

## E-Mail Hosting Terms and Conditions of Service

These terms and conditions apply when we provide the Services to you. You are deemed to have accepted these terms and conditions when you use the Services or if you pay any amount billed to your account.

### 1. Definitions

Whenever these words and expressions appear in these terms and conditions, they have the following meanings:

**account** means the account in which we record all your charges.

**cancellation charge** means the charge which is applied to your account for cancelling this agreement before the end of the minimum period and is calculated by adding up the unexpired monthly service charges from the time you end this Agreement until the end of the minimum period.

**charges** means what you are billed for use of the Services and any other charges relating to this Agreement.

**Internet** refers to the global network of computers using TCP/IP protocol for communication.

**normal working hours** are 8:00 a.m. to 4:30 p.m. Monday to Friday.

**Performance Remedies** means reductions in certain charges where we fail to meet specified service levels calculated as set out in Schedule A and subject to the conditions specified in Schedule A.

**Service Application Form** means the Cable & Wireless Service Application Form that you sign (and we accept) for the Services.

**Service Commencement Date** means the date when we advise that the Services are operational and available for use.

**the Services** means the provision of an email account or email accounts and the capability to send and receive electronic mail through the Web via the SMTP, and POP3 protocols through a local email client on your desktop and to access your email account via the Internet and a Web browser.

**this Agreement** means this agreement between you and us for the Service, it also includes the Service Application Form you filled out.

**Service Levels** means the level of Services to be supplied by us to you as set out in the Schedule.

**“we”, “us” and “our”** means Cable & Wireless (Barbados) Limited.

**“you and “your”** means the customer named on the Service Application Form.

### 2. Our Agreement

2.1 This agreement between you and us applies from the Service Commencement Date.

2.2 All applications for the Services are subject to credit assessment before we can provide such services. If we are not satisfied, in our sole judgement, of your credit worthiness we reserve the right to decline to provide you with the Services. We do not accept any liability for the consequences of our declining to provide the Services to you.

2.3 You must also pay a deposit if we request that you pay one (see Clause 16.6).

2.4 We will open an account in your name and we will apply charges incurred by you to your account (see Clause 16). We will also credit any money which we owe to you to your account when appropriate.

2.5 We can change these terms and conditions or the charges and we will inform you in writing thirty (30) days before any changes take effect. If you do not agree to any changes made to the terms and conditions or charges you may terminate the Agreement by giving us notice in writing within twenty (20) days of the date of our notice. If you continue to use the Services or if you pay any amount billed to your account after we have given notice under this section you are deemed to have accepted the changes to the Agreement.

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### **3. Minimum Period**

3.1 When you sign up for the Services you agree to take such services for a minimum period of twelve (12) months. This minimum period commences from the Service Commencement Date.

3.2 If you want to end this Agreement during its minimum period, you must notify us and pay us the appropriate cancellation charge. However no such cancellation charge is payable if you end this Agreement because any licence which we require to run the network is ended.

3.3 We reserve the right to cancel this Agreement during the minimum period for the reasons stated in Clause 19 of this agreement. Once the minimum period is over you can end this Agreement by giving us thirty (30) days notice in writing.

### **4. Provision of the Services**

4.1 Subject to the terms and conditions set forth in this Agreement we agree to provide you with:

4.1.1 the number of email accounts specified for the tier of service purchased by you. Additional email accounts may be purchased from us at our rates in force from time to time;

4.1.2 the capability to send and receive electronic mail through the Web via the SMTP and POP3 protocols through a local email client on your desktop and to access your email account via the Internet and a Web browser.

