

**HEADS OF AGREEMENT**

**THIS AGREEMENT** is made this 30<sup>th</sup> day of September 1999

**BETWEEN**

The Government of Jamaica (“Government”) acting through the Minister of Commerce and Technology (“the Minister”)

**AND**

Cable and Wireless Jamaica Limited (“CWJ”) whose registered office is at 47 Half Way Tree Road, Kingston 10, Jamaica.

**WHEREAS**

CWJ is the telecommunications carrier in Jamaica operating under five telecommunications operating licences (the “Existing Operating Licences”) granted by the then Minister of Public Utilities and Transport each dated 31<sup>st</sup> August 1988 and each valid for a period of 25 years. By virtue of the Existing Operating Licences, CWJ has authority to provide telecommunications in Jamaica.

CWJ has agreed to surrender the Existing Operating Licences in consideration for the adoption and implementation and bringing into law new legislation that fully reflects the Drafting Instructions approved by Cabinet and in full of the detailed policy document forming Annexure A to this Agreement (“the Policy”) issued to the Chief Parliamentary Counsel and the issuance of new licences as set out in Annexures A, B, and C and D to this Agreement, consistent in accordance with the Drafting Instructions and resulting legislation.

The Drafting Instructions are consistent with the Government’s Telecommunications Policy, and a copy of those Drafting Instructions has been seen and accepted by CWJ. Policy (subject to the same being implemented and brought into law) so as to end CWJ’s present exclusivity in certain areas as rapidly as is reasonably possible having regard to the rights already conferred on it under the Existing Operating Licences.

CWJ has agreed to perform certain obligations in relation to the provision of telecommunications lines and investment in informatics development in Jamaica, as provided for in this Agreement.

The Policy Drafting Instructions and any resulting legislation are intended to establish a framework whereby all sections of the telecommunications market will move towards full, fair and competitive conditions on a phased basis and will ensure that existing and future services to uneconomic areas and uneconomic

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customers will be supported by universal service contributions from all licensees on an equitable basis.

CWJ and the Minister of Commerce and Technology (“the Minister”) are parties to legal proceedings under Suit No. M-89 of 1998 (the Proceedings”) in which CWJ has applied to the Full Court of the Supreme Court of Jamaica for Orders of Certiorari and Prohibition in respect of certain licences granted by the Minister for the operation of radio and telegraph stations for the purposes of international wireless telecommunications under the Radio and Telegraph Control Act of 1973. CWJ claims that these licences and the Kasnet Licence issued on similar terms (collectively, “the VSAT Licences”) breach its exclusivity under the External Telecommunications Special Licence for external telecommunications. The Minister has contended that CWJ has no such claim to exclusivity. The Proceedings are currently part heard.

CWJ and the Minister now intend to resolve their differences with respect to the Proceedings and to facilitate the new framework for the licensing and regulation of competing providers of telecommunications services and equipment in Jamaica. They have entered into this Agreement for the purpose of setting out the terms of such resolution and to give effect to such terms and to the new framework.

The parties recognise that before the PolicyDrafting Instructions can be implemented into law the Bill prepared consistent with those instructions will be the subject of Parliamentary debate and possible modification or rejection by Parliament. The parties also recognise that such modification or rejection may give rise to certain rights including, *inter alia*, and obligation on the Government to compensate CWJ in accordance with this Agreement.

**NOW THIS AGREEMENT WITNESSETH** that, in consideration of CWJ agreeing to the surrender of the Existing Operating Licences on the terms set out herein and of the mutual covenants herein exchanged, the adequacy of which is hereby acknowledged and agreed:

### **1. Representations by the Government**

1.1 Government represents that it will lay before Parliament a bill (“the Bill”) that fully reflects and implements the PolicyDrafting Instructions together with such other proposed amending legislation (collectively with the Bill, being “the New Telecommunications Legislation”) as may be necessary to give full force and effect to those PolicyDrafting Instructions. The principal purposes of the new Telecommunications Legislation are as described in the Recitals to this Agreement. In particular, Government Agrees that during the transition to full competition as contemplated in the PolicyDrafting Instructions (the “Transition Period”) providers of

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telecommunications services and owners and operators of telecommunications facilities will be licensed strictly in accordance with, and as contemplated by, the PolicyDrafting Instructions and in the terms of the licences set out in Annexures A, B, and C and D to this Agreement.

- 2.1 The Minister agrees to issue to CWJ in the manner, and at the time specified in, and contemplated by, the PolicyDrafting Instructions, licences in the form provided for in Annexure B A (the “New CWJ Licences”).
- 2.2 Upon issuance of the New CWJ Licences, CWJ shall surrender the Existing Operating Licences and is hereby released from all obligations under the Existing Operating Licences.

