



ADSL Terms & Conditions

A. Definitions

1. "Service Authorization" means **Cable & Wireless Jamaica Limited** hereinafter referred to as ("**FLOW**") application form together with any appendices thereto, signed by FLOW and its customer ("Customer") and to which these terms apply.
2. "Agreement" means the Service Authorization and any appendices thereto together with these terms.
3. "Minimum Service period" 12 months for residential customers and 24 months for business customers.
4. "Device" means a wireless local area network compatible device.

B. Service Description:

1. The FLOW Asymmetric Digital Subscriber Line High Speed Internet Access Service ("Service") is an Internet access service that provides dedicated connections from a Customer's premises to the Internet via Digital Subscriber Line local facilities and FLOW's Internet network.
2. At the originating Customer's premises, the Customer's equipment places data into Internet Protocol packets ("IP") and gives each packet a terminating address, and FLOW routes registered IP packets over its Internet network to the terminating Internet

location or peering point with another Internet service provider.

3. The Service may not be compatible with devices such as home security systems, medical alerts, door bell answering service, or other similar automatic reporting systems using telephone lines.

4. The provision of the Service may be dependent upon the provision of other FLOW services to Customer (such as fixed line telephony services) and to the extent that the Service to Customer is facilitated by such other FLOW service, the terms & conditions of such other service may be applicable, in whole or in part, to the provision of this Service.

C. Equipment

1. Upon initial provision of the ADSL Service, FLOW will provide a modem and splitter/filter kit. The cost of the modem kit will be billed to the Customer's service account upon service installation. It is in FLOW's sole discretion to determine the period over which the cost of the modem will be billed. Additional items required by the Customer may also be purchased from FLOW or from recommended distributors.

2. The Customer is responsible for the configuration and installation of the modem and splitter unless purchased from FLOW.

3. Where the Customer did not purchase the modem and splitter from FLOW, the Customer should ensure that the modem and splitter are configured and installed at the time of Service installation by FLOW, as billing for the Service will not be delayed due to lack of a modem or splitter, once the Service is installed.

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4. If equipment is purchased from FLOW, title to the equipment will pass to the Customer upon FLOW's receipt of full payment therefor. Risk of loss for or damage to each item of equipment will pass to the Customer upon its delivery to Customer. Modems purchased from FLOW will remain under warranty for 90 days from the date of installation.

5. In the event that FLOW determines that an item of equipment requires replacement, the Customer will be responsible for replacing it with a functionally equivalent item of equipment.

6. The Customer will be responsible for obtaining and installing all other software or equipment necessary to access the Service and to operate the Customer's computer.

D. Charges:

1. The Customer will pay all applicable charges for the Service and will also pay any charges related to equipment purchased from FLOW.

2. Charges will be invoiced monthly. Bills will be sent via post, or any other means approved by FLOW. FLOW shall not be responsible for and shall not be faulted for Customer's non-receipt of bills delivered to the post office. Billing details may be obtained directly from FLOW by either contacting the Customer Care Centre or via other facilities and, accordingly, non-receipt of a bill is not an excuse for non-payment.

3. Amounts not paid on or before the final date for payment stated on the monthly invoice ("Final Date") will be deemed overdue.

4. FLOW reserves the right to charge interest on the overdue amounts provided that the rate of interest shall not exceed the rate payable by FLOW on security deposits from Customer in accordance with Section 8 below. The interest shall be payable on the Customer's next bill.

5. The charges do not include any applicable taxes and may be revised by FLOW from time to time upon thirty (30) days notice to the Customer.

6. The monthly charges will be billed from the date on which the Service is first provisioned for the Customer's use.

7. If the Customer requests that FLOW expedite delivery of the Service, FLOW will use its reasonable efforts to so expedite delivery, and the Customer will pay any applicable charges.