### **5. Your Obligations**

5.1 You:

5.1.1 are responsible for providing all telephone, computer hardware and

software equipment necessary to access the Services;

5.1.2 are solely responsible for the management of data stored on or transmitted by email such management includes but is not limited to backup and restoration of data;

5.1.3 are solely responsible for maintaining any security procedures you deem appropriate such as encryption of data to protect your information;

5.1.4 provide us with a registered domain name. If you do not have a registered domain name, we will, upon request use commercially reasonable efforts to register the domain name(s) selected by you provided that such domain name(s) is/are available for registration and does not violate any InterNic or other registration services policies, or any law or regulation. Such registration services shall be subject to the payment of our applicable fees as exists from time to time and shall be in accordance with our standard terms and conditions with respect to domain name registration. In the event of any dispute arising out of or related to your domain name(s) used in connection with your use of the Services, upon your request, we will attempt to register with the InterNic an alternative domain name chosen by you.

### **6. Service Acceptance**

6.1 We will notify you of the Service Commencement Date. In the event that the equipment and/or facilities which you need to access and/or use the Service are not installed, operational or ready for use by the Service Commencement date that will not be grounds for the Services not being accepted by you.

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### 7. Our Equipment

7.1 We retain all rights to the Services and any computer hardware, software, telecommunications, or other equipment used to provide the Services (collectively “our Equipment”) and you do not have any ownership, property, or other rights in our Equipment.

### 8. Warranties

8.1 You represent and warrant that you have the power and authority to enter into and fully perform your obligations under this Agreement and to grant the rights granted in this Agreement.

### 9. Use of the Services

9.1 We will provide the Services to you as long as you agree not to use the Services or allow anyone else to use the Services:

9.1.1 for any illegal, fraudulent, immoral, improper or criminal purpose;

9.1.2 to make, send, transmit, post, disseminate or otherwise distribute, knowingly receive, upload, use or reuse any information, statement, image or communication which is or might be defamatory, libellous, slanderous, obscene, abusive, offensive, menacing, threatening, immoral, profane, indecent;

9.1.3 in any manner or for any purpose prohibited by any law, regulation or international convention;

9.1.4 in any manner which infringes or might infringe the rights of any person including without limitation copyright, trademark or other intellectual property or proprietary rights or confidentiality;

9.1.5 for the purpose of intimidating, harassing or causing any nuisance,

annoyance, or inconvenience to anyone;

9.1.6 to impair the operation of our network, the network of any third party or any part of such networks or put such networks in jeopardy;

9.1.7 to send or encourage the sending of any unsolicited e-mail, advertising or promotional material or to engage in any spamming activity;

9.1.8 to transmit any virus, worm, trojan horse or other harmful material.

9.2 You must give us any information that we reasonably require to provide the Services or perform our responsibilities under this Agreement and you must follow all reasonable instructions we give you about the Services and our facilities.

9.3 The Services are offered subject to the availability of the necessary facilities. You may not resell the Services to any third party and can only permit your employees or authorized agents to use the Services. You must comply with any instructions given by us, any applicable Internet instructions, rules, and regulations concerning the use of the Services as such instructions, rules, and regulations may change from time to time, and you must only use the Services in full compliance with any applicable local laws.

### 10. Usernames and Passwords

10.1 We will provide you with usernames and passwords for the email account(s). You should immediately change your password(s) when received. You are responsible for all charges incurred against your username(s).

10.2 If the password(s) is/are lost or stolen, you must immediately notify us at 238-4357 or 1-800-804-2994 and confirm such notice in writing. Upon receipt of verbal notice, we will make every effort to cancel the lost or

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stolen password(s) as soon as reasonably possible under all circumstances. You are responsible for all charges incurred against the password(s) prior to cancellation by us.

10.3 We reserve the right to change your password(s) at any time subject to notice being given to you as is reasonable under the circumstances then prevailing.

10.4 We reserve the right to cancel your password(s) or deny you access to the Service without notice in the event that we become aware of any breach of Clause 9 by you or by anyone who obtains access to the Service as a result of your act or omission.

10.5 You are responsible for the allocation and administration of all usernames and passwords and related settings for the purpose of authenticating and authorizing access to the Services.

