



Interconnection Agreement

Legal Framework



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This Agreement is made this 5th day of December, 2005.

BETWEEN

- A) Blue Sky Wireless Ltd., a company duly incorporated under the laws of the Cayman Islands, having its registered office at 32336 Seven Mile Beach, Grand Cayman, Cayman Islands (the "Telco"); and
- B) Cable & Wireless (Cayman Islands) Limited, a company duly incorporated under the laws of the Cayman Islands having its registered office at One Technology Square, Eastern Avenue, P.O. Box 293 GT, Grand Cayman, Cayman Islands ("C&W").

RECITALS

- A) Pursuant to a licence issued by the Information and Communications Technology Authority ("Authority"), the Telco is entitled to establish and operate a public telecommunications ICT Network and to provide public telecommunications ICT Services in the Cayman Islands.
- B) C&W is entitled by its Public Network Operator Licence to provide various public telecommunications ICT Services and establish and operate telecommunications ICT Networks in the Cayman Islands.
- C) The Telco has requested interconnection of its Public Voice Network with that of C&W, and the Parties have agreed to interconnect their respective ICT Networks in accordance with the Information and Communications Technology Authority Law, 2002, on the terms and conditions set out herein.

1. Definitions and Applicability

- 1.1 In this Agreement, unless the context otherwise requires or explicitly states, the terms used shall have the meanings assigned to them in the Definitions schedule.
- 1.2 In this Agreement, unless the context otherwise requires or explicitly states:
 - a) The singular includes the plural and vice versa;
 - b) Reference to an agreement or other instrument includes any variation or replacement to or of either of them;
 - c) Reference to any Clause, Schedule, Annex or other Attachment is a reference to a clause of or schedule, annex or attachment to this Agreement and any reference to this Agreement includes any such Schedule, Annex or other Attachment. Reference to any Paragraph is a reference to a paragraph of a Schedule, Annex or Attachment.

- d) Reference to any statute, ordinance, code or other law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements thereof at any time;
 - e) The expression "person" includes any individual, firm or company;
 - f) All references to CI\$ or other payable amounts refer to Cayman Islands Dollars unless otherwise stated; and
 - g) If a day on which payment of money falls due is not a Business Day, the due date for such payment shall be deemed to be the next following Business Day.
- 1.3 References in this Agreement to either Party shall include any legitimate successors or assigns of that Party pursuant to Clause 32.
- 1.4 Headings are included for convenience and do not affect the interpretation of this Agreement.
- 1.5 In the event of any inconsistency between the numbered Clauses of this Agreement and the Schedules, Annexes or other Attachments, the numbered Clauses of this Agreement shall prevail. In any other event the following order of priority will apply:
- a) Definitions
 - b) Service Descriptions
 - c) Joint Working Manual
 - d) Service Schedule and Parameter Schedule
 - e) Tariff Schedule
2. **Duration**
- 2.1 This Agreement takes effect on the date on the date it has been executed and continues in full force and effect for a period of five (5) years unless terminated in accordance with Clause 23, otherwise varied in accordance with the provisions of Clause 22. In the event of any variation pursuant to Clause 22, the Agreement as amended shall continue in full force and effect unless terminated in accordance with Clause 23 or further otherwise varied in accordance with the provisions of Clause 22.
- 2.2 Renegotiations for an extension of this Agreement shall commence on the fourth anniversary of the execution of this Agreement. In the event that no agreement is reached on a renewal of this Agreement prior to expiry of the five-year term, the Agreement shall remain in force for a further six (6) months beyond the original term, provided however that neither Party shall be obliged to continue to provide service if no agreement is reached within six (6) months of the conclusion of the original five-year term.



3. **Interconnection**

- 3.1 Subject to the provisions of this Agreement, C&W shall connect and keep connected the C&W System to the Telco System and the Telco shall connect and keep connected the Telco System to the C&W System in the manner described in this Agreement.
- 3.2 Subject to Clause 15, Points of Connection shall be established between the C&W Interconnect Switch Location (ISL) and Telco Interconnect Switch Location specified in the Service Schedule in accordance with the Joining Service as more particularly described in the Service Descriptions.
- 3.3 Each Party shall ensure that any Telecommunications Apparatus necessary to the provision of interconnection pursuant to this Agreement conform to the technical requirements set out in the Joint Working Manual.

4. **Forecasting, Ordering and Provision of Interconnect Capacity**

- 4.1 The Parties will exchange Forecasts for each Service as required in the Service Descriptions in accordance with the procedures set out in the Joint Working Manual and shall comply with all the applicable provisions of the Joint Working Manual relating to forecasting.
- 4.2 The Parties will order and provision capacity in accordance with the procedures set out in the Joint Working Manual and comply with all applicable provisions of the Joint Working Manual relating to ordering and provisioning.

5. **Testing**

- 5.1 The Parties will carry out the Acceptance Testing and commissioning procedures described in the Joint Working Manual.

6. **Operation and Maintenance**

- 6.1 Subject to Clause 9.1, each Party shall be responsible for planning, providing, operating and maintaining all Telecommunications Apparatus located on its side of the Point of Connection.
- 6.2 Each Party shall manage traffic on its System so as to avoid disruption to the other Party's System and Services to the maximum extent reasonably practicable and each Party shall take all necessary steps as are reasonably practicable to minimise service failures and congestion and signalling system disturbances within its own System which would affect the ability of the other Party to carry Calls across such other Party's System in accordance with the routing principles set out in the Joint Working Manual and the Parameter Schedule.
- 6.3 Each Party shall advise the other Party of any Faults or planned maintenance in accordance with the procedures set out in the Joint Working Manual and shall

resolve the Faults or conduct the maintenance in accordance with the Joint Working Manual.

