

Streaming Audio/Video Terms & 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.

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

Content refers to all audio, video, text, images, graphics, sound, music, photographs or other materials provided by you for use with the Services.

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 available for use.

the Services means the provision of streaming audio and video services of your Content over the Internet.

this Agreement means this agreement between you and us for the Services, 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 time we approve your request for services.

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 If you sign up for unlimited video services we will open an account in your name and we will apply charges incurred by you to your account (see Clause 11). We will also credit any money which we owe to you to your account when appropriate.

2.4 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.

3. Provision of Streaming Services

3.1 Subject to the terms and conditions set forth in this Agreement we agree:

3.1.1 to encode the Content supplied by you into streaming audio and/or video format;

3.1.2 to provide access to the streaming audio and/or vide formats via our Caribsurf website so that your

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Content can be viewed and/or accessed via the Internet.

- 3.2 Where you request the Services for a live event and your telephone line is not ADSL enabled we shall as part of the Services enable that telephone line to be ADSL capable for the duration of the live event in order to enable encoding and streaming of the Content.

4. Your Obligations

- 4.1 You shall:
- 4.1.1 provide us with the Content in the format(s) specified by us as such format(s) may change from time to time;
 - 4.1.2 advertise the event(s) for which the Services are to be provided;
 - 4.1.3 provide us with ADSL enabled telephone line if you require the Services in respect of a live event;
- 4.2 Where you request the Services in respect of a live event you shall (a) provide the videographer; and (b) advise us of the date and time of the event no later than seven (7) days prior to the date of such event.

5. Content

- 5.1 You retain all right, title and interest including without limitation, all copyrights trademarks, patents, trade secrets and any other proprietary rights in the Content. You assume sole responsibility for the accuracy of the Content transmitted via the Services. You grant to us a non-exclusive royalty-free licence for the term of this Agreement to use, copy, modify, adapt and display the Content solely as necessary to fulfill our obligations pursuant to this Agreement.

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.

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:

8.1.1 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;

8.1.2 the Content and any other material, made available through the Services does not and will not contain any material that is inaccurate or that violates any applicable law, rule or regulation (including without limitation, export laws) or that infringes upon any common law or statutory right of any person or entity, including without limitation any proprietary, contract, moral, privacy or publicity right, copyright, patent, trademark, trade secret or any other third party right or constitutes false advertising, unfair competition, defamation, an invasion of privacy or violates a right of privacy and that you own the Content or otherwise have the right to submit the Content for use with the Services;

8.1.3 the Content, material, messages, data and information made available

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through the Services does not and will not contain any material that in our good faith judgment is obscene, threatening, malicious, defamatory, libelous, slanderous, pornographic or which otherwise could expose us to criminal or civil liability;

- 8.1.4 you have verified the accuracy of the Content, material, messages, data and information made available through the Services including but not limited to descriptive claims, warranties, guarantees, nature of business, rates, and address where business is conducted.

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

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 or permit any third party 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. Performance Remedies

10.1 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.

10.2 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 13.6 or your act, fault or omission.

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

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11. Reporting Faults

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

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.

12. What and How You Pay

- 12.1 Where you request any package other than the unlimited option the charges for that option must be paid in advance.

- 12.3 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.

- 12.2 If you selected the unlimited option:

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

- 12.4 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.

12.2.2 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.

- 12.5 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.

12.2.3 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.

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

13. Liability

12.2.4 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

- 13.1 We are only liable to you as set out in this Agreement.

- 13.2 We do not exclude or restrict our liability for anything, which cannot by law be excluded.

- 13.3 Nothing in this Agreement removes or limits our liability for death or personal injury caused by something we have done or failed to do.

- 13.4 Except in relation to Clause 13.3, our entire liability to you for any direct loss or damage

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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.

13.5 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.

13.6 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.