### **3. Other Licences under the New Telecommunications Legislation**

- 3.1 Subject to the coming into effect of the New Telecommunications Legislation, the Minister agrees that all licences issued under the New Telecommunications Legislation to new competitors other than the New CWJ Licences (the “Competitor Licences”) will be issued in accordance with and as contemplated by the PolicyDrafting Instructions governing the grant and issuance of those licences and in the form as set out in Annexure C B. Further, during the Transition Period, the Competitor Licences will authorise the holders of those licences thereof to own and operate only those facilities, or to provide only those services, that are permitted from time to time in accordance with, and as contemplated by, the PolicyDrafting instructions.
- 3.2 The Minister will procure that all existing holders of VSAT Licences (other than CWJ) will surrender those licences in exchange for new VSAT Licences in the form provided for in Annexure D C (the “New VSAT Licences”) so as to ensure that during the Transition Period, the existing holders of VSAT Licences will only be authorised to own and operate those facilities, or provide those services, as contemplated by that are permitted under the PolicyDrafting Instructions and permitted under the New VSAT Licences.
- 3.3 For the avoidance of doubt, the Minister acknowledges that, during the Transition Period, the Drafting Instructions contemplate that during the Transition Period, the New Telecommunications Legislation Policy will restrict the Government from issuing any international facilities licences (including VSAT Licences) other than to existing holders of VSAT Licences as provided for in clause 3.2 above and to persons eligible to hold Free Trade Zone licences consistent in accordance with, and as contemplated by the PolicyDrafting Instructions.

**4. Regulations**

Subject to the coming into effect of the New Telecommunications Legislation, the Minister agrees to issue regulations in the form and on the terms provided for in the Policy (“Regulations”).

4.1 Subject to the coming into effect of the New Telecommunications Legislation, the Minister agrees to issue regulations in conformity with the terms provided for in the Drafting Instructions (“Regulations”).

4.2 Subject to the coming into effect of the New Telecommunications Legislation, the Minister agrees to procure that the OUR issue any rules in conformity with the form and on the terms provided for in the Policy Drafting Instruction (“Rules”).

**5. Discontinuance of Proceedings**

5.1 Forthwith upon execution of this Agreement, CWJ and the Minister shall discontinue the Proceedings without prejudice to either party’s rights and with liberty to apply. CWJ and the Minister shall take all such steps as are necessary to have Proceedings discontinued by consent and on terms that the parties thereto will each bear their own costs.

[Upon discontinuance of the Proceedings in accordance with clause 5.1 above, each party agrees to hold the other party indemnified in respect of half of any adverse cost orders that may be made in favour of any of the third parties to the Proceedings.]

**6. Settlement of claims**

6.1 Save as regards any claim for damages under clause 9.4 and subject to the coming into effect of the New Telecommunications Legislation and upon issuance of the New CWJ Licences in accordance with clause 2.1 above, the Government will accept this Agreement in full and final settlement of any demands or claims that the Government has or may have against CWJ under the Existing Operating Licences and for the purposes of this clause 6, the expression “Government” shall include any member of Government and any Department or, Agency or other body (corporate or otherwise) over which Government exercises control by virtue of acquisition of shareholding or directorate appointment or by the appointment of a person as corporation sole.

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6.2 Subject to the coming into effect of the New Telecommunications Legislation and upon issuance of the new CWJ Licences in accordance with this Agreement, and save as regards CWJ's right to claim the payment of damages or claims for compensation in accordance with the provisions of this Agreement, together with its right to pursue any claim or claims against any third parties arising from any infringement of its rights under its Existing Operating Licences (all of which are expressly reserved) CWJ will and hereby accepts this Agreement in full and final settlement of any other claims and demands that it has, or may have, against the Minister and/or the Government under the Existing Operating Licences. For the avoidance of doubt the provisions of this clause 6.2 will not apply if CWJ gives notice under clause 9 or if a Defined Event occurs as contemplated by clause 9.

### **7. CWJ and Government Commitments**

7.1 Subject to the rights of CWJ under clause 9 below. CWJ shall install:

7.1.1. 100,000 Lines (gross) within 1 year of the coming into effect of the New Telecommunications Legislation; and

7.1.2 217,000 Lines (gross) within 3 years of the coming into effect of the New Telecommunication Legislation, which for the avoidance of doubt will include the Lines specified in clause 7.1.1 above,

where a "Line" means a physical or logical (wireless or wireline) connection to CWJ's public voice network capable of allowing a customer to be provided with telephone services. For the avoidance of doubt, this does not include mobile (cellular) lines.

