

AGREEMENT

CABLE AND WIRELESS (CAYMAN ISLANDS) LIMITED

AND

THE GOVERNOR IN CABINET OF THE CAYMAN ISLANDS

AND

**THE INFORMATION AND COMMUNICATIONS
TECHNOLOGY AUTHORITY**

10th July 2003

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THIS AGREEMENT is made this 10th day of July 2003

B E T W E E N:

- (1) **CABLE AND WIRELESS (CAYMAN ISLANDS) LIMITED** a company incorporated in the Cayman Islands and having its registered office situate at Leeward 4, Safehaven Corporate Centre, P.O. Box 293 G.T., Grand Cayman, Cayman Islands (hereinafter '**C&W**'); and,

- (2) **THE GOVERNOR IN CABINET OF THE CAYMAN ISLANDS** of Government Administration Building, Elgin Avenue, Grand Cayman, Cayman Islands (hereinafter the "**Government**" or the "**Governor**" as the context permits); and,

- (3) **THE INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY** of P.O. BOX 2502 GT, 85, North Sound Way, Alissta Towers, George Town Grand Cayman, Cayman Islands (hereinafter the "**Authority**") (and with C&W and the Government and/or the Governor hereinafter collectively referred to as the "**Parties**").

WHEREAS:

- A. Prior to the 13th December 1991, Cable and Wireless (West Indies) Limited was the national operator of telecommunications in the Cayman Islands, with the exclusive right (subject to certain exceptions) to provide national and international fixed and mobile telecommunications services, to lay and operate submarine cables and to operate satellite earth stations in the Cayman Islands, pursuant to various licence agreements between the Government and Cable & Wireless companies since 1955 and more fully recited in the 1991 Licence.
- B. By virtue of section 3 of the (now repealed) Telephone Law (1997 Revision), the Government was empowered to enter into an agreement not inconsistent with that Law, with any company to provide, install, maintain and operate a modern and efficient telephone system in the Cayman Islands. Pursuant to that Law, on 13 December 1991, the Government granted to Cable and Wireless (West Indies) Limited an exclusive licence to provide, own, install, maintain, operate, promote and augment the national and international telecommunications systems and services to, from or within the Cayman Islands (the '1991 Licence'). The 1991 Licence may be terminated by either party on 5 years notice or renewed by the parties, but not in any event before 13 December 2011.
- C. On the 30th June 1995, pursuant to clause 18 of the 1991 Licence, Cable and Wireless (West Indies) Limited assigned to Cable and Wireless (Cayman Islands) Limited all of the former's undertaking in the Cayman Islands including its rights and obligations under the 1991 Licence.

- D. The Government wishes to liberalise the information and communications technology markets in the Cayman Islands and, to that end, the legislature has passed the Information and Communications Technology Authority Law 2002 (the ‘**ICTA Law**’) which came into effect on the 17th May 2002, to establish conditions for a fair and open competitive market for, amongst other things, national and international telecommunications in and from the Cayman Islands. The ICTA Law provides for the establishment of the Authority and the promulgation of regulations to be made under the ICTA Law by the Authority and/or the Governor (the ‘**ICTA Regulations**’).
- E. In order to facilitate the liberalisation of national and international telecommunications (*inter alia*) in and from the Cayman Islands, the Government, the Authority and C&W are desirous of carrying into effect the terms, conditions and obligations set out in this Agreement and in particular:
- (i) to agree the terms on which the 1991 Licence shall be terminated by agreement between the Governor and C&W and by notice published in the Gazette in accordance with section 75(4) of the ICTA Law and to settle any and all claims arising from, or out of, that termination;
 - (ii) to agree the terms of the new licence to be granted to C&W in accordance with the ICTA Law and ICTA Regulations upon the termination of the 1991 Licence; and
 - (iii) to agree certain other transitional and other issues.

F. The Government, the Authority and C&W are committed to ensuring a smooth transition to a fully liberalised and competitive information and communications technology (including telecommunications) market as set out in this Agreement as part of the development of the information and communications technology sector in the Cayman Islands and have agreed to collaborate in good faith during the period of transition to full competition as set out in this Agreement.

