preference for directory entry (full listing or ex-directory). This information will be used by such companies to provide Directory Services. Where appropriate, C&W may also disclose the above Customer information to the Emergency Services. If the Directory Services are provided by a third party, C&W does not accept responsibility for any error or omission in that Customer's directory or Internet listing, unless the error or omission is the fault of C&W. If the Customer would like to have an ex-directory listing, it will pay the charge set out in C&W's Price List.

6) The Telephone Directory produced by C&W, or by a third party on C&W's behalf, is C&W property and the Customer may not reproduce it without C&W's consent.

## **6. Attachments**

1) The Customer agrees to access Equipment, including a Network Interface Device, where installed, only for the purposes of:

- a) facilitating self-testing as part of the fault resolution procedure; or
- b) allowing connection to the in-house wiring facilities by a qualified contractor.

2) The Customer is responsible for all aspects of provisioning, maintaining and repairing the Customer's Apparatus, including in-house wiring facilities. C&W may provide guidelines based upon quality standards criteria established by recognized telecommunications authorities.

3) The Customer agrees that these guidelines are provided for information purposes only and that C&W shall have no liability for them.

4) No advice or information given by C&W's employees, Agents or contractors (including with respect to any equipment that may be recommended for purchase and/or use with the service) shall create a warranty.

## **7. Charges**

1) The Customer agrees to pay C&W for the provision of the Services, whether the Customer or someone else uses the Services, in accordance with the terms of this Tariff or Price List as applicable, as explained below:

a) Installation Charges – These are one-time, non-recurring charges, payable by the Customer once the Customer signs the Application Form.

b) Special Installation Charges – These are one-time, non-recurring charges payable by the Customer if C&W provides Special Installation Services. Special Installation Charges will not be payable by the Customer without the Customer's consent for such charges.

c) Service Charges – Unless C&W and the Customer agree to an alternative payment arrangement, these are generally monthly, recurring charges payable in advance by the Customer for the Customer's Telephone Line rental, Call Plan and Features, including Optional Services.

d) Usage Charges – Unless C&W and the Customer agree to an alternative payment arrangement, these are generally payable in arrears on a monthly basis by the Customer at the end of the billing cycle in which the charges are incurred. Usage Charges begin when C&W receives an answer supervisory signal from the dialed number. Usage charges shall be applied at the rates set out in this Tariff. The Customer is responsible for payment for all Calls that are answered by fax machines, answering machines and all other forms of equipment, or facilities connected to the dialed number. Even where outgoing International Direct Dial Service has been barred, the Customer is responsible for all charges for incoming international collect Calls accepted at the Service Address. In case of any dispute arising from incoming collect Calls, the statement of the Overseas carrier shall be conclusive evidence that such Calls were accepted

e) Maintenance Charges – These are generally one-time, non-recurring that are the result of special services that the Customer has requested. They also include charges where C&W attended to a fault on the Customer's request which was subsequently proved to be within the Customer's Apparatus. They also include C&W's charges in cases where the Customer's Apparatus has damaged the System or Equipment. If a Network Interface Device has been installed, the Customer will be responsible for paying C&W's charges for fault claims that are not attributed to us.

2) C&W may agree to different billing cycles with the Customer depending on the Customer's typical spending levels and may change the billing date for operational reasons. The Customer may make any enquiries relating to a particular Account either in person at C&W's local office, or in writing, within three months of the date of the Account in question. C&W is not obliged to consider claims that an Account is incorrect made after three months have elapsed from the date of the Bill for that Account,

but if C&W agrees to do so it may charge a reasonable fee for conducting such an investigation. If following any such investigation, it is found that a Bill for the Account was incorrect, C&W shall refund the Customer for the amount of the error, and will not charge the Customer for the cost of the investigation.

3) With the exception of pre-paid services or Customers who subscribe to e.Account, C&W shall prepare Bills monthly and send them to the Customer by either (i) ordinary post or (ii) some other means of delivery to the billing address specified in the Customer's Application Form (or such other address specified by the Customer). The Customer must pay its Account(s) by the pay-by date shown on that Bill. Failure to receive a Bill does not relieve the Customer of the responsibility to pay the amount due. If the Customer does not receive a Bill, it is the Customer's obligation to check with C&W Customer Service.

4) Where the Customer has agreed to pay its Bill by direct debit or credit card, the Customer authorizes C&W to alter the Customer's variable direct debit or credit card instructions in accordance with the charges applicable for the Customer's Services. C&W shall notify the Customer's bank or card issuer each billing period of the amount due.

5) Due to the extra administrative costs incurred by C&W when overdue accounts are not paid, C&W may charge the Customer interest on overdue accounts from the due date until receipt of payment by C&W at 3% per annum over the base interest rate set by FirstCaribbean International Bank in the Cayman Islands.

