



**FLOW**  
**MOBILE DATA TERMS AND CONDITIONS**

In this Agreement, the terms “ ‘You’ and ‘Your’ ” will be used to refer to the Customer and the terms “ ‘We’, ‘Us’ and ‘Our’ ” will be used to refer to Cable & Wireless Jamaica Limited hereinafter referred to as “FLOW”. This is an agreement between You and Us for the provision of mobile data service (“the Service”) including but not limited to post-paid, pre-paid and roaming data services on our GPRS/EDGE and Mobile Broadband networks, as applicable. This Agreement, the Service and the use of Your receiving equipment (“the Unit or Device”) are subject further to applicable tariffs and regulations. Your use of the Service will constitute your agreement to be bound by

**1. Description of the Service**

The Service includes: A. the sending and receiving of mobile data between capable mobile data devices, and B. Internet connectivity. Depending on the type of device and mobile data plan, the service may also include direct access to mobile and internet content and applications. The Service will be provided over our network using either GPRS/EDGE or Mobile Broadband technology, and access to the Service will require a compatible Device.

**2. Usage/Billing**

Usage and monthly fees will be charged as specified in your plan. Data transport is normally billed per Megabyte which is 1024 Kilobytes of data, and actual transport is rounded up to the nearest one hundredth of a Megabyte at the end of each data session for billing purposes. We charge in increments of one hundredth of a Megabyte at the end of each month. If you are on an inclusive data plan you will be charged a monthly fee for the specified monthly data allotment plus a specified Megabyte rate for data used over the plan limit. Data sent and received includes, but is not limited to downloads, uploads, email, overhead and software update checks. Reported data may be higher than expected due to network overhead, software update requests, and resend requests that may be caused by network errors.

Prices do not include taxes, or roaming, or other fees which may be exempted from time to time by Us and are subject to change.

You are responsible for the payment of all charges for the Service, including but not limited to access charges, and charges for service features.

(a) All bills rendered to You must be paid in full on or before the Final Date shown on the bill. If a bill is delayed in the post or otherwise, it is Your obligation to call Us to verify the amount due. Where payment is made by cheque credit card or other instrument, We may charge You a return fee if the cheque credit card or other instrument is dishonoured.

(b) Non-payment of bills by the Final Date will lead to the Service being disconnected and/or suspended. Upon suspension, prompt payment of the outstanding amounts will ensure restoration of service. Non-payment of bills after suspension shall result in disconnection from the network, necessitating full payment of outstanding amounts and re-application for Service.

(c) In the case of prepaid service, no bill will be sent to You and network access will be terminated where the Service is deemed to be inactive by Us, that is, if You have a zero balance on Your account for a period in excess of the period prescribed by us and the value of the prepaid credit on your account has expired and has not been renewed for a period in excess of the period prescribed by us.

(d) Your prepaid subscription plan expires either at the end of the subscription period or when You have used all of Your data allotment, whichever comes first. On expiration You will be required to purchase a new prepaid plan in order to resume access to the internet.

**3. Roaming**

Roaming charges for the Service may be charged when outside our wireless network. Display on your Device will not indicate whether you will incur roaming charges. Use of the Service when roaming is dependent upon the roaming carrier's support of applicable network technology and functionality. Certain capabilities of the Service may vary or be unavailable in certain countries and with particular carriers while roaming. Availability, quality of coverage and Services while roaming are not guaranteed. Check with roaming carriers individually for support and coverage details. Billing for domestic and international roaming usage may be delayed up to three billing cycles due to reporting between carriers.

**4. OffNet Usage**

If your usage of the Service on other carriers' wireless networks ("referred to as 'offnet usage'") during any two consecutive months exceeds your 'offnet usage' allowance, We may at our discretion terminate your access to the Service, or deny your continued use of other carriers' coverage. Your 'offnet usage' allowance is equal to 20% of the Megabytes included in your mobile data plan. For example, if you mobile data plan includes 1 Gigabyte, or 1024 Megabytes of data, your 'offnet' usage allowance is restricted to a cumulative maximum of 205 Megabytes of data over two (2) consecutive months. Case-by-case exceptions may be considered if pre-approved by our customer service department.