NOW THIS AGREEMENT WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

‘Agreed Form’ means in relation to any document the draft of that document which is either annexed to this Agreement, contained in a Schedule to this Agreement or which has been initialled by the parties to this Agreement by way of identification;

‘Authority’ means the Information and Communications Technology Authority established under section 3 of the ICTA Law;

‘C&W’ means Cable and Wireless (Cayman Islands) Limited and any subsidiary or affiliated company to

which the benefits and burdens of this Agreement may be assigned under clause 9 of this Agreement;

‘C&W ICT Networks’

means the ICT Networks in respect of which C&W makes applications in accordance with clause 6 of this Agreement, the ICTA Law and any applicable ICTA Regulations and in respect of which a New C&W Licence is to be issued by the Authority pursuant to this Agreement, the ICTA Law and any applicable ICTA Regulations;

‘C&W ICT Services’

means the ICT Services in respect of which C&W makes applications in accordance with clause 6 of this Agreement, the ICTA Law and any applicable ICTA Regulations and in respect of which a New C&W Licence is to be issued by the Authority pursuant to this Agreement, the ICTA Law and any applicable ICTA Regulations;

‘Commercially Operate’

means to use an ICT Network to provide an ICT Service to any other person (with the exception of their own employees) or Licensee, with or without charging a fee for that service and ‘Commercial Operation’ shall be construed accordingly;

the ‘Constitution’

shall have the meaning ascribed to that expression in the Interpretation Law (1997 Revision);

‘Effective Date’

means the date of execution of this Agreement;

‘1991 Licence’	means the agreement dated 13 th December 1991, under which C&W currently has the exclusive right (subject to certain exceptions) to provide the types of telecommunications in the Cayman Islands whether domestic or international therein specified;
‘Force Majeure’	means any cause affecting the performance by a party of its obligations arising from acts, events, omissions, occurrences or non-occurrences beyond its reasonable control, including (but without limiting the generality thereof) governmental regulations, fire, flood or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available.
‘Gazette’	has the meaning ascribed to that expression in the Interpretation Law (1997 Revision) (which expression for the avoidance of doubt includes any Extraordinary Gazette);
‘Governor’	means the Governor in Cabinet of the Cayman Islands;
‘ICTA Law’	means the Information and Communications Technology Authority Law 2002;
‘ICT Networks’	shall have the meaning ascribed to that expression in the ICTA Law;

‘ICTA Regulations’

means those Regulations to be made by the Governor pursuant to section 70 (1) of the ICTA Law or those regulations to be made by the Authority pursuant to section 70(3) of the ICTA Law, which in either case shall (*inter alia*), for the duration of this Agreement as provided for in clause 3.1. hereof only, reflect the Regulatory Principles in relation to telecommunications set out in Schedule 1;

‘ICT Services’

shall have the meaning ascribed to that expression in the ICTA Law;

‘Licensing Timetable’

means the respective commencement dates for the provision of certain ICT Services and the operation of certain ICT Networks by Licensees other than C&W more particularly set out in Schedule 6.

‘Minister’

means the Minister for the time being to whom responsibility for Information Technology has been assigned by the Governor pursuant to the Constitution;

‘New C&W Licence’

means such Licence as is applied for by C&W, approved by the Authority and issued to C&W in the Agreed Form set out in Schedule 2 in accordance with clauses 5, 6 and 8 of this Agreement and the ICTA Law;

‘Regulatory Principles’ means the regulatory principles to be applied by the Governor and the Authority as they relate specifically to telecommunications as defined in the ICTA Law and comprising Schedule 1 to this Agreement;

the ‘Section 75(4) Notice’ means the Notice under section 75(4) of the ICTA Law and to be published in the Gazette in which the Governor shall specify the date upon which the 1991 Licence shall be terminated (a copy of which Notice is set out in Agreed Form in Schedule3).

‘Spectrum’ means the entire range of electromagnetic radiation ranging in frequency measured in hertz and extending from zero to infinity.