6) The Customer shall pay C&W's costs and/or expenses, including attorney's fees and expenses, incurred directly or indirectly in the collection of any amount which the Customer owes C&W under this Tariff.

7) Determination of whether a Customer's Service should be classified as Business Service or Residential Service shall be determined by C&W.

## **8. Credit Referencing and Deposits**

1) On applying for Services, the Customer shall pay C&W a deposit in the amount set out in the Tariff or C&W's Price List as security for the Equipment or against non-payment of bills. C&W shall not require Customers to deposit as security an amount of money in excess of two month's charges for all Services ordered from C&W, including reasonably anticipated domestic and international charges, except as otherwise approved by the Authority.

2) C&W may carry out a credit check on the Customer at any time after the Customer has applied for Service(s). If the Customer does not meet C&W's credit criteria or persistently defaults in paying its bill on time, C&W may:

a) require the Customer to pay a further deposit as is reasonable in the circumstances;

b) impose such credit limit on the Customer's account in respect of Usage Charges (billed and unbilled) as is reasonable in the circumstances and which may be set at the level of the Customer's deposit. C&W retains the right to suspend the Customer's Services if the Customer exceeds such credit limit until C&W has received payment for the outstanding charges.

3) Interest will be paid annually on the Customer's deposit. C&W will apply it annually to the Customer's account.

4) Upon termination of service, C&W shall within one hundred and twenty (120) days refund the Customer the amount of its deposit, including accrued interest as specified above, less any monies owed by the Customer for unpaid bills, including amounts for any incoming collect calls that have been received during this period.

## **9. Termination**

1) The rates, terms and conditions of this Tariff shall continue in force from the Effective Date until terminated in accordance with this Tariff.

2) The Customer may cancel the Service(s) prior to the Service Start Date by giving C&W written notice. C&W may charge the Customer reasonable expenses for any work that C&W carried out prior to receipt of the Customer's notice.

3) The Customer may terminate the Service(s), other than Services subject to a term commitment of one year or greater, by giving C&W 30 days written notice. C&W may from time to time have certain promotions, which will require the Customer to have service for a specified length of time. In these instances, the Customer will not be able to terminate the Service(s) on notice until the expiration of the contract period. The Customer agrees that it will pay the Service Charge and Usage Charges up to the end of the notice period or until the Customer stops using the Services, whichever is later.

4) C&W may terminate the Service(s) prior to the Service Start Date where it proves impossible by reason of its construction or network requirements to install the Equipment at the Service Address other than at unreasonable expense or where the Customer is unable to obtain the necessary permission. In such circumstances, C&W will refund the Customer any monies paid to it.

## **10. Use of the Services, Equipment and Customers' Apparatus**

1) The Customer must use the Services and Equipment in accordance with C&W's reasonable instructions notified to the Customer in writing from time to time.

2) The Customer must not use, or authorize the use by others of, the Services and/or Equipment:

a) to send any message which is defamatory, abusive, offensive, obscene, menacing or illegal;

b) fraudulently, or in connection with any criminal offence, or for any purpose prohibited by common law, statute, regulation, rule, bye-law, international convention or other law;

c) in a manner which causes needless anxiety or inconvenience to or infringes the rights of any other person;

d) in a manner which interferes with, modifies or adapts Equipment supplied by C&W, whether under this Tariff or any other agreement;

e) in any manner, or for any purpose, which may circumvent, frustrate or diminish a Licensee's right to provide

Telecommunications Systems and Services to the Cayman Islands;

f) in such a way as to avoid, evade or reduce payment of C&W's standard charges for the Service;

g) to provide or receive any Telecommunications Service from any person other than a Licensee;

h) in a manner which C&W reasonably believes adversely affects the provision of Telecommunications Services to its other customers; or

i) in any manner to transmit Telephone or Data Services by any means other than that established or approved by the ICTA or C&W, and the Customer agrees that C&W may block such unauthorized transmission.

3) The Customer agrees to be responsible for any claims or liabilities out of the Customer's failure to observe the conditions relating to the provisions of sub-item 10.2.

### **11. Unusually High Usage of Telephone Service**

1) In exceptional circumstances, or unless otherwise advised by the Customer, for both the Customer's and C&W's protection, C&W can suspend the Telephone Service if the number of Calls or Usage Charges have increased to such an extent that it appears, in C&W's reasonable opinion, that the Service is being used in a manner that is inconsistent with the Customer's previous use.

2) C&W will make reasonable efforts to contact the Customer before it suspends the Telephone Service, but C&W is not liable for any loss the Customer may suffer if C&W is unable to do so or if it suspends the Telephone Service for a reason caused by this sub- item.