7.2 The Government shall use its best endeavours to procure for CWJ low cost, long-term financing from the World Bank to support the roll-out of Lines including those provided for in clause 7.1.

7.3 Both parties agree to keep each other reasonably informed as to their progress in fulfilling their commitments under this clause

7.4 Subject to the rights of CWJ under clause 9. CWJ shall:

7.4.1 install 60 Internet terminals allowing members of the public access to the Internet, to be provided in Post Offices in the manner agreed between the Government and CWJ, such installation to occur within 18 months of the coming into effect of the New Telecommunications Legislation;

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- 7.4.2 provide scholarships for the Caribbean Institute of Technology to the value of J\$16 million per annum for the first three years after the coming into effect of the New Telecommunications Legislation;
  - 7.4.3 make contributions in payments or goods or services provided in lieu of payment, towards the refurbishment of the Goodyear Factory in St. Thomas to the total value of J\$90 million within the 3 year period from the coming into effect of the New Telecommunications Legislation; and
  - 7.4.4 pay J\$80 million to the agency created to perform the duties of spectrum management as contemplated under the PolicyDrafting Instruction, within 30 days of the later of the formation of that agency or the coming into effect of the New Telecommunications Legislation.
- 7.5. In consideration for CWJ agreeing to pay the monies referred to in clause 7.4.4 above, the Government agrees that CWJ will not be liable for any licence or spectrum fees during the Transition Period, but may, for the avoidance of doubt, be required to pay administrative costs based on the reasonable costs of the regulators only as specifically provided for in the PolicyDrafting Instructions.

### **8. Orderly transition to competition**

- 8.1. The Government and CWJ agree that bypass of CWJ's international gateway and/or the international settlement rate system in the provision of international voice telephony ("Bypass") contrary to the Drafting Instructions and/or the New Telecommunications Legislation is detrimental to the interests of Jamaica and that:

- 8.1.1 from the date of this Agreement, during Phases 1 and 2 of the Transition Period, and during the time that Bypass is prohibited under the New Telecommunications Legislation, both parties will, from the date of this Agreement, use their best endeavours:

to prevent and stop Bypass, whether by taking regulatory or other action to the full extent permitted by law;

to ensure that the Jamaican public understands that during the Transition Period prohibition of Bypass is necessary in order to promote an orderly transition to competition and:

that Bypass is detrimental to Jamaica and is illegal,

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that the Government will not tolerate Bypass in any form;  
and

that the Government will act to prevent and stop, and will support action by others to prevent and stop such Bypass to the full extent permitted by law.

### **9. Termination**

9.1. If for any reason:

9.1.1. Telecommunications Legislation does not come into effect within 6 months of the date of this Agreement, in accordance with clause 1.1 and no extension of time is granted by CWJ; or

9.1.2. the Government takes any actin (including issuing any licence) which is inconsistent with the PolicyDrafting Instructions prior to the New Telecommunication Legislation coming into effect,

then this Agreement may be terminated by CWJ upon written notice to the Minister.

9.2 If this Agreement is terminated in accordance with clause 9.1 above, the parties agree that:-

9.2.1 Government shall pay to CWJ damages to be assessed based on CWJ's loss, such assessment to include a determination as to what rights CWJ has lost (including, but not limited to, any loss arising from any rights to of exclusivity under the Existing Operating Licences) as a direct or indirect consequence of the issuance of the VSAT Licences or loss from action under clause 9.1.2.) and CWJ shall not be taken to have waived any of its rights under is Existing Operating Licences (including, but not limited to its right to claim compensation or damages) as a consequence of the discontinuance of the Proceedings as contemplated in clause 5.1; and

9.2.2 this Agreement shall not be deemed to have affected or otherwise prejudiced any claim or claims that might be pursued by CWJ against the Minister and/or Government and/or any third party under its Existing Operating Licences or any position of the Government in relation thereto and any such claim or claims shall not be deemed to have been prejudiced by any act carried out in performance of this Agreement.

