

C&W Isle of Man General Terms and Conditions

Cable & Wireless Isle of Man (C&W IOM) Service Specific Terms and Conditions should be read in conjunction with these C&W IOM General Terms and Conditions and the Order Form signed by the customer. Where there is conflict, the Service Specific Terms and Conditions and/or the Order Form supersede these General Terms and Conditions.

1. DEFINITION AND INTERPRETATION

In these terms and conditions:

"Acceptable Use Policy" means a separate document showing the rules and etiquette governing Our customers in their use of the Internet and is available on Our website www.surecw.com.

"Agreement" means the contract between You and Us incorporating these General Terms and Conditions, the C&W IOM Service Specific Terms & Conditions, Our Order Form and Service Schedule.

"Application" means a request made by You to C&W IOM for the provision of a Service.

"C&W IOM" means Cable & Wireless Isle of Man Limited.

"Consumer Code of Practice" means Our published Consumer Code of Practice that can be seen on Our web site at surecw.com or sent to You upon request.

"Contact Details" means the name and telephone number of Your authorised agent or employee who is Your contact point for this Agreement.

"Customer Premises Equipment" (CPE) means terminal and associated equipment and inside wiring located at a Subscriber's premises and connected to a Telecommunications System at a Network Terminating Point.

"Electronic Communication" means a communication for transmission by means of an Electronic Communications Network.

"Electronic Communications Network" means a telecommunications system as defined in section 2 of the Telecommunications Act 1984 (of Tynwald).

"Electronic Communications Service" means a telecommunications service as defined in section 2 of the Telecommunications Act 1984 (of Tynwald).

"Fair Usage Policy" means Our policy that applies to certain of Our Services that provide access to the Internet. Our Fair Usage Policy is available at www.surecw.com/quernsey/page-1185. Our Fair Usage Policy may change from time to time.

"Fault" means any failure of the Service causing loss of the ability to convey Electronic Communications, but does not include the loss of such ability arising as a result of Our suspension of Service under the provisions of this Agreement.

"Interconnection" means the linking (whether directly or indirectly by physical or logical means, or by a combination of physical and logical means) of one Public Electronic Communications Network to another for the purpose of enabling the persons using one of them to be able: a) to communicate with users of the other one; or b) to make use of services provided by means of the other one (whether by the provider of that Network or by another person).

"Network Terminating Point" means the physical point at which a Subscriber is provided with access to a Public Electronic Communications Network and, where it concerns Electronic Communications Networks involving switching or routing, that physical point is identified by means of a specific network address, which may be linked to the Telephone Number or name of a Subscriber.

"Normal Working Hours" means work carried out between 08-30 to 17-30 hours, Monday to Friday (but excluding public/bank holidays in the Isle of Man).

"Order Form" means Our order form, signed by You, detailing the Service and other relevant information, including where relevant the charges paid by You, forming part of this Agreement.

"Other Licensed Operator" means any person who, other than Us, for the time being, has the benefit of a telecommunications licence granted under the Telecommunications Act 1984 (of Tynwald) or law in any other jurisdiction under which a telecommunications licence has been granted.

"Premises" means the premises in which Service is or is to be provided under this Agreement.

"Public Telecommunications System" has the meaning given to it in the Telecommunications Act 1984 (of Tynwald).

"Public Electronic Communications Network" means an Electronic Communications Network provided wholly or mainly for the purpose of making Electronic Communications Services available to members of the public.

"Public Electronic Communications Service" means any Electronic Communications Service that is provided so as to be available for use by members of the public.

"Service" means a telecommunications service or any facilities provided by Us for You in connection with the Service, as specified in Our Order Form and Service Schedule that forms part of this Agreement.

"Service Delivery Date" means the date on which We make Service ready for use.

"Service Schedule" means a schedule detailing additional terms and conditions that form part of this Agreement.

"Subscriber" means any person who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services.

"Telecommunications Apparatus" has the meaning given to it in the Telecommunications Act 1984 (of Tynwald).