6.4 Each Party may make reasonable tests and inspections of any Services it provides to the other and may upon reasonable notice temporarily interrupt Services being tested or inspected in accordance with the provisions of the Joint Working Manual relating to planned maintenance. Where a test or inspection will affect telecommunications traffic originating or terminating on or transiting either Party's System, the testing or inspection shall be carried out in such a way as to minimise disruption to each Party's System.

7. System Changes

7.1 Where a Party intends to make or permit to be made any alteration, adjustment or addition to its System which would have the effect of materially impairing the operation of the other Party's System or otherwise to materially affect the conveyance of Calls over the Point of Connection, that Party shall provide as much notice as is practicable in the circumstances to enable the other Party to make modifications to its own System which are necessary to maintain interconnection at the agreed standards. Each Party shall take appropriate and reasonable steps to minimise the impact on the other Party of such alteration, adjustment or addition.

7.2 In the event that at any time either Party intends to change any standards or implement additional standards or standards with different features which may affect the operation of the other Party's System, the Party shall so notify the other Party as soon as practicable, and in any event no later than sixty (60) days before the planned network alteration, in order that the other Party has a reasonable opportunity to attempt to meet such standards or adjust its System accordingly. Each Party shall take appropriate and reasonable steps to minimise the impact on the other Party of such alteration, adjustment or addition, including modification costs.

7.3 Subject to Clauses 7.1 and 7.2, nothing in this Agreement shall limit either Party's ability to upgrade its System through the incorporation of new equipment, new software or otherwise or to change, in part or in whole, the design, function, operation or layout of its System.

7.4 The applicable standards of operation of each Party's System for the purpose of the Services will be those specified in the Joint Working Manual and, in the absence of any specified standards, will be such applicable international standards as determined by C&W.

8. Telecommunication Services

8.1 Each Party shall provide the other with the Services for which that Party is indicated as being the Service Supplier in the Service Schedule, provided that each Party's System and the Points of Connection are suitable for the conveyance of Calls pursuant to the relevant Service Description. Subject to Clause 15 the Services shall be provided in accordance with the Service Descriptions and the Joint Working Manual.

- 8.2 For the avoidance of doubt, and notwithstanding the interconnection of the Parties' Systems, neither Party shall hand over to the other Party, nor have an obligation to convey Messages of any category, unless the Parties have agreed to convey Messages of that category pursuant to a Service Description. In the event that Messages not expressly provided for are handed over and accepted for conveyance, the following supplementary charges will be applied: (i) where the Message is of a type described in a Service Description, the charges for that Service as set out in the Tariff Schedule, and (ii) where the Message is of a type not described in a Service Description, such amount as is reasonable having regard to all the circumstances.
- 8.3 Each Party shall be solely responsible for the switching and routing of all telecommunication services on its System and shall not be liable for telecommunications services provided by a Third Party Telecom Provider. Such switching and routing shall be consistent with the principles in the Joint Working Manual.
9. **Charges and Payment**
- 9.1 Each Party shall pay to the other the relevant Charges applicable to each Service as more particularly described in the Service Descriptions and tariffed in the Tariff Schedule.
- 9.2 C&W may propose to the Authority that interconnecting Licensees should pay an Access Deficit Contribution in accordance with Regulation 10 of the *Information and Communications Technology Authority (Interconnection and Infrastructure Sharing) Regulations, 2003*. An Access Deficit Contribution shall not be payable until the Authority has held a public consultation on the subject and the level of the Access Deficit has been determined by the Authority.
- 9.3 With the exception of the Access Deficit Contribution component, if any, of any Charges, unless otherwise stated, Charges payable by C&W to the Telco for a Service shall be the same as the Charges payable by the Telco to C&W for the same Service. In the event that C&W's Charges for a Service are varied pursuant to Clause 10, the Telco will vary its Charges for the same Service to ensure they remain the same. The Charges payable by C&W to the Telco in respect of a Service shall not include an Access Deficit Contribution, unless the Authority has mandated that the Telco may charge an Access Deficit Contribution as well.
- 9.4 Payments shall be made in an agreed form and will be deemed made on the date of receipt of such payments in cleared funds.
- 9.5 Subject to Clause 9.6, all Charges payable under this Agreement shall be payable within thirty (30) days of deemed receipt of an invoice. In the event that either Party shall fail to pay any amount due hereunder within such thirty (30) day period, (i) the payee shall be entitled to charge and receive interest at the base lending rate of FirstCaribbean International Bank from time to time in force plus two per cent (2%), from and including the day following the due date for payment until the date of payment in full, and whether before or after any court judgement or other award, and

- (ii) the payee may deduct the amount it is owed from any amount it owes the other Party.
- 9.6 If one Party is owed an amount by the other Party, the first Party may deduct the amount it is owed from the amount it owes the other party, and pay only the “net” amount. Notwithstanding this, the Parties agree to issue invoices showing full amounts owing by the other Party. The first Party shall advise the other Party at least seven (7) business days prior to the date the payments are due of the amount it intends to pay on a “net” basis, and shall provide at that time sufficient information to allow the other Party to identify all relevant invoices and amounts.
- 9.7 In the event that either Party disputes the specific amount of any invoice delivered by the other Party under this Agreement the Parties shall resolve the dispute in accordance with the investigation and determination procedures set out in the Joint Working Manual. Notwithstanding any dispute as to any payment, the Parties shall remain obliged to continue to observe and perform the provisions of this Agreement including, but not limited to, continuing to provide Service to each other, subject to the provisions of Sections 23 and 24 herein.
- 9.8 Any amount in dispute shall, for the purposes of Clause 9.5, be deemed not payable pending resolution of the dispute under Clause 9.6. Nothing in this Clause shall be taken as permitting a Party to withhold payment of an amount that is not in dispute. The Parties agree that they will not dispute amounts representing less than 0.5% of the total amount of the invoice (excluding any value added or other applicable tax).
- 9.9 Where appropriate, any value added or other applicable tax shall be added to all or any part of the Charges under this Agreement, and shall be paid by the Party responsible for making such payment.