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- 9.3. If this Agreement is terminated under clause 9.1, notwithstanding any other provision of this Agreement, CWJ may elect to be released from its obligations under clause 7.
- 9.4 If CWJ fails to meet any of its commitments under clause 7, the Government is entitled to claim and recover from CWJ such damages as are available at common law arising from CWJ's failure to meet that commitment.
- 9.5 If for any reason:
- 9.5.1 New Telecommunications Legislation comes into effect which is inconsistent with the PolicyDrafting Instructions and the New Telecommunications Legislation as contemplated in required by clause 1.1, or which incorporates provisions not included in the PolicyDrafting Instructions, in a way detrimental to CWJ (such detriment includes, but is not limited to, a negative effect on the value of CWJ); or
  - 9.5.2 the Government takes any action (including issuing any licence) which is inconsistent with the PolicyDrafting Instructions prior to the New Telecommunication Legislation coming into effect;
  - 9.5.3 the Minister fails to issue to CWJ the New CWJ Licences in accordance with clause 2.1 above; or
  - 9.5.4 the Competitor Licences are not issued in accordance with clause 3.1 above; or
  - 9.5.5 the New VSAT Licences are not issued in accordance with clause 3.2 above; or
  - 9.5.6 the Minister acts contrary to his acknowledgement in clause 3.3 above; or
  - 9.5.7 the Regulations are not issued in accordance with clause 4.1 above; or
  - 9.5.8 the Minister fails to procure the issuance of Rules in accordance with clause 4.2 above; or
  - 9.5.9 the New Telecommunications Legislation, New CWJ Licences, Competitor Licences, New VSAT Licences, Regulations or Rules are subsequently amended or reissued or any other action taken to the detriment of CWJ (such detriment includes, but is not limited

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to a negative effect on the value of CWJ) or so as to adversely affect CWJ's rights; or

9.5.10 Parliament amends or further amends the New Telecommunications Legislation (including but not limited to the transition period provided for in the Drafting Instructions), or brings into effect any other legislation; or

9.5.11 any of the provisions of the New Telecommunications Legislation and/or of this Agreement are for any reason determined by a court of competent authority to be void and/or unenforceable, the Government breaches its obligations under clause 10 then

(each of the circumstances described in 9.5.1 to 9.5.11 above being a "Defined Event") and the Defined Event has a detrimental effect on CWJ (such detriment includes, but is not limited to, a negative effect on the value of CWJ), then the Government shall pay CWJ (upon receipt of written notice to the Minister from CWJ) an amount equivalent to the loss arising in connection with the ending of the Existing Operating Licences such assessment to include a determination as to what rights CWJ has lost (including, but not limited to, any loss of exclusivity under its Existing Operating Licences) from the date of effective termination of the same under this Agreement until the date on which those Licences would otherwise have expired at the end of their term.

- 9.6 In the event that Government defaults on paying all or any part of the amounts due to CWJ under this Agreement including this Clause 9, CWJ may set off the balance outstanding from Government from time to time against any liabilities, future licence fees or taxes, cesses, duties or imposts due and/or against sums due to be paid by CWJ in accordance with its universal service and/or informatics obligations under this Agreement or the terms of the New Telecommunications Legislation any new legislation and/or against any other liabilities to Government howsoever due.
- 9.7 If a Defined Event occurs, notwithstanding any other provision of this Agreement, CWJ may elect to be released from its commitments under clause 7 above
- 9.8. If a Defined Event occurs, this Agreement shall not be deemed to have affected or otherwise prejudiced any other claim or claims which might be pursued by CWJ against the Minister and/or Government under this Agreement or under its Existing Operating Licences or any position of the Government in relation thereto and any such claim or claims or position shall not be deemed to have been prejudiced by any act carried out in performance of this Agreement. All of CWJ's rights under its Existing

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Operating Licences shall be reserved and CWJ may also claim compensation from Government in accordance with this Agreement.

### **Amendment of Legislation, Regulations, Rules and Licences**

9.9 If, within 6 years after the coming into effect of the New Telecommunications Legislation:

9.9.1 Parliament amends or further amends such Legislation (including but not limited to the Transition Period provided for in the Policy) or brings into effect any other Legislation; or

9.9.2 the Regulations and/or Rules are amended or reissued; or

9.9.3 the new CWJ Licences, the Competitor Licences or the new VSAT Licences are amended or reissued; or

in a way that is detrimental to CWJ, (such detriment includes but not limited to a negative effect on the value of CWJ), CWJ may claim compensation in accordance with the provisions of this Agreement.

### **10. Validity of Agreement**

If at any time after the coming into effect of the New Telecommunications Legislation, the provision thereof and/or of this Agreement are for any reason determined by a court of competent authority to be void and unenforceable, CWJ may claim compensation from Government in accordance with the provisions of clause 9 above.

### **11. General**

11.1 This Agreement shall be deemed to have been made in Jamaica and shall be governed by and construed in accordance with the laws of Jamaica.

11.2 If this Agreement terminates for any reason, the following provisions shall continue to apply: clauses 6, 8, 9, 10, 11 and 12.