‘Termination Date’ means the date, on or after the Effective Date, specified by the Governor by notice published in the Gazette, under section 75(4) of the ICTA Law upon which the 1991 Licence will be terminated;

1.2 Expressions in the singular shall include the plural and in the masculine shall include the feminine and vice versa and references to persons shall include corporations and vice versa.

1.3 Reference to any statute or statutory provision includes a reference to:

1.3.1 that statute or statutory provision as from time to time amended, extended, re-enacted, revised or consolidated whether before or after the date of this Agreement; and,

1.3.2 all statutory instruments, regulations or orders made pursuant to it.

1.4 Unless the context otherwise requires reference to any clause, sub-clause or schedule is to a clause, sub-clause or schedule (as the case may be) of or to this Agreement.

1.5 Headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

1.6 The Schedules to this Agreement are deemed to be incorporated into and form part of this Agreement.

1.7 Terms not otherwise defined have the meaning given in the ICTA Law.

2. LIBERALISATION ON THE EFFECTIVE DATE

2.1 The liberalisation of ICT Networks and ICT Services in telecommunications shall commence on the Effective Date, with new licences able to be issued from the Effective Date, in accordance with the Licensing Timetable as set out in Schedule 6 hereto, but not so as to permit Commercial Operations by such new licensees unless and until the 75(4) Notice shall have been published.

- 2.2 On or before the Termination Date the Governor shall procure the publication in the Gazette of the Section 75(4) Notice in the form of the Notice set out in Agreed Form in Schedule 3 terminating the 1991 Licence with effect from the Termination Date. On the Effective Date, the Governor shall procure that the Minister shall give to the Authority the Policy Direction in the Agreed Form as set out in Schedule 5 pursuant to section 11(1) of the ICTA Law and shall procure that the same is published in the Gazette PROVIDED ALWAYS that C&W agrees and acknowledges that the said Policy Direction shall not:
- 2.2.1 be relied upon by C&W as a representation of fact for the purposes of the Contracts Law (1996 Revision); or,
 - 2.2.2 be used so as to found an action by C&W in misrepresentation whether in contract or tort.
- 2.3 The Government and the Authority shall on and after the Effective Date, implement regulation of ICT Networks and ICT Services in telecommunications in accordance with the ICTA Law and ICTA Regulations (such ICTA Regulations to reflect the Regulatory Principles set out in Schedule 1);
- 2.4 For the avoidance of doubt this Agreement applies only in respect of ICT Networks and ICT Services comprising, or used in connection with, telecommunications and is without prejudice to the Government's and/or the Authority's right to regulate in such manner as it thinks fit all other ICT Networks and ICT Services which fall to be regulated in accordance with the ICTA Law.
- 2.5 All ICT Services offered and all ICT Networks subject to licensure under the ICTA Law and operated by C&W are subject to regulation by the Authority. Nothing in this Agreement shall be taken to mean or imply any derogation of, or

limitation in, the exercise by the Authority of all of its duties, functions and responsibilities contained in the ICTA Law. The Authority's discretion to regulate C&W shall not be limited in any way, save and except, and only to the extent specifically stipulated in this Agreement.

3. MAKING AND BRINGING INTO EFFECT ICTA REGULATIONS

- 3.1 The Governor and the Authority as the case may be undertake to C&W to make and bring into effect ICTA Regulations that reflect the Regulatory Principles and which are not inconsistent with the provisions of clause 2.1 of this Agreement and the terms of the New C&W Licence for a period commencing on the Effective Date and terminating on the 12th day of December 2011. For the avoidance of doubt the ICTA Regulations are not required to reflect the Regulatory Principles beyond the 12th day of December 2011. The parties acknowledge the right of the Authority to consult publicly on any and all ICTA Regulations, rules and procedures.
- 3.2 Nothing in this Agreement shall prejudice the Authority's and/or the Governor's right to make other ICTA Regulations under the ICTA Law in such manner and at such time as it or he thinks fit, provided that they are not inconsistent with this Agreement.
- 3.3 C&W acknowledges and agrees that it shall be subject to and shall comply with the ICTA Law and ICT Regulations.