10. **Variation of Charges**

- 10.1 C&W may from time to time notify the Telco of changes to specific Charges,
- i) where the Authority has approved changes to those Charges; or
 - ii) where a Third Party Telecom Provider has made changes to its charges, and these charges form part of the specified C&W Charges.

Such notice shall specify the date on which the variation is to become effective. In the case of changes falling within (i) above, the changes will take effect from the effective date approved by the Authority. In the case of changes falling within (ii) above, the changes will take effect from the date set out in the notice as being the effective date.

11. **Billing**

- 11.1 Each Party shall be responsible for invoicing its own Subscribers.

- 11.2 Each Party shall be entitled to invoice the other Party for the relevant Usage Charges and Monthly Recurring Charges following the expiration of each Billing Period. Each Party shall use reasonable endeavours to deliver invoices in a timely manner in accordance with the Joint Working Manual.
- 11.3 Subject to Clauses 11.2 and 11.4, each Party shall be entitled to invoice the other Party for applicable One-off Charges and any other amounts expressed as being payable in accordance with the specific provisions of this Agreement.
- 11.4 Invoicing for the Joining Service shall be carried out in accordance with the relevant Service Description and all reasonable endeavours shall be used to ensure that all information necessary to produce a complete invoice for such Services is obtained in a timely manner.
- 11.5 Any failure to deliver invoices in accordance with Clause 11.2, 11.3 or 11.4 shall not be deemed to be a waiver of the invoicing Party's rights in respect of payment or a breach of a material obligation of the invoicing Party.
- 11.6 For the purpose of reconciling accounts, each Party shall use all reasonable endeavours to provide the other with Billing Data in respect of Calls conveyed from its System and handed over to the other Party at the Point of Connection in accordance with the Joint Working Manual.
- 11.7 Notwithstanding the above, in the event that:
- a) Billing Data is temporarily or permanently unavailable;
 - b) in the first twelve (12) months following signature of this Agreement, a billing error is discovered that occurred in the previous three (3) Billing Periods; or
 - c) at any time after the first twelve (12) months following signature of this Agreement, a billing error is discovered that occurred in the previous Billing Period

the Parties shall follow the procedures set out in the Joint Working Manual.

12. **Transitional Provisions**

- 12.1 The Parties shall make any changes, as required, to Charges which result from the approval of the forward-looking long-run incremental cost model by the Authority.

13. **CLI**

- 13.1 The Parties will pass CLI in accordance with the Joint Working Manual and any agreed code of practice for CLI from time to time in force. For the avoidance of doubt, neither Party is required to pass CLI for any Call in respect of which CLI is not available.

14. Numbering

- 14.1 Each Party shall make the necessary adjustments to its System to route Calls to the other Party's System in accordance with the number ranges and other numbers assigned to the other Party under the National Numbering Plan and in accordance with the Service Descriptions and the Service Schedule.
- 14.2 Each Party shall use numbers in accordance with the National Numbering Plan and, in the absence of any such Plan, in accordance with the applicable ITU recommendations.

15. Service Performance and Standards

- 15.1 Subject to Clause 15.3, the Parties shall use all reasonable endeavours to comply with the provisions relating to quality of service set out in the Joint Working Manual and the Parameter Schedule.
- 15.2 Subject to Clause 15.3, the Parties shall use all reasonable endeavours to at all times apply standards (including signalling standards) and operating guidelines which are consistent with the Joint Working Manual.
- 15.3 Save as is set out in Clause 15.1 and 15.2, the Parties provide no other warranties, representations, undertakings or commitments in respect of quality of service including, but not limited to, warranties, representations, undertakings or commitments in respect of difficulties or faults which result in a failure to establish service, in-service interruption or loss of or distortion of communication, and all implied warranties are hereby excluded.

16. Safety and System Protection

- 16.1 Each Party shall be responsible for the safe operation of its System and shall take all steps reasonably necessary or required by law to ensure that such operation and the implementation of this Agreement:
- a) comply with any specific safety and protection requirements contained in this Agreement (including, without limitation, the Joint Working Manual);
 - b) do not endanger the safety or health of the officers, employees, contractors, representatives, agents, invitees or Subscribers of the other Party;
 - c) do not damage, interfere with or cause any impairment to or deterioration in the operation of the other Party's System;
 - d) do not interfere with the use or provision of licensed telecommunication services provided by the other Party, provided that this principle shall not preclude the taking of action by either Party in the normal operation of its System to protect its System, on condition that any such action is in compliance with the Joint Working Manual.

16.2 In the event that it is agreed to be necessary or desirable for representatives of a Party to access the premises of the other Party for the purposes of this Agreement, each Party shall use its reasonable endeavours to comply with all reasonable security and safety practices and procedures applicable to access to and operations on the premises of the other Party notified to it by the Party whose premises are being visited. Subject to the indemnified Party complying with Clause 26.6, each Party shall indemnify and keep indemnified the other against all risks and damages, costs, claims and expenses arising out of any breach by the indemnifying Party of this Clause 16.2.