11.3 All disputes, differences or questions between the parties with respect to any matter arising out of or relating to this Agreement including but not limited to any claim or claims for compensation or damages and/or for any other relief pursuant to clause 9.11 above or any claim or claims for compensation and/or for any other relief arising from any breach of this Agreement shall be resolved in the first instance by consultation between

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the Minister and a person nominated by CWJ and in the event the parties are unable to resolve their differences within 30 days then the dispute shall be referred to arbitration in accordance with the provisions of the Jamaican Arbitration Act. The parties agree to reserve their right to appoint an arbitrator who is not a Jamaican or British citizen or resident in Jamaica or in the United Kingdom if that person so appointed has suitable knowledge, skills or experience relevant to the matters in dispute.

- 11.4 If for any reason, any provision or provisions of this Agreement are is or are deemed to be unenforceable and void, the remaining provisions shall be severable and shall remain in full force and effect.
- 11.5 This Agreement shall ensure for the benefit of the parties and their respective successors and assigns and shall continue in full force and effect irrespective of any subsequent changes of Government save that no entities other than the parties hereto and their successors and assigns shall be a third party beneficiary of this Agreement.
- 11.6 Notices may be given hereunder by any party by fax, hand delivery or courier and addressed to the other party concerned in the case of CWJ at its registered office of the time being, in the case of the Minister at 36 Trafalgar Road, Kingston 10 in the Parish of St. Andrew and shall be deemed to have been received in the case of a fax at the time of despatch (or if the day of despatch is not a business day, on the next following day), in the case of a courier on the business day after despatch 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).
- 11.7 Headings in this Agreement are for convenience only and shall not affect the interpretation of any provisions in this Agreement.
- 11.8 The failure of either party to enforce any of its rights or to require the performance of any obligation, responsibility or liability of the other party under this Agreement shall not of itself be taken as a waiver of that party's rights, obligations, responsibilities or liabilities under this Agreement.

This Agreement together with the Annexures A, B and C to this Agreement represents the entire agreement between the parties and replaces all previous agreement, writings and understandings between the parties with respect to the subject matter of this Agreement.

IN WITNESS WHEREOF this Agreement has been signed by the Prime Minister and the Minister who each have/has hereunto set their/his hand and seal the Company has caused its Common Seal to be hereunto affixed the day and year first above written.

Signed for and on behalf of:

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THE GOVERNMENT OF JAMAICA

.....  
(The Hon. Prime Minister)  
PERCIVAL JAMES PATTERSON

.....  
In the presence of:

.....  
Signature of Witness

Signed for and on behalf of:

THE GOVERNMENT OF JAMAICA

Acting throughby

PHILLIP PAULWELL  
Minister of Commerce and Technology

.....  
In the presence of:

.....  
Signature of Witness

The Common Seal of CABLE &  
WIRELESS JAMAICA LIMITED

Was hereto affixed in the presence of:

.....  
Don Reed

Chairman ..... Director  
Director/Secretary ..... Secretary

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**LIST OF ANNEXURES**

**(Not included in online documentation)**

Annexure A: Telecommunications Policy Document

Annexure B: New CWJ Licences

Cable & Wireless Jamaica Limited Carrier Licence

Cable & Wireless Jamaica Limited Mobile Carrier Licence

Cable & Wireless Jamaica Limited Service Provider Licence

Cable & Wireless Jamaica Limited Mobile Service Provider Licence

Jamaica Digiport International Limited Carrier Licence

Jamaica Digiport International Limited Service Provider Licence

Cable & Wireless Jamaica Limited Spectrum Licence

Annexure CB: Competitor Licences

Phase I Licences

[Pro forma] Mobile Carrier Licence

[Pro forma] Mobile Service Provider Licence

[Pro forma] FTZ Carrier Licence

[Pro forma] FTZ Service Provider Licence

[Pro forma] ISP/Data/Information Service Provider Licence

Phase II Licences

[Pro forma] Domestic Carrier Licence

[Pro forma] Domestic Service Provider Licence

Generic Licences

[Pro form] Spectrum Licence

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Annexure DC: New VSAT Licences

Infochannel VSAT Carrier Licence

Infochannel VSAT Service Provider Licence

Amerijet VSAT Carrier Licence

Comtech Limited VSAT Carrier Licence

Comtech Limited VSAT Service Provider Licence

N5 Systems Limited VSAT Service Provider Licence

N5 Systems Limited VSAT Carrier Licence

US Embassy VSAT Carrier Licence

Compuworks Multimedia Limited VSAT Carrier Licence

Compuworks Multimedia Limited VSAT Service Provider Licence

Kasnet Online Communications Limited VSAT Carrier Licence

Kasnet Online Communications Limited VSAT Service Provider Licence