

## BROADBAND INTERNET TERMS AND CONDITIONS



These C&W Service Specific Terms and Conditions should be read in conjunction with the C&W Telephone General Terms and Conditions. Where there is conflict these Service Specific Terms and Conditions supersede the General Terms and Conditions.

**1.0 GENERAL:** Cable & Wireless will make available ADSL Broadband Service ("Service") together with various IP based services available to subscribers eg email facilities, personal web space access to the world wide web and other services and applications that we may introduce from time to time. The terms set forth below, the terms on the Cable & Wireless order form ("Application Form") and the terms of any documents referenced or otherwise incorporated herein (collectively, "Agreement") govern the provision by Cable & Wireless, South Atlantic Limited ("C&W") of service to its customer specified on the Application Form ("Customer"), which service provides access to the combination of computers and computer networks that are owned and operated by a variety of entities and which is generally known collectively as the "Internet". This service provides access to the Internet only for the Customer's use; it does not include any usage of the Internet itself nor does it include any third party charges thereof. This Agreement is effective upon its acceptance by C&W as set forth on the Application Form ("Effective Date"). C&W reserves the right to refuse your application for the Service

**2.0 TERM:** There is one full calendar month minimum term contract from the Service Start Date ("Minimum Period"). Should the Customer terminate this Agreement or telephone line before the expiration of the Minimum Period, the Customer will remain liable for the charges during the Minimum Period. Thereafter (that is once the Minimum Period has passed), the Customer may cease the contract at any time by giving not less than 7 days' written advance notice of termination before the end of any calendar month. If the Customer gives less than 7 days' notice before the end of a calendar month he/she may be liable for an administration charge/penalty fee. The amount of this charge shall be at our sole discretion but in any event will not exceed the aggregate value of one month's rental charge. C&W will always give the Customer 30 days' advance written notice of termination. This Agreement shall continue in force from the Effective Date until either party provides the other with the required advance written notice of termination. A full months data allowance will be given for part month start of contract.

**3.0 SERVICE ACCEPTANCE:** C&W shall notify the Customer as to the date Service is operational and available for the Customer's use ("Service Start Date"). Any Customer-provided equipment and/or facilities not being installed, operational or otherwise available for use by the Service Start Date shall not be grounds for the Service not being accepted by the Customer.

**4.0 CHARGES:** Effective as of the Service Start Date, for all usage of the Service, whether such usage is authorised or known by the Customer, the Customer shall pay the monthly charges set forth in the C&W Tariff of charges (see www.cwi.sh for current C&W Tariffs). Where a Customer requests a Service Start Date during a month, the Customer will pay the full monthly charges for that relevant calendar month (as a full months data allowance will still be given to the Customer). No prorated charges will apply. The Customer shall also incur an installation or other specified one-time Charge as of the date C&W commences the work for which that Charge applies. C&W may revise the Charges, or the terms and conditions of this Agreement, at any time upon thirty (30) days' advance notice.

**5.0 PAYMENT:** C&W shall provide invoices regularly covering C&W's monthly billing periods. The Customer shall pay for these charges before the end of each billing month (ie: before the last day of each calendar month). If payment becomes overdue C&W reserves the right to suspend the Service and/or any other services provided to the Customer. The Customer shall be liable to C&W for any and all costs and/or expenses incurred directly or indirectly, including reasonable legal costs and expenses, in the collection or attempted collection of any amounts overdue. C&W Credit Control Policy will apply to the service.

### **6.0 PROVISION AND USE OF SERVICE, SOFTWARE, AND EQUIPMENT:**

6.1 The Service will only be available if there is a valid contract with C&W for the use of a direct exchange line which terminates on a master socket forming part of C&W telecommunications network.

6.2 The Service is offered subject to the availability of the necessary facilities, equipment and island coverage capability. C&W does not have any responsibility for any failure to provide the Service which is due to any acts, omission, neglect or default of any foreign administration and/or other company/persons.