17. **Prevention of Fraud**

17.1 A Party shall not be obliged to convey, receive or terminate Calls or Messages (i), where the volume of such Calls or Messages materially exceeds that which could reasonably be expected and such traffic impedes the transmission of other Calls or Messages, or (ii) such Calls or Messages are otherwise harmful to the integrity of the Party's System.

17.2 A Party shall not be restrained from taking any reasonable actions, including not conveying, receiving or terminating Calls or Messages, in the event of (i) payment not being received from a Third Party in respect of Calls or Messages, or (ii) fraud being carried out against the Party, provided that the same action is taken in respect of all affected Calls or Messages.

17.3 To the extent permitted by law, the Parties will promptly upon becoming aware of fraudulent use, theft or misuse of the Parties' respective Services and associated Telecommunications Apparatus inform the other of such circumstances.

17.4 If requested, the Parties shall co-operate in the provision of information to the Authority or to other relevant regulatory bodies, in relation to fraudulent use, theft or misuse of the Parties' respective Services and associated Telecommunications Apparatus.

18. **Confidentiality**

18.1 Subject to the following provisions of this Clause 18, a Receiving Party shall keep in confidence Confidential Information and will not (and will use its best efforts to ensure that its directors, employees, agents, representatives, affiliates and professional advisers will not) disclose such information to any third party.

18.2 A Receiving Party shall exercise no lesser security or degree of care over Confidential Information than that Party applies to its own Confidential Information and in any event such security or degree of care shall be no less than would be exercised by a reasonable person with knowledge of the confidential nature of the information.

18.3 A Receiving Party shall restrict disclosure of Confidential Information relating to the other Party to those who have a reasonable need to know. Confidential Information shall be used solely for the purposes for which it was disclosed.



- 18.4 A Receiving Party may disclose Confidential Information to a contractor or agent, subject to the contractor or agent having a reasonable need to know and undertaking in writing to comply with obligations equivalent to those contained in this Clause 18.
- 18.5 A Receiving Party may disclose Confidential Information to an Associated Company, subject to the Associated Company having a reasonable need to know and undertaking to comply with obligations equivalent to those contained in this Clause 18.
- 18.6 All Confidential Information is acknowledged by the Receiving Party to be the property of the Disclosing Party and the disclosure of the Confidential Information shall not be deemed to confer any rights to that Confidential Information on the Receiving Party.
- 18.7 The Disclosing Party may request in writing at any time any written Confidential Information (and/or Confidential Information in machine readable form) disclosed pursuant to the terms and conditions of this Clause 18 and any copies thereof be returned with a written statement to the effect that upon such return the Receiving Party has not knowingly retained in its possession or under its control, either directly or indirectly, any Confidential Information or copies thereof and the Receiving Party shall comply with any such request within seven (7) days of receipt of such request.
- 18.8 Unless otherwise agreed in writing, a Receiving Party shall not use the other Party's Confidential Information to provide commercial advantage to its Customer Facing Divisions.
- 18.9 In the event a Receiving Party receives information from the Disclosing Party for the purposes of interconnection, where such information received is of a competitive nature, such as customer orders, market forecasts, plans for the development of new services, network plans, new customers and current or proposed business plans, the Receiving Party shall treat such information in confidence and shall share it only amongst those employees who have a need to know for provisioning services to the Disclosing Party and shall not provide such information to personnel involved in the provision of ICT services offered in competition, and shall use such information solely for the purpose for which such information is received.
19. **Use of Subscriber Information**
- 19.1 Information in respect of a Party's Subscribers which is passed to the other Party for any purpose shall not be used by that other Party to the commercial advantage of its Customer Facing Divisions.
20. **Intellectual Property Rights**
- 20.1 Where any IPR is developed in connection with performance of this Agreement then, in the absence of any other Agreement between the Parties, the owner of the IPR shall be the Party who developed the IPR. Each Party grants to the other a non-

- exclusive, royalty free licence to use any IPR for the purposes of this Agreement and for its term subject to the other provisions in this Clause 20.
- 20.2 Each Party (“the IP Indemnifying Party”) agrees to indemnify the other Party (“the IP Indemnified Party”) against all liability or loss arising from, and all reasonable costs, charges and expenses incurred in connection with, any claim, action, suit or demand alleging infringement by the IP Indemnified Party of the rights in the Cayman Islands of a third person arising from the use by the IP Indemnified Party of IPR disclosed or licensed by the IP Indemnifying Party under this Agreement except where such IPR has been modified or used other than in accordance with this Agreement subject to the IP Indemnified Party complying with Clause 26.6.
- 20.3 If a Party becomes aware of an infringement or threatened infringement of IPR belonging to the other Party (“the IP Owner”) disclosed or licensed by the IP Owner under this Agreement, then that Party shall promptly notify the IP Owner of all the relevant details relating to the infringement, or threatened infringement.
- 20.4 The IP Owner may take such steps and proceedings as it considers necessary or desirable to protect its rights in respect of the IPR, and any rights of the other Party in the IPR, and the other Party must render all reasonable assistance to the IP Owner in this regard at the IP Owner’s expense.
- 20.5 If a Party (“the Infringing Party”) licenses or otherwise provides IPR to the other Party for the purposes of this Agreement and that IPR infringes the rights of a third Party, then the Infringing Party must:
- a) at its own expense take such steps as are necessary to cure the infringement, or
 - b) if a) is unreasonable having regard to the likely costs and other relevant matters, provide alternative technology as soon as reasonably practicable.
- 20.6 The Parties acknowledge that this Clause sets out the only remedies and forms for compensation available in respect of any infringement of third Party rights by IPR licensed for the purpose of this Agreement.
- 20.7 A Party must not use a trademark belonging to another Party without the prior written consent of that other Party.
21. **Authorised Representatives**
- 21.1 Each Party shall appoint the representatives referred to in the Joint Working Manual to be responsible for the matters indicated in the Joint Working Manual. Each Party shall notify the other of the identity of the representative(s) in writing no later than five (5) Business Days following signature of this Agreement.
- 21.2 Except as otherwise provided herein, all correspondence, meetings and other communications (including notification of matters in dispute) pertaining to issues pertaining to their responsibilities shall be directed to and conducted by and through

those representative(s). The representative(s) shall keep an appropriate record of all communication with their counterpart(s).