8. If requested by FLOW, the Customer will provide a security deposit equivalent to the Installation charge plus one month's rental charge. FLOW will pay simple interest on the deposit at the average savings rate of FLOW's principal banker(s) for the immediately preceding 12 month period. Interest shall be computed on the basis of a calendar year or part thereof and shall be credited annually to Customer's account, or at the time of discontinuance or termination of the Service. Upon discontinuance or termination of the Service, the deposit and any accrued interest will be applied firstly to settle any sum outstanding on the Customer's account, and the balance, if any, refunded to the Customer.

9. If at any time the Customer fails to pay any overdue amount, FLOW will be entitled to deduct the overdue amount from the security deposit and the Customer will, upon request by FLOW pay such amount towards the deposit as will be sufficient to restore the security deposit.

10. **Consolidation of Bills.** FLOW shall be entitled to consolidate all bills in the name of the same Customer regardless of the service and transfer balances to or from accounts for the Service or any other services to any other account of the same Customer for services not covered under this Agreement.

11. Notwithstanding any other clause herein, the Customer may, or may be required to (by the provisions of any other applicable FLOW terms & conditions of service),

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prepay all charges for the Service, by a pre-payment method or methods as may be indicated and agreed to by FLOW from time to time.

E. Term and Termination:

1. The term of the Service ("Term") will start as of the billing effective date ("Term Start Date") and will continue on a month to month basis or as may otherwise be expressly indicated by FLOW in writing in respect of a particular service offering. Customer understands that if at any time Customer is not current in paying amounts owed to FLOW, or if Customer credit or debit card ("Card") expires, does not process payment or is otherwise rejected, FLOW may terminate the Service immediately in our discretion without notice. Customer is hereby further advised that the termination or other such temporary or permanent disconnection of another FLOW service taken by Customer (such as the "Direct Line Telephone Service") MAY result in this Service being temporarily or permanently being terminated, and FLOW shall not be liable in any such instance. Despite termination Customer will be liable for payment of any amounts due or other obligations incurred before or upon termination, whether the Agreement is ended by Customer or FLOW. If Customer selects a subscription plan with a Minimum Service Period, the term of Service shall be for such minimum period from the date of Customer's plan commencement, after any applicable promotion periods have expired (the "Fixed Term"). After the applicable Fixed Term expires, if Customer does not renew Customer's Fixed Term subscription Customer become a month-to-month customer but is still subject to the Agreement, as modified.

2. CUSTOMER MAY TERMINATE SERVICE FOR PLANS WITHOUT A FIXED TERM BY PROVIDING FLOW WITH 30 DAYS NOTICE. CANCELLATION WILL TAKE EFFECT ON OR BEFORE THE BEGINNING OF THE NEXT BILLING CYCLE AFTER THE NOTICE PERIOD.

3. In addition to any other remedies available, FLOW may immediately (without notice and without liability to the Customer) discontinue the provision of Service:

- (a) in accordance with Section H (3) below, or
- (b) if any of the following occurs: (i) FLOW deems in its absolute discretion that it is necessary to discontinue the Service in order to protect against its fraudulent or illegal use or to otherwise protect FLOW, its equipment, network or facilities; (ii) FLOW receives complaints or claims from third parties regarding the Customer's use of the Service; or (iii) the Customer fails to comply with its obligations pursuant to this Agreement (iv) the Customer becomes insolvent; or (v) Customer's financial institution dishonors or returns for insufficient funds Customer check or credit card or (vi) the Customer fails to pay on or before the Final Date the applicable charges for the Service or any other service supplied to the Customer by FLOW.

4. FLOW will endeavor to give the Customer notice regarding the reason(s) for suspension or termination as soon as reasonably practicable after such suspension or termination.

F. Cancellation/Termination Charges & Consequences

1. IF CUSTOMER CANCELS SERVICE PRIOR TO THE END OF CUSTOMER'S FIXED TERM OR BREACHES THE AGREEMENT BEFORE CUSTOMER'S FIXED TERM ENDS, CUSTOMER AGREES TO PAY FLOW IN ADDITION TO AMOUNTS OWED, 50% OF THE OUTSTANDING RENTAL FOR THE REMAINDER OF THE FIXED TERM, PLUS THE FULL SUM OF ANY OTHER FEE OR CHARGE THAT WAS WAIVED.