6.3 The Customer may not resell the Service to any third party or permit any third party to use the Service, Service Agreement Software, or the Equipment unless accepted, by prior arrangement with C&W. The Customer shall not allow the Service to be used, modified or adapted to transmit voice on the public telecommunications system of either C&W or any foreign telecommunications provider, and the Customer shall not connect to the PSTN at either the local or the distant end. The Customer shall comply with any C&W

and other applicable Internet instructions, rules, and regulations concerning the use of the Service, Software, Equipment, and the Internet, as may be applicable from time to time, and the Customer shall only use the Service in full compliance with any applicable local laws and the C&W Acceptable Use Policy (www.cwi.sh). Although C&W may configure the Service so as to provide some security features, the Customer shall be solely responsible for providing any security or privacy that it may desire for its computer network and any data stored on that network or accessed through the Service. The Customer acknowledges and assumes all liabilities relating to, and risks associated with, unauthorised access by a third party via the Service to such computer network and data.

6.4 If C&W provides any software (and any related documentation) under this Agreement which is embedded in hardware as firmware and which is not accompanied by a license

agreement (collectively "Service Agreement Software"), the Customer shall use the Service Agreement Software only with the Equipment, if any, and the Services. The Customer shall not (i) reproduce, reverse engineer, disassemble, decompile, modify, adapt, translate, create derivative works from, or transfer or transmit the Service Agreement Software in any form or by any means, or (ii) use the Service Agreement Software for any purpose other than as set forth in this paragraph. The Customer shall not have any ownership rights in, or obtain rights to, the Service Agreement Software. If a license agreement ("Software License") accompanies the C&W-provided software, whether such software is owned by C&W ("C&W License Agreement Software") or its third-party supplier(s) ("Third-Party License Agreement Software"), the Customer shall abide by the terms of the Software License. C&W shall have no obligations or liabilities whatsoever in connection with any Third-Party License Agreement Software, whether such Third Party License Agreement Software is used in connection with the C&W provided Service or is used independent of the C&W-provided Service, including, without limiting the generality of the foregoing, in connection with the use thereof. The Customer agrees to look exclusively to the Third-Party License Agreement Software supplier(s) with respect to all matters relating to its software. The Service Agreement Software, the C&W License Agreement Software, and the Third-Party License Agreement Software are collectively referred to as "Software".

6.5 Title to any C&W-furnished equipment ("Equipment") shall at all times remain with C&W. The Customer shall not permit any liens or encumbrances to be placed upon the Equipment, and C&W shall have the right to take all actions necessary (including taking possession from the Customer's premises) to protect its ownership interest in the Equipment. Risk of loss for any Equipment shall pass to the Customer upon its delivery to the Customer's premises.

6.6 On subscription to the service the Customer must have a PC/Network that satisfies the technical requirements and will be required to purchase a modem and filter supplied by C&W. If customer equipment is not provided by C&W such equipment must comply with standards by C&W. C&W reserves the right to change these equipment compliance standards at any time during the Agreement. Current equipment standards can be obtained from C&W Customer Care Centre.

6.7 The Customer acknowledges that due to the contention on the C&W network, the speed of the Service may be reduced or may not be available at times

6.8 This Agreement does not constitute a license for the Customer to copy, reproduce, distribute, or otherwise use any proprietary information provided or accessible through the Service.

6.9 The Customer may not extend the Service beyond the confines of the Customer's property by wireless or cable.

### **7.0 UPGRADE/DOWNGRADE/TERMINATION/CANCELLATION /DISCONTINUATION OF SERVICE:**

7.1 In the event that the Customer decides to:

7.1.1 upgrade to another Broadband package, C&W will require two working days notice in writing. Costs will be charged at the upgraded package tariff. The upgraded data allowance would be given at the time of request. Only one upgrade per month permitted.

7.1.2 downgrade from one Broadband package to another, C&W will require at least two working days notice. Downgrades will only be completed at month end following the notice period. In addition, a Customer may only downgrade a Broadband package after a minimum period of one full calendar month subscription on a particular package. Should the Customer require a downgrade before the expiration of one full calendar month subscription at a particular package, the Customer will be liable for the charges at the package rate payable prior to the downgrade for a period of one calendar month.