4. TARIFFS AND REGULATION

- 4.1 The parties agree to give effect to the various matters set out in Schedule 4 to this Agreement.

5. LICENSING OF C&W AND ICTA LICENSEES

- 5.1 Subject to compliance with clause 6, the ICTA Law and C&W's other obligations under this Agreement, the Authority shall, on or before the Termination Date, issue the New C&W Licence to C&W in Agreed Form as set out in Schedule 2 to take effect upon the Termination Date.
- 5.2 The Government, the Authority and C&W hereby stipulate and agree that, for the avoidance of doubt, the 1991 Licence shall continue to bind the Government, the Authority and C&W until the New C&W Licence is issued and in effect.
- 5.3 As from the Termination Date and for a period of two years thereafter, the Governor (whether by general waiver or by the making of specific Regulations under the Customs Law (R) providing for such waiver) shall waive any requirement of C&W (and in his discretion to any other ICTA Licensee on a competitively neutral basis so that any such waiver permitted to any other Licensee shall not exceed two years from the date of the issue by the ICTA of such licence) to pay customs duty chargeable in respect of the importation into the Cayman Islands of any telecommunications equipment, apparatus and machinery required for use in the renewal, provision, operation, repair or extension of its ICT Networks and ICT Services PROVIDED ALWAYS that such waiver shall not extend to vehicles imported for the private use of C&W's employees or agents as part of their terms of employment or agreements for services.

6. NOTICES AND APPLICATIONS FOR LICENCES

6.1 Not later than the Termination Date, the Authority under section 23(2) of the ICTA Law shall have published in the Gazette a notice specifying ICT Networks and ICT Services which are required to be licensed which notice will also include reference to the Licensing Timetable.

6.2 Prior to the Termination Date C&W shall have submitted applications for New C&W Licences. In the event that any information that the ICTA seeks as part of that application is not available prior to the Termination Date, the parties agree that:

(a) C&W shall submit the application in as complete a form as is practicable at that time save that the following items shall have been submitted by C&W to the Authority on or before the Effective Date:

- (i) Applicant's details;
- (ii) Types of Networks and/or Services;
- (iii) Optional licence types;
- (iv) Company directors and management;
- (v) Company background;
- (vi) Business plan for one (1) year.

(b) the Authority shall issue the New C&W Licences in the Agreed Form, notwithstanding that the application form is not yet completed provided that the information required by the ICTA but not supplied by C&W by the Termination Date shall be so supplied by C&W within three calendar months from the Termination Date.

7. ACCORD AND SATISFACTION

- 7.1 Each party shall relinquish and waive all claims against each other party arising from or in connection with the 1991 Licence, including, without limitation, the early termination of the 1991 Licence Provided always that nothing in this Agreement shall relieve C&W of the obligation to pay to the Government licence fees for the period 1st April 2003 to the date that C&W receives the New C&W Licence in accordance with the terms for the payment of such fees under the 1991 Licence.

8. TERM AND CONSEQUENCES OF BREACH

- 8.1 Subject to the provisions of clause 3.1, this Agreement shall remain in effect until 12th December 2011. Clauses 7 and 9 shall continue in effect after expiry of this Agreement.
- 8.2 If the parties or any of them fail to observe any term of this Agreement or of any contract or agreement to be executed by the parties pursuant to this Agreement, then an affected party shall give notice of any such breach to the other party. In the event that the breach is incapable of remedy, any party who suffers loss and damage as a result of such breach shall be entitled to claim against the party in breach. Where the breach is capable of remedy, the notice shall require the breach to be remedied within 15 days of the date of the notice, failing which the affected party may issue such proceedings or take such other enforcement action as permitted by law.

8.3 In the event of a fundamental breach of this Agreement, nothing in this Agreement and no act carried out in the performance of this Agreement will be deemed to have affected or otherwise prejudiced any claim for damages that either party had or may have had for the early termination of the 1991 Licence as if this Agreement had not been executed.

9. NON-ASSIGNABILITY

9.1 No party shall assign, transfer, sub-contract or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of the other parties hereto (which shall not be unreasonably withheld).