### 11. Email Message Filtering

11.1 We may provide filtering of email messages that pass through our network for the purpose of identifying spam, known viruses and other disruptive content (collectively "Junk Email"). We will make reasonable efforts to configure our automated software to accurately identify Junk Email, however you acknowledge and agree that it is not possible to identify such content with 100% accuracy and that we are not obligated to do so. We do not guarantee that filtering will identify and block all of the Junk Email that you may receive through the use of the Services, nor do we guarantee that the emails that are identified or blocked by the filtering software truly contain Junk Email content. You acknowledge that it is always a good idea to run a desktop virus scanner and firewall on computers that are connected to the Internet as a secondary line of defense in case such content slips through the email message filters and to reduce the risk of your system(s) being infected by viruses that spread via other methods besides email.

11.2 You agree and understand the risks associated with using the Services and receiving and transmitting email messages via the Internet. You agree to hold us harmless and indemnify us from and against any liabilities, damages, losses, costs and expenses, including attorney's fees, of every kind and nature, caused by or arising out of claims based upon the receipt, transmission or loss of any content.

### 12. Email Message Storage

12.1 The Services have a fixed storage limit per email account. Email messages when received may not be stored if the size of such email would put the destination mailbox over its storage limit. It is your responsibility to monitor the size of your e-mail account(s) in order to prevent it from reaching its storage limit. We assume no responsibility for the deletion of or failure to store email messages.

### 13. Privacy

13.1 We consider email transmitted via the Services to be the private correspondence between the sender and recipient. We will not monitor, edit or disclose the contents of your private communications, except that you agree that we may do so: (a) as required by law; (b) to comply with legal process; (c) if necessary to enforce these terms and conditions; (d) to respond to claims that such contents violate the rights of third-parties; (e) to protect our rights or property or the rights or property of others.

13.2 You acknowledge and agree that we do not endorse the content of your communications and that we are not responsible or liable for any unlawful, harassing, libelous, privacy invading, abusive, threatening, harmful, vulgar, obscene, tortious, or otherwise objectionable content, or content that infringes or may infringe the intellectual property or other rights of another.

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### 14. **Performance Remedies**

14.1 You are entitled to Performance Remedies for failure by us to meet the Service Levels, calculated in the manner set out in Schedule A and subject to the conditions applicable to the Service Levels. Such Performance Remedies will be your sole and exclusive remedy for such failure by us to meet the Service Levels.

14.2 Performance Remedies will not be available to you where our failure to meet any Service Levels results from any force majeure as described in clause 17.6 or your act, fault or omission.

14.3 You must contact our Services Management Centre with respect to all queries relating to correspondence of the Services to the Service Levels or arising from performance reports.

### 15. **Reporting Faults**

15.1 If you experience problems in using the Services kindly call us at 238-4357 or 1-800-804-2994.

### 16. **What and How You Pay**

16.1 You agree to pay our charges for providing the Services to you whether you or someone else uses the Services.

16.2 We have a monthly billing period and we will send you a bill every month. We can change the billing period.

16.3 You must pay your bill by the payment due date stated on the bill. If you don't pay your bill by the payment due date we can debar your use of the Services and charge you interest on what you owe at one point five percent (1.5%) per month. We will charge you interest until you pay. You agree that if you do not pay a bill on time we can say that you have broken this Agreement and we can terminate this Agreement immediately. All of these rights are in addition to any other

legal rights we may have against you which we may also rely upon.

16.4 You will not be relieved from making a prompt payment to us because you have not received a bill showing the amount owed on your account. You should call us immediately if you have not received your monthly bill to obtain your current account balance.

16.5 We can change the payment terms for any good reason, for instance, if you do not pay your bill(s) on time or if any payment method used by you is dishonoured. We do not have to write and tell you before we do this.

16.6 We can at any time ask you for a deposit (or an extra deposit) at our discretion. We will keep the deposit as a partial guarantee of payment until the end of this Agreement. We will return it to you after your account is closed and when you pay us everything that you owe. We can also use your deposit to cover anything you owe us.

16.7 If you have any queries about the charges on your bill you should write to us within fourteen (14) days of receipt of your bill letting us know what charges you are disputing and why. We will make every effort to investigate your claim within fourteen (14) days of receiving your query. While we are investigating your claim you will be responsible for paying all undisputed charges.