"Telecommunications Equipment" means equipment designed, constructed or adapted for use in connection with the establishment or operation of a Telecommunications System or the provision of a Telecommunications Service, including telecommunications apparatus, poles, structures, ducts, man-holes and other tangible property.

"Telecommunications Service" has the meaning given to it in the Telecommunications Act 1984 (of Tynwald).

"Telecommunications Systems" has the meaning given to it in the Telecommunications Act 1984 (of Tynwald).

"Telephone Number" means any number that is allocated to You by Us.

"You" or "Your" means the customer entering into this Agreement.

"We", "Us" or "Our" means C&W IOM, and any other associated organizations, other parties and authorised agents, contractors or subcontractors that C&W IOM may choose to use in the provision of all or any part of the Service.

Words in the singular include the plural and vice versa.

2. PROVISION OF SERVICE

2.1 We shall provide Service to meet the Service Delivery Date specified in Our Service Schedule or another date that We agree with You.

2.2 If You ask Us to provide any part of the Service outside Normal Working Hours then We will charge You at Our applicable hourly rate.

3. SPECIAL PROVISION OF SERVICE

3.1 If in order to meet Your requirements We need to provide any part of the Service in a non standard or exceptionally expensive manner then We may make additional charges. We will notify You of any additional charges prior to Our acceptance of Your Application and You may cancel Your Application for Service within 14 days of the notice being sent.

3.2 If the special provision of Service requires additional or amended terms and conditions then We will notify You of them prior to Our acceptance of Your Application and You may cancel Your Application for Service within 14 days of the notice being sent.

3.3 For operational reasons, We may change the technical specification of the service used by Us for provision of the Service to You, provided that any change to the technical specification does not materially adversely affect the performance of the Service.

3.4 You may be asked to nominate a system administrator and provide Us with full Contact Details for that individual.

4. USE OF SERVICE

4.1 We may from time to time give You instructions about the use of the Service that We believe are in the interests of health, safety or quality of service to You or other customers.

4.2 You or any other person may only use the Service in accordance with the Telecommunications Act 1984 (of Tynwald) and any instructions that We may notify to You.

4.3 You shall not use the Service or permit any other person to use the Service:

4.3.1 for any communication that is grossly offensive or of an indecent, obscene or menacing character;

4.3.2 for the purpose of causing annoyance, inconvenience or needless anxiety to another by sending Electronic Communications that are known to be false or of a persistent nature; or

4.3.3 In breach of instructions We have given You under paragraph 4.1.

4.3.4 in a manner that violates C&W IOM's Acceptable Use Policy (which may change from time to time and which currently may be found on C&W IOM's web site at www.surecw.com) or any other policies referred to in this Agreement.

4.3.5 in a manner that is or could entail the commission of an offence that is a breach of any relevant law or regulation.

4.4 In addition to the rights given under Clause 14, We may give You immediate notice and suspend the Service:

4.4.1 If it is used in a manner that materially harms the integrity, security or interoperability of the Telecommunications System;

4.4.2 Is used with equipment that is not approved for connection to the Telecommunications System; or

4.4.3 Under the direction of a competent authority, if it is used in a manner, or in relation to, the commission of offences against any relevant law or regulation.

4.4.4 If it is used in breach of conditions under 4.3 whether by You or any other party with or without Your knowledge.

4.5 We may vary the technical specification of the Service from time to time and occasionally may have to change the Telephone Number.

4.6 Our Fair Usage Policy applies to some services You may take from Us. If You use the Service in a way that violates Our Fair Use Policy We may restrict Your use of the Service by any means permitted under that policy. Such action may include, but is not limited to, restricting the amount of capacity made available to You for the use of the Service.

5. TELECOMMUNICATIONS EQUIPMENT

See Service specific terms in the Service Schedule applicable to that Service.

6. FAULT REPAIR (Where applicable)

6.1 We will provide You with a working Service although We cannot guarantee that it will always be Fault free.

6.2 If You detect a Fault in the Service then You must report it to Us by telephoning the number specified in Our Service Specific Terms and Conditions as applicable or any other number that We may notify You of. You must provide Us with details of the nature of the Fault, the Telephone Number and Contact Details so that We can inform You of progress.