**5. Service Availability and Access/Coverage**

We do not guarantee availability of our wireless network. Services may be subject to certain equipment and compatibility/limitations including memory, storage, network

availability, coverage, accessibility and data conversion limitations. Aspects of the Service (including without limitation, eligibility requirements, plans, pricing, features and/or service areas) are subject to change without notice. When outside coverage area, access will be limited to information and applications previously downloaded to, or resident on, your Device. Coverage areas vary between our Mobile Broadband and GPRS/EDGE network technology. Actual download speeds depend upon Device characteristics, network, network availability and coverage levels, tasks, file characteristics, applications and other factors. Performance may be impacted by transmission limitations, terrain, in-building/in-vehicle use, capacity constraints, and the type of network technology used in specific locations to provide service (including Mobile Broadband or GPRS/EDGE technology).

## **6. Information/Content/Applications**

Certain information, applications, or other content is provided by independently owned and operated content providers or service providers who are subject to change at any time without notice. Third-party content or service providers may impose additional charges. Policies regarding intellectual property, privacy and other policies or terms of use may differ among our content or service providers and you are bound by such policies or terms when you visit their respective sites or use their services. It is your responsibility to read the rules or service agreements of each content provider or service provider. Any information you involuntarily or voluntarily provide third parties is governed by their policies or terms. The accuracy, appropriateness, content, completeness, timeliness, usefulness, security, safety, merchantability, fitness for a particular purpose, transmission or correct sequencing of any application, information or downloaded data is not guaranteed or warranted by us or any content providers or other third party. Delays or omissions may occur. We shall not be liable to you for any loss or injury arising out of or caused, in whole or in part, by your use of any information, application or content, or any information, application, or other content acquired through the Service.

## **7. Prohibited and Permissible Uses:**

Except as may otherwise be specifically permitted or prohibited for select data plans, data sessions may be conducted only for the following purposes: (i) Internet browsing; (ii) email; and (iii) intranet access (including access to corporate intranets, email, and individual productivity applications like customer relationship management, sales force, and field service automation), (iv) sending and receiving of pictures and videos clips between individuals, (v) licensed music and content downloads by individuals and (vi) mobile data streaming applications for individual use. While these are recognized as the more common uses permitted by your data plan, there are certain uses or applications that cause extreme network capacity issues – they severely interfere with our network and are therefore prohibited.

Examples of prohibited uses include, without limitation, the following: (i) server Devices or host computer applications, including, but not limited to, Web camera posts or broadcasts, automatic data feeds, automated machine-to-machine connections or peer-to-peer (P2P) file sharing applications; (ii) VOIP (Voice Over Internet Protocol) applications (iii) "auto-responders," "cancel-bots," or similar automated or manual routines which generate excessive amounts of net traffic, or which disrupt net user groups or email use by others; (iv) "spam" or unsolicited commercial or bulk email (or activities that have the effect of facilitating unsolicited commercial email or unsolicited bulk email); (v) any activity that adversely affects the ability of other people or systems to use either our wireless services or other parties' Internet-based resources, including "denial of service" (DoS) attacks against another network host or individual user; (vi) accessing, or attempting to access without authority, the accounts of others, or to penetrate, or attempt to penetrate, security measures of our wireless network or another entity's network or systems; (vii) software or other Devices that maintain continuous active Internet connections when a computer's connection would otherwise be idle or any "keep alive" functions, unless they adhere to our data retry requirements, which may be changed from time to time. This means, by way of example only, that checking email, surfing the Internet, downloading legally acquired songs, and/or visiting corporate intranets is permitted, but downloading movies using P2P file sharing services, redirecting television signals for viewing on personal computers, web broadcasting, and/or for the operation of servers, telemetry Devices and/or supervisory control and data acquisition Devices are prohibited. We reserve the right to without notice to anyone (i) deny, disconnect, modify and/or terminate Service of anyone we believe is using the Service in any manner prohibited or whose usage hinders access to our wireless network, adversely impacts our wireless network or service levels, including without limitation, after a significant period of inactivity or after sessions of excessive usage and (ii) otherwise protect our wireless network from harm, compromised capacity or degradation in performance, which may impact legitimate data flows. As a subscriber you may not send solicitations to other wireless subscribers without their consent. You may not use the Service other than for its intended use and as governed by applicable law. Plans are for individual, non-commercial use only and are not for resale. Your use of the Service is subject to Our Acceptable Use Policy, as amended from time to time, which is posted at [www.discoverflow.co/jamaica](http://www.discoverflow.co/jamaica). We may, at Our discretion, and You acknowledge that We may, monitor Your Service and Your traffic for compliance with our terms, conditions or usage policies.