3) If C&W suspends the Telephone Service, it will not provide Telephone Service to the Customer again until the Customer can satisfy C&W that it knows of the increase in use of Telephone Service and will pay the Usage Charges relating to such increased usage.

4) C&W may in addition, upon notice to the Customer:

a) bar the Customer from making IDD Calls and/or premium rated Calls if in C&W's reasonable opinion, the charges for such Calls form an unusual and abnormally high proportion of the Customer's normal Usage Charges, or

b) require the Customer to pay a further deposit, pursuant to sub- item 8.

5) C&W will act reasonably in deciding whether to apply any of the above sub-items.

### **12. The Equipment**

1) The Equipment is C&W's property and it may modify or substitute it from time to time when it has a valid reason, such as upgrading C&W's Services or its Network.

2) The Customer agrees:

a) to keep the Equipment safe, and to use it in accordance with the manufacturer's and C&W's instructions;

b) not to sell, lend, dispose of, move, damage or otherwise interfere with the Equipment;

c) to indemnify C&W against all costs, claims, damage, loss or expenses that C&W may suffer or incur as a result of any claim by a third party in relation to damage caused to the Equipment by the Customer's Apparatus.

3) The Customer must notify C&W of any loss or damage to any part of the Equipment immediately after being made aware of such loss or damage. The Customer is responsible for the Equipment and may be charged for any loss or damage other than fair wear and tear in the ordinary course of usage.

4) When C&W ceases to provide Services to the Customer, the Customer must return the Equipment to C&W or make it available for collection in good condition.

### **13. Maintenance**

1) C&W shall maintain and repair its Equipment as C&W reasonably considers necessary to provide the Customer's Services. Maintenance by C&W does not include maintenance of the Customer's Apparatus.

2) The Customer agrees to notify C&W promptly of any defect in the operation of C&W's System or provision of the Services by telephoning, or writing to C&W's Customer Services. C&W aims to respond as soon as possible during our normal working hours. If the Customer so requests, C&W will consider working outside of normal working hours, but the Customer must pay C&W its additional visit charges at the rates set out in the Price List or Tariff. Many problems can be corrected remotely without the need to dispatch a technician.

3) The Customer must not attempt to repair, interfere with, modify, or adapt Equipment or restore the Services, nor permit anyone else to do so.

4) If C&W identifies a fault in the Equipment, C&W shall either repair or replace the faulty Equipment, at our discretion, as soon as reasonably practicable.

5) If the Customer prevents or delays access for maintenance or repairs at a time previously arranged or agreed with the Customer, or fails to warn C&W of access difficulties, C&W may charge the Customer for reasonable costs and expenses incurred.

6) C&W may charge the Customer for reasonable costs and expenses attending to fault reports or in providing maintenance and repairs if the need for such maintenance arises out of:

a) abuse, neglect or damage to the Equipment;

b) any fault or other problem with the Customer's own wiring or Apparatus, or other apparatus not forming part of the Equipment; or

c) the Customer's failure to reasonably comply with the provisions of this Tariff or any Agreement with C&W.

#### **14. Suspension of Service**

1) C&W may immediately suspend the Services if:

- a) the Customer fails to make payment when charges are due for the Services or Equipment;
  - b) the Customer fails to pay any deposit requested by C&W;
  - c) the Customer fails to satisfy C&W of his/her creditworthiness at any time;
  - d) C&W is entitled to terminate the Service(s);
  - e) C&W needs to carry out repairs, maintenance or improvements to any part of its System;
  - f) C&W believes that any apparatus used in connection with the Services poses a danger to persons or property or interferes with any Services;
  - g) there is an emergency or in order to provide or safeguard service to a hospital or emergency or other medical services;
  - h) C&W is required to do so by any lawful authority; or
  - i) C&W believes that the Services are being used in a way prohibited by sub-item 10 or fraudulently;
- 2) Where C&W suspends the Services as a result of the Customer's breach of this Tariff, C&W may not restore the Services unless C&W is satisfied that there will be no repetition of the circumstances giving rise to the suspension.

#### **15. Change**

- a) The Customer may add, reduce, or terminate the Services from time to time by contacting C&W's Customer Services. Any change in the Customer's Services are effective for a minimum period of one month (or such longer period up to one year as indicated by C&W to the Customer in writing) before a further change in the same Service may be implemented. The charges applicable to the changed Services will be set out in the Tariff or the current Price List at the time C&W agrees to the change.
- b) C&W reserves the right to vary its rates, terms and conditions subject to Government laws and regulations and Authority approval where applicable. Where possible, C&W shall give the Customer reasonable advance notice not less than 30 days of any changes that significantly affect the Customer's Services or increase any of the Customer's Service Charges or Usage Charges.