2. In the event that the Service is disconnected for any reason specified in clause E3 herein,

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(a) Customer is responsible for payment of all charges (including any cancellation fee) due to FLOW under the Agreement or these terms, which charges will be immediately due and payable. If FLOW reinstates Service to Customer after discontinuing Service, Customer may be subject to a credit check and agree to pay reactivation charges or deposits. FLOW remedies hereunder are not exclusive but are in addition to all other remedies provided by law.

(b) FLOW may, in its sole discretion, reconnect the Service, provided that the Customer, prior to such reconnection, pays all outstanding fees and charges and the relevant reconnection fee.

G. Additional Rights and Obligations:

1. FLOW will operate and maintain the Service, contingent upon FLOW's (i) ability to maintain necessary licenses or permissions, and (ii) availability of network capacity and connections.

2. Customer will, at the Customer's own expense, be responsible for all site preparation activities necessary for installation of the Service.

3. FLOW is not responsible for the installation, maintenance, compatibility or performance of any third party equipment or software not provided by FLOW, and if such equipment or software (i) impairs the Service, the Customer remains liable for payment, and (ii) is likely to cause hazard or service obstruction, the Customer will eliminate such likelihood at FLOW's request.

4. It is acknowledged and agreed by the parties hereto that the bandwidth for each product set out in this Agreement is the maximum bandwidth which can be achieved on the circuit and cannot be guaranteed by FLOW. FLOW will however use all reasonable efforts to achieve the highest possible level of Service at all times.

5. In the event that the Customer provides router(s) to interface with the Service, upon request by Customer confirmed in writing,

FLOW may assist Customer in configuring the router(s) in order to implement and operate the Service. If such router(s) are not recommended by FLOW nor certified by FLOW as compatible for use with the Service, FLOW may refuse such assistance and will not be responsible for the performance of the Service.

6. The Customer will give FLOW and its suppliers reasonable access to its premises at all reasonable times for purposes related to the provision of the Service.

7. Although FLOW may configure the Service so as to provide some security features, Customer shall be solely responsible for providing any security or privacy desired for its computer network and any data stored on that network or accessed through the Service. The Customer acknowledges and assumes all liabilities relating to, and risks associated with, unauthorized access by a third party via the Service to such computer network and data.

8. FLOW may communicate security issues to the Customer from time to time when misuse is observed or reported by others.

H. Use of Service

1. FLOW has no obligation to monitor the Service; however, FLOW may monitor the Service and disclose information gained from such monitoring in order to (i) satisfy any law, regulation or other governmental request, (ii) operate the Service and administer FLOW's networks, or (iii) protect itself or its subscribers.

2. Customer agrees not to use or attempt to use the Service, the FLOW network or website, or a Device for any fraudulent, unlawful, harassing or abusive purpose, or so as to damage or cause risk to our business, reputation, employees, subscribers, facilities, or to any person. Improper uses include, but are not limited to: (a) Violating any applicable law or regulation; (b) Posting or transmitting content Customer does not have the right to post or transmit; (c) Posting or transmitting content that infringes a third party's trademark, patent, trade secret, copyright,

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publicity, privacy, or other right; (d) Posting or transmitting content that is unlawful, untrue, stalking, harassing, libelous, defamatory, abusive, tortious, threatening, obscene, hateful, abusive, harmful or otherwise objectionable as determined in FLOW's sole discretion; (e) Attempting to intercept, collect or store data about third parties without their knowledge or consent; (f) Deleting, tampering with or revising any material posted by any other person or entity; (g) Accessing, tampering with or using non-public areas of the Service, FLOW's computer systems and network or any FLOW website; (h) Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures; (i) Attempting to access or search the Service, the FLOW network or any FLOW website with any engine, software, tool, agent, device or mechanism other than the software and/or search agents provided by FLOW or other generally available third party web browser; (j) Sending or attempting to send unsolicited messages, including without limitation, promotions or advertisements for products or services, "spam", "chain mail" or "junk mail"; (k) Using or attempting to use the Service, the FLOW network or any FLOW website to send altered, deceptive or false source-identifying information; (l) Attempting to decipher, decompile, disassemble or reverse engineer any of the software comprising or in any way making up a part of the Service, the FLOW network or any FLOW website; (m) Interfering or attempting to interfere with the access of any user, host or network, including without limitation, sending a "virus" to the Service, the FLOW network or any FLOW website, overloading, "flooding," "spamming," "crashing," or "mailbombing" the Service, the FLOW network or any FLOW website; (n) Impersonating or misrepresenting Customers affiliation with any person or entity; (o) Using the Service to make fraudulent offers to sell or buy products, items, or services or to advance any type of financial scam; or (p) Excessively high volume data transfers or bandwidth consumption, hosting of a web server, internet relay chat server or any other server, and non-traditional end user activities.