6.3 If You report a Fault in the Service, We will respond as detailed in Our Service Schedule to correct the Fault by undertaking one or more of the following actions:

6.3.1 We will provide advice to You by telephone including any tests and checks that You should carry out;

6.3.2 Where appropriate, We will carry out diagnostic tests from Our premises, or

6.3.3 Attend a point in Our network or visit Your Premises if Our previous actions have not cleared the Fault and We consider that such a visit is necessary.

6.4 If We undertake work to correct a reported Fault in the Service and find there is none, We may charge You for the work at the applicable hourly rate.

6.5 If, at Your specific request, We agree to attend a reported Fault in a Service outside Our Normal Working Hours then You will be charged at the applicable hourly rate.

7. RELOCATION AND RECONFIGURATION

7.1 If You ask Us to relocate or reconfigure the Service then We may either:

7.1.1 agree to Your request and You must pay Our applicable charges; or

7.1.2 require You to give notice to terminate the Service and apply for a new Service.

8. TERM OF SERVICE

The Service provided under this Agreement is for an initial term of 6, 12, 18 or 24 months as stipulated on the Order Form (the "Initial Term") from the Service Delivery Date and unless terminated under the provisions of paragraph 14, 17 or otherwise will continue for one or more continuous terms of 12 months. A further Initial Term of service shall apply in respect of each new facility added or changes made to the Service at Your request.

9. TEMPORARY SERVICE

If We accept an Application for the Service for a term that is less than the normal term for the Service We shall regard the Service as temporary and charge You accordingly, as set out on Your Order Form.

10. INTERCONNECTION

10.1 If the Service requires Interconnection with Other Licensed Operators then We are only responsible and liable for the part of the Service under Our direct control.

10.2 We may suspend or terminate the Service immediately, without notice, if any other part of the Service is terminated or suspended.

10.3 We may negotiate and enter into a contract for Service with Other Licensed Operators on Your behalf as part of the provision of a Service. We shall advise You of any specific or additional terms and conditions of the Other Licensed Operator and You shall be responsible for complying with them.

10.4 Where We are the party contracting for Service with the Other Licensed Operator, We will undertake to make payment for such Service directly to such Other Licensed Operators. We will recharge such payments to You either separately or within the Charges for the overall Service and may do so in advance at Our sole discretion.

11. CHARGES

11.1 All charges for Services, which may be amended from time to time, can be obtained by contacting Us at Our main office at Cable & Wireless Isle of Man Limited, 2nd floor, 14 Athol Street, Douglas, Isle of Man IM1 1JA or sent to you upon request. They are also available on Our web site located in the Charges section at <http://www.surecw.com/>.

11.2 All charges include local taxes such as VAT, if applicable, unless otherwise stated.

11.3 You are responsible for checking the details and accuracy of Your bill.

12. PAYMENT

12.1 You shall pay to Us on demand all applicable charges for the relevant Service at rates specified on Our Order Form.

12.2 All amounts due under this agreement shall be paid in full without any deduction or withholding other than as required by law. You shall not be entitled to assert any credit, set-off or counterclaim against Us in order to justify withholding payment of any such amount in whole or in part.

12.3 We reserve the right to charge interest on any balances which remain unpaid from the due date to the date of payment and/or a late payment fee at rates notified from time to time at www.surecw.com.

13. DEPOSITS, PAYMENTS IN ADVANCE AND SECURITY FOR PAYMENTS

13.1 We may carry out credit checks and refuse to provide the Service to You if the result of the credit check is not satisfactory.

13.2 We may from time to time require payment of a deposit. If a deposit is required We shall notify You of the amount and You shall pay Us immediately. We may credit the deposit against any charges due to Us or upon discharge of Your liabilities to Us, refund it together with any interest that We may deem appropriate.

13.3 We may from time to time require You to provide Us with valid credit or debit card details and authority to secure payment from that card in the event that any outstanding bills are not paid by any other manner agreed between us, including but not limited to You setting up a direct debit instruction to Your Bank. If payment is required We shall notify You of the amount and You shall ensure that such payment will be honoured.