13.7 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) that directly or indirectly result from, arise out of or relate to: (i) any violation of this Agreement by you; (ii) the use of the Services; (iii) infringement or violation of any person's property, contractual or other proprietary rights, including copyright, patent, trade secret and trademark rights; (iv) any Content supplied by you which infringes or allegedly infringes the proprietary rights of a third party; or (v) 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 13.7.

13.8 This Clause 13 will still apply after this Agreement has ended.

14. Representation and Warranties

14.1 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.

14.2 We do not warrant that Services will be uninterrupted, error free or completely secure or meet your requirements. 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 a particular purpose it being agreed that all services performed pursuant to this Agreement are provided on an “as is”basis.

15. Suspension/Disconnection of the Services

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

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

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

15.1.3 if there is an emergency.

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

16. Removal of Content

16.1 We may remove your Content and discontinue the Services without giving you notice in the following situations:

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- 16.1.1 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;
- 16.1.2 in the event of any breach of the warranties and representations made by you herein or where we in our reasonable opinion determine that the Content supplied by you is in breach of any applicable local or international law or is obscene, indecent, pornographic, libellous or otherwise objectionable;
- 16.1.3 in the event that you use the Services in contravention of the provisions of Clause 9;
- 16.1.4 if you fail to make payment for the Services when due, or when we request payment;
- 16.1.5 if you fail to satisfy us as to your creditworthiness at any time;
- 16.1.6 if you refuse to give us the deposit that we ask for (see clause 12.2.4).
- 16.1.6 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.
- 16.2 We can charge you for reconnecting you to the Services and we may apply different payment terms to you as a condition of such reconnection. Where your Content has been removed 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.
- 17. When the Agreement Ends**
- 17.1 We can end all or part of this Agreement immediately if any of the following happens;
- 17.1.1 you break any condition or a number of conditions of this Agreement;
- 17.1.2 you make, or offer to make, an arrangement with your creditors or you commit an act of bankruptcy or you die;
- 17.1.3 any licence to run our network is ended;
- 17.1.4 anything beyond our control prevents us from providing the Services for a period of more than sixty (60) days;
- 17.1.5 any part of your declaration on the Service Application Form was not true or not accurate when you made it.
- 17.2 You can end all or part of this Agreement immediately if any of the following happens;
- 17.2.1 we break any condition or a number of conditions of this Agreement;
- 17.2.2 we make, or offer to make, an arrangement with our creditors or we commit an act of bankruptcy;
- 17.2.3 any licence to run our network is ended;
- 17.2.4 anything beyond our control prevents us from providing the services for a period of more than sixty (60) days;
- 17.3 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.

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- 17.4 You may also end this Agreement by providing us with not less than thirty (30) days written notice.
- 17.5 You must pay everything you owe on your account when you end this Agreement. 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.
- 17.6 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.
- 17.7 You agree to pay all costs including reasonable attorneys fees, collection fees, and court costs we incur in enforcing this Agreement.
- 18. General**
- 18.1 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.
- 18.2 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.
- 18.3 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.
- 18.4 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.
- 18.5 We may sometimes provide notices to you required to be provided under this 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.
- 18.6 Any notices that you are required to send us under this Agreement should be sent to us at our registered office.
- 18.7 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.
- 18.8 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.
- 18.9 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.

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18.10 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:

- The Content has been placed on the Internet for viewing and/or listening but cannot be viewed or heard by users of the Internet.

d. The Services 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 or reasonable control;
- any planned outage of the Services in accordance with paragraph **3.h**;
- any suspension or disconnection of the Services and/or removal of the Content in accordance with Clause 15 and 16 of this Agreement;

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- any unauthorised activities on your part;
 - difficulties in viewing and/or listening to the Content 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 you have the unlimited package and the availability of the Service, 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.

If you choose a package other than the unlimited package and the Services are unavailable for any portion of the time specified for that package we will refund you a portion of the charges pro-rated for the period of time that the Services were unavailable.

- 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 Services 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 Rental charges |
|---------------------------|--|
| More than 4hrs up to 8hrs | 5% |