3. The Customer shall not use the Service for the purpose of bypass (as defined in the Telecommunications Act, 2000), nor for any other purpose prohibited by the said Act.

4. PLEASE BE ADVISED THAT USE OF THE SERVICE IS ALSO GOVERNED BY THE FLOW FAIR USAGE POLICY ("FUP") AND THESE TERMS AND CONDITIONS INCORPORATE THE FUP, EFFECTIVE SEPTEMBER 1, 2007, WHICH CUSTOMER MAY VIEW AT www.discoverflow.co/jamaica.

5. If FLOW suspects violations of any of the above, we may: (i) Institute legal action, (ii) Immediately, without prior notice to you terminate the Agreement and the Service, (iii) Terminate any other FLOW agreements between us and you and the FLOW service provided under those agreements, and (iv) Cooperate with law enforcement authorities in bringing legal proceedings against violators. Customer agrees to reasonably cooperate with us in investigating suspected violations.

6. FLOW reserves the right to install, implement, manage and/or operate one or more software, monitor or other solutions designed to assist us in identifying and/or tracking activities that we consider to be illegal or violations of these T&C's, including but not limited to any of the activities described in this Section. FLOW may, but is not obligated to, in our sole discretion, and without notice, remove, block, filter or restrict by any means any materials or information (including but not limited to emails) that we consider to be actual or potential violations of the restrictions set forth in these T&C's, including but not limited to those activities described in this Section and any other activities that may subject FLOW or its customers to harm or liability. FLOW disclaims any and all liability for any failure on its part to prevent such materials or information from being transmitted over the Service and/or into Customer's Device.

7. In the event that Customer purchases an official FLOW provided internet voice

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service ("VOIP Service") from FLOW which also requires the utilization of this Service, then these T & C's as well as the FLOW terms & conditions with respect to such VOIP service shall apply.

I. Warranties and Liabilities -

1. The Customer acknowledges and understands that, except for certain services specifically identified as FLOW services, FLOW does not operate or control the Internet.

2. THE CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR ITS USE OF THE INTERNET.

3. FLOW MAKES NO EXPRESSED OR IMPLIED WARRANTIES, REPRESENTATIONS OR ENDORSEMENTS REGARDING ANY MERCHANDISE, INFORMATION, PRODUCTS OR SERVICES PROVIDED THROUGH THE INTERNET.

4. FLOW does not in any manner warrant any item of equipment provided by FLOW; FLOW will, however, transfer to the Customer (to the extent permitted by an equipment supplier) any warranty provided by such supplier, with FLOW retaining the authority to exercise Customer's rights thereunder until discontinuation or termination of the Service.

5. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT AND IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. NO ADVICE OR INFORMATION GIVEN BY FLOW 'S EMPLOYEES, AGENTS OR CONTRACTORS (INCLUDING WITH RESPECT TO ANY EQUIPMENT THAT MAY BE RECOMMENDED FOR PURCHASE AND/OR USE WITH THE

SERVICE) SHALL CREATE A WARRANTY.

7. FLOW shall not be liable for, and is excused from, any failure or delay due to acts of God, acts of civil or military authority, riots, civil unrest, acts of the public enemy, war or threats of war, accidents, fires, explosions, earthquakes, floods, unusually severe weather, epidemics, strikes or industrial action or any other cause beyond its reasonable control.