#### **16. C&W Initiated Termination of Service**

1) C&W may terminate the Service(s) immediately if:

- a) the Customer breaks or continues to break its obligations under this Tariff. In the case of minor breaches, which are capable of remedy, C&W shall give the Customer notice of the breach and at least 7 days to remedy the breach before C&W terminates the Service(s).
  - b) the Customer initiates proceedings in voluntary bankruptcy or winding up;
  - c) proceedings are initiated against the Customer in involuntary bankruptcy which are not dismissed within sixty days of initiation;
  - d) a receiver or trustee is appointed for the Customer;
  - e) A general assignment is made for the benefit of the Customer's creditors;
  - f) the Customer is insolvent;
  - g) C&W's Licence expires or is revoked.
  - h) In the case of pre-paid mobile services (see Item 303), if the Customer maintains a zero balance on its Account beyond the expiry of the applicable grace period.
- 2) C&W will endeavour to give the Customer notice regarding the reasons for a termination as soon as reasonably possible after such termination.

#### **17. Customer Initiated Termination of Service**

- 1) C&W accepts liability for its failure to perform its obligations and for direct physical damage to the Service Address or to Customer Apparatus caused by its negligence, as provided in this Tariff. However, C&W's liability is limited as set out in sub-items 17(2) – 17(3).
- 2) C&W does not exclude or restrict its liability:
  - a) for death or personal injury caused by its negligence; or
  - b) for any liabilities which cannot by law be excluded.
- 3) C&W's liability under this Agreement is limited to the total charges for the Service provided during the month in which such liability arises and/or minimum Term, whichever is greater.
- 4) C&W does not accept any liability for loss of revenue, business, contracts, anticipated savings, profits or wasted expenses or any other consequential damages.

#### **18. Matters Outside C&W's Reasonable Control**

1) C&W shall not be liable to the Customer if the performance of any of its obligations contained in the Tariff is delayed or prevented by matters outside its reasonable control. Such matters include, but are not limited to, disruption of any international lines or facilities of third parties, fire, flood, hurricane, lightning, extreme weather conditions, failure of power supply, industrial disputes, actions of the local or national government, war, or acts of terrorism or vandalism.

#### **19. Transfer of Service or Equipment from One Customer to Another**

1) The Services and the Equipment are provided by C&W to the Customer and the Customer may not assign the benefit of the Tariff or otherwise transfer Services or Equipment whether temporarily or permanently to a third party without C&W's prior approval.

2) The Customer may apply to C&W for the transfer of Services and Equipment to a new customer at the same Service Address. Applications must be made to C&W in writing signed by both the transferring Customer and the transferee. Where the transferee is not already a C&W Customer, he/she will be required to complete and submit an Application Form to C&W. An application for the transfer of Service or Equipment shall be treated in all respects as a new application for Services or Equipment. All outstanding charges must be paid before the transfer can take place.

## **20. Notices**

1) Any notice given under the Tariff must be in writing and must be delivered by hand or sent by fax or by post to C&W at its Customer Service Address and to the Customer at his/her Billing Address.

## **21. Legal Action**

1) If any legal proceedings are commenced by C&W against the Customer as a result of the Customer's breach of these Terms, the Customer will accept the presentation of documents produced from microfiche or other electronic means as good and sufficient evidence in any court of law.

## **22. Data Protection**

1) C&W may not disclose any personal information the Customer gives C&W except for the purpose of operating its licensed ICT Networks or licensed ICT Services, to bill and collect charges, to protect its rights or property, or to prevent the fraudulent use of the licensed ICT Networks or licensed ICT Services.

2) Customer personal information will not be used for any purposes or disclosed to any persons, except as described in this Tariff or as may be agreed in writing between the Customer and C&W.

3) As part of C&W's sales and marketing activities, C&W and its associated companies may contact you to give you details of C&W's other products or services available. C&W may also disclose the Customer's personal information to research organizations for the purposes of surveying C&W's Customers' opinions about C&W's services. If the Customer does not wish C&W to use the Customer's data for these purposes, the Customer must notify C&W in writing.

## **23. Waiver**

1) Any waiver by C&W of a breach of any term of the Tariff shall not operate as or be construed as a waiver of any other breach of such term in the Tariff. C&W's failure to insist upon strict adherence to any term of the Tariff on one or more occasions shall not be considered to be a waiver of any rights under the Tariff or operate to deprive C&W of the right thereafter to insist upon strict adherence to that term or any other term of the Tariff.

## **24. Entirety**

1) It is C&W's intention that all agreements, special terms, or provisions of the Tariff between C&W and the Customer shall be in writing.

## **25. Jurisdiction**

1) The Tariff shall be governed and construed in accordance with the laws of the Cayman Islands.