7.2 In the event the Customer terminates the Service and/or the telephone line after the Service Start Date in accordance with clause 2 above the Customer shall pay for all Charges incurred up to and including the date Service is discontinued. No refunds will be given to the Customer. A full months data allowance will be given for part month end of contract. The Customer may cancel the Service prior to the Service Start Date by providing prior written notice to C&W. In such event, the Customer shall pay for all Charges incurred up to and including the date of cancellation.

7.3 In addition to any other remedies available, C&W may immediately terminate this Agreement in the event of a breach by the Customer of this Agreement, the C&W Acceptable Use Policy, of the Software License, or of any other Agreement between the parties pursuant to which C&W provides telecommunications services for the Customer ("Telecoms Agreement"). C&W may terminate this Agreement on notice to the Customer in any of the following circumstances: (i) initiation of proceedings by the Customer in voluntary bankruptcy; (ii) initiation of proceedings against the Customer in involuntary bankruptcy which are not dismissed within sixty (60) days of initiation; (iii) the appointment of a receiver or trustee for the Customer; (iv) a general assignment for the benefit of the Customer's creditors; (v) the Customer's insolvency; (vi) nonpayment of amounts due to C&W under this Agreement or under any Telecoms Agreement.

**BROADBAND INTERNET TERMS AND CONDITIONS**

7.4 Upon any termination, the Customer shall (i) immediately cease utilising the Service, (ii) immediately return any Service Agreement Software, (iii) permit C&W to have access to and remove any Equipment from the Customer's premises, (iv) pay C&W for all Charges incurred by Customer up to and including the date Service is discontinued.

7.5 In addition to any other remedies available, C&W may immediately (without notice and without liability to the Customer) discontinue the provision of Service if any of the following occurs: (a) C&W deems in its absolute discretion that it is necessary to discontinue the Service in order to protect against its fraudulent or illegal use or to otherwise protect C&W, its equipment, or facilities; (b) C&W receives complaints or claims from third parties regarding the Customer's use of the Service; or (c) the Customer fails to comply with the warranties set forth below.

**8.0 INDEMNIFICATION/LIMITATION OF LIABILITY:**

8.1 The Customer shall defend, indemnify and hold C&W harmless from and against all claims, demands, actions, causes of action, judgments, costs and reasonable legal costs and expenses of any kind or nature for any damages of any kind arising from or related to any use of the Service, Software, Equipment, or the Internet including any breach by the Customer of the terms of this Agreement, whether such use is by the Customer or any third party irrespective of whether the Customer has authorised or known about such usage, or otherwise arising under or related to this Agreement, the Service, the Software, the Equipment, or the Internet.

8.2 C&W shall not be liable for any delay or interruption in or failure to provide or restore the Service howsoever caused including, without limitation, anything caused by or attributable to any customer equipment or any services provided by any person providing the on-line service connection to the Internet. In no event shall C&W be liable for any unauthorised access by a third party to Customer's computer network or data, loss of profits or data, or for any incidental, special, exemplary, or consequential damages. For all other claims that may arise under the terms of this Agreement (and whether in contract, tort, negligence or otherwise), then, to the extent allowed by law C&W's total liability to the Customer, shall be capped at 100% of the fees paid by the Customer to C&W in the 12 months immediately prior to the event giving rise to the claim.

8.3 If C&W has been notified that any Customer's usage of the Service, Software, Equipment, or the Internet is infringing any third party's rights or is in violation of any applicable law or regulation or if C&W otherwise has reason to believe this to be so, if requested by C&W, the Customer shall immediately cease all such usage of the Service, Software, or Equipment.