## **8. Special Corporate Mobile Data agreements**

Special mobile data agreements may be available, depending on usage volume, quantity of units, and contract length. Persons interested in discussing such agreements must contact their designated FLOW Account Representative.

We may, at our discretion, monitor the compliance of any of Our subscribers, with Our terms, conditions, or policies.

## **9. Security**

We do not guarantee security. If you use your Device to access company email or information, it is your responsibility to ensure your use complies with your company's internal IT and security procedures.

## **10. Changes to the terms and conditions**

These terms and conditions may be changed from time-to-time. We will post the most current version of these terms and conditions at [www.discoverflow.co/jamaica](http://www.discoverflow.co/jamaica) or other appropriate location. Please check these regularly to inform yourself about changes to the terms and conditions.

## **11. Access Requirements**

Additional hardware, software, subscription, credit or debit card, Internet access from your compatible PC and/or special network connection may be required and you are solely responsible for arranging for or obtaining all such requirements. Some solutions may require third party products and/or services, which are subject to any applicable third party terms and conditions and may require separate purchase from and/or agreement with the third party provider. We are not responsible for any damage caused in any way by the preceding hardware, software or other items/requirements.

## **12. Miscellaneous**

We are not responsible for loss or disclosure of any sensitive information you transmit. Our wireless services are not equivalent to landline Internet. We are not responsible for non-proprietary services or their effects on Devices. If applicable, use of Desktop Toolbar requires compatible home computer products. Caller ID blocking is not available when using the Services, and your wireless number may be transmitted to Internet sites you visit. As a result, you may receive unsolicited messages from third parties and a charge for these messages may apply (i.e., data charges for downloading these emails and applicable attachments) whether the message is read or unread, solicited or unsolicited.

## **13. Intellectual Property**

All trademarks, service marks and trade names used on or in connection with the Service are the property of their respective owners. You must respect our intellectual property rights, and the rights of our third-party content providers, and any other owner of intellectual property whose protected property may appear on any website. Except for material in the public domain, all material displayed in association with the Service is copyrighted or trademarked. Except for personal, non-commercial use, trademarked and copyrighted material may not be copied, downloaded, redistributed, modified or otherwise exploited, in whole or in part, without the permission of the owner.

## **14. Additional Terms for Specific Mobile Data Services**

### **(a) Text, Instant Messaging and Picture/Video Messaging**

Messages are limited to 160 characters per message. Premium text and picture/video messages are charged at their stated rates. Text, instant, picture, and video messages, including downloaded content, not delivered seven (7) days after being sent, will be deleted. We reserve the right to change this delivery period as needed without notification. You are charged for each part of messages that are delivered to you in multiple parts. Picture/Video messaging, data plan, and text messaging may need to be provisioned on an account in order for you to use picture/video messaging. Some elements of picture/video messages may not be accessible, viewable, or heard due to limitations on certain wireless phones, PCs, or e-mail. We reserve the right to change the picture/video message size limit at any time without notification. When a single message is sent to multiple recipients, the sender is charged for one message for each recipient. Text message notifications may be sent to non-picture/video messaging subscribers if they subscribe to text messaging.

### **(b) Unlimited Mobile-to-Mobile Messaging:**

Some rate plans may include unlimited text, picture, and video messages between our wireless customers for a fixed fee. Certain message types, including instant messaging services, may be outside of the plan and would therefore be charged additional fees. It is up to you to check what types of messages are included in the plan.