16.8 You are responsible for payment of any value added tax, or any other levy or charge imposed by the Government of Barbados.

16.9 The Services will not be disconnected for non-payment of a disputed charge unless we have reasonable grounds for believing that the purpose of the dispute is to evade or delay payment.

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### 17. **Liability**

- 17.1 We are only liable to you as set out in this Agreement.
- 17.2 We do not exclude or restrict our liability for anything, which cannot by law be excluded.
- 17.3 Nothing in this Agreement removes or limits our liability for death or personal injury caused by something we have done or failed to do.
- 17.4 Except in relation to Clause 17.3, our entire liability to you for any direct loss or damage for something we or anyone who works for us does or does not do under or in connection with this Agreement, will be limited to the total charges for the Services provided during the month in which such liability arises.
- 17.5 You assume total responsibility and risk for your use of the Services. We are not liable to you in any way for any loss of income or revenue, business, contracts, anticipated savings or profits, wasted expenses or loss of any use of property, or any other indirect or consequential loss. In this section "anticipated savings" means any costs, which you expected to avoid by using the Services.
- 17.6 We will not be liable to you if we are unable to carry out our duties or if we are unable to provide the Services because of something beyond our control including but not limited to floods, fire, hurricane, extreme weather conditions, lightning, industrial disputes, or actions of Government.
- 17.7 You agree to defend, indemnify and hold us, our employees, affiliates and agents harmless from any and all claims, suits, proceedings, investigations, liabilities, judgments, losses, damages, expenses or cost (including attorneys' fees and investigation expenses) caused by or arising out of claims arising out of; (a) any violation of this Agreement by you; (b) the use of the

Services; (c) infringement or violation of any person's property, contractual or other proprietary rights, including copyright, patent, trade secret and trademark rights; (d) any content contained in any email that has been sent or received through the Services which is alleged to be libelous, defamatory, a violation of rights of privacy or publicity of any party or an infringement of intellectual property rights or others rights of a third party; or (e) any breach or alleged breach of your representations and warranties made under this Agreement. You also agree to pay our reasonable attorneys fees and other costs incurred in enforcing this clause 17.7.

- 17.8 This Clause 17 will still apply after this Agreement has ended.

### 18. **Representation and Warranties**

- 18.1 We will use our reasonable endeavors to provide the Services in accordance with best practice and with that degree of skill, care and diligence exercised by skilled and experienced companies in the telecommunications industry.
- 18.2 We do not warrant that the Services will be uninterrupted, error free, meet your requirements, completely secure, or that the information received through the Services shall be accurate, correct, appropriate for any party's needs, free from viruses, other disabling codes or harmful elements, or that such information shall not infringe upon any proprietary or other rights of others or that the Services will meet your requirements. You understand and agree that any material obtained through the use of the Services is received at your own discretion and risk and that you are solely responsible for any damage to your computer system or loss of data or any other losses that result from the obtaining such material. Other than any express warranties contained in this agreement and to extent permitted by applicable law we disclaim all warranties either express or implied, including, without limitation, any warranties of merchantability and fitness for

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a particular purpose it being agreed that all services performed pursuant to this Agreement are provided on an “as is” basis.

### 19. Suspension/Disconnection of the Services

19.1 We may suspend or disconnect the Services without giving you notice in the following situations:

19.1.1 if we need to carry out repairs, maintenance, modification or upgrading to any part of our network;

19.1.2 if anything beyond our control prevents us from providing the Services;

19.1.3 if there is an emergency.

19.1.4 if you do not keep the conditions of this Agreement or any other agreement that you have with us. We reserve the right to discontinue all services simultaneously when any one of several services provided to you has to be disconnected due to non-payment of that portion of your bill which is not in dispute;

19.1.5 in the event of any breach of the warranties and representations made by you herein;

19.1.6 in the event that you use the Services in contravention of the provisions of Clause 9;

19.1.7 if you fail to make payment for the Services when due, or when we request payment;

19.1.8 if you fail to satisfy us as to your creditworthiness at any time;

19.1.9 if you do anything that damages or puts our network at risk, or if you abuse or threaten us or any of our employees or agents.