8. UNDER NO CIRCUMSTANCES SHALL FLOW OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT RESULT FROM CUSTOMER OR CUSTOMER'S USERS' USE OF OR INABILITY TO ACCESS ANY PART OF THE INTERNET OR RELIANCE ON OR USE OF INFORMATION, SERVICES OR MERCHANDISE PROVIDED ON OR THROUGH THE SERVICE, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, LOSS, THEFT, OR DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE.

9. Notwithstanding anything to the contrary stated herein, FLOW's maximum liability hereunder will not exceed an amount equal to the total of the monthly recurring charges paid by the Customer hereunder for the twelve (12) months preceding the month during which such liability arises.

10. The Customer shall defend, protect and hold harmless FLOW and its affiliates from and against any liabilities, actions, losses, costs, or claims incurred by them as a result of (i) any use or misuse of the Service (whether by the Customer or any other party), or (ii) any claims arising out of the use of any third party equipment or software with the Service based on the alleged infringement or misappropriation of any intellectual or other property rights of any third party.

11. FLOW and the Customer expressly agree that this Agreement does not give rise

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to any third party being a third party beneficiary or being entitled to any rights whatsoever.

12. In the event an action is brought by FLOW against the Customer to enforce this Agreement, in addition to any other remedy available to FLOW, Customer shall reimburse FLOW for reasonable attorneys' fees and expenses of any such action.

J. Additional Terms

1. Neither party may use the other's name in trademark, tradenames or other proprietary identifying symbols without the prior written approval of the other party.

2. Any notice and similar communications concerning this Agreement ("Notice") shall be in writing, and may be (a) delivered in person, or (b) sent to the other party by (i) registered mail (with return receipt requested), (ii) facsimile (electronically confirmed and followed up immediately by regular mail), or (iii) electronic mail (followed up immediately by regular mail). Notices will be delivered or sent to the following addresses or to such other address as either party may hereafter establish by notice given in the manner prescribed in this paragraph: (i) if to Customer: to the relevant billing address, and (ii) if to FLOW: Attention: -VP, Marketing at 2 - 6 Carlton Crescent, Kingston 10. Notwithstanding the above, FLOW may give notice to Customer (other than with respect to breach, default, suspension or termination) by including appropriate notification in Customer's monthly invoice. A Notice will be considered given when delivered in the manner prescribed in this paragraph.

3. The Customer may not resell the Service or otherwise assign or transfer this Agreement or any rights or obligations without the prior written consent of FLOW.

4. In the event that one or more of the provisions herein is for any reason held to be illegal or unenforceable, this Agreement will be revised only to the extent necessary to make such provision(s) legal and enforceable; provided, however, that this

Agreement as revised is consistent with the parties' original intent.

5. Neither party's failure to insist upon strict performance of the terms of this Agreement or to exercise any rights or remedies hereunder shall waive any of its rights to require strict performance of such terms, to assert any of the same rights, or to rely on any such terms any time thereafter.

6. This Agreement is made in, governed by and subject to the laws and the jurisdiction of the Courts of Jamaica.

7. The Customer agrees that it may only make a claim or sue in relation to the Service if such claim or suit is brought within one (1) year after the cause of action arises and that such claim or cause of action will be barred thereafter.

8. FLOW and the Customer are independent contracting parties, and this Agreement will not constitute the parties as principal and agent, partners, joint venturers, or employer and employee.

9. No Customer purchase orders or similar documents will vary or add to the terms of this Agreement.

10. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and it supersedes all prior or contemporaneous oral or written agreements, understandings and representations.

11. FLOW may, upon reasonable notice to the Customer, vary these terms and conditions and the Customer will be bound by such variation if the Customer uses the Service thereafter.

12. Notice to Customers may be published in a daily newspaper circulated in the island, by radio announcement, by notices placed in our Business Offices or dealer locations, on our website at www.discoverflow.co/jamaica or sent by email or voice mail messages to Customer Line or other contact given on the Application Form.

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