### **(c) Directly Billed Third Party Content**

Third party content or services may be billed directly on your wireless bill. You may be charged monthly on your FLOW bill for all transactions entered into during the previous billing period. If others use your payment information, you are liable for charges they incur. If you should have any questions on your transaction history you may contact our customer care department

We may terminate the account of anyone who seeks refunds on improper grounds. Transactions on Prepaid services will be debited from your account balance at the time of the transaction. If there are insufficient funds in your account at the time of the transaction, you will not be able to complete your purchase or receive the requested services.

### **(d) Content Downloads**

Availability of content, including (but not restricted to): ringtones, graphics, games or video clips may vary based on the handset capabilities. Content alerts may be delivered in multiple messages. Content charges may be issued as a one-time download charge, a subscription rate, or per Megabyte of data. Usage charges apply to play multi-user games against

other wireless users or the server. Consult our advertised rates for details, or contact our customer care department.

**(e) Mobile Email**

Mobile Email requires an e-mail account with a compatible internet service provider and a downloaded or preloaded e-mail application for the wireless Device. Access and use of Mobile Email is billed by total volume of data sent and received (normally in kilobytes) unless you have an Unlimited Email plan or a plan that allows for a specified amount of data use for a particular cost. (i.e., BlackBerry Unlimited Email or BlackBerry Unlimited Email and Internet service). Upgrades to the email application on your Device may be required in order to continue to use the Service. Wireless data usage charges will apply for downloading the application and any upgrades. Your capability to view attachments will vary depending on the type of data Device that you have. Check the user instructions that came with your Device.

**LIMITATION/EXCLUSION OF LIABILITY**

NOTWITHSTANDING ANYTHING HEREIN, WE SHALL NOT BE LIABLE FOR NON-PERFORMANCE OR UNAVAILABILITY OF THE SERVICE IF SAME IS CAUSED OR CONTRIBUTED TO BY EQUIPMENT FAILURE OR BREAKDOWN, ACTS OF GOD, STRIKE, LABOUR DISTURBANCE, THE ACT OR OMISSION OF ANY OTHER TELECOMMUNICATIONS CARRIER OR OTHER CAUSES BEYOND OUR REASONABLE CONTROL. IF, WE INCUR ANY LIABILITY TO YOU WHETHER BASED ON TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THE SERVICE, OUR LIABILITY SHALL BE LIMITED TO THE AMOUNT OF THE PRO-RATA MONTHLY ACCESS CHARGE DURING THE PERIOD THAT THE SERVICE WAS AFFECTED OR J\$500.00, WHICHEVER IS LOWER. IN NO EVENT SHALL WE BE LIABLE TO YOU OR YOUR EMPLOYEE, AGENTS, CLIENTS, OR ANY THIRD PARTY FOR:

i) ANY DELAY OR GENERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, OUR FAILURE TO PERFORM UNDER THIS AGREEMENT; OR

ii) LOSS OF DATA, THE CONTENT OF ANY DATA TRANSMISSION, COMMUNICATION OR MESSAGE TRANSMITTED TO OR RECEIVED BY YOUR UNIT OR DEVICE.

WE MAKE NO REPRESENTATION AND GIVE NO WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY SET FORTH HEREIN.

**15. Privacy**

Mobile telephone calls may be intercepted. Accordingly, complete privacy, although likely, cannot be guaranteed.

**16. Severance**

If any provision of this Agreement is invalid or unenforceable, it shall be severed from this Agreement and the balance of this Agreement shall be unaffected and shall be enforceable.

**17. Customer's Copy**

You confirm that you have received a copy of this Agreement and read it and that you clearly understand it. You also confirm that we have not made any representation or commitment, which is not set out herein.

**18. Notice**

Notice to You may be posted on our website, published in any daily newspaper circulated in the Island, dispatched to Your billing address, sent by SMS message to your mobile phone number or such other commercially reasonable means by which We may notify You as may be available to Us from time to time.

**19. Change**

We have the right to modify this Agreement (by changing any of the terms hereof or by introducing new terms). Notice of any such modification shall be given to you via any of the means listed in Clause 18 above. If you continue to use the Service after such Notice has been given, then You will be deemed to have accepted such modification.

**20. Governing Law**

This Agreement shall be governed by Jamaican law.