19.1.10 if you refuse to give us the deposit that we ask for (see clause 16.6).

19.2 You are still liable for all charges during suspension or disconnection unless we otherwise decide, at our sole discretion.

19.3 We can charge you for reconnecting you to the Services except in the circumstances stated in 19.1.1. We may apply different payment terms to you as a condition of reconnecting you. Where the Services have been suspended or disconnected for failing to pay for the Services and you have not fully paid your bill up to twenty-eight (28) days from the date of removal we will end this Agreement and forward your unpaid account to our debt collector for collection.

### 20. When the Agreement Ends

20.1 We can end all or part of this Agreement immediately if any of the following happens;

20.1.1 you break any condition or a number of conditions of this Agreement;

20.1.2 you make, or offer to make, an arrangement with your creditors or you commit an act of bankruptcy or you die;

20.1.3 any licence to run our network is ended;

20.1.4 anything beyond our control prevents us from providing the Services for a period of more than sixty (60) days;

20.1.5 any part of your declaration on the Service Application Form was not true or not accurate when you made it.

20.2 You can end all or part of this Agreement immediately if any of the following happens;

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- 20.2.1 we break any condition or a number of conditions of this Agreement;
- 20.2.2 we make, or offer to make, an arrangement with our creditors or we commit an act of bankruptcy;
- 20.2.3 any licence to run our network is ended;
- 20.2.4 anything beyond our control prevents us from providing the services for a period of more than sixty (60) days;
- 20.3 In case of minor breaches which can be corrected we will give you notice of the breach and at least seven (7) days in which to correct the breach before we terminate this Agreement.
- 20.4 You may also end this Agreement by providing us with not less than thirty (30) days written notice.
- 20.5 You must pay everything you owe on your account when you end this Agreement. A cancellation charge as set out in Clause 3 is also payable if you end this Agreement before the expiration of the end of the minimum period. If we end the agreement for any of the reasons set out in Clause 20.1.1, 20.1.2, or 20.1.5 above, you must pay everything you owe on your account and the cancellation charge if applicable. If we end this Agreement for the reasons set out at Section 20.1.3 or 20.1.4 above, you must pay everything you owe on your account, but you will not have to pay a cancellation charge if applicable. Where you have not settled your account within thirty (30) days after termination we will forward your unpaid account to our debt collector for collection.
- 20.6 After termination it is your responsibility to cancel any direct debits, standing orders, credit card mandates, or other authorisations you may have given for periodic payments to be made to us by third parties.
- 20.7 You agree to pay all costs including reasonable attorney's fees, collection fees, and court costs we incur in enforcing this Agreement.
- 21. General**
- 21.1 You may not transfer or try to transfer any of your rights and responsibilities under this Agreement unless we have agreed in writing beforehand. We may transfer any of our rights without your permission, provided the level of service you now receive is not reduced as a result.
- 21.2 If you telephone us your call may be monitored or recorded so that we may manage your account or the Services. We are not liable for any lack of privacy which may be experienced with regard to the Services.
- 21.3 We will send all bills and notices under this Agreement to your address stated in the Service Application Form. You must inform us immediately about any change in this address. We allow forty-eight (48) hours for you to receive bills and notices through the post. You agree that after forty-eight (48) hours we can assume that you have received the bill or notice.
- 21.4 We may use credit reference agencies to help us make credit decisions or for fraud protection. You agree that we may register information about you and the conduct of your account with any credit reference agency. For the purpose of fraud prevention, debt collection and credit management, information about you and the conduct of your account may be disclosed to debt collection agencies, security agencies or financial organisations. We may also use and disclose any personal information you give us for the purpose of managing your account and providing the Services, and we may disclose the information to our contractors, agents and our associated companies for that purpose.
- 21.5 We may sometimes provide notices to you required to be provided under this

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Agreement by sending you an e-mail message, placing an announcement on our web site or including a notice on your monthly bill. You agree that we can assume that you have received such notices.