21.3 Each Party is entitled to change the representative(s) by notice in writing to the other Party.

22. Review and Amendment

22.1 Without prejudice to the provisions of Clause 10, either Party may seek to amend this Agreement by serving on the other a review notice if:

- a) a material change occurs in the laws or regulations governing telecommunications which affect the Cayman Islands (including, without limitation, licence changes, Authority determinations, and court decisions that necessitate the amendment of this Agreement);
- b) a RIO or revised RIO is in effect with respect to C&W;
- c) it is not, or no longer, physically, technically or commercially feasible to provide a Service or fulfil an obligation under this Agreement;
- d) both Parties agree in writing that there should be a review.

22.2 A review notice shall set out in reasonable detail the events giving rise to the review required by the notice and the nature of the amendments sought by the Party serving the notice.

22.3 On service of a review notice, the Parties shall forthwith negotiate the matters to be resolved with a view to agreeing the relevant amendments to this Agreement.

22.4 If, after a period of thirty (30) days from commencement of such review, the Parties fail to reach Agreement, the Parties shall resolve the dispute through the arbitration process outlined in Clause 34 of this Agreement.

22.5 For the avoidance of doubt, the Parties agree, without prejudice to any ultimate decision to the contrary, that the terms and conditions for this Agreement shall remain in full force and effect during such review until such time as this Agreement is terminated in accordance with its terms.

23. Suspension and Termination

23.1 Either Party may suspend or terminate this Agreement or the provision of any Service or Services on notice in writing in the following situations on the following terms. Where no time frame is set out below, such notice shall be provided no later than seven (7) days after the suspension or termination, as the case may be. References to "suspension" and "termination" not only include suspension or termination of this Agreement, but also specific Services.

- a) Either Party may suspend where suspension is necessary to deal with a material degradation of either Party's telecommunications network or services;

- b) Either Party may suspend where the other Party fails to pay any undisputed invoice or payable undisputed portion of an invoice within thirty (30) days of deemed receipt of an invoice, and may terminate where the other Party fails to pay any undisputed invoice or any undisputed portion of an invoice when due and has failed to remedy such non-payment within three (3) month of receipt of a notice from the billing Party that the Agreement will be terminated for non-payment;
- c) Either Party may suspend where the other Party is engaged in acts or omissions which impair the integrity or security of the Party's network or services, and may suspend on five (5) days' notice where the other Party is engaged in acts or omissions which will impair the integrity or security of the Party's network or services and has failed to take reasonable steps during that period to ensure that such impairment does not result;
- d) Either Party may terminate this Agreement where Services have been suspended under the terms of Clause 23.1(c) above for at least ninety (90) days, and the suspended Party fails to remedy the acts or omissions giving rise to the suspension within ninety (90) days of notice under Clause 23.1(c) being given;
- e) Either Party may suspend where the other Party is in breach of any material obligation contained in this Agreement and may terminate where the other Party fails to remedy such breach within fourteen (14) days of notice being given;
- f) Either Party may suspend where the other Party knowingly engages in conduct which is harmful to the Party, and which is unlawful or interferes with the obligations of the Party under its licence, the Law or Regulations, and may terminate if the conduct does not cease within two (2) days of notice being given;
- g) Either Party may suspend or terminate if either Party's Public Network Operator Licence and/or relevant Frequency Authorization necessary to entitle the Party to interconnection or to enable the Party to carry out its obligations at any time expires or is revoked by the Authority and is not immediately replaced or re-issued;
- h) Either Party may suspend where the other Party engages in conduct that would endanger life or safety, or damage the property of the Party, and may terminate if such conduct is not ceased within two (2) days of notice being given;
- i) Either Party may suspend or terminate if the other Party ceases to carry on business, enters into liquidation (other than for the purpose of merger or reconstruction where the emergent company assumes its obligations hereunder) or is dissolved or becomes bankrupt or insolvent or takes or suffers any similar action in consequence of debt;