14. DEFAULT

14.1 If You:

14.1.1 do not pay within 21 days of any charge falling due or break this Agreement in any other way We will send You a reminder, stating that payment must be made within 7 days of that reminder date. If payment is still not received by Us or You

14.1.2 are subject to bankruptcy or insolvency proceedings; or

14.1.3 do not prevent Service being used in a way prohibited by this Agreement.

We can (without losing or reducing any other rights or remedy):

a) suspend the Service (including partially) temporarily without notice, though You remain liable to pay rental during the period of suspension; or

b) terminate this Agreement and the Service provided under it by immediate notice.

14.2 More detail on payment terms is provided in Our Bill Payment Code of Practice, which forms part of Our Consumer Code of Practice. In particular You should refer to it if You have difficulty paying Us.

14.3 "Bankruptcy or Insolvency proceedings" means bankruptcy proceedings, becoming insolvent, making any composition or arrangements with creditors or an assignment for their benefit, any execution, distress, diligence or seizure; or if You are a company, being the subject of proceedings for the appointment of an administrator, going into liquidation whether voluntary or compulsory (except for the purpose of amalgamation or reconstruction) or having receiver or administrative receiver of any assets appointed.

14.4 If We terminate this Agreement in accordance with paragraph 14.1 above, or otherwise, as well as other sums payable up to the end of the Agreement, You may be required to pay Us the rental or other charges which would have been payable for the remainder of the Initial Term of Service at the rate in force at termination but We will make due allowances for any rental You have paid in advance for a period ending after the end of the Initial Term of Service, and make a repayment where appropriate.

14.5 As well as other sums that You may become liable to pay for, You continue to be liable to pay all charges that are due for the Service during the period in which You do not comply with this Agreement until the end of the term of service.

15. CANCELLATION

15.1 Prior to the Service being provided, this Agreement may be cancelled by:

15.1.1 You although We may make a charge for any abortive work undertaken and/or any money spent to meet Your requirements;

15.1.2 Us if paragraph 32 of this Agreement applies.

16. SUSPENSION

16.1 We may suspend the Service immediately and without notice in an emergency in order to provide or safeguard service to a hospital or to the emergency, or other essential, services.

16.2 We may suspend the Service giving You as much written or oral notice as reasonably practical and possible and not less than 24 hours:

16.2.1 for the purpose of repair, maintenance or improvement of Our Telecommunication System; or

16.2.2 to permit the passage of vehicles with abnormal loads.

16.3 We will restore Service as soon as reasonably possible after the suspension. Under no circumstances will any rebate of rental be granted for such suspension of Service.

16.4 We may suspend Service if You breach any of the terms of this Agreement.

17. TERMINATION

17.1 We may terminate this Agreement by giving You at least 30 days notice. If We give You notice then You must pay rental and any other applicable charges up to the expiry of the notice period. We will credit or refund the appropriate proportion of any rental paid in advance for the period after Your liability for rental ceases. If You have been suspended from service due to non-payment of accounts We may terminate the Service after one month should payment still be outstanding.

17.2 We may terminate or suspend provision of the Service to You in circumstances described in these C&W IOM General Terms and Conditions and in particular clauses 14 and 16.

17.3 You may terminate this Agreement by giving written notice to Us of at least 30 days. If You terminate this Agreement during the Initial Term of Service You shall be liable to pay the charges due until the end of the Initial term at the rate in force at the time. Outstanding rental charges shall not be payable if:

17.3.1 the Service is replaced with another Service from Us that We deem to be comparable; or

17.3.2 We materially change the rental charge or terms and conditions of this Agreement to Your detriment.

17.4 Your notice does not avoid any other liability for the Service already provided.

18. CALL MONITORING AND RECORDING

We may monitor and record calls made to or by Us. We do this for the protection of You and Us, training, customer service and telemarketing purposes.