9.2 In the event of any assignment of this Agreement, the Agreement shall be binding upon such successor or assignee and the name of a party appearing herein shall be deemed to include the names of any such successor or assignee.

10. GOVERNING LAW

10.1 This Agreement shall be governed by, construed, performed and enforced in accordance with the laws of the Cayman Islands and the parties hereby submit to the exclusive jurisdiction of the courts of the Cayman Islands in relation thereto.

11. NOTICES

11.1 Notices may be given hereunder by any party to any other party by electronic means, facsimile, hand delivery or courier addressed to the address set out in the

parties' clause hereto and in the case of the Government to the Permanent Secretary, Ministry of Planning, Communications, Works and Information Technology at the address set out in the parties' clause hereto and shall be deemed to have been received in the case of electronic means or a facsimile at the time of dispatch (or if the day of dispatch is not a business day, on the next following business day), in the case of courier on the business day after dispatch and in the case of hand delivery when delivered (or if the day of delivery is not a business day, on the next following business day).

12. ENTIRE AGREEMENT

12.1 This Agreement represents the entire Agreement between the parties and replaces all previous agreements, licences, arrangements, writings, statements, representations of fact or opinion, heads of agreement and understandings between the parties with respect to the subject matter hereof.

13. PUBLICITY

13.1 The parties agree to release a joint statement regarding this Agreement on the Effective Date. Each party shall ensure that any public comments or announcements regarding this Agreement shall be consistent with that joint statement or else as agreed between the parties.

13.2 For the avoidance of doubt the restrictions contained in clause 13.1 relate only to announcements made by the parties in public or via public media and shall not prohibit any party from making any statements when properly required to do so by any law or order of the Court.

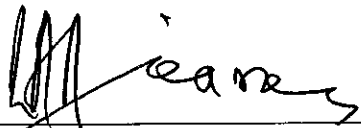
14. FORCE MAJEURE

- 14.1 The parties shall not be held liable or deemed to be in default of this Agreement for any failure to perform their obligations hereunder if such failure results directly or indirectly from Force Majeure.
- 14.2 If the Parties become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on their part, they shall forthwith notify the other parties by the most expeditious method then available and shall inform the others of the period during which it is estimated that such failure or delay shall continue.

15. GENERAL

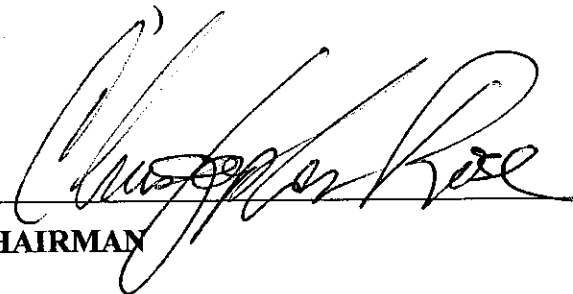
- 15.1 The parties hereby confirm that they have the capacity and are duly authorised to enter into this Agreement which shall enure for the benefit of the parties and their respective successors and assigns and shall continue in full force and effect.
- 15.2 The terms of this Agreement bind the Authority only to the extent that these terms are relevant to the operation of the Authority's statutory duties under the ICTA Law.
- 15.3 The failure of any of the parties to enforce any of their rights or to require the performance of any obligation, responsibility or liability under this Agreement shall not itself be taken as a waiver of that party's rights, obligations, responsibilities or liabilities under this Agreement.

**SIGNED FOR AND ON BEHALF OF
THE GOVERNOR IN CABINET
OF THE CAYMAN ISLANDS
AND EXECUTED AS A DEED**



THE HONOURABLE LINFORD A. PIERSON OBE JP
MINISTER FOR PLANNING COMMUNICATIONS,
WORKS AND INFORMATION TECHNOLOGY

THE COMMON SEAL of the)
Information Communication and)
Technology Authority was hereunto affixed)
and this Agreement was duly)
EXECUTED AS A DEED by)



CHAIRMAN

Signed by)
duly authorised by and)
for and on behalf of)
CABLE AND WIRELESS)
(CAYMAN ISLANDS) LIMITED)



DIRECTOR GENERAL MANAGER