- j) Either Party may terminate with the agreement of the Other Party on reasonable notice as agreed by the Parties.
- 23.2 In each case where service is suspended pursuant to Clause 23.1, it shall be restored once the circumstances warranting suspension have ceased to apply. Exercise of a right to suspend under Clause 23.1 shall not prejudice the suspending Party's right to exercise any other existing right to terminate pursuant to Clause 23.1. The Party whose service is suspended shall remain liable for any Charges in respect of the suspended Service throughout the period of suspension.
24. **Effects of Termination**
- 24.1 Termination or expiry of this Agreement shall be without prejudice to the rights and obligations of the Parties accruing prior to such termination and such termination shall not affect the continuance in force of any provision of this Agreement which is expressly or by implication intended to continue in force (including but not limited to Clauses 1, 9, 11, 18, 20, 24, 26 and Paragraph 2.3.2.6 of the Joint Working Manual).
- 24.2 Termination or expiry of this Agreement shall not operate as a waiver of any breach by a Party of this Agreement and shall be without prejudice to any rights, liabilities or obligations of either Party which have accrued up to the date of termination.
25. **Force Majeure**
- 25.1 Neither Party shall be liable to the other for any delay or failure to perform or observe any provision of this Agreement by reason of Force Majeure if the Party experiencing the Force Majeure circumstance makes reasonable efforts to remove or overcome the effects of such circumstance. A Party shall be relieved of its obligations under this Agreement by reason of Force Majeure only for the period of time during which the Force Majeure circumstance applies.
- 25.2 The Party affected by any Force Majeure shall promptly notify the other of the estimated extent and duration of its inability to perform its obligations under this Agreement. Upon cessation of the delay or failure resulting from Force Majeure, the Party affected shall promptly notify the other of such cessation.
- 25.3 If, as a result of Force Majeure, performance by either Party of its obligations under this Agreement is only partially affected, that Party shall nevertheless remain liable for the performance of those obligations not affected by Force Majeure.
- 25.4 If the Force Majeure lasts for six months or less from the date of any notification under Clause 25.2, any obligation outstanding shall be fulfilled by the Party affected as soon as possible after cessation of the Force Majeure, save to the extent that such fulfilment is no longer practically possible or is not required by the other Party.
- 25.5 If the Force Majeure lasts for more than six months from the date of any such notification and notice of cessation has not been given and such Force Majeure prevents the affected Party from performing its obligations in whole or in part



during that period, the unaffected Party shall be entitled (but not obliged) to terminate this Agreement by giving not less than thirty (30) days written notice to the other after expiry of such six month period, unless notice of cessation of the Force Majeure is received by the unaffected Party prior to the expiry of such thirty (30) days notice. If this Agreement is not so terminated under the provisions of this Clause 25, any obligations outstanding shall be fulfilled by the Party affected by the Force Majeure as soon as possible after the Force Majeure has ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party.

26. **Liability**

- 26.1 Neither Party shall be liable to the other in respect of any action, claim, suit or demand brought or made against the other by any third person pursuant to a contractual relationship with that other Party.
- 26.2 Notwithstanding any other provision of this Agreement, neither Party shall be liable to the other in contract, tort or otherwise for indirect, purely economic, special, punitive or consequential loss or damage, foreseeable or not, arising from its performance or non-performance of its obligations under this Agreement.
- 26.3 In addition to the other limitations contained in this Clause 26, the liability of each Party to the other in contract, negligence, and otherwise in respect of its performance under this Agreement shall be limited, to the extent permitted by law, to US\$1.0 million for any one incident or series of events arising from a single incident, and US\$1.5 million for all events (connected and unconnected) in any twelve (12) month period.
- 26.4 Subject to Clause 26.2, nothing in this Agreement shall exclude or limit the liability of one Party to the other arising out of that Party's fraud or fraudulent misrepresentation.
- 26.5 Subject to Clause 26.6, each Party ("the Indemnifying Party") shall indemnify the other ("the Indemnified Party") against all liability or loss arising directly from, and any reasonable cost, charge or expense incurred in connection with:
- a) damage to or loss of any Telecommunications Apparatus or other property of the Indemnified Party caused by the negligence or wilful acts or omissions of the Indemnifying Party or its employees, directors, representatives or agents arising out of or in connection with this Agreement; and
 - b) any action, claim, suit or demand by any person against the Indemnified Party in respect of or arising out of any negligence or wilful acts or omissions of the Indemnifying Party in the course of providing services to the Indemnified Party.
- 26.6 If any action, claim, suit or demand ("claim") is made by any person against the Indemnified Party which, if satisfied or paid by the Indemnified Party, would result in liability by the Indemnifying Party under the indemnity set out in Clause 26.5:

- a) the Indemnified Party must give written notice of the claim to the Indemnifying Party as soon as practicable after the making of the claim; and
- b) within thirty (30) days after receipt of that notice, the Indemnifying Party must:
 - i) cause the Indemnified Party to be put in sufficient funds to satisfy or pay the claim; or
 - ii) give notice to the Indemnified Party directing it to take such action (including legal proceedings) in respect of the claim as notified at the Indemnifying Party's expense; and
- c) the Indemnifying Party must cause the Indemnified Party to be put, and therefore maintained, in sufficient funds in sufficient time to pay all reasonable costs and expenses of any action or settlement directed by the Indemnifying Party under Clauses 26.6(b) and 26.6(d) and
- d) the Indemnified Party:
 - i) must take such action as the Indemnifying Party reasonably directs to avoid, dispute, defend, appeal, settle or compromise ("deal with") the claim and any adjudication thereof; and
 - ii) must not deal with the claims except as directed by the Indemnifying Party.

27. Relationship of the Parties

- 27.1 In giving effect to this Agreement, the relationship of the Parties to each other shall be that of independent contractors. Nothing in this Agreement shall be construed as or shall constitute the relationship of the Parties as an agency, partnership, franchise, employment, joint venture or other joint venture relationship between the Parties.
- 27.2 No Party shall have the right to enter into contracts or pledge the credit of or assume or incur expenses or liabilities or any obligation of any kind (including but not limited to the making of any representation or warranty), express or implied, on behalf of the other Party unless otherwise expressly permitted by such other Party.
- 27.3 The only Parties to this Agreement are the Telco and C&W.
- 27.4 This Agreement confers benefits and imposes burdens only upon the Parties to this Agreement and does not confer any benefit of any kind whatsoever or impose any burden of any kind whatsoever upon any person or entity who is not a Party.
- 27.5 Subject to any express provision of this Agreement to the contrary, this Agreement does not provide any person or entity who is not a Party with any remedy, defence, claim, action, claim of action or other right of any kind, or impose any liability upon such person that that person did not have before this Agreement commenced.