- 21.6 Any notices that you are required to send us under this Agreement should be sent to us at our registered office.
- 21.7 This Agreement represents the entire understanding between us in relation to the Services and supersedes all other Agreements and representations made by either of us, whether oral or written.
- 21.8 Failure by either party to exercise or enforce any right conferred by this Agreement will not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of such right or of any other right on any other occasion.
- 21.9 If any provision of this Agreement shall be prohibited by or adjudged by a court to be unlawful void or unenforceable such provision shall to the extent that it is not fundamental to the performance of this Agreement be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way effect any other circumstances or the

validity or enforcement of this Agreement.

- 19.10 The construction, validity and performance of this Agreement will be governed by the laws of Barbados without regard to its conflict of law rules.

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### SCHEDULE A

#### Service Levels

1. Service definition

These Service Levels apply to the Services.

2. Definition of terms

**Service Commencement Date** is as defined in Clause 1 of this Agreement.

**‘Quarter’** means a fixed calendar quarter, starting on one of the following dates – 1 January, 1 April, 1 July or 1 October. When the Service Commencement Date is not at the beginning of a quarter, the first measuring period will run from the Service Commencement Date to the beginning of the next quarter, and service availability will be calculated over this period.

3. Availability

a. The Services are available twenty-four (24) hours a day, with an availability of **99.7%**. Service credits in the form of rebates, as defined in paragraph **3.f**, will be payable when availability falls below **99.7%** in any complete quarter after the Service Commencement Date.

b. Availability will be calculated as follows:

$$P = \frac{\text{Total Operating Time} - \text{Total Down}}{\text{Total Operating Time}} \times 100$$

where:

- P is the percentage availability
- 2190 is the Total Operating Time for a Quarter

c. Subject to the exceptions listed below, the Services will be deemed unavailable when you are unable to send and receive email.

d. The Service will not be deemed unavailable, for calculation using the formula in paragraph **3.b**, if its non-availability arises from or is otherwise caused by one or more of the following:

- you requesting us to test the Services although no fault has been detected or reported;
- any circumstances beyond our reasonable control;
- any planned outage of the Services in accordance with paragraph **3.h**;

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- any suspension and/or disconnection of the Services in accordance with Clause 19 of this Agreement;
  - any unauthorised activities on your part;
  - difficulties in accessing the Services as a result of any problems associated with any computers, network and or internet connections, any intervening network connections, other internet service providers and or telecommunications carriers;
  - your failing to comply with the terms and conditions of this Agreement.
- e. Any period of unavailability where we can find no fault with the Services will not count in the calculation of availability using the formula in paragraph **3.b**.
- f. If the availability of the Services, calculated using the formula in paragraph **3.b**, is less than the percentage referred to in paragraph **3.a**, you will be entitled to a rebate of part of the charges payable during the relevant quarter as follows:

Availability	Rebate of fixed quarterly charges
Less than 99.7%	5%

Rebates must be claimed through your Account Manager within thirty (30) calendar days of the end of the affected quarter. Any credits will be applied to your next bill after agreement that such credits are due.

- g. The period of unavailability of the Services will be measured from the time you report the unavailability to our Services Management Centre, in accordance with the fault reporting procedures described in paragraph **5**. It will end at the time when we advise you that the Services are available.
- h. We will give you notice of any maintenance or upgrade work on our network which will affect the availability of the Services to you.

We will give you at least fourteen (14) days' notice of an outage. In calculating availability, as detailed in paragraph **3.b**, the Service will be deemed to be available during any such planned outage, following proper notice.

#### **4. Mean Time To Repair**

- a. We will maintain a maximum of four (4) hours repair time (MTTR).

MTTR will be calculated as the time elapsed from when the fault was reported to the time that the Services are made available.

If the MTTR, calculated using the formula above, is more than four (4) hours, you will be entitled to a rebate of part of the charges payable during the relevant quarter as follows:

MTTR	Rebate of fixed monthly Charges
More than 4hrs up to 8hrs	5%
Each additional 4hrs.	5%