**9.0 REPRESENTATIONS AND WARRANTIES:**

9.1 C&W shall provide Service, Software and Equipment as set forth in this Agreement. **C&W DOES NOT WARRANT THAT THE SERVICE, SERVICE AGREEMENT SOFTWARE OR EQUIPMENT SHALL BE UNINTERRUPTED OR ERROR FREE OR PROVIDE ANY SECURITY OR PRIVACY FOR ANY COMPUTER NETWORK OR ANY DATA, OR THAT THE INFORMATION AVAILABLE AND/OR ACCESSED THROUGH THE INTERNET SHALL BE ACCURATE, CORRECT, APPROPRIATE FOR ANY PARTY'S NEEDS, FREE FROM VIRUSES OR OTHER DISABLING CODES, OR THAT SUCH INFORMATION SHALL NOT INFRINGE UPON ANY PROPRIETARY OR OTHER RIGHTS OF OTHERS THE USE OF THE INTERNET, ANY INFORMATION AVAILABLE AND/OR ACCESSED THROUGH THE INTERNET, ANY DOMAIN NAME, AND ANY SECURITY FEATURES PROVIDED FOR THE SERVICE SHALL BE AT THE USER'S SOLE RISK. OTHER THAN ANY EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT, C&W DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR YEAR/ DATE ACCURACY. C&W MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE FITNESS, QUALITY, SUITABILITY, MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR PERFORMANCE OF ANY THIRD- PARTY LICENSE AGREEMENT SOFTWARE, IT BEING AGREED THAT ANY SUCH SOFTWARE IS BEING SUPPLIED "AS IS" AND THAT ALL SUCH RISK, AS BETWEEN C&W AND CUSTOMER, ARE TO BE BORNE BY CUSTOMER AT ITS SOLE RISK AND EXPENSE.**

**THE CUSTOMER HEREBY REPRESENTS AND WARRANTS THAT USE OF THE SERVICE HEREUNDER (INCLUDING ANY USE OF ANY DOMAIN NAME) SHALL NOT VIOLATE OR INFRINGE UPON ANY PROPRIETARY OR OTHER RIGHTS OF OTHERS, BE ABUSIVE, THREATENING, OBSCENE, PROFANE OR OTHERWISE OFFENSIVE, OR VIOLATE ANY APPLICABLE LAWS OR REGULATIONS. THE CUSTOMER SHALL NOT REPRESENT TO ANY THIRD PARTY THAT C&W HAS MADE ANY WARRANTY OR REPRESENTATION OF ANY KIND WITH RESPECT TO THE SERVICE, SOFTWARE, EQUIPMENT, OR THE INTERNET.**

**10.0 ADDITIONAL TERMS:** (a) This Agreement is governed by and shall be construed in accordance with the laws of the St. Helena Island (b) The Customer may not assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of C&W. An assignment shall be deemed to include any change of control of the Customer. (c) C&W shall not be liable for, and is excused from, any failure or delay in performance that is due to acts of God, acts of civil or military authority, acts of the public enemy, war or threats of war, accidents, fires, explosions, earthquakes, floods, hurricanes, unusually severe weather, epidemics, or due to any other cause beyond

its reasonable control. (d), C&W may at any time on giving 30 days notice to Customer vary these Terms and Conditions. (e) Any notice required to be given by either party under this Agreement may be sent by post in the case of C&W to the Company's Main Office, and in the case of the Customer, to the address set out in the Application Form or to the Customer's E-Mail address and shall in the case of notice by post be deemed to be effective three days after posting and in the case of notice to the Customer by E-Mail 24 hours after transmission. (f) This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and it supersedes all prior and/or contemporaneous oral and written agreements, understandings, and/or representations thereto. (g) Notwithstanding any purchase orders or similar documents submitted by the Customer to C&W only the terms of this Agreement shall apply.

**11.0 FAULTS AND REPAIRS/MAINTENANCE**

11.1 If the Customer reports a failure or impairment in the provision of the Services, C&W shall, subject to the other terms and provisions of this agreement, restore the Service or correct the impairment as soon as reasonably practicable following the Customer's notification of the same. C&W shall not be obliged to take any step to restore the Services otherwise than during the Company's normal working hours being 0800 to 1600 Monday to Friday (excluding Public Holidays). If C&W agrees to attend to a fault outside normal working hours, the Customer will pay C&W reasonable charges in connection with the compliance with such a request. If C&W undertakes work to correct a fault or impairment but in its sole opinion considers that either there was no such fault or impairment or such a fault or impairment was due to any act, omission or fault of the Customer or any improper use of the Services, the Customer shall pay C&W reasonable costs in undertaking such work.

11.2 C&W will not undertake any repairs/maintenance of customer-provided equipment.

Empty rectangular box with a dashed line at the bottom, intended for the Customer's signature.

Customer

Empty rectangular box with a dashed line at the bottom, intended for the Date.

Date

Updated 01 May 2010