28. Representations of the Parties

- 28.1 Each Party represents that it is now and will remain in compliance with all laws, regulations, and orders applicable to its performance of its obligations under this Agreement. Each Party shall promptly notify the other Party in writing of any governmental or regulatory action that suspends, cancels, withdraws, limits or otherwise materially affects its ability to perform its obligations under this Agreement.
- 28.2 Each Party represents and warrants to the other that it:
- a) is a limited liability company duly incorporated or continued and validly existing under the laws of the Cayman Islands and has all necessary corporate power and capacity to own its properties and carry on its business in the Cayman Islands as presently carried on and is duly licensed, registered or qualified under the relevant company or corporate legislation in all jurisdictions where the character of its property owned or leased or the nature of the activities conducted by it makes such licensing, registration or qualification necessary or desirable;
 - b) has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations in accordance with their terms subject to necessary regulatory approval, and that the execution and delivery of this Agreement have been duly authorised by all necessary corporate action on its part; and
 - c) is duly qualified to act as a Public Network Operator under the Law and shall hold all valid licences or permits as deemed or granted under the Law to establish and operate Telecommunications Apparatus and to provide specified services.

29. Severability

- 29.1 The individuality or enforceability for any reason of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement.
- 29.2 If further lawful performance of this Agreement or any part hereof shall be rendered impossible by the final judgement or final order of any court of competent jurisdiction, commission or governmental agency or similar authority having jurisdiction over either Party, the Parties undertake that they will exert their best efforts to agree on an amendment or amendments to this Agreement or on modifications of their practices hereunder in such manner as will fully comply with such final judgement or final order and render further performance lawful.
- 29.3 The enforceability of all rights or obligations of the Parties under this Agreement or the portion thereof judged invalid, illegal or otherwise unenforceable by such final judgement or final order, shall be suspended as from the date thereof pending the outcome of negotiations between the Parties as aforesaid though without prejudice

to all or any accrued rights of the Parties in respect of the past performance or observance thereof.

30. No Waiver

- 30.1 Failure or delay by either Party at any time to enforce any of the provisions of this Agreement shall not be construed by the other as a waiver of any such provision nor in any way affect the validity of this Agreement or any part thereof.
- 30.2 Subject to Clause 22.4, no variation, modification or waiver of any provisions of this Agreement shall in any event be of any force or effect, unless the same is in writing signed by each of the Parties hereto.
- 30.3 No forbearance, delay or indulgence by either Party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of such Party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either Party is exclusive of any right, power or remedy available to such Party and each such right, power or remedy shall be cumulative.

31. Entire Agreement

- 31.1 This Agreement and to the extent applicable governmental regulations, tariffs or rules constitutes the entire Agreement and understanding between the Parties and supersedes all previous Agreements, understandings and representations between the Parties, whether oral or written, as it relates to interconnection.

32. Assignment

- 32.1 Neither Party may assign the whole or any part of this Agreement or its rights or obligations hereunder other than with the prior consent in writing of the other Party, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, neither Party shall require the consent of the other Party to assign the whole or any part of this Agreement or its rights or obligations hereunder to a subsidiary, parent or Associated Company.
- 32.2 A Party may only perform an assignment under Clause 32.1 if:
- a) the assignee is granted all applicable Public Network Operator Licences and Frequency Authorizations by the Authority with respect to the ownership and operation of all or part of the Telecommunications Apparatus of the assigning Party and the provision of all or part of the telecommunications ICT services of the assigning Party;
 - b) in cases where the assignee is an Associated Company of the assigning Party and ceases to be a Associated Company, the assigning Party shall give prior notification of that fact to the other Party hereto and shall procure that prior to such cessation such assignee reassigns such rights and obligations to it; and

- c) the assigning Party shall procure that the assignee enters into an agreement with the other Party whereby the assignee agrees to observe all of the terms and conditions of this Agreement and, if required by the other Party, the assigning Party shall join in such agreement to guarantee the performance of it by the assignee.
- 32.3 Either Party may subcontract for the provision of its services or obligations under this Agreement, provided that, in such case, it will not be relieved of its obligations as specified in this Agreement.
33. **Notices**
- 33.1 Any notice which may be given by either Party under this Agreement shall be deemed to have been duly given if left at or sent by courier or facsimile transmission (confirming the same by courier) or, where the Parties expressly agree, by electronic mail, to an address to which notices, invoices or other documents may be sent under Clause 33.3 below, or, if no such notification is given, its principal place of business as set out herein.
- 33.2 Any such notice shall be deemed to have been made to the other Party on the day on which such communication ought to have been received in due course by registered mail or facsimile transmission. Any communication by electronic mail shall be deemed to have been made on the day on which the communication is first stored in the receiving Party's electronic mailbox.
- 33.3 All notices under this Agreement shall be sent:

To C&W -

Cable and Wireless (Cayman Islands) Limited

One Technology Square
Eastern Avenue
P.O. Box 293 GT
Grand Cayman, Cayman Islands

Attention: Chief Executive

Cable and Wireless

One Technology Square
Eastern Avenue
P.O. Box 2425 GT
Grand Cayman, Cayman Islands

Attention: VP, Regulatory Affairs, Northern Caribbean Area



To the Telco –

Blue Sky Wireless Ltd.