19. ACCOMMODATION, POWER AND LIGHTNING PROTECTION

See Service Specific Terms and Conditions and the Service Schedule applicable to that Service.

20. CUSTOMER PREMISES EQUIPMENT

See Service Specific Terms and Conditions and the Service Schedule applicable to that Service.

21. INFORMATION AND PERMISSIONS

21.1 You must provide to Us when asked any information and /or co-operation that We may reasonably require in order for Us to provide the Service under this Agreement.

21.2 You shall promptly inform Us of any changes to any details originally provided to Us in relation to the Service and this Agreement.

21.3 In order to investigate abuse of the Telecommunications System You must provide to Us, when asked, any information and records relating to the use of the Service or equipment.

22 CONFIDENTIALITY

22.1 The parties will keep in confidence any information (whether written or oral) of a confidential nature (including software and manuals) obtained under this Agreement and will not disclose that information to any person (other than their employees or any entity in the C&W Group) without the written consent of the other party.

22.2 This paragraph 22 will not apply to:

22.2.1 any information that has been published other than through a breach of this Agreement;

22.2.2 information lawfully in the possession of the recipient before the relevant disclosure;

22.2.3 information obtained from a third party who is free to disclose it; and

22.2.4 information that a party is requested to disclose and if it did not could be required by law to do so.

23. ACCESS TO PREMISES

See Service Specific Terms and Conditions and the Service Schedule applicable to that Service.

24. COMPLAINTS AND ARBITRATION

All complaints and arbitration shall be dealt with in accordance with Our Consumer Code of Practice.

25. ASSIGNMENT / SUBCONTRACT

We shall have the right to assign, subcontract or transfer all or any of Our rights and obligations under this Agreement to any person and shall notify You prior to exercising the right to assign, subcontract or transfer such rights or obligations.

26. INTELLECTUAL PROPERTY

26.1 Any intellectual property rights existing in any information, software and equipment supplied to You in connection with the Service shall remain Ours or the appropriate owners of such intellectual property rights. Such information shall not be copied, used or disclosed (other than for the purpose for which it was supplied) without Our prior written consent.

26.2 The words or marks "Cable & Wireless" and "Sure" however represented, including stylised representations, all associated logos and symbols, and combinations of any of the foregoing with another word or mark, are the

trade marks of Cable & Wireless or one of the Cable & Wireless Group companies or third parties. ALL RIGHTS RESERVED.

27. COPYRIGHT

Copyright of all information supplied to You in connection with the Service shall remain Ours or the copyright owners. Such information shall not be copied, used or disclosed (other than for the purpose for which it was supplied) without Our prior written consent.

28. DURATION AND ENTIRE AGREEMENT

28.1 This Agreement shall come into force immediately and shall continue until the Service is terminated.

28.2 This Agreement sets out the entire terms and conditions under which We provide Service to You.

28.3 Any clause that is expressly or implicitly intended to survive the termination of this Agreement shall survive termination of this Agreement.

29. INDEMNITY

You must indemnify Us against all claims that anyone other than Yourself threatens or makes against Us because of the way in which the Service is used.

30. LAW

This Agreement shall be governed by and constructed and interpreted in accordance with the Laws of the Isle of Man, and each party hereby submits to the exclusive jurisdiction of the Isle of Man Courts.

31. LIABILITY

31.1 We do not exclude or restrict liability for death or personal injury resulting from Our negligence.

31.2 We are not liable to You either in contract, tort, (including negligence) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings, or for any indirect or consequential loss or damage whatever.

31.3 Our liability to You in contract, tort (including negligence) or otherwise in relation to provision of the Service, or otherwise under this Agreement, is limited to the value of any amounts paid by You to Us under this Agreement in any 12 month rolling period, starting on the date on which We commence the provision of the Service in accordance with clause 2.1.

31.4 Each provision of this paragraph limiting or excluding liability operates separately. If any part is held unreasonable or inapplicable in any circumstances the other parts shall continue to apply.