32336 Seven Mile Beach

Grand Cayman, Cayman Islands

Attention: Gene Thompson

34. **Dispute Resolution**

34.1 Should a dispute or disagreement of any kind (a "Dispute") arise with respect to the interpretation or application of this Agreement, the Parties agree to use the following procedures to resolve the Dispute:

34.1.1 A Party that wishes to invoke dispute resolution procedures shall indicate its intention to do so by notice in writing to the other Party. Such notice shall contain all relevant details including the nature and extent of the dispute, and the Party in receipt of the written notice shall acknowledge receipt of such notice within two (2) Business Days.

34.1.2 Within five (5) Business Days of receipt of the dispute notice pursuant to Clause 34.1.1, the Parties shall commence good faith negotiations with the objective of resolving the dispute. If the Dispute is not resolved within fifteen (15) calendar days of receipt of the dispute notice, either Party may escalate the dispute pursuant to Clause 34.1.3. If the dispute is not resolved pursuant to the process in Clause 34.1.2, either Party may request in writing that the dispute be escalated, identifying the Party's representative to whom that Party has escalated the dispute. The Party in receipt of such notice shall acknowledge receipt of the notice within two (2) Business Days, and will identify its representative to whom it has escalated the dispute.

34.1.3 The Parties shall continue to negotiate in good faith to try to resolve the dispute at the level of the appropriate senior managers.

34.1.4 In the event that the dispute is not resolved within fifteen (15) calendar days of receipt of the second notice under Clause 34.1.3, either Party may refer the dispute to arbitration in accordance with the rules agreed to in writing by the Parties and in compliance with applicable legislation and procedural convention. If the Parties are unable to agree, within ten calendar (10) days of the dispute being referred to arbitration, on the rules for the arbitration, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators (unless the Parties agree to a different number) appointed in accordance with the said Rules.

34.1.5 Nothing herein shall prevent a Party from:

- a) using other dispute resolution procedures agreed to by the Parties in writing; or
- b) seeking (including obtaining or implementing) interim relief in circumstances where the Party is, or will be immediately, subject to a pressing and substantial harm due to the conduct of the other Party. Notwithstanding any application for interim relief, the Parties shall resolve the substantive issue in dispute in accordance with the procedures set out in this Clause; or
- c) Referring the dispute to the ICTA in accordance with any dispute resolution procedure that has been adopted by the ICTA.

34.2 For greater certainty, this process shall not apply to the resolution of faults pursuant to Paragraph 2.5.4 of the Joint Working Manual.

35. **Not Used**

36. **Insurance Provisions**

36.1 Each Party must maintain during the term of this Agreement a valid and enforceable public and product liability insurance policy providing coverage of at least

- a) US \$1.0 million in respect of any one incident and unlimited in the aggregate for public liability; and
- b) US \$1.0 million in respect of any one incident and US \$2.0 million in the annual aggregate for product liability.

36.2 The policy shall insure against all risks it is prudent for the Parties to insure against. Those risks shall include, but not be limited to:

- a) Liabilities and potential liabilities under or in respect of this Agreement;
- b) Fidelity coverage for losses incurred as a result of dishonesty on the part of the Party's employees, agents, contractors or other personnel;
- c) Liability in respect of intellectual property rights infringement as more fully described in Clause 20.

36.3 Whenever requested by either Party, the other Party shall promptly provide a certificate issued by the relevant insurer stating that a policy in the amounts set forth in this agreement for the named insured is in effect.

37. **Filing of Agreement**

37.1 Pursuant to Clause 2, this Agreement shall not come into effect until it is executed by the Parties. The Parties will use their best endeavours to file this Agreement with

the Authority within seven (7) days of execution and will agree submissions to be made to the Regulator.

38. Governing law and jurisdiction

38.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Cayman Islands.

39. Counterparts

39.1 This Agreement may be executed in counterparts, all of which shall constitute one agreement, and each such counterpart shall be deemed to have been made, executed and delivered on the date set out at the head of this Agreement, without regard to the dates or times when such counterparts may actually have been made, executed or delivered.

40. Reference Interconnect Offer

40.1 To the extent that the terms of this Agreement depart from those included in a RIO lodged with the Authority, the agreement to the inclusion of any such terms in this Agreement shall not be taken as acceptance by C&W that the terms of this Agreement are appropriate for inclusion in the RIO or that the equivalent terms in the RIO are inappropriate.

41. Deposits

41.1 C&W may require the Telco to provide a security deposit. The amount of any such security deposit shall not exceed the sum of three (3) months Usage Charges for all Services used, or forecast to be used, by the Telco as set out in the Final Forecast. Any security deposit furnished under this clause shall be returned to the Telco with interest, less any outstanding Charges, in the event the Agreement is terminated. The deposit shall also be returned, with interest, once the Telco has paid all undisputed Charges, or payable disputed Charges when due for a period of twenty-four (24) months.

41.2 The amount of any security deposit required pursuant to Clause 41.1 may be increased where the Telco's current usage pattern of all Services indicates that Charges due in the current Billing Period will exceed, or have exceeded, the amount of any existing security deposit in respect of an equivalent period of time held by C&W by twenty (20) percent.

41.3 Any increase to the security deposit pursuant to Clause 41.3 shall be limited to the difference between the existing security deposit, and the sum of three (3) months Usage Charges for all Services based on the Telco's current usage pattern, and such increase shall be paid within seven (7) days of receipt of notice from C&W. Failure to provide the increased security deposit within this timeframe shall be deemed to be a material breach of an obligation under this Agreement.

5th December 2005 -

Signed as an Agreement on the ~~day of October, 2005~~
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Signed for and on behalf of Cable & Wireless (Cayman Islands) Limited

By: Mark Mark
Date: 5th Dec 2005

Signed for and on behalf of Blue Sky Wireless Ltd.

By: Gene Thompson
Date: Oct 29 2005