31.5 We will accept liability for failure to meet any of Our obligations stated in any Service Schedule applicable to the Service but only to the extent stated in paragraph 31 and as limited in paragraph 32 of this Agreement and in the relevant Service Specific Terms and Conditions and Service Schedule. In any conflict between the terms and conditions of paragraph 31 and the applicable Service Specific Terms and Conditions or Service Schedule the terms and conditions of paragraph 31 shall prevail.

31.6 You are responsible for the security and use of any access code, password or PIN numbers used with the Service. You are advised not to use them with Customer Premises Equipment or any other appropriate equipment that has a memory, such as telephones with last number dialled and display facilities. We will not be held liable for any loss that You may suffer as a result of Your failure to comply with this clause.

31.7 Customer Premises Equipment DOES NOT provide immunity from fraudulent intrusion or hacking and You are responsible for ensuring that You have taken all measures to prevent such fraudulent use of Your CPE which may include hacking or any form of toll fraud, rogue dialling or other forms of fraud that causes Your CPE to make calls or incur charges that You are not aware of. We will not be held liable for any loss that You may incur as a result of any failure to comply with these terms and conditions or as a result of any fraudulent activity that is conducted against You through Your CPE. We do not monitor the usage of Your CPE on an individual basis and the monitoring of the charges incurred by You is Your responsibility. In the event that We incur charges as a result of any hacking or fraudulent activity, then We will seek to recover those charges from You in full and You will pay all such charges as may have been incurred.

32. MATTERS BEYOND REASONABLE CONTROL

We are not liable for any breach of this Agreement which is caused by a matter beyond Our reasonable control including but not limited to Act of God, fire, lightning, explosion, war, disorder, flood, industrial disputes (whether or not involving their employees), extremely severe weather or acts of government or other competent authorities. If We are prevented by restrictions of a legal or regulatory nature from supplying the Service, We will have no liability to You for failure to supply the Service.

33. NOTICE

33.1 Notices given under this Agreement must be in writing and delivered by hand or sent by facsimile or prepaid post as follows:

33.1.1 To Us: at the address of Our office shown on Our Order Form or on Your last bill or any alternative address that We may notify You of;

33.1.2 To You: at the address that You ask Us to send bills, the address of the Premises, or if You are a limited company to Your registered office.

34. USE OF INFORMATION

34.1 You warrant that You have and do, and undertake that You will, comply with all applicable data protection legislation including, without limitation, the Data Protection Act 2002.

34.2 We warrant that We have and do, and undertake that We will, comply with all applicable data protection legislation including, without limitation, the Data Protection Act 2002.

34.3 We will use the information We have about You and Your use of the Service for marketing purposes. We will not do so if You ask Us not to.

34.4 We will process Your billing data and information about Your use of the Service for marketing Our own telecommunications products and services. This enables Us to better inform You about products, services and options that We provide and believe may be of particular interest to You. We will not disclose this information to anyone other than members of the Cable & Wireless Group. We need Your consent to continue to give You all the benefits that this processing provides and You should indicate if you do not wish to provide us with such consent on the Order Form for the Service.

34.5 We may pass information We have about You to other companies within the Cable & Wireless Group in order to facilitate the provision of service to You.

35. SEVERABILITY

If any provision of this contract is found to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected by that finding.

36. VARIATION

36.1 If, during the term of the Agreement, We send to You a revised version of these terms together with a notice stating when they shall come into force and You continue to make use of the Services after such date, then You shall be deemed to have accepted the revised terms with effect from the date specified in the notice. In the event that You notify Us within 30 days of such notice that You do not accept the revised terms, the revised terms shall take effect from the expiry of the Initial Period or, if relevant, the renewal Term then in effect.

36.2 Notwithstanding Clause 36.1, We shall have the right to modify the Agreement at any time so as to comply with any regulations or other requirement applicable to or imposed upon Us under the Conditions, by the Communications Commission or by any competent authority.

37. WAIVER

If either party fails to exercise or enforce any right conferred by this Agreement it shall not be deemed to be a waiver of those rights nor bar the exercise or enforcement of them on any later occasion. If We waive a particular breach of this Agreement by You, that waiver is limited to the particular